

A Criminalizing Mission

Tribes and the Law in Colonial India, 1818-1871

A Thesis

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Introduction

Waiting patiently at his home in Central London in 1824, John Malcolm remained fixated on the dense and mountainous jungles of western India. Prior to returning to Britain, he had led the East India Company's armies to victory in the conquest of the Maratha Confederacy. By 1819, the Company had acquired vast territories in the subcontinent: Bengal in the East, Madras in the South, and now Bombay in the West.¹ Mountstuart Elphinstone, Malcolm's onetime friend but new political rival, had been selected to become the first Governor of the Bombay Presidency. Hoping to be called back to office in India as Elphinstone's successor, Malcolm wrote extensively on the upcoming project of political consolidation and state-building in western and central India following the Company's wars of expansion.

At the center of his vision for the rule of British colonial law over India laid the Bhils, a tribe that lived in the peripheries of the Bombay Presidency. In March of 1824, at the inaugural meeting of the Royal Asiatic Society, Malcolm declared: "Time has interwoven their habits of life, and feelings, with their superstitions, until they actually believe, that they were created to prey upon their neighbors. 'I am Mahadeva's [God's] thief,' is the common answer of a *Bhill* [sic], detected in a crime."² For Malcolm, if the Bhils truly considered themselves to be God's thieves, then their behavior must be explained through dimensions of criminality rather than an

¹ The East India Company ("EIC" or "the Company") first gained its foothold as merchants in Mughal India in the 17th century. Its formal colonial rule in India first began following the Battle of Buxar in 1764, when the Company acquired the right of "Diwani," or revenue collection, over the region of Bengal from the Mughal Emperor. The Mughals' declining political power allowed the Company to extend its hegemonic force through military conquest or "subsidiary alliances" with various Indian princely states. In 1799, the Company's armies conquered Tipu Sultan's Kingdom in Mysore and organized the southern section of the subcontinent as the "Madras Presidency." By the early nineteenth century, the Maratha Confederacy was the last major Indian polity south of Delhi still violently resisting British expansion. The terms "Bombay" or "the Presidency" used in this thesis refers to the vast, colonial administrative territory spanning the coasts of western India to the interior of the Deccan Plateau—covering parts of the modern-day Indian states of Maharashtra, Gujarat, Madhya Pradesh, and coastal Karnataka—organized as the Bombay Presidency after 1819.

² John Malcolm, "Essay on the Bhils," *Transactions of the Royal Asiatic Society of Great Britain and Ireland* 1, no. 1 (1824), 89.

intrinsic “savagery” or “primitivity.” Tribal recalcitrance to the hierarchy of the state and colonial rule was thus seen by Bombay’s administrators as the product of their spaces, cultures, and societies rather than their nature. Indeed, between the Company’s conquest of western India (1818) and the colonial Government of India’s Criminal Tribes Act (1871), the idea of the criminal tribe became ubiquitous in Anglo-Indian law.

How, then, did colonial legal frameworks play a defining role in the subjugation of tribes in early nineteenth century Bombay? How did the idea of “criminal tribes” shape the colonial state’s law and governance in western India in this same period? This thesis argues that Elphinstone and Malcolm defined their highly influential ideology of criminal tribes around notions of tribal behavior and collectivity. Their ideas, in turn, led to the framing of criminal laws around a principle of collective criminal intent which enabled and justified colonial rule. Seen from the perspective of the criminalization of tribes, this thesis argues that Bombay was an early site of the well-known “frontier” strategy of governance in colonial India, where law was used as a tool to demarcate zones of exception. The rule of law, in other words, was the primary mechanism of the criminal tribes ideology and colonial dominance over tribal peoples in the Bombay Presidency.

Colonial discourse often represented India’s interior as a “wild” and unknown place and deemed its “aboriginal” or “tribal” inhabitants to be “wild peoples.” Both Elphinstone and Malcolm drew frequent comparisons between “placid” Hindu or Muslim villages in the agrarian plains and “uncivilized” or “jungly” tribes in the wilderness.³ It is tempting to interpret such

³ The arguments of anthropologist James Scott that the geographical location, social organization, and cultures of “barbaric” peoples were often intentionally designed or retooled to resist the hegemonic expansion of states are highly relevant to understanding colonial descriptions of tribal society. His idea of subaltern “state avoidance” is also quite helpful in interpreting the plains/jungle contrast Elphinstone and Malcolm seek to draw in their rhetoric. James C. Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (Yale University Press, 2009), 128. Malcolm, *A Memoir of Central India, Including Malwa, and Adjoining Provinces. With the*

colonial narratives as solely commenting on hierarchies of civilizations. Of course, normative claims on the human nature of indigenous peoples in the New World were at the center of many European imaginations of civilization and primitivity. In the seventeenth century, philosopher John Locke's formulation of classical liberalism treated the "savagery" of natives in the Americas as antithetical to the "civility" of European societies.⁴ For Locke, since "savages" were thought to be subject only to the rules of nature or the practical coercive effects of violence, they would remain forever beyond the scope of civil society. In turn, the continuation of their habits of life or even existence itself would be adversarial to colonial sovereignty. This New World analogy, however, does not map perfectly onto India. Indigenous "criminals," as conceptualized by Bombay's administrators, were thought to be assimilated into the dominant political structure of the colonial state because of the law's perceived normativity. The ideology of criminal tribes developed in Bombay was structured around a different logic than European colonial dominance over Indigenous peoples in the New World.

This difference can be more clearly understood by taking a brief comparative look at the United States during the period of "Indian Removal" in the early nineteenth century. In the 1832 Supreme Court case *Worcester v. Georgia*, Chief Justice John Marshall offered a legal-historical narrative, saying that Natives Americans were "domestic dependent nations" of the U.S. and that the federal government had inherited a "right of pre-emption" over their lands from the British Crown.⁵ Even though the U.S. and its white settlers violently pursued the removal of the Native nations onto reservations, Marshall sketched out the legal-historical tradition of *de jure*

History, and Copious Illustrations, of the Past and Present Condition of that Country (Kingsbury, Parbury, and Allen, 1824), vol. I., 270, 442.

⁴ John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge University Press, 1988), vol. II, chap. 5.

⁵ I do not suggest that Native Americans were treated according to the liberal "laws of nations" or that Marshall's ideological map was truly representative of the history of colonial-tribal relations in English, French, or Spanish colonies. Rather, the ideological map of European sovereignty and liberal thought presented in Marshall's opinion can be fruitfully contrasted with the legal tradition developed in Bombay. *Worcester v. Georgia*, 31 U.S. 515 (1832).

Indigenous sovereignty in the New World. In 1859, utilitarian philosopher and East India Company clerk John Stuart Mill contemplated the Rajput princely states in India and attempted to qualify the meaning and scope of a similar style of sovereignty: “barbarians have no rights as a *nation*, except a right to such treatment as may, at the earliest possible period, fit them for becoming one.”⁶ He essentially set a threshold for the normative competence of those who qualify for self-governance. Despotic intervention, in the form of colonial rule, was considered permissible because such intervention would help the barbaric nations realize their potential capacity. But even though the Ramoshi tribe in Bombay might have held just as little *de facto* sovereignty as the Cherokee Nation or the Raja (King) of Satara in the 1830s, there was no rhetorical or ideological tradition of them being treated by colonial officials as a discrete nation or a body politic.

In 1835, French liberal philosopher Alexis de Tocqueville commented on debates in the U.S. Senate over Removal saying that “the Europeans have not been able to metamorphose the character of the Indians; and though they have had power to destroy them, they have never been able to make them submit to the rules of civilized society.”⁷ I have suggested that the premise of the Bombay model of criminal tribes was that tribes existed as criminal communities rather than savage nations. During their tenures as governors of Bombay, Elphinstone (1819-1827) and Malcolm (1827-1830) crafted their jurisprudence and governance around this core principle. If we take their logic to its conclusion, then the social and cultural origins of tribal criminality could ultimately be “tamed.” In this way, the two governors defined tribal governance in

⁶ J.S. Mill, *On Liberty, A Few Words on Non-Intervention*, CW 21:119, quoted in Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton University Press, 2005), 143.

⁷ Tocqueville’s use of “Indians” here refers to the indigenous peoples of North America. The British used the terms “tribal” or “aboriginal” to describe the *Adivasi* or indigenous peoples of South Asia. Alexis de Tocqueville, *Democracy in America*, trans. Henry Reeve (Adlard and Saunders, 1838), vol. I, Chapter XVIII.

Bombay as a criminalizing mission requiring the careful study and incorporation of tribal behavior and culture into criminal law.

Global and South Asian histories of colonial law and indigenous peoples have approached embedded historiographical questions of law, sovereignty, and ideology from multiple perspectives. The conceptual framework of “legal pluralism” has shaped a global approach to the relationship between Indigenous societies and the legal regimes of empires from the fifteenth to the nineteenth century. Lauren Benton’s foundational work on legal pluralism pays attention to fluid discourses of geography and law in order to excavate a structural logic of quasi or partial sovereignty in imperial territories.⁸ Among her many significant arguments, Benton provides two particularly instructive examples in colonial tribal governance. First, the extension of Canon law protections to slaves in New Spain in the sixteenth century demonstrated the existence of a colonial formulation of sovereignty of the *Indios*.⁹ Although unrecognized as citizens, their status as “subjects” of the Crown and children of God warranted protection from the uniquely violent *encomienda* forced labor system. Next, English treaty-making councils interfacing with North American tribes in the seventeenth century often adopted the diplomatic language of gift-giving and kinship terms and recognized the limited *de jure* sovereignty of native peoples as dependent “nations” subject to the English Crown.¹⁰ References to the laws of the metropole and colonial innovations on indigenous legal structures therefore jointly formed the basis of legal pluralism in European colonial contexts. Benton’s discussion of British India begins with the Princely State of Kathiawar which entered a “subsidiary alliance” with the

⁸ Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge University Press, 2014), 53.

⁹ Benton, *A Search for Sovereignty*, 36.

¹⁰ Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History 1400-1900* (Cambridge University Press, 2009), Chapter 2.

Company in the early nineteenth century. She sees the “quasi-sovereignty” of the state as paradigmatic of British treatment of Indian “hill polities,”¹¹ and tells us how such plurality was both a product and a proponent of layered sovereignties.

The study of “frontier governance” is another significant global approach to the study of colonial legal regimes. Benjamin Hopkins’s historical work considers the peripheral regions of imperial power as arenas of contested sovereignty. In his work, he compares the 1872 Frontier Crimes Regulation (FCR) deployed in the Northwest Frontier Provinces of British India to political frontier wars with tribes in late-nineteenth century in South Africa, the United States, Nigeria, and Argentina. Hopkins’s illustration of the frontier as a space reverses the classic “center/periphery” model of colonial sovereignty—he argues the effects of frontiers on the centers of state of power. Hopkins says that new governance strategies and economic pathways were often prototyped in the frontier. As examples, he shows the FCR’s formalization of arbitrary detentions, the banning of Chiricahua Apache religious practices in the U.S., the prison labor of *indios* in Argentina, and the arms trade in Afghanistan.¹² These arguments also demonstrate his attention to modern-day instability in some of these regions. Later, Hopkins deploys Benton’s analysis of plural sovereignties to argue that the FCR claimed authority over the Baloch and Pashtun tribes on the borders of Afghanistan but not control. He claims that frontier tribes were not “colonial subjects, but rather imperial objects.”¹³ Whereas Benton and Hopkins approach legal history with a focus on sovereignty, this thesis instead questions the subjugation of indigenous peoples by law under colonial frameworks of criminality.

¹¹ Benton, *A Search for Sovereignty*, 245.

¹² Benjamin Hopkins, *Ruling the Savage Periphery: Frontier Governance and the Making of the Modern State* (Harvard University Press, 2020), 198-205.

¹³ Hopkins, *Ruling the Savage Periphery*, 31.

The legal history of South Asia, while a rapidly growing and nuanced field of scholarship, has not, apart from a few exceptions, analyzed the relationship between colonial law and indigenous tribes in depth. Among the few works that address this issue, Radhika Singha argues that colonial law gained its normative force based on political alignment with different powerful sections of Indian society—namely, traditional landed caste authorities and a new urban elite. Singha reconciles the Company’s codification of some criminal exceptions for upper-caste authorities with explicitly liberal social reforms.¹⁴ Preceding both Benton and Hopkins, her understanding of pluralism remains attentive to the particular regional contexts of the Company’s political expansion and creation of law codes in North India. She frames this analytical approach as the study of “political and social frontiers.”¹⁵ I develop this framework to argue that the peripheries of Bombay were governed as an “internal” colonial frontier. Rather than an arena of contested sovereignties, Singha sees the frontier as being defined by the Company’s law—a depth of mediation between Indian subjects and the colonial state. Her analysis shows that while Law Member Thomas Macaulay’s Draft of the Indian Penal Code (1837) purported to be a universal liberal code, it functioned more as the culmination of this process of negotiation. Her work considers colonial jurisprudence on collective criminality broadly but does not investigate its overlap with tribal governance. Despite Singha’s important contributions to our understanding of the codification of Anglo-Indian law, the study of criminal tribes in South Asia has mostly been pursued outside of the boundaries of “legal history.”

¹⁴ The recent works of historians Robert Travers and Nandini Chatterjee approvingly cite Benton’s work on legal pluralism and use her style of analysis to further develop the argument for the plural origins of civil law in Bengal. They discover the plural origins of the colonial “Hindu” or “Mohammaden” religio-legal codes. Elizabeth Kolsky also investigates some contradictions underlying this process by exploring the judicial trials of white officials in India accused of committing severe acts of violence against laborers. Radhika Singha, *A Despotism of Law*, Chapter 1.

¹⁵ Singha takes inspiration from the historical work of C.A. Bayly on the Company’s reliance on merchant-bankers and “indigenous capital” to expand the reach of its hegemonic power into Central India. C.A. Bayly, *Indian Society and the Making of the British Empire* (Cambridge University Press, 1988).

One such historiographical approach to criminal tribes in South Asia has been to study the formations and development of tribal political consciousness. Ajay Skaria's historical and ethnographic work on the Bhil, Koli, and Ramoshi tribes in the Khandesh region during Maratha and British rule explores tribal discourses of "wildness" as articulations of political agency. Skaria shows how raiding plains villages, for example, was one such articulation of economic and political sovereignty.¹⁶ Following the approach of the early Subaltern Studies Collective,¹⁷ his work seeks "recover" tribal political consciousness from the dominance of colonial historical narratives. Skaria's foundational work has clarified the evolution of tribal *rajya* (notions of independence or self-sufficiency) and political structures in western India.

The common interpretation of the early nineteenth century as the high point of "liberal empire" in India has shaped historical discussions of some key figures in this study like Elphinstone, Malcolm, and Macaulay. In these years, the Company promoted free trade, the codification of law in India, and several key reforms in Indian society.¹⁸ The reform-minded or "liberal" Company administrators who codified India's laws in this era can be seen as quite apart from the Crown's cautious, socially conservative, and highly authoritarian officials who ruled India after the 1857 Mutiny. However, as Eric Stokes and Jennifer Pitts have argued, the Company constantly oscillated between liberal and utilitarian philosophical conceptions of colonial government in the 1830s. For example, while Macaulay penned some of the empire's

¹⁶ Ajay Skaria, *Hybrid Histories*, 17.

¹⁷ The rule of law, subaltern scholar Partha Chatterjee says, was predicated on signifying and enforcing "the rule of colonial difference." The central thrust of this argument is to show the inherent historical contradiction between the universal promises of liberalism and culturally essentialized concepts of difference enforced by the colonial state onto its Indian subjects. Partha Chatterjee, *The Nation and its Fragments* (Princeton University Press, 1993).

¹⁸ By "free trade," I refer to the Company having lost its trade monopoly over India (1813) and beginning to allow various European merchants to India's ports. The importance of opium, one of the Company's key global export products, land routes from Central Indian factories to port cities like Bombay would become a key consideration in the criminal tribes equation in regions like Sagar and Narbada. Reforms like the 1829 ban on *Sati* (ritual of widow immolation) and the 1835 mandate for English education have become "classic" episodes for historians studying "liberal empire." E.T. Stokes, *The English Utilitarians in India* (Oxford University Press, 1959), chapter 2-3.

most liberal social reforms, his jurisprudence was largely shaped by the philosophies of Jeremy Bentham and James Mill. Contributions to Anglo-Indian law, even while framed as universal, during this period were also shaped by political pressure from Parliament and the practical realities of colonial governance during a period of political consolidation.¹⁹ The rubric of “liberalism” alone, in other words, does not adequately explain figures like Elphinstone, Malcolm, or Macaulay and their ideological contributions to law’s dominance over tribes in colonial India.

The history of criminal tribes in Bombay provides fresh ground for the application of both global and South Asian perspectives on the legal relationship between indigenous peoples and empires. The eighteenth century in western India was a period of continuing economic and political decentralization away from the Mughal Empire. In its place, rural agrarian society was organized into an increasingly regionalized and localized political structure—that is, the power of the many lords part of the Maratha Confederacy—while also experiencing unprecedented social and economic mobility.²⁰ Tribes asserted their political authority in these localized power structures by negotiating their *haks* (rights or privileges) with Maratha authorities and village councils. The disruption to this political and social equation caused by the war between the Company and the Marathas led Bombay’s administrators to label the Presidency as a “chaotic” space. It is in this historical context that, several decades before British expansion into Afghanistan, Burma, or North-East India, the peripheries of Bombay were governed by the Company as the empire’s “internal frontier.” The Company’s governance of Bombay in the early nineteenth century can therefore serve as a unique and especially fruitful case study in the history of colonial governance of tribes.

¹⁹ Stokes, *The English Utilitarians and India*, Chapter 2.

²⁰ C.A. Bayly, *Indian Society and the Making of the British Empire* (Cambridge University Press, 1988), 43.

This thesis' argument for the significance of the Bombay criminal tribes ideology unfolds in three parts. Section I investigates how Elphinstone and Malcolm defined criminal tribes with respect to the behaviors, societies, and cultures of tribal peoples. Section II shows how this thinking translated into the codification of law in Bombay and in Thomas Macaulay's Indian Penal Code. Finally, Section III argues that the Company's governance of criminal tribes in Bombay was prototypical of the colonial state's authoritarian governance of the empire's "internal frontiers."

Section I: The Criminal Tribes Ideology and its Bombay Origins

Mountstuart Elphinstone's 1821 *Report on the Territories Conquered from the Peshwa* was intended to serve as a geographic, political, and ethnographic survey of the vast territories recently organized into the Bombay Presidency. A key component of his *Report* was a geographic survey of the Presidency. Specifically, Elphinstone focused on the jungles and rocky hills of the Western Ghat mountain range and the Khandesh, Satara, Nasik, and Ahmednagar regions—home to the Bhil, Koli, and Ramoshi tribes. He described the "thick and extensive jungle" full of "tygers and other wild beasts."²¹ The tribal inhabitants of the jungles, whom Elphinstone applied the blanket label "Bhils," were thought to navigate the jungles freely. The equivalence of the jungle to wildness was a central aspect of the criminal tribes ideology. For Elphinstone, the existence of tribes in such a harsh environment and among beasts could naturally explain their "predatory habits." Elphinstone stressed the rapid shift in the geography of the region between the Maratha villages in the low plains and the steep jungles of the periphery. He saw this as the central reason for the contrast between the "mild and inoffensive" attitude of the villages of the plains and the forest-dwelling tribes who "differ from the other inhabitants in

²¹ Mountstuart Elphinstone, *Report on the Territories, Conquered from the Paishwa* (Government Gazette Press, 1821), 4-5.

language, manners and appearance” and “scarcely form part of the society...”²² Key to his conception of the Presidency as a space, Elphinstone’s geographical surveys sought out the root causes for tribal wildness and criminality.

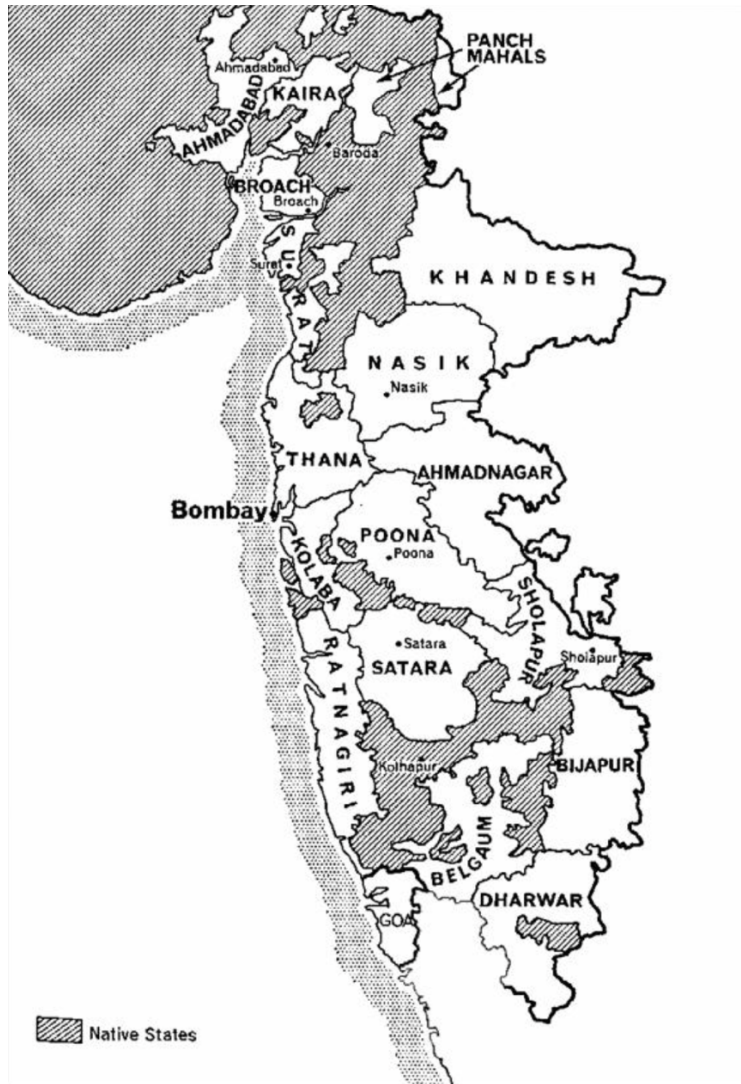


Figure 1. “Bombay Presidency (excluding Sind), c. 1843,” reproduced from Anil Seal, *The Emergence of Indian Nationalism: Competition and Collaboration in the Nineteenth Century* (Cambridge University Press, 1965), 65.

An interesting episode which further clarifies Elphinstone’s view of tribal criminality was the formal creation of the Khandesh collectorate—a “jungly” district in the Presidency. Despite the war’s end, Elphinstone saw Khandesh as a society historically steeped in chaos. He explained

²² Elphinstone, *Report on the Territories*, 55.

how charismatic tribal chiefs in Khandesh negotiated *haks* with plains villages to collect tolls on hill roads, extract tribute through village raids, and engage in services as village watchmen.²³ During raids, tribal chiefs would gather armed collectives and then disband and retreat into the jungle upon the completion of their objectives. But for Elphinstone, the political tradition of *naiks* negotiating their *rajya* or privileges through raids was an ancient reinforcement of tribal criminality. He described the leaders of armed bands like the Ramoshi leader Umiaji or the Bhil Silput Raja as “inspired magicians.”²⁴ These *naiks*’ enigmatic hold over their followers and ability to influence local Maratha politics and economy was a source of serious confusion and frustration for him. When contemplating the aftermath of the defeat of the Marathas, he wrote that “...although a long time must be required to restore the population, and clear away the jungle, we have the satisfaction of knowing that there are now no obstacles to the progress of those improvements.”²⁵ The wildness of the jungle as a space and the lasting power of the *naiks* were two essential conditions for Elphinstone’s conception of “hereditary criminality.”

Elphinstone took older colonial knowledge of dacoity (gang robbery) and adapted it to fit the tribes of Bombay as the justification for his model of hereditary criminality. In his imagination, just as kinship networks bonded tribal communities together, they reinforced pathways to crime. For example, a *naik* could instruct their followers to recruit additional members in their armed band along the lines of kinship. Despite the *naiks*’ call to action often ending in a relatively non-violent negotiation of *haks*, Elphinstone saw it as an ancient organizing force of tribal criminality. He thus suggested that criminality was a hereditary and intrinsic quality of tribal society. This colonial conception of criminal communities, however,

²³ Elphinstone, *Report on the Territories*, 51.

²⁴ Mountstuart Elphinstone, *History of India: The Hindu and Mohamatten Periods* (John Murray, 1843), 212.

²⁵ Edward Colebrooke, *Life of Mountstuart Elphinstone* (John Murray, 1884), 192.

was not unique to this episode in Khandesh. In 1772, the Governor-General of Bengal, Warren Hastings, instituted judicial reforms that extended the grounds of conviction for dacoity to include familial association with notorious dacoits.²⁶ But dacoity, as considered by Hastings and other administrators unconcerned with tribal criminality, was a random or materially influenced crime committed by professional criminals. In contrast, Elphinstone wrote that “gang robberies are common, but always committed by Bhils and other predatory tribes...”²⁷ The kinship networks which tied together such groups and bonded them to their *naik* were unique to tribal societies. In 1797, Company officials in Bengal had “discovered” that dacoit groups were primarily led by village watchmen who had intimate knowledge of villages and could coerce the peasantry.²⁸ Since the watchman was a position most often held by tribal members in the Khandesh, Nasik, and Ahmednagar regions, Elphinstone’s suspicion fell onto these martial authorities who lived in the boundaries of the villages and oversaw the safety of the village’s roads. The hereditary aspect of the occupation—that the sons of watchmen would continue to serve the same village—supported Elphinstone’s tying together of criminality and tribal status. “Hereditary criminality” thus entailed the kinship networks which were the foundation of tribal society and the hereditary qualities of certain occupations which encouraged criminality.

²⁶ Singha, *A Despotism of Law*, 169.

²⁷ J.S. Cotton, W.W. Hunter (ed.), *Mountstuart Elphinstone and the Making of South-Western India* (Clarendon Press, 1896), 141.

²⁸ Villagers would often continue to hire known dacoits or armed tribal *naiks* as watchmen out of fear and in search of protection from other such groups. John R. McLane, “Bengali Bandits, Police and Landlords after the Permanent Settlement” in *Crime and Criminality in British India*, ed. Anand Yang (University of Arizona Press, 1985), 33.



Figure 2. Charles Laplante, “The Travelers Stopped by the Bheels in the Beechwara Passes, 1870,” wood engraving, in Louis Rousselet, *India and its Native Princes: Travels in Central India and in the Presidencies of Bombay and Bengal*, illustrated by Charles Laplante (Chapman and Hall, 1876), 140.

Although Malcolm agreed with Elphinstone that criminality was the derivative of tribal behaviors, his ideological conception of criminal tribes was more focused on how tribal society and culture, rather than the *naiks* or hereditary occupations, cultivated criminality. His 1824 “Essay on the Bhils” contemplated the origins and status of the tribal peoples through an ethnography conducted in the forested interior, accompanied by some flights of conjectural history. He began with the argument that “existing, as they [the tribes] have hitherto done, under despotic governments... placed them beyond the pale of civil society...”²⁹ It seems that Malcolm placed the blame for tribal criminality on the Maratha and even Mughal governments whereas Elphinstone mostly derided the timid village authorities. This difference, although seemingly subtle, demonstrates Malcolm’s belief that the grave issue of criminal tribes transcended local

²⁹ Malcolm, “Essay on the Bhils,” 89.

society and power structures. To Malcolm, the divide between mountain or jungly tribes and civil society was the result for the development of a discrete criminal culture and, therefore, would be true even outside of Khandesh. In this way, the connections Malcolm established in his Essay between tribal behavior and criminality were intended to be paradigmatic.

Malcolm then prescribed a distinction between “pure” and “impure” tribes as the fundamental layer in his schema of tribal criminal behavior. The former group, he argued, were distinct from other tribes in cultural habits, religious rituals, and language. His description of a pure Koli tribe in the western hills in the Vindhya Mountain chain, for example, illustrates an implied connection in his writing between cultivation and purity.³⁰ They lived in forests just outside of peasant villages and were more intermixed with the lowest members of the Hindu caste system. Although they shifted cultivation areas and often lived in separate hamlets, Malcolm asserted a connection between their “settled” nature and their “subdued” behavior. Further evidence of this effect was found in the reduced role of the *naik* in villages near the plains in comparison to the forests. He presented this point more forcefully by contrasting how the practice of *pujas* (prayers) by “pure” Bhils centered around village temples, unlike the rituals of impure Bhils who worshipped near certain sacred trees.³¹ In tracing the differences between pure and impure tribes, Malcolm focused on a peripatetic lifestyle and specific cultural and religious beliefs which were key to sustaining a culture of wildness and “rapine.”

Malcolm suggested that these impure cultural practices directly translated into criminal behaviors like village raids and armed banditry. In his view, rituals spiritually centered on trees could potentially foster a reverence of forest life, self-sufficiency, and mobility. This thinking connects quite clearly to the colonial imagination of the ambush as an ulterior and wild threat

³⁰ Malcolm, *Memoir of Central India*, vol. II, 327.

³¹ Malcolm “Essay on the Bhils,” 80-81.

unique to tribal territories. He also recounted a few Bhil religious myths which tell the stories of folk heroes with the ability to transform into animals.³² For Malcolm, if Bhil culture was formed around nature and the wilderness, then it could reassure and further cultivate wild behaviors. Indeed, he identified time as the great factor which cemented the manifestation of tribal cultural wildness into criminal behavior.

Malcolm's arrival at the idea of a "criminal caste" was the culmination of the criminal tribes ideology. In practice, when stopped by police, tribal peoples were more likely to identify with their village, occupation, or *naik* rather than an outright label of "Bhil" or "Coolie."³³ In the late eighteenth century, the Company sought to explicitly reinforce traditional structures of power and authority in rural India.³⁴ "Caste" was one such organizational principle which colonial administrators thought was key to maintaining power over the political structure of the rural village. If the tribes were separate castes themselves, Malcolm thought, then they were ancient social fixtures unlike the armed collectives who wandered and pillaged erratically, organized around their *naiks*, and then routinely disbanded.

Demonstrating an ultimate synthesis between their difference on the origins of tribal criminality, Malcolm's model of the criminal caste incorporated Elphinstone's previous observations of hereditary criminality. When considering a case of dacoity unfolding in the Deccan Plateau, just outside the eastern limits of the Presidency, Malcolm defined a criminal caste as those to whom theft and robbery were hereditary occupations.³⁵ While he certainly did not invent the stereotype of criminal communities in India, his systematization of caste categories predicated on social and cultural practices by tribal or occupational groups was both

³² Malcolm, "Essay on the Bhils," 77.

³³ Skaria, *Hybrid Histories*, 14.

³⁴ C.A. Bayly, *Indian Society and the Making of the British Empire*, 11-12.

³⁵ John Malcolm, *The Government of India* (John Murray, 1833), 71.

novel and widely adopted by prominent future colonial administrators like Colonel William Sleeman, Thomas Macaulay, and J.F. Stephen. The label of caste could specifically target certain “jungly” occupations which were, almost always, peripatetic in nature. For Malcolm, the existence of tribes as criminal castes could explain why they remained outside civil society, were so resistant to the hierarchy of the state, and were entrenched in their wild lifestyles. While the Bhils may not have been originally or intrinsically criminal, the division of their society into pure and impure castes was organized around specific hereditary occupations—that is, cultivation or criminality.

In parallel with the ideological evolution of the criminal caste, the label of “tribe” was itself an ambiguous and contested term in colonial discourse in early nineteenth century Bombay. Elphinstone often applied the blanket label of “Bhil” or “coolie” to describe all the tribes of Bombay. However, Malcolm consistently asserted that the tribes were neither a corporate nor homogenous group. He argued that “the general name of *Bhill* [sic] only denotes a confederacy of mixed and degraded races of Hindus...”³⁶ According to Malcolm, the geographical and cultural differences between the Bhil, Koli, Ramoshi, and Gond tribes could be traced back to the mythology of the *Mahabharata*—an ancient Indian epic. Malcolm’s attempts at ethnography, albeit oftentimes speculative and conjectural, reveal another layer of complexity in his conception of the tribe as a criminal caste. The term “coolie,” used by Elphinstone and his administrative officers John Briggs and Henry Pottinger, was a pejorative label for indentured or bonded laborers in the early nineteenth century.³⁷ Malcolm’s insistence on the pure and impure division within Bhil society—which he said existed among most neighboring tribes in

³⁶ Malcolm, “Essay on the Bhils,” 47.

³⁷ Rupa Viswanath, *The Pariah Problem: Caste, Religion, and the Social in Modern India* (Columbia University Press, 2014), Chapter 1.

Bombay—was modeled instead in the language of caste discourse. Rather than defining tribal groups through political (“Bhil”) or economic (“coolie”) qualities like Elphinstone, Malcolm’s firm belief in his own understanding of tribal society, culture, and behavior led him to view “caste” as the most accurate descriptive framework of tribal collectivity and criminality.



Figure 3. Anonymous Indian artist, “Thugs about to Strangle a Traveler!” 1837, watercolor commissioned for Captain James Paton, British Library.

The famous colonial conception of “thugs” as a criminal caste demonstrates the broad reverberations of Malcolm’s thinking. Sensationalized by Colonel William Sleeman around 1832, the act of “thuggee” was the combination of dacoity and, specifically, murder by strangulation with a cloth. His reports to Company officials and books published back in London, which suggested that thugs necessarily worshiped the goddess Kali and strangled their victims, are a well-studied historical archive of criminal communities in British India.³⁸ Thugs

³⁸ Taken from Hindustani, the English term “thug” was used to describe a diverse population of criminals across India. Historians find that thugs were indeed not an ancient collective or secret society. Instead, they were opportunistic marauders or bandits who took advantage of the rapid demobilization of sepoy (the Company’s Indian soldiers) after the wars of expansion. Kim Wagner, *Stranglers and Bandits: A Historical Anthology of Thuggee* (Oxford University Press, 2009), 72-80, 112.

were not bound together by kinship or class background; they were instead thought to be a “secret society” by the colonial state that recruited fellow bandits on the road and adopted orphans into their communities. Yet some tribes were also considered to be thugs by both occupation and caste. For example, in the Sagar territory east of Khandesh, Sleeman reported that “wild peoples of the jungle” like the Gond tribe participated in ritualistic murder and cannibalism as part of their prayer to Kali and could therefore be considered as thugs.³⁹ Just like how the Bhils were “God’s thieves,” Sleeman’s belief that all thugs worshiped the goddess Kali came to be the binding element in the construction of the “thug caste.” This was a clear articulation of Malcolm’s model of criminal behavior—it bridged all the social and cultural elements of collective criminality with the actual crimes of dacoity and murder.

The ideology of criminal tribes was the product of a decade of colonial surveys into tribal behavior and society. Whereas Elphinstone fixated on occupations like the watchman or the role of the *naik*, Malcolm deconstructed tribal cultural practices to discover the origins of criminality. The future equivalence of “tribe” with “criminal caste” in colonial discourse illustrates the ultimate synthesis between their views. In nearly every one of their works on tribes, both Elphinstone and Malcolm suggest that the logical conclusion of their projects was that tribes were “redeemable.” That is, they thought the social, cultural, religious, and environmental factors fueling tribal criminality could ultimately be tamed. In the following decades, a new generation of Company officers would look to Bombay and find the ideology’s core principles beneath the surface of its laws.

³⁹ William Henry Sleeman, *Rambles and Recollections of an Indian Official* (J. Hatchard and Son, 1844), Chapter 11.

Section II: Criminal Tribes in Anglo-Indian Law, 1827-1871

The conception of tribal criminality shaped the emerging legal order of early nineteenth century British India in complex and often counterintuitive ways. On the one hand, decades before the 1871 Criminal Tribes Act, the period of political consolidation in Bombay was a crucible for the development of the criminal tribes ideology. Its central concepts—Elphinstone’s doctrine of hereditary criminality and Malcolm’s model of criminal behaviorism—were developed in response to tribal “crises” in Khandesh and Ahmednagar. On the other hand, despite the fundamental challenge tribes posed to the Company’s consolidation of political power in the early nineteenth century, they remained absent from written law. Nevertheless, the mechanics of Anglo-Indian criminal law as designed by Macaulay’s 1837 Penal Code became fundamentally shaped by the ideology of criminal tribes framed in Bombay.

The 1827 Bombay Regulations, or the “Elphinstone Codes,” codified civil and criminal procedure in the Presidency. Many of the mechanisms of civil procedure in the Regulations authored by Elphinstone were tailored towards the redefinition of certain tribes as criminal castes. Section XXI of Regulation II revoked the *Sadar* (district) court’s jurisdiction over litigation concerned with caste and also diminished the jurisdiction of the *panchayat* (village judicial council of five) to a marginal role in support of the British district magistrate judges.⁴⁰ The latter decision was likely inspired by Elphinstone’s frustration with the pattern of *naiks* routinely negotiating with or intimidating village authorities in the plains. The Regulations thus precluded the ability of tribal peoples to pursue claims-making anywhere outside of the

⁴⁰ These legal codes will henceforth be referred to as the “Regulations” or the “BCR.” Mountstuart Elphinstone, “Bombay Code of Regulations” quoted in *Bombay Acts and Regulations, with Notes, Decisions, and Notifications* (ed.) Jamietram Nanabhai, Chinman Harlilal Setalvad (Ripon Printing Press, 1884), 2-3.

Company's fiscal-judicial system.⁴¹ If, for example, a Ramoshi chief wished to collect a *hak* payment from the village administrators in exchange for watchmen services or his collection of timber from the forest, the district's British Agent, revenue collector, or magistrate judge would need to be involved. By relegating "caste" litigation to the *panchayats*, the Bombay government sought to return power at the local level back to village authorities. For example, in 1832, a village *panchayat* in Ahmednagar adjudicated the forfeiture of a forest tract collectively inhabited by a Bhil tribe in a suit by a villager seeking additional agricultural land.⁴² In effect, these civil procedures could further the divide between pure and impure tribes or those settled in the plains outside of villages and those still in the forest. The changes to civil procedure certainly aligned with Malcolm's designs in his Essay that the government ought to encourage a further "intermixing" between the two groups by punishing unsettled lifestyles.

For Elphinstone, criminal punishment through his Regulations was another successful method of deconstructing the social and cultural factors underlying tribal criminality. In 1824, upon ordering a *naik* caught committing dacoity to be executed "by being blown away from guns," Elphinstone wrote that "the punishment contained two valuable elements of capital punishment; it was painless to the criminal and terrible to the beholder."⁴³ He argued that such an execution was according to Maratha custom. This traditionalization of punishment followed neither liberal court procedures nor a standard law-and-order campaign. The framing of punishment around its effect on the viewer was a marked shift towards the principles of incapacitation and general deterrence emphasized by the utilitarian jurisprudence of Jeremy Bentham. For the crime of dacoity, the Regulations stipulated a minimum of seven years of

⁴¹ James A. Jaffe, "Layering Law Upon Custom: The British in Colonial West India," *Florida International University Law Review* 10 (2014): 109.

⁴² Skaria, *Hybrid Histories*, 155.

⁴³ T.E. Colebrooke, *Life of Mountstuart Elphinstone*, 75.

imprisonment, exile for life, or execution.⁴⁴ The exile of *naiks* was key to undermining their social charisma and, more critically, their political positions by denying them the forum to pursue negotiation. Execution, on the other hand, was found to be the only other deterrent strong enough to overcome the inherent criminal tendencies of tribal peoples. In 1821, a famous prison revolt by Bhils in Ahmednagar prompted the Bombay government to rethink its criteria for its jail regime.⁴⁵ Inspired by Bentham’s designs, Elphinstone also ordered the construction of two “panopticon” prisons in Pune and Ratnagiri.⁴⁶ Although they remained incomplete, the government’s long search for a specific, specialized style of jail capable of holding tribal criminals was another manifestation of the criminal tribes ideology’s core precepts into law and governance.

Much of the jurisprudence on collective criminality under Malcolm was the result of an institutional crisis in Bombay between 1828 and 1829. The tension between the judiciary and the executive branch reached its peak during the case of Moro Raghunath. A family member of Raghunath, a recently adopted orphan, submitted an unprecedented petition for a writ of *habeas corpus* from the Supreme Court of Bombay.⁴⁷ To Malcolm’s shock, Chief Justice Elijah Impey issued the writ for custody over the boy in an opinion claiming that the court’s jurisdiction extended to every district governed by the Presidency. Especially after losing its trade monopoly over India in 1813, the idea of judges appointed by Parliament legislating novel rights and jurisdictional powers in India was of paramount concern to the Company. He explicitly feared the possibility of *habeas corpus* becoming a *de facto* right for natives.⁴⁸ For Malcolm, if the

⁴⁴ Elphinstone, BCR, quoted in *Bombay Acts and Regulations*, 141.

⁴⁵ Nishant Gokhale, & Meg Foster, “‘Not Regular Thieves’: Shades of Bhil Engagement with Company Criminal Justice (c. 1818–1825)” in *History Australia* 21, no. 2 (2024), 224.

⁴⁶ Martha Kaplan, “Panopticon in Poona: An Essay on Foucault and Colonialism” in *Cultural Anthropology* 10, no. 1 (1995): 85–98.

⁴⁷ Malcolm, *The Government of India*, 119-124.

⁴⁸ Malcolm, *The Government of India*, 127.

Court's pretension of jurisdiction was successful, then the Regulations would be left a dead letter.

In response, Malcolm's legal innovations on tribes were implemented through "executive orders" rather than direct legislation. First, in 1828, Malcolm directed the Collector in Ahmednagar to create a permanent pension from village revenues for watchmen and ordered their permanent settlement in *huttees* (hamlets) outside the villages.⁴⁹ It was thought that a more stable income would prevent watchmen from continuing their habit of leaving their posts and providing *naiks* or dacoits with information and assistance during raids in exchange for a share of the loot. In theory, their permanent fixture through pension would more clearly define the watchmen as a "caste." The regions on the peripheries of the Presidency like Sagar and Narbada had frequent reports of thuggee and dacoity. In 1829, Malcolm ordered Captain D.C. Graham to travel the Presidency and create a formal register of forty-eight *naiks* and hundreds of their watchmen and followers.⁵⁰ The process of surveilling and categorizing criminal communities in this way was unique because it made their caste identity integral to their designation in a criminal register. This register was among the first of its kind in British India. Indeed, in this way, Malcolm's orders accelerated the systemization of criminal law in Bombay.

The function of the criminal caste was central to the theoretical structure of Malcolm's model of collective criminal intent. According to his model of tribal behavior, tribal societies in the jungle engaged in cultural practices which fostered criminality. To clarify, he provides examples of ritual prayers conducted before raids and the "devotion" which tribes show to their *naiks*.⁵¹ Even without participating in such acts, living amongst the Bhils would require a

⁴⁹ Malcolm, *Memoir of Central India*, vol II., 24-25.

⁵⁰ James M. Campbell, ed., "History: Bhil Disorders (1818-1842)," in *Maharashtra State Gazetteers: Khandesh Khandesh District, reprint of the 1880 edition* (Gazetteers Department, Government of Maharashtra, 1985), 251-64.

⁵¹ Malcolm, "Essay on the Bhils," 76.

voluntary negligence regarding the central social role of the community's criminals. Together, these conditions were sufficient to prove a community's guilty mind and collective culpability to the district magistrate. Malcolm suggests that the state saw participation in the culture of criminal tribes as precursory to the crime itself and thus satisfying the definition of conspiracy. The ties of kinship or hereditary occupation which upheld the structure of a criminal caste would extend such a *mens rea* to all the community's members.⁵² The label of the criminal caste, rather than simply tribe or dacoit gang, extended an equal criminal culpability to all members.

For Malcolm, collective criminal intent could finally bring the impure tribes, destined to commit crimes by habit, culture, and occupation, under the scope of the law. The earlier Regulation XVII of 1827 included the charge of "conspiracy" to commit banditry as an offense separate to the act itself.⁵³ Since the government still needed to present district judges with evidence of thuggee, the testimony of a police officer that a suspect belonged to a known criminal caste would be sufficient in establishing the accused's *mens rea*. For instance, in 1829, the police in Sagar under Captain John Borthwick captured a group of forty dacoits in their home village and quickly, after taking their deposition, carried out their execution without judicial proceeding.⁵⁴ Although Elphinstone's Regulations provided for detention without proceedings, Malcolm's influential idea of collective criminal intent ideologically justified coercive dominance such as mass convictions. Under Malcolm, the application of collective criminal intent beyond law's letter extended the label of criminality to a larger population of tribal communities.

⁵² *Mens rea*, in the tradition of British common law, refers to the mental or subjective dimension of the wrongdoing or criminal act.

⁵³ Mountstuart Elphinstone, "Bombay Code of Regulations," quoted in C.H. Cameron and D. Elliot, *The Indian Penal Code as Originally Framed in 1837 with Notes by T.B. Macaulay, J.M. Macleod, G.W. Anderson and F. Millett, and the First and Second Reports Thereon Dated 23rd July 1846 and 24th June 1847. A Verbatim Reprint.* (Higginbotham and Co., 1888), xi.

⁵⁴ Wagner, *Thuggee: Banditry and the British in Early Nineteenth-Century India*, 217.

Before his 1837 Indian Penal Code, Thomas Macaulay's jurisprudence on criminality leveraged some practical applications of Malcolm's model of collective criminal intent to codify categories of criminal castes. For example, in August of 1834, Colonel Sleeman reported of another Gond tribe in the Sagar region which traditionally practiced "tiger charming."⁵⁵ This occupation might have entailed assisting wealthy patrons in tiger hunts and practically necessitated communal cooperation. Given that these jungles were also their homes, the Gonds displayed a cultural knowledge and spiritual connection with the animals and the jungles. Together, these occupational and cultural qualities could satisfy the criteria of a criminal caste. This was the ideological foundation upon which the tiger charming Gonds of Sagar were later registered by law in 1871 as a criminal caste. In direct collaboration with Sleeman's anti-Thuggee campaign, Macaulay's Act XXX of 1836 defined criminal intention to commit thuggee as an association with or participation in a "professional" thug community.⁵⁶ Like Malcolm's conception of the collective *mens rea* of tribes, Macaulay's framed criminal intent around the idea of collective criminality.

Macaulay's fixation on collective criminality broadened the definitional scope of criminality itself in his 1837 Penal Code. On crime, he wrote that "six or more persons conjointly commit or attempt to commit a robbery, or where...present and aiding such commission or attempt...every person so committing, attempting, or aiding, is said to commit dacoity."⁵⁷ Macaulay's emphasis on the number of offenders and those present demonstrates his immense concern with systematic and collective criminal behavior. He likely applied Malcolm's model to

⁵⁵ Sleeman, *Rambles and Recollections*, 188.

⁵⁶ Wagner, *Stranglers and Bandits*, 174.

⁵⁷ Thomas B. Macaulay, "A Penal Code," quoted in C.H. Cameron and D. Elliot, *The Indian Penal Code as Originally Framed in 1837 with Notes by T.B. Macaulay, J.M. Macleod, G.W. Anderson and F. Millett, and the First and Second Reports Thereon Dated 23rd July 1846 and 24th June 1847. A Verbatim Reprint.* (Higginbotham and Co., 1888), 69.

his scaffolding of these two categories. Although seemingly counterintuitive, the absence of the tribes from Macaulay's jurisprudence was itself a powerful mechanism of colonial dominance over indigenous peoples. As an unpolitical yet systematic crime, dacoity was a legal categorization which could preclude any negotiation of authority attempted by members of criminal communities and instead facilitate an efficient process of collective conviction. Taking inspiration from Elphinstone and Malcolm, Macaulay thus framed British law in India around the maxim that castes which professionally practiced criminality demonstrated a collective criminal intent.

Instead of relying on the slow movement of village reports or *panchayat* action, Macaulay also borrowed the Bombay Regulations' standard of evidence for criminal trial, which was tailored to fit the principle of collective criminality. Regulation XXV allowed for the indefinite "confinement of state prisoners and attachment of the lands of Chieftains and others for reasons of state...against whom there may not be sufficient ground to institute any judicial proceedings..."⁵⁸ The power of arbitrary detention was another authoritarian tool for the Company's police officers. While it was originally intended to allow for the capture of *naiks*, this power soon broadened to include the detention of any tribal person suspected to be part of a collective conspiracy to commit a crime. In this way, Macaulay's Act XIX of 1837 codified the prosecutorial practice of seeking "approvers" in cases of collective crime.⁵⁹ The status of approver was extended almost exclusively to detained members of thug, dacoit, or tribal "gangs" in exchange for information on their criminal allies. According to General Charles Hervey, in practice, in exchange for information on their comrades, offenders facing capital punishment

⁵⁸ Partially inspired by Henry Pottinger's 1822 assessment that relying solely on previous catch-and-release or pension schemes for tribal *naiks* was highly ineffective, Elphinstone's regulations imagined a new schematic for the colonial police. Elphinstone, BCR, quoted in *Bombay Acts and Regulations*, 25.

⁵⁹ Singha, *A Despotism of Law*, 219.

could be reduced to the “conspiracy” charge and face seven years of imprisonment and labor.⁶⁰

The procedure of approvers functioned like the traditional tribal negotiation of rights (*haks*) between tribes and pre-colonial states, but in a significantly more authoritarian language.

Macaulay’s jurisprudence therefore gave the government’s procedural claims of reasonable suspicion over criminal conspiracies far more significant practical effect.

Despite its liberal aspirations, Macaulay’s Penal Code also ultimately integrated “traditionalized” criminal punishment, but with his own novel reasoning on separate punishment. Since all members present or assisting dacoity could be found criminally liable, Macaulay defined criminal punishment collectively. Here, he diverged from Elphinstone’s emphasis on solely targeting the *naik* or leader of a dacoit group. Macaulay emphasized the need for the separate exile or, at the very least, imprisonment of the entire group. He justified this with a pseudo-biological explanation that those with Asiatic blood were “indifferent” to the conditions of imprisonment.⁶¹ In this passage, he might have also implied the close kinship connections between tribal individuals and their *naiks* or thug/dacoits and their leaders when housed in the same jails. Here, Anglo-Indian jurisprudence once again took influence from utilitarian principles of deterrence by framing law so closely in accordance with the “disposition” of natives rather than remaining consistent with its goal of dispensing universal principles. Such a contradiction was undoubtedly the result of decades of practical innovations on collective criminality. Macaulay’s collectivization of criminality but separateness of punishment indicates

⁶⁰ Charles Hervey, “At the Durbar (Close of 1866)” quoted in Charles Hevey, *Some Records of Crime (Being the Diary of a Year, Official and Particular of an Officer of the Thuggee and Dacoity Police)* (Sampson Low, Marston & Company, 1892), 47.

⁶¹ This stereotype posited that, unlike Europeans, Indians quickly became accustomed to the lifestyle imprisonment and found the government’s role in fulfilling their basic needs to be an acceptable outcome. Macaulay, “A Penal Code,” 95.

the Penal Code's attempt at breaking down the perceived systematic nature of criminal behaviors like dacoity.

Macaulay's Penal Code and outline of criminal procedure would not be ratified until 1862. But they were undoubtedly influenced by the emergence of the ideology of criminal castes and collective criminality in Bombay. In 1870, a principal framer of the Criminal Tribes Act (CTA) declared that:

When we speak of professional criminals, we...[mean] a tribe whose ancestors were criminals from time immemorial, who are themselves destined by the usage of caste to commit crime, and whose descendants will be offenders against the law, until the whole tribe is exterminated or accounted for in manner of thugs.⁶²

In these words, J.F. Stephen echoed the governance and jurisprudence of Elphinstone and Malcolm on criminal tribes. Just as Elphinstone connected "professional" criminality to hereditary occupation, Malcolm systematized the social and cultural elements of a criminal caste. The CTA was in many ways an effervescence of these key mechanics of the criminal tribes ideology. By the end of the nineteenth century, the colonial Government of India had scheduled millions of individuals belonging to roughly one hundred and fifty different communities as "criminal tribes" under the CTA.

Although he had set out to create a "universal" code of law for India, Macaulay's 1837 Draft of the Indian Penal Code borrowed many principles from Elphinstone's framing of the Bombay Regulations. Further, Malcolm's "executive actions" innovated a system of collective criminal intent which also became integral to Macaulay's jurisprudence and conception of criminality. The codification of so many tenets of the criminal tribes ideology developed in

⁶² James Fitzjames Stephen, "Speech introducing the Criminal Tribes Bill," quoted in Anand Yang, "Dangerous Castes and Tribes: The Criminal Tribes Act and the Magahiya Doms of Northeast India," in *Crime and Criminality in British India* (ed.) Anand Yang, 108.

Bombay harmonizes the absence of tribes from the Penal Code with the overall trajectory of colonial dominance in the nineteenth century. In this way, the lasting legacy of the criminal tribes ideology was the ubiquity of the criminal caste and collective criminal intent in Anglo-Indian law.

Section III: The Use of Law to Incorporate Tribes in Empire

Before the tribes became “criminals,” they were interpreted by the Company as a wild and unknown class of peoples divorced from the civil society of the agrarian plains. Elphinstone often wrote of “preserving the native system” in Bombay, and, in 1818, Malcolm signed roughly one hundred “friendship treaties” with petty Maratha nobles after the Confederacy’s defeat.⁶³ Their incorporation of the legal systems or authority of these Indians might suggest law’s “plural” normative basis in Bombay. However, as Colonel John Briggs wrote, political consolidation excluded tribal *naiks* and the *haks*—to protect territories from robberies or guard passes and extract tolls—they negotiated with Maratha authorities.⁶⁴ Here, the colonial state ignored traditional political idioms, like *haks*, which gave shape to semi-autonomous or fragmented power at the local level. By doing so, Elphinstone thought of the tribes as subsumed by Maratha political power—the product of a classic colonial belief in centralized power as an organizing force of the state. The Bombay government thus saw the tribes as one stratum of political society, albeit entirely wild and removed from the population, instead of a sovereign body politic. Such a “gap” in sovereignty made them closer to objects of colonial rule rather than imperial design.

⁶³ Malcolm, *A Memoir of Central India*, vol. I, 260.

⁶⁴ John Briggs, “Report on the Bhils, Oct. 1818,” DCF 172, quoted in Arvind Deshpande, *John Briggs in Maharashtra: A Study of District Administration Under Early British Rule* (Mittal Publications, 1987), 101-105.



Figure 3. William Robert Houghton, *Mountainous Landscape in the Western Ghats*, 1876, Oil on Paper, British Library.

Between 1819 and 1852, the Bombay government was faced with patterns of tribal raids and threats of rebellion. The first major crisis, partially the result of post-war famine and a credit squeeze, was described by Commissioner Pottinger as raids primarily led by the Bhil *naik* Silput Raja against village *panchayats* who refused *hak* payments on the grounds of their “imbibed prejudice” for tribal peoples.⁶⁵ Elphinstone’s administrative structure of government relied on upper-caste *panchayat* village authorities to manage almost all local government functions. This increasing discontent introduced a new, bottom-up pressure on the Bombay government to act against the tribes. Starting in 1824, Khandesh and Kittur saw a drastic increase in reports of cattle and highway robberies and village raids by armed Bhil and Koli groups, and Bombay’s

⁶⁵ Stewart N. Gordon, “Bhils and the Idea of a Criminal Tribe in Nineteenth-Century India,” in *Crime and Criminality in British India*, ed. Anand Yang (University of Arizona Press, 1985), 136.

interior was transformed into a state of crisis.⁶⁶ Various *naiks* placed members of their groups on the roads and demanded toll payments from travelers. In response, Elphinstone offered some *naiks* pension payments. But unlike traditional *haks*, he demanded that they demobilize their armed bands and construct *huttees* (hamlets) for their communities. One Bhil *naik* named Khem Raja remarked that if “you get your money from the English *Sarkar* [government], one day or other we shall be ruined. The English Government will give us Hucks as long as we can do any mischief no longer...”⁶⁷ In other words, when Elphinstone spoke of maintaining Maratha rule and “preserving the native system” in Bombay, he meant placing the authority to arbitrate local power in the hands of the Company government.

The emergence of more authoritarian methods of colonial rule, in place of liberal ideals, was a primary characteristic of frontier governance in Bombay. First, in Chapter IV of Bombay Regulation XII, Elphinstone sought to end the system of accommodation between local Maratha authorities and Bhil *naiks* by uniting magisterial and executive authority with the Company’s district collector. Doing so moved against liberal approaches within the Company in support of a separation of powers and was remarkably like the utilitarian structure of government advocated for by James Mill.⁶⁸ The pluralistic legal court culture of *hak* negotiations, involving *naiks* or petty rajas petitioning for their privileges, and the separation of powers undermined the colonial government’s vision for unitary authority in Bombay. Next, the fate of Colonel Briggs through the Khandesh crisis can further illuminate the colonial state’s shift from liberal to authoritarian approaches to governance during these years. In 1822, after leading a hunting party which killed some sixty tigers, Briggs found and extrajudicially executed the raiding tribal leader Cheel

⁶⁶ Horace Hayman Wilson, *History of British India from 1805 to 1835*, vol. 3 (James Madden, 1858), 168–79.

⁶⁷ Skaria, *Hybrid Histories*, 157.

⁶⁸ Elphinstone, *Report on the Territories*, 64–65. For more on James Mill’s influential suggestions for the restructuring of the Government of India, see Eric Stokes, *The English Utilitarians in India*, 74–79.

Naik.⁶⁹ Upon learning of this, the Bombay judiciary and the Company's Court of Directors later punished him by ordering his indefinite transfer to become Resident at the Princely State of Satara. After the 1828 judicial controversy, Malcolm's vision for a rural police institution was a marked departure from the classic *ad hoc* and paternalistic practices of "men on the spot" like Briggs. The systematic policing of tribal and collective crime through surveillance and registries was a definitive shift towards a more authoritarian style of policing.

At the height of the Khandesh crisis, Elphinstone ordered the creation of a tribal police institution in the Khandesh Bhil Corps. Captain James Outram, its commanding officer, personally recruited a police force of two hundred Bhils through his displays of "bravery" during tiger hunts. Almost immediately, the Corps' networks of information and jungle "trackers" led to the capture of the raiding *naik* Silput Raja.⁷⁰ By 1826, the Corps' guidance on excursions into the jungles was so successful that the crisis was thought to have ended altogether. Outram's breakthrough in "taming" the Bhils was itself a sensational administrative phenomenon noted by both the Governor-General and Macaulay. The structure of the Corps was simple: Bhil watchmen would act as police inspectors and pension a few informants and subordinate officers to conduct village patrols. Eventually, the Corps also incorporated some *naiks* as "constables" in the police force, managing the placement and rotation of watchmen.⁷¹ By mandating local cooperation with the colonial police, the Company sought to reinforce its permanent presence in the frontier of the rural interior. For example, Chapter IV of Bombay Regulation XII levied fines for a village's negligence to support the "police establishment" during cases of dacoity.⁷² By

⁶⁹ Deshpande, *John Briggs in Maharashtra*, 74, 178.

⁷⁰ Stewart Gordon, "Bhils and the Idea of a Criminal Tribe," in *Crime and Criminality*, ed. Anand Yang, (University of Arizona Press, 1985), 136-137.

⁷¹ Charles Hervey, "Journal, 1867," quoted in Hervey, *Some Records of Crime*, 199.

⁷² Elphinstone, BCR, quoted in *Bombay Acts and Regulations*, 21.

negotiating with the tribes on their roles in the police force, like a *hak*, district administrators could leverage their martial authority against other tribes. In this way, traditional systems of power at the local level were subsumed by the authoritarian institution of the colonial police.

Similarly, Malcolm's "executive orders" consolidated tribal participation in the police corps in rural Bombay and further sketched out the rural colonial police institution. First, in 1828, Malcolm ordered that a land-grant and an officer role be created for the Ramoshi chief Omiah in the police.⁷³ This rather unprecedented move was actually a careful deployment of the Regulations. The new style of policing incorporated the officers' knowledge of social structure, politics, and the geography of these wild spaces resistant to the reach of colonial domination. In 1830, Malcolm ordered the Collector in Ahmednagar to exclusively hire chief watchmen of the Mehvasi and Koli tribes as horseback policemen in other villages in the Collectorate.⁷⁴ In many ways, the practice of negotiating or coercing the testimony of approvers or collecting revenue from village authorities was quite similar to the traditional negotiation of *haks*. By placing tribal policemen in villages unknown to them, the state could also ensure their loyalty and mitigate their supposed instinct for collaboration with criminals. The incorporation of tribal peoples into the police force empowered a more systematic approach to the transformation of "wild" spaces and people.

The lasting legacy of Outram's Bhil Corps was its execution of Malcolm's policy of sedentarization by bridging the plains and the jungle, formalizing the *huttee* (hamlet), and enforcing the economic structure of fixed cultivation. Between 1831 and 1842, a series of forest

⁷³ Even though Elphinstone and Outram had previously created the Bhil Corps to track and capture *naiks* in forested areas, the integration of some *naiks* into the police of Pune—the onetime *de facto* administrative center of the Presidency—was an highly unprecedented move. John Malcolm, "Minute of 30th November 1830," quoted in Malcolm, *The Government of India*, 35.

⁷⁴ Malcolm, *The Government of India*, 72.

leases in Khandesh for *teak* and rosewood timber extraction were signed between the Bombay government and a few *naiks* in exchange for revenue payment and pensions.⁷⁵ Following timber collection, tribal *huttees* and cultivation areas would be designated in these deforested and reduced tracts of land. As a permanent and isolated social unit, the *huttee* could limit the valence of supra-local kinship ties. The martial power of the police institution could tie traditionally peripatetic groups to designated deforested tracts of land. Furthermore, in the mid-nineteenth century, tribal peasant cultivators in arable lands north of Khandesh were increasingly coerced into growing cash crops like cotton.⁷⁶ The Company thus unleashed new economic impetuses for sedentarization. By finally connecting the plains to the forests, the government could leverage the forces of Indian capital, like local landowners and merchants, against traditional tribal occupations of wood collection, small-scale subsistence cultivation, or hunting. In culling the forests and enforcing the *huttee*, the government sought to tear away the social and economic value of the jungle from tribal society. Together, the three elements of sedentarization were designed to “redeem” the impure tribes of Bombay.

⁷⁵ Skaria, *Hybrid Histories*, 152.

⁷⁶ Bayly, *Indian Society and the Making of the British Empire*, 35, 64.

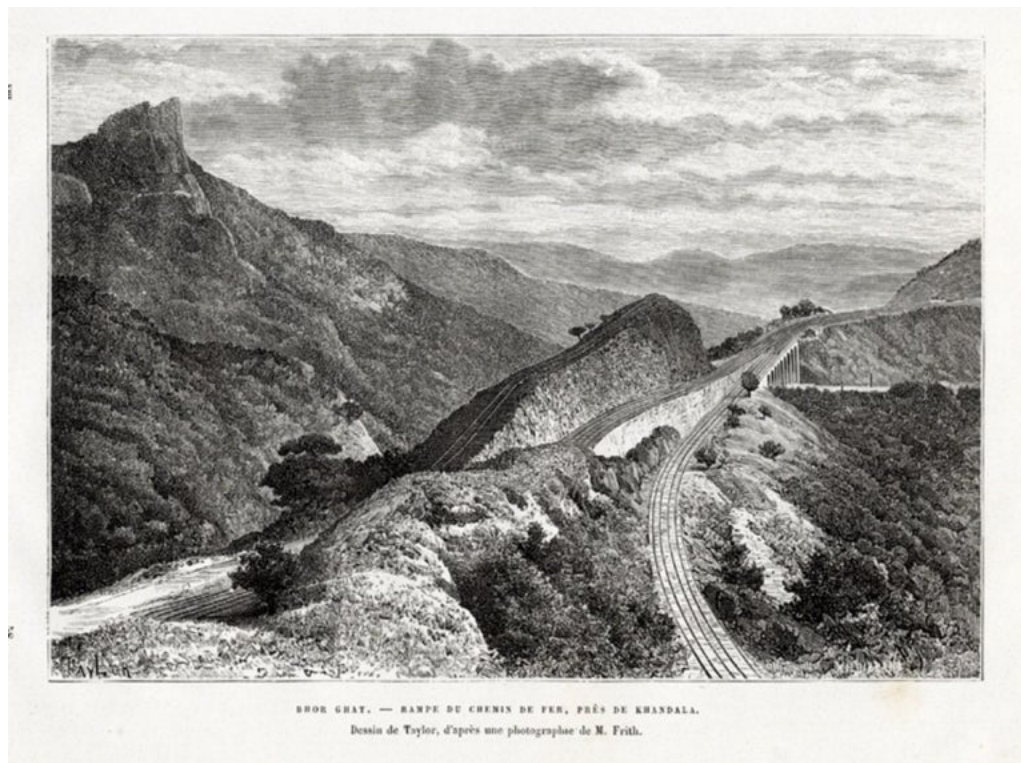


Figure 4. J. Taylor, “The Bhor Ghat, Gradient of the Railway Near Khandala, India, 1884,” Sketch, in Élisée Reclus, *The Earth and Its Inhabitants*, vol. 8 (J. S. Virtue & Co., 1884), 280.

Efforts towards the forced settlement of Bhil peoples in Khandesh were first conceived through the ideological framework of “redeemability” and the destruction of the jungle. Malcolm explained by saying that “we must, by making roads through their hills and forests, bring that race into daily and familiar intercourse with those, among who they live.”⁷⁷ As such, in 1830, Malcolm ordered the construction of the Bhor Ghat road through the densely forested hills of the Sahyadri mountain range. The road was intended to connect the cities of Pune and Bombay for mail carts and carriages. But more importantly, paving roads into the jungle gave colonial power a permanent, physical form in tribal territory. He explained how the engineers relied on the knowledge of local Dhangar (a pastoralist tribe) and Bhil watchmen to plan the road’s path

⁷⁷ Malcolm, *The Government of India*, 90

through forest mountain passes.⁷⁸ Although their number is unknown, it is suggested that this labor was also recruited from the local prison population comprised of tribal peoples. The more well-documented use of unfree and bonded tribal labor on the Bhor Ghat railroad tracks in the 1860s further supports the likelihood of this idea.⁷⁹ The construction of the trunk road also coincided with another deforestation effort facilitated by the Company—timber merchants seeking valuable *teak* wood supplies in the Sahyadri hills. Essentially, for administrators like Malcolm, deforestation could facilitate the taming of tribal society by removing the cultural practices and practical circumstances which supported tribal criminality.

These strategies suggest that redeemability's end was the extirpation of tribal autonomy itself. The government envisioned that, by building roads and culling the jungle, it would be “returning great numbers of this wild class to the habits of civilized life.”⁸⁰ This, in turn, would facilitate the “intermixing” between tribes and lower-caste Hindus peasants which Malcolm wished for in his Essay. He theorized that the settlement of tribes away from the jungle and closer to plains villages would facilitate a broad cultural shift. Further, through social and economic coercion, the colonial state could ensure that sedentarization deconstructed tribal practices and livelihoods which centered around mobility. For Malcolm, the redemption of Bombay's criminal castes would be the broad legacy of sedentarization.

Tribal governance in Bombay can be fruitfully compared to another tribal crisis in Chota Nagpur, a region in eastern India, to understand how the Bombay model contributed to a broader, all-India framework of the governance of “internal frontiers.” The work of historian K.

⁷⁸ William Wilson Hunter, *The Indian Empire: Its People, History, and Products*, 2nd ed. (Clarendon Press, 1886), 36, 550.

⁷⁹ Ian J. Kerr, “Labour Control and Labour Legislation in Colonial India: A Tale of Two Mid-nineteenth Century Acts,” *South Asia: Journal of South Asian Studies* 27, no 1 (2004), 11–25.

⁸⁰ Malcolm, *Memoir of Central India*, 121.

Sivaramakrishnan explains that Chota Nagpur, a densely forested territory, lay between the Company's capital in Bengal and the highly populated territory of Bihar. For Governor-General Bentinck, the Kols, a collective term used to describe the Santhal, Ho, and Bhumji tribes, were directly responsible for a sharp rise in highway banditry and village dacoity between 1831-33. Santhal and Bhumji raids targeted jungle *mahals* (a unit of twenty-three estates) which paid revenue directly to British collectors rather than the historical tradition of *hak* payments to tribal watchmen.⁸¹ Therefore, just like Khandesh, tribal "depredations" in Chota Nagpur were carefully planned political attacks. Bentinck, with a similar conviction as the Bombay government, looked to define their raids as dacoity. Bentinck explicitly cited Malcolm's governance of tribes in Central India as a successful model and in the following years looked to the precedent of the Elphinstone Codes, Malcolm's model of collective criminality, and the government's executive actions in Bombay.⁸²

The innovation of more centralized police departments across India—the colonial state's response to the Chota Nagpur tribal crisis and thuggee—borrowed heavily from the Bombay model. Firstly, Bengal Regulation XIII of 1833 commissioned the creation of the South West Frontier Agency (SWFA) led by Colonel Thomas Wilkinson and provided it full jurisdiction over Chota Nagpur. Like in Bombay, tribal watchmen were hired by the SWFA to police jungly villages and estates with *de facto* immunity for their actions.⁸³ Unlike a traditional military force, a centralized agency could rely on the intelligence of informants and remain highly mobile on the major roads. The integration of tribal officers privileged the same system of approvers used in Bombay. Colonel Sleeman's Thuggee and Dacoity Department was organized with a similar

⁸¹ K. Sivaramakrishnan, *Modern Forests: Statemaking and Environmental Change in Colonial Eastern India*, 57-61.

⁸² William Bentinck, "Minute on Central India" quoted in C.H. Phillips, *The Correspondence of Lord William Cavendish Bentinck Governor-General of India 1828-1835* (Oxford University Press, 1977), 36-39.

⁸³ Bentinck, "Minute on Central India." 65.

structure. Just a few checkpoints on roads could maintain a permanent police presence without the need of military cantonment towns. Borrowing heavily from the success of the highly mobile Khandesh Bhil Corps, these new colonial police institutions were formed against the backdrop of criminal tribes.

The legal structure of “non-regulation” territories was a logical derivative of the criminal tribes laws in Bombay. In Bengal Regulation XIII, Bentinck stipulated the non-regulation of Chota Nagpur and vested all governmental authority in Wilkinson’s position as the Agent to the Governor-General for the region. Likewise, in 1835, the regions of Sagar and Narbada were formally designed as non-regulation territories and placed under the sole executive and judicial authority of Sleeman who also became the Agent. Even though judicial procedure was always limited in these peripheral regions, the idea of non-regulation was shaped by the understanding that tribal criminality made the frontier a defining arena for colonial sovereignty and thus necessitated a zone of exception. For example, Macaulay’s IPC stipulated that in “case of murder in dacoity...every member of the gang is liable to...the highest political offense, that of waging war, &c., against the Government.”⁸⁴ Robbery or dacoity in these internal frontier regions could disrupt the movement of trade goods, like opium and indigo, key to Company’s economic structure. The paramount value of economic stability in regions like Sagar likely prompted the codification of treason in the same clause as dacoity. The writing of the earlier Governor-General Minto can clarify the logic underlying Macaulay’s equivalence of dacoity and treason: “[the dacoits] had established a terrorism as perfect as that which was the foundation of the French republican power, and...by these measures such a vigorous efficient government was erected by

⁸⁴ Macaulay, “A Penal Code,” 226.

the banditti in these districts.”⁸⁵ Criminal tribes, who could only exist in the peripheries of power, were therefore framed as adversarial rather than simply problematic to colonial sovereignty by the legal and discursive categories of terrorism or treason. If the intent to commit criminal acts was held collectively, then entire communities could undermine the unitary structure of colonial sovereignty. For colonial administrators, the internal frontier could only be conquered by a force which could “redeem” or “tame” the tribal criminal element—that is, the rule of law.

The colonial state’s governance of its “internal frontiers” through sedentarization was constructed towards the end of stifling tribal autonomy. The emphasis placed on an efficient police institution and the creation of permanent tribal settlements under Elphinstone and Malcolm birthed a uniquely authoritarian approach to tribal governance. The scaffolding of a rural police institution in Bombay was adapted and deployed by both Sleeman’s Thuggee and Dacoity Department in Central India and the SWFD in Chota Nagpur during the 1830s. Both organizations would largely be absorbed by the Imperial Police in 1867. In the following decades, as the borders of the Anglo-Indian empire expanded, the colonial state established new frontiers in the North West Frontier Provinces, North East Frontier Provinces, and Burma. The continuing influence of the ideology of criminal tribes on institutional changes in policing and non-regulation during the nineteenth century demonstrates the continued salience of the style of frontier governance prototyped in Bombay.

⁸⁵ Elliot G. Minto, *Lord Minto in India: Life and Letters of Gilbert Elliot, First Earl of Minto from 1807 to 1814 While Governor-General of India, Being a Sequel to his "Life and Letters" Published in 1874; ed. by the Countess of Minto* (Longmans, Green, 1880), 188-89.

Conclusion

This thesis began with an excerpt from Malcolm's 1824 survey on the tribes of western India that emphasized the strange wildness of their cultures and their propensity for criminal behavior. On a final tour of the Presidency before leaving India in 1830, Malcolm described the ruins of the city of Mandu as once being inhabited by "destructive" tigers and Bhils. He then wrote: "...the tigers I shoot; the *Bheels* [sic] are my friends, and now serve in a corps I have raised, or cultivate lands. I have made, and am making roads in every direction."⁸⁶ In colonial discourse and imagination, the hunt of tigers had long represented the dominance of British power over India and even nature itself.⁸⁷ In the end, it seems that Malcolm believed he had fulfilled the colonial fantasy of taming the wild and making friends and loyal subjects out of wild peoples destined to be criminals.

This thesis has argued that the colonial state's criminalizing mission in Bombay was realized through the development of an ideology of criminal tribes and its ultimate persistence in Anglo-Indian law and the colonial governance of frontiers. The notions of hereditary and collective criminality developed between 1819 and 1830 by governors Elphinstone and Malcolm were the product of their respective observations on tribal behavior, society, and culture during the period of political consolidation in western India. Malcolm's idea of the tribes as criminal castes was founded on a pure and impure divide that connected criminality to peripatetic lifestyles and certain forms of rituals. The 1827 Elphinstone Codes and Malcolm's executive orders institutionalized the ideology's core tenet of collective criminality into law. In turn, the

⁸⁶ John Malcolm, "Letter on April 3 from Nalcha," quoted in John William Kaye, *The Life and Correspondence of Major-General Sir John Malcolm, G.C.B., Late Envoy to Persia, and Governor of Bombay; From Unpublished Letters and Journals* (Smith, Elder, and Co., 1856), vol. II, 318.

⁸⁷ This colonial political trope became popularized during the hard-fought British wars of expansion against the Kingdom of Mysore led by Tipu Sultan in 1790s. Tipu, who fiercely resisted the Company's armies, embraced the tiger as his personal political symbol. See K. Sivaramakrishnan's *Modern Forests*, 106, 109, and 168, for more on the persistence of this famous imagery in colonial rhetoric.

Bombay legal approach to criminal tribes, albeit in some counterintuitive ways, significantly influenced Thomas Macaulay's 1837 Indian Penal Code and the 1871 Criminal Tribes Act. Lastly, the colonial state incorporated the tribes living in empire's internal frontier through the early development of a rural police institution, the construction of roads, the flow of merchant capital, and, ultimately, the sedentarization of tribal communities.

The connections between the criminal tribes ideology in Bombay, Anglo-Indian criminal law, and the governance of internal frontiers explored in this thesis invites new ways of thinking about the relationship between indigenous peoples and imperial state structures. Approaching the history of colonial law through dimensions of criminality rather than political sovereignty or settler colonialism could provide a clearer view of the agency of indigenous peoples within imperial state structures. Further research on the global reverberations of criminal tribes ideologies could also meaningfully contribute to historical understandings of nineteenth century colonial legal systems. Moreover, these questions can better locate the place of indigenous peoples in the transition from the famous civilizing mission of the "age of liberal empires" to the imperial authoritarianism of the late nineteenth century. As for western India during the early years of colonial rule, the codification of culturally essentialized notions of tribal behavior and collectivity into the law positioned the colonial state to enforce a uniquely coercive and persistent style of dominance over indigenous peoples.

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