

The East India Company: Non-State Actor as Treaty-Maker

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1 Introduction

‘The charter of 1661 to the British East India Company authorized the entity to make treaties, and it was through the exercise of this authority that British rule came to India.’¹

D. P. O’Connell’s concise summation of how Britain came to govern over India is somewhat misleading. The evolution of British rule in India was underpinned by both conquest and through the signing of treaties with native rulers. What makes these steps more unique is the fact that these conquests and treaties were, until 1858, made by a corporation, the East India Company. Over time, it was the ‘John Company’ that would, by virtue of treaties signed with the Native Princes of the Indian states, and through armed force, acquire authority over large portions of Indian territory. As Mark Lindley points out:

What was at first a mere trading corporation came in the course of time to exercise sovereign rights over an immense area which afterwards passed under the direct administration of the British Crown.²

That a chartered company, the East India Company, acquired territory by treaties and conquest was not unique in the history of British imperialism.³

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1 DP O’Connell, ‘International law and Boundary Disputes’ (1960) 54 Proceedings of the American Society of International Law at its Annual Meeting (1921–1969) 81.

2 MF Lindley, *The Acquisition and Government of Backward Territory in International Law* (Longman, Green and Co, 1926) 94.

3 The East India Company was a precursor to the companies established under the Royal Charter in the mid-19th century such as George Goldie’s United African Company. This

However, the very fact that a company came to pre-eminence over almost the whole of the Indian subcontinent was in itself unusual, and was recognised as such as it came about. As Nick Robins has observed, there was acknowledgement by employees of the company of the:

... [P]eculiarity of situation where a commercial body was ‘exercising sovereignty over more people, with larger revenue and a larger army than the British state ... there was little doubt that ‘the company is an anomaly’ and part of a system where everything is anomaly.⁴

This situation of anomaly was reflected in the period of Indian history in which the East India Company came to prominence. It was a time when the Native Princely States sought greater autonomy from, but continued to pledge allegiance to, the Mughal Empire. The Company gradually eroded, and then assumed, the authority of the Empire until its own position was superseded by the British Crown.

2 The Rise of the East India Company

From the 17th century to the 19th century, it was often the case that any contact between Europeans and non-Europeans would be as a result of the activities of trading companies. The characteristics and functions of such companies have been clearly summarized by Lindley:

Formed in most cases, at all events from the point of view of the shareholders for the purpose of earning dividends, these corporations have proved to be the instruments by which enormous areas have been brought under the dominion of the states under whose auspices they were created, and in this way they have been utilised by all the important colonizing powers. The special field of their operation has been territory which the state creating them was not at the time prepared to administer directly, but which offered good prospects from the point of view of trade or industrial exploration.⁵

company would sign treaties with native leaders and in time come to have control of vast areas of West Africa, See L Lumley, ‘Goldie, Sir George Dashwood Taubman (1846–1925)’, in rev. J Flint (eds), *Oxford Dictionary of National Biography* (OUP 2004); online edn, <<http://www.oxforddnb.com/view/article/33441>>, accessed 17 April 2015

4 Secretary of the Board of Control Thomas Babington Macaulay quoted in N Robins, *The Corporation that Changed the World How the East India Company shaped the Modern Multinational* (2nd edn, Pluto Press 2012) 186.

5 Lindley (n 2) 91.