

Plural Society and the Colonial State: English Law and the Making of Crown Colony Government in the Straits Settlements

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Abstract

In this article, I explain the establishment of Crown Colony government within the racially diverse colonies of the British Empire through an examination of the reconstitution of the Straits Settlements as a Crown Colony in 1867. My central argument is that the reconstitution of the Straits Settlements as a Crown Colony rested on colonial officials and subjects' shared understandings of the fragmented and unstable character of racially diverse societies. Such understandings were analogous to J.S. Furnivall's concept of "plural society" and were generated by the negative images of "native" populations and the precarity of colonial rule. Despite the reception of the common law and its institutions in the colony, these beliefs ultimately justified colonial officials' repudiation of liberal principles of government and law despite intransigent protests by a minority of officials and subjects. In the Crown Colony of the Straits Settlements, this meant the institutionalization of a constitutional framework and laws that granted the Governor authoritarian powers over the legislature, judiciary, and society to maintain the social order.

Keywords: colonial state, Crown Colony government, Straits Settlements, plural society, political liberalism

1. INTRODUCTION

Did colonial rule mean that metropolitan legal and political institutions were transferred from the imperial centre to the colonies? Given that Crown Colony government emerged as a widespread form of colonial rule in the British Empire by the late nineteenth century,¹ were Crown Colonies constituted by the direct transfer of English laws and parliamentary rule? And,

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1. Wight (1946), p. 57.

more crucially, did Britain's colonial subjects necessarily benefit from the rights and liberties of English law? The simple answer to these questions is no. Of course, the reception of the English common law and statutes did indeed occur in British colonies of various kinds. Even so, these laws were transplanted to fit into varying institutional and social contexts. While English laws and liberties were the "birthright" of British persons whose trading activities, emigration, and settlement established colonies across the world, these settlers also found colonial societies whose perceived composition and character differed from conditions in England. Therefore, rather than establishing English forms of government and its legal principles in colonies that were divided along lines of racial difference, colonial officials in London and such colonies crafted and borrowed constitutions and laws that were seemingly tailored to local conditions.

The institutional forms that the colonial state took depended on the kinds of persons that populated colonial society and also shaped its supposed character. In colonies mainly populated by British and other European settlers, colonial institutions of government and law evolved to resemble those in England but, in colonies that were not, racial differences and tensions between the European community and the "natives" justified the need for greater authoritarian control. Scholars of colonialism have explained this divergence in colonial rule by pointing to how non-European colonial subjects were assumed to be both racially different and inferior—the maintenance of this "rule of difference" between European colonizers and their "native" subjects was necessary for elites in the empire to justify the "permanent domination and inequality" that defined colonial rule.² While the necessity of the "rule of difference" did mark official discourse, how and why did it become institutionalized in the constitutions and laws of colonial government despite the supposed universality of English legal principles, such as the rule of law?

This essay examines this tension between the racial differences that marked colonial society and colonial officials' commitment to an ideal of legality as the legitimate basis of colonial rule. For Britain's racially divided colonies, colonial officials resolved this problem by instituting Crown Colony government, which would grant the Governor despotic powers of control over the colonial judiciary, legislature, and society despite countervailing calls for the protection of judicial independence and even *habeas corpus*—use of the writ could be suspended for the suppression of disturbances. Therefore, I argue that colonial officials' understandings of racially divided societies as socially fragmented and politically unstable entities lay at the basis of their reluctance to maintain English legal principles, particularly when confronted with episodic conflicts that threatened British rule. This approach to statecraft and the recurrence of moments of instability explain how and why the government of racially diverse colonies underwent a shift by the mid-nineteenth century when colonies like Jamaica and the Straits Settlements were reconstituted as Crown Colonies.

The constitutional framework of the Crown Colonies allowed for the development of laws that granted the colonial state extensive powers to limit the basic individual liberties of non-European colonial subjects if the circumstances demanded it. Hence, for those who were not natural-born subjects of the Crown, their personhood was defined primarily by their ascribed racial identity and their individual rights could always be curtailed, unlike the rights of Englishmen. Practically speaking, such differential legal treatment was applied to members of the so-called "native" communities within the Crown Colonies whose presence and

2. Steinmetz (2007), pp. 36–7; also see Halliday & Karpik (2012), p. 13.

activities might threaten the social order; this even included non-European immigrants who might have become naturalized as British subjects. Within this system of colonial law, such expression of the “rule of difference” meant that an individual’s legal personhood ultimately depended on one’s belonging to a racial community. With the establishment of Crown Colony government as a standard way of governing racially divided colonies by the late 1860s, we thus find authoritarian colonial states crafting and wielding law as a formal instrument of control over “native” subjects even though the reception of English laws had also occurred. In such contexts, the enshrined legal principles of the common law would be sacrificed to maintain an always uneasy peace.

To demonstrate the salience of colonial officials’ beliefs about the inherent instability of racially diverse colonies in their making of colonial government and law, this study examines the reconstitution of the racially diverse Straits Settlements of Malacca, Penang, and Singapore in 1867, when the colony was granted Crown Colony government after the Colonial Office assumed control over its affairs from the India Office.³ Notably, together with the Malay States along the peninsula and the other British holdings in Borneo, the Straits Settlements would form the nation-states of Malaysia and Singapore in the mid-twentieth century; while Singapore separated from Malaysia in 1965, both Malacca and Penang remained as states in the latter. Beyond the importance of understanding the constitutional history of the Straits Settlements in light of its enduring consequences for the nation-states of Malaysia and Singapore, I have elected to focus on the Straits Settlements because its official reconstitution as a Crown Colony occurred in the late 1860s when imperial policy towards the government of racially diverse colonies had undergone a clear shift. This was most visible in the West Indies, namely the Caribbean, where, following Jamaica, most of the British colonies adopted Crown Colony government after abolishing their representative legislative bodies. Like these older colonies, the population of the Straits Settlements was racially diverse. In the Census Returns dated 2 April 1871, the largest racial groups within the Straits Settlements were the Malays (147,188 persons or 48%) and the Chinese (103,936 persons or 34%), and they were followed by the Indians who were enumerated under various categories.⁴ In contrast, those counted as “Europeans and Americans” consisted of 1,730 persons or less than 1% of the population, along with only 675 British military personnel.⁵ Given their status as a numerical minority, British dominance in the Straits Settlements would seem to be balanced on a knife’s edge.

Within such a racially divided social context, colonial officials and their European brethren not only assumed the “rule of difference” in justifying colonial rule; they would also assert it in their debates over the appropriate means of colonial government and law. Even though the law of the land was English in its origin, colonial officials modified the institutions of the common law to suit social conditions unlike those in England, thereby also crafting illiberal colonial legacies.

3. First ceded to the British between 1786 and 1824 through treaties between various Malay Sultans, the Dutch, and the East India Company, the port settlements of Penang, Singapore, and Malacca were grouped and administered together as the Straits Settlements in 1826—these three territories were positioned along the Straits of Malacca, a key maritime trade route between India and China. By 1866, the Straits Settlements had been placed under the control of the India Office, which administered it through its agents in Calcutta.

4. “Straits Settlements Census Reports and Returns 1871,” p. P7. CO 277/5.

5. *Ibid.*

2. BETWEEN STATE AND PERSONHOOD: ON THE PROBLEM OF “PLURAL SOCIETY”

In this study, I situate key happenings related to the reconstitution of the Straits Settlements within the global shift in British policy towards colonial government, which was marked by multi-sited political struggles. To further demonstrate the significance of this eventful change in imperial policy in reshaping colonial institutions of government and law, I utilize the paradigmatic case of Jamaica, which adopted Crown Colony government in 1866, as a comparative point of reference. Such a comparison helps reveals how and why colonial officials accounted for the necessity of authoritarian control in racially divided societies. In fact, signs of this turn in policy emerged as early as 1839, when the Colonial Office initiated unsuccessful efforts to abolish the elected Legislative Assembly in Jamaica in favour of the establishment of Crown Colony government, the essence of which had recently been adopted in lower Canada.⁶ As Sir Henry Taylor wrote in the Colonial Office’s submission to the Cabinet regarding the Colonial Office’s intentions, the emancipation of slaves in Jamaica raised the question of “whether the West Indian Assemblies be or be not, by their constitution and the nature of the societies for which they legislate, absolutely incompetent and unfit to deal with the new state of things.”⁷ Taylor not only assumed the “rule of difference” between European colonial elites and the emancipated “native” populations, but also pointed out the ostensible instability of maintaining the political franchise in racially divided societies.

Moving from the West Indies to the East Indies and from actors in the metropole to those in the periphery, we find pressures for the adoption of new institutions of colonial government in the Straits Settlements coming from the European community in Singapore as early as 1858. They, like officials in the Colonial Office, had also been keen observers of institutional developments elsewhere in the empire. In a petition to the House of Commons, they stated:

When a few years ago, Parliament established a Legislative Council for India, your petitioners hoped that a beneficial change would take place in the manner of dealing with questions affecting the welfare of the Straits Settlements, but they found that such expectations were fallacious

...

Your Petitioners therefore humbly pray, that your Honourable House will be pleased to adopt such measures as may be necessary for removing the Government of British India from the East India Company, and substituting in its place the direct government of Her Most Gracious Majesty the Queen; and further, that the Straits Settlements may be constituted a separate government directly under the Crown, and not, as at present, under a delegated authority in India.⁸

Indeed, like colonial officials, British subjects could employ formal means to appeal for the constitutional reform of colonial governments throughout the empire in the mid-nineteenth century. C.M. Turnbull reports that the European merchants in Singapore had

6. Holt (1992), pp. 109–12. It should be noted that Crown Colony government was only a stage in the political development of Britain’s Australian and North American colonies towards constitutional arrangements that were based on principles similar to Britain’s political institutions.

7. *Ibid.*, p. 109.

8. The House of Commons 1862 (259). East India (Straits Settlements). Copies of all correspondence between the government of *India* and the Secretary of State for *India*, and between the Secretary of State for *India* and the Colonial Office, and any other Departments of the government, relative to the proposed TRANSFER OF THE STRAITS SETTLEMENTS TO THE COLONIAL OFFICE: And, of COMMUNICATIONS from Parties in this Country to the Colonial Office on the same subject, pp. 3–6.

learned of an earlier petition sent to Parliament from their counterparts in Calcutta for the direct control of India by the Crown.⁹ By sending their own petition, the European merchants of Singapore did not merely act to support the petition from Calcutta; they also sought for the Straits Settlement to be directly governed by the Crown. Their petition was supported by John Crawfurd, who had previously been Resident of Singapore. In a note in support of the Singapore merchants' petition, he stated that "it has not escaped their observation that the administration of the Crown Colonies to the eastward of the Cape of Good Hope is conducted in a more liberal, popular and constitutional spirit than ... in their own case."¹⁰ Crawfurd's earnest note seemed to ignore the obvious fact that Crown Colony government would hardly be as "liberal, popular and constitutional" as supposed!

Despite these early efforts, the Straits Settlements was not reconstituted as a Crown Colony until 1867. The eventual reconstitution of the Straits Settlements would demonstrate how the Colonial Office administered far-flung colonies through control over their constitutions and laws, weaving a global mechanism of imperial control and wielding despotic powers in racially diverse societies. In such colonies, Crown Colony government meant authoritarian control for the Governor would control the executive, legislative, and judicial arms of the state. Instead of institutionalizing principles such as parliamentary supremacy or the rule of law, colonial officials oversaw the formation of colonial states that were more akin to Thomas Hobbes's famous image of the monstrous Leviathan in the Crown Colonies. Why?

Drawing from sociological theories of the colonial state,¹¹ I observe that the precarity of colonial domination and British officials' negative images of native populations generated widely shared ideas regarding the political implications of racial pluralism in colonial society. Martin Wight's pithy formulation is indicative of such assumptions: "In a plural society everything makes for constitutional retardation."¹² Formulated by J.S. Furnivall in his writings, "plural society" was essentially everything that English society was perceived not to be.¹³ Nevertheless, even before Furnivall's career as a colonial official, ideas analogous to his concept of "plural society" had already surfaced in official discourse, as evident in the correspondence regarding constitutional changes in the Straits Settlements, as well as in other racially diverse colonies like Jamaica. A "plural society" like the Straits Settlements was thus marked by the separate co-existence of different racial groups. Each group, in turn, could be restrictively defined by "a uniform cultural essence beneath the shimmering surface of indigenous practice."¹⁴

When viewed as a whole, such a racially divided society could not provide the necessary societal conditions for the institutionalization of "political liberalism" in the eyes of elites in both the metropole and the colony, even if some of their peers would contest such a view.¹⁵

9. Turnbull (1972), p. 348.

10. The House of Commons, *supra* note 8, p. 6.

11. Steinmetz, *supra* note 2; Wilson (2011b); Halliday & Karpik, *supra* note 2.

12. Wight, *supra* note 1, p. 89.

13. The following features define a plural society: "... the society as a whole comprises separate racial sections; each section is an aggregate of individuals rather than a corporate or organic whole; and as individuals their social life is incomplete." Furthermore: "In each section the sectional common social will is feeble, and in the society as a whole, there is no common social will;" Furnivall (1956), pp. 306, 308, emphasis added.

14. Steinmetz, *supra* note 2, p. 43.

15. Political liberalism is defined as "an amalgam of three elements: a *moderate state*, whereby the power of the state is fragmented, commonly by a counter-balancing of the executive and legislature, or both of these by the judiciary; *civil society* ...; and *basic legal freedoms*, which include first-generation civil rights that protect individuals against state

Furthermore, because colonial rule in the Straits Settlements had been threatened by episodes of racial conflict, such as riots involving Chinese secret societies that controlled the trade of coolies, opium, and prostitution, over the mid-nineteenth century, colonial officials and leading members of the European community were certainly sensitive to the possibility that British domination could always be threatened by unrest that emerged from “native” communities.¹⁶ Such uncertainty prompted varying responses from factions amongst this colonial elite with regard to the kind of institutions that were needed for effective government in the colony. In particular, while both officials and leading members of the European mercantile community supported measures that would allow the colonial administration to suppress sources of disorder, some of them were also concerned by the colonial state’s encroachment upon individual liberties.

Evidence of their resulting debates corroborate Nicholas H. Wilson’s sociological theory of colonial state-building, for the constitution and statutory powers of the colonial state in the Straits Settlements was indeed shaped by official discourse over whether English institutions of law and government were suitable for this racially divided colony; these debates pivoted upon “alternative understandings of the same society.”¹⁷ This study thus extends sociological theories of colonialism and empire to the development of colonial constitutions and law, linking the former’s theoretical mechanisms of the making of the colonial state to socio-legal concerns with the curtailment or protection of the legal rights of persons. In relation to the latter, colonial law remained a double-edged sword that was significantly weighted towards the preservation of order.

Having presented the theoretical framework of my argument, the following sections of this essay will first elaborate upon the changing historical significance of Crown Colony government through a comparative legal history of its use within the empire. In light of this context of change in imperial policy towards colonial government, I will then examine the discourses that preceded and followed the establishment of Crown Colony government in the Straits Settlements in 1867. Namely, I focus on how the “official mind,” as defined by colonial officials’ motivations, reasoning, beliefs, sense of duty, orientation towards others, and method of problem-solving,¹⁸ responded to appeals from the predominantly European mercantile community and leading officials like the Chief Justice for institutional changes in colonial government and the law.

3. A COMPARATIVE LEGAL HISTORY OF THE “CROWN COLONY”

Let us start our historical investigation with a simple question: what did British colonial officials mean by the term “Crown Colony”? The definition of the term “Crown Colony” was ambiguous, as noted by one legal adviser for the Colonial Office, Sir Kenneth Roberts-Wray:

Let it suffice to say that the essence of a “Crown Colony” is that the authority of the Crown is unimpaired. While the Governor bears the primary responsibility for administration, close

(Footnote continued)

tyranny,” Halliday & Karpik, *supra* note 2, p. 4, emphasis in original. For Halliday and Karpik, political liberalism constituted the main institutional legacy of British colonialism.

16. Turnbull, *supra* note 9, pp. 106–39; see Yen (1986), Chapter 4, for a discussion of the social and economic roles played by the Chinese secret societies in the Straits Settlements.

17. Wilson, *supra* note 11, pp. 1445–6.

18. Robinson and Gallagher, with Denny (1981), p. 20.

supervision and control are exercised by the Government (nearly always that of the United Kingdom) to whom the Governor is answerable in both the legislative and executive fields. This is vague enough to demonstrate that the term is one which it is better to avoid.¹⁹

Furthermore, Roberts-Wray notes that its designation expanded over time—from colonies that the British had either conquered or gained through cession to including those that they deemed to be unfit for “representative government” on various grounds.²⁰ The broad and imprecise meaning of the term was thus congruent with a range of colonial constitutions, and the composition of the legislative bodies of such colonies could be established in various ways. Some Crown Colonies, like Jamaica and Ceylon, later came to possess limited political franchise in the election of the unofficial members of their Legislative Councils. Despite the vague, and evolving, meaning of the term, the Colonial Office did seek to state its meaning clearly. In the *Rules and Regulations for Her Majesty’s Colonial Service*, Crown Colonies are defined in contrast to colonies with representative institutions.²¹ Hence, Crown Colonies are colonies “in which the Crown has the entire control of legislation, while the administration is carried on by public officers under the control of the Home Government.”²² As such, such colonies meet two necessary conditions: heteronomy in the making of law and in the appointment and service of colonial administrators.

In the making and application of law, Crown Colonies were undoubtedly subject to the imperial government—practically speaking, this meant control by the Colonial Office. I stress this point because it provides us with a way to understand the significance of Crown Colonies to our understanding of British colonialism and its legal legacies. While comparative scholarship have brought much needed attention to the variegated developmental trajectories of British post-colonies in the twentieth century, they have underemphasized differences in how colonial rule shaped the establishment of “centralized and territory-wide legal administrative institutions” and the seeming “*universality* of the rule of law”—albeit one marked by the colonial state’s routine use of emergency powers and racial inequality in the use of law.²³

The thoughtful comparison of British post-colonies by Terence Halliday, Lucien Karpik, and Malcom Feeley assumes the “putatively common histories” of British influence upon colonial law and legal professionals as their starting point for analysis, even though they do highlight the fact that “Britain unevenly exported to its colonies some semblance of the rule of law.”²⁴ Drawing partly from Matthew Lange’s work on the developmental legacies of British colonialism, the key distinction in colonial law and state formation they recognize is the one between direct and indirect rule.²⁵ Both of these comparative studies of the legacies of British colonialism thus contrast the penetration of the “bureaucratic and judicial arms of

19. Roberts-Wray (1966), pp. 44–5.

20. *Ibid.*, pp. 44–5. Wight locates the origins of Crown Colony government in the Anglo-French War of 1793–1815, for Britain’s acquisitions from the war, which were either conquered or ceded, were the prototypes for the development of Crown Colony government. In these cases, the necessity of controlling foreign populations during wartime and British attempts to abolish the slave trade prompted the establishment of a new system of colonial government. Wight, *supra* note 1, p. 47.

21. Colonial Office (1867), p. 1.

22. *Ibid.*, p. 1.

23. Lange (2009), p. 29; Halliday & Karpik, *supra* note 2, pp. 11–13, emphasis in original.

24. Halliday & Karpik, *supra* note 2, pp. 4, 12.

25. Lange, *supra* note 23, pp. 27–33; Halliday & Karpik, *supra* note 2, pp. 10–11.

the colonial state” with the maintenance of indigenous institutions, such as customary courts and law.²⁶ However, this emphasis has elided variations in how direct rule was established in various colonies. Even though Lange observes that directly ruled colonies included “settler colonies,” “plantation colonies,” and “directly ruled colonies with large indigenous populations,” he states that they varied according to “the inclusiveness of the colonial state and its active incorporation of local communities.”²⁷ My point, though, is that directly ruled colonies also differed in their institutions of government and law according to the perceived character of these societies. Instituted in racially divided colonies, Crown Colony government granted the Colonial Office and its agent, the Governor, a monopoly of control over the making of legislation and the appointment of officials, including judges. Unlike the predominantly White settler colonies that were also subject to direct rule, Crown Colonies were defined by their formal disavowal of political liberalism.²⁸

One illustration of the distinct way that institutions of English common law had been adapted in the Crown Colonies is the 1953 Privy Council judgment, *Terrell v. Secretary of State*. Here, the guarantee of judicial independence within the Act of Settlement of 1701 was found to be inapplicable when a judge of the Straits Settlements challenged his forced retirement.²⁹ This ruling reinforced the fact that, unlike their professional counterparts in Britain and the colonies possessing “responsible government,”³⁰ such as Australia and Canada, judges in the Crown Colonies served at Her Majesty’s pleasure.³¹ Given such terms of appointment, even Chief Justices could be suspended or dismissed by the Governor. Not only does such a state of affairs provoke doubts about the institutionalization of the principles of common law in the Crown Colonies, it also prompts us to ask questions about the causes and consequences of the Crown’s absolute control over colonial judges and law.

3.1 *The Legal Foundations of Crown Colony Government*

The legal significance of Crown Colony government is better understood in relation to an earlier way that the Colonial Office distinguished between its possessions. The form of government and law of a colony had depended, in the first instance, on its method of acquisition: settlement, conquest, or cession. And, as I noted, the term “Crown Colony” had been used in reference to colonies that had been conquered or ceded. On the other hand, settled colonies would typically possess elected legislatures with the authority to pass their own laws. To grasp the significance of this distinction for colonial law and government, we may turn to a judgment of Sir Peter Benson Maxwell, who became the first Chief Justice of the Straits Settlements:

The general rule of law determining what is the law of a territory is, that if the new acquisition be an uninhabited country found out by British subjects and occupied, the law of England, so far as it

26. Halliday & Karpik, *supra* note 2, p. 12.

27. Lange, *supra* note 23, pp. 29–30.

28. See *supra* note 15 for Halliday and Karpik’s definition of political liberalism.

29. *Terrell v. Secretary of State* [1953] 2 QB 482 and Act of Settlement 1701, 12 & 13 Wm. III c. 2, cited in Bartholomew (1991), p. 62. For more, see Roberts-Wray, *supra* note 19, pp. 496–7.

30. Roberts-Wray defines “responsible government” as “a system of government by or on the advice of Ministers who are responsible to a legislature consisting wholly, or mainly, of elected members; and this responsibility implies an obligation to resign if they no longer have the confidence of the legislature.” Roberts-Wray, *supra* note 19, p. 64.

31. McLaren (2011), pp. 276–7.

is applicable [1 *Bl. Com.* 107], becomes, on the foundation of the Settlement, the law of the land [2 *P. Wms.* 75], but that if it be an inhabited country obtained by conquest and cession, the law in existence at the time of its acquisition, continues in force, until changed by the new Sovereign. In the one case the settlers carry with them to their new homes, their laws, usages, and liberties, as their birthright. In the other, the conquered or ceded inhabitants are allowed the analogous, though more precarious privilege of preserving theirs, subject to the will of the conqueror.³²

As the Recorder of the Prince of Wales' Island (Penang) at that point, Maxwell R. established that English law was the *lex loci* of the Straits Settlements despite the earlier possession of the island by the Rajah of Quedah (Kedah). This had presented a legal problem precisely because the Settlement did not fall neatly into the distinction between ceded, conquered, and settled colonies. While the Prince of Wales' Island had not been settled by British subjects since a British garrison had landed first to take possession of the ceded territory, the British did not consider it to be inhabited because only "four Malay families were found encamped upon it."³³ Since the law of Quedah could not be the *lex loci*, Maxwell R. reasoned that the reception of English law in the Straits Settlements was to be based on the *Second Charter of Justice*,³⁴ a royal instrument, rather than the "birthright" of British settlers.

In contrast to the vagueness of the term "Crown Colony," the distinction between ceded, conquered, and settled colonies made greater sense in the legal determination of colonial law and government, even in the mid-nineteenth century. Even so, major changes in the constitutions of several British colonies occurred in this period. In 1850, the British Parliament passed the Australian Colonies Government Act,³⁵ increasing the scope of both the law-making powers and the degree of elected representation of the Legislative Councils of New South Wales and Victoria while making it possible for both Van Diemen's Land (Tasmania) and West Australia to establish similarly constituted Legislative Councils in time. Similarly, the passing of the British North America Act, 1867³⁶ in Parliament united the provinces of Canada, Nova Scotia, and New Brunswick with "a constitution similar in principle to that of the United Kingdom." Such positive developments contrasted with the loss of political franchise and the abolishment of the Legislative Assembly in Jamaica after the Morant Bay rebellion in 1865. Jamaica was subsequently reconstituted by an Order of the Queen in Council dated 11 June 1866³⁷ with a Legislative Council under the control of the Governor—Jamaica thus became a Crown Colony. The meaning of the term "Crown Colonies" should be understood against such changes in imperial policy.

The imposition of Crown Colony government in Jamaica was a political turning point for both the colony and imperial policy towards colonial government. As Governor Edward J. Eeyre communicated to the Legislative Assembly to urge their enacting of a law to abolish itself:

... that although for many years the disposition and practice of the crown has been rather to devolve on colonial representative bodies the powers and responsibilities of government, than

32. *Regina v. Willans* [1858] 3 Ky. 16, p. 20.

33. *Ibid.*, p. 20.

34. The Charter was dated 27 November 1826. As Bartholomew notes, "the only copy known to me is a photocopy in the Law Library of the National University of Singapore," Bartholomew, *supra* note 29, p. 13.

35. 13 & 14 Vic. Cap. 156.

36. 30 & 31 Vic. Cap. 3.

37. Enclosure in Grant to Carnarvon, 23 October 1866, CO 137/407.

either to keep the powers it possessed, or to assume powers and responsibilities which had not hitherto belonged to it, yet in a case, in which the crown's deprivation of power is incompatible with the welfare, and even the safety of the colony, there would be no hesitation on the part of her majesty's government to accept any amount of additional responsibility which circumstances might seem to require.³⁸

In this message, dated 2 December 1865, Eeyre claimed to have been confidentially informed of these intentions of the imperial government. However, he subsequently declined the Assembly's request for further information, adding that "the crown will not undertake the responsibility of directing the affairs of a colony, circumstanced as Jamaica is, unless wholly unfettered as regards the form of constitution, and the nature of the administrative machinery to be established."³⁹ Despite Eeyre's rhetorical manipulations, this exchange highlighted the exceptional nature of the changes to Jamaica's constitution in relation to imperial policy.

These constitutional changes meant that both law and administration in Jamaica would come under the absolute control of the Crown. In this regard, Eeyre would write to Secretary Cardwell with recommendations that Jamaica ought to be controlled by the Crown with a "purely nominee Council, *like that of Trinidad or Ceylon*"; he argued that, if elected representation was allowed, it would only reflect the interests of the small minority of planters.⁴⁰ Since Trinidad and Ceylon, as colonies that had been ceded, were Crown Colonies in the earlier sense of the term, Jamaica's adoption of a constitution similar to these colonies' indicated that the use and meaning of the nomenclature of "Crown Colony" would become broader, if not more vague. The imposition of Crown Colony government in Jamaica signalled the culmination of a global shift in imperial policy towards colonial government across the British Empire⁴¹ and the 1860s was the proverbial fork in the road that separated Crown Colonies, which were increasingly identified by the racially diverse composition of their societies, from predominantly White settler colonies that had attained "responsible government." The social circumstances of Jamaica—a diverse society not only divided by race and class, but also mostly inhabited by a racial group that was deemed to be unfit to rule—could be found in other colonies.

We may now turn from the case of Jamaica back to the Straits Settlements to better understand the significance of this turn in imperial policy for colonial law and justice. In the very same year as Jamaica's nominated Legislative Council was constituted, the British Parliament would also pass the Straits Settlements Act,⁴² authorizing the transfer of the administration of the Straits Settlements from the India Office to the Colonial Office. In the royal Charter dated 4 February 1867, the Straits Settlements was reconstituted with a nominated Legislative Council under the control of the Governor.⁴³ Based on these legal foundations, the Straits Settlements, which had been mostly settled by Chinese, Malay, and

38. Enclosure in Eeyre to Cardwell, 24 December 1865, CO 137/396.

39. *Ibid.* Eeyre did receive such confidential information. In another official letter to the Colonial Office, he acknowledged Secretary Cardwell's "private and confidential intimation" as well as the above-mentioned exchange. Eeyre to Cardwell, 22 December 1865, CO 137/396.

40. *Ibid.*, emphasis added.

41. Jamaica's loss of self-government "set a precedent soon followed in other parts of the colonial empire. 'Beneficent guardianship' over colored peoples, first implemented in Britain's former slave colonies, was an idea that gained ready assent from other British policy-makers in the late nineteenth century," Holt, *supra* note 6, p. 307.

42. 29 & 30 Vic. Cap. 115.

43. Enclosure in Ord to Buckingham and Chandos, 1 May 1867, CO 273/10.

Indian migrants, became a Crown Colony. Notably, the changes in the government of the Straits Settlements would lead to political struggles over the issue of judicial independence as the new Governor sought to reconstitute the colonial courts in ways similar to those in other Crown Colonies. This conflict would highlight two aspects of law under Crown Colony government. First, imperial policy towards the administration of colonial courts was defined by generalizable formal rules that standardized governmental practices in patterned ways across the empire; Crown Colonies were thus administered in a similar fashion.⁴⁴ Second, judicial administration was not to be independent of executive control; should colonial judges prove to be troublesome, the Governor had the power to suspend or remove their appointment. As my further examination of events in the Straits Settlements will show, metropolitan colonial officials and the Privy Council, the highest court for the colonies in the British Empire, would justify such judicial subordination by the social conditions within the Crown Colonies—conditions that were different from those in England. Consequently, as the Colonial Office’s regulations state, “Crown Colony” signified a category of colonies that would be ruled without the constraints posed by elected legislatures or misbehaving judges.⁴⁵

3.2 *On the Uses of Comparison in Colonial Government: A Methodological Note*

Given how the institutional meanings of Crown Colony government evolved in relation to multi-sited changes in the constitutions of various colonies, how did such local events come to bear casual significance in shaping the political and legal institutions of Crown Colonies throughout the empire? In this regard, I note that the answer may be found in colonial officials’ uses of comparison in their shaping of imperial policy and the Colonial Office’s central role in the organization of colonial administration. Methodologically, the value of an individual event like the reconstitution of the Straits Settlements lies not only in its similarity to previous events in other colonies that officials could use as models to formulate their policies, but also in its far-reaching consequences for the government and law of other Crown Colonies as the institutional outcomes of this event became precedents that would shape imperial policy.

This is due to the organizational structure of imperial administration, which allowed for what Wilson has called the “appellate process of escalation.”⁴⁶ This means of resolving local conflict could produce outcomes that would be binding on other colonies. When colonial officials or subjects, such as the European merchants in the Straits Settlements, held grievances against the current Governor and his administration, they could, and did, seek to appeal directly to the Colonial Office or even Parliament as they sought forms of redress. In these petitions, both the petitioner and the metropolitan officials who were frequently the targets of such efforts would typically address the problem at hand with reference to other colonies. This, in turn, could shape the course of imperial policy with regards to a particular issue if, for instance, such petitions resulted in the issuance of circulars or instructions that

44. Cf. “The crown colony system was a *development and universalization* of the system under which the conquered and ceded colonies were governed at the time when their government was distinguished from that of settled colonies,” Wight (1952), p. 15, emphasis added. The rules of Crown Colony government were formalized in various ways, from imperial acts and colonial ordinances to the internal rules and regulations of the Colonial Service.

45. Colonial Office, *supra* note 21.

46. Wilson (2011a), pp. 6–9.

would then apply across the empire. Within such an administrative web, the use of comparison was central in remaking Crown Colony government into the standard means for the imperial control of racially divided societies.

Cumulatively, the reconstitution of individual colonies also compelled official participants and observers to view Britain's imperial project in a different way. Wight's rendering of such a *gestalt* shift suggests that local developments within the colonies gradually reshaped the larger image (and supposed teleology) of the British Empire:

The change from the old Empire to the new Empire was the change from a simple system to a double system of colonial government. The old representative system was replaced by crown colony government plus responsible government. These two were complementary, and developed side by side. But underlying the governmental change was the more profound development from a static to an evolutionary conception of empire. The old Empire was constitutionally a solar system, in which the dependencies, revolving at an inalterable distance, reflected the liberties of the mother-country. The new Empire is constitutionally a procession, in which the dependencies are graded according to their degree of self-government.⁴⁷

Comparison, as a practice of colonial officials, thus had the political and legal consequence of making the colonies more similar in form and purpose, effacing differences in their constitutional development and laws that had been the result of distinct histories. Upon the reconstitution of the Straits Settlements, the newly transferred colonial officials and their subjects could expect administrative practices to be similar to other Crown Colonies despite the previously different form of government under British India. If they were not the same, colonial officials and subjects could, and did, point to other Crown Colonies as examples to devise and justify administrative reforms. Moreover, both colonial officials and laws could be transplanted from colony to colony—the transplantation and modification of laws seem to have been based upon officials' comparative knowledge of the laws and practices of other colonies.

Methodologically, the study of these changes in colonial government and law inverts the assumptions of a positivist approach to sociological comparison.⁴⁸ Rather than seeing the colonies as standard units of analysis whose differences or similarities may be accounted for by universal laws—as typically stated in the form “if X then Y”—I observe instead that the *standardization* of colonial government and legislation in the Crown Colonies was a consequence of empire-wide policies formulated by the Colonial Office in response to local events in the colonies. As Hirschman and Reed would put it, the widespread institutionalization of Crown Colony government in the British empire at this historical juncture is a “formation story” that reveals a change in the very nature of the colonial state in racially divided societies.⁴⁹ Indeed, the establishment of Crown Colony government meant that the Governor would dominate the legislature and judiciary, putting in doubt cherished common-law institutions like the rule of law.⁵⁰

47. Wight, *supra* note 44, p. 15.

48. Steinmetz (2004), pp. 381–3.

49. Hirschman & Reed (2014), p. 268.

50. In Singapore and Malaysia, the historical legacy of Crown Colony government and its authoritarian use of law provide a point of departure that might help account for Harding's dictum regarding the fate of legal transplants in Southeast Asia. As he states, “the more public law is, the more it has diverged from Western law; but the more private or commercial law is, the less it has diverged,” Harding (2001), p. 213. To use Rajah's characterization of law in colonial

4. PLURAL SOCIETY AND COLONIAL GOVERNMENT: ON THE RECONSTITUTION OF THE STRAITS SETTLEMENTS

When J.S. Furnivall, a colonial official and scholar of Burma, developed the concept of “plural society,” he drew upon his own practical experiences as well as ideas about colonial societies that had developed amongst the British elites of his time, the twentieth century.⁵¹ Likewise, in societies such as Jamaica and the Straits Settlements, colonial officials had viewed the various racial groups as “separate racial sections,” the defining feature of plural societies.⁵² According to Furnivall’s definition, each racial section would be “an aggregate of individuals,” each of whose “social life is incomplete.”⁵³ As such, these individuals were only held together by “colonial power and the force of economic circumstances.”⁵⁴ Politically, the lack of a common social would mean that democracy would not be possible.⁵⁵ In this particular regard, Furnivall’s views were not entirely different from those of British policy-makers in the mid-nineteenth century, who had been too willing to deprive Jamaica of elected representation based on their view that its inhabitants, who were mostly Black, were not fit to exercise self-government. To the British “official mind,” racial difference within a colony was a problematic social fact that called for direct control by the Crown.

The Straits Settlements could also be seen as a “plural society” and its reconstitution as a Crown Colony stemmed not only from the problems directly brought by its highly diverse mix of peoples, but also from the paradigm shift in imperial policy towards colonial government in the mid-nineteenth century. Against this historical context of a changing British Empire, we may partly understand why the European merchant community in the Straits Settlements, particularly Singapore, saw Crown Colony government—rather than the representative system that had been used in older colonies—as the solution to the problems that were recurrent under the rule of the Indian government. Another factor to consider would be the demographic similarities between the Straits Settlements and the relatively close Crown Colonies of Ceylon and Hong Kong, where “native” communities that were unfamiliar with English law formed a majority.

Social life in a plural society like the Straits Settlements was a source of social fears and tension partly because of the potential for misunderstandings or conflicts between communities. Turnbull identifies the 1857 petition by Singapore’s European merchants for direct rule from London as the culmination of a long campaign by W.H. Read and other like-minded merchants against the rule of the East India Company.⁵⁶ This petition was the first to articulate their calls for the Straits Settlements to be made a Crown Colony. As Turnbull relates, “The basic objection was the lack of representation in government and of a

(*F*note continued)

and modern Singapore, Crown Colony government established the foundation for the extension of “modernist, bureaucratic technologies that were, in essence, power-serving ‘rule by law’,” Rajah (2012), pp. 50–1.

51. Pham (2005).

52. Furnivall, *supra* note 13, p. 306.

53. *Ibid.*

54. *Ibid.*, p. 307. The undertones of Furnivall’s conceptualization reveal his concern with the anomic tendencies of economic life, where individuals are primarily participants in a market of exchange rather than integrated members of a community.

55. *Ibid.*, p. 308; Pham, *supra* note 51, p. 336.

56. Turnbull, *supra* note 9, pp. 348–9.

local legislative council, because the difficulties and discontent in the Straits stemmed mainly from over-centralization in Calcutta.”⁵⁷ Such “difficulties and discontent” included a range of concerns, namely the taxation of trade; the administration of the courts and the police; the lack of protection from the potential dangers posed by the Chinese secret societies; and the transportation of Indian convicts “whose crimes are of the deepest dye.”⁵⁸ In the petition, the European merchants’ sense of unease towards the Chinese, who composed the “great bulk of the population,” is well expressed:

Belonging chiefly to the lowest class, the Chinese immigrants are ignorant and turbulent, bringing with them from their own country those prejudices and feelings which animate their nation generally against foreigners. Here they find their secret societies and confederacies in full operation, and they fall into that system of self-government which ... is found to interfere so seriously with public order and the proper administration of justice To control such a population requires a firm and consistent, though conciliatory course of action on the part of the Government.⁵⁹

Given their concerns, Read and the other European merchants viewed Crown Colony government as a means for them to have a greater say in the protection of their own community’s interests, and to establish an administration that would be more responsive to local problems. These mercantile elites were partly justified in these beliefs. Nevertheless, while the establishment of Crown Colony government in 1867 did enable colonial officials to be more responsive to local needs, the newly constituted government would only be accountable to the Colonial Office, whose initial primary concern was the fiscal health of the new Crown Colony rather than the protection of the European merchants’ interests. In relation, the official decision-making process that led to the transfer of the Straits Settlements from the India Office deserves brief scrutiny, for the circumstances of the adoption of Crown Colony government contrasted with the political conflicts and social disturbances that eventually forced the outcome in Jamaica. The matter was decided administratively after the Colonial Office sent Sir Hercules Robinson, the then-Governor of Hong Kong, to Singapore to report on the feasibility of the transfer. Robinson’s report, according with the Colonial Office’s instructions, focused first on the finances of the colony. As for the form of colonial government, he recommended:

For these reasons [the fiscal stability of the Settlements] I am of opinion that the three Settlements [Singapore, Penang and Malacca] should be incorporated into one Crown Colony, under one Governor, and that for legislative purposes there should be one Council, composed, *as in Ceylon and Hong Kong*, of Official and Unofficial Members nominated by the Crown.⁶⁰

The manner of the Straits Settlements’ transfer to the Colonial Office as a Crown Colony reveals, to a greater extent, how colonial officials turned to Crown Colony government as a standard form of colonial constitution by the mid-nineteenth century. While colonial officials looked to Crown Colony government as the solution to the problem of racial difference in Jamaica, similar concerns were borne instead by the European merchant community in the Straits Settlements. For the Colonial Office, their taking on the administration of the Straits

57. *Ibid.*, p. 350.

58. *Ibid.*, pp. 339–48; House of Commons, *supra* note 8, p. 5.

59. House of Commons, *ibid.*

60. Robinson to Newcastle, 25 January 1864, CO 273/8, emphasis added.

Settlements pivoted mainly around fiscal concerns. Constituted at a juncture when Crown Colony government had increasingly become accepted as a legitimate way to govern racially diverse societies, the case of the Straits Settlements provides a strategic lens to examine how the shift in imperial policy towards colonial government was related to social tensions and political struggles that were rooted in a specific local context. Crown Colony government was accepted as the ideal solution for the government of a “plural society” since unimpaired Crown control was justified by the political incapacity of a society composed of different racial groups and the need to maintain political order and stability between them.

5. BETWEEN COLONIAL GOVERNMENT AND JUSTICE: THE CASE OF SIR PETER BENSON MAXWELL CJ

Law was not merely an instrument of social control within Britain’s colonies, for legal ideas and principles also shaped the language of political struggles with regard to colonial government. For British political elites, English law and its principles formed the idiom of their political struggles. While the common-law tradition properly refers to “the pattern of judicial prerogative and initiative that developed in England during the late Middle Ages,” its influence upon the “official mind” cannot be dismissed out of hand despite the different social contexts of the Crown Colonies.⁶¹ Like other Crown Colonies, the Straits Settlements’ Legislative Council included the colonial government’s top legal officers, the Attorney General and the Chief Justice, as official members alongside the nominated unofficial members, which could include the leading lawyers and merchants in the colony. Higher up the imperial chain of command in the Colonial Office, Sir Frederic Rogers, who had been the highest-ranking civil servant as the permanent undersecretary of state for the colonies between 1860 and 1871, was also a lawyer who had been called to the Bar in 1837.⁶² Not surprisingly, legal language and considerations thus permeated official correspondence, and colonial officials like Rogers could draw upon their own expertise in their supervision of colonial legislation and the courts.

The establishment of Crown Colony government meant that the appointment of the Legislative Council and the judiciary would have to come under the supervision and control of the Governor who was the local agent of the Colonial Office; this was a state of affairs unlike Britain and those colonies with “responsible government.” Furthermore, the Colonial Office could issue instructions to the Governor to pass or repeal statutory laws. Did these differences mean that an alien legal system developed in the Crown Colonies—one bearing only basic similarities in form to England’s common-law system but ultimately crafted upon a set of principles that had no relation to the former? This is not the case, and I note instead that the divergent legal development in the Crown Colonies stems from the practical basis of the common-law tradition, which emphasizes the importance of context in determining authority.

As a legal tradition, the common law offered ideas and rhetorical resources that allowed legal and political actors across the empire to make claims for greater powers relative to each other. As John McLaren recognizes, the rule of law was “a highly tensile notion” that could

61. Selznick (1992), p. 448.

62. Beasley (2005), p. 44.

be mobilized by legal and political actors in varying ways depending on “the political and legal culture of imperial governance, as well as the politics and law in various colonial jurisdictions.”⁶³ In fact, two models of the rule of law can be identified within the common-law tradition, as respectively formulated by Sir Edward Coke and Lord Francis Bacon.⁶⁴ While the former subjects the Crown to the dictates of the courts of law, the latter views judges instead as the “loyal servants” of the ruler.⁶⁵ Within colonial contexts, the Baconian model was dominant and the subordinate status of colonial judges in the Crown Colonies reflected the general position of judges within British colonies in the last decades of the eighteenth century.⁶⁶ Nevertheless, judicial independence in the White settler colonies emerged gradually with the development of “responsible government” while it remained an elusive ideal in the Crown Colonies.⁶⁷ Being partly dependent on the political context, the principle of judicial independence was an object of political struggle within the colonial state.

The conflict between the first Chief Justice and Governor of the Straits Settlements over the constitution of the Supreme Court is a case in point. Prior to his appointment as Chief Justice, Maxwell had begun his service in the Straits Settlements as a judge in Penang in 1856.⁶⁸ When the Settlements were finally handed over to the Colonial Office in 1867, he was the Recorder of Singapore before becoming the first Chief Justice of the new Crown Colony upon the transfer. Notably, as the Recorder of Penang, Maxwell had built up a reputation as a reformer of the courts and, on more than one occasion, became a source of ire to Governor Edmund Blundell.⁶⁹ More importantly, his long period of engagement in the Straits Settlements meant that the local mercantile community saw him as an ally. These connections would prove to be important in his subsequent disagreements with Sir Harry St George Ord, who would become the first Governor of the Straits Settlements after its transfer.

To put it simply, their disagreement centred upon the Supreme Court of Judicature Act 1868.⁷⁰ Before its passage, Maxwell had asked for the Governor to include an amendment to the Bill that would make it such that the Governor would not be able to suspend judges.⁷¹ Ord disagreed, stating that it was opposed to his “Commission, Instructions, and the Colonial Regulations and a departure from the rule of the Colonial Service.”⁷² Maxwell’s disagreement with Ord was understandable to some extent. After all, prior to the transfer, the constitution of the courts in the Settlements had been established by the *Third Charter of Justice* dated 10 August 1855.⁷³ This Letters Patent issued by the Queen stated that judges (then known as Recorders) held their offices “during the pleasure of us, our heirs and successors.” Since the courts were constituted in this way, it was the Crown—not the Governor or even the Indian government—that held the power to appoint, suspend, or

63. McLaren (2010), pp. 71–2.

64. McLaren, *supra* note 31, p. 11.

65. *Ibid.*

66. McLaren, *supra* note 63, p. 73.

67. McLaren, *supra* note 31, pp. 276–7.

68. Turnbull, *supra* note 9, p. 68.

69. *Ibid.*, pp. 69–70, 355–6.

70. Ordinance No. 5 of 1868.

71. Ord to Buckingham and Chandos, 15 June 1868, CO 273/19.

72. *Ibid.*

73. This Charter was ratified and confirmed by 18 & 19 Vic. Cap. 93.

remove judges in the Straits Settlements. Thus, the power of the Governor to suspend judges, while they were certainly granted by Ord's Commission and Instructions,⁷⁴ had not existed prior to the transfer. However, it should be noted that, even before the transfer, Maxwell and his fellow judges served "during the pleasure" of the Crown—the Charter was no formal guarantee of judicial independence. Rather, Maxwell's primary concern was the subordination of judges to the Governor.

Given his long service and social ties in the Straits Settlements, it was not surprising that Maxwell's opposition to this provision was shared by the European and Asian merchant community. Shortly after the Governor sent the Bill for the Queen's assent, a public meeting was held in Singapore to express their disagreement with Ord. This meeting led to a petition addressed to the Secretary of State for the Colonies dated 30 June 1868, which stated:

... the Straits Settlements have enjoyed the inestimable advantage of having justice being administered by Judges entirely independent not only of the local Governors but even of the Governors General of India, and that position of dignified independence secured to the judges the entire respect and confidence of the various communities both Native and European.⁷⁵

This meeting and petition followed a tradition of "persistent extra-constitutional anti-government opposition" that had developed from European merchants' earlier attempts to agitate for the Settlements' transfer.⁷⁶ Interestingly, as he forwarded this petition, Governor Ord also observed:

It is a curious fact that of the Ten Gentlemen, who, exclusive of the Attorney General, compose the bar of the Settlement, only two Mr. Atchinson and Mr. A. Baumgarten signed the petition. Mr. Atchinson who has been the principal Speaker and mover in the Meeting is usually supposed to possess the confidence of the Chief Justice.⁷⁷

The principle of judicial independence, as rooted in the common-law tradition, thus provided rhetorical grist for Maxwell and the mercantile community to express their opposition to Ord. Raising their appeal for colonial judges' independence from the Governor to be maintained directly to the Colonial Office, Maxwell's allies employed the normative weight of this principle against Ord, whose position accorded instead with the Colonial Office's rules.

The outcomes of Maxwell's struggle to prevent the Governor's control over the judiciary would fail for the same reasons as I have identified for the institutionalization of Crown Colony government across the Empire. In the Crown Colonies, colonial judges needed to be subject to discipline when necessary and without undue delay. In response to Singapore's petition for judicial independence, the Secretary of State thus observed that "whatever is, in this respect, best for the Straits Settlements, would also be best for Ceylon or Hong Kong, and other Colonies not possessing Responsible Government."⁷⁸ As the Undersecretary of State for the Colonies, Sir Frederic Rogers, explained in a memorandum:

... Judges should be appointed formally during good behaviour, where ... there exists a sufficient combination of the following conditions: a reasonably extended public opinion, a

74. *Supra* note 43.

75. Enclosed in Ord to Buckingham and Chandos, 15 July 1868, CO 273/20.

76. Turnbull, *supra* note 9, p. 391.

77. Ord to Buckingham and Chandos, *supra* note 75.

78. Enclosed in "Correspondence respecting the removal and suspension of colonial judges," Parliamentary Papers, C. 139, 1870, p. 3.

tolerably efficient press, colleagues, an intelligent Bar, and a society large enough to make the Judge's personal habits no great element in the improvement or corruption of colonial society.⁷⁹

The terms of appointment of colonial judges, like the constitutional form of Crown Colony government, would have to fit the social conditions of the colonies. In relation to plural societies that seemed to lack a common social will, would colonial officials find "a reasonably extended public opinion" or the other conditions Rogers identified? Given colonial officials' consolidated beliefs regarding the plural societies they governed, judges in the Crown Colonies never came to possess the same independence as their professional counterparts in the metropole or those colonies with "responsible government."

6. CONCLUSION: ON LAW AND PERSONHOOD IN THE GOVERNMENT OF PLURAL SOCIETY

In this essay, my central theoretical claim is that the reconstitution of the Straits Settlements as a Crown Colony rested on colonial officials and subjects' shared understandings of the fragmented and unstable character of racially diverse societies. Such understandings were analogous to Furnivall's concept of "plural society" and justified the establishment of a despotic form of government—simply put, because such societies lack a common social will, order and stability could not be secured without the force exerted by an authoritarian colonial state. Consequently to such notions, the Colonial Office and its agents, colonial Governors, justified their claims to their monopolistic control over the making, implementation, and judging of laws. Unlike the legal and political institutions of England, the constitutional rules and institutions of Crown Colony government rejected liberal principles that would justify the circumscription of state power in favour of individuals' basic rights.

To expand further in this direction, conceptions of personhood, within the framework of a plural society, would be based on one's belonging to a racial community—not upon the fundamental equality and liberties of individuals. Such ideas were indeed expressed in the laws of the colonial state. As Steinmetz observes, a central function of colonial government, its "native policy," was to "compel the colonised to adhere to a constant and stable definition of their own culture" and to reinforce the inferior standing of the so-called natives.⁸⁰ Because of the recurrence of violent conflicts, or riots, involving the Chinese secret societies through the nineteenth century, the "native policy" of the colonial government of the Straits Settlements was initially concerned with the suppression of their activities. Notably, a major riot involving these societies had occurred in Penang just months after Ord's assumption of control. On this point, Chief Justice Maxwell clashed once again with Governor Ord.

Shortly after their conflict over the independence of colonial judges, Maxwell and Ord found themselves in disagreement over the extension of the 1867 Preservation of the Peace Act,⁸¹ which had been due to expire in August 1868. Despite the passage of the 1868 Preservation of the Peace Extension Ordinance,⁸² Maxwell wrote to the Secretary of State for

79. *Ibid.*, p. 4. Undeterred by the Colonial Office's negative response, Singapore's mercantile elites submitted another petition to the House of Lords two years later. The Judicial Committee of the Privy Council then settled the question through a memorandum that corroborated Roger's position. *Ibid.*, pp. 6–9.

80. Steinmetz (2008), p. 593.

81. Act No. 20 of 1867.

82. Ordinance No. 10 of 1868.

the Colonies, protesting against the law's provisions; the first of his many objections was the law's infringement of individual liberties due to the powers granted to the Governor to detain and deport both aliens and naturalized subjects at will and the suspension of *habeas corpus* whenever the provisions of the law were proclaimed to be in force.⁸³ In responding to Maxwell's objections, Ord justified the act by pointing to information he had received from Penang, "stating that considerable apprehension existed that an outbreak was likely to take place between [two Chinese secret societies,] the Ghee Hins and the Toh Peh Kongs."⁸⁴ Unlike Maxwell's assessment that such occurrences, when they occurred, were essentially factional fights between the societies and did not threaten colonial rule, Ord viewed such a possibility as a real threat particularly in light of the 1867 Penang riots. In defending this colonial ordinance, he asked:

... is the preservation of the public peace and the protection of property a primary duty of the Government and has it a right to demand that it shall be furnished with the means of carrying out these duties, or is the right to be hampered with the restriction that it must always be exercised in conformity with the fundamental principles of English law?⁸⁵

As the Secretary of State for the Colonies, the Duke of Buckingham and Chandos would agree with Ord on the necessity of granting the colonial executive exceptional powers in controlling the seemingly unstable plural society of the Straits Settlements. However, in acknowledging the validity of some of Maxwell's objections, he also observed that:

... in passing Laws which give a large measure of discretionary power to the Executive, the Government is desirous not only of guarding against the abuse of those powers, but also of removing, as far as consists with the security of the public[,] all apprehension of such abuse.⁸⁶

While he had misgivings over the suspension of the writ of *habeas corpus* for those detained under the provisions of the ordinance, the Secretary of State's response to Ord was first concerned about the legality and legitimacy of the law. In the subsequent amendment of the 1867 Preservation of the Peace Act in 1869, the Legislative Council, despite the express objection of Maxwell and W.H. Read, thus modified the law in accordance to the Secretary of State's instructions and limited the discretionary powers granted to the Governor in Executive Council to deport foreigners whose removal was deemed to be necessary for public safety.⁸⁷

However, it might be noted that the provision in the 1867 law that authorized the suspension of the writ of *habeas corpus* for those detained during the proclamation of the law was not yet repealed by this amendment; this provision was only removed by the revision of this law in 1870 after the passage of the Dangerous Societies Suppression Ordinance, 1869, which instituted measures for the registration and regulation of the secret societies.⁸⁸ Tellingly, the draconian measure of suspending *habeas corpus* to quell social disturbances

83. Maxwell to Buckingham and Chandos, enclosed in Ord to Buckingham and Chandos, 11 September 1868, CO 273/21.

84. Ord to Buckingham and Chandos, *ibid.*

85. *Ibid.*

86. Buckingham and Chandos to Ord, *ibid.*

87. Ordinance No. 7 of 1869.

88. See Ord to Granville, 3 January 1870, CO 273/36; Ordinance No. 19 of 1869. Notably, the 1869 Dangerous Societies Suppression Ordinance specifically excluded European societies of Freemasons from such control.

was only abandoned when the colonial government could exercise greater legal control over the activities of the secret societies. While both metropolitan and local colonial officials did recognize the significance of protecting individual liberties, they again prioritized the protection of social order when confronted by the challenge of maintaining British rule in a colony with social conditions that were unfitted to the liberal principles of English law. Clearly, similar to Hobbes's Leviathan, the Colonial Office and its local agents wielded colonial laws as instruments of domination across the Crown Colonies.

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