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India and the translation of the Irish Brehon Laws

Heather Laird

In 1852, the British government agreed to fund a project to transcribe, edit, translate and make available for publication the Brehon Law manuscripts in Ireland. The result of this translation project was a six-volume collection entitled *The Ancient Laws and Institutes of Ireland*. This project took almost fifty years to complete and involved the labour of a substantial number of scholars, professional and amateur, some of whom had been previously involved in the Ordnance Survey of Ireland.[1] Among those directly involved were the commissioners who were mostly members of the Anglo-Irish elite with an interest in antiquarianism, the Gaelic scholars who transcribed and translated the documents, and the legal experts and historians who, with the help of the Gaelic scholars, prepared the translated documents for publication and wrote hugely influential introductions to the volumes published.

This translation process represented and allowed for the recuperation of the Brehon Laws. The resulting publications both indicated that the Brehon Laws were becoming 'respectable' and were part of the process through which they became 'respectable'; a system of control that in early modern Ireland had been dismissed by English commentators as 'lewd' or 'barbarous' custom was now re-categorised as 'ancient law' and widely considered an accepted focus of scholarly and political debate. In the early seventeenth century, Sir John Davies, a lawyer, poet and statesman, who held the office of solicitor-general and later attorney-general, outlined the degenerative effects of the Brehon Laws on the so-called Old English, the descendents of the original Anglo-Norman conquerors of the country:

> These were the Irish customs, which the English colonies did embrace and use, after they had rejected the civil and honourable laws and customs of England, whereby they became degenerate and metamorphosed like Nabuchadnezzar who although he had the face of a man, had the heart of a beast; or like those who had drunk of Circe's cup, and were turned into very beasts; and yet took such pleasure in their beastly manner of life, as they would

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> not return to their shape of men again. Insomuch as within less time than the age of a man, they had no marks or differences left amongst them of that noble nation, from which they were descended. (Davies 181–2)

In the late nineteenth century, we find early Irish laws and customs serving a very different function in House of Commons debates on Gladstone's 1870 Land Act. In these debates, Gladstone justified some of the more radical components of that Act, such as the recognition of tenant rights, with reference to customary law that had its origins in the Brehon Laws:

> [In Ireland] where the old Irish ideas were never supplanted except by the rude hand of violence – by laws written on the Statue Book, but never entering into the hearts of the Irish people – the people have not generally embraced the idea of the occupation of land by contract; and the old Irish notion that some interest in the soil adheres to the tenant, even though his contract has expired, is everywhere rooted in the popular mind. (Qtd in Dewey 59)

These two passages allow us to chart – even if in an overly simplistic way – the recuperation process facilitated by the translation of the Brehon Laws.

The focus of this chapter is India and the translation of the Irish Brehon Laws. In particular, this chapter will explore the relationship between colonial rule in India and attitudes towards both the Brehon Laws and English rule in Ireland. In order to explore this relationship, however, it is first necessary to provide a brief overview of the connection between colonial rule in India and the translation of so-called native law. Central to colonial rule in India was the concept of governing the country according to its own laws and customs. In 1772, Warren Hastings, who had been appointed to the newly created position of governor-general, was instructed by the directors of the East India Company to stabilise the Bengal territories. When writing to the Court of Directors in relation of his plan for the better government of Bengal, he pointed out the necessity of 'adapt[ing] our Regulations to the Manners and Understandings of the People' and 'adhering as closely as we are able to their ancient uses and Institutions' (qtd in Cohn 26). Queen Victoria was to echo these sentiments in her 1858 proclamation to mark the end of the Company's rule and the establishment of direct rule of India under the Crown of Great Britain. 'Due regard', she announced, would 'be paid to the ancient rights, usages and customs of India' in 'framing and administering the law' (qtd in Philips 10–11).

During the eighteenth and early nineteenth centuries, numerous Sanskrit, Persian and Arabic legal texts were translated into English. The translation of 'native' law in India, though enthusiastically pursued by those with a personal interest in the 'orient', was never a

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straightforward scholarly enterprise. From the very beginning, it was understood to have an important practical and political component. In a 'Preface' to the translated *Institutes of Hindu Law*, Sir William Jones, a classical scholar who had studied Persian and Arabic at Oxford and had actively sought an appointment as a judge in India in the hope of furthering his orientalist studies, stated that one of his 'principle motives' in studying and embarking on the translation of Hindu Law was to ensure that the laws and customs through which India was to be governed were 'fully and accurately known' (Jones xi).

The limitations of both this translation process and the connected concept of governing India according to its own laws and customs have already been pointed out by a number of commentators. The anthropologist Bernard S. Cohn, for example, has argued that the attempt made by legal scholars like Nathaniel Halhed, Sir William Jones and Henry Thomas Colebrooke to reconstitute a 'genuine' or 'authoritative' Indian law through the translation of texts led to a systematic refiguration of Indian legal traditions and principles. By giving primacy to text over interpretative practice, for example, they distorted both Hindu and Islamic legal practices which were often heavily reliant on oral transmission. Furthermore, these scholars, Cohn points out, were primarily interested in establishing rules determining 'contracts' and 'succession' that would affect the ownership and transmission of property and often excised those parts of the texts that were concerned with what were considered to be ethical and religious matters (Cohn 71).[2]

For the purpose of this chapter, however, I am more interested in the ideological functions served by this translation process and the form of rule with which it was associated. As Joe Cleary points out in his seminal essay, '"Misplaced Ideas"', within administrative colonies such as India, colonialism, at least initially, did not tend to create totally new societies. This, however, had little to do with what commentators like Sir William Jones might have interpreted as a respect for 'native' customs. According to Cleary, administrative colonies (also known as colonies of exploitation) tended to be established where European powers found that they could 'benefit most by extracting economic surplus or valuable mineral resources from these lands without systematically destroying their traditional societies' (Cleary 30). In India, the concept of ruling the country according to its own laws and customs also helped to legitimise English rule by allowing a contrast to be formed between English rule and a prior Muslim rule that supposedly had not been so respectful of the laws and customs of the Hindu portion of the population; a contrast between a benevolent English rule that nurtured native usages and customs and a prior despotic Muslim rule that systematically derided those usages and customs that were different from its own. In Nathaniel Halhed's 'Preface' to *A Code of Gentoo Laws; or, Ordinations of the Pundits*, it was Warren Hastings'

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knowledge of the 'terror and confusion' that had resulted from the imposition of the 'Laws of Mahomed' that was the source of his interest in the laws and customs of the Hindus and the reason why he commissioned that particular translation (Halhed 183).

While this denigration of local rule provided a useful means of legitimising English rule in India, it had quite a different impact in Ireland. The very ideological tools that were used to legitimise English rule in India formed the basis for a critique of English rule in Ireland. For example, George Campbell's analysis of Irish land issues was shaped by the distinctions that the English in India had formed between 'good' rule that respects and sustains 'native' laws and customs and 'bad' rule that denigrates such laws and customs. Campbell, a Scotsman who worked as a settlement officer in the Punjab, a judicial commissioner in Oudh, and a chief commissioner in the Central Provinces, travelled to Ireland on a number of occasions in the late 1860s in preparation for a book on Irish property relations. In the resulting text, *The Irish Land*, Campbell pinpointed what he described as the 'cardinal mistake' of English rule in Ireland to be the rejection of Irish laws as 'nothing but "lewd customs" ' and the subsequent 'introduction of English laws and purely English courts' (Campbell 30). For Campbell, the invasive nature of English rule in Ireland was most apparent when juxtaposed to the system that operated in India: 'it was as if we had a large body of English colonists settled in India backed by English law and English courts' (Campbell 31). In Campbell's analysis, there were two main points of contrast between rule in India and rule in Ireland: the sheer number of colonists in relation to the native population and the extent to which English laws and legal institutions had been substituted for those that existed prior to conquest. Writing not long after the publication of Campbell's *The Irish Land*, the Irish economist, John Elliot Cairnes, in his review of James Anthony Froude's *The English in Ireland in the Eighteenth Century*, followed his own endorsement of the system of rule that operated in India by asking the question that is the logical outcome of such an analysis:

> Every custom, not positively criminal, has been respected; the native religions have not only been tolerated, but in many instances endowed; the Hindu and Mohammedan Codes have been incorporated into the jurisprudence administered in our courts; the land settlements are elaborate attempts made, with whatever success, certainly in good faith, to give effect to the ancient traditions and practices of the country. If this method of government has been found efficacious in India, why should it not have been attended with equal benefit to Ireland? (Cairnes 186)[3]

Reading these commentators, we are reminded that the translation of 'native' law in Ireland and India took place under very different circumstances. In belated answer to Cairnes's question as to why the

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Indian model of government had not been applied to Ireland, I want to refer once again to "Misplaced Ideas" and, in particular, to Cleary's claims that those involved in the establishment of mixed settlement colonies, such as Ireland, sought to 'monopolise control of the land and to replace native political and cultural institutions with their own' (Cleary 30). Colonial practices in mixed settlement colonies were no more exploitative than those in administrative colonies, but they did tend to be of a more interventionist nature. Hence, in contrast to the legal situation in India, English common law had been the official legal system in Ireland for hundreds of years before the translation project took place and in the titles of the translated volumes the Brehon Laws are referred to as 'ancient'.

Nevertheless, any attempt to categorise the translation of the Brehon Laws as a purely antiquarian and scholarly project would be misguided. As is the case in the 'Preface' to Jones's translation of Hindu Law and the letter he sent to Cornwallis seeking funding for a *Digest of Hindu and Mohammedan Laws*, the letter that the Irish antiquarians Charles Graves and James Todd sent to the government looking for financial backing for the translation of the Brehon Laws had an important practical component. It is clear from this letter and also from the debates that accompanied the translation process that in nineteenth-century Ireland the Brehon Laws were assigned a very contemporary relevance that was missing, for example, from the debates surrounding the origins of Irish round towers.[4] This may explain why the government agreed to fund this project, but turned down a similar request for a grant by the Royal Irish Academy (RIA) for the translation and publication of Irish historical documents. The letter opens by referring to the intense scholarly interest that there was at that time in the Brehon Laws. The Brehon Law manuscripts, it is argued, 'bear the marks of great antiquity' and, consequently, are of 'singular interest' (Graves and Todd 3). In the paragraphs that follow, however, it is made clear that the government, in funding the translation project, would be pursuing its own interests and not simply furthering scholarship. The letter acknowledges that common law has long been the official legal system in Ireland, but goes on to claim that the Brehon Laws 'continued to have force in Ireland in comparatively recent times' (ibid.). The content of the Brehon Law manuscripts would, therefore, 'have important bearings upon the existing condition of society in Ireland' (ibid.). These manuscripts, it is argued, would be a useful source of information not only for the antiquarian, the historian and the linguist, but also for the English politician who is struggling for a better understanding of the Irish people:

> Perhaps even there are circumstances which would render the publication of the Brehon Laws especially interesting in the eyes of the politician who has studied and been perplexed by the

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> anomalies of Irish character. Is it unlikely that the Irishman's habits of thought and action were, in the first instance, reflected in his laws, and have been influenced, even down to the present day, by institutions to which his countrymen clung for centuries with a desperate tenacity? (Ibid.)

Graves and Todd were not alone in making a case for the contemporary relevance of the Brehon Laws. A number of other commentators ranging from judges to administrators to interested parties argued that aspects of Irish rural culture, in particular the rundale system of landholding and tenant-farmers' assertion of rights of occupancy, had their origins in the Brehon Laws. In a speech given before the Social Science Association to mark the commencement of the publication of *The Ancient Laws and Institutes of Ireland*, Lord Thomas O'Hagan justified the translation project on the grounds that the Brehon Laws 'manifest the principles and peculiar notions which guided the Irish in their dealings with the land, and which, to this hour, have not ceased to operate, through dim tradition, on our actual state' (O'Hagan 83). The editors of the second volume of this publication, W. Neilson Hancock and Thaddeus O'Mahony, allude to the afterlife of the Senchus Mor, one of the earliest examples of the Brehon Laws, in such practices as the sending home of remittances by Irish emigrants (Hancock and O'Mahony lvi). Frederick Engels, who took a keen interest in the translation process and wrote about it on a number of occasions to Karl Marx,[5] was adamant that this system of law, though 'forcibly broken up by the English [. . .] still lives today in the consciousness of the people' and in such customs as the rundale system of landholding and faction fighting (Engels 192, 194). Another commentator, David Fitzgerald, was, like George Campbell, to find a much wider contemporary significance for the old Irish legal system, arguing that 'traditions and ideas derived from it continue to influence the mass of the Irish people to-day'. Among the 'survivals' referred to by Fitzgerald was a custom of landholding that resulted in the 'deep-lying feeling of the Irish farmer that so long as he pays rent for the land he has a right to live on it, and that to evict him from his holding is in a certain sense to deprive him of his lawful property' (Fitzgerald 479).

In Graves and Todd's letter, a knowledge of the Brehon Laws would lead to a better understanding of the Irishman's 'habits of thought and action' and would, therefore, be an important tool in the governing of the country. This appeal to the government's self-interest is best interpreted in the context of a crisis of rule in nineteenth-century Ireland that was the result of the failure of the vast majority of the Irish people, particularly at times of heightened economic and political tensions, to fully engage with the official legal system. Clifford Lloyd, who was assigned in 1881 to the newly established position of Special Resident Magistrate, complained of an Irish populace who refused to come

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forward as witnesses, were reluctant to pass a guilty verdict when on a jury, and 'no more sought redress at the magistrate's court, but applied to that of the Land League for the adjustment of their disputes and the redress of their grievances, real and imaginary' (Lloyd 79).[6] For George Campbell, whose analysis of Irish issues was shaped by ideas of rule developed in the governing of India, this crisis was primarily the result of a gap between law and custom that had its origins in a failure to acknowledge pre-conquest law and incorporate its concepts and practices into the official legal system. The outcome of this flawed policy, according to Campbell, was the existence in Ireland of two mechanisms of control: the official system of law and the laws and customs of the country. 'In the clashing of these two systems', Campbell concluded, 'lies the whole difficulty' (Campbell 6).

William Gladstone introduced the more controversial aspects of his 1870 Land Act by referring to the same body of ideas that underpinned Campbell's work, pointing to the gap that existed between the 'laws written on the Statute Book' and 'the old Irish notion' that 'is everywhere rooted in the popular mind' (qtd in Dewey 59). Through his later 1881 Land Act, which restricted a landlord's right to evict and made provisions for the tenant-farmer to sell his or her 'interest' in the holding, Gladstone was attempting to bridge this perceived gap between law and custom by recognising rights of occupancy that he believed had their origins in the Brehon Laws. Gladstone's 1881 Land Act could, therefore, be described as a belated attempt to correct what Campbell had claimed to be the fundamental mistake of English rule in Ireland by following the Indian model and incorporating elements of 'native' law into the official legal system. The concept of governing India according to its own laws and customs may have been intricately linked to the specific colonial structures that were established there, but the success of this concept as an ideological tool in legitimising English rule in India led many nineteenth-century commentators to endorse its application to Ireland, a very different colonial setting.

NOTES

1. The commissioners, George Petrie and Major Thomas Aiskew Larcom, and the translators, John O'Donovan and Eugene O'Curry, had previously worked together on the Ordnance Survey project.
2. See also Anderson's view that colonial jurists endorsed highly orthodox forms of Islamic law which were applied more widely and rigorously than in the pre-colonial period.
3. I would like to thank Tadhg Foley for drawing my attention to this review.
4. For an overview of the debates surrounding the origins of the Irish round towers, see Leerssen.
5. See Marx and Engels, 392, 399, 405, 413–14. In March 1870, for example, Engels wrote to Marx of both his excitement at having finally received a copy of the

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Senchus Mor (405) and his outrage at the idleness of Brehon Law commissioners (414).

6. For an analysis of this failure, see Laird.

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