

CHAPTER I

Governing Colonial Peoples

As new colonial territories around the Indian Ocean were brought under British rule, the varied governing strategies formulated in the India of the Raj made their way across the sea. This is not surprising. By the late nineteenth century the India of the Raj, first under the East India Company and then under the Crown, had existed for a century and had developed an array of administrative practices, well known and easily accessible, that provided exemplars of how an empire might be organized and run. The legal and administrative structures of the Raj were the most predominant and visible such export, but the influence of the Raj extended as well to such disparate matters as landholding, forest management, and the design of irrigation systems. These institutions and practices traveled across the ocean in several different guises. One was the diffusion and adoption of “Indian” ideas of governance with little avowed acknowledgement of their Indian origin. Among these were such administrative constructs as “indirect rule” through princes and the notion of “martial races.” On occasion, as we will see, Indian precedents were acknowledged only to be contested or, more commonly, to be taken as a jumping-off point for a transformed administrative structure in the new colonial context. A second mode of transmission was the movement of Indian officials, bringing Indian strategies of governance with them, to places as different as Egypt, Iraq, and the Straits. Finally, newly appointed colonial officials who had no experience of India frequently looked to the India of the Raj as a reservoir of useful practices and precedents as they struggled to set up their own governments.

Constructing Colonial Legal Systems

Two fundamental concerns shaped all discussion of law in the colonies. One was a belief that imperial rule could be justified only by a commitment to the rule of law. An avowed “despotism,” which the British saw as a mark of the regimes they had supplanted, had at all costs to be avoided. At the same time, the law had to take into account and in some degree respect those customs and traditions that the British saw as central to the peoples over whom they ruled. These two objectives were not wholly compatible, nor did they by themselves dictate any particular legal strategy. Fitting the law to the people ruled out any wholesale adoption, in India or elsewhere, of the case-based English system with its precedents coming down from the Middle Ages; yet to a very large degree, the English prided themselves on possessing a rule of law surpassing in its perfection that of other peoples. The result of this extended struggle was the establishment throughout the colonial world of complex and varied regimes of legal pluralism. It is not possible here to investigate the working even of the colonial Indian legal order, much less that of colonies elsewhere. My objective is to show how colonial “Indian” law, as well as “indigenous” and “English” law, could shape colonial legal systems. Following the suggestive insights of Lauren Benton, I argue that “the law worked both to tie disparate parts of empires [together] and to lay the basis for exchanges of all sorts between political and culturally separate imperial or colonial powers.”¹

In India, from the time of Warren Hastings (governor-general, 1772–84) onward, the British determined that the substantive civil law should incorporate what they regarded as the traditional personal rights of the people; these they defined as embodied in the ancient texts of the two religions of Hinduism and Islam. In civil suits regarding marriage, inheritance, and the like, Hastings wrote, “the laws of the Koran with respect to Mahomedans, and those of the Shaster with respect to the Gentoos [Hindus] shall be invariably adhered to.” The British thus began the practice, subsequently extended throughout the empire, of defining “tradition” so as to create bounded self-contained communities, and then enforcing these definitions upon those who were subject to them. The British recoiled, however, from enforcing the criminal laws of their Mughal predecessors. Many of these punishments they found abhorrent, while too much, in their view as they sought a rule of law, was left to the discretion of individual officials. Punishment for serious criminal acts had also to be taken out of the hands of aggrieved individuals and made

crimes against the state. The result was the creation of what became known as “Anglo-Muhammadan” law blending elements of British and of Mughal legal cultures. The British endeavored to restrict the use of English law to British subjects, who were placed under the jurisdiction of a Supreme Court created in 1772. But the separation of jurisdictions could not be strictly maintained as Indians appealed to the Supreme Court and the Anglo-Muhammadan law became infused with the English practice of citing cases and precedents in decision making.²

By the 1830s the British had determined to create by codification an alternative basis both for the substantive criminal law and for procedure more generally, and to make all residents of India subject to these codes. (The substantive civil law, with its distinction between Hindu and Muslim, was not codified.) The impetus for change came from the utilitarian philosophers in Britain, most notably Jeremy Bentham, who sought to make the law simple, uniform, and rigorous in its application in place of the complexity and arbitrariness that characterized so much of the English legal system in the late eighteenth century. Bentham’s influence on the English legal system was to be negligible, with only occasional and piecemeal reforms enacted during the early Victorian era. In India, however, where powerful vested interests did not cumber the stage, codification could be brought to a successful conclusion. Even so, this was to be a contentious and extended process. Thomas Macaulay, as law member of the governor-general’s council in the 1830s, took the first step with the drafting of the Indian Penal Code. Inspired by Bentham, Macaulay set out to create a code marked by “uniformity where you can have it; diversity where you must have it; but in all cases certainty.” He explicitly rejected as a model the English criminal law as administered by the Indian Supreme Court. The result, as Eric Stokes described it, was “a code of law drawn not from existing practice or from foreign law systems, but created *ex nihilo* by the disinterested philosophic intelligence.”³

Bureaucratic inertia, with the decline of utilitarian enthusiasm, delayed enactment of the penal code until 1860. The process of codification spurred by the upheaval of the 1857 revolt, the penal code was joined by the enactment in 1859 of the civil procedure code and in 1861 of the criminal procedure code. Although less rigorously based on Benthamite principles than Macaulay’s penal code, the two codes of procedure still showed the effects of Bentham’s conviction that the law must be made simple, efficient, and certain. As John Stuart Mill wrote of the draft code of civil procedure, it promised to secure “so far as judicial institutions can secure that blessing, as good and accessible an administration of civil justice as the lights of the age are capable of conferring on it.”⁴

The Indian codes, then, as enacted were not in principle compilations of existing, and for the most part still unreformed, English law. Indeed, Bentham and his followers, as we have seen, repudiated the law of England as the basis on which Indian law should be constructed. Nor were these codes “Indian” in any obvious fashion. Although adapted to Indian conditions in part and drafted for use in India, they were not designed to embody Indian legal practices, either those of the Mughal Empire or its successor state of the Company Raj. Rather, especially with Macaulay’s penal code, they were founded upon universal principles of jurisprudence, which took legislative form in India only because of the opportunities provided by British colonialism. That colonialism provided an unparalleled opportunity to introduce such a reform was not lost on Benthamite legal scholars. As Macaulay told the House of Commons in 1833, “A Code is almost the only blessing — perhaps it is the only blessing — which absolute governments are better fitted to confer on a nation than popular governments.”⁵

Given the character of the new codes, how can they be said in any way to be the product of an Indian legal culture? These codes were, after all, drafted by Englishmen, and Macaulay notwithstanding, much of their substance was, in practice, as David Skuy has argued, derived from English legal usage and embodied in English legal precepts.⁶ Yet whether in Kenya or the Straits, Iraq or Nigeria, the attempt to enact these codes into law outside India, as we will see, triggered immense controversy. Time and again these codes were perceived by local colonial officials and not least by white settlers as fundamentally different from and at odds with English law. They were, in appearance if not reality, incontestably Indian. In sum, whatever the content of the codes, their adoption overseas visibly involved the export to Britain’s colonies of a legislative culture crafted in India, and by the Raj for India. Macaulay might describe the Indian Penal Code as the work of a disinterested philosophic intelligence, and scholars like Skuy might find “English legal principles” embedded in it. For many in Britain’s colonies at the time, however, these codes, because they were not the familiar common law of England, embodied “Indian” jurisprudence and were scorned or embraced accordingly.

One might start with the Straits Settlements. Singapore, with its ancillary outposts of Penang and Malacca, had been placed under the rule of the East India Company from its founding in 1819. The enactment of the Indian Penal Code by the Raj therefore provoked a flurry of discussion as to whether it ought appropriately be extended to the Straits as well. These initial discussions in 1861 promptly precipitated antagonism between, on one hand, the members of the Straits executive government,

all of whom from the governor down to the local magistrates favored the use of the code, and, on the other, the local legal community, which opposed it. In the face of this divided opinion, together with an ongoing reconsideration of the status of the Straits Settlement following the abolition of the East India Company, no action was then taken. In 1867 the Straits Settlements became a Crown colony under the Colonial Office. No longer tied to India, the Straits government was now free to chart its own legal course.

The very next year, in 1868, T. Braddell, the colony's attorney general, raised the question of whether the Straits criminal law ought to be reformed. As he pointed out in a memorandum for the legislative council, without the "advantage of the improvements introduced by the penal code," the Straits criminal law remained frozen where it had been in 1829, when the last Indian act prior to codification had been enacted. As a first step toward reform, Braddell recommended extending to the colony some half-dozen 1861 English acts amending and consolidating the criminal law. These, he pointed out, had been brought into force in Hong Kong in 1865.⁷

Emboldened by Braddell's proposal, a group of private attorneys, advocates at the Singapore Supreme Court, endeavored to quash at the outset any effort to introduce the Indian code into the Straits. As their spokesman, R. C. Woods, argued, the Indian codes were simply not suited for a colony possessing an established bar and professional legal practitioners. The Indian code, he wrote, "was originally intended for the guidance of mofussil [district] judges and magistrates who had not the advantage of a professional training in legal sciences, and who did not possess more than an elementary knowledge of law." By contrast, "the judges in the Straits Settlements are chosen from the Bar, and doubtless all future magistrates will be also." Hence, the government ought to introduce into the colony the "improved criminal acts of England," for they offered the "advantage of a continued series of decisions of the most eminent judges who have made law the study of their lives." Criminal legislation, Woods concluded, "is progressive; it cannot be confined within the limits of any code."⁸ Speaking on behalf of this proposal in the legislative council, the chief justice of the Singapore court insisted that "our criminal law is in general very accurate and well defined and perfectly understood" by the lawyers and judges from England who practiced in the colonial courts; hence no purpose would be served by substituting for that "familiar" system one to which the English lawyer was "a stranger."⁹ In short, the Straits Settlements, in their legal culture, should be a colony

of England, not of India. With these remarks, battle was joined in an enduring contest — pitting the Indian codes against the common law — for control of the legal system in Britain's new colonies.

Woods's argument did not evoke much enthusiasm either in the Straits government or in the Colonial Office. Concisely capturing the self-interested motives of Woods and his fellow petitioners, one official wrote simply, "I presume lawyers, like other people, do not like to make useless knowledge which they possess, and create a necessity for knowledge which they have not."¹⁰ Larger issues were, nevertheless, at stake. As Braddell, now converted to the Indian code, told the legislative council, to adopt the 1861 English acts would leave untouched all the heads of law not included in those acts. By contrast, enacting the Indian Penal Code would have, he said (in words that echoed Bentham), the "great advantage of having the whole body of our criminal law in a shape easy of access, easily to be comprehended, and in his opinion more efficient than the criminal law of England."¹¹ The code was enacted as Straits Ordinance 5 of 1870.

Braddell, with the other members of the legislative council, had no doubt as to the radical departure from English practice that use of the Indian code entailed. Indeed, for this very reason, he refused to accept any alteration of the Indian act. "We were," he wrote, looking back on the debate, "about to cast off from the English law and in consequence lose the guide to interpret the law which we had in English text books and law reports, and to adopt a new system for the interpretation of which we must rely on Indian text books and law reports and it seemed desirable that we should alter the form of the new law as little as possible from the form used in India." The Straits government should do no more than "follow in the footsteps of the Indian legislature as to amendments."¹² From 1870 onward, in its legal culture the Straits Settlements were, to extend Braddell's metaphor, firmly moored in Indian waters.

Enactment of the Indian Penal Code was followed almost at once by enactment of the Indian Code of Criminal Procedure. This ordinance (20 of 1870) was, so the governor told the Colonial Office, "rendered necessary by the enactment in this colony of the Indian Penal Code" and was "virtually a copy" of the Indian act.¹³ These acts did not end Indian influence on the process of legal reform in the Straits. To the contrary, Indian enactments remained both models to be emulated and examples of what ought to be avoided. Revision of the criminal procedure code in 1892, for instance, provided an occasion to consider afresh whether Indian precedent ought to be adhered to. In this case, controversy revolved around whether the drafting committee had introduced too many

“departures from Indian practice.” Grumbling that none of the committee members had ever seen the criminal procedure code “in practical working in India,” W. E. Maxwell, the colonial secretary, charged that the revised code unduly restricted magistrates’ powers, while multiplying “needless formalities” and opportunities for appeal. In particular, he insisted, while ostensibly “imitating Indian procedures,” the committee “have apparently ignored the Indian practice of allowing magistrates to try summarily a very numerous class of cases.” The Straits civil service, he pointed out, “is recruited from the very class of men who as judicial officers in India have very extended powers”; hence, “it is in my opinion a distinct waste of power to refuse to employ them in this Colony as freely as is done in India.” One detects in this discussion an echo of the enduring tension between the colonial executive, which saw in adoption of Indian practices opportunities for a more unfettered exercise of power, and judges and lawyers committed to a more English conception of the rule of law, with its rules, regulations, and appeals. As Maxwell described the members of the drafting committee, they exhibited a “natural perhaps unconscious dislike on the part of a body of lawyers to cheap law.”¹⁴

Meanwhile the British had been, since 1875, extending their control into the states of the Malay Peninsula. Although these states remained under the technical sovereignty of their Malay sultans, their day-to-day governance, as will be discussed presently, was gradually taken over by the states’ newly appointed British residents and magistrates. Not surprisingly, given the novel situation in which they found themselves — under the Malay sultans but not subject to their authority — these British officials were uncertain as to the principles on which they should administer justice. Hugh Low, as resident in Perak, reported in 1877 that “the law administered in the courts is the law prevalent in Mahomedan countries, supplemented, when necessary, by the laws of Great Britain.” By contrast, T. C. S. Speedy, assistant resident in Durian Sabatang, said that, as he had been “up to the present [1877] furnished with no code as definitely applicable in the Malay States,” he had “endeavoured as nearly as possible in consonance with Malay custom to follow the Indian Penal Code.” In similar fashion, the residents in Selangor and Sungei Ujong reported having brought into force in their states the Straits Penal Code and other ordinances in force in the Straits, but “without the lawyers.”¹⁵ So far as procedure was concerned, as a later legal adviser observed of Perak, “except in cases of trial by jury, there was no criminal procedure code of any kind. So far as I can ascertain, the magistrates followed either the English or the Indian procedure, each according to his own taste and fancy.”¹⁶

Over time the government endeavored to bring some order out of this legal jumble. In 1884 the Straits Penal Code was placed in force in Perak, and from there it was extended to the remaining protected Malay states in the subsequent five years. In 1893 the Straits Criminal Procedure Code of the previous year was adopted as law in Selangor, along with a number of other related Straits and Indian acts. But the magistrates in several other states still continued with “no legalized system of criminal procedure of any kind.” Hence, in 1896, with the coming into force of the Federated Malay States as a unified government, it was decided to enforce throughout the federation the Straits Criminal Procedure Code. As in the case of the Straits itself, however, Indian practice was not scrupulously followed. As the federation’s legal adviser wrote, although this code “would form the best basis for criminal procedure,” it needed to be simplified and adapted to fit the circumstances of the Malay states. Most important of these alterations, perhaps, was the decision to adopt neither that most cherished of English institutions — trial by jury — nor the Indian system of unfettered magisterial authority for which Maxwell had argued so strenuously. Instead, the code provided for trial with assessors. As the legal adviser made clear, this procedure was “wholly different” from that in force in India, for there “the judge is not bound to conform to the opinions of the assessors, while here the assessors are actually judges.”¹⁷ Despite such modifications as these, by the end of the century the Indian-derived Straits codes had made their way to all the protected states of the Malay Peninsula.

The Straits Settlements and Malaya were not the only colonial territories to which Indian codes and legislative enactments found their way in the later nineteenth century. In July 1897, by the East Africa Order in Council, the major Indian codes, together with some twenty Indian legislative enactments, were put in force throughout the extensive territories of the newly established East African Protectorate. “Her Majesty’s criminal and civil jurisdiction in the Protectorate,” the government proclaimed, “shall, so far as circumstances admit, be exercised on the principle of, and in conformity with, the enactments hereafter mentioned of the Governor General of India in Council, and the Governor of Bombay in Council, and according to the course of procedure and practice observed by and before the courts in the Presidency of Bombay.” Indeed, the order announced, the codes of civil and criminal procedure would have effect “as if the Protectorate were a district of a presidency of India.”¹⁸

This sweeping introduction of seemingly the entire Indian legal system into East Africa marked the culmination of a process that had begun on a small scale some years earlier. In Zanzibar, as that island state fell under

British influence from the late 1840s onward, the British consul, following the Ottoman precedent of extraterritoriality, claimed jurisdiction over British subjects and British protected persons in the sultan's domains. The 1866 Zanzibar Order in Council formalized this jurisdiction and provided for appeals from the consular court to the Bombay high court. The following year the consul promulgated the Indian Penal Code as the criminal law for those subject to his jurisdiction; in 1884 an order in council extended to Zanzibar a number of further Indian acts, including the codes of civil and criminal procedure and the evidence and succession acts. By these acts, as one commentator wrote, Zanzibar was made, "so far as concerns the administration of justice to British subjects, a part of Her Majesty's Indian Empire."¹⁹

That Zanzibar was so treated is perhaps not surprising. As I discuss elsewhere, Indian traders and merchants, most of whom were British subjects, flocked to Zanzibar during the last half of the nineteenth century, and were followed by bankers and professionals of all kinds, as well as laborers. The further extension of Indian law onto continental Africa was in large measure a logical outcome of the extension of British power from Zanzibar into the interior. In 1890 the Imperial British East Africa Company, as the British government's chosen agent in East Africa, established a consular court in Mombasa, and in 1891, when it took over Witu from the Germans following the Heligoland settlement, the company introduced the Indian codes into that coastal district. Yet British opinion was by no means united. Inaugurating a conflict of legal systems that would unsettle the working of Britain's colonial courts in Africa for decades to come, the imperial authorities, by the Africa Order in Council of 1889, ruled that jurisdiction within continental Africa was to be exercised "upon the principles of, and in conformity with, the substance of the law for the time being in force in England."

In 1895 the imperial government took over East Africa from the bankrupt company. Convinced that it was "urgent" to establish "a simple and uniform" legal system throughout the new protectorate, Sir A. Hardinge as commissioner determined to substitute the Indian codes for the English law prescribed by the 1889 order in council. "The Indian codes," he told the Foreign Office, echoing views held by many colonial officials both then and later, "are a good deal simpler than English law, and present fewer difficulties to an administrator possessing no special legal training." Further, he pointed out, inasmuch as Zanzibar had already adopted the Indian codes, it was "very desirable" to have "identical" treatment of the same offenses in these two "sister protectorates." The Foreign Office,

to which the East Africa Protectorate was then subject, raised no objection to the change.²⁰ The result was the 1897 order in council.

The 1897 order opened the way for an influx into East Africa of Indian laws. Some twenty Indian acts were introduced by the order itself; others followed in subsequent years. In 1900, furthermore, with the construction of the railway from Mombasa into the interior, the Indian codes were extended to include the Uganda Protectorate as well. The extent of this wholesale adoption of Indian legislative practice surprised even some Indian officials. As one secretariat official wrote, on receiving a copy of the 1897 order, "Various Indian acts are applied by both Orders [for East Africa and Zanzibar], the most remarkable of which is the Transfer of Property Act. Though deemed too advanced for the Indian Punjab, this Act is apparently considered suitable for the wilds of East Africa!"²¹ In one critical way, however, the tie with India was cut with the establishment of a high court at Zanzibar to which appeals were to be taken from local courts throughout the protectorates. No longer did an appeal lie to the Bombay high court.

As in the Malay States, however, introduction of these codes was no easy matter. Few of the officials scattered across the protectorate in the late 1890s even possessed copies of the codes; moreover, from the outset the British had committed themselves to respecting "native customs" and, on the coast, Islamic law. Hence, as Hardinge wrote to J. Ainsworth, posted in remote Ukamba, in March 1896, although "you should be guided by the general principles of the Indian Penal and Criminal Procedure codes," it "may not be possible to apply them in every detail." As a kind of awkward compromise, Hardinge told Ainsworth that, "though a copy of it [the Indian Civil Procedure Code] will be sent to you," it was "inapplicable to a savage community" and therefore need not be "strictly" adhered to. Rather "you will have in settling native cases to be guided by common sense . . . and native law and custom."²² Even as they were brought more fully into effect, however, Indian laws and procedures were intricately interwoven with "native custom" and with Islamic law. The Protectorate Court, sitting at Mombasa with an appeal to Zanzibar, and its subordinate courts exercised jurisdiction over all British and British protected subjects, including Indians, as well as the nationals of foreign countries. The law administered by it, both civil and criminal, was that of British India. At the same time, on the coast, district-level courts presided over by Qazis recognized Muslim personal law and administered justice, under British supervision, to the local Muslim population.

The most difficult question was that of integrating the native African

population into this system. Hardinge in 1895 had envisaged a day when, “as the progress of civilization makes the change possible,” the Indian codes “might gradually take the place of native laws and usages.”²³ The 1897 order in council nevertheless stated explicitly that “every criminal charge against a Native, and every civil proceeding against a Native . . . shall be heard and determined in the proper Native Court, and the Protectorate Court shall not exercise any jurisdiction therein.” The order further reserved to the British the authority to “make rules and orders for such courts” as necessary and to establish or abolish these courts. But what was to be the jurisdiction of these “Native Courts,” and what “rules” were they to follow? These questions were to bedevil the British throughout their years of rule over East Africa. What is important for our purposes is that the tension visible in Hardinge’s 1896 instructions to Ainsworth was never wholly resolved. The Native Courts, whether presided over by tribal chiefs, headmen, or British officials, were meant to enforce “native custom,” yet at the same time they were to participate in the establishment of a colonial rule of law. For the most part, as Ainsworth himself reported in 1905, law in the native tribunals was in the end “administered by the Collectors and Assistant Collectors,” following “nominally” the procedures of the Indian codes; “the practice in these courts, however, is to exercise common sense.” Where “common sense” did not suffice, assessors were brought in to assist the British judges in ascertaining local “custom.”²⁴

As time went on, this Indian-derived legal system came increasingly under attack. Initially, during the first two decades of the twentieth century, a number of the Indian acts were replaced by local ordinances. These local enactments, however, were largely re-enactments of the Indian legislation and made no substantive change in the law. Up to the 1920s, as H. F. Morris has written in his authoritative account of East African law, “the bulk of the criminal work was carried out under Indian law and according to the criminal procedure of India, while important branches of the civil law were Indian, as was the procedure applicable for civil cases.” Indian cases, as well as English, were looked to for precedents.²⁵ From the outset, however, the white settler community, rapidly growing in numbers by the 1920s, adamantly opposed the use of Indian law in East Africa. In its view, the Indian codes, as the products of an authoritarian colonialism, were not fit vehicles for the adjudication of disputes among free Englishmen. As the colonists’ association wrote in a petition to the secretary of state as early as 1905, “there is the strongest objection in principle to placing white men under laws intended for a coloured population

despotically governed.” By the “law of England,” the association insisted, “every Englishman carries the common law of England into every new country settled by him over which the King has proclaimed sovereignty.”²⁶

The Colonial Office turned aside this early petition with the argument that Indian law was codified, whereas English law was not. Hence it could be administered, in East Africa as in India, by ordinary magistrates having no legal training. To introduce English law would require, as Lord Elgin pointed out, the appointment of “a number of legally trained magistrates at greatly increased salaries to take over the judicial duties of the Collectors.”²⁷ Nevertheless it soon became clear that the Colonial Office had little sympathy for the use of the Indian codes in Africa. By the 1920s, it had determined to replace them, and not simply by local enactments but by the introduction of the English common law itself. The Colonial Office was of course always more responsive than the Foreign Office to home opinion and, whether in East or South Africa, was notoriously reluctant to antagonize white settler communities. Hence, it came as no surprise that, as one official in Uganda put it, the Colonial Office would endeavor to “break away from anything savouring of connection with India.”²⁸

Yet, in the end, the decision to press forward had ostensibly nothing to do with settler pressure. To the contrary, the Colonial Office sought to punish the Kenyan judiciary for what it saw as undue leniency in cases involving settler assaults on native Africans. When one settler was convicted only of inflicting “grievous hurt” and sentenced to two years’ imprisonment for killing an African servant, the Colonial Office argued that the problem lay in part with the provisions of the Indian Penal Code. As one Colonial Office official, H. G. Bushe, wrote, “If all this had happened in this country I have no doubt that the accused would have been charged with murder. . . . The position in Kenya is governed by the Indian penal code and this is so technical and so incoherent a document that it is very difficult to understand. If anything, it seems to be inclined to limit the offence of murder rather more than does English law.” In reviewing a similar case in Tanganyika, the colonial secretary told the governor that “the procedure at and conduct of the trial point strongly to the desirability of adopting a criminal code in accordance with English law and procedure.” As the Indian codes had long been praised for their clarity and conciseness, an argument for repeal based on a presumed lack of coherence is hard to fathom. One can only speculate that these murder cases provided a justification, acceptable to British liberal opinion, for the Colonial Office to do what it wanted to do in any case. In 1923 the colo-

nial secretary told the governor of Kenya to substitute a local ordinance based on English criminal law for the Indian Penal Code; the following year the governor was instructed to replace the existing criminal procedure code with one based on that of a colony such as Nigeria or the Gold Coast where the Indian codes had not been introduced.²⁹

Elements of the ensuing controversy resembled that in the Straits Settlements a half century before. Here, however, the sides were reversed. Whereas in Singapore the legal community had advocated the use of English law, in East Africa the bar and bench, with the local governments, all sought to retain the Indian codes. The chief judge of the Nyasaland high court even sought to use the occasion to introduce into his colony not the proposed new code but one based on the Indian model.³⁰ So intense, in fact, was the local opposition that the draft code was prepared not in East Africa but in the Colonial Office itself. In part, no doubt, self-interested motives were at work in this stubborn refusal to accept a new jurisprudence, for East African lawyers and judges had no desire to abandon a system with which, after several decades' use, they were familiar.

But the arguments that had brought about the use of the Indian codes in the first place still remained compelling to colonial administrators. The Kenya chief justice, pleading for retention of the Indian code, insisted that "the Indian Penal Code and the local Criminal Procedure Ordinance, which is based on the Indian Criminal Procedure Code, are admirably suited for administration by lay magistrates." From neighboring Uganda the chief secretary in 1927 further pointed out that the "Indian Penal Code is a clear and concise statement of English law," which had "the supreme merit of being easily understood by the layman and has been administered in India and elsewhere by laymen with great success for many years." Adverting to the code's origins, he sighed, "It seems a pity that we should be embarrassed because certain people in Kenya apparently have never heard of Lord Macaulay."³¹ The penal code, he seemed to imply, inasmuch as it was drafted by an eminent Englishman and embodied, correctly as we have seen, the substance of English law, should not be condemned for its "Indian-ness."

Pressed to defend their decision, officials at the Colonial Office insisted that, as the colonial secretary wrote the three East African governors jointly in 1927, "officers will find it easier to apply a code which employs the terms and principles with which they are familiar in England than one in which these terms and principles have been discarded for others of doubtful import."³² But more surely was at stake. Some hint of this can be seen in Bushe's response to a Uganda barrister who had come to

London to protest the change. If, Bushe said, “you have magistrates and judges who have been trained in this country, it is far more satisfactory that they should administer English law than Indian law; that the Indian law was not really applicable nowadays in East Africa; and that in any event the great British territories in East Africa ought to come into line with British colonies generally and base themselves upon English law.”³³ A uniform legal system with standardized codes of procedure derived from English practice was, in the eyes of the bureaucrats in Whitehall, clearly essential to the effective functioning of a “modernized” British Empire.

As a result, new codes were put in place in all of the East African colonies during the early 1930s. From then onward the region’s legal ties with India rapidly became attenuated, while judicial officers trained in England increasingly took over the magisterial work previously undertaken by district officers. During the 1950s, as independence approached, H. F. Morris has written, “English law and procedure were now applied with even more rigidity than before; the legacy of Indian legislation was steadily eroded; and ever increasing attention and authority were accorded to the decisions of the English courts.”³⁴

East Africa and Malaya did not stand alone in their adoption of Indian legal forms. As the British Empire expanded during the later nineteenth century and the early years of the twentieth, the Indian codes found receptive soil around the rim of the Indian Ocean. A number of Indian acts were brought into operation in neighboring Tanganyika after the British took over responsibility for it in 1920, while to the north of Kenya, in British Somaliland, the Somaliland Order in Council of 1899 extended the principles of the 1897 East Africa order to that territory. As in East Africa, civil and criminal jurisdiction was to be exercised “on the principles of, and in conformity with,” Indian legislative enactments. The Sudan Penal Code too was based in part on Indian precedents. Across the Red Sea on the Arabian coast, Aden, controlled by India since its 1839 conquest, was, as Lord Northbrook wrote in 1875, “practically an Indian town, . . . the population is wholly Indian, or is engaged in Indian trade; the capital invested in the place is Indian; the laws and modes of government are Indian, and the officers whose duty it has hitherto been to administer them have been selected from the Indian service.”³⁵ During the First World War, as we will see, Indian officials introduced Indian laws into the newly conquered Ottoman province of Basra in Mesopotamia.

Yet there were clear limits to the reach of Indian legislation. One was set by the legal structure in existence at the time of conquest. Perhaps the

most instructive case is that of Egypt. Much has been made by scholars of the “Indianization” of the Egyptian administration under British rule. But on the legal side, the British were tightly constrained as they set out to reform that country’s institutions. To some degree, this was a product of their own reluctance to interfere too deeply in a country that they had not legally annexed and from which, they regularly insisted, their departure was imminent. More important, however, Egypt at the time of its occupation in 1882 already possessed a rich structure of laws and institutions; and these, as Robert Tignor has noted, incorporated a range of Ottoman, French, and purely Egyptian influences. Indeed, as Tignor wrote, Egypt’s problems “stemmed, not from a lack, but from a superabundance of courts and judicial systems.” Thus, much as Egypt’s incoming rulers, many of whom, like Lord Cromer, were drawn from Indian service, may have wished to reconstruct the Egyptian legal system along Indian lines, they could not simply wish out of existence the existing codes and courts. These were not, after all, remnants of some ancient tradition, but rather the products of the French-inspired reforming enthusiasms of such rulers as Muhammad Ali and Khedive Ismail. Ultimately, in the 1890s, a certain amount of Anglo-Indian procedure was grafted onto the existing structure. But the Code Napoleon and related legislation of necessity remained the foundation of the Egyptian legal system.³⁶

Distance from India mattered too. The further a colony was from India, the less likely were the Indian codes to be seen as appropriate for its governance. Hong Kong, off the China coast, despite its close ties with Singapore, never adopted the Indian codes. The Central African colonies of Nyasaland and Northern Rhodesia briefly considered adoption only to reject them. In South Africa the enduring Roman-Dutch legal tradition, together with white settler self-government, in the Cape from the 1850s and Natal from the 1890s, and then in the Union of South Africa after 1910, meant that the imperial government had little opportunity to enforce Indian legal forms. In one West African colony — Nigeria — the Indian codes secured a hearing, but the ensuing controversy showed how little support could be expected for them on so distant a coast of Africa.

The opening round took place in 1904, when the chief justice of Frederick Lugard’s newly established Northern Nigeria reached to Australia for a model code, which he found in the Queensland Criminal Code of 1899, based on English law. At the same time, the high commissioner of Southern Nigeria, Sir Walter Egerton, proposed introducing into his colony the Straits Settlements Penal Code, based (as we have seen) on the Indian code. In terms almost identical to those used by officials in Kenya,

Egerton argued that the Indian code “has stood the test of time” and was “far simpler and better suited to the needs of an uncivilized or semi-civilized population.” In support of this proposal, he cited his own twenty years’ experience as a magistrate working the Indian code in the Straits.³⁷

At the Colonial Office, Egerton’s proposal evoked nothing but fierce hostility. As one official noted in the margin of Egerton’s dispatch, “The law of England should be good enough for West Africa.” The Queensland code, approved for Northern Nigeria, was, the official added, “practically the law of England,” of which “the vast majority of West African judicial officers have (it is to be hoped) some ‘experience’!” Bowing to this unanimous sentiment on the part of his legal advisers, the colonial secretary, Lord Elgin, turned aside Egerton’s request and left Southern Nigeria’s criminal law uncodified. Ten years after the initial discussions, in 1914, Northern and Southern Nigeria were amalgamated into one colony under Lugard’s governor-generalship. Now in charge of the whole, Lugard wasted no time securing the extension of the Queensland code from the north of Nigeria to the south. With its enactment in 1916, the effort to introduce the Indian codes into West Africa came to an end.

Clearly, an enduring tension existed between local officials, whose experience working the Indian codes generated sympathy for their use, and the officials of the Colonial Office, who adamantly opposed any adoption of Indian codes outside the immediate arc of Indian influence and even, as in East Africa, sought their repeal. To be sure, at a great distance from India, as the colonial secretary wrote to the East African governors in 1927, it might appear to be “easier” for English-trained officials to employ legal “terms and principles” with which they were “familiar” from home. But even in West Africa, colonial career patterns frequently brought to the region officials familiar with the Indian codes, such as Egerton, as well as W. E. Maxwell, appointed governor of the Gold Coast in 1895 after thirty years service in the Straits. And of course, so far as geography was concerned, Queensland was hardly closer to West Africa than was India.

But one can perhaps go further. The problem, especially for those at home in England, may be said to have resided in the codes themselves. Despite the acknowledged “effectiveness” of the Indian codes as instruments for colonial rule, especially where magistrates untrained in the law were responsible for administering justice, their Indian origin, in effect, “tainted” them. Not only white settlers but also the Colonial Office itself, one might argue, found in these codes a too visible assertion of the role of India as an imperial center. The Colonial Office, one must remember, had no responsibility for India’s governance, and often little sympathy for

the pleas on behalf of Indians put forward by the viceroy and the India Office. From their London-centered perspective, the Indian codes, no matter how much of the substance of English law they may have contained, were insufficiently “English.” The rule of law on which the British prided themselves could, in this vision, appropriately take only one form — the rule of “English” law. As English law was itself reformed, though never codified, during the later nineteenth century, these sentiments can only have grown more intense. The arc carved out for an India-centered legal culture, while vast in its reach across thousands of miles of ocean to East Africa and Southeast Asia, could never be made to encompass the entire British Empire.

Strategies of Governance

With its vast size; its early date of conquest, in the late eighteenth and early nineteenth centuries; and its array of administrative forms, India offered to administrators elsewhere in the empire models for many styles of colonial governance. In practice, these are often collapsed into the two opposed strategies of “direct” and “indirect” rule. While convenient, this division is inevitably arbitrary and, as will be seen, often misleading when applied to particular cases. Still, it may be helpful as we look at India’s role in shaping the administrative structure of the empire to use these constructs as a lens to help sharpen our vision of what the British *thought* they were doing, as well as what they were doing, in their colonial empire. It is important too to remember that these administrative ideas found expression not only in the “ideology” of empire but also in the lives of those many officials who took their Indian experience with them to posts in Britain’s newly acquired territories.

One might begin with the notion of indirect rule. Central to the practice of this form of colonial governance was the restoration to their thrones of rulers who had been defeated in battle or had otherwise accepted the suzerainty of the British. Such rulers, as “protected princes,” were secured from hostile enemies but were now obliged to accept British residents at their courts and to follow the resident’s “advice.” For the most part, the protected prince retained the internal governance of his former state, but he could not wage war, and he had to acknowledge the British as “paramount power,” with the right to intervene as they chose in his state’s internal affairs. The prince was frequently obliged as well to pay a “subsidy” in return for military support and protection. This system

took shape in India in the 1760s as the British, from their coastal bases, sought allies, or “buffers,” against enemies in the interior. The initial appointment of residents, at the courts of the Nizam of Hyderabad and the Nawab of Awadh at Lucknow after 1764, announced Britain’s intent to push its influence forward beyond the territories it ruled directly. Wellesley’s conquests as governor-general, from 1798 to 1805, vastly extended the reach of what may be called the residency system and changed its objectives. As rulers of the entire Indian subcontinent, with a powerful army at their command, the British no longer required allies against foreign enemies. Instead, the subordination of the country’s princes by posting residents at their courts became a device to secure British hegemony over India.

It is needless here to trace out the extended history of Britain’s relations with the Indian princely states, whose territories by 1860 encompassed some 40 percent of the subcontinent’s area and over a quarter of its population.³⁸ Sufficient to note is that, as they practiced indirect rule, the British were caught in a contradiction that could never be resolved. On one hand, they sought by sustaining princes in power to take advantage of the legitimacy these men possessed as “traditional” rulers, and thus to present their own Raj as “Indian”; at the same time, by leaving day-to-day governance in the hands of docile princes, they could reduce their own administrative costs. On the other hand, the British were committed to the rule of law, to certain precepts of morality, and to the larger liberal vision of an India transformed by Western education and the creation of a modern state. His throne secured at once from invaders and rebels, the protected prince had little incentive to govern according to British precepts or indeed to interest himself at all in the administration of his state. In the years up to the 1857 revolt, but most especially during Dalhousie’s governor-generalship (1849–56), the British commonly endeavored to resolve this dilemma by a policy of active intervention, which, when frustration overcame patience, led to the annexation of princely states on the grounds of failure of heirs, or of simple “misgovernment.” But of course annexation extinguished princely governance altogether and with it indirect rule. After the upheaval of the Mutiny, the British reversed course, eschewed annexation, and sought to reassure India’s remaining princes, now seen as “bulwarks against the storm which otherwise would have swept over us in one great wave,” that their thrones were secure. To be sure, the threat of deposition remained as an instrument for the chastisement of unruly princes, and the British took advantage of princely minorities to introduce reforms. Nevertheless, with the princes now central play-

ers in a grand imperial pageant meant to evoke a glittering “traditional” India, the British, for the most part, left them to rule as they wished.

As Britain’s colonial empire expanded around the Indian Ocean, the Indian practice of indirect rule through pliant princes exercised a powerful attraction for officials concerned to keep expenses down and avoid needlessly disrupting functioning indigenous systems of governance. As Michael Fisher has written, the Indian “residency system” implied “limited British involvement, fewer potentially embarrassing entanglements, . . . and a subordinate, loyal, traditional, and therefore ‘natural’ rule.” Hence it “proved persuasive for Britons throughout the Empire.”³⁹ In assessing the growth of indirect rule outside India, it is essential to keep in view the distinction between those occasions when Indian precedents were explicitly cited, either approvingly or otherwise, and those when the introduction of indirect rule, though similar in its operation to that of India, owed nothing to direct Indian influence, but rather was a product of similar circumstances. Of the latter, perhaps the most important, setting precedents of its own, was the system of Zulu reserves established by Theophilus Shepstone (1817–1893) in Natal between 1845 and 1875.

Shepstone, a South African and son of a Wesleyan missionary, with no experience of India, began his career as a diplomatic agent to the tribes of the Eastern Cape and then, following its 1843 annexation, moved into Natal as Crown agent and subsequently as Secretary for Native Affairs. In part to allay white settler fears of the still powerful Zulu kingdom, Shepstone set aside large reserves for the Zulus in the colony’s hinterland, but at the same time brought them under British suzerainty. Insistent that they be ruled “according to their own laws, customs, and usages,” he nevertheless established himself as a Zulu chief under the colony’s lieutenant-governor, installed in turn, by a contorted adaptation of tribal custom, as “supreme chief.” Shepstone’s position as tribal adviser, with his solicitous paternalism, approximated that of a resident at an Indian princely court, while the Natal lieutenant-governor’s role at the apex of the system resembled, on a much reduced scale, that of India’s viceroy, who as the queen’s representative to the princes, stood forth as the visible embodiment of British “paramountcy.” Indian precedents, however, played no role in shaping the outcome in South Africa. Rather, Shepstone’s system, with its “native reserves” and separation of white from black, laid the institutional foundation for the subsequent South African policy of apartheid.

Only in the last quarter of the nineteenth century did India become an exemplar of indirect rule. From 1875 onward, the British Empire grew rapidly both in Africa and in Southeast Asia, with the result that, from

Northern Nigeria to remote Fiji, as colonial officials cast about for economical and minimally intrusive forms of colonial governance, they looked toward India and Indian models. It is essential, however, to avoid jumping to conclusions about how indirect rule functioned in this array of colonial territories. Nowhere was there any simple or straightforward adoption of Indian precedents. For our purposes, perhaps the most suggestive instance is that of Malaya. There, local British officials, many of whom had previously served in India or Ceylon, set out initially to put in place a variant of the Indian princely system but ended up establishing almost its exact opposite, a system approaching that of “direct rule.” Hence developments in Malaya are worth looking at in some detail.

In January 1874 the Pangkor Engagement established a British resident at the court of Perak; before the year was out, neighboring Selangor and Sungei Ujong had also accepted British residents. With this act the British initiated a process of imperial expansion that ultimately extended from Johore, across the causeway from Singapore, north to the Siamese (Thai) border. Enthusiasm among local officials for such a move antedated by several years the signing of this treaty. An 1871 committee appointed by A. E. H. Anson, acting governor of the Straits Settlements, first proposed posting residents, to be called political agents, at the courts of the Malay sultans. As one member of the committee, colonial engineer Major J. F. A. McNair, formerly of the Madras Artillery, later wrote on behalf of this proposal, “Many of the Malay chiefs have represented to me that what they want is an officer acquainted with their language, who would reside near them to give them countenance and support, who would teach them to collect and spend their revenues to the best advantage, to administer a better form of justice, and to maintain order in their country.” Anson, forwarding the report to London, acknowledged that the appointment of residents would be desirable, but said that “the time had not yet arrived” for such a step, “having regard to the present barbarous state of the territories.”⁴⁰

The next year, 1872, G. W. R. Campbell, serving as acting lieutenant-governor of Penang after many years service in the Ceylon police, took up the cudgels on behalf of the residential system. “I think it is worth consideration,” he wrote, “whether the appointment under the British Government of a British Resident or Political Agent for certain of the Malay States would not, as in India, have a markedly beneficial effect.” In “many a native ruled State in India, it is marvellous what work a single well-selected British officer has effected in such matters as roads, schools, and police—even within the compass of a few years.” In 1873 Campbell

renewed his call for a “friendly intervention” in the Malay states along the lines of that in princely India. Calling for the appointment in Perak of a “carefully chosen discreet man with a good knowledge of the people and their language,” Campbell pointed out that “most native states in and around India have such officers and the value of their influence is unquestionable.”⁴¹

In this early phase of the scramble for empire, the Colonial Office was reluctant to encourage what it saw as costly and unnecessary extensions of British power. As the Liberal Gladstone government’s colonial secretary Lord Kimberley wrote to the incoming Straits governor Sir Andrew Clarke in 1873, “Her Majesty’s Government has no desire to interfere in the internal affairs of the Malay States.” Yet at this same time events on the ground in Malaya were prompting a reconsideration of this policy. The state of Perak was the site of rich tin mines whose ore was being worked by immigrant Chinese laborers. Factional contests among these miners, who were caught up in disputes between contenders for the throne of Perak, provoked “disturbances” that in turn threatened the profitability of the mines and also offered, or so the British feared, opportunities for intervention by foreign powers. Hence Kimberley, who had previously been undersecretary of state for India, went on to authorize Clarke to use his influence with the native princes to “rescue, if possible, these fertile and productive countries from the ruin which must befall them if the present disorders continue.” He especially asked Clarke to consider “whether it would be advisable to appoint a British officer to reside in any of the States.”⁴²

On receipt of these instructions, Clarke summoned the Perak chieftains to a meeting at Pangkor. Not content simply to solicit opinions and report back to London, Clarke, on his own initiative, on 20 January 1874 concluded with the chieftains what became known as the Pangkor Engagement. Several of its provisions were explicitly drawn from Indian practice. Article 6, for instance, provided that “the sultan shall receive and provide a suitable residence for a British officer to be called Resident . . . whose advice must be asked and acted upon on all occasions other than those touching Malay religion and custom.” But article 10 called into question one of the chief tenets of the Indian princely system, which left the entire internal governance of his state, as well as control over religion and custom, in the hands of its ruler. That article read, “The collection and control of all revenues, and the general administration of the country, [shall] be regulated under the advice of these Residents.”⁴³

What moved Clarke to introduce this additional provision into the Engagement is not at once obvious. In part, no doubt, the insertion of



MAP 2. Malaya, c. 1900

article 10 reflected the growing late-Victorian disillusionment with the character and abilities of “native” peoples. As T. Braddell, the Straits attorney general had written, supporting Campbell’s 1873 recommendation, the native chiefs “are indolent, self-indulgent, and averse to continuous exertion in any direction.” Clarke himself wrote, in justification of his

action, that “the Malays, like every other rude Eastern nation, require to be treated much more like children, and to be taught; and this especially in all matters of improvement.”⁴⁴ The Malay ruler was, in this view, simply incapable of doing his job properly and could not be left unchecked in control of the levers of administration. British disillusionment with the post-1858 Indian princely system may also have played a part. Clearly, Clarke was reluctant to be drawn into the continuing round of threats, frustrations, and rebuffs that marked British efforts in India to mold the activities of princes now guaranteed possession of their thrones.

Still, Pangkor did not by itself resolve these difficulties. To the contrary, it only brought them visibly to the surface, for there was no easy way to resolve the ambiguity inherent in a system in which, on one hand, residents gave “advice” and that, on the other, authorized them to “regulate” the collection of revenue. Clarke himself spoke of the residents as “watching the collection of the revenue, and controlling its expenditure” and as inducing the sultan “to select proper men for the collection.”⁴⁵ But how this was to take place was left designedly vague. Carnarvon, colonial secretary in the new Conservative government under Disraeli, when informed of the Pangkor arrangements, urged the Straits officials to move cautiously. Arguing that the history of Indian residents ought to “put us on our guard in the present instance,” he pointed out that, while the presence of a resident was “an undoubted benefit” to a princely state, “we become through them much more closely connected than heretofore with things and persons and political combinations that may easily lead us further than we now intend to go.” Determined to keep this “new phase” of colonial policy carefully in check, Carnarvon repeatedly insisted that residents, in keeping with the Indian precedent, should “in all ordinary cases, confine their action to advice tendered by them to native Rulers, under whose direction the government of the country should be carried on.”⁴⁶

Even though halting, this first step toward a “forward” policy in Malaya evoked substantial criticism. Most outspoken perhaps was Lord Stanley of Alderley. A widely traveled Arabist and Orientalist, friend of Sir Richard Burton, and, most unusually for the time, supporter of Indian nationalist aspirations, Stanley in the House of Lords presciently denounced the entire enterprise as one that “must inevitably lead to the invasion and conquest of the whole of the Malay peninsula.” The local officials in the Straits, by contrast, unanimously backed Clarke’s initiative. The colonial secretary, J. W. W. Birch, rapturously predicted that “the moment a British officer takes up his residence . . . we shall find an immediate influx of Chinese and even of Malays from other States; the

revenues properly collected on fixed principles will naturally increase; justice will be administered and oppression prevented; order will be preserved, and security for life and property . . . will be ensured; while the country will soon be opened up by roads, and cultivation will everywhere increase.”⁴⁷

After Pangkor, Birch was appointed resident in Perak, while the adventurer T. C. S. Speedy, who had organized a private army for the subordinate chieftain the Mantri of Larut, took up the post of assistant resident in Larut. At the same time, the Straits government, anxious to establish the new system on a basis of accepted practice, requested from the foreign department of the Indian government “copies of any rules or regulations or printed code which may be in existence in India” that might serve as “guides” for those organizing the “new system” in Malaya. In reply, the foreign department said that its relations with India’s princely states were “so various that it would be impossible to devise a set of rules which should be alike applicable to all.” Instead, the department forwarded to Singapore a number of circular letters and instructions to residents that might, in its view, “indicate generally the spirit in which Political Officers are expected to conduct their intercourse with native princes and chiefs.”⁴⁸

Despite the provision of this well-intentioned advice, Birch and Speedy alike soon began to chafe at the restraints Indian-style indirect rule imposed upon them. Nor did they find the mere presence of a resident productive of the changes Birch had so enthusiastically predicted. Birch reported in April 1875 that the chiefs, although “by degree getting accustomed to it,” were not yet “satisfied with the presence of a British officer,” while the people of Perak, he resignedly announced, “are singularly averse to doing any work, even for hire, except cultivation of their own lands, or for their own purposes.”⁴⁹ Hence, both men, on their own initiative, soon began to set up systems of administration under their own control. Whether this decision on their part was primarily a response to local chiefly inaction or was a calculated move to push forward British power in the absence of effective supervision from above, in either case the result was very quickly to undercut the “guidelines” for indirect rule so recently forwarded from Calcutta.

As news of these developments filtered back to Britain, most notably in Speedy’s 1874 annual report for Larut, Lord Stanley led a chorus of critics both in Parliament and outside. Accepting for the moment the necessity for indirect rule in Malaya, Stanley chose to focus instead on Speedy’s presumed “deviations” from Indian practice. Above all, Stanley told the House of Lords, Speedy in his report “invariably speaks as though he

were the ruler of the country, instead of the adviser of the Ruler.” Soliciting comments from a friend (unnamed) in the India Office, Stanley then proceeded to lecture the Colonial Office on how Speedy *ought* to have acted in Larut. Speedy ought not, for instance, he said, to have established courts on his own authority, and the presiding officer of any court should have been a native, sitting with a British assessor, with an appeal to the native ruler, not to the resident. In sum, as Stanley’s “friend” put it, “under the present regime, the Mantri, in place of being judiciously trained to the wise exercise of his authority, is taught to regard himself as a puppet, equally destitute of power and responsibility.”⁵⁰

The Straits governor, now Sir William Jervois, disdaining to be taught lessons by Stanley or his friend, responded angrily that “Indian experience is not necessarily a qualification for forming a judgment on our officers and the chiefs of the Malay States.” Contesting a central tenet of the Indian system, Jervois wrote that, “if native chiefs once felt certain that the Resident was there only to ‘advise,’ and that in the event of his advice being refused he would simply say, ‘I wash my hands of this affair,’ and then wait inactive till the next opportunity of offering his advice occurred, from that moment his position in the native State would be worse than useless.” He urged that the residents be replaced with “Queen’s commissioners” who would rule in the name of the sultan. Unhappily caught in the middle, Carnarvon contented himself with reminding the local officials that British residents were placed in the Malay states as “advisers not rulers.”⁵¹

In November 1875 J. W. W. Birch, resident in Perak, was assassinated; this was followed within days by an uprising of disaffected Malays led by Sultan Abdullah. How far Birch’s aggressively interventionist policy may have provoked the uprising matters less for our purposes than the British response. Faced with this challenge to their authority, the British poured troops into Perak and tracked down the perpetrators of Birch’s murder. By the time the “Perak War” came to an end, an uncontested British supremacy had been established in Perak and in the adjacent states of Selangor and Sungei Ujong. In effect, the uprising and its subsequent suppression by force dramatically altered the balance of power in Malaya. To be sure, efforts were made to re-establish the status quo ante. A new Perak sultan was installed in place of Abdullah. The Pangkor Engagement, with its reservation of power over custom and religion to the sultans, was not repudiated, while Jervois’s plan to formally annex Perak and other Malay states was turned aside. Sovereignty remained in the hands of the sultans, and in subsequent years the British elevated the ritual importance of the rulers, and their authority over the lesser chiefs.

Nevertheless, after the suppression of the Perak rising, it became impossible to rein in the officials in Malaya, now emboldened in their commitment to an interventionist strategy of governance. As Jervois pointedly told the colonial secretary, the residents in the Malay states had from the beginning taken to themselves “the control of public affairs,” and so in practice exercised effective authority over the states to which they were accredited. To roll back this authority was out of the question. The power of the Malay sultan to act on his own, he insisted, was never more than “nominal.” By himself he could neither carry out the advice of the resident nor control the petty chiefs and local usurpers who “set his authority at defiance with impunity.” In the end, the beleaguered Carnarvon, unwilling to contemplate dismissing the Straits officials for insubordination, effectively abandoned the effort to restrain them. In a dispatch of 1 June 1876, while piously warning them not “to interfere more frequently or to a greater extent than is necessary in the minor details of government,” he nevertheless authorized the officials in Malaya to take as “their special objects” the “maintenance of peace and law, the initiation of a sound source of taxation, with the consequent development of the general resources of the country, and the supervision of the collection of the revenue so as to ensure the receipt of funds necessary to carry out the principal engagements of the Government, and to pay for the costs of the British officers and whatever establishments may be found necessary to support them.”⁵² The 1858 settlement in India, in which defeat of the rebels led to the confirmation of the princes’ authority over the administration of their states, was not to be repeated in Malaya. The Malay prince, so the British convinced themselves, was not like the Indian prince and could not be vested with power in the same manner.

Yet, despite the effective repudiation of indirect rule, India did not cease being a model for Malaya. Rather, Malaya’s new British rulers now found organizing principles in the directly ruled districts of British India. Speedy and Birch had indeed already inaugurated this practice of “direct rule” in 1875. The court, for instance, which had drawn the wrath of Stanley’s friend in the India Office was modeled on those in India, and enforced the Indian Penal Code. At the same time, on the administrative side, the British introduced Indian forms of local government into Malaya. Perak, for instance, was divided into four districts, each under the charge of a British official designated by the Indian term “collector and magistrate.” His duties were identical to those of the Indian district collector; as F. A. Swettenham reported in 1879, he “collects the revenue of his district, defrays court expenses, and holds the surplus for the credit of the government.” By 1886, Hugh Low, resident in Perak, recounted in his

annual report that “business is now conducted almost precisely on the lines of a Crown Colony, and the returns and papers which lie before me in writing this report are such as would be sent in to the Colonial Secretary of one of the largest of Her Majesty’s possessions.”⁵³

Of course, the Malayan administrative system possessed distinctive features of its own. State councils, in a way foreign to both princely and direct rule in India, incorporated the residents with the rulers and major chiefs. Substantive civil law, never codified, much of it dealing with religion and custom, was left in the hands of *qazis* appointed by the sultans. In 1895 the four states of Perak, Selangor, Pahang, and Negri Sembilan were brought together in the Federated Malay States, with a unified administration under a resident-general reporting to the Straits governor as high commissioner. In this way the ad hoc introduction of the principles of direct rule inaugurated after the Perak rebellion were formalized and consolidated. Surprisingly, even in this atmosphere, so different from that of princely India, Indian terminology still found a place. Swettenham, for instance, as resident-general inaugurated the new federation with a meeting that he called a *darbar*. Its substance, however, a four-day series of discussions with the princes and their British rulers all seated around a large table bore no resemblance to the ritual displays of sovereignty and homage that characterized Curzon’s contemporaneous *darbars*.⁵⁴ Elsewhere in the Malay Peninsula, outside the federated states, from Kedah and Kelantan in the north to Johore in the south, the British presence was much more lightly felt. The rulers of these states were obliged to accept only British advisers, whose position was more comparable to that of a resident at an Indian princely court. Most exceptionally, the proud and outspokenly anglicized rulers of Johore managed to evade any subordination to the British at all until 1914.

As they spread their empire across Africa after 1890, the British had again to face the question of how to govern newly conquered territories. As before, Indian precedents helped shape the outcome. It is not possible here to assess the varied administrative structures the British established throughout Africa. One may identify three alternative strategies of governance: district administration on the pattern of British India; the Indian princely system with residents appointed as advisers to the rulers; and the transformed Indian model of Malaya, in which the resident ran the government in the name of the prince. The closest to the Malayan model was unquestionably the administration of Zanzibar, proclaimed a protectorate in 1890, where British officials were appointed to administrative posts while the sultan remained titular head of state.

The system of indirect rule established by Lugard, first in Uganda, then in Northern Nigeria, and finally throughout Nigeria and elsewhere, has been the subject of much commentary and analysis. Lugard was born in India and lived there as a child; after training at Sandhurst, he returned to serve in the Indian Army for a decade through the late 1870s and early 1880s. A personal romantic crisis provoked his resignation from the army and drove him in 1888 to seek adventure in Africa. As he set out from the 1890s to establish African colonial governments, there can be no doubt that Lugard was, as Margery Perham put it, “not unaware” of the working of India’s administrative system in both its princely states and its directly ruled districts; and Indian example unquestionably helped inspire him as he set up his system of rule in Africa. He referred, for instance, in 1900 to Northern Nigeria as a “little India,” and in his 1902 administrative report he spoke of Northern Nigeria, “though but a third in size, and many centuries behind the great Eastern dependency,” as presenting “to my imagination many parallel conditions.”⁵⁵

Yet, apart from such features as the appointment of residents to princely courts — a defining feature of indirect rule anywhere — evidence that Lugard avowedly sought to apply Indian forms to African governance remains scanty. One might argue that as he moved across Africa, what Lugard brought with him from India was more the *idea* of indirect rule than any formal administrative arrangements. Certainly, the famed system of indirect rule Lugard set up in Northern Nigeria diverged considerably from any Indian model. Unlike its presumed Indian counterpart, the Nigerian system integrated into a single system the ruling emirs and the British colonial officials. As Lugard wrote in his influential *The Dual Mandate in British Tropical Africa*, “There are not two sets of rulers — British and native — working either separately or in cooperation, but a single Government in which the native chiefs have well defined duties and an acknowledged status equally with British officials.”⁵⁶ The native ruler thus retained control over the collection of taxes and the administration of justice, but, unlike the prince in India, he was subject to strict and continuing supervision. Although Lugard did not go so far as his counterparts in Malaya in limiting the powers allotted native rulers, much of what he learned from what he called “the invaluable lessons of Indian administration” were lessons in what to avoid — above all, conceding to such rulers an unfettered control over the internal governance of their states.

Indian administrative forms may be said to have flourished more fully not in Lugard’s system of indirect rule, but rather in the directly gov-

erned East African Protectorate after 1895. Here, Hardinge as commissioner carefully modeled the administrative structure on that of India. At its heart, as in India, lay the division of the protectorate into districts, each in charge of a "Collector." This official's responsibilities, and those of his assistants, were to be "identical with those of the Collector and Assistant Collectors in India or in the Bombay Presidency." The powers allotted to the superior officers, the commissioner and sub-commissioner, were to be equivalent to those of the Indian provincial governor (or lieutenant-governor) and divisional commissioner. The introduction of such titles, instead of more generic terms such as "district officer," Hardinge explained, was undertaken with "the special purpose of its adaptability to the various Indian acts."⁵⁷

In its executive, as in its judicial, governance, Egypt stood apart. Although, as Tignor makes clear, the Egyptian administrative system after 1882 was "guided" by Indian models, it could incorporate them only partially and incompletely. Despite the existence of many Indian-derived plans and proposals, most notably Lord Dufferin's 1883 "Report on the Reorganization of Egypt," Britain's inability — or unwillingness — to formally annex Egypt placed strict limits on what it could do as a ruling authority. For the most part, Britain sought to control Egypt by placing British officials in key ministries as "advisers" who wielded more power than their nominal superiors. Even in 1882, already one thousand European officials were employed in the Egyptian government. Nevertheless, as Tignor writes, the provincial administration remained "essentially that created in the age of Mohammed Ali, while the social life of the wealthy and sophisticated was dominated by French culture."⁵⁸

The most visible Indian contributions to British rule in Egypt are to be found not in the structure of its governing institutions, but in the provision of administrative personnel and, above all, in the construction of the massive irrigation works that tamed the flow of the Nile. Lord Cromer, as is well known, before taking up the post of consul-general in Egypt, had served in India as private secretary to the viceroy Lord Northbrook (1872–76) and as finance member of the viceroy's council from 1880 to 1883. The Indian Civil Service (ICS) officer Auckland Colvin went to Egypt in 1878, where he served successively as head of the cadastral survey, commissioner of the debt, and controller-general; in 1883 he returned to India as finance member of the viceroy's council. The British Indian judge Sir John Scott served in Egypt as judicial adviser from 1890 to 1895. Sir Colin Scott-Moncrieff, who had worked on the Ganges and Jamuna canals and as chief engineer in Burma, joined the Egyptian public works

department in 1883, along with four subordinate engineers from India, including, as we have seen, William Willcocks. These appointments had lasting consequences, for they marked the first stage in the empire-wide diffusion of Indian practices of water management. "Irrigation," as Scott-Moncrieff wrote, "is an art which there is no occasion to practice in England," whereas northern India possesses a system of canals "far greater than in Egypt." For the reconstruction of the great Nile Barrage a few years later, as he wrote in an 1890 report on the project, "again I looked to India for helpers, and the services of four were lent to enable me to spend the Million [of a sterling loan to Egypt] to the best advantage."⁵⁹ The first Aswan Dam, with initial plans drawn up by Willcocks, followed.

Throughout a vast arc of the empire, then, India provided inspiration, precedents, and personnel for colonial administration. There was, one might argue, little alternative. By contrast with the English legal system, no one proposed introducing into the late-nineteenth-century empire English forms of local government. The Queensland law code might be considered suitable for Africa, but neither mayors and gentry-magistrates nor the kinds of elected local government bodies brought into being in Britain and Australia in these years, much less parliamentary elections, were appropriate, in the British view, for colonies that involved rule over "uncivilized" peoples. Ironically, the new Indian institutions that grew up after the 1880s — above all Lord Ripon's local self-government measures, which put in place partially elective municipal and district boards — had to be pointedly ignored. India was, to be sure, a rich and accessible source of administrative ideas, but it was always conceived of as being at a more advanced "stage" of "civilization" than Britain's other colonial territories. In Egypt alone did the British establish anything resembling legislative councils, and these had but little power. Much as Ripon's administrative reforms may have foreshadowed Africa's distant future, unlike district collectors and subordinated princes, they did not offer "models" for its present.