

John Locke, Accumulation by Dispossession and the Governance of Colonial India

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ABSTRACT *This paper proposes a historical framework for examining colonial land policies in India. It argues that Locke's dualistic distinctions between settled agriculture on enclosed land and non-settled forms of livelihood framed basic differences in the ways that the colonial administration conceived of agricultural fields and forests. Locke's dichotomies between value and non-value-producing labour are also traced in early political economy, a discipline that exerted a direct influence on Indian governance, and particularly its land settlements. It is further argued that distinctions between value-producing labour and waste were formative in the development of the Forest Laws in the late nineteenth century, legislation that provided the legal framework for *adivasi* dispossession for the past century and a quarter.*

KEY WORDS: John Locke, wasteland, property, dispossession, colonial governance, India

... [T]he idea of waste! Its array of meanings is a veritable catalogue of social “undesirables.” As a noun it serves as dumping ground for all those entities that capitalist society views as marginal, residual, unimportant, or unpalatable. As a verb it describes the varieties of human behaviour that are unacceptable to modern society. In either grammatical form, the word “waste” hovers in the English language waiting to pounce on subjects and objects at the fringes of society (Gidwani, 1992: PE 31).

Despite the attention paid by post-colonial theorists to the relation between John Locke's labour theory of property and the conquest of America, few scholars so far have examined its relation to the conquest and governance of India.¹ This neglect may be due to the separation in time between the publication of Locke's *Two Treatises* (1690) and the conquest of India that began with the Battle of Plassey (1757). Despite this temporal gap, however, it is perhaps worth revisiting the relationship between Lockean doctrines and the land settlements and forest laws instituted in British India. As Wells (2007) notes, revenue settlements and forest laws

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in India were a major means to establish colonial hegemony based on the commodification of land, agriculture and forest produce.² They were, therefore, crucial in promoting the transformation of India into an agricultural and primary commodity branch plant of England in the late eighteenth and nineteenth centuries.

This paper argues that Locke provided a definition of waste and wastelands that was formative in the evolution of British political economy, which had a direct influence on the land revenue and forest settlements of British India. Hence, there are discursive similarities between Locke's labour theory of property, India's colonial land and forest legislation, and more widespread practices of accumulation by dispossession that involve the appropriation of landscapes of already-inhabited or already-used territories (Harvey, 2003). This may be because the labour theory of property simultaneously validated the expansionary tendencies of capitalist accumulation (MacPherson, 1964), upheld private ownership as a natural right even under conditions of accumulation and provided a racialised component to practices of colonial dispossession (Harris, 2004; Harvey, 2003).³

Post-colonial discussions of Locke's *Two Treatises*, especially its labour theory of property and its chapter on conquest, have focused on the ways these writings were connected to debates about the conquest of the "New World" (Arneill, 1998; Parekh, 1995; Tully, 1993). Arguing that a "state of nature" and "wilde woods" could still be found in America in the 1600s, Locke maintained that by enclosing such lands and bringing them under intensive cultivation, English colonisation of the Americas would raise global agricultural productivity and provide a source of increased trade from which all populations would benefit (Arneill, 1998: 10). In his argument, commercial cultivation on "individually enclosed" lands became the defining feature of the passage from a state of nature to a state of civilisation (Arneill, 1998; Parekh, 1995). While Locke criticised the conquest of already-inhabited territories, this principle did not apply to territories in which settled cultivation and individual property was considered non-existent and land was laying "waste." Since wastelands existed in a state of nature where people enjoyed the fruits of the Earth "in common," their inhabitants could not truly claim a proprietary right over such territories (Tully, 1993). Through the equation between states of nature, common lands, non-settled cultivation and "wilde wastelands," the doctrine of enclosure trumped the rights of pre-existing inhabitants. Here, Locke squared several political economic circles in emerging liberal English theory, of which two are relevant for this paper. The first was that between the "natural right" to "life" versus the English enclosures which dispossessed thousands of English and Scottish peasants, especially in the seventeenth century (MacPherson, 1964; Thompson, 1991; Wordie, 1983). The second was that between political liberalism and English colonial autocracy (Parekh, 1995). Indeed, Gidwani (2008: 21) has argued that the theory of wastelands was intimately connected to the ideology of progress, a problematic that sutured the premise of "natural liberties" to colonial autocracy through the deferral of material improvement to the future.

An examination of Locke's labour theory of property and the way it was utilised by early English political economists, such as Adam Smith and Thomas Malthus, shows that it became a major influence guiding the policies of land use in South Asia throughout much of the colonial period. In turn, the doctrines of Smith and Malthus were major influences informing the governance of India. Malthus held the Chair of

Political Economy at Haileybury College, the institution created by the Court of Directors of the British East India Company in 1805 to train civil servants for India, and the economic lectures at Haileybury were based mainly on Adam Smith's *Wealth of Nations*, with some alterations by Malthus to Smith's theories of rent (Ambirajan, 1978; Malthus, 1820). Indeed, the two major subjects taught at Haileybury were law and political economy, and the importance of understanding both disciplines had, by the early nineteenth century, been disseminated to the English middle classes from whom the majority of British India's civil servants were recruited (Ambirajan, 1978).

The main thesis of this paper is that the categories of waste and wasteland constituted the hidden supplement to the categories of "value" and "improvement" in both Lockean political philosophy and early English political economy. Hence, the role of the legal category of "wasteland" was to suture the relations between individual property and a normative diagram of governance based on material progress, both at home and abroad (Gidwani, 2008). In order to establish British territorial sovereignty and extend its governance to the local level, the Lockean categories of waste and wasteland functioned as pejorative oppositions to value-producing labour and land.

In comparing discourses about the productive or unproductive uses of land in the *zamindari*, *ryotwari* and forest settlements, the category of wasteland will be shown not only to have constructed different landscapes of "value," but also differentiated subjectivities of value. All subjects in India were colonised. However, they were not homogeneously governed, but were legally differentiated through either caste or tribal identities (Sumit Guha, 2001; Skaria, 1998). In turn, the legal identities of caste and tribe were related to founding oppositions between productive and unproductive uses of land found in the land settlements (Chaturvedi, 2007; Sumit Guha, 2001; Whitehead, 2010). Analysing wasteland as a social and historical category, rather than a natural one, shows how populations that inhabited different social ecologies were also deemed to be essentially racially dissimilar. These nineteenth-century distinctions adhered to Lockean distinctions between the settled and the savage, states of culture and states of nature, and the propertied and the propertyless.

This paper will briefly review the category of "wasteland" as it was applied to discourses of property, land use and personhood in the *zamindari* settlement of Bengal (1793) and the *ryotwari* settlements of western India (1830s-1840s), using these as a counterpoint to discuss the origins of forest legislation during the latter part of the nineteenth century and the subsequent enclosure of much forest land.⁴ Forest legislation is not often examined as a land settlement on par with the *zamindari* and *ryotwari* revenue systems, due to the disjuncture between "the field" and "the forest" that has characterised recent Indian environmental history (see Menon, 2004). Bringing the Forest Laws into correlative comparison with the major revenue settlements of the plains destabilises the foundational dualisms that constructed rigid boundaries between them. In comparing discourses about productive and unproductive uses of land and labour in the *zamindari*, *ryotwari* and forest settlements the category of wasteland is revealed to not only have constructed specific landscapes of "value," but also different social identities of groups inhabiting and using specific ecologies.

Locke's Labour Theory of Property and the Category of Wastelands

As is well known, Locke grounded his labour theory of property on precepts of natural law that were derived from both medieval theory and Puritan ethics (MacPherson, 1964; Tully, 1993). In the natural state, all men were equal and, therefore, had rights to life, liberty and possessions. Locke included possessions as a natural right because humanity had a right to survive and at least some possessions were necessary in order to do so. While Locke believed that the Earth and its fruits originally belonged to humanity in common, the natural right to possessions necessitated individual rights in some property. The transition from holding lands "in common" to private possessions occurred through the application of labour to land and was visually marked by the enclosure of individually worked fields (Davies, 2007: 88-92). Those who had worked the land and enclosed it had a "natural" right to it as property. Individual appropriation of land was desirable, as long as it did not infringe on others' rights to survival. Such interference would not occur if "there was enough and as good (land) left in common for others" (Locke, 2006; see also MacPherson, 1964).

Locke acknowledged that with the emergence of money and markets, land came to be concentrated to the point at which there no longer existed "enough and as good [land] left in common for others" (Locke, 2006: 122). However, he sustained his support for the private concentration of land in two ways. First, he argued that privatised lands that were intensively cultivated possessed a higher productivity than lands held in common by a multitude of subsistence-based households. Thus, the accumulation of money and land enabled a few to increase productivity to the extent that others could acquire the necessities of life through barter or trade. Here, the notion of "higher and best possible use of land" trumped the condition that enough good land should be left in common for others (MacPherson, 1964: 212).

Locke's second argument promoting the private concentration of land was that while there may not be enough unenclosed land left in England, there was certainly sufficient waste and common land left throughout the rest of the world for others to appropriate. The example given repeatedly was the "wilde" lands of America. "Full as the world seems, a man may still find enough and as good land in some inland, vacant places of America" (Locke, 2006: 14). In addition, both the peoples and lands of the Americas still existed in a state of nature, where there was no improvement on the land, so that 1000 acres of land under-utilised by the aboriginal population yielded only one one-hundredth of the necessities of life of an "enclosed" farm in Devonshire. Hence, in order to provide dispossessed English farmers with enough and good land for private use, colonial expansion was necessary and desirable.

The fact that the category of wasteland was used fourteen times in a chapter on property that consisted of seven to eight pages indicates that it is of some importance in Locke's labour theory of property. The meanings he attached to the term are instructive. At most points, Locke equated the category of wasteland with common land and used it in opposition to land that was privately owned, cultivated, commodified and enclosed. But it also referred to "neglected" land, such as when he writes: "the inhabitants think themselves beholden to him, who, by his industry on neglected, and consequently waste land, has increased the stock of corn" (Locke, 2006: 16). It was also identified with unproductive land: "land that is left wholly to

nature, that hath no improvement of pasturage, tillage, or planting, is called, as indeed it is, waste; and we shall find the benefit of it amount to little more than nothing” (Locke, 2006: 13). Indeed, Locke here was following existing legal usages of wasteland in the sense of land being left unused, a category introduced into English Common Law in the thirteenth century to curb the rights of tenants to do anything they pleased with rented land, and to disallow them from leaving it idle (Davies, 2007; Gidwani, 1992).

The empirical existence of wasteland was logically important in order that the proposition “enough and good land be left for others” (Locke, 2006: 122) would hold as a possible option, realised through colonial conquest. By using North America as an example of wasteland, Locke was also expanding its potential geographical scale to all areas of the world in which lands were not commodified or intensively cultivated. Not only did supposed “wild woods and waste” exist in many continents, but the apparently wasteful use of them seemed to necessitate their appropriation by an “improving hand” from England.

E. P. Thompson has pointed out that legal decisions in eighteenth-century England concerning land use introduced arguments from Locke’s labour theory of property, in which general reasons of “progress” and “improvement” were decisive in promoting individual and exclusive forms of property. In other words, disputes over “common land” increasingly came to be judged through the category of the highest and best possible use of the land. While Locke may not have understood individual property to include the exclusive and absolute rights of dominion, landed property in England throughout the eighteenth century was increasingly subsumed to contract by taking on the qualities and functions of capital through the increasing liquidity of mortgages. In this process, the common and use rights of the “lower orders” were eroded (Thompson, 1991: 154-9).

By the late 1700s, both law and the emerging discipline of political economy regarded coexistent properties in the same land with extreme impatience. For Adam Smith, as well as Malthus several decades later, “property was either perfect and absolute, or it was meaningless” (Thompson, 1991: 162). One of the functions of government for Smith was to protect individual property from the indignation of the poor, so that the liberty of market transactions could be allowed to operate unhindered by overlapping claims to subsistence. While Smith is best known as an advocate of *laissez-faire*, in his private correspondence he criticised Scottish subsistence crofters as a barrier to the emerging division of labour and increased demand and supported primitive accumulation (Perelman, 2000: 90-1). Echoes of Locke’s definition of waste can be found in Smith’s distinction between unproductive and productive labour, with the latter defined as labour that produced things of value, that is, marketable products. Unproductive labour, therefore, came to be identified with subsistence producers in early English political economy. The major innovation of Smith and later political economists was to shift the analysis of property from a language of law and rights to a language of impersonal market forces that operated independently of the will of individuals and supposedly in a generally improving fashion. However, the legal constitution of exclusive property in land and enclosure of the commons was a pre-condition for the emergence of the regime of productive labour and the “hidden hand” of the market. This process was nearly complete in England by the early nineteenth century. Hence, Smith’s

explanation of primitive accumulation that attributed the concentration of land and capital to the frugality and industry of a fortunate few was received without serious objections until Marx's pioneering work on the subject (Perelman, 2000: 91; see Marx, 1976).⁵

The same improving mind-set found the lack of productive labour or land reprehensible, whether in the English commons or in the English colonies. This notion of moral entitlement to landscapes based on the degree of their "improvement" was carried from England, not only to America, but also to other British dominions. Probably the most ambitious projects to transpose the law of property and the doctrine of value were found in the land settlements in India (see Thompson, 1991). Malthus' theory of rent was considered by many Indian civil servants to be the most important influence informing debates about land settlements in the early nineteenth century (Ambirajan, 1978: 1). Malthus argued that the system of property prevailing in the Mughal Empire, in which the emperor supposedly owned all the land, led to a great deal of land lying waste. This was due to the fact that rent absorbed the greater proportion of the agricultural surplus and did not allow the emergence of agricultural profits and wages (Malthus, 1820: 154-5). Malthus, therefore, thought that a system of individual landed property in India was a pre-condition for increasing the cultivation of supposedly extensive wastelands in India. His views were in common circulation with those intellectuals who formed the core advisors to the British East India Company directors, including Jeremy Bentham and James Mill, with the latter later writing a scathing denunciation of India's "despotic traditional institutions" that he believed inhibited individual initiative and commercialisation (Gidwani, 2008: 10).

Wastelands in India I: The Permanent Settlement and "Indolent Zamindars"

The introduction of the category of wasteland into Indian law and land revenue policies dates from the Permanent Settlement of Bengal in 1793 (Ranajit Guha, 1984). In its first incarnation in India, the notion of wasteland closely followed Lockean usages of the term. The desire to vest permanent and exclusive property rights in a class of gentleman farmers through the Permanent Settlement was guided by then prevalent ideas of the Whiggish aristocracy that derived from a *mélange* of Locke's labour theory of property and Adam Smith's labour theory of value, leavened with a dose of physiocratic doctrine. All believed that secure private property rights in a class of gentleman farmers provided the best incentive for value-creating labour that would increase agricultural productivity and, hence, wealth in general. According to Cornwallis, in the late eighteenth century, one-third of the land in Bengal was laying waste, although its precise amount could not be specified. One of the goals of the permanent settlement was to increase the land under cultivation and, for this, a cash-based revenue system and exclusive property were thought to provide the necessary incentives. The framers of the Permanent Settlement (Grant, Francis, Shore and Cornwallis) also utilised a physiocratic theory of value, in which the surplus generated from agriculture was the source of all economic value (see Ranajit Guha, 1984).

The framers of the Permanent Settlement seem to have exaggerated the extent of "wasteland" in Bengal. Habib (1964: 10) has estimated that since the number of revenue villages in Aurangzeb's reign was similar to those in 1881, most of the

province was fully occupied and cultivable during Mughal times, and very little was “lying waste.” In misrecognising the extent of the cultivated land in Bengal, Cornwallis’ usage of wasteland corresponds to Locke’s unstated meaning of the term – that is, a rhetorical device to justify state appropriation and expand British governance to new territories. “Land left lying idle” justified both the conquest of new regions and the intensification of governance within already conquered regions.

As Gidwani (1992: PE 45) observes, the pejorative connotations of waste as land used unproductively or left idle seeped into negative categorisations of the users/possessors of such land in Bengal:

With productivity as the ordering criterion, it was now possible to view “waste land” as a synonym for “idle land,” that is, land untapped – or perhaps more accurately – not *being tapped* for its commercial potential. For example, in the debates concerning the Permanent Settlement, Shore makes the following comment: They [the *zamindars*] have been decried as a useless, idle, oppressive race, practising every species of extortion, or countenancing it by their inactivity and ignorance. It is no wonder that so much land lies waste.

Despite these negative evaluations, the vesting of property rights in the *zamindars* was justified for reasons of political stability; that is, to maintain “order” in the countryside. In addition, as Cornwallis noted,

If laws are enacted which secure to [the *zamindars*] the fruits of their industry and economy, at the same time, leave them to experience the consequences of idleness and extravagance; they must either render themselves capable to transacting their own business, or they will dispose of their lands to those who would cultivate and improve them (cited in Gidwani, 1992: PE 47).

The concept of wasteland began its career in India not as we understand it today as a natural category applied to infertile, barren lands or rocky outcrops. It was a social category that applied both to the supposedly unproductive uses that lands were put to, to lands held in common, and to land left idle. Hence, it conflated commercial agriculture with a singular form of ownership, naturalising this combination in the process (Menon, 2004). Not cultivating the land, letting it lie fallow for long periods, utilising the land for gathering, hunting or pasturage activities, or not applying capital to land, would all serve to qualify specific groups of people as unproductive users of idle wastelands. According to Lockean theory, such individuals not only squandered resources by ignoring the imperative to produce the highest possible value from land, they also forfeited the “natural” right of property in land.

When Bengal’s *zamindars* failed to sufficiently commercialise agriculture on their tenants’ holdings according to utilitarian calculations, the blame was placed on their supposedly idle, oppressive and indolent habits (Ambirajan, 1978; Gidwani, 1992). However, the failures of the Permanent Settlement to increase cultivation of wastelands and commercialise agriculture led to the temporary eclipse of Malthus’ rent theory by a new utilitarian stream that derived its economic inspiration from Ricardo (Ambirajan, 1978; Stokes, 1959). Followers of Ricardo’s theory of rent believed that under conditions of land scarcity, a portion of rent derived from a

monopoly of ownership by a landed class and not only from differences in soil fertility. In order to reduce or eliminate monopoly rent, subsequent revenue settlements that followed the British East India Company's conquests in west and south India were contracted with those castes believed to be direct cultivators, or *ryots*. These were known as *ryotwari* settlements. In the process, those who were deemed to be "non-cultivating castes," including many "scheduled castes," were divested of rights of possession in common lands in western India (Chaturvedi, 2007). Ricardian disdain for "landlordism" was now wedded to Lockean definitions of value and waste, bringing about a temporary overturning of Malthusian rent doctrine in favour of a stricter utilitarian policy (Stokes, 1959).

Wastelands in India II: The *Ryotwari* Settlements of Western India and "Hardy Cultivating Castes"

After the British East India Company subdued large areas of western India in the early nineteenth century, it implemented a series of *ryotwari* land settlements with those they believed to be cultivating castes. It hoped in this way to circumvent the power of landed intermediaries and extract taxes directly from the peasantry, so that the full share of rent would fall to the British East India Company (Thorner, 1976). In addition, land revenue was not to be permanently fixed, but was to be raised periodically given differential investments on land, differences in soil fertility and even differences in the castes who cultivated the land (Ambirajan, 1978: 144-5). The major groups who were vested with the responsibility of paying revenue in western India fell into a narrow spectrum of castes, such as the Lewa Patidars in Gujarat and Kunbi Marathas in Maharashtra. These castes were not only thought to be the direct holders of land, but were also believed to belong to a sturdy farming stock that had the potential to become a productive yeoman peasantry and the harbingers of agricultural modernisation.

The revenue settlements of the Bombay Presidency covered several decades following the conquest of the Maratha kingdoms in 1818. An influential voice urging the application of Ricardian principles of rent, in which the state appropriated that amount due to a landlord and the cultivator was left with surplus capital for investment, was that of James Mill. He condemned Mughal policies as ruinous, since their gross produce assessments ignored differential soil fertility and social productivity. These assessments, he argued, "comprised the deleterious standard of rude governments" (quoted in Klein, 1965: 576). Utilitarian policy was strengthened by the appointment of R. K. Pringle, a "devout" Ricardian, as Bombay Settlement Officer in the late 1820s. He believed that the principles of Ricardian political economy could and should apply to property rights and land revenue, disregarding the overlapping rights of previous intermediaries, such as *meerasdars*, *deshmukhs* and *patils* (Kumar, 2004: 94-106). He believed that only by strengthening the rights of individual *kunbis* could individual initiative in farming be encouraged. By ignoring village-level intermediaries, and pitching a high cash revenue demand of net produce on the basis of differential fertility, Pringle believed cultivators would be incentivised to apply capital to their holdings, and increase commercial production both extensively and intensively. However, both high revenue rates of 55% of net produce and the collusion of surveyors with local

notables led to peasant devastation in Pringle's experimental *ryotwari* districts. Hence, a modified form of *ryotwari* settlement was concluded for the rest of the Bombay Presidency by Wingate and Goldsmid in the late 1830s and early 1840s (Kumar, 2004: 120). Some rights of the *patils* were recognised, yet individual property and the right to dispose of it was vested in cultivators, most of whom belonged to locally dominant castes, such as *Kunbi Marathas* in the Deccan and *Lewa Patidars* in Gujarat. Both Wingate and Goldsmid believed that:

The extension of agriculture depends upon the amount of surplus capital employed by the *kunbis* ... Once they had surplus capital in their hands, the *kunbis* could not only afford to take waste land under cultivation, but they could afford to pay the entire rent on this land (Wingate, writing in 1838, cited in Kumar, 2004: 125).

The *ryotwari* settlements of Goldsmid and Wingate constituted less a break with Mughal and Maratha revenue systems than a necessarily pragmatic synthesis of pre-existing tenures with utilitarian principles (see Klein, 1965). However, the ideology surrounding the *ryotwari* settlements fused a belief in individual initiative with one that linked occupational characteristics, such as farming, with inherent traits of specific caste groups. Each group then acquired its own racialised history (Cohn, 1988). Through the *ryotwari* settlements in Maharashtra, and the *narwardari* settlements in parts of Gujarat, *Lewa Patidars* and *Kunbi Marathas* emerged as the dominant landholding castes of the Bombay Presidency, although they too suffered from inflexible revenue demands that often turned poor harvests into famines. During periods of famine (Gidwani, 2008). They were able to utilise the increasing commodification of land as collateral for money-lending practices that increasingly concentrated the land in their hands (Gidwani, 2008).⁶ Indeed, Bremen (2003) has noted that the economic advance of the *Lewa Patidars* in Gujarat dates from the introduction of *ryotwari* settlements. Guided by Ricardian rent theory, settlement officers in nineteenth-century western India also encouraged *Kunbi Maratha* and *Lewa Patidar* cultivators to extend cultivation into "commons" and "waste" land through reduced rental rates and low-interest *taqavi* loans (Charlesworth, 2002). This was particularly true for frontier areas, such as Khandesh (Kumar, 2004; Whitehead, 2010). Hence, land settlements not only reflected, but also constructed the categories of productive, cultivating castes and non-productive "scheduled castes and tribes" and inscribed these essentialised categories on to an agrarian frontier. The expansion of cultivation into remaining wastelands was a major priority of the Revenue Department in the first half of the nineteenth century, since land revenue constituted about half of India's outflow to Britain (Wells, 2007).

Wastelands in India III: Forest Laws and the "Savage Slot"

Towards the middle of the nineteenth century, the colonial administration began to relinquish its view that forested woodlands were merely a barrier to the extension of cultivation, and a new set of debates emerged about the remaining "wastelands" of India (Gadgil and Guha, 1989). At that time, "wastelands" consisted mainly of the hilly and forested areas of South Asia. The new debates about forest wastelands

stemmed from concerns about the depletion of forest resources due to the increasing trade in India's commercially viable tree species, especially teak, *sal*, *deodar*, and *chir* pine (Ramachandra Guha, 2000: 40). While teak was in high demand after the Royal Navy chose to build ships in the Indian sub-continent after 1780, the construction of railways throughout the country from 1840 onwards led to steeply rising demands for railway sleepers (Rangarajan, 1996: 18). While many administrators advocated the protection of Indian forests on ecological grounds, the establishment of forest conservation in the late nineteenth century may be also traced to a more prosaic basis (Ramachandra Guha, 2000). Increasingly, a sustainable supply of commercial timber – both for the railways and the navy – became viewed as a necessity. Hence, through the expansion of commercial forestry, jungles that had been classified previously as malarial wastelands were viewed increasingly as commercial landscapes possessing valuable forest commodities requiring long-term maintenance and protection.

Pressure within the administration for forest conservation led to Lord Dalhousie's Minute of 1855 which outlined basic principles for future forest conservation, leading to the formation of the Indian Forest Department in 1864 and the formulation of the first India Forest Act in 1865 (Ramachandra Guha, 2000). Since England itself lacked a forest service, the first Inspector-General of Forests, Dr Deitrich Brandis, was chosen from the German Forest Service. Not only was the German Forest Service considered the most scientifically advanced in Europe, it had recently cut its teeth prohibiting customary woodland uses by the Rhineish peasantry and in suppressing an 1848 peasant revolt against forest enclosures in that region (Linebaugh, 1979). Brandis' inspectional tours of South Asia's forests between 1864 and 1875 uncovered a supposedly wide number and range of forest "abuses" on the part of the "tribal populations." His subsequent recommendations provided the basis first for the 1865 Act and its more sweeping successor, the 1878 India Forest Act.

The major abuses that Brandis uncovered did not derive from the unrestrained commercial exploitation of trees prevalent in the first half of the nineteenth century (Ramachandra Guha, 2000; Rangarajan, 1996). Indeed, Brandis took the commodification of forest products as a premise from which the edifice of a scientific regime of forest conservation was to be constructed. Like Locke and early political economists, he viewed commercial uses of the forests, tempered by long-term management, as the most productive application of labour to land. Since commercial exploitation was a given in scientific forestry, the major causes of deforestation were found in the supposedly wasteful practices of hill "tribes."

Customary users of forest commons included subsistence cultivators, hunters and gatherers, and village users of neighbouring forests for pasturage, house materials and fuel. However, the major culprits in Brandis' narrative were slash-and-burn cultivators and pastoralists. Since Brandis' reasoning concerning these practices was echoed repeatedly by subsequent forest conservators and officers, it is worth quoting at length his original memorandum, which called for all-India forest legislation:

If we take a review of the present impoverished state of a large proportion of the forests in British India, we come to the conclusion that certain main causes have co-operated to reduce them to the present unproductive condition.

Indiscriminate felling and reckless mutilation of trees, the lopping of branches for fodder and litter, the wholesale cutting of young trees for fences and roofing,

have contributed much . . . to prevent the improvement of the Forests, and many tracts have been entirely denuded . . . The unrestricted collection of leaves, the extraction of varnish, wood-oil and various gums and resins, has been another source of extensive injury to the Forests.

Another cause of deterioration . . . is the practice of temporary and shifting cultivation by clearing and burning the jungle, which is general in almost all hilly districts of India and Burmah . . . Besides the destruction by cutting and burning on the spot . . . the neighbouring forests are injured by the spread of the fire. The temporary character, however, of this cultivation is the principal source of evil. The spot cleared and burnt this year is deserted after yielding only one harvest, and thus a new portion of the Forest is every year doomed to destruction.

. . . The jungle fires which every year pervade the greater portion of the forest in this country do great harm. They are frequently caused by the erratic hill clearings just mentioned, or by the practice of herdsmen to set fire to the jungle during the hot season, in order to produce a fresh crop of young and tender grass during the monsoon. These jungle fires are most mischievous. They destroy annually an immense quantity of timber felled and lying in the forests (Government of India [GOI], 1865: 348a).⁷

The first India Forest Act was passed by the Legislative Council in December 1865. The importance of Brandis' original memorandum was shown by the fact that the above passage was included in its frontispiece. The India Forest Act of 1865 carved out the categories of state forests and District Forests from the category of wastelands and defined productive versus wasteful uses (and users) of the forests. It defined as destructive the livelihood strategies of many hill-dwelling communities, while eliding productive uses of the forest with those of commercial forestry. Slash-and-burn cultivators, who "fired the forests indiscriminately" and allowed their cattle and goats free pasturage in the forests, were portrayed as creating physical wastelands out of what were now seen as landscapes containing threatened commercial resources. Criticism of customary users of the forest as wasteful and destructive became a normative call to remedial action through enclosure, prohibition and restrictions on customary practices by the newly formed Forest Service (GOI, 1865; Ribbentrop, 1900; Stebbing, 1929).

The 1865 Act defined government-reserved forests as all those wastelands that were covered with trees, brushwood or jungle and which were not privately owned; that is, those containing the most potentially valuable timber. These were to be managed wholly by the Forest Department. Other government wastelands, which might contain some trees, but were not identified as containing valuable tree species, would become part of the District Forests. These were to be managed by the District Commissioners in consultation with District Forest Conservators (GOI, 1865).

The manner in which the state was to deal with "tribal" land rights was also foreshadowed for the future. The Legal Council at this time was H. S. Maine. Appointed to the post mainly due to his paternalist and Orientalist stance, which viewed Indian society as governed by laws of status rather than contract, he advocated the gradual application of "modernist" laws to India following the

Rebellion of 1857-58 (Kuper, 1997; Whitehead, 1992). However, Maine capitulated to Brandis' views that the sources of forest destruction were the everyday "customary" practices of hill populations. He counselled that those villages on the borders of reserved forests (for example, villages in the Himalayan foothills) should not be divested of common pasturage rights. Within the state reserved forests, however, this recognition of rights could not apply. In short, rights of use and possession of forest lands and produce could be abrogated to the State wherever the Forest Conservator found it necessary to do so.

Despite arguing for the maintenance of traditional codes in Indian civil law, Maine was also a great admirer of Locke. Hence, he may have discounted the value of customary land uses of the hill tribes. Since they inhabited a state of nature, he may have viewed them as outside the realm of civilisational law, whether traditional or modern.

Other reasons Maine gave for his failure to recognise customary ownership rights in the 1865 Act were the relatively small numbers of hill populations and the seeming complexity of their forest rights:

Some of the finest Forests in the world are being rapidly lost to the Government of India . . . through acts which conduce to the benefit . . . of an inconceivably small minority of the population . . . It would appear that various petty rights over the soil or produce of forests have been prescriptively acquired by individuals, villages or wandering tribes. These rights the Government of India does not wish to affect or abridge, but they exhibit such diversity of character that it is impossible to include them in any one definition for the purposes of reservation and settlement (GOI, 1865).⁸

Once the Act was passed, the category of wastelands, and/or lands used in common, applied to a shrinking land base. It now included only those lands that were not privately owned and cultivated, and were also not included in the Reserved Forests. It also did not include a potentially ambiguous category of lands, included under the category of District Forests, in which some trees or shrubs were found, but were not privately cultivated or owned either. The ambiguity in this category of landscape was magnified by the "dual administration" of the District Forests. Although they were under the overriding supervision of the Revenue Department, the sale of District Forest lands to individuals, and their other usages, was to be decided through consultation between the District Commissioner and the District Conservator of Forests. All remaining lands were still considered wastelands and were liable for sale under the existing Wasteland Rules (GOI, 1868).

Almost as soon as the ink was dry on the first India Forest Act (1865), Brandis initiated a vigorous debate on the category of wastelands in District Forests. While the two sides of the debate were identified with the Revenue Department, on the one hand, and the new Forest Department, on the other, the logical premise for both was achieving the most productive use of land, and for that the specification of either state right in forests, or private rights in cultivated lands, was deemed essential. Most revenue officers, while differing with each other on how the forest rules should be implemented, accepted that their desire to expand the agricultural frontier had to be

squared with the need for forest conservation.⁹ However, they often differed with Brandis on the question of whether to treat customary uses of District Forests “and other wastelands” as based on a “right” or a “privilege” (Ramachandra Guha, 2000: 38). The forest officers, on the other hand, intensified their arguments about forest degradation due to wasteful customary practices. For them, forest conservation should apply to the district, as well as the reserved forests.

Brandis urged a more far-reaching Forest Act as early as 1867, and prepared a draft of it by 31 October 1868:

In every province, a commencement has been made to separate, from the large extent of waste lands, certain of the more valuable forest tracts, and to place them under the exclusive control of the Forest Department . . . The other forest lands have been called district forests . . . It was not deemed expedient to abandon the control of the forest department over the remainder of the waste and forests . . . For, in the present state . . . it is not possible to know whether the state forests will be found sufficient for the requirements of the country and the export trade, or whether their area may not have to be increased hereafter . . . In addition, the 1865 Act does not authorise the establishment of separate rules for the residuum of forests contained in the District Forests and over which the establishment of a certain degree of control seems expedient (GOI, 1868: 25).

Brandis further argued that the articles of the 1865 Act which defined rules for the reserved forests should be made applicable to all District Forests. In addition, he found it necessary to omit H. S. Maine’s residual clause in the 1865 Act counselling Forest Conservators “against affecting any existing rights of individuals or communities.” For Brandis, this phrase nullified in certain cases important provisions of the (forest) rules, leading to pasturing even in many Reserved Forests. “If allowed to stand,” Brandis argued, “this clause may be interpreted [in the future] to nullify *all* existing rules passed under the Act” (GOI, 1868: 27, emphasis added).

The responses from the District Commissioners who were stationed in regions with high “tribal” populations were ambivalent. Most agreed that the existing rules regarding District Forests were vague, with there being little to differentiate the District Forests from Government wastelands. Hence, it was often difficult to decide whether they could be sold to private proprietors or timber contractors under the Waste Land Rules. However, they also expressed a rather paternalistic concern that the application of Forest Rules to the District Forests would extinguish customary rights and usages and cause the Gonds, Bhils and other “wild” tribes to flee those areas to take up government wastelands elsewhere, sometimes in areas that could be considered “pristine forests” of potentially high commercial value. The District Commissioners from Nagpur, Chhota Nagpur, Simla, Bombay and Nasik drew attention to the fact that Brandis’ plan to extend Forest Rules to District Forests would impinge on the customary, aural rights of hill cultivators.

For example, the District Commissioner from Nasik, H. N. B. Erskine argued that:

The provisions regarding demarcation are hardly suitable to this presidency. We do not in this presidency possess much forest in civilised parts of the country and the procedure laid down is only suitable for civilized

communities. The villages in the neighbourhood of forest reserves ... are to a great extent collections of huts belonging to Bhils, Kolis and such like, and written proclamations would to them be unintelligible, while the procedures laid down for their guidance would seem absurd. Fancy a Bhil or Koli being told to present the Forest Officer with a “written notice” stating the nature of his rights and giving, too, the amount and particular of the compensation claimed in respect thereof. Then, if such rights are not claimed, they shall, the Bill declares, be deemed to be extinguished (GOI, 1872: 15).

Despite a decade-long discussion on the political dangers of introducing Forest Rules into the District Forests inhabited by “wild” tribes, the overall intent of the central government in favour of further enclosure was evident early on. Col. C. F. Dickens, Secretary of the Public Works Department, on behalf of the central government, stated as early as 1870:

It appears to the Governor General in Council that the Forest Rules and Waste Land Sale Rules do not sufficiently guard against the alienation of valuable forests. It appears that in 1863 Dr. Brandis advised that in the Government Forests, no land should be sold ... without the sanction of the Government of India. The Revenue Department deemed that there was no necessity for this Rule, since it was provided for in the Waste Land Rules ... It now appears necessary to include further safeguards against the sale of valuable forest lands, especially in the District Forests.

... I also suggest whether it would not be expedient, in addition to the Reserves already demarcated, to declare certain forest lands as exempt from the Waste Land Sale Rules, though it may for other reason not be expedient to include them in the State Reserved Forests (GOI, 1870: 5).

Despite the warnings from some District Commissioners, the final discussion in the Legislative Council evidenced little concern for the settlement of pre-existing rights of hill communities. Instead, the then Legal Member of Council, H. Hope, asserted that the new Act provided greater security of individual claims than the 1865 legislation. In addition, he stated that “due to the innumerable range of such rights, and the time it would take to record them, forests should be declared protected or reserved, *prior* to enquiry into the settlement of rights” (GOI, 1878: 4, emphasis added). In addition, he argued, prior enquiries into whether villagers’ use of forests were “privileges” or “rights” had already been settled at the second Forest Conference by the principle that “the right of conquest was the strongest of all rights – and a right against which there was no appeal” (quoted in Ramachandra Guha, 2000: 43). In essence, then, the recording of long-standing usages, customs and rights that were possessed by hill and forest dwellers were overruled by the needs of scientific forestry and by commercial uses of forest produce. Throughout these discussions, the priority of identifying the highest commercial uses of the landscape with productive labour and value was taken for granted and the category of wasteful and destructive labour identified with slash-and-burn cultivation, pastoralism and other subsistence activities.

The 1878 Forest Act and the Category of Wasteland

The 1878 Forest Act, amended in 1890, 1894, 1904 and 1927, created the legal categories of reserved and protected forests, and enabled the enclosure of large areas of landscape as reserved forests. Some cultivation was allowed under supervision in the protected forests, but none was permitted in the reserved forests. It appointed Forest Officers, and accorded them the power to declare new “wastelands” as protected or reserved forests and to prosecute offences unilaterally. Hence, any areas in which a particular Forest Officer felt that forest products were being overused could be declared reserved areas, and all their use and trade came under the supervision of the Forest Officer. The Forest Officer of a district also had the authority to prohibit offences created by the Act unilaterally. Much of what constituted the “kin” mode of production based on slash-and-burn cultivation, pasturage and some hunting, gathering and fishing in the forests or forest waterways, was criminalised in the 1878 Act. The Act contains an encyclopaedic compendium of quotidian activities that were considered both wasteful and destructive of the forests, with the following prohibitions being but a brief excerpt:

The construction of any fresh clearing, . . . setting fire to a reserved forest, or kindling any fire in such manner as to endanger the same . . ., or permitting cattle trespass, causing . . . damage by negligence in felling any tree or cutting or dragging any timber, felling, girdling, lopping, tapping, or burning of any tree, stripping-off the bark or leaves from, or otherwise damaging any tree . . . quarrying any stone, burning lime or charcoal, or collecting, subjecting to any manufacturing process or removing any forest-produce, clearing any land for cultivation or any other purpose; or, killing elephants, hunting, shooting, fishing or setting traps or snares (GOI, 1878: 23).

The forest “resources” that were prohibited included fruits used as food for people; underbrush used as fodder for domestic animals; branches used to make bedding, fencing, walls and house poles, and for firewood; bark, roots and leaves for making medicines and resins; crabs and freshwater fish from forest streams; animals that were hunted for game, *mahua* flowers used for making liquor, and so forth. The 1878 Act also empowered the Forest Officer, in declaring areas protected or reserved forests, to unilaterally nullify rights of use, possession or revenue-collection of the forested areas and forest products which had hitherto been possessed by hill communities and/or previous overlords. Section 9 of the Act “extinguished any rights in respect of which no claim had been referred under section six” (GOI, 1878: 27). In turn, section six appointed an officer “to inquire into and determine the existence, nature, and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest-produce, and to provide such persons with suitable compensation” (GOI, 1878). Compensation could be paid only if the petitioner had proven in writing within three months of the following the declaration of forest reserve that such rights were of long-standing existence. Since most of those affected were not literate, it is probable that most would have been unable to appeal to the Settlement Officer. Nor does it seem possible that many would possess a written agreement of “customary rights of long-standing with a previous ruler.” Hence, three

months following the declaration of a reserved or protected forest, such rights were extinguished.

Although the implementation of the 1878 Forest Act was uneven throughout the sub-continent (Sivaramakrishnan, 1999), Ramachandra Guha and others have documented far-reaching changes in the cultivation and pasturage activities of communities in the Himalayan foothills that were ushered in by Forest Reserves and Forest Rules in the late nineteenth and early twentieth centuries (Ramachandra Guha, 2000). Similar erosions of rights of possession, use and sustainable practices have been documented in the Assam highlands and in the eastern Ghats of Tamil Nadu (see Menon, 2004; Saikia, 2008; Saravanan, 2006).

Categories of Land and Categories of Personhood

The division of lands in India into state forests, on the one hand, and privatised farm or commercial land, on the other, was accompanied by racialised divisions based upon two axes. First, there were evolutionary typologies that differentiated “tribes” from “castes” and, second, Orientalist exoticism, which, in turn, divided various castes from each other (Skaria, 1998).

Castes were acknowledged to inhabit a structured, “semi-civilised” society based on settled agriculture. Even the modernising utilitarians acknowledged that intensive agriculture and its accompanying urbanisation had existed in the subcontinent for millennia, if supposedly lacking the exclusionary property rights that defined entrance into full civilisation. Yet mainstream rural India, with its “myriad” of castes and sects, was also viewed as rigid, unchanging and traditional, requiring the improving hand of European modernisation and progress (Cohn, 1988; Gidwani, 2008). A major protagonist in this British hagiography of modernisation was the individual cultivator, or *ryot*, supposedly oppressed by centuries of feudal intermediaries, and waiting for his innovative capacities to be unleashed by exclusive property rights, commercialisation and the compulsions created by high and monetised revenue demands. The more ambiguous categories of intermediary land holders, including the *zamindars* of Bengal Presidency, that *talukdars* of Oudh and the petty princes of western India, were alternately vilified and/or supported by the administration during different historical conjunctures. Changing attitudes towards them over time depended upon political expediency, changing economic doctrines and their historical strength prior to conquest. For example, the administrative support of *zamindars* and *talukdars* was considered necessary both after the conquest of Bengal and following the 1858 Rebellion, but not during British expansion into west and south India during the early nineteenth century. During periods in which British hegemony was uncontested and a pre-existing landlord class relatively weak, intermediaries between the state and the cultivator could be dispensed with more easily. When British hegemony was seriously threatened, however, indirect rule was deemed necessary, Indian traditionalism was affirmed, and landed intermediaries became the bulwarks of order who would, hopefully, ensure peace in the countryside (Metcalf, 1979; Whitehead, 1992).

The differences between *zamindari* or *ryotwari* tenure should not, however, obscure a deeper, foundational dualism in British attitudes towards social groups in South Asia. Unlike both the *ryots* and *zamindars*, the “tribes” of India were viewed

as below even a semi-civilised society. During the mid- to late nineteenth century, a three-stage evolutionary theory gained cultural ascendance in nineteenth-century Britain, Europe and America (Kuper, 1997). It associated hunting, gathering and fishing with barbarism, slash-and-burn agriculture and/or pastoralism with savagery, and settled agriculture and industry with civilisation (Kuper, 1997; Trouillot, 2003). In the South Asian context, intensive agriculture was associated with caste society, while tribal society was identified with hunting and gathering in the forests, slash-and-burn cultivation and pastoralism and, hence, assigned to an evolutionary slot of either savagery or barbarism.

In addition, each of the specific “tribes” and “castes” was dressed up with separate, racialised histories (Cohn, 1988), and often differentiated physically by skull size, nose shape and skin colour. While the higher castes were seen as descendants of Aryan invaders, “tribes” were viewed as indigenous inhabitants of the subcontinent, lacking Aryan blood and were, hence, outside and below the racialised rankings of caste (Sumit Guha, 2001; Skaria, 2001). These self-reinforcing histories transformed cultural differences in geographical space into a temporal, unilinear progression based on “race,” and plotted different subsistence strategies on to a historical edifice of value-producing or unproductive users of the landscape.

In the process, “scheduled tribes” were invented as savage beings. They were often likened to both children and criminals in much administrative discourse (Skaria, 1998: 734). In addition, Lockean images of a “state of nature” were applied quite extensively in British administrative documents and histories of “tribes” of the nineteenth century. Since revenue settlements and private property rights did not apply to the hill areas, such lands were deemed to be still wastelands, occupying a “natural state” inhabited by “wild” tribes who wandered at will and appropriated the fruits of their labour in common. Since they lacked all notion of individual property, they were also often regarded as outlaws. These stereotypes applied, for example, to the “Bhils” in western India. In imagery very reminiscent of Locke’s “natural state,” an early British historian of the “Bhils” of Khandesh described them thus:

Reckless of life, active and intelligent, the Bheel race is peculiarly adapted for the daring foray and the night attack. Their habits and ideas . . . are totally opposed to agricultural labour; the motives which lead to the gradual accumulation of property are faint and insufficient; and honest mechanical craft is despised (by them) with the most thorough contempt (Graham, 1843: 180).

The savage slot into which the Bhils were placed also induced a series of attempts to “civilise” them through teaching them the use of the plough and the advantages of irrigated, double-crop agriculture. The “introduction” of plough agriculture was thought to render them more “settled” and to be an important part of the pacification of hill “chiefs.” In addition, a police force, comprised solely of Bhils, was formed in order to subdue the “wild” hill tribes of the Satpuda and Vindhya ranges. Founded by Major Outram in 1825, the Bhil Corps subsequently defended the Vindhya and Satpuda mountain passes from various rebellions and insurrections until its disbandment in 1891 (GOI, 1898: 82).

Numerous “tribes,” including some “Bhils,” were criminalised due to the nomadic and peripatetic nature of their occupations. They were required to attend daily roll

calls or were resettled in labour camps run by missionary organisations (Radhakrishnan, 1992; Yang, 1985). In the Forest Acts, many of their everyday subsistence activities were outlawed in the name of conservation, and they were prevented from owning property due to the aural nature of their previous rights. The dividing line between castes and tribes constituted differing categories of personhood and subjectivity in colonial law, property rights and administrative practices.

Environmental historians have already analysed the trope of wildness that was applied to hill communities and examined the ways that it rigidly divided hill communities from settled cultivators in the colonial imagination, academic treatises and government policies (Sumit Guha, 2001; Skaria, 1998; Skaria, 2001). However, the relationships between the administrative categories of tribes and castes and corresponding property regimes have not been so well excavated. By plotting tribes and castes onto a racialised, evolutionary history, each category was linked to either productive or wasteful uses of the land and assigned a subsistence slot in which each was rigidly maintained, in terms very reminiscent of Locke's labour theory of property.

In mapping an evolutionary typology on to specific landscapes, both the social categories of caste and tribe and their associated lifestyles became doubly naturalised. On the one hand, each occupied fixed, racialised, occupational slots (Trouillot, 2003). On the other hand, they were deemed the natural inhabitants of differing productive regimes and ecosystems. It is hard not to see the long arm of Locke's founding dualisms between states of nature and states of civilisation in the boundaries that were created in nineteenth-century divisions between castes and tribes, fields and forests. The opposition between those deemed deserving of property and those who were not was mediated through the discipline of political economy, which occluded processes of primitive accumulation through the "invisible hand of the market." At the same time, it attributed the concentration of capital and land to the frugality and industry of a fortunate few, such that subsistence production became doubly stigmatised as both unproductive and a barrier to future improvement (Perelman, 2000; Whitehead, 2010).

In both Locke's theory of property and nineteenth-century forest policy, the state of nature met the trope of wasteland through the metaphors of wilderness and wildness. Not only were certain landscapes deemed *jungli* and wild, but so too were the people occupying such areas. Locke's category of wasteland provided a metonymic appraisal of both land and "its" peoples. Land left idle, as in slash-and-burn cultivation fallows, defined a supposedly wasteful use of landscape, while land used in common attached the category of wasteland to specific modes of production that were assigned to "lower" evolutionary levels. In order for wilderness areas to be civilised and rendered productive, therefore, "tribes" had first to be removed from such landscapes, and control over their resources vested in more civilised beings. As in seventeenth- and eighteenth-century England, apparently wasteful uses of the landscape were deemed sufficient legal reasons for enclosure and the consequent erosion of the rural commons (Thompson, 1991).

By metonymically signifying both landscapes and people, the category of wasteland signalled an array of policies that applied to both the uses and the users of land. Locke's labour theory of property created the original legal map that divided wildness from civilised, wasteful from productive, and the civilised from the savage. Hence, the labour theory of property classified those who would, and who

would not, become most vulnerable to accumulation by dispossession in a colonial context. Inhabitants of wastelands became people without history, property or productive identities, inflecting class projects of dispossession with a racialised subjectivity located in a state of nature before history began.

Ultimately, imperialism was and is about the control of space and territories. To apply the categories of waste and wastelands to already inhabited areas of India was to implant a legal grid over a space that contained all of productive capitalism's undesirables: "primitive," "wasteful" populations that lacked any sense of "propriety," "industry" and "private ownership." The concept of wasteland also enjoined an ascriptive call to action that could be ultimately used to justify the dispossession of such populations in favour of supposedly "higher" commercial users of the land. Hill populations were seen as outside of and prior to a state of culture or civil society; their uses of the land were consequently primitive and destructive. In Lockean terms, they constituted a vast region of waste that required the civilising hand of enclosure, followed by forced resettlement in forest villages, criminalisation or pauperisation. In Locke's wasteland, and its opposition to the categories of value and productive labour, we see the unseemly scaffolding of imperial and class projects that united processes of dispossession with racialised subjectivities and identities. These continued to inflect our naturalised categories of land use, "productive labour" and "tribal" populations in India for centuries to come.

Notes

- ¹ See Gidwani (1992; 2008) for an insightful contribution to this otherwise neglected topic, focusing on the Permanent Settlement of Bengal 1793.
- ² Ranajit Guha (1984) has argued persuasively that colonial rule was based on domination, rather than hegemony. While this is true in considering Indian culture and language as a whole, Wells' argument that the British only needed to establish commercial and territorial control to constitute a hegemonic bloc also has merit. I am using Wells' understanding of hegemony in this paper.
- ³ The labour theory of property also had major implications for gender exclusion, as do all contract theories (Pateman, 1988). However, a consideration of Locke, property and gender is beyond the confines of this short paper.
- ⁴ In examining the pre-colonial permeability between the boundaries of the sown and the forest areas of western India, Sumit Guha (2001: 14) shows how colonial forest legislation rigidified the boundaries between intensive cultivation and hill cultivation in western India, and proposes a new historical agenda based on viewing hill and plains communities as co-evolving in continuous interaction involving both conflict and co-operation over two millennia.
- ⁵ Indeed, Perelman (2000: 196-7) argues that the increasing commodification of land in England and the formal subsumption of subsistence producers to agrarian capital by the early nineteenth century was a major reason why Smith and Malthus did not dwell on primitive accumulation. As is well known, Smith attributed primitive accumulation to the frugal habits of a fortunate few.
- ⁶ Although the *ryotwari* settlement benefited the *Lewa Patidars* more than other castes, it is not suggested that British policies enriched the *Lewa Patidars* or *Kunbi Marathas*. Indeed, as Gidwani (2008) shows, inflexible British revenue demands and the Malthusian famine policies promoted a *laissez-faire* approach to famine conditions and led to the impoverishment and death of hundreds of thousands of cultivators in Gujarat, including the *Lewa Patidars* during 1877-88 in Maharashtra and 1899-1901 in Gujarat.
- ⁷ The primary documents cited in this article are all found at the Asian and African Reading Room of the British Library, formerly known as the India Office Records Room. For citation purposes, I have used the conventions of previous years, listed under Government of India, followed by year, title, IOR (India Office Records) and the shelf number of the document.
- ⁸ Curiously, in the Maine correspondence held in the India Office Records and Reading Room at the British Library, there appears to be no additional correspondence or deliberative discussion on Maine's

reasons for supporting a law that virtually extinguished the rights of existing cultivators in forest land or forest produce. Almost all the other laws framed and passed by Maine while Legal Counsel in India between 1860 and 1869 contain copious commentaries by him.

- ⁹ However, the Madras Government argued against an all-India Act. Members of the Madras Government argued strenuously that many District Forests bordered village lands and, therefore, were impossible to demarcate from the common rights that villagers had held for centuries. They introduced their own Forest Conservation Rules. Similarly, the Bombay Government remained outside the purview of the all-India Forest Act(s) until 1878.

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