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Petitioning and the making of a colonial judicial state in eighteenth century Bengal

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Natalie Rothman, in her recent study of ‘trans-imperial subjects’ in early modern Venice, has suggested that petitions ‘served as the main vehicles through which early modern subjects engaged officialdom’.¹ This broad claim reflects the ubiquity of diverse forms of petitions as historical sources for early modern state-formation in many regions of the world. Yet the very breadth of the term ‘petition’ immediately raises questions of about how the particular forms of engagement encompassed by written or oral addresses, requests, complaints or memorials to government varied across place and time. My paper takes up the issue of the petition as a putatively global or cross-cultural technique of political and legal address in a broad overview of the role of petitioning in the early period of colonial state-formation in late eighteenth century Bengal. I suggest how the capaciousness of the English term ‘petition’ (and, by extension, ‘petitioner’) was itself an important facet of colonial state-building, as new British rulers strove to translate and represent the political life-worlds of Bengal in a growing colonial archive. Yet the attempt to translate and manage Indian forms and practices of petitioning was also fraught

¹ E. Natalie Rothman, *Brokering Empire. Trans-Imperial Subjects Between Venice and Istanbul* (Cornell, 2012), p. 22.

with tension and anxiety. British officials often perceived Indian practices of petitioning, especially the ways large crowds of petitioners assembled in major towns, as a threat to political order. Meanwhile, critics of the East India Company regime charged that the British had failed either to understand or to live up to precolonial political norms for hearing and responding to subjects' grievances.

After the conquest of Bengal in the 1750s and 1760s, the huge proceeding books of the East India Company's governing councils were filled with translated petitions (often also rendered in English as 'complaints') from Indian subjects. The texts of these petitions were translated from a variety of South Asian languages, most commonly from Persian. Indian subjects also frequently presented petitions in English, adapting English styles of 'humble petition'. Indian petitions were often called 'arzees' in the Company's records, from the Persian word *arzi* or *arzdasht*, which seems to have had a similarly broad-ranging and fluid purchase within South Asian politics as the term petition did in the Anglo-world. Indeed the term *arzi* may have had a broader sphere of reference than the English 'petition', denoting the lesser or subordinate status of the author or presenter of the *arzi* vis-à-vis the recipient, and encompassing diverse forms of address that might have been rendered in English by terms such as report, or letter, as well as 'petition'.² *Arzis* in the more restrictive sense of petitions of complaint or request were an important element in the bureaucratic practices of early modern South Asian states, as a way of documenting relations between states, communities and individual subjects.³

² For a brief discussion, see S. Inayat A. Zaidi, 'Introduction', in Majid Siddiqi, 'The British Historical Context and Petitioning in Colonial India', (Jamia Millia Islamia, 2005), 9-16.

³ See, for a longer discussion of *arzis* as a bureaucratic form in early modern South Asia, Nandita Prasad Sahai, *Politics of Patronage and Protest. The State, Society and Artisans in Early Modern Rajasthan* (Oxford, 2006), pp. 30-34.

The English term ‘petition’ and South Asian term *arzi* seem to have shared a broad range of reference to many different forms of request, across many different political, legal and bureaucratic venues, even while they also connoted a certain deferential register common to these different forms. Sarah Pearsall, in her study of English epistolary culture in the eighteenth century Atlantic world, has noted that English petitions from this period, even when they were presented in relatively ‘informal’ settings, had developed certain generic features appropriate to ‘a legal form with a set tone and style’. Letter writing manuals from the period included sections on petitions which emphasized the importance of deferential language, ‘humble and respectful’, and the avoidance of informal modes of address.⁴ A petition inscribed a relationship of subordination, while often presuming on the benevolence of the person or office addressed, even while it also, as Natalie Rothman has argued, ‘placed specific claims on this benevolence’.⁵

The apparent familiarity and ubiquity as of the form of the petition/complaint/*arzi* in the East India Company’s archive can be viewed as an important instrument for rendering the figure of the Indian subject as knowable and translatable. Long before the conquest of Bengal, the Company had engaged with South Asian forms of petitioning, both as a petitioner of South Asian rulers, and as a recipient of Indian petitions itself. After the conquests, translated petitions served as sources of political information about local society, and as ideological constructs which appeared to render the Company as a source of legitimate authority in the eyes of their subjects. One of the most common motifs in translated Indian petitions was the phrase ‘you are the masters’, followed by the exhortation to decide and do justice.

⁴ Sarah Pearsall, *Atlantic Families: Lives and Letters in the Later Eighteenth Century* (Oxford: Oxford University Press, 2008), p. 97-8.

⁵ Rothman, *Brokering Empire*, p. 23.

Yet the Indian subject rendered as ‘complainant’ or ‘petitioner’ also became a broad object for colonial projects of reform. In her study of the ‘document Raj’ in early nineteenth century South India, Bhavani Raman has shown how official regulations worked ‘to discipline petitioning’ as a form of authorized and ‘proper dissent’. Company regulations aimed to create a ‘new colonial petitioner’, more strictly delinked from more dangerous forms of dissent including riot, desertion and public assembly.⁶ Similarly, in eighteenth century Bengal, Company authorities frequently expressed anxiety about unruly and threatening ‘clamour’ of Indian petitioners, and issued regulations to limit the scope and the modes of Indian complaints.

Focusing mainly on the East India Company’s capital of Calcutta, I show how the Indian subject as petitioner became a highly contested figure in the politics of colonial state-formation. The first part of the paper examines the role of Indian petitioning in the turbulent politics of the 1770s, as the Company ‘stood forth’ as *diwan* in Bengal, and moved many of the central offices of government from the old capital at Murshidabad to Calcutta. Members of the Company’s governing council struggled to insulate themselves from the ensuing torrent of Indian complaints, and tried to establish the khalsa or chief revenue office, under the office of an English ‘superintendent’, as the approved venue for presenting petitions. Meanwhile, Indian petitions became weapons in the intense factionalism and political struggles that divided the Company government during the governorship of Warren Hastings.

One of the features of Company rule in the 1770s was the constantly shifting and uncertain scope of many of the central institutions of Company rule, including the new *adalats* or law courts established by Warren Hastings in 1772. The *nawab*’s government in Murshidabad was retained as the center of criminal justice (*nizamat*), the Company’s provincial councils and

⁶ Bhavani Raman, *Document Raj. Writing and Scribes in Early Colonial South India* (Chicago, 2012), pp. 178-182.

collectors exercised a combined executive and judicial role, and they often clashed with the competing jurisdiction of the Crown appointed Supreme Court in Calcutta. The second part of the paper shows how contemporary critiques of the Company's government in the 1780s drew attention to the problems faced by Indian petitioners, given the fragmented nature of Company rule, and the indifference or remoteness British officials. In this section, I examine the famous Persian history of Ghulam Husain Khan Tabatabai from the early 1780s, the *Siyar al-muta'akhirin*, and also the political writings of the translator of this history, Haji Mustapha, to show how they referred back to precolonial practices of petitioning rulers to critique the inaccessibility of British officials to Indian grievances.

The final section of the paper examines the attempt by Lord Cornwallis, governor-general of British India from 1786-93, to reconstitute British rule as a more comprehensive form of imperial sovereignty. I show how his efforts to reform the colonial judiciary, and to separate the judicial functions of the state from its executive role as tax collector, were also aimed at reforming practices of Indian petitioning. Establishing a 'rule of law' became for Cornwallis closely linked to the redirecting the chaotic mass of Indian complaints into a properly ordered system of legal process. Cornwallis' vision of an enlightened colonial despotism, I suggest, attempted to redefine the relatively broad and open-ended category of the 'Indian petition' or *arzi* as a legal document conforming to the highly regulated domain of the Company's law courts. The shifting boundaries between 'law' and 'politics', and the effort to establish British rule as a kind of enlightened 'despotism of law', were thus enacted over the figure of the native subject as petitioner.⁷

⁷ For the concept of a 'despotism of law' see Radikha Singha, *A Despotism of Law. Crime and Justice in Early Colonial India* (Oxford, 2000).

Managing Indian Complaints

George Bogle, younger son of a wealthy Glasgow merchant, later remembered as the first British ambassador to Tibet, was not much impressed by the city of Calcutta when he arrived as a junior servant of the East India Company in 1770. His letters home rehearsed long established European stereotypes of local Indian society as mired in the corrupting effects of despotism. He commented on the ‘meekness and submission’ of the ‘Black people’ who constantly crowded around an influential Company servant.⁸ ‘Whenever he moves’, Bogle wrote, ‘all the principal Black merchants and banyans ate waiting to make their obeisance – they bow their heads to the earth and seem to be annihilated in his presence’. Other Britons, he claimed, were ‘worshipped in the same manner’.⁹ Inured to tyranny by frequent changes of rulers, the natives quietly submitted to changes that would ‘in any other country cause insurrections and rebellions’. In India, by contrast, ‘there is no instance where the subjects roused by sufferings and oppressions collect in a body and risque their lives and fortunes to obtain redress of the grievances they suffer from. Governors and the people of this country are the most contented in the world, give them but rice and a few other necessaries of life and they seldom complain’.¹⁰

Bogle’s view of the fawning and uncomplaining crowds that accompanied leading Company servants around Calcutta probably reflected his relative inexperience of life in the fast-growing city. The crowds he observed may indeed have been made up of elaborate retinues of servants, which as Elizabeth Collingham has shown, were becoming *de rigueur* for the

⁸ George Bogle to his father, George Bogle, 28 December 1770, Bogle Papers, Mitchell library, Glasgow, Bundle 2, p. 83.

⁹ George Bogle to Robert Bogle, 20 January 1771, Bogle Papers, Bundle 2, p. 92.

¹⁰ George Bogle to his father George Bogle, 24 February 1771, Bundle 2, p. 110.

aspiring British empire-builder in India.¹¹ But it is likely that such crowds also consisted of Indian petitioners or their agents (*wakils*), who were (pace Bogle) precisely attempting to have their complaints heard by the Company's authorities. Indeed, more experienced Company officials than Bogle tended to view Indian subjects, not as 'seldom' complaining, but rather as pathologically inclined to complaint.

Members of the Company's ruling council in Calcutta, reconstituted as the 'Supreme Council' after 1774, felt especially targeted by crowds of petitioners. During a period of institutional flux and confusion following the Company's conquests, the council enjoyed a broad authority as a managing agency and court of appeal for the Company's territories, and was frequently involved in adjudicating complex disputes over inheritance, debt, as well as claims against Company officials of different kinds of oppression or corruption. Crowds of petitioners seem often to have made personal applications to the members of the governing council as they moved around the streets of Calcutta. General John Clavering, after taking up his position on the Supreme Council in Calcutta in 1774, wrote to his brother that complainants 'flocked round our palanqueens every time we went out, with numberless petitions', some in English, and some in 'country languages'.¹² Those in English he conveyed to the council, and those in Indian languages to another Company servant employed as his interpreter.

High ranking Company officials often recorded their discomfort at being confronted by such crowds of petitioners. A few years later, in June 1777, General Clavering told the council that the 'the number of petitioners clamoring in the streets for redress of their complaints is become a nuisance that requires the interposition of the board, either to provide the means of

¹¹ Collingham, *Imperial Bodies. The Physical Experience of the Raj* (Wiley, 2001), pp. 16-17.

¹² General Clavering to his brother Thomas, 5 August 1775, Clavering papers, NRO 309, G.4, Box 1, 5, Northumberland County Record Office.

redressing their complaints, or at least preventing their insulting the members as they come to the council. I have been attacked today by a mob of people so very outrageous that it was impossible for me to extricate myself from them without violence'. Governor Warren Hastings agreed that he could scarce 'quit my house' without being assailed 'by clamorous petitioners in the public streets', even though he made a 'strict rule' not to attend to them. Hastings had constructed a private path from his main offices to the two houses where the councils were held to obviate this problem.¹³ Yet petitioning crowds were extremely persistent in their attempts to gain personal access to members of the council, especially if they felt ignored or badly treated by the Company's governing agencies. In November 1779, Supreme Councilor Philip Francis had his palanqueen 'violently stopped and assaulted by a man'. The man was seized and asked to explain his 'extraordinary behavior'. Apparently this man, a *taluqdar* or landholder from Sandwip in east Bengal, had come to complain against a Calcutta merchant. Under investigation in council, he claimed 'that he has during five years endeavoured in vain to procure redress of his Complaints, and worn out with so long Delays, says he knows not what he does'.¹⁴

The crowds of Indian petitioners who accosted Company officials on the streets of Calcutta often consisted of relatively poor people. Wealthier or better connected petitioners could sometimes secure a personal audience with members of the council to present their petitions, or employ lawyers to seek redress in the newly created Calcutta Supreme Court. The presence of crowds of petitioners on the streets suggests that a fairly extensive infrastructure existed both for producing written petitions in different languages, and for disseminating information about where, and to whom, petitioners might go for redress. The 'very numerous body of petitioners' who accosted General Clavering 'in a most outrageous manner' were

¹³ Bengal Revenue Consultations (BRC), 3rd June 1777, British library, India Office Records, P.49.72, pp. 102-3.

¹⁴ BRC, 30th November 1779, BL, IOR, P.50.20.

apparently salt-boilers from the nearby 24 Parganas district, trying to bring complaints for violence and oppression against their employer, one Captain Weller. Weller was an associate of Clavering's great rival on the Supreme Council, Warren Hastings. The salt-boilers alleged that Weller had tried to prevent their complaints by having them 'chained and sent down to the salt works again and compelled to work by Seapoys being put over them'.¹⁵ Poor petitioners also made similar personal approaches to the English judges of Supreme Court. One 'Anchalee', a widow from Rajshahi district, presented a petition in English to Justice John Hyde, claiming in the petition that a government official, 'Deewaram Sircar' had 'hurt me almost to death and confined her in bending her hands and also robed [sic] he juels whatever she is quete unable to apply the attorney for want of money as she is as a great poor.'¹⁶

This widow's petition was eventually passed to the English 'Superintendent of the Khalsa Records', from where it was sent (as a matter of 'criminal jurisdiction') to the *naib nazim* or Indian deputy governor in Murshidabad. The khalsa (*khalisa sharifa*), or chief revenue office of the Company government in Calcutta, became in the 1770s the main clearing house for Indian petitions presented to the Company's authorities in Calcutta. Occupying sprawling offices in the old fort buildings, this office or 'public cutcherry' was headed by an English company servant superintending a large staff of Indian officials, some of whom had been brought down to Calcutta when the khalsa records were moved from the *nawab's* capital in Murshidabad in 1772.¹⁷ The khalsa was the main store of official records relating to the revenue and civil

¹⁵ General Clavering to his brother Thomas, 5 August 1775, Clavering papers, NRO 309, G.4, Box 1, 5, Northumberland CRO.

¹⁶ West Bengal State Archives, (Historical Division) Kolkata, (henceforth WBSA). Superintendent of Khalsa Record Proceedings, volume 6, 15 April 1776, p. 349. Justice Hyde passed it on to the *khalsa* asking the superintendent to 'hear her story and put her in a proper way to redress', and the petition was passed on the *naib nazim* in Murshidabad, the native officer in charge of criminal justice.

¹⁷ PJ Marshall, 'Indian officials Under the East India Company in Eighteenth Century Bengal', *Bengal Past and Present* 84 (1965).

administration of Bengal, including *sanads* or title deeds and large registers of petitions running into the thousands each year. Sometimes complaints were referred by the Supreme Council for the investigation by the superintendent, who reported back to the council for a final determination. Often, petitioners or their agents (*wakils*) presented complaints appealing against decisions made by different agencies in the districts of Bengal. Petitions to the khalsa often recounted long histories of disputed claims, detailing (and critiquing) earlier hearings and adjudications by local authorities, from *qazis* and *zamindars*, to British collectors or councils.

The English superintendent's written 'proceedings' from the khalsa in the 1770s portrayed a busy public space thronged with crowds of petitioners, *wakils* and scribes. The Company's council believed that the moving of the khalsa to Calcutta had 'tended greatly to the increase of the inhabitants, who being composed of different nations and religions are more liable to disorders and more difficult to restrain'.¹⁸ Inside the khalsa the superintendent often struggled to control what was called the 'clamorousness' of petitioners. Yet 'clamours' could themselves be taken as evidence of the justice of a claim. For example, the superintendent referred a petition (in 1777) to the Company's Burdwan council, describing how the appellant 'incessantly and loudly' complained at the khalsa. It was not very probable, the superintendent wrote, 'that a Man would so long and so incessantly persist in an uninterrupted attendance at the Presidency where the expense of living must be very considerable, were he not in his own mind fully satisfied that he had a good Right to what he sues for'.¹⁹ Complaints presented at the khalsa ranged from cases of marital abuse, rape, or violent oppressions, to the illegal enforcement of

¹⁸ Letter of the Bengal Council in the Revenue Department to the Court of Directors, 6 January 1773, *Fort William-India House Correspondence*, vol. xi, p. 327.

¹⁹ WBSA, *SKRP*, 29 September 1777, vol. 10, pp. 436-7.

commercial duties, and property disputes. Petitioners ranged from great *zamindars* or *banyans*, to humble fishmongers.

The long duration of many disputes as they were reported in petitions suggested the profound political and institutional confusion in Bengal following the Company's chaotic conquests. Superintendents complained, for example, that the Company's hasty establishment of new collectorates and councils had created numerous opportunities for false or collusive claims to different tribunals. For example, the superintendent suggested 'many Dewanny Sunnuds [a form of property deed] have been at different Periods granted contrary to Justice', including many 'since the Company have become possessed of the Dewanny'.²⁰ Yet, unable to handle more than a handful of direct inquiries in the *khalsa*, the best the superintendent could generally offer to the numerous petitioners was a letter of reference to local authorities urging a new hearing of the case. Acting as superintendent of the *khalsa* in 1777, Gerard Ducarel compared the Company's treatment of petitioners in Calcutta unfavorably with earlier practices under the *nawabs* of Bengal. He wrote to the Supreme Council that it had 'been an antient Custom at the Khalsa for the sake of giving speedy Redress to complaints to grant orders for Enquiry and Relief to the nearest Jurisdiction', and that this had been a 'great Benefit', 'as those References are said to have been strictly and regularly adhered to'. Now, however, this mode was 'not so beneficial', 'for want of regular answers to the references'.²¹ In other words, petitions sent out from the *khalsa* to the Company's provincial agencies were likely simply to be ignored.

Fierce factional disputes among members of the Company's Supreme Council in the 1770s, and between the Supreme Council and the Supreme Court, created new opportunities for

²⁰ WBSA, *SKRP*, 29 December 1777, vol. 10, pp. 761.

²¹ Superitendant's letter to Board of Revenue, WBSA, *SKRP*, 7 April 1777, vol. 8, p. 319.

petitioning subjects in Calcutta but also new dangers. Rival factions on the Supreme Council sought out petitions of complaint against their rivals. Governor Warren Hastings became concerned in 1777 that copies of Persian *mazharnamas* or memorials of grievances drawn up by high officials in Murshidabad were being sent back to London to undermine his position.²² Hastings had previously brought charges of conspiracy in the Supreme Court against his political enemy, Nandakumar, for allegedly fomenting false accusations of corruption against the governor.²³ Chief Justice Elijah Impey, meanwhile, determined to make his Supreme Court a source of legal redress against the Company's authority, set up (in 1777) a 'new office for receiving and examining Petitions from the natives & for prosecuting suits of the poor gratis'. But, soon after this he reported back to England 'a melancholy accident occasioned by the new institution'. The *diwan* of William Chambers, Persian translator to the court, had apparently been 'very diligent in assisting the petitioners', and had refused many offers of bribes. But, according to Impey, this *diwan* was 'found murdered in his Bed by a man who had a few days before offered him his service to play on a Sittar'. Given that none of the valuables of the murdered man were taken, Impey surmised that the assassin had been hired by a person who might have suffered from ongoing investigations of complaints.²⁴

Especially in the early decades of Company rule, the boundaries between 'judicial' or 'legal' processes and 'political' struggles were fluid and uncertain. While the Supreme Court judges became embroiled in political contests over their jurisdiction, so the Company's khalsa operated as a 'quasi-judicial' space that also mediated broader political grievances and conflicts. While many petitions presented at the khalsa were written on behalf of individual complainants

²² Robert Travers, *Ideology and Empire in Eighteenth Century India* (Cambridge, 2007), p. 139

²³ Ibid., p. 155

²⁴ Elijah Impey to Lord Bathurst, 1 April 1777, British Library, London, Impey Papers, Additional Manuscripts 16,259, fo. 52r,v.

seeking what we might call ‘legal’ remedies for specific grievances, petitioning was also a vehicle for expressions of collective or corporate interests and identities. In October 1789, for example, a group of over 400 ‘native inhabitants of Calcutta’ presented a petition in English to the governor-general, Lord Cornwallis, which was later referred to the khalsa, complaining about high property taxes and the inadequate provision made by the Company for the repair of roads. The petition stated that the Calcutta inhabitants had previously complained over burdensome property taxes in the time of Warren Hastings. At that time, the complaint had been handled by Hastings’ banyan, Krishna Kanta Nandy. According to the 1789 petition, Nandy’s previous assurances that higher tax levies would be temporary had proved false. The petition claimed that the Company’s levies for road building in Calcutta were not only ineffectual, but also unheard of ‘within the Empire of Hindostan’. Yet, according to the petition, now that Calcutta ‘is become the capital of the empire’, it was necessary that the inhabitants ‘should live happier than before’. In response to this petition, Cornwallis directed the ‘inhabitants’ to appoint two or three spokesmen ‘to explain in a quiet and orderly manner the subject of their complaints’.²⁵

Thus, through the everyday process of petition and response, the khalsa became a space for political argument concerning issues of imperial legitimacy and the common good, as well as a ‘quasi-judicial’ space for the hearing of particular grievances. The Calcutta petitioners seemed to deliberately echo the repeated rhetorical claims of British rulers that their subjects were ‘happier’ than those of other Indian governments.²⁶ More wealthy and well-connected subjects seem often to have framed their addresses in English as a way of trying to insert themselves into the high political debates carried on in the Company’s ruling councils. A striking example of this came from a dispute referred to the khalsa in 1776 between the Rani of Burdwan, one of the

²⁵ WBSA. Kolkata, Preparer of Reports Proceedings, 19 October 1789, vol. 57.

²⁶ Travers, *Ideology and Empire*, p. 244; see also Cornwallis’ remarks, cited below, p. 27.

largest *zamindars* of Bengal, and Gokalchandra Ghoshal, one of the most powerful Calcutta *banyans*, over a revenue farm held by the latter. At a time when political opinion in the Company was turning against revenue farmers like Ghoshal, and favoring the ‘patrimonial’ rights of *zamindars*, Ghoshal wrote a long letter in English to the Company, which not only defended his own right to the revenue farm, but offered a broader critique of the ‘arbitrary’ power exercised by *zamindars* in their estates. His letter declared the *zamindari* oppressions ‘are the most operative cause of the general state of decay observable upon the lands’, and asked whether ‘it be conformable to the justice or to the policy or to the humanity of a British Government’ that his farm should be singled out for resumption.²⁷ Ghoshal’s use of the form of an English letter, rather than the more conventional style of a petition/*arzi*, may itself have been a deliberate attempt to draw attention to his high status in Calcutta, and to pull rank over the Rani.

Indian petitions, especially group petitions, also became weapons used by competing British factions as they rehearsed their disputes in the public sphere of eighteenth century Britain. For example, in 1779, disputes between the Company, the British inhabitants and the judges of the Calcutta Supreme Court were appealed back to the British parliament. The enemies of the Supreme Court published in London several petitions of ‘native inhabitants’, translated from Persian, testifying to the unpopularity of the Supreme Court among the local population. The English translators of these petitions were careful to maintain certain Persianate/Mughal styles of address to enhance their aura of authenticity for a British audience.²⁸ For example, in the ‘Persian petition from the Native inhabitants of the Subah Azeemabad [Patna] to the King’, the ‘poor distressed inhabitants’ appealed to George III as ‘the most sacred king, the shadow of

²⁷ Letter of Gokalchandra Ghoshal, WBSA, *SKRP*, 13 August 1776, vol. 7, pp. 222-4.

²⁸ In pamphlets relating to the Supreme Court, certain legal documents were published in English translation alongside the original Persian. See, for example, *Narrative of the Proceedings of the Provincial Council at Patna in the suit of Behader Beg against Nadara Begum* (London, 1780), appendix.

the Almighty’, posing the rhetorical question: ‘from a physician how long can you conceal your pain?’ The ‘native inhabitants’ hoped that the petition would not be rejected from the ‘chamber of audience’ of the English King. They gave ‘a full explanation of all the bad innovations of this Court of Judicature’, including its replacing local Indian law and custom with the alien rules of English law, the high costs of its proceedings, and the way it had been used by ‘the mean, and for knaves, and those of no credit’ to upset the established social hierarchy.²⁹

In publishing this Indian petition, the British authors of the pamphlet felt the need to reconcile the apparently determined protests of the ‘native inhabitants’, with conventional British stereotypes of Indians as slavishly devoid of political will or agency. Thus the deferential rhetoric of the native petitions, including the assertion by Indian revenue farmers that they would rather desert the British provinces than submit any longer to an alien law, was described as further proof of the ‘servile and abject state of the natives of these provinces’, and ‘the timidity with which they at last make, any complaints against the usurpations of power’.³⁰ It is very striking, in this context, that the printed petition of the inhabitants of Patna did not in fact confine its critique to the workings of Supreme Court only, but passed critical comments on the government of the East India Company more generally. On the one hand, the Patna petitioners professed ‘satisfaction and happiness’ that the Company had chosen to preserve indigenous ‘customs and usages’, for example employing Indian law officers. On the other hand, they noted other ill effects of the Company’s conquests: ‘on account of the want of employment from the loss of our services and offices, and the deprivation of the means of subsistence, we were

²⁹ ‘Translation of a Persian Petition from the native Inhabitants of the Subah Azeemabad to the King’, printed in *Administration of Justice in Bengal. The Several Petitions of the British Inhabitants in Bengal, of the Governor-general and council, and of the Court of Directors of the East India Company to Parliament* (London, 1780), pp. 7-14.

³⁰ ‘A second letter to Lord Weymouth, April 25th 1779), in *Administration of Justice in Bengal*, p. 5.

affected with poverty and hunger, with narrow circumstances and distress'.³¹ This petition can also be read, therefore, as part of a larger literature of complaint produced by South Asian political elites as they were confronted by the growing power of the British empire.

Critics of Company Justice

The Company's claims to just ruler-ship in Bengal increasingly rested on the establishment of a new system of *adalats* or law courts, *diwani adalats* for civil justice and *faujdari adalats* for criminal justice. First established by judicial regulations of Warren Hastings in 1772, these courts were professedly modelled on the 'ancient constitution of the Mughal empire', administering supposedly traditional forms of Hindu and Muslim law. In practice, the question of what exactly counted as Hindu and Muslim law, and when and how to apply these laws, remained highly uncertain and contested. Meanwhile the 'judicial' agencies of the Company government in the 1770s remained largely indistinguishable from a fluctuating system of revenue collection made up of provincial councils and collectorates. The *faujdari adalats* or criminal courts remained under the formal control of the *nawab's* government in Murshidabad. In 1782, following allegations in the Supreme Court of the irregularity and corruption of the Company's law courts, new written regulations for the *adalats* were issued and published in English, Persian and Bengali.³² In theory, most petitioners for justice, like those who had crowded into the khalsa in previous years, were now to be directed towards the Company's reformed judiciary.

³¹ 'Translation of a Persian Petition', *ibid.* p. 8.

³² *A Persian Translation of Regulations for the Administration of Justice in the Courts of Suddur and Mofussil Dewannee Adauluts*, Calcutta, by order of hon Gov gen and c, tr by William Chambers, printed by C Wilkins, 1782

Around the same time, in 1781-2 Ghulam Husain Tabatabai, a scholar-administrator and landholder from Bihar, was writing his vast contemporary history of India, documenting the gradual decline of the Mughal empire, and the rise of British power, the *Siyar al-muta'akhirin*.³³ Ghulam Husain was intimately familiar with the Company's regime, having been employed by Company officials as a Persian secretary (*munshi*) and diplomat, as well as acting as a financial security in the land revenue system.³⁴ Ghulam Husain had also been to Calcutta as a supplicant for justice, where he had represented a petition in person to Governor Warren Hastings about debts owed to him from defaulting *zamindars* in Bihar.³⁵ Hastings referred him to the khalsa, where Ghulam Husain attended in person, and received a letter from the superintendent requesting that the Provincial Council in Patna should pay 'particular attention' to the 'hardship' suffered by the petitioner.³⁶ Yet in his Persian history, Ghulam Husain not only expressed his personal disappointment about the lack of justice done to him in this case, but also offered a broader critique of the Company's inadequate provision for justice, emphasizing the difficulties facing Indian petitioners for justice like himself.

³³ In what follows I refer often to the influential translation by Haji Mustapha or 'Nota Manus': *Seir Mutaqherin, or Review of Modern Times, being an history of India...*, by Seid Gholam Hossein Khan, an Indian nobleman of high rank, who wrote both as an Actor and Spectator (Calcutta, 1789, reprinted Lahore, 1975), vol. 3, pp.156-213. I have also compared this at certain points to the printed edition of the Persian text, Ghulām Husain Khān Tabatābāī, *Siyar al-muta'akhirin* (Calcutta, 1833, 2 vols in 1), p. 404-420; accessed via Harvard University Library, Islamic Heritage Project, <http://nrs.harvard.edu/urn-3:FHCL:2225240>,

³⁴ For a broader discussion, situating this text within the larger context of Indo-Persian historiography, see Kumkum Chatterjee, 'History as Self-Representation. The Recasting of a Political Tradition in Bengal and Bihar', *Modern Asian Studies* 32 (1998), 913-48, and Kumkum Chatterjee, *The Cultures of History in Early Modern India. Persianization and Mughal Culture in Bengal* (Oxford, 2009).

³⁵ *The Seir Mutaqherin, or History of Modern Times*, vol. 3, pp. 100-1.

³⁶ 'Petition from Gholam Hosaine', WBSA, SKRP, 24 April 1778. The complaint concerned a claim of 60,000 rs against the *zamindars* of Serris Kutumba in Bihar. Ghulam Husain had apparently been held liable as security for balances on the revenues; he had been imprisoned, and had only attained his release by mortgaging his *altamgha*.

Inserted into Ghulam Husain's wide-ranging political history was a short treatise detailing the causes of the decline of Bengal from its former flourishing under Mughal rule.³⁷ This treatise rested on an idealized conception of the Mughal imperial past, as an era when 'princes lived among their people, and amongst their nobles, as kind and condescending parents amongst their children'.³⁸ Dedicated to the Company's Governor Warren Hastings, Ghulam Husain's Persian history was expressly designed to remedy what he perceived as the lack of reliable knowledge about Indian society possessed by British rulers. At the same time, Ghulam Husain, whose noble family had close ties both to the Mughal emperors and to the *nawabs* of Bengal, also gave details about the history of Britain and of the East India Company for an Indian audience. For example, he explained that the *pādshāh* of England was called 'king', and he spelled out this word in Persian letters.³⁹

The animating premise of Ghulam Husain's treatise was the wide diversity of natural, social and political cultures in the different regions or *aqālīm* of the world. Especially given that Hindustan the most distinct of any region of the world (*mubāyanat tamām*), wise rulers had always adapted themselves to customary local forms of government to secure the welfare and ease of the people (*rafāt wa āsāyish-i khalq*). Former conquerors, including the Mughals, had therefore sought reconciliation (*mustamāl*) with their subjects, inviting them, from the highest to

³⁷ For an interesting recent account of Ghulam Husain as an 'absolutist' political thinker, see Partha Chatterjee, *The Black Hole of Empire. The History of a Global Practice of Power* (Princeton, 2012), pp.78-85. Chatterjee rests his interpretations on Ghulam Husain's praise for strong military rulers, including usurpers, who knew how to grasp and maintain their power. But Chatterjee also acknowledges a form of 'constitutionalist' discourse running through the history, which emphasizes the reciprocal rights of rulers and ruled, and the necessity for rulers of attending to popular grievances.

³⁸ *Seir Mutaqherin*, vol. 3, p. 159.

³⁹ *Siyar al-muta'akhirin*, p. 403.

the lowest rank, into the presence of the ruler, and appointing local elites to positions of authority.⁴⁰

For Ghulam Husain, the primary locus of imperial justice under the Mughals was the *darbār*, or ‘court’ in the monarchical sense of that term. This can perhaps be seen as a place of ‘representative publicness’ (in Habermas’ sense), where the ruler ‘presented himself as the embodiment of some sort of “higher power”’.⁴¹ The different orders of subjects assembled before the emperor or imperial governor acting as *hākim*, or the ruler as judge. The critical act of sovereignty, in Ghulam Husain’s account, was the royal governor’s appearance in public (*darbār-i ‘ām*) before the assembled subjects and their *wakīls* (or agents), in order to hear and decide disputes. The imperial court in this sense was a seat of judgment, but also a site of consultative government, in which the complaints of the people as a whole were laid bare before the ruler. Ghulam Husain put particular emphasis on the watchful oversight of virtuous rulers over lower officials through the hearing of complaints, and their capacity to appoint men of merit to positions of influence.

He viewed law courts, such as ‘*adālat*s, staffed by *darogas* or *qāzīs*, as a significant element in a system of Mughal imperial justice, but also as subsidiary to the primary justice of the ruler. An ‘*adālat*, he wrote, afforded relief for the ‘poor, defenceless, weak people’ who could not ‘resort to Ministers and even Emperors’. The *daroga* was in any case supposed to present narratives of difficult cases to the emperor or his minister who would ‘sit twice a week on purpose to hear such matters’.⁴² Petitions or requests presented in person were supplemented by written complaints. Thanks to an extensive network of official writers, emperors were kept

⁴⁰ Ibid., p. 404.

⁴¹ Jürgen Habermas, *The Structural Transformation of the Public Sphere* (tr. Thomas Burger and Frederick Lawrence, MIT press, 2001), pp. 5-14.

⁴² *Seir Mutaqherin*, vol. 3, pp. 168-9.

informed the needs of even distant subjects, so that ‘petitioners had often gained their cause in the middle of a distant province, sometime before they had agreed upon the wording of their petitions’.⁴³

Ghulam Husain described a long-drawn out process of corruption, going back to reign of Aurungzeb, through which imperial forms of justice had gradually been corroded by the expansion of the state’s fiscal demands, and the leasing of judicial offices. Nonetheless, he suggested that an earlier form of direct imperial justice had survived into his own era, especially in the person of the *nā’ib nazim* or governor of Bihar, Maharaja Shitab Rai, who was accustomed to sitting in public *darbār* (*darbār-i ‘ām*) ‘from one half each day down to one-third of each night in hearing petitions, and in giving decisions’ (*darbar-i ‘ām neshastan wa ahwāl-i mardom shenidan wa fahmidan*).⁴⁴

Ghulam Husain detailed how this system of imperial justice had broken down under British rulers who were, with some notable exceptions, unable or unwilling to hear or redress subjects’ complaints. He suggested that Governor Warren Hastings, who was patron to Ghulam Husain’s own employer, Colonel Goddard, was a rare exception to the general rule. Yet Ghulam Husain claimed that his own and others’ claims for justice had usually fallen on deaf British ears. The British in general could not understand Indian languages, so petitioners or the needy (*muhtāj*) were forced to have their complaints interpreted by lowly domestic servants in British households. Indeed, it was necessary to bribe such servants even to gain access to the *diwān khāna* or household audience chambers. Crowds of Indians appeared to the British, in Ghulam Husain’s memorable simile, as like an assembly of portraits (*majlis-i taswīr*). Even if a complaint

⁴³ Ibid., pp. 173-4.

⁴⁴ Ibid., p. 198; *Siyar al-muta’akhirīn*, p. 416.

was presented in such a setting, the British system of government by council, the weight of internal Company business, and the pervasive factionalism of the Company service, meant that Indian petitioners often waited in vain for redress.⁴⁵ Meanwhile, the British, according to Ghulam Husain's account, hated 'appearing in public audiences, and whenever they come at all, it is to betray their extreme uneasiness, impatience, and anger, on seeing themselves surrounded by crowds, on hearing their complaints, and clamours'.⁴⁶

The widening gap between rulers and subjects not only prevented subjects from gaining redress in particular cases, but also led the British to adopt faulty general regulations (*zawābit wa qawā'id*), ignorant of their true effects. The Company state was very different not only from a responsive, Mughal form of imperial paternalism, but also from the consultative forms of monarchical rule in Britain. In a remarkable passage, Ghulam Husain described how the *pādshāh* in Britain, though supreme in commands (*naḥz al-amr*), could not make laws without consulting with the *kunsel-i vilāyat*, who were selected from each town and district. It is interesting, given Ghulam Husain's emphasis on the vital role of petitioning for justice in Mughal governance, that he described how the members of the English 'council of the kingdom' (MPs) were granted powers of agency (*wakālat*) by their communities – seeming to link them through this term with the agents or *wakīls* who presented complaints on behalf of petitioners in India. By contrast with the king of Britain, however, the East India Company in Bengal wrote down rules in books based merely on what they had heard from scribes and accountants employed in the government offices, without properly inquiring into the rationale behind these laws (*barāi che kār muqarrar*

⁴⁵ *Siyyar al-muta'akhirin*, p. 414.

⁴⁶ *Seir Mutaqherin*, vol. 3, p. 200.

gashte). Because the British had disdain (*naḡūr*) the society of Indians, they remained ignorant of the affairs of their Indian subjects.⁴⁷

Thus, Ghulam Husain's account of Mughal imperial justice positioned the hearing of diverse complaints in public by the emperor or imperial governors as a cornerstone of responsive rulership. His notion of imperial justice implied a system privileged access to imperial justice for those of higher rank and status, but also an extensive system for hearing grievances of all ranks of people, which included rulers appearing among large crowds of complainants. Ghulam Husain tended to emphasize the failure of British rulers, through their lack of understanding, cultural distancing or simple disinterest, to maintain this earlier culture of state-subject interactions; furthermore, this failure was now being institutionalized through the written regulations issued by the Company. By ignoring older practices of imperial justice, the British seemed to have cut the link between hearing complaints or petitions, doing justice in particular cases, and making or maintaining general rules for conducting government business.

Ghulam Husain's treatise likely reflected the widespread influence in Mughal India of Indo-Persian *akhlāq* literature, writings on political ethics that viewed justice, '*adl*, as the foundation of social order and the touchstone of virtuous and attentive rulership. Muzaffar Alam has argued that Mughal *akhlāq* literature, combining elements of Islamic and Greek philosophy, tended to promote a concept of justice as rooted in human social capacities, and emphasized the duty of rulers to promote harmony in social relations, by hearing and redressing the complaints of their subjects.⁴⁸ As Kumkum Chatterjee has suggested, Ghulam Husain's treatise can be also read as an extended defense of the old Mughal nobility, represented by figures like Maharaja

⁴⁷ Ibid., p. 403-4.

⁴⁸ Muzaffar Alam, *The Languages of Political Islam. India 1200-1800* (Chicago, 2004), pp. 54-69. See also, C. A. Bayly, *Origins of Nationality in South Asia. Patriotism and Ethical Government in the Making of Modern India* (Delhi, 1998), pp. 13-19.

Shitab Rai, and a plea for the continued employment in high office of virtuous Indian officials under the British empire.⁴⁹

Within a few years, Company officials in Calcutta were able to read Ghulam Husain's strictures in a multi-volume translation. In 1789-90, an English translation of Ghulam Husain's history was published in Calcutta by the French-educated Muslim adventurer, Haji Mustapha Istanbuli or 'Nota Manus'. As recent research by Miles Ogborn has shown, Haji Mustapha was also carrying on his own campaign for reforming the Company's system of justice in Bengal, even as he hoped to profit commercially by publishing Ghulam Husain's history.⁵⁰ Mustapha, like Ghulam Husain, had also suffered from frustrating encounters with the Company's judicial agencies. Mustapha believed he had been unfairly treated in a series of cases argued before the civil and criminal law courts or *adalats* in Murshidabad. He repeatedly appealed against these tribunals to the Company authorities in Calcutta, including to the governor-general Cornwallis, but was disappointed by the lack of attention to his case. Mustapha eventually published several of his English 'humble petitions' together with a detailed history of his legal travails in a pamphlet in Calcutta, putting on public view the apparently malign neglect of the British government.⁵¹

Like Ghulam Husain, and often drawing on Ghulam Husain's history as a source, Mustapha's political writings focused on the difficulties facing those bringing their complaints to the colonial government, and recommended that the British should pay more attention to local norms and practices. Mustapha's commentary and footnotes in his translated history pointedly

⁴⁹ Kumkum Chatterjee, 'History as Self-Representation'.

⁵⁰ Miles Ogborn, 'The Amusements of Posterity: Print Against Empire in Late Eighteenth Century Bengal', in Ogborn and Charles W.J. Withers eds., *Geographies of the Book* (Ashgate, 2010), pp. 29-50.

⁵¹ *Some Idea of the Civil and Criminal Courts at Moorshoodabad, in a letter to Captain John Hawkshaw at Behrampore of 30th May 1789* (Calcutta, 1789).

contrasted Ghulam Husain's portrayal of responsive Mughal rulership with tired European stereotypes of Asiatic despots. 'Should we listen to the books and relations found in Europe', Mustapha wrote, 'we should be apt to think that the Princes of the East are a set of inaccessible men, eternally shut up within the walls of their palaces'. The fact was, however, 'there are no Princes, and no Ministers on the face of the earth so accessible, and none so inclined to put up with the murmurs, the reproaches, and even the foul language of their disappointed suitors'.⁵² In fact it was the British who had shut themselves away in the houses and council chambers, and remained ignorant of the sufferings of their subjects. This was partly a problem of lack of adequate languages, partly of the priority of collecting taxes over doing justice, and partly because Indian subjects were afraid to complain to such distant and forbidding rulers. 'Do you really believe', Mustapha chided British readers of his pamphlet, 'that among ten thousand low or middling people, oppressed, there can be ten men that have right notions enough of the English government to think that redress can be had'. He answered his own question: 'None: assuredly none will ever think of it, unless he be Armenian, a Bengalee connected with the principal Bengalees of Calcutta, or possibly...a man dependant on the two Nawabs of Moorshoodabad, or on the Djagatseats'.⁵³

Thus, Mustapha seems to have broadly shared Ghulam Husain's view of a British elite willfully insulated from the sufferings of their subjects. He saved his particular scorn, and satirical attacks, for the 'low born' Indian officials of the Murshidabad courts. He pilloried the *nawabi* law officers, *qazis* and *muftis*, as corrupt, venal and ignorant, as well as addled by their addiction to drugs and alcohol. Mustapha noted the difficulty of presenting petitions to the courts, and the extortions and frauds practiced by local officials. Petitions presented without

⁵² Ibid., vol. 2, p. 550

⁵³ *Some Idea of the Civil and Criminal Courts*, pp. 84-5.

bribes would be ignored. If a petition was presented ‘in a masterly style and an elegant language’ it would ‘stagger the Moonshy’ who was ‘always an illiterate low fellow, unacquainted with every thing, save the six or seven formul of letters and Petitions which he has now by him, and which constitute all his learning’. Petitions would only be accepted by the courts when ‘a more submissive tone or language’ was adopted.⁵⁴

According to Mustapha, therefore, the ‘Shoals of wretched suitors’ in Murshidabad, especially the vast majority of illiterate complainants, were in practice unable to make any appeal against the oppressions of these law officers. Mustapha’s pamphlet on the law courts concluded with a generalized attack on native officials, which seemed to echo the rising tide of British denunciations of ‘native depravity’ which strongly marked the governorship of Lord Cornwallis. Mustapha suggested it would be better to extend the authority of the English Supreme Court over Bengal, or to establish inferior courts under English judges. Even ‘inferior Englishmen in the inferior Courts of Bengal’, he argued, would be of superior character and education to the ‘venality, oppression, and extortion that pervade all ranks’ of the natives.⁵⁵

By the late 1780s Mustapha (who had been born in Constantinople, educated in Paris, and converted to Islam in India), had moved his main residence to Calcutta and was calling himself a ‘semi-Englishmen’; he seems to have been trying to position himself as a semi-official advisor to Governor-general Cornwallis. Mustapha also knew that Cornwallis was planning a radical overhaul of the *adalats* of Bengal, and was considering sweeping away the lingering control of the *nawab*’s government over the criminal courts or *nizamat*. Indeed it seems plausible that Mustapha’s pamphlet might have been partly sponsored by enemies of Muhammed Reza Khan,

⁵⁴ Ibid., pp. 81-3.

⁵⁵ Ibid. 88-9.

the deputy *nawab* in Murshidabad, perhaps even by British officials hoping to profit from the expansion of the Company's judiciary and the appointment of new judges. Mustapha himself boasted, in a letter to the former governor-general Warren Hastings, that 'it is reported that the governor-general is paying a deal of attention to its contents, has coupled it with two anonymous memorials he received two years ago from the same hand, and intends to introduce a variety of changes in the mode of rendering justice in Bengal'.⁵⁶

Taken together, the political writings of Ghulam Husain Khan and Haji Mustapha offer intriguing glimpses into arenas of political debate about the legitimacy of the Company government and its institutions, which stretched far beyond British salons and council chambers. They also suggest how the figure of the petitioning subject, trying in vain to represent grievances to distant or disinterested British officials, had become a powerful emblem of the shortcomings of the Company's regime. For Ghulam Husain, the secrecy and distance maintained by British rulers contrasted sadly with earlier practices of consultative rulership in the Mughal *darbar*. For Mustapha, by contrast, the remedies for bad justice depended on a more vigorous assertion of the authority of British judges over venal Indian subordinates. This line of thought would also be taken up by Lord Cornwallis as he addressed himself to widespread perceptions of a crisis of justice in early colonial Bengal, removing *nawabi* officials from control of the *faujdari adalats* or criminal courts, and reestablishing a more comprehensive network of civil courts under British judges.

⁵⁶ Mustapha to Hastings, Calcutta 5th Feb. 1790, British Library, Additional Manuscripts 29,172, fo. 30. Mustapha had earlier written to Cornwallis in December 1788 requesting government patronage for his translation, which was not forthcoming. Cornwallis papers, National Archives, PRO 30.11.27, fos. 481-2. Mustafa also sent Cornwallis a long hand-written treatise on justice, drawing on his translation, which is preserved in the Cornwallis papers. Mustafa's letter to Cornwallis, 2nd-3rd January 1788, National Archives, PRO 30.11.12.

The Judicialization of Complaints

Though several of Mustapha's unpublished letters and treatises are indeed preserved in the Cornwallis papers at the National Archives, there is little further evidence that Cornwallis paid particular attention to Mustapha's views. Yet Cornwallis' own writings on the reform of the Company state shared in some respects the pessimistic sense in Ghulam Husain's and Mustapha's writings that Bengal was suffering through a prolonged crisis of justice under Company rule. Pervasive factionalism, corruption scandals (culminating in the impeachment of Warren Hastings), and the continuing financial instability of the East India Company all contributed to the sense of political crisis in Bengal which Lord Cornwallis was appointed to address. Cornwallis' extensive administrative reforms, built around the dramatic freezing of the land tax in the 'permanent settlement' of 1793, were meant to rebrand the Company government both in Britain and in India. Most critically, they were supposed to establish the property of the Bengal *zamindars* as a saleable asset, attracting new investments in land rights, stabilizing tax revenues, and thereby providing a more stable basis for the Company's growing debt.⁵⁷

The notion that the Company had previously failed to evolve stable institutional mechanisms for hearing and adjudicating subjects' grievances became one of the animating principles of Cornwallis' judicial reforms in the early 1790s. Here, I focus on Cornwallis' plan, from February 1793, to separate the 'revenue' from the 'judicial' functions of the state, reforming the system of civil courts (*diwani adalats*) to establish a more comprehensive system of civil justice. In this plan, salaried British judges, supervised by higher courts and controlled

⁵⁷ For a recent account of the Cornwallis reforms, emphasizing the context of fiscal crisis, see Jon E. Wilson, *The Domination of Strangers. Modern Governance in Eastern India, 1780-1835* (Basingstoke, 2008).

by a comprehensive system of written regulations, would be installed as a check on revenue collectors at both the provincial and district level. By analyzing a long minute in which Cornwallis laid out his plans for a new colonial judiciary, I suggest how the governor-general envisaged his courts as providing more ready access to Indian complainants, thus better securing rights of property holders, but also a disciplinary framework within which the unruly characteristics of Indian petitioners would be contained and tamed.

Cornwallis' minute began in the grand style, promising to establish 'a constitution for the country that will protect private property' and 'render our subjects the happiest people in India'.⁵⁸ But soon, Cornwallis was giving quite as depressing a view as Ghulam Husain or Haji Mustapha of the systemic injustices of the Company government. He argued that the business of justice had been overwhelmed by fiscal imperatives. To strengthen the hand of revenue collectors and their agents, the Company had been unwilling to establish a proper judicial review for acts of government. Government had therefore in effect become unaccountable for invasions of property; this was, according to Cornwallis, 'the main cause of the depreciation in the value of private property, and the slow progress which has been made in the improvement of the country'.⁵⁹

Cornwallis, like Ghulam Husain, paid particular attention to the problems faced by subjects trying to represent their complaints to the Company's authorities. Whole provinces had been 'silently submitting for years to oppression, and for the maladministration of collectors having never reached the ear of government until despair getting the better of the terrors of power, the people flock to the presidency to impeach their oppressor'. Thus the crowds of

⁵⁸ Minute of Governor-general, 11 Feb. 1793, British Library, India Office Records, Board of Revenue Proceedings P.52.55, p. 201.

⁵⁹ Ibid., p. 263.

petitioners in Calcutta, which had so plagued the Company's rulers, were a symptom of deep structural problems in the districts. Collectors and their native agents had not previously been liable to legal action in the *diwani adalats* for actions in their official capacity, 'but by the uncertain and inefficient one of petitioning the Board of Revenue or the Supreme Government'. Yet such petitions, Cornwallis wrote, had tended merely to result in long drawn out and ineffectual inquiries, hampered by the pervasive local influence of collectors as the government's one source of local information. Though Cornwallis' minute raised the spectre of corrupt British collectors, it placed still greater emphasis on the dangers posed by the Company's reliance on 'native officers of government'.⁶⁰

Problems arose not merely from the Company's faulty system of government, which involved inadequate powers of judicial review, but also from what he regarded as the ill-defined nature of Indian law, especially in relation to revenue administration, which left many causes to the 'vague term of usage'. Interestingly, given modern historians' focus on British attempts to codify authoritative codes of Hindu and Muslim law, Cornwallis argued that these religiously defined laws were 'in many ways inapplicable to the internal government of the country'. Vital issues such as the rights of landholders, the regulation of commerce and the rules of court procedure would depend instead on 'the British part of the judicial code'. Problems of inadequate Indian laws were compounded by the practice of Indian suitors employing *wakils* or agents from among their personal servants, who were 'generally of a low character', and ignorant of all laws; their pleadings, Cornwallis complained were 'generally diffuse' and 'often irrelevant'.⁶¹

⁶⁰ Ibid., pp. 223-234.

⁶¹ Ibid., pp. 224, 289.

Cornwallis' remedy, therefore, was for a much strengthened judicial branch, with an extensive network of civil law courts staffed by high-salaried British judges, and for revenue officials to be made liable in courts for breaches of official regulations. Now that the 'permanent settlement' of the land tax had stabilized the tax assessment, Cornwallis suggested that government could safely reduce the previously exorbitant power of collectors. Earlier regulations, limiting the scope for appeal to higher courts, and imposing expensive fees on litigants, would be rescinded to improve access to the law. Cornwallis' regulations thus seemed to answer in part the criticisms of those like Ghulam Husain about the lack of redress under Company rule, especially against corrupt officials. He also seemed to respond to Ghulam Husain's charge that the Company made regulations in secret, without expressing the reasons for the regulations. Cornwallis wrote that all official regulations affecting the lives of property of Indian subjects must be published in Persian and Bengali accompanied with a preamble expressing clearly the reasons for the regulation.⁶²

Yet whereas Ghulam Husain's critique of the Company suggested the need to consult knowledgeable and experienced Indian officials about the most fitting regulations, Cornwallis was clear that all judicial regulations must be framed exclusively by British governors and councils. 'I should be no means', he wrote, 'propose to admit the natives to any participation in the framing of regulations'. Emphasizing the priority of securing the Company's rule of conquest, he stated that the British government must 'keep the means of safety within itself'. Moreover, in a familiar colonial deployment of Asiatic 'despotism' for its own ends, he argued that 'the natives have been accustomed to despotic rule from time immemorial, and are well-

⁶² Ibid., p. 216-17. *Siyar al-muta'akhirin*, p. 404.

acquainted with the miseries of their own tyrannic administrations'.⁶³ Cornwallis' view of Indian subjects as made up of 'long oppressed Hindoos, and their oppressors the Mahomedans' was very far from Ghulam Husain's image of paternal Mughal rule.

Rather than drawing on indigenous traditions of consultative rulership in public *darbar*, Cornwallis envisaged a comprehensive reeducation of Indian litigants and their amateurish *wakils* in the new court system. *Wakils* would be now disciplined by British regulations establishing authorized terms of employment and fee structures, and transformed from digressive and ignorant agitators into 'professional establishments' of 'licensed advocates'. Rather than 'personal servants' of litigants, they would instead become state-licensed agents for educating suitors about British regulations, and disseminating a better knowledge of and obedience to state laws throughout society.⁶⁴ Cornwallis' project, then, in providing new modes of judicial redress to the Company's subjects, was also expressly designed to redirect the torrents of Indian *arzis* and crowds of *wakils* into the highly regulated judicial domain of the Company's civil law courts. Just as Company servants would be retrained as professional judges, so also Indian complainants would also now be professionalized in their styles and modes of address.

In a telling moment of his minute, Cornwallis suggested that his new system of courts would help to clear the crowds of complainants attendant on the Supreme Council in Calcutta: 'the doors of the Council Chamber', he wrote, 'would no longer be crowded with petitioners for justice'. Indian complainants would be redirected away from the council chambers, the place where regulations were made, and into the courts, where they were enacted.⁶⁵ Only after a

⁶³ Minute of Governor-general, 11 Feb. 1793, British Library, India Office Records, Board of Revenue Proceedings P.52.55, pp. 203-4.

⁶⁴ *Ibid.*, 286-7.

⁶⁵ *Ibid.* There was however a certain dynamic or responsive element in Cornwallis' plan, given that local judges would have the capacity to propose new regulations to the council.

layered process of appeal, would complaints potentially be heard by the governor-general in council sitting as the highest civil court or *sadr diwani adalat*. If Ghulam Husain's treatise had implied that the doors of the British council chambers should be opened to the crowds of Indian petitioners, Cornwallis insisted that Indian petitioners must be redirected into the approved and regulated venue of the Company's *adalats*.

Together with his insistence that 'natives' must not participate in the making of administrative regulations, Cornwallis' determination to clear away the crowds of petitioners from the Supreme Council appears highly significant. It seemed to suggest that a system of adequate judicial review governed by British made regulations should ideally render ongoing practices of petitioning rulers irrelevant. Indian subjects, as subjects of an Olympian system of imperial law, would be encouraged to present legal petitions in the proper venues, but direct petitioning to high officials at the center of government, one of the hallmarks of Mughal rule according to Ghulam Husain, was to be discontinued. This authoritarian vision of a 'regulation raj' illuminates the strong streak of enlightened despotic reasoning running through British imperial thought, in which colonial legislation would bring about a highly mechanistic form of judicial state, with 'politics' in effect reduced to the legal resolution of questions of private right, mediated by allegedly impartial British judges operating within a pre-fabricated rule of law. Cornwallis' highly abstract notion of rule-making must also to be set in the context of a new rule of property for Bengal, designed to shore up private rights in land as security for the government revenue and debt.

Conclusions

This paper has traced how the figure of the Indian subject as petitioner became a frequent topic of political debate in the formative era of colonial state-building in Bengal. One of the major difficulties involved in the historical study of petitions and petitioning is the broad definition of these terms, and the diffuse character of petitioning as a social practice. This paper started with the suggestion that the very fluidity and capaciousness of the English concept of petition made this term a useful mediating category for British state-builders as they worked to translate diverse modes of South Asian address into an emergent colonial archive. The daily translation of *arzis* into English petitions rendered Indian subjects as state-seeking, and putatively deferential, ‘petitioners’. The sense that the colonial state constantly needed to expand its bureaucratic systems in order to meet the endless demands of Indian petitioners also operated as a powerful rhetorical justification for projects of colonial reform.

Yet, as we have seen, practices of petitioning in early colonial Bengal continually broke through the orderly and deferential bounds imagined by the Company’s authorities. Petitions also stood as potential markers of the fledgling state’s repeated failure to provide redress for subjects’ grievances. The ubiquity of petitioning in the Company’s eighteenth century records suggests how precolonial modes of political address were being adapted to the new exigencies of colonial rule, even if colonial translations of Indian petitions are a problematic vehicle for understanding precolonial practice. The continual ‘translation’ of *arzis* into English petitions indeed raised troubling questions for contemporaries about what was being ‘lost in translation’, and how the Company’s responses to petitions compared with those of earlier rulers. Ghulam Husain Khan Tabatabai’s lofty treatise on political ethics argued that the Company and its ruling councils had in fact dispensed with earlier practices of rulers appearing regularly in public *darbar* to receive

petitions and hear complaints. Haji Mustapha's English writings, especially in their attentions to the daily practices of the *adalats* in Murshidabad, offered another revealing, and deliberately prejudiced, view of the challenges facing the Company's subjects as they tried to represent their grievances. By publishing Ghulam Husain's critical history in Calcutta, as well as his own English petitions of complaint, Mustapha tried to bring into a more public view the everyday failings of the state.

In Britain, petitions to the crown or to parliament were a long-standing, familiar, and much venerated feature of eighteenth century public life, a mechanism through which government was in theory made responsive and accountable to public opinion.⁶⁶ Some forms of petitioning in Bengal, as practiced for example by Haji Mustapha in his scandalous publications, or the forms of consultative rulership envisaged in Ghulam Husain's history, or perhaps the assembling of large crowds of petitioners in Calcutta, suggested that the Company government should also be answerable and responsive to some form of an Indian 'public opinion'. Yet the Company's pervasive fear of rebellion and scandal, and its commitment to maintaining the exclusive prerogatives of its own servants in making and administering administrative regulations, made British authorities in Bengal deeply suspicious of these more public and 'political' forms of petitioning. I have suggested, instead, that the Company's 'rule of law', or 'rule of *adalats*', was explicitly designed to contain and discipline Indian petitioning with safe 'judicial' bounds. Yet Lord Cornwallis' vision of disappearing crowds of Indian petitioners was just another move, though a highly charged and influential move, within a much longer contest over the meanings and bounds of petitioning in colonial India, through which the shifting

⁶⁶ David Zaret, *Origins of Democratic Culture. Printing, Petitions and the Public Sphere in Early-Modern England* (Princeton, 2000); Mark Knights, 'Participation and representation before democracy: petitions and addresses in pre-modern Britain', in Ian Shapiro et al. eds., *Political Representation* (Cambridge, 2009).

boundaries between 'politics' and 'law', and between the 'state' and its 'subjects', were being continually formed and reformed.