

## Growth of Fishing as vocation of the local people of coastal region of Midnapore district

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### Abstract

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Fish, which is at present the main source of animal protein in the region can play a major role in helping to bridge of protein deficit. Fishing is a very important occupation in Midnapore district, especially in the coastal region. Growth of fishing as an occupation was one of the important economic activities in the nineteenth century Midnapore. In various reports, there are many references regarding this. Even, some people shifted their vocation from agricultural activity to fishing during the period of our study. The salt authority also encouraged fishing as a vocation among the Malangis. Usually people belonging to Pod, Khadal, Namasudra, Rajbanshi and Muslim communities were engaged in fishing. This paper analyzes the development of fishing rights in colonial Bengal through the nineteenth century.

**Keywords:** Zamindar, Estuary, Fishing, Occupation, Growth, Human.

The geographical location of the coastal region of undivided Medinipur, with rivers like Hoogly, Rupnarayan, Rasulpur, Subaranrekha and numerous canals pouring into the Bay of Bengal, provided an ideal space for external trade and commerce as well as a centre for fishing and salt production. The fertility and sapfulness of the land and the water bodies all over prompted people of the region to take up agriculture and fishing as natural professions for livelihood. During the pathan rule, the coastal regions like Tamluk, Nandigram, Khejuri, Contai, Mirgoda and Birkul were populated by people of 'koiborto' sub-caste (a sub-caste among Hindus, primarily peasants and fishermen) and one gets references of rows of fishermen's colonies along the coast in many folklores

about the region.<sup>1</sup>

These people were more interested in fishing than fishery for their livelihood. If one looks at the place names, one is pleasantly surprised by how the availability of certain species of fish or aquatic creatures determines place-names – Jelegkata, Tangramari, Khalisabhanga, Chingurdanya, PoraChingra, to mention a few. There was no fixed market for selling fish and foreign merchants would purchase the fish at a paltry rate – fish purchased at four annas would be sufficient for a family of ten. Even big-sized Faldfish and Shalia were sold at Rupees Four per Twenty pieces.<sup>2</sup>

The fishing communities across the coastal regions of Hijli and Tamluk did more or less maintain their socio-economic existence on the basis of fishing – the particular sub-castes engaged in fishing were Koiborto, Pod, Kandra, Bagdi, Rajbanshi, Jele, Khadal and Namoshudro. The JeleKoibortos were engaged in fishing in the Rivers and not the Sea. During the Mughal era, under the orders of King Shahjahan, a ‘Nawara’ regiment was created with the Koibortos to resist the pirates, predominantly Portugese. However, with the Portuguese pirates subsequently withdrawing from the region, this regiment lost its relevance. These people then turned to fishing in canals, rivers and the sea as their vocation. People of Bagdi, Rajbanshi, Jele, Khadal sub-castes belonged to the lower stratum of the social hierarchy<sup>3</sup>

These communities still exist, though in a lesser number. They usually settled in some vest or wasteland outside the boundaries of villages and made their living though labor. In the coastal regions of Hijli-Contai, they were engaged as daily wage-earners in the khalaris of the *nimakmahal* of British East India Company. These people also acted as sailors in fishing boats as well as fishing and manufacturing fishing equipment’s.<sup>4</sup>

The local landlords and zamindars, to enrich the exchequer, used to employ them in salt production as an alternate vocation in the period after the harvesting season when they were generally without any work. Thus, the landlords earned the support of the landowners and salt traders on the one hand and arranged for alleviation of the poverty of the working class on the other. Consequently, the production industry in the area developed – production of crops and salt-production. Along with agricultural produce, the naturally saline soil and salt water of the sea ensured alternate vocation for people of the region. Some rich outsiders began to take lease of lands from the local rulers and

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<sup>1</sup> Premananda Pradhan, Hijlinama, Contai House Owners Association Medinipur, 2003, p 29

<sup>2</sup> Ibid,p43

<sup>3</sup> Ibid,p65

<sup>4</sup> Ibid,p75

established salt producing units on the coastal area. The employees of East India Company got directly involved and with the help of native merchants were able to have a monopoly over salt production in the region.<sup>5</sup>

Till the mid-19<sup>th</sup> Century, the *kuthi* of salt agencies of Hijli and Tamluk played a significant role in determining the economy not only of the region but also of the entire state and the neighboring state Orissa. Along with peasants and fishermen, a new landless class emerged – they were called Molongiss – they also joined the struggle for survival. They were being pressed under the twin pressure of advances from salt agencies and excessive rate of interest of the moneylenders. This prompted the landless class – the Molongises - to turn their attention to having lands.<sup>6</sup> With so many obstacles in earning a decent living, these people began to look for other vocations like fishing and agriculture, temporarily moving away from their traditional engagements in salt production. These Molongis raiyats dug up ponds and ponds to ensure supply of water for both agriculture and fishery. They also created fishing Gheris on the low lands just beyond the coastal dams.<sup>7</sup>

British historian Wilson has discovered the notes regarding easy availability of fish recorded in the 1676 diary of Strin Shyam Master, the Governor of Madras Kuthi of East India Company. The “Royadad” record of the Deputy Magistrate in charge of the 1843 settlement in this area also narrates how cheap sea-fish and river-fish were during that period.<sup>8</sup>

The term ‘fishing’ denotes catching of fish in the seas and inland waters. To say more specifically, the term ‘fishing’ refers to catching of fishes grown in natural environment without human intervention. When we classify fishery “under two broad categories such as capture ‘fishery’ and culture ‘fishery’, fishing comes under capture fishery”. In the marine sector, fishing is the only way to collect or procure fishes. It is the oldest or primitive technique of collecting fish.

On the other hand, the term “fishery” & fisheries (plural) refers to a host of activities related to fish and it includes “fishing” as well. According to “Encyclopedia Britannica” (2009) the term ‘fishery’ means: (i) The occupation, industry, or season of taking fish & other sea animals, (ii) A place for catching fish & other sea animals, (iii) A fishing establishment; also its fishermen (iv) The legal rights to take fish at a particular place or in particular waters, (v) The technology of fishery.

According to Oxford English Reference Dictionary (2008), the term, fishery“ refers to a place where fish are caught or reared as well as the occupation or

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<sup>5</sup> Ibid, p168

<sup>6</sup> Ibid,p179

<sup>7</sup> Mahendra Karan, Hijlir Masnadi-I-Ala, Medinipur Sahitya Parishad, Medinipur, p 142

<sup>8</sup> Chittya Ranjan Maity, Mahakaler Bandar, Bengal Publishers, Kolkata, B S. 1371, p 98

industry of catching or rearing fish. (2) According to the “Everyman’s Dictionary” (2010), the term ‘fishery’ referred to as the part of the sea where fishes are captured, fish-pond (Bheri) as well as the fish-trade & culture. (3) From above definitions, it is clear that fishery“ includes a wide range of activities from fish capture to culture, from fishing place to fishing equipment and even the fishermen, their occupation and the industry as a whole. Reflecting this view Sampath observed that “fisheries activities includes not only going out in boats and catching fish but also collecting shell fish and other marine life from the reef and mangroves, cleaning, cutting, cooking and preserving sea-food; sitting in the market selling sea food; and a host of other activities to do with marine resources.”(4) The same connotation is applicable in case of inland fishery sector as well. Here, fishery activities mainly include open-water fish capture, pisciculture, hatching activities, fish processing, preservation and marketing.

The parganas and villages, on this side of Russoolpore river have very good crops. Baligan and Aumeera had on the other side of the river are also well off. But the Biswan villages to the south of Majna, before referred to, and especially the 5 named in my proceeding of the December 1851, have been ruined by the inundation of the salt water from the Myapoor Khal and subsequently deserted and waste, viz. Roopnuggur, Kistochuck, Deolpotta, Koolbanee and Barditte. They were well all twice examined by myself; and a proposal made that if Sumbooram Meda would settle 50 riots in the plain of these villages (about Rs. 4,000 to appearance) this year, 4 annas of demand on their account should be suspended for one year, if 100 the suspension should extend to two years (see Embankments and fresh water Tranks). There is a large fishery attached to this Kushba Hidgillee pargana (Jumma Rs. 450). The farmer asserts that the closing of the channel and the shallows formed about Kedgree have driven the fish across to sauger, and that where they might have gone, into the deep-water channel below Cowcooly and the Russoolpore river (also in his farm and not assessed as a fishery). They are sealed off from by the steamers, steam-tugs &c. The question whether the asset is really seriously diminished by circumstances beyond the farmer’s control deserves investigation. Mr. Butoher, the Superintendent of the electric Telegraph and Postmaster at Kedgree, kindly promised to watch the matter and keep me informed on the subject, and the Deputy Collector at Contai might do the same and the claim be adjusted accordingly.<sup>9</sup>

### **History of the Evolution of Fishing Rights**

The present section aims at tracing the development of fishing rights in Bengal in general and the coastal Midnapore in particular in the 19<sup>th</sup> century. The two mainstays of the economic activity and major occupations in coastal regions of Midnapore district in the 19<sup>th</sup> century were agriculture and fishing. Various

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<sup>9</sup> K.C, De- Report on The Fisheries of Eastern Bengal and Assam, Shillong, 1910. p. 5.

reports and annals of the period bear testimony to this. They further show an increasing trend, especially among the Malangis, to shift from agri-labour to fishing at the encouragement of their masters. Along with them the traditional fishing section, primarily comprising people belonging to Pod, Khadar, Nama sudra, Rajbanshi and Muslim communities, made fishing a major contributing factor to the economic structure of the locality.<sup>10</sup> The different stages of the development of fishing rights – from an implicit alliance between the landlords (zamindars) and the colonial masters to a stage of self-enforcing regulations – present a curious case study.

That there was an implicit and relational contract between the colonizers and the zamindars, in the Bengal Presidency is beyond the level of mere conjecture – it may be called ‘implicit’ since it was legally unenforceable and was basically a mutual understanding; it was ‘relational’ because a primary aim of the contract was to secure exchange between the parties into the future. Since, as pointed out, it was not legally enforceable, the parties bound in such implicit contract tried to convince each other that collaboration was the only sensible strategy as any deviation from the same would result in incurring significant costs. A realization of the loss-gain issue makes the contract self-enforcing. The resultant incentives made this self-enforcing contract so lucrative for the zamindars and the British that it has a far-reaching impact upon the economy of Bengal in general and the development of fishing rights in colonial Bengal in particular.

Since it was an ‘implicit’ contract and cannot be proved by any ‘policy document’ per se, we have to look at the series of court cases heard in the Calcutta High Court and the subsequent passage of legislation. The courtroom deliberations and different pioneering judgements prove on the one hand the independence of the judiciary and on the other how the relational contract affected colonial institutions of government, the course of peasant-landlord conflict, and the management and use of natural resources. However, in most cases the ruling of the court was not followed but that does not either the non-existence of the ‘contract’ or those did not have any impact on the development of fisheries or fishing rights that happened subsequently.<sup>11</sup>

### **Early years of Colonial Period and Permanent Settlement**

The early years after the East India Company took over the reign were not at all easy-going – rather those were fraught with disasters and upheavals. Some of the books, annals, travelogues and records of company officials show how the second half of the 18<sup>th</sup> century brought enormous misery for the population and the authorities alike, only to be compounded by some of the disastrous decisions of the colonizers. Jeremy Bentham, writing in 1782, commented on the Company’s

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<sup>10</sup> Guha, R. *A Rule of Property for Bengal*. Paris: Moulton and Co. 1963. pp 90

<sup>11</sup> H.V.Bayley, Memoranda of Midnapore, Kolkata, 1852 p 141-42

mismanagement and abuse of power, and noted the damage being done both to the native inhabitants as well as the colonizer's bottom line<sup>12</sup>. A famine in 1770, brought on by crop failure and the harshness of British rule, was the first to affect the region in hundreds of years.<sup>13</sup> By some accounts it killed a full one-third of the population of Bengal.<sup>14</sup> Public outcry in England led to a policy response that began with the passage of the Regulating Act of 1773, which brought the East India Company under a greater degree of British government control. A new "revenue farming" plan, where estates were leased out to bidders, was set up after 1773 by the first Governor General of Bengal, Warren Hastings. However, this ushered in another disaster, aggravated by the corruption of the Company officials.

If such misery was not enough, the Permanent Settlement of Bengal, proclaimed in 1793 by Governor General Cornwallis, which apparently was a panacea to all contentious questions of land rights and revenue collection. In reality, however, the Permanent Settlement, with fixed revenues to be collected by the British from landowners in perpetuity and codified full proprietary rights for the land-holding class, opened up a new avenue for the landowning class, the zamindars, to manage their estates as they pleased so long as they kept up with the revenue demands, which were to be fixed forever.

The question remains – was it the be-all and end-all of the Permanent Settlement as envisaged by the British. An interesting point is made by Alexander Dow, an orientalist and East India Company officer and one of the early proponents of the Permanent Settlement. Dow argues, "To give them [Indian] property would only bind them with stronger ties to our interest, and make them more our subjects; or if the British nation prefers the name, more our slaves".<sup>15</sup> One can discern in Dow's comment a vicious strategy to enslave the Indians through the Permanent Settlement. A second account, coming from another Company official who was also very much connected with policy-making of the permanent settlement presents an alternate view – in his opinion this could be seen as an initiative to

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<sup>12</sup> J. Bentham, J. Bowring (ed.) *The Works of Jeremy Bentham, vol. 1* Edinburgh: William Tait. 1838. pp. 363-402.

<sup>13</sup> S.R. Osmani, Famines. In K. Basu (ed.) *Oxford Companion to Economics in India*, New Delhi: Oxford University Press. 2007. pp. 166-170.

<sup>14</sup> R.C. Dutt, *The Economic History of India Under Early British Rule: From the Rise of the British Power in 1757, to the Accession of Queen Victoria in 1837*. London: Kegan, Paul, Trench, Trubner & Co. 1908. p 51-52

<sup>15</sup> A. Dow, *The History of Hindostan from the Death of Akbar to the Complete Settlement of the Empire Under Aurungzeb to which are Prefixed, I. A Dissertation on the Origin and Nature of Despotism in Hindostan, II. An Enquiry into the State of Bengal; With a Plan of Restoring that Kingdom to its Former Prosperity and Splendor*. London: John Murray. 1792. pp clv.

“save” Bengal.<sup>16</sup> This official, Phillip Francis, basically highlighted the importance of the Act as contributing to the growth of national wealth while admitting that the economic value would definitely fill the coffers of the British. Guha in his 1963 book draws our attention to the two distinct and at times oppositional views regarding the Permanent Settlement: while Dow’s position took as its primary aim the institution of British power in Bengal, Francis’s view was concerned first with the improvement of land and the creation of wealth. While theoretically the British policy of the time and immediately next decades were informed by both these strands, the experiences of the populace in the next hundred bear testimony to the fact that it is increasingly the motive to enslave that predominated rather than the more liberal and humanitarian view of creation of national wealth for the collective welfare.

### **Relational Contract**

Two relevant questions crop up at the end of the previous section:

1. How can grant of right to property be treated as a covert mechanism for enslaving a population?
2. Was there no existing structure of property-rights prior to the arrival of the Britishers?

Let us try to find the answer to the second question as that would lead us to the answer of the first. Yes, there was an existing system. In fact in the pre-colonial times, there were zamindars, who were taxed by the Mughals and often governed large tracts of land, and many subordinate rungs of society whose members held various types of proprietary and usage rights over land and common resources.<sup>17</sup>

Then why was there the need for a new legislation? It may be that the likes of Dow were totally ignorant of the existing system or even if they knew, they tried to thoroughly change the existing landowning-class-structure. It appears that both were true to some extent. The real intention was to create a class of zamindars who would not only pay taxes but would also be ever-obliged to satisfy every intent of the Imperial forces. If this indirectly leads to the answer of the first question, Dow is even more forthcoming in curtailing the freedom of people when he made a ridiculous assertion that ‘the heat and humidity of the climate make the Bengali people physically incapable of the vivacity required for political and economic freedom.’<sup>18</sup> Thus the new system would push zamindars

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<sup>16</sup> Guha, R. *A Rule of Property for Bengal*. Paris: Moulton and Co. 1963. pp 90

<sup>17</sup> Baden-Powell, B.H. *Land Systems of Agrarian India* vol. 1. Oxford: Clarendon Press. 1892. pp207-209

<sup>18</sup> A. Dow, *The History of Hindostan from the Death of Akbar to the Complete Settlement of the Empire Under Aurungzebe to which are Prefixed, I. A Dissertation on the Origin and Nature of Despotism in Hindostan, II. An Enquiry into the State of Bengal; With a*

to a state of perennial anxiety of losing their rights that would work in favor of the Britishers. Loyalty was the key word apart from revenue to be generated from the land and taxes to be paid to the Britishers.

Throwing aside the claim that Bengalis are simply incapable of freedom due to their physical constitution, Dow's plan proposes an implicit contract of exchange. Specifically, the British supported extensive power and authority for the zamindar class over their lands in exchange for a certain standard of revenue and long-term loyalty to the British. Loyalty would mean not opposing British rule over Bengal, paying rents to the British as specified, and maintaining the conditions for effective revenue collection; these conditions included working the subordinate classes of tenants while dealing with any conflicts and opposition from these lower rungs of society. Crucially, since the zamindars were actually very much capable of revolt and the British equally capable of renegeing on their promises, the problem of enforcement was a real one. The contract, however, was made self-enforcing by the increasing institutionalization of zamindari property rights, showing a credible commitment on the part of the British and incentivizing the zamindars to cooperate, along with the credible threat of zamindari non-cooperation, which incentivized the British to continue furthering zamindari interests.

The Permanent Settlement itself closely resembled the contractual relationship envisioned by Dow: the British codified perennial proprietary rights for zamindars into their colonial law while demanding a certain standard of revenue in return. However, the ramifications of this contract extended well beyond the proclamation and codification of the Permanent Settlement. Certain aspects of the contract were obviously enforceable from the beginning. Although the zamindars had no real recourse to justice other than armed insurrection if the British renegeed on their terms, the codification of the Permanent Settlement and its implementation through the administrative apparatus of the colonial state showed a credible commitment on the part of the British to uphold their end of the deal. What is not made explicit in Permanent Settlement, but is clearly central to Dow's vision, is the understanding that the zamindars should remain loyal to the British. As Dow put it, this meant the alignment of British and zamindari interests. If we look at the assumptions behind 'relational contract', the Permanent Settlement was envisaged as one such between the British and the zamindars : formal institutionalization of zamindari property rights, for one, represented a credible commitment to advance zamindari interests; by fixing rents in perpetuity, the Permanent Settlement represented a commitment to disavowing arbitrary rate changes, removing an important source of uncertainty that had plagued zamindars under British rule prior to the Permanent Settlement.

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*Plan of Restoring that Kingdom to its Former Prosperity and Splendour.* London: John Murray. 1792. pp. cxxi



The unspoken reciprocity that was demanded was unquestionable loyalty to the British state. Zamindars were not to oppose British rule over Bengal and were to advance the conditions of effective revenue collection. But while the Permanent Settlement addressed the property rights of zamindars, it did not deal with those of the many subordinate classes of tenants who lived and worked zamindari lands, and whose resistance or rebellion could threaten the zamindars' ability to offer the loyalty and revenue the contract required. These tenant cultivators – called raiyats – had ancient customary rights to various uses of zamindari lands,<sup>19</sup> so their interests had to be considered in any arrangement that obligated the zamindars to the British. A re-bargaining of these tenancy rights in the century after the Permanent Settlement would thus be an important arena for the development of the relational contract between the British and the zamindars along the lines envisioned by Dow. This in fact prepares the ground, in the next century for fishing rights and the policies of the British administrators and the role of the judiciary in it.

### **Customary Rights, the Calcutta High Court, and the Fishing Cases**

“Justice has emanated from nature. Therefore, certain matters have passed into custom by reason of their utility. Finally the fear of law, even religion, gives sanction to those rules which have both emanated from nature and have been approved by custom.” – Cicero

At the beginning of this section we should have a clear understanding of Customary Rights or Customary Law/Rights. Customary Law/Rights have their root in indigenous wisdom. Long and continuous association with the elements of nature and natural resources led to the development of a broad cumulative knowledge base. This cumulative body of knowledge and beliefs handed down through generations by cultural transmission about the relationship of living beings, including humans, with one another and with their natural environment, is the indigenous knowledge. The indigenous knowledge and belief system determined the cultural ethos, value system and worldview of the community. This is indigenous wisdom. Flowing from this indigenous wisdom, certain rules, customs, norms, and institutions emerge, become stable, and not only do they emerge, they enjoy legitimacy for stakeholders without the influence of a third party or central authority. These local institutions and the customs and conventions set by them and almost unanimously agreed upon by the participating units may be referred to as customary rights/laws which stand in stark opposition to rights/laws codified by legislative and executive promulgations.

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<sup>19</sup> B. Pokrant, P. Reeves, & J. McGuire, Bengal Fishers and Fisheries: A Historiographic Essay. In S. Bandyopadhyay (ed.), *Bengal: Rethinking History* New Delhi: Manohar Publishers & Distributors. 2001. pp.93-117

In the present context, customary fishing rights and laws, we have numerous reports, accounts and observations – those of Buchanan-Hamilton<sup>20</sup> being the most prominent ones. From these accounts it may be deduced that in pre- and early colonial Bengal, there existed quite a systematic body of customary fishing rules and rights that regulated patterns of fishery use. Such customs were time and space/place-specific and in general adhered to by the stakeholders.

With the advent of the British rule and the consequent social changes that it brought about such customary rights of fishing very replaced by certain legislative pronouncements. However, before coming to that we must also try to realize how these laws came into being and how they worked. The Raiyats enjoyed the right to use zamindari lands for fishing. These rights did not only exist in physical terms - such fishing rights had their symbolic suggestions too. Guha particularly highlights how significant it was for the Raiyats as the fishing tools acquired symbolic connotations during the 19<sup>th</sup> century peasant revolt.

Such customary rights sometimes proved to be ineffective in resolving the conflicts among the Raiyats or the stakeholders and then the conflicts that could not be resolved within the conventional framework came to the ambit of the courts. The more the institutional legal system came into the picture, the customary laws and rights begin to increasingly lose their relevance. Many of the rulings by the Calcutta High court highlight the way Dow looked at the issues regarding fishing - that is, the latent relational contract between the British imperialist forces and the local zamindars, much to the disadvantage of the traditional system and stakeholder at the ground level. As colonial institutions evolved and gained in strength, all aspects of the social and professional life came under its impact and fishing was no exception.

The response of the colonial centre to the rebellion of 1857 was manifold - on the one hand the reins of administration was taken off the East India company and was now to be directly controlled by the parliament; on the other, certain judicial reforms were also brought about. The Calcutta High Court was established in 1861 by the Indian High Courts Act, apparently to provide justice and ensure the rule of law in India. Another huge reform was the promulgation of the Indian Penal Code that was enacted in 1862. These were long before the Permanent Settlement came into being. So by the last quarter of the 19<sup>th</sup> century the High Court of Calcutta composed of promising English barristers and Indian graduates of the newly established Calcutta University.<sup>21</sup> While there was no dearth of legal scholarship and prudence in the High Court, the lower courts were in a mess as

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<sup>20</sup> F. Buchanan-Hamilton, *A Geographical, Statistical, and Historical Description of the District, or Zila of Dinajpur, in the province, or Soubah, of Bengal*. Calcutta: The Baptist Mission Press. 1833. pp 137-142

<sup>21</sup> Price's Re-settlement of the majnamuta and jellamuta estates, P87

those were still being dominated by people with limited legal acumen. And it had its adverse impact upon case relating to fishing rights. Before reaching the High Court, disputes were heard, debated, and in most cases settled at the level of the magistrates, local administrative officers and minor functionaries, whose legal knowledge was not above suspicion.<sup>22</sup>

Very few cases reached the High Court. Of those cases, two pronouncements stand out as proof of the subtle ways in which the customary rights were gradually curtailed. Both the cases arose in small town in the present day border region of India and Bangladesh – Meherpur, situated on the banks of Jalangi river. The cases are famous as Mudhoo Mundle and Others vs. Umesh Parni (1886) and Meherpur Case (1887). The cases concern a BEEL – a large pond or swampy area – that usually got filled with the overflowing water of Jalangi river during the monsoon. In the first case - Mudhoo Mundle case – it was alleged that the raiyats had fished in that BEEL on Bengali New Year. Since the BEEL lay on the Zamindari Lands, the raiyats were charged of unlawful assembly and theft and subjected to imprisonment, whippings, and fines through a summary trial. When the case reached the High Court, the charge were found to be legally untenable – the High Court dismissed the charge of unlawful assembly as it was not an arranged gathering with an evil motive ; further, the charge of theft was also sidestepped as the actual fishing activity did not take place.

In the Meherpore case the following year, the Calcutta High Court clearly defined the meaning of ‘theft’ of fish and what could be deemed as a legal offence. The matter has been very succinctly recorded by Chief Justice Sir William Comer Petheram, a member of the Middle Temple Bar in England and an experienced judge in India as follows:

*It appears that, on a particular day in the year, it is the practice of the inhabitants of the neighboring towns and villages to go to this Bheel and catch what fish they can, and for doing that these sixty-eight persons have been convicted of stealing fish and punished in an extraordinary manner. A large number of them were whipped there and then, or at any rate a few hours after, and a large number of them have been sentenced to two months' rigorous imprisonment<sup>23</sup>.*

It is evident from this narrative that traditional fishing was clashing with contemporary reality. The issue of who had the right to fish in the bee remained unresolved notwithstanding the punishment meted out to the offenders since there

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<sup>22</sup> C.E. Buckland, *Dictionary of Indian Biography*. London: Swan Sonnenschein & Co. Chaudhuri, K.N. 1978. *The Trading World of Asia and the English East India Company 1660-1760*. London: Cambridge University Press. 1906. pp.160&275

<sup>23</sup> J.D.M Derret,. *Religion, Law and the State in India*. New York: The Free Press. 1968. pp 276-277

was no internal re-bargaining of community institutions or a clear rule established by the state or its courts. Older zamindars were happy to uphold conventional fishing rights, but the new zamindari class, established by the Permanent Settlement and motivated by things like their monetary ties to the British and the opening of markets, frequently refused to do so and was not at all hesitant to use force against them. The future of the contractual agreement between the zamindars and the British, as well as the general administration of British rule in Bengal, became heavily reliant on how these zamindar-ray at disputes were to be resolved by the British authorities.

The doctrine of *ferae naturae*, which maintains that wild animals are unowned property, was cited by the justices of the Calcutta High Court in their decision in the case. Beels and jheels, local terminology for tiny ponds and lakes, are enclosed or linked to larger river systems depending on the season in Bengal due to seasonal fluctuations in water levels. The Court determined that the fish were not anyone's property and could not have been taken because they were in a beel that was part of a larger riparian system at the time. The Court demonstrated a notable reluctance to apply the criminal code to the argument over fishing rights throughout its opinion in Meherpore. This is consistent with the situation in England, where using a private fishery was not a crime of larceny. According to the Court's perspective, the question of fishing rights was essentially a civil dispute that needed to be resolved through negotiations between the parties, possibly with the help of civil litigation at times.

The Meherpur cases eliminated the practice of applying criminal law to fishing disputes during the monsoon season, when fish were free to roam throughout the extensive river systems, but they also raised significant problems. How can fish come to belong to someone? The Meherpore Court did not respond to this inquiry, other than to note that the fish in the case at hand, which happened at a time when the relevant beel was connected to the Jalangi River, were *ferae naturae*. As a result, it was impossible to claim ownership of the fish simply because it happened to be swimming through a body of water that belonged to someone who had the legal right to fish. The right to fish in a particular body of water or to make other commercial use of the water falls under the general category of Jalkar's rights, contrary to the interests of the British administrative and administrative authorities and the Zamindari. This trend in the High Court would jeopardize the relational contract between the Zamindar family and the British.

### **A Rule for Fish**

In two cases, *Maya Ram Surma v Nichara Katani* (1888) and *Bagiram Dome v*

Abar Dome (1888),<sup>24</sup> the Calcutta High Court produced more complete rules for use in fishing on the same day, the Court handed down its judgment. They originated in the same district of present-day Assam and both involved portions of public rivers that the government leased to private individuals for fishing. It shows the growing conflict with the Calcutta Supreme Court. While the executive branch sought to increase government revenues and limit dissent, the High Court remained committed to applying steer judgments and common law principles to Indian cases. In these cases, the region's Deputy Commissioner and District Commissioner-Judge of the Peace, an emissary from the colonial state<sup>25</sup> - but the mail pool incident. In response to this challenge, the Court drew up the fishing Rights Rules, drawing on precedents from the UK and elsewhere in India. Court decisions in these cases further undermined the colonial-era practice of putting criminal law behind political initiatives and threatened to weaken the zamindar's position.

Maya Ram Surma was involved in collecting fish from privately excavated basins that were then completely submerged by neighboring rivers. In its ruling, the court expanded what is considered possession of fish. In particular, the judge said he wanted to uphold the theft conviction if the fish were in such condition that the owner could take them of his own volition. If it had been completely enclosed, the fish would not have been able to move between the tank and the river and would therefore no longer be *ferae naturae*. The fish then become the property of the tank owner, and fishing from that tank during the dry season constitutes criminal theft. This rule also seems to apply to many beels and zeal throughout the Ganges Delta. These were connected to the river system during the wet season, but remained completely landlocked during the dry season. fishing in these waters cannot be considered stealing during the wet season, but can be considered stealing during the dry season when the fish are completely caught. It reflects fishing patterns. In Bengal, general fishing traditionally took place in the wet months, while commercial fishing took place in the dry months when fish were more restricted and easier to catch.<sup>26</sup>As zamindars increasingly question the legitimacy of age-old customary fishing rules and the conflict between zamindars and raiyats over the issue becomes more acute, the Calcutta Supreme Court has taken advantage of common law principles to, drafted rules for use in fishing that effectively mirrored the ancient fishing rules. It was customary and gave the raiyats the rights they claimed. This was a clear threat to the treaty of relations

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<sup>24</sup> *The Meherpore Case* (1887). In Cranenburgh, D.E. 1890. *A Handbook of Criminal Cases Containing a Verbatim Reprint of All Criminal Cases Reported in Vols. I. to XVI., Calcutta Series I.L.R., With a Complete Digest* (pp. 819-820). Calcutta: D.E. Cranenburgh.

<sup>25</sup> E. Stokes, *The English Utilitarians and India*. Oxford: Clarendon Press. 1959. pp.156

<sup>26</sup> N. Nakazato, *Agrarian Systems in Eastern Bengal*. Calcutta: K.P. Bagchi & Company. 1994. pp 229

here postulated between Britain and the Zamindars.

Bagiram Dome v. Abar Dome and Another (1888)<sup>18</sup>, a case heard contemporaneously with Maya Ram Surma, further clarifies and emphasizes the above rules. At that time, the two defendants, along with 11 of his other people, were fishing in the Bogdoy River during the monsoon season. In the case's ruling, the deputy commissioner, who acted as judge, argued that the defendant committed theft because the fishery owner could easily catch the fish if he wanted. After it subsided, he said the fishery owner would put up bamboo fences on the riverbed to catch the fish, but he said, "In this case, the fences hadn't been put up by the time it happened, so it wasn't possible." I admitted no. Pay me to do it. 'built by the end of the rainy season'<sup>27</sup>. However, the High Court ruled that just saying the fish may have been caught is not enough. No fish were actually caught, so the theft charge did not apply. However, if the fence had indeed been erected and the fish restrained, the fish would have been the property of the jalker's owner and a larceny conviction could have been upheld. The ruling strengthened Maya Lam Surma and reaffirmed the same standards for fish ownership. Fish are no longer wild fish until they are kept at the owner's disposal and fenced. When fish are no longer natural wildlife, their removal constitutes criminal theft. The zamindars were enraged by this result and quickly found other channels to claim their claim to fishing rights. The treaty presented here is key to understanding how and why the Zamindars were finally able to challenge the Calcutta High Court and assert their claim to customary fishing rights. The way they were able to do this shows the power of the incentives brought about by the Relations Agreement between the Zamindar and the colonial masters.

### **The Bengal Act II of 1889: Private Fisheries Protection**

The Court ruling at Bagiram Dome, which effectively protected the customary fishing rights of rays from colonial criminal law, angered the establishment of the Zamindari. By 1889, the British India Association, an organization of zamindars, lobbied the Bengal government to amend the regulations enacted by the High Court. Ultimately, this led to the enactment of his Bengal Act II of 1889, also known as The Bengal Code 1890. The Act criminalizes all illegal fishing and trespassing into fishing, whether or not associated with river systems, with fines not exceeding Rs.50 and one month for the first violation. Up to Rs 200 for simple or severe imprisonment up to and/or subsequent violations. The passage of this law overturned the High Court's alignment with property rights and traditional practices, effectively outlawing common fishing patterns.

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<sup>27</sup> *Bhagiram Dome v. Abar Dome*, I.L.R. 15 Cal. 388 (1888). In Cranenburgh, D.E. 1890. *A Handbook of Criminal Cases Containing a Verbatim Reprint of All Criminal Cases Reported in Vols. I. to XVI., Calcutta Series I.L.R., With a Complete Digest* (pp. 818-827). Calcutta: D.E. Cranenburgh.

As detailed by Stokes (1959), the development of legislative institutions in colonial India was strongly influenced by utilitarian philosophy. The Utilitarians, led by Bentham and Mill, saw legislation as a science. It is 'a task of the most capable philosophical mind, a subject of sober study and expertise, not a sport of political passion or popular, ignorant prejudice'.<sup>28</sup> Although the structure of India's various legislative bodies was repeatedly altered by parliamentary enactments throughout the 19<sup>th</sup> century, the Indian legislature of 1889 still resembled a putative body of 'experts' and was by no means popular. It was neither a specific nor representative organization.<sup>29</sup> Under the Council Act of 1861, 19 members of the King's administrative and administrative elite, along with a few selected members of the Indian population, were elected to serve in the major colonial centres of Calcutta, Bombay and Madras.<sup>30</sup> As we have seen, this claim was either misleading or dishonest. Indeed, Advocate His General, a jurist of the Bengal Legislative Council, investigated the zamindar's claim that they historically have exclusive rights to fishing, but found no basis for it (Statement of the Course of Legislation, (1889:657). But historical incidents were not the only objections to the court's decision. The other was based on the outcome of court rulings on the revenue streams of the colonial government. Concerns about how court rulings would affect those revenues made the question clear and unambiguous. I was referred to the Internal Revenue Service for an estimate. The Commission was unable to confirm specific figures, but nevertheless there was agreement there and with other administrative and enforcement agencies that property rights of fishery owners should be strengthened to protect revenue interests.<sup>31</sup>

Against this background, on a hot and humid March Day in Calcutta, the Attorney General introduced the Final Bill.<sup>32</sup> He remarkably defended the legal soundness of Supreme Court justices' rulings and the principles they deployed in dismissing the Zamindars' appeal for historical rights. showed a clear contempt for the law:

*I think those who endeavor to impeach the decisions of the highest tribunals of this country and the opinions of Judges of experience should put forward a strong case. Such a case might be made by reference to decided cases which contravene the decisions objected to, or by challenging the principle on which the decisions are rested, or by showing that other acknowledged and well recognized*

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<sup>28</sup> E. Stokes, *The English Utilitarians and India*. Oxford: Clarendon Press. 1959. pp.176-177

<sup>29</sup> *Ibid*,p20-45

<sup>30</sup> Statement of the Course of Legislation. *Supplement to the Calcutta Gazette*, 1889. pp. 656

<sup>31</sup> *Ibid*,p356

<sup>32</sup> *Ibid*,p358

*principles apply to the subject itself. Now, those who have made objections have done nothing of the kind. . . . [T]he objections, as far as I am aware, resolve themselves into irrelevant arguments, vituperative assertions, and an array of words which exhibit a confusion of thought as to the meaning of “property” and “possession” . . . (Statement of the Course of Legislation 1889: 660)<sup>33</sup>*

After reading this passage, one might think that the Bengal Act II of 1889 should not be passed after all. But the law passed, and although the Attorney General defended the legal basis behind the High Court's rulings and downplayed attempts to undermine it, ultimately the need for such a law The Zamindar family's complaints about the ‘irrelevant arguments’ and ‘defamatory allegations’ may have been in the eyes of the Attorney General, yet somehow ‘in a moderate spirit’, It was also ‘supported by a very fair argument.’ (1889: 661). What was this ‘fair reasoning’? Perhaps it was an argument based on revenue gains. Income was a factor, but a bigger factor was the dynamics of the relationship contract between the Britons and the Zamindars. The system of incentives introduced to the Zamindars and Britons as a result of the Treaty of Relations between the Zamindars and Britons played a central role in resolving the issue of fishing rights.

### **Why Private Fisheries Protection? Credible Threat and Commitment**

Concerns about revenue have certainly influenced the passage of the Civil Fisheries Act, but there is good reason to believe that revenue itself was not the only concern, or even the most important one. Apparently the law was taken up after the zamindar complained. The Bengal government, in the wake of a Supreme Court ruling, has warned against excessive Hobbesian liberal policies recommending laws favourable to the Zamindars. ‘If the Raiyats knew this rule,’ they declared, ‘the value of the julkur [jalkar] property would be grave, even if it was not completely destroyed’.<sup>34</sup>

It is very difficult to see how this threat to zamindar revenues, and therefore state revenues, could reasonably emanate from court rulings. After all, it is still against the law to take fish from closed bodies of water (tanks and beer and zeal in the dry season), so the court ruling did not reduce the dry season jalkar values at all. , each open-water body dispersed fish shoals across most of the wetland system. It is difficult to understand how conventional subsistence ray fishing could have crippled such stocks. It still relied on compensatory torts.

Moreover, the zamindars could have done something, albeit at a cost, to bring their practices in line with the court's rulings. The zamindars complained that civil lawsuits were useless given the poverty of the Raiyats, thereby justifying

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<sup>33</sup> Ibid,p358

<sup>34</sup> Ibid,p360



their own use of force, but they had other options. A system may have been developed. The new standards of use may also have been negotiated between the zamindars and traditional fishermen. The High Court of Kolkata effectively granted the Raiyats customary fishing rights during the rainy season, but the zamindars still had the option to purchase that right from Rayat if the valuation justified it.

Instead, the government memo said the landlord class “will take other measures to protect the rights they hold dear, and there will certainly be many examples of unilateral or bilateral violence.”<sup>35</sup> Given the alternatives, why was violence the Zamindar's first choice? The zamindar's resort to violence against Rayat is linked to the treaty of relations with Britain. As mentioned earlier, the treaty had no external enforcement mechanism. In such an uncertain environment, contractors often demonstrate their own commitment to cooperating, or highlight the significant costs of deviating from cooperating, to incentivize others to meet their commitments as well. When a contract is mutually stimulating, it becomes self-enforcing. Against this backdrop, resorting to the Rayat's violent punishment of the zamindars is a credible threat mechanism against Britain. The harsh penalties imposed for even minor violations of property rights claimed by the zamindars showed Britain that the price of leniency could be very high. Islands also threaten the soil. Thus, the Zamindars hinted that the price to Britain could be very high if they did not promote Zamindar interests, in this case fisheries. The Zamindars did not need to use force directly against the British and cost them so much. Zamindar-Rayat's competition hinders revenue value and growth. Violence undermines British authority over Bengal, and a forced cessation of violence would consume resources. The cost to Britain of such a dispute would therefore be considerable.

If the Zamindars had shown their commitment to the treaty by using draconian means to secure the revenues they owe, the British should have shown an equally credible commitment. In this case, the colonial legal institutionalization of the new exclusive jalkar rights, which abrogates the rules in line with local practice announced by the Calcutta High Court, reflects Britain's credible commitment to treaty relations with the United Kingdom. In the High Court's view, the Zamindars, even if that meant wrongdoing to Raiyats. Another sign that the Second Bengal Act was a credible statement of commitment rather than a strictly revenue-focused policy is the fact that it now applies only to Bengal. In fact, the chairman of the Bengal Legislative Council was proposing to pass a law covering all of India. Since the Calcutta Supreme Court ruling applied not only to Bengal but to all of India, the law opposing that ruling should also apply to all of India. However, the governor's response was that 'certain conditions exist mainly in

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<sup>35</sup> J.C.Price, Re-settlement of the majnamuta and jellamuta estates, P 82

## Bengal and Assam'<sup>36</sup>

At first glance, this distinction of Bengal from the rest of India is justified on purely economic grounds. Fish are of particular cultural importance in Bengal, and perhaps other states would have had less of an impact on income by allowing common fishing. There were no seasonal floods that blurred the boundaries of river, beer and zeal. But in Madras, for example, disputes over fishing seem to be frequent, as evidenced by various fishing-related lawsuits in the region. Certainly, strengthening fishing rights in Madras would have helped generate income. So perhaps the governor's reference to 'special circumstances' had more to do with the cultural importance of fish and the topography of wetlands. In fact, the Zamindari system itself was another 'special set of circumstances' more or less unique to Bengali. For example, in Madras, later colonized as Bengal, the British tax system was built around the Ryotwari system, with tax revenues settled directly between British authorities and farmers. There was no officially recognized Zamindari rank and consequently no implied treaties like in Bengal. The importance of the Relations Treaty between the Zamindars and the British in establishing the colonial powers of the President of Bengal was the most important reason behind the passage of the Bengal Act II. Their own High Court of Calcutta opposed the old customs and rules promulgated by the, and expressed a credible commitment to the Zamindars.

### **Social, Political, and Economic Development by Relational Contract**

Income was the obvious way of matching British and Zamindari interests. But the central argument of this essay is that the incentives provided by the relational contract between them created a less obvious but significant way in which the interests of these two groups were bound together. The dynamics of this relationship have had a significant impact on Bengal's political economy. Aspects of this relationship can be understood from the enforcement issues faced by contractors. As part of this treaty, the UK upheld broad power and authority over the zamindar's lands and resources in exchange for control of the tax collection process, maintenance of peace on the ground, and full support for the British government. In the face of enforcement problems, the relationship was marked by credible acts of promise by the British and credible threats by the Zamindars. One striking conclusion of this case study is that it shows the Calcutta High Court to have been a truly independent judiciary. In this final section, we highlight three other important and related historical conclusions suggested by the development of fishing rights in colonial Bengal.

The first is that aspects of the colonial institutional structure in Bengal were

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<sup>36</sup> D. North, & B. R. Weingast, Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England, *The Journal of Economic History*, 49(4): 1989. P 803-832.

constructed to promote the interests of landowners. Our analysis shows how this has happened in the case of fisheries, and has seen this development as a credible commitment by the UK to support the zamindars while managing the land and generating an income for them. It ties in with the need to indicate. Note to North and Weingast (1989): The ruler is . . . A reliable commitment on two counts. One is to set a precedent for “responsible behaviour” by appearing to adhere to a set of rules that are consistently enforced. Second, they are forced to follow a set of rules that leave no room for breach of duty.<sup>37</sup>

The passage of the Bengal Act II was an example of the second type of strategy, as was permanent settlement. Britain demonstrated a credible commitment to the zamindars by introducing zamindar interests into the colonial legal system. If this interpretation is correct, credible engagement with the landlord class was a guiding principle for the development of government institutions and state formation in colonial Bengal. Other examples of organizational development that share similar motivations may be identified.

A second conclusion is that given the dynamics of treaty relations with Britain, the zamindars had limited incentives to work within their communities to consensually resolve disputes such as their dispute with the Raiyats. The importance of credible threats as a treaty enforcement mechanism made it clear that it was in the Zamindar's interest to intimidate or engage in violence rather than to negotiate with the Rayat. Eliminate and maintain social order. fisheries for. The recipients of the messages of threats of violence were not only Raiyats, but also Britons who received the signal that they would do whatever they could to ensure that the zamindars could protect their interests and honour their obligations to Britain. The contrast between violence and bargaining is particularly evident given the alternatives that the Calcutta Supreme Court upheld through its Fisheries Regulations. Under a court ruling that gave the Raiyats significant fishing rights, it was left to the zamindars to negotiate new standards of use with the Raiyats and to adopt different fishing techniques and methods. This has important distributional implications. If the zamindars were forced to purchase ray at fishing rights and seize them to maximize their own and the government's income, court rulings could be produced by this new arrangement through negotiations. It gives Rayat the opportunity to share the potential new income of property rights. Giving the zamindars exclusive rights to directly fish, as Bengal Act II did, means that the new income generated by the exclusion goes to the zamindars and not to the raiyats. This could lead to serious problems, especially where customs respected the rights of outcasts, as is the case here. The incentives created by relationship contracts fostered the collapse of a social life

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<sup>37</sup> D. Acemoglu, S. Johnson, & J. Robinson, The Colonial Origins of Comparative Development: An Empirical Investigation, *The American Economic Review*, 91(5): 2001. 1369-1401

that had been relatively peaceful and stable for a very long time. Leading to the transformation, a feedback loop was created in which steps were taken to better enforce the treaty between the Zamindar and Great Britain, destroying the Zamindar. And the rays of goodwill and trust that once existed among them to the greatest extent undermining their capacity to peacefully and effectively resolve the various problems that inevitably arise in social life. Habits of thinking and behaviour nurtured by such loops can plague nations and societies for generations. Various studies have also observed such links between colonial institutions and present-day political and economic outcomes.<sup>38</sup>

A third observation concerns the use and management of natural resources. The fisheries case shows that the exploitation of natural resources was directly influenced by the relevant treaties between the Zamindar and the United Kingdom. In the case of fishing, landowners, with the assistance of colonial government agencies, were able to secure exclusive use and seize customary rights historically held by Rayat. As a result, the management and development of fisheries resources has developed in a manner driven solely by the claims of landowners and their tenant farmers. On the other hand, if the High Court decision is adopted, it is easy to imagine that completely different modes of operation and usage will emerge. How would the fisheries authorities have responded differently if the High Court's ruling had survived and Rayat had been given greater powers to influence the outcome?

Alexander Dow's view of the proper relation between the British and Indians was still alive and well in public discourse. As Lord Lytton, governor-general of India from 1876-1880, wrote to his friend, the Conservative politician and eventual Prime Minister, Lord Salisbury in 1877:

*I am convinced that the fundamental mistake . . . of [our] Indian officials is a belief that we can hold India securely by what they call good government; that is to say, by improving the condition of the riot [rayat], strictly administering justice, spending immense sums on irrigation works, etc. Politically speaking, the Indian peasantry is an inert mass. If it ever moves at all, it will move in obedience, not to its British benefactors, but to its native chiefs and princes, however tyrannical they may be. . . . To secure completely, and efficiently utilize, the Indian aristocracy is, I am convinced, the most important problem now before us<sup>39</sup>.*

This section explores the institutionalization of this view through a case study of the development of fishing rights. Not only does this shed light on the history of the colonial administration as it actually unfolded, but it is also a viable

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<sup>38</sup> E. Stokes, *The English Utilitarians and India*. Oxford: Clarendon Press. 1959. pp.286

<sup>39</sup> H. L. DAMPIER, ESQ., Offg. Secretary to the Govt. of Bengal, to the Secretary to the Govt. of India, Home Dept. No. 463T, dated Bankipore, the 18th August 1868. WBSA

alternative to these historical outcomes that may bring us closer to Lytton's 'good government' being advanced by Calcutta. It also sheds light on available institutional alternatives became the Supreme Court. This option was based on the common law principle of individual liberty rather than the promotion of centralized colonial power. Increased authority of the local ruling class. The treaty framework allows the various political and economic outcomes in colonial Bengal to be related to the way the colonial government was theorized and practiced in that state, and the patterns of behaviour and institutional consequences failure can be identified. Or political organization - continues to this day. The analytical power of this framework will only become apparent with further criticism and historical case studies.