Dear colleagues,

Many thanks for taking the time to read and comment on this draft, particularly during these uncertain and rather overwhelming times. I can only apologize for its abrupt nature, and I wanted to take this opportunity to provide some background information and to clarify how it fits in with the rest of my project.

My project is a history of the international legal doctrine of sovereignty in colonial South Asia, and I focus specifically on legal debates surrounding the "princely states" from 1858 to 1950. There were approximately 600 princely states and they covered about two-fifths of the area and included one-third of the population of colonial South Asia. Although the government of India exercised certain functions, such as defence and external affairs, on the princes' behalf, the states were governed by local rulers and were considered to be legally distinct from British India, which was directly administered by the British government. The British handled their relations with the states through the Political Department of the government of India, which was headed by the political secretary (also referred to as the foreign secretary). Political officers, recruited from the army and the civil service, staffed the Department's offices; they were also posted at states' courts to "advise" the princes on how to rule. Much of this information will be included in the introduction of the manuscript.

This draft comprises what I envisage to be the third chapter of the manuscript. It contains several references to a previous chapter on late nineteenth-century jurisdictional disputes between the princely states and the British government. For those who are interested, you can find a version of those arguments in "Jousting Over Jurisdiction: Sovereignty and International Law in Late Nineteenth-Century South Asia," a piece published in volume 38, issue 2 of the Law and History Review.

The draft is a work-in-progress; I have tried to make the argument as complete as possible, although I have not managed to include a conclusion (this semester has been somewhat busy). I also realize that the draft is rather long; you may wish to focus on the introduction (pages 1-4) and the final section on the Indian States Committee (pages 24-34).

I hope that this note provides some context within which to consider this draft. I look forward to your comments and our discussion in the workshop.

Warmest wishes,
Priyasha

Priyasha Saksena
Draft – please do not cite or circulate

The Many Meanings of Divisible Sovereignty: Princely States, British Officials, and the Indian States Committee, 1928-1929[*]

In January 1925, four army officers stationed in the British Indian metropolis of Bombay were driving home after a round of golf. While crossing the posh neighbourhood of Malabar Hill, they encountered a woman being assaulted and dragged into a car by a gang of men. They rescued the woman, Mumtaz Begum, from her alleged abductors, but this was only the beginning of a sordid tale of passion, revenge, and murder.[1] Mumtaz revealed that she had been a palace dancer, and part of the *zenana*[2] at the court of Tukojirao III Holkar XIII Bahadur, the *maharaja* of the princely state of Indore. Mumtaz alleged that she had been abused during her stay in the state, on account of which she ran away and made her way to Bombay, where she started living with a businessman named Abdul Kadir Bawla. Bawla, travelling with Mumtaz on that fateful night, was shot by the assailants and died in hospital.[3] Nine men were tried for his murder; all but two were found guilty.[4]

In the meantime, rumours surrounding Tukojirao's connection with the incident began to swirl. Police investigations revealed that many of the assailants had been employees of the state of Indore.[5] The Bombay press alleged that the Indore state treasury financed the defence of the accused, implying that Tukojirao himself had been involved in ordering the failed abduction.[6] On account of the extraordinarily public nature of the allegations against Tukojirao, the British were forced to act against a ruling prince, whose position they had sworn to uphold under treaty and political practice. They offered him a commission of inquiry to investigate his role in the affair, in order to save him the ignominy of a criminal trial.[7] Tukojirao was, however, furious at the turn of events, and vehemently argued that "neither on the analogy of international law, nor as a matter resting upon treaty, [was] a Prince of [his] position liable to be tried."[8] Instead of accepting the commission, Tukojirao abdicated in favour of his son.[9]

As scholars like Angma Jhala have argued, the Malabar Hill murder (as it was branded in the local press) brought into focus the lives of the Indian princes and the position of colonized

[*] I use material from the India Office Records, Asia, Pacific, and Africa Collections, British Library, London (hereafter IOR); the National Archives of India, New Delhi (hereafter NAI); and the National Archives of India, Bhopal Regional Office (hereafter NAI – Bhopal).

[1] "A Hold-Up by Desperadoes," *The Times of India*, 13 January 1925.

[2] The *zenana* constituted the "sequestered female quarters of the palace," as distinct from the *mardana*, the male space. See Angma Dey Jhala, *Courtly Indian Women in Late Imperial India* (London: Pickering & Chatto, 2008), 7.

[3] "A Hold-Up by Desperadoes," *The Times of India*, 13 January 1925.

[4] "Three to be Hanged," *The Times of India*, 25 May 1925. A snapshot of the case and the trial can be found in P. B. Vachha, *Famous Judges, Lawyers and Cases of Bombay: A Judicial History of Bombay During the British Period* (Bombay: N. M. Tripathi Private Ltd., 1962), 329-338.

[5] "Indore Arrests," *The Times of India*, 22 January 1925.

[6] "Indore to Foot Heavy Bill," *The Times of India*, 6 February 1926.

[7] "Viceroy Decides," *The Times of India*, 2 February 1926. Such commissions of inquiry were appointed in a situation when, in the view of the governor-general, there arose the question of depriving a ruling prince "temporarily or permanently of any of the rights, dignities, powers or privileges, to which he as a Ruler is entitled." The commission's role was to offer advice and it was only appointed if the prince who was the subject of the inquiry agreed to the appointment. The specific procedure was laid out in a government of India resolution passed in 1920, the text of which can be found in D. K. Sen, *The Indian States, Their Status, Rights and Obligations* (London: Sweet and Maxwell, 1930), 232-234.

[8] The text of Tukojirao's letter to the Political Department of the government of India was published in various newspapers. See "Beneath His Dignity: Holkar's Reply," *The Times of India*, 4 March 1926.

[9] "Indore Abdication," *The Times of India*, 1 March 1926.

women in relation to elite men.[10] It also highlighted the complex relationship between the British colonial state and the princes, one that "cannot be simplistically determined as one of either independence or dependency."[11] The case raised questions about the nature and extent of the sovereign powers exercised by the British and the princes, including on the scope of British authority when it came to the trial of ruling princes, the legal basis of commissions of inquiry, and the nature and significance of the treaties between the British government and the princely states.

In this chapter, I will examine interwar debates over the legal status of the princely states to illuminate the broader history of the doctrine of sovereignty. Scholars have chronicled the role played by international institutions in state-making, the establishment of eclectic modes of international administration in central and eastern Europe, and the management of non-European territories that were considered to be unable to govern themselves.[12] Sovereignty, therefore, was a concept in immense flux at this time, with jurists creating new legal species (such as mandates) that were outside the traditional subject of the state and often marked by their incompleteness in comparison with the state.[13] The invention of these novel legal personalities placed additional pressure on the "boundaries of the international,"[14] the definition of which has always been a central concern for international lawyers. In the context of the British empire, the escalating controversy over the international status of the dominions also raised questions about the frontier between international, imperial, and national law, with the language of sovereignty playing a key role in attempts to draw these borders.[15]

In interwar South Asia too, a range of actors defined sovereignty in different ways in order to construct political orders that aligned with their interests. In the late nineteenth century, as I described in the last chapter, the princes argued that sovereignty was "territorial" to limit the scope of British interference in the internal affairs of the states; this strategy was largely futile

[10] Jhala, *Courtly Indian Women in Late Imperial India*, 125-159; and Angma D. Jhala, "The Malabar Hill Murder Trial of 1925: Sovereignty, Law and Sexual Politics in Colonial Princely India," *The Indian Economic and Social History Review* 46, no. 3 (2009): 373-400.
[11] Jhala, "The Malabar Hill Murder Trial of 1925," 398.
[12] See, for instance, Nathaniel Berman, ""But the Alternative is Despair": European Nationalism and the Modernist Renewal of International Law," *Harvard Law Review* 106, no. 8 (1992-1993): 1792-1903; and Antony Anghie, "Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations," *New York University Journal of International Law and Politics* 34, no. 3 (2002): 513-634.
[13] See Rose Parfitt, "*Empire des Nègres Blancs*: The Hybridity of International Personality and the Abyssinia Crisis of 1935-36," *Leiden Journal of International Law* 24, no. 4 (2011): 849-872; and Natasha Wheatley, "Spectral Legal Personality in Interwar International Law: On New Ways of Not Being a State," *Law and History Review* 35, no. 3 (2017): 753-787.
[14] I borrow this phrase from Jennifer Pitts. See Jennifer Pitts, *Boundaries of the International: Law and Empire* (Cambridge, MA: Harvard University Press, 2018).
[15] The term "dominion" is usually associated with the constitutional status of Canada, Newfoundland, Australia, New Zealand, Ireland, and South Africa. In the 1920s, political leaders in the dominions started to call for more independence relating to legislation and foreign policy rather than being completely subjected to the British parliament. For some of the contemporaneous contributions to the debate, see Malcolm M. Lewis, "The International Status of the British Self-Governing Dominions," *British Year Book of International Law* 21 (1922-23): 21-41; Arthur Berriedale Keith, *The Sovereignty of the British Dominions* (London: Macmillan and Co., 1929); Philip Noel-Baker, *The Present Juridical Status of British Dominions in International Law* (London: Longmans, 1929); and K. C. Wheare, *The Statute of Westminster, 1931* (Oxford: Clarendon Press, 1933). For more recent evaluations of the debates over dominion status, see Thomas Mohr, "The Statute of Westminster, 1931: An Irish Perspective," *Law and History Review* 31, no. 4 (2013): 749-791; Donal Coffey, "'The Right to Shoot Himself': Secession in the British Commonwealth of Nations," *The Journal of Legal History* 39, no. 2 (2018): 117-139; and Peter C. Oliver, ""Dominion Status": History, Framework and Context," *International Journal of Constitutional Law* 17, no. 4 (2019): 1173-1191.

as British officials managed to rely on "divisible sovereignty" to entrench their paramountcy in the region. However, debates over the legal status of the princely states persisted; as the Malabar Hill murder demonstrates, the scope and extent of British and princely sovereign powers remained deeply contested. In fact, as Stephen Legg argues, the establishment of interwar international institutions generated additional uncertainties on account of conflicting views relating to the applicability of League of Nations conventions to the states.[16] In this context, British politicians, colonial officials, anticolonial nationalists, princes, and state administrators were all significant participants in debates over the scope and definition of the doctrine of sovereignty.

In addition to global events, significant changes in local context also had profound implications for the relationship between the British government and the princely states. In particular, as historians of the princely states have noted, the strengthening of anticolonial nationalism in the first two decades of the twentieth century forced the British to reach out to the states for support, thereby increasing the space for the princes to claim wider sovereign powers and argue for more robust limitations on British interference in their internal affairs.[17] On account of the heightened role for the princes in South Asian and imperial politics, earlier British policy of enforcing the political isolation of the states slowly deteriorated.[18] The princes took this opportunity to start acting jointly; while individual disputes between some states and the British government persisted, collective action was crucial to shaping the relationship. This united front came to a head at the Indian States Committee, appointed in 1927 to report upon the nature of the relationship between the British government and the princely states. Although there is considerable scholarship on the changing nature of these ties in the interwar period,[19] scholars have only briefly examined the legal arguments that were made by the princes and colonial officials in their attempts to resolve disputes and clarify the nature of their association. Law, and the concept of sovereignty in particular, played a key role in defining the relationship between the British government and the princely states, and their respective attempts to construct specific political orders to advocate for their concerns.

In this chapter, I will analyse a range of material (including textbooks, memos, legal opinions, political tracts, public speeches, private letters, minutes of meetings, and oral arguments) to trace versions of sovereignty articulated in the interwar period, focusing both on debates at the

[16] Stephen Legg, "An International Anomaly? Sovereignty, the League of Nations and India's Princely Geographies," *Journal of Historical Geography* 43 (2014): 96–110.

[17] See Ian Copland, *The Princes of India in the Endgame of Empire, 1917-1947* (Cambridge: Cambridge University Press, 1997), 27-32; and Barbara Ramusack, *The Indian Princes and their States* (Cambridge: Cambridge University Press, 2004), 128-129.

[18] In the nineteenth century, the British insisted that the states communicate with each other only through the medium of British political officers. At one stage, the government of Bombay even refused to accept joint petitions from the Kathiawar states, arguing that "if by treaty and custom they are separate entities unable to enter into foreign negotiations, it seemed to this Government desirable that each State should look for redress on account of its own individual grievances to the Government of Bombay." See Letter from the Political Secretary, Government of Bombay to the Foreign Secretary, Government of India, 12 March 1891, IOR/P/3967, Proceedings of the Government of India in the Foreign Department, Internal, July 1891, no. 48. The strict policy of isolation was loosened with imperial assemblages and coronation *durbars* and finally on account of princely participation in the war effort. See Ramusack, *The Indian Princes and their States*, 126.

[19] See Barbara Ramusack, *The Princes of India in the Twilight of Empire: Dissolution of a Patron-Client System, 1914-1939* (Columbus: Ohio State University Press, 1978); S. R. Ashton, *British Policy Towards the Indian States, 1905-1939* (London: Curzon Press, 1982); Ian Copland, *The British Raj and the Indian Princes: Paramountcy in Western India, 1857–1930* (Bombay: Orient Longman, 1982), 241-296; Copland, *The Princes of India in the Endgame of Empire*, 15-182; and Ramusack, *The Indian Princes and their States*, 105-131, 245-274.

international and the regional levels. Since "location matters"[20] in the development of legal concepts, it is only by parsing through global and local contexts that we can reach an understanding of the specific structure of the legal arguments made by various actors, including international lawyers, British politicians, colonial officials, princes, and state bureaucrats. As I will describe in this chapter, most participants in interwar debates critiqued absolutist approaches to the doctrine of sovereignty, preferring to claim that sovereignty was "divisible;" however, they also differed on precisely how this division of sovereign powers was to be done. Sovereignty, therefore, is polysemic, and deeper insight into the many definitions of sovereignty will help to shed light on the history of sovereignty more generally.

I will first examine the definitions of sovereignty put forth by interwar British international lawyers, focusing on Hersch Lauterpacht and James Brierly. Although critical of the idea of absolute state sovereignty, both advocated relatively "legalistic" approaches to international institutions, envisioning a major role for international courts to "discipline" politics. British politicians, on the other hand, preferred a "political" League of Nations, considering it important for pragmatic politics to be able to resolve international problems. I will then examine the views of British colonial officials in South Asia, who adopted an approach similar to their counterparts in London and advocated the necessity of defining sovereignty in a "flexible" manner that depended on political interests in order to be able to resolve colonial problems. This pragmatic approach to legal concepts enabled the British government to extend the scope and exercise of their powers in the states based on "imperial interests." I will then turn to the response of the princely states, which developed their own definition of sovereignty. In order to maintain the fiction that they were "allies" of the Crown, they agreed that sovereignty was "divisible." However, in order to limit British interference and carve out a space for themselves in the struggle for power, they focused on "treaty rights" and "state consent" rather than "imperial interests" to determine the manner in which sovereign powers were divided between the states and the British government. Both the British government and the princely states, therefore, used the language of "divisible" sovereignty, but in very different ways. They placed sophisticated versions of these arguments before the Indian States Committee, which I will examine in the final part of this chapter in order to trace the evolution of the relationship between the British government and the states and to draw insights for the broader history of sovereignty.

Sovereignty in Interwar International Law

International lawyers, as Hilary Charlesworth notes, "revel in a good crisis" since it "provides a focus for the development of the discipline."[21] The First World War was precisely such a crisis, a moment that is often considered to mark a turning point in the history of international law. In the aftermath of the war, international lawyers started to argue that the nineteenth century discipline had been unduly formalistic and focused relentlessly on an untrammelled version of sovereignty.[22] Such a definition of sovereignty was, these scholars argued, ideologically dangerous as it appeared to condone even the most extreme actions taken by

[20] B. S. Chimni, "The World of TWAIL: Introduction to the Special Issue," *Trade, Law and Development* 3, no. 1 (2011): 22.
[21] Hilary Charlesworth, "International Law: A Discipline of Crisis," *Modern Law Review* 65, no. 3 (2002): 377.
[22] David Kennedy, "International Law and the Nineteenth Century: History of an Illusion," *Quinnipiac Law Review* 17, no. 1 (1997): 100-104.

states, pushing the world into war.[23] Consequently, the critique of sovereignty constituted a key element of the self-conscious reimagination of the discipline of international law in the early twentieth century.

The "renewal" of the discipline, which international lawyers charted out as "a progressive story of modernization, internationalization, and the left,"[24] was accompanied by a "move to institutions"[25] in international politics and diplomacy. The most prominent of the interwar international institutions was the League of Nations.[26] Although contemporaneous scholarship on the League often portrayed it as signifying the movement from chaos to order and from politics to law,[27] Stephen Wertheim has persuasively argued for the need to take seriously the existence of multiple versions of internationalism.[28] In particular, he notes that during debates over the establishment of the League, activists argued for different types of international institutions: some advocated "a formalistic, legalistic conception of international organization"[29] that would be structured around a court that would mandatorily settle inter-state disputes and hoped for "the reign of law over politics,"[30] while others "privileged politicians' judgement above judicial settlement."[31]

The relationship between law and politics was a key theme in the writings of Hersch Lauterpacht[32] and James Brierly,[33] the pre-eminent international lawyers of interwar Britain.[34]

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[23] Richard Collins, "Classical Legal Positivism in International Law Revisited," in *International Legal Positivism in a Post-Modern World*, ed. Jörg Kammerhofer and Jean D'Aspremont (Cambridge: Cambridge University Press, 2014), 25-28. However, as Collins argues, the late nineteenth century was actually a time of methodological eclecticism, and the turn to positivism at the turn of the century was, in fact, concerned with defending the efficacy of the law as a system that could act as an effective restraint in international politics, rather than bolstering the power of sovereign states. See Collins, "Classical Legal Positivism in International Law Revisited," 32-36.

[24] Kennedy, "International Law and the Nineteenth Century," 102.

[25] I borrow this phrase from David Kennedy. See David Kennedy, "The Move to Institutions," *Cardozo Law Review* 8, no. 5 (1987): 841-988.

[26] There is considerable scholarship on the League of Nations, both contemporaneous and modern. For a review of the historiography on the League, see Susan Pedersen, "Back to the League of Nations," *American Historical Review* 112, no. 4 (2007): 1091-1117.

[27] For an overview of these moves in the literature, see Kennedy, "The Move to Institutions."

[28] Stephen Wertheim, "The League of Nations: A Retreat from International Law?," *Journal of Global History* 7, no. 2 (2012): 211.

[29] Wertheim, "The League of Nations," 211.

[30] Wertheim, "The League of Nations," 212.

[31] Wertheim, "The League of Nations," 213. For a description of this divide over the appropriate structure of the League among American international lawyers of the period, see David Kennedy, "When Renewal Repeats: Thinking Against the Box," *New York University Journal of International Law and Politics* 32, no. 2 (2000): 378-379.

[32] Lauterpacht was the Whewell Professor of International Law at Cambridge from 1938 to 1947. For a discussion Lauterpacht's life and the influence of his experiences on his scholarship, see Elihu Lauterpacht, *The Life of Sir Hersch Lauterpacht* (Cambridge: Cambridge University Press, 2010).

[33] Brierly was the Chichele Professor of Public International Law at Oxford from 1922 to 1947. For additional details on Brierly's academic career, see Humphrey Waldock, "Brierly, James Leslie (1881-1955)," in *Oxford Dictionary of National Biography*, ed. David Cannadine, online ed. (Oxford: Oxford University Press, 2004), https://doi.org/10.1093/ref:odnb/32069 (accessed September 29, 2020).

[34] Given the significance of Lauterpacht and Brierly in the field, there is considerable scholarship on their work and influence. See, for instance, Carl Landauer, "J. L. Brierly and The Modernization of International Law," *Vanderbilt Journal of Transnational Law* 25 (1993): 881-918; Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870-1960* (Cambridge: Cambridge University Press, 2001), 353-412; Martti Koskenniemi, "Hersch Lauterpacht," in *Jurists Uprooted: German-Speaking Émigré Lawyers in Twentieth-Century Britain*, ed. Jack Beatson and Reinhard Zimmermann (Oxford: Oxford University Press, 2004), 601-662; James Crawford, "Public International Law in Twentieth-Century England," in *Jurists Uprooted:*

It was this relationship that framed scholars' varied understandings of the role of law in society, and more particularly in the prevention of war, a question of great significance at the time. Lauterpacht, for instance, considered international law to be an idealistic project; therefore, in line with what he defined as "the Grotian tradition,"[35] he desired "the subjection of the totality of international relations to the rule of law."[36]

A central element in Lauterpacht's advocacy for the international rule of law was his critique of the absolutist notion of state sovereignty. For Lauterpacht, the definition of sovereignty as "the supreme authority of the State" was accurate for constitutional law, but not for international law.[37] Instead, he argued that "from the point of view of international law, sovereignty is a delegated bundle of rights."[38] Recognizing sovereignty as "divisible, modifiable and elastic"[39] would correspond with "the political and economic realities of international life"[40] by taking into account cases such as the League of Nations, the British dominions, and the Holy See, whose existence complicated the idea of absolute state sovereignty.[41]

Lauterpacht's critique of the absolutist version of sovereignty was not limited to it being contrary to social reality. Given his commitment to the supremacy of law in international affairs, Lauterpacht was deeply concerned by the limitations that absolute sovereignty placed on the role that law could play in international society. A specific concern related to the judicial resolution of international disputes, a cause that Lauterpacht championed. In his view, the doctrine of absolute sovereignty deduced the binding force of international law from the will of the states rather than on "a precept imposed from outside."[42] Since the doctrine implied that states were only bound by law that they had expressly or tacitly accepted, the jurisdiction of international tribunals depended on voluntary acceptance by states, and arbitration of disputes was not regarded as a fundamental duty owed by members of the international community to each other but as "a self-imposed concession."[43] The continual reaffirmation of the idea that the jurisdiction of international tribunals was limited by the will of sovereign states,

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German-Speaking Émigré Lawyers in Twentieth-Century Britain, ed. Jack Beatson and Reinhard Zimmermann (Oxford: Oxford University Press, 2004), 681-708; Iain Scobbie, "Hersch Lauterpacht," in *The Oxford Handbook of the History of International Law*, ed. Bardo Fassbender and Anne Peters (Oxford: Oxford University Press, 2012), 1179-1184; and Richard Collins, "The Progressive Conception of International Law: Brierly and Lauterpacht in the *Interbellum* Period," in *British Influences on International Law, 1915-2015*, ed. Robert McCorquodale and Jean-Pierre Gauci (Leiden: Brill Nijhoff, 2016), 437-487.

[35] Hersch Lauterpacht, "The Grotian Tradition in International Law," *British Year Book of International Law* 23 (1946): 1-53. Lauterpacht considered this article to be "the best thing that he had ever written." See Lauterpacht, *The Life of Sir Hersch Lauterpacht*, 279-280. Arnold McNair recalls Lauterpacht telling him that this article "contained more of his essential thinking and faith than anything else he had written." See Arnold McNair, "Memorial Article," *Annals of the British Academy* (1960): 379 as cited in Koskenniemi, *The Gentle Civilizer of Nations*, 356n11.

[36] Lauterpacht, "The Grotian Tradition in International Law," 51.

[37] Hersch Lauterpacht, "Sovereignty and Federation," in *International Law: Being the Collected Papers of Hersch Lauterpacht*, vol. 3, *The Law of Peace*, ed. Elihu Lauterpacht (Cambridge: Cambridge University Press, 1977), 9.

[38] Lauterpacht, "Sovereignty and Federation," 8.

[39] Lauterpacht, "Sovereignty and Federation," 8.

[40] Hersch Lauterpacht, "Westlake and Present Day International Law," *Economica* 15 (1925): 319.

[41] Lauterpacht, "Westlake and Present Day International Law," 311.

[42] Hersch Lauterpacht, *The Function of Law in the International Community* (Oxford: Clarendon Press, 1933), 3. The book expanded on claims that Lauterpacht initially made in earlier published articles, including Hersch Lauterpacht, "The Doctrine of Non-Justiciable Disputes in International Law," *Economica* 24 (1928): 277-317; and Hersch Lauterpacht, "The Nature of International Law and General Jurisprudence," *Economica* 37 (1932): 301-320.

[43] Lauterpacht, *The Function of Law in the International Community*, 3-4.

Lauterpacht argued, was "derogatory to general principles of law and to international law conceived as a system of law."[44]

For Lauterpacht, it was only through "an insistence on the justiciability of all disputes"[45] that law could fulfil its role "as a pacifier of humankind."[46] Although he acknowledged that law was not "a panacea," he argued that it was "a powerful constituent element of peace."[47] In his view, the "reign of law," as represented by obligatory arbitration as a rule of international law, was an essential condition of peace.[48] In a powerful plea for the place of law in society, Lauterpacht argued that peace was "pre-eminently a legal postulate."[49] He considered most problems of the interwar period to be "a measure of the absence of legal restraint on the conduct of foreign policy."[50] Consequently, he argued in favour of considering international law to be "a complete system,"[51] with all international events being amenable to legal analysis.[52]

With this commitment towards the "constitutionalization of politics,"[53] Lauterpacht saw the function of international law as being the regulation of "the mutual conduct of self-governing entities called states and marching towards the "federation of the world"."[54] By engaging in a functional reading of the institutional structures of the League of Nations,[55] Lauterpacht envisioned the League Covenant as a constitutional document.[56] The establishment of the League and the Permanent Court of International Justice was, in his view, a step towards "an emerging 'constitutional' architecture for international law."[57]

A similar approach to the constitutionalization of politics through international institutions was taken by James Brierly.[58] Although international institutions could not "yet be regarded as giving a 'constitution' to the international society," they could be "described as a beginning of its constitutional law."[59] He also called for a greater role of international law in society, arguing that it was "neither a chimera nor a panacea, but just one institution among others which we have at our disposal for the building up of a saner international order."[60]

Much like Lauterpacht, Brierly focused on the concept of sovereignty as the basis for concerns around the nature of international legal obligations, and thereby the international rule of law.

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[44] Lauterpacht, *The Function of Law in the International Community*, 428.
[45] Casper Sylvest, *British Liberal Internationalism, 1880-1930: Making Progress?* (Manchester: Manchester University Press, 2009), 205.
[46] Sylvest, *British Liberal Internationalism*, 206.
[47] Lauterpacht, *The Function of Law in the International Community*, 437.
[48] Lauterpacht, *The Function of Law in the International Community*, 437.
[49] Lauterpacht, *The Function of Law in the International Community*, 438.
[50] Koskenniemi, *The Gentle Civilizer of Nations*, 381.
[51] Koskenniemi, *The Gentle Civilizer of Nations*, 361. On the idea of international law being a system at par with domestic law, see Hersch Lauterpacht, *Private Law Sources and Analogies of International Law* (London: Longmans, Green and Co. Ltd., 1927).
[52] Koskenniemi, *The Gentle Civilizer of Nations*, 376.
[53] Koskenniemi, *The Gentle Civilizer of Nations*, 382.
[54] Lauterpacht, "Westlake and Present Day International Law," 324.
[55] Richard Collins, "Two Idea(l)s of the International Rule of Law," *Global Constitutionalism* 8, no. 2 (2019): 220.
[56] Hersch Lauterpacht, "The Covenant as the Higher Law," *British Year Book of International Law* 17 (1936): 54-65.
[57] Collins, "The Progressive Conception of International Law," 454.
[58] Collins, "The Progressive Conception of International Law," 455.
[59] J. L. Brierly, *The Law of Nations: An Introduction to the International Law of Peace*, 2nd ed. (Oxford: Clarendon Press, 1936), 66.
[60] Brierly, *The Law of Nations*, v-vi.

Sovereignty, in his view, was "merely a term that we find convenient when we wish to refer collectively a number of particular powers that states have traditionally claimed for themselves the right to exercise."[61] However, it had instead become a "semi-mystical sacrosanct quality or principle which is inherent in statehood, a source from which all the particular powers that states actually exercise are a sort of emanation."[62] Since the doctrine placed states above the law, scholars found it difficult to explain the basis of obligation in international law.[63]

The focus on state sovereignty, in Brierly's view, hampered the development of international institutions, specifically legislative machinery and courts.[64] Brierly was not, however, an unabashed supporter of the mandatory judicial settlement of disputes. He instead claimed that "there are many methods of reaching a peaceable settlement, and it does not follow that *any* dispute can be settled by *any* method."[65] Judicial settlement was, he argued, "a highly specialized" process that was capable of being "profitably applied" only to some disputes.[66] Law could only be a useful method of dispute settlement if "a society has accepted the rule of law as its way of life" as could be seen within states where the judicial system was a part of "the whole complicated machinery of a state's government."[67] Statements such as this one have led to Brierly often being considered as a "sceptic from within" the international law academy;[68] however, as Carl Landauer notes, Brierly's realism was thin, particularly during the earlier part of the interwar period, when his writings "expressed a deep belief in international legal progress."[69] The League of Nations, Brierly argued, presented "the only hope of the eventual triumph of law and reason in international relations."[70] Much like Lauterpacht, Brierly considered that international law had to act as an effective "restraint upon available political choices."[71]

Despite the arguments of the legalists in favour of codified law and the creation of a permanent international court, the League that was ultimately established proved to be of a different character. The structures of the League owe much to the views of key personnel involved in its creation. Although Woodrow Wilson, one of the chief architects of the League, has sometimes been portrayed as a champion of international law and international adjudication,[72] recent scholarship has noted that international lawyers became marginal players in the American foreign policy establishment once Wilson was elected president.[73] This scepticism of the role

[61] J. L. Brierly, "The Sovereign State Today," in *The Basis of Obligation in International Law and Other Papers*, ed. Hersch Lauterpacht and C. H. M. Waldock (Oxford: Clarendon Press, 1958), 350.
[62] Brierly, "The Sovereign State Today," 350.
[63] Brierly, *The Law of Nations*, 39.
[64] Brierly, *The Law of Nations*, 62-65.
[65] J. L. Brierly, "The Judicial Settlement of International Disputes," in *The Basis of Obligation in International Law and Other Papers*, ed. Hersch Lauterpacht and C. H. M. Waldock (Oxford: Clarendon Press, 1958), 94.
[66] Brierly, "The Judicial Settlement of International Disputes," 95.
[67] Brierly, *The Law of Nations*, 223.
[68] Crawford, "Public International Law in Twentieth-Century England," 698.
[69] Landauer, "J. L. Brierly and The Modernization of International Law," 916.
[70] Brierly, *The Law of Nations*, 222.
[71] Collins, "The Progressive Conception of International Law," 453.
[72] See, for instance, Mark Weston Janis, *America and the Law of Nations, 1776-1939* (Oxford: Oxford University Press, 2010), 158-175.
[73] See Stephen Wertheim, "The League That Wasn't: American Designs for a Legalist-Sanctionist League of Nations and the Intellectual Origins of International Organization, 1914-1920," *Diplomatic History* 35, no. 5 (2011): 797-836; Wertheim, "The League of Nations: A Retreat from International Law?;" and Benjamin Allen Coates, *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century* (Oxford: Oxford University Press, 2016), 152-176. On the more general scepticism of legalist ideas of

of lawyers in international institutions, and particularly of the idea of the mandatory judicial settlement of disputes, was even more overt amongst British politicians involved in negotiations over the establishment of the League. British politicians believed in the exercise of political discretion rather than legal sanctions imposed by an international judiciary.[74] Although initially envisaged as a "guarantee of peace,"[75] under the influence of Alfred Zimmern[76] and Jan Smuts,[77] British proposals for the League soon started to encompass economic and colonial questions.[78] Although these moves expanded the scope of the League, they were accompanied by increasing doubt about the effectiveness of judicial settlement of disputes, as seen, for instance in the writings of Robert Cecil,[79] who advised the British delegation to the Paris Peace Conference.[80] Cecil's position was echoed in a memorandum authored by Zimmern arguing in favour of pacific settlement of disputes, but advocating a political rather than a juridical approach to international relations; this draft became the basis for the position adopted by Britain in the negotiations in Paris.[81]

The idea of the League as a political and administrative rather than a judicial body can be most clearly seen in relation to colonial questions, an issue on which both Lauterpacht and Brierly had been curiously silent.[82] In eastern Europe, new states were created, although the Allies insisted on demanding protection for minority rights and internationalizing parts of the

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international law in the United States in the aftermath of the war, see Samuel J. Astorino, "The Impact of Sociological Jurisprudence on International Law in the Inter-War Period: The American Experience," *Duquesne Law Review* 34, no. 2 (1996): 277-298.

[74] Wertheim, "The League of Nations: A Retreat from International Law?," 223-227.

[75] I borrow this term from Peter Yearwood. See Peter J. Yearwood, *Guarantee of Peace: The League of Nations in British Policy, 1914-1925* (Oxford: Oxford University Press, 2009).

[76] Zimmern was trained as a classicist but became involved in the British government's proposals relating to international institutions in the interwar period. For details of his career, see D. J. Markwell, "Zimmern, Sir Alfred Eckhard (1879-1957)," in *Oxford Dictionary of National Biography*, ed. David Cannadine, online ed. (Oxford: Oxford University Press, 2004), https://doi.org/10.1093/ref:odnb/37088 (accessed October 5, 2020). For a discussion of how Zimmern's background in the classics influenced his thinking about international relations see, Mark M. Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton, NJ: Princeton University Press, 2009), 66-103.

[77] Smuts was prime minister of South Africa and became heavily involved in the design of the League provisions of the Mandate System. For details of his life and career, see Shula Marks, "Smuts, Jan Christiaan (1870-1950)," in *Oxford Dictionary of National Biography*, ed. David Cannadine, online ed. (Oxford: Oxford University Press, 2004), https://doi.org/10.1093/ref:odnb/36171 (accessed October 5, 2020). On Smuts's advocacy of "imperial internationalism," see Mazower, *No Enchanted Palace*, 28-65.

[78] Yearwood, *Guarantee of Peace*, 1-58.

[79] For details of Cecil's life and career, see Martin Ceadel, "Cecil, (Edgar Algernon) Robert Gascoyne- [known as Lord Robert Cecil], Viscount Cecil of Chelwood (1864-1958)," in *Oxford Dictionary of National Biography*, ed. David Cannadine, online ed. (Oxford: Oxford University Press, 2004), https://doi.org/10.1093/ref:odnb/32335 (accessed October 5, 2020).

[80] Yearwood, *Guarantee of Peace*, 83-84.

[81] Yearwood, *Guarantee of Peace*, 84-85. Others have also noted that despite Zimmern's advocacy of the League, he remained sceptical of the idea of "a World State governed by a World Law." See Paul Rich, "Reinventing Peace: David Davies, Alfred Zimmern and Liberal Internationalism in Interwar Britain," *International Relations* 16, no. 1 (2002): 122.

[82] Koskenniemi notes that Lauterpacht was ambivalent towards colonialism. See Koskenniemi, *The Gentle Civilizer of Nations*, 359. Lauterpacht's vast scholarship includes explicit discussion of colonial questions only on a few occasions. See, for instance, Hersch Lauterpacht, "International Law and Colonial Questions, 1870-1914," in *International Law: Being the Collected Papers of Hersch Lauterpacht*, vol. 2, *The Law of Peace*, ed. Elihu Lauterpacht (Cambridge: Cambridge University Press, 1977), 95-144; and Hersch Lauterpacht, "The Mandate Under International Law in the Covenant of the League of Nations," in *International Law: Being the Collected Papers of Hersch Lauterpacht*, vol. 3, *The Law of Peace*, ed. Elihu Lauterpacht (Cambridge: Cambridge University Press, 1977), 29-84.

territories to deal with concerns around nationalism.[83] Outside Europe, the Mandate System was the most explicit mechanism to internationalize colonial problems.[84] Under the Treaty of Versailles, German colonies and territories that had been part of the Ottoman Empire were placed under the management of mandatory powers (colonial powers such as the United Kingdom, France, Belgium, and Japan or British dominions such as Australia, New Zealand, and South Africa), which were overseen by the Permanent Mandates Commission of the League.[85] Since the territories were "inhabited by peoples not yet able to stand by themselves," they were placed under the "tutelage" of "advanced nations" who be guided by the principle that "the well-being and development of such peoples form a sacred trust of civilisation."[86] The territories were classified, allegedly on the basis of their relative stage of political evolution,[87] but in many cases, mandatory powers planned to delay withdrawal to a time "in the long-distant future."[88]

With this focus on administration, the Mandate System was a world away from the legalist ideal of taming politics through law. Scholars have long argued that the Mandate System exemplifies the turn towards "pragmatism" in international law. Antony Anghie, for instance, describes how interwar international lawyers such as Manley Hudson and Alejandro Alvarez critiqued law that was "devoid of social purpose and separated from the realities of social life."[89] Consequently, they drew insights from the social sciences in order to embed international law in social reality, pushed for flexible principles over fixed rules, and broke down the distinction between law and politics in order to resolve concrete international problems.[90] As Anghie notes, the idea of making law more socially oriented was key for the Mandate System, which combined law with the insights of disciplines like economics, sociology, and political science in order to "create the social and political infrastructure necessary to support a functioning sovereign state."[91] Balakrishnan Rajagopal also focuses on the administrative nature of the Mandate System, noting that mandatory authorities regularly collected and compared extensive sets of data about the mandated territories in order to draw conclusions and formulate universal principles.[92] Consequently, he argues, international law

[83] Berman, ""But the Alternative is Despair"."
[84] There is considerable literature on the Mandate System. For contemporaneous literature, see, for instance, Quincy Wright, *Mandates Under the League of the Nations* (Chicago, IL: Chicago University Press, 1930); and Norman Bentwich, *The Mandates System* (London: Longmans, 1930). For more recent historical assessments of the system, see Michael D. Callahan, *Mandates and Empire: The League of Nations and Africa, 1914-1931* (Eastbourne: Sussex Academic Press, 1998); Simon Jackson, "Diaspora Politics and Developmental Empire: The Syro-Lebanese at the League of Nations," *Arab Studies Journal* 21, no. 1 (2013): 166-190; Natasha Wheatley, "Mandatory Interpretation: Legal Hermeneutics and the New International Order in Arab and Jewish Petitions to the League of Nations," *Past & Present* 227 (2015): 205-248; Susan Pedersen, *The Guardians: The League of Nations and the Crisis of Empire* (Oxford: Oxford University Press, 2015); and Natasha Wheatley, "New Subjects in International Law and Order," in *Internationalisms: A Twentieth-Century History*, eds. Glenda Sluga and Patricia Clavin (Cambridge: Cambridge University Press, 2016), 265-286.
[85] Sean Andrew Wempe, "A League to Preserve Empires: Understanding the Mandates System and Avenues for Further Scholarly Inquiry," *American Historical Review* 124, no. 5 (2019): 1724.
[86] Article 22, Covenant of the League of Nations, 1919.
[87] Glenda Sluga, "Remembering 1919: International Organizations and the Future of International Order," *International Affairs* 95, no. 1 (2019): 30.
[88] Mark Mazower, "An International Civilization?: Empire, Internationalism and the Crisis of the Mid-Twentieth Century," *International Affairs* 82, no. 3 (2006): 560.
[89] Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (New York: Cambridge University Press, 2005), 128.
[90] Anghie, *Imperialism, Sovereignty and the Making of International Law*, 133.
[91] Anghie, *Imperialism, Sovereignty and the Making of International Law*, 135-136.
[92] Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements, and Third World Resistance* (Cambridge: Cambridge University Press, 2003), 59-67.

itself changed from a system of formal rules to a science of administration, although he recognizes that legalist ideas continued to hold sway in some circles.[93]

As the structures of the Mandate System demonstrate, despite the dominance of legalist ideas among prominent British international lawyers in the interwar period, international institutions, framed largely through the ideas and proposals of British politicians, were built around an emphasis on politics over law and the need for flexibility in legal concepts. Colonial officials in interwar South Asia placed similar weight on the need to be pragmatic in their dealings with the princely states; it is to them that I now turn.

The Indian Political Department in the Interwar Period

The First World War did not simply mark a turning point for international law and international institutions; it also cast a long shadow over South Asia.[94] Nearly 1.7 million Indians served in various capacities during the war.[95] Despite famine conditions, India also became a food source for forces in Middle Eastern war zones; locals also bore the brunt of spiralling grain prices on account of inflationary pressures exerted by the Government of India's massive wartime spending.[96] Although moderate nationalists in the Indian National Congress, including Mohandas Gandhi, urged Indians to enlist in the hope of winning self-government at the end of the war,[97] the war also stimulated transnational revolutionary movements involving diaspora populations hoping to win independence through political violence.[98] These activists carried on the tradition of "revolutionary terrorism" that had gained momentum in the aftermath of the colonial government's decision to partition the eastern province of Bengal in 1905.[99] Despite some tokenistic efforts at political reform to include Indians in government (for instance, in the changes to the composition of the viceroy's advisory councils in 1892 and 1909),[100] anticolonial resistance was largely met with repression, including the banning of "seditious"

[93] Rajagopal, *International Law from Below*, 62.
[94] In recent years, there has been considerable scholarly interest in India's role in the war. See, for instance, Shrabani Basu, *For King and Another Country: Indian Soldiers on the Western Front, 1914-18* (New Delhi: Bloomsbury, 2015); Santanu Das, *India, Empire, and First World War Culture: Writings, Images, and Songs* (Cambridge: Cambridge University Press, 2018); George Morton-Jack, *The Indian Empire At War: From Jihad to Victory, The Untold Story of the Indian Army in the First World War* (London: Little, Brown, 2018); Roger D. Long and Ian Talbot, eds., *India and World War I: A Centennial Assessment* (London: Routledge, 2018); and Radhika Singha, *The Coolie's Great War: Indian Labour in a Global Conflict, 1914-1921* (London: Hurst, 2020).
[95] Gajendra Singh, "India and the Great War: Colonial Fantasies, Anxieties and Discontent," *Studies in Ethnicity and Nationalism* 14, no. 2 (2014): 343.
[96] Sugata Bose and Ayesha Jalal, *Modern South Asia: History, Culture, Political Economy*, 4th ed. (New York: Routledge, 2018), 112-113.
[97] Singh, "India and the Great War," 344.
[98] Ian Talbot, *A History of Modern South Asia: Politics, States, Diasporas* (New Haven, CT: Yale University Press, 2016), 117-118.
[99] Sumit Sarkar, *Modern India, 1885-1947* (Delhi: Macmillan India, 1983), 144-149. For a study of the role of political violence in the Indian liberation movement and the responses of the colonial state, see Durba Ghosh, *Gentlemanly Terrorists: Political Violence and the Colonial State in India, 1919-1947* (Cambridge: Cambridge University Press, 2017).
[100] The Indian Councils Act, 1892 increased the number of "non-official" members of the executive council so that local bodies could be more involved in the nomination process. The Indian Councils Act, 1909 increased the representative element of imperial and provincial legislative councils although their resolutions remained non-binding. See Arthur Berriedale Keith, *A Constitutional History of India, 1600-1935*, 2nd ed. (London: Methuen & Co., 1937), 228-232; Sarkar, *Modern India*, 138-140; Barbara D. Metcalf and Thomas R. Metcalf, *A Concise History of Modern India* (New York: Cambridge University Press, 2006), 160-161; and Sumit Sarkar, *Modern Times: India, 1880s-1950s, Environment, Economy, Culture* (Ranikhet: Permanent Black, 2014), 14-15.

meetings, the seizure of printing presses used by nationalist newspapers, and the deportations of some anticolonial leaders.[101]

In the face of increasingly strident anticolonial nationalism and war, the British looked for support in order to minimize the influence of rebellions with the potential to threaten imperial stability. After previous episodes of unrest, and specifically in the aftermath of the revolt of 1857, the British had focused on incorporating local rulers, chiefs, and power brokers into the imperial hierarchy.[102] The colonial establishment considered the rulers of the princely states, in particular, to be "traditional" or "natural" leaders who commanded the respect, loyalty, and obedience of the Indian masses.[103] Given this view, it is unsurprising that the princely states were, once again, at the forefront of British efforts to buttress the authority of the colonial state in the early decades of the twentieth century.

However, although the British had sought to integrate the states into imperial power structures in the late nineteenth century by claiming to respect their territories as well as their treaty rights,[104] actual colonial policy involved complicated moves to consolidate British control. As I described in the previous chapter, colonial officials defined sovereignty was "divisible" in order to claim that the princely states only possessed certain sovereign rights with the remaining being exercised by the British government. In order to determine how these sovereign rights were distributed, administrators relied on "political practice" in order to create "precedent;" they argued that principles drawn from cases in relation to one princely state could be made universally applicable to all states. By relying on the twin principles of "divisible sovereignty" and "precedent," colonial administrators managed to extend legal recognition to the states as "junior allies" in the imperial project while simultaneously entrenching British paramountcy in the region.

By the turn of the twentieth century, colonial policy increasingly whittled away what the princes considered to be their sovereign rights, including jurisdiction over railways, posts, and telegraphs; the right to operate mints; and the right to import weapons.[105] The British also dramatically intervened in Manipur in 1891 and claimed the authority to execute rebels for

[101] Sarkar, *Modern India*, 138.
[102] Partha Chatterjee, *The Black Hole of Empire: History of a Global Practice of Power* (Princeton, NJ: Princeton University Press, 2012), 212.
[103] Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* (Princeton, NJ: Princeton University Press, 2010), 52; and Michael H. Fisher, "Diplomacy in India, 1526-1858," in Britain's Oceanic Empire: Atlantic and Indian Ocean Worlds, c. 1550-1850, ed. H. V. Bowen, Elizabeth Mancke, and John G. Reid (Cambridge: Cambridge University Press, 2012), 265.
[104] Queen Victoria's famous 1858 proclamation to the princes included the following statements: "…… We hereby announce to the native princes of India, that all treaties and engagements made with them by or under the authority of the East India Company are by us accepted, and will be scrupulously maintained, and we look for the like observance on their part. We desire no extension of our present territorial possessions; and, while we will permit no aggression upon our dominions or our rights to be attempted with impunity, we shall sanction no encroachment on those of others. We shall respect the rights, dignity, and honour of native princes as our own; and we desire that they, as well as our own subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good government. …" See Proclamation by the Queen to the Princes, Chiefs, and the People of India, 1 November 1858, quoted in *Speeches and Documents on Indian Policy, 1750-1921*, vol. 1, ed. A. B. Keith (London: Oxford University Press, 1922), 383-384.
[105] Copland, *The Princes of India in the Endgame of Empire*, 20.

waging war against the Crown.[106] Further, Lord Curzon's[107] viceroyalty (1899-1905) appeared to cement the return of pre-revolt interventionist policy, with several states being placed under temporary British administration and the rulers of Jhalawar, Panna, and Indore being deposed.[108] The princes bristled under these increasing constraints and attempted to challenge expansive claims of British paramountcy. As the cases relating to Travancore and Baroda (discussed in the previous chapter) demonstrate, they disputed the colonial government's assertions of wide jurisdiction as well as its reliance on "political practice" to chip away at the rights guaranteed to individual states under treaties entered into with the British over the years.

The twin challenges of anticolonial nationalism and war emerged in the midst of this atmosphere of distrust between the princes and the British.[109] Although most of the princes (with the possible exception of Sayajirao Gaekwad of Baroda)[110] aided British efforts to clamp

[106] The facts of the Manipur intervention are complicated but involve the British intervening on behalf of the ruler who had changed his mind about abdicating and precipitated a rebellion. The leaders of the revolt were tried and executed for waging war against the Crown. For a detailed overview of the Manipur uprising and its aftermath, see Caroline Keen, *An Imperial Crisis in British India: The Manipur Uprising of 1891* (London: I. B. Tauris, 2015). The government of India's proclamation justifying its authority to try rebels in a state that was not considered to be British territory can be found in Resolution and Proclamation by the Government of India, 21 August 1891, in *Documents and Speeches on the Indian Princely States*, vol. 1, ed. Adrian Sever (Delhi: B. R. Publishing, 1985), 335-336.

[107] Curzon was sporadically the under-secretary of state for India and under-secretary of state for foreign affairs in the 1890s before being appointed viceroy of India in 1898. His time in India was overshadowed by famine and plague, as well as the deeply controversial decision to partition the province of Bengal. He resigned after a particularly bitter battle over the question of civilian or military control of the Indian army with Lord Kitchener. See David Gilmour, "Curzon, George Nathaniel, Marquess Curzon of Kedleston (1859-1925)," in *Oxford Dictionary of National Biography*, online ed., ed. David Cannadine (Oxford: Oxford University Press, 2004), https://doi.org/10.1093/ref:odnb/32680 (accessed October 8, 2020).

[108] Copland, *The Princes of India in the Endgame of Empire*, 21. This interventionist policy is unsurprising since Curzon considered the princes to be "a set of unruly and ignorant and rather undisciplined school-boys" and therefore thought that it would be "fatal policy" to "leave them alone to go their own way." See Letter from Curzon to Hamilton, 29 August 1900, in *Documents and Speeches on the Indian Princely States*, vol. 1, ed. Adrian Sever (Delhi: B. R. Publishing, 1985), 346.

[109] Although the latter half of the nineteenth century was punctuated by regular peasant and tribal rebellions, anticolonial nationalism only became a mass movement in the early decades of the twentieth century. See Sarkar, *Modern India,* 43-63, 165-226.

[110] On Sayajirao's various run-ins with colonial authorities, see Ian Copland, "The Dilemmas of a Ruling Prince: Maharaja Sayaji Rao Gaekwar and "Sedition",' in *Rule, Protest, Identity: Aspects of Modern South Asia*, ed. Peter Robb and David Taylor (London: Curzon Press, 1978), 28-48; Charles W. Nuckolls, "The Durbar Incident," *Modern Asian Studies* 24, no. 3 (1990): 529-559; "'Have You Seen the Gaekwar Bob?': Filming the 1911 Delhi Durbar," *Historical Journal of Film, Radio and Television* 17, no. 3 (1997): 309-345; and Manu Bhagavan, *Sovereign Spheres: Princes, Education, and Empire in Colonial India* (Oxford: Oxford University Press, 2003), 47-69. For a discussion of Sayajirao's life more generally, see Philip W. Sergeant, *The Ruler of Baroda: An Account of the Life and Work of the Maharaja Gaekwar* (London: John Murray, 1928); Stanley Rice, *Life of Sayaji Rao III Maharaja of Baroda*, 2 volumes (London: Oxford University Press, 1931); Fatehsinhrao Gaekwad, *Sayajirao of Baroda: The Prince and the Man* (London: Sangam, 1989); Barbara Ramusack, "Gaikwar [Gaekwar], Sayaji Rao, maharaja of Baroda (1863-1939)," in *Oxford Dictionary of National Biography*, online ed., ed. David Cannadine (Oxford: Oxford University Press, 2004), https://doi.org/10.1093/ref:odnb/30613 (accessed October 19, 2020); and Uma Balasubramaniam, *Sayajirao Gaekwad III: The Maharaja of Baroda* (New Delhi: Rupa Publications, 2019).

down on nationalist protests[111] and were also enthusiastic supporters of the British war effort,[112] Ian Copland notes that the British realized that the support of the princes could not be taken for granted.[113] Consequently, political changes also precipitated a reworking of British policy towards the princely states; the new approach relied on redefining sovereignty as a set of powers that were divided between the colonial government and the princely states based on the pragmatic notion of the "interests of empire." Despite the revamped strategy, the aim remained the same as that of the precedent-based theory of divisible sovereignty in the late nineteenth century: to ensure that the British could claim the princely states as somewhat sovereign junior allies but also maintain control over their actions for the larger imperial project. Hence, although the new approach was supposed to be based on non-intervention, it, in fact, laid the foundation for a new push towards greater interference in the states in the 1920s.[114]

The new policy was termed "*laissez-faire*," and the first signs of the change could be seen in a 1909 speech delivered by Lord Minto,[115] who had succeeded Curzon as viceroy. Minto repeated Britain's commitment to respecting princely state treaties and claimed that British policy was "with rare exceptions one of non-interference in the internal affairs of Native States."[116] He also issued a mild rebuke to over-zealous British political officers who wished to introduce large-scale administrative changes in the states, claiming that it was "easy to overestimate the value of administrative efficiency."[117] Instead, he insisted that "reforms should emanate from Durbars themselves, and grow up in harmony with the traditions of the State."[118] Although political officers had a duty to act in order to correct any "abuses and corruption" in the states, he also considered the wisest course to be "to accept the general system of administration to which the Chief and his people have been accustomed" as they

[111] Many princes suppressed local newspapers that supported anticolonial nationalism, clamped down on state organizations with nationalist links, helped to quash disturbances in border areas, and arrested and extradited British Indian political suspects who sought refuge in the states. See Ramusack, *The Princes of India in the Twilight of Empire*, 96; and Copland, *The Princes of India in the Endgame of Empire*, 30.

[112] The princes contributed money towards war coffers and were enthusiastic recruiters for the Indian military; some even served themselves. See Ramusack, *The Princes of India in the Twilight of Empire*; 38-40; Ramusack, *The Indian Princes and their States*, 122-123; and Tony McClenaghan, *For the Honour of My House: The Contribution of the Indian Princely States to the First World War* (Warwick: Helion and Company, 2019). One exception was the *maharana* of Udaipur who refused to support the war effort, arguing that Indians ought not to be sent to die when Europeans fought because Europeans did not come to die when there was a war in India. See Charles Allen and Sharada Dwivedi, *Lives of the Indian Princes* (London: Century Publishing, 1984), 96.

[113] Copland, *The Princes of India in the Endgame of Empire*, 30.

[114] Ian Copland contends that the increased intervention in the affairs of the states in the 1920s can be linked partly to changes in personnel and partly to British dismay at the increasingly assertive attitude of the princes. See Copland, *The Princes of India in the Endgame of Empire*, 44-50. However, I would argue that the foundation of the broader interventionist movement of the 1920s was encoded within the move to *laissez-faire* itself.

[115] Minto had a turbulent tenure as governor-general of Canada before he was appointed viceroy of India in 1905. He worked closely with John Morley, the secretary of state for India, on the programme for constitutional reform. Both believed that parliamentary democracy was unsuitable for India and instead sought to bring traditional elites like the princes and landowners into the political system. See Carman Miller and Philip Woods, "Kynynmound, Gilbert John Elliot Murray, fourth earl of Minto (1845-1914)," in *Oxford Dictionary of National Biography*, online ed., ed. David Cannadine (Oxford: Oxford University Press, 2004), https://doi.org/10.1093/ref:odnb/33001 (accessed October 13, 2020).

[116] Speech delivered at the State Banquet at Udaipur, 3 November 1909, in *Speeches by the Earl of Minto, Viceroy and Governor General of India* (Calcutta: Superintendent Government Printing, India, 1911), 324. The references to non-intervention in Minto's speech made for a marked change from the interventionist policy under Curzon and generated enthusiastic reactions from the princes. Lady Minto claimed in her journal that the princes thought that the speech was so important, they considered it equivalent to "their Magna Charta." See Mary Minto, *India, Minto and Morley, 1905-1910* (London: Macmillan and Co., 1934), 342.

[117] Speech delivered at the State Banquet at Udaipur, 325.

[118] Speech delivered at the State Banquet at Udaipur, 325.

were "well adapted to the needs and relations of the ruler and his people."[119] This assertion of "non-interference" was, however, a heavily qualified one. Since the British government guaranteed the internal independence of the states and had undertaken to protect them against external aggression, Minto argued that it had also "assumed a certain degree of responsibility for the general soundness of their administration and would not consent to incur the reproach of being an indirect instrument of misrule."[120] Intervention appeared to be legitimate, therefore, when it related to the maintenance of "good government" in the states.

Although the claims of non-interference rang a little hollow, British policy towards the princely states in the early twentieth century did change in one key respect. As I discussed in the previous chapter, late nineteenth-century British political officers relied on history in order to determine the specific manner in which sovereign powers were divided between the princely states and the British government. On account of this emphasis on previous political practice, manuals of case law such as *Indian Political Practice*[121] achieved prominence and enabled the British to generate general principles from cases relating to one state and claim that such principles were applicable to similar cases in all states. In his speech in Udaipur, however, Minto assailed "subservience to precedent" and instead asserted that fashioning a uniform policy with respect to all the states was a difficult task on account of the "diversity of conditions."[122] Consequently, he claimed that he had "made it a rule to avoid as far as possible the issue of general instructions" and instead "endeavoured to deal with questions as they arose with reference to existing treaties, the merits of each case, local conditions, antecedent circumstances, and the particular stage of development, feudal and constitutional, of undivided principalities."[123] Despite abandoning precedent as an organizing principle of British policy, Minto claimed that the government of India still had the authority to intervene in the states; such interference would be to "safeguard the interests of the community as a whole as well as those of the Paramount Power" in relation to matters such as "railways, telegraphs, and other services of an Imperial character."[124] By building on earlier British claims to jurisdiction over state infrastructure that attempted to weld British India and the princely states into a single economic unit (as discussed in the previous chapter),[125] Minto opened the door for relying on "imperial interests" to determine the division of sovereign powers between the princely states and the British government.

The new British policy relating to the states was fleshed out in a text compiled by the civil servant, Charles Lennox Somerville Russell, with an introduction authored by Minto's

[119] Speech delivered at the State Banquet at Udaipur, 325.
[120] Speech delivered at the State Banquet at Udaipur, 324.
[121] Charles Lewis Tupper, *Indian Political Practice: A Collection of the Decisions of the Government of India in Political Cases*, 4 vols. (Calcutta: Office of the Superintendent of Government Printing, 1895; repr., Delhi: B. R. Publishing, 1974).
[122] Speech delivered at the State Banquet at Udaipur, 324.
[123] Speech delivered at the State Banquet at Udaipur, 324.
[124] Speech delivered at the State Banquet at Udaipur, 324.
[125] British India had been organized as a geographical space through the colonial technological networks of irrigation canals, roads, and railways, and late nineteenth-century nationalist discourse built upon this order to envision a territorially bound national entity of India. See Gyan Prakash, *Another Reason: Science and the Imagination of Modern India* (Princeton, NJ: Princeton University Press, 1999) and Manu Goswami, *Producing India: From Colonial Economy to National Space* (Chicago, IL: University of Chicago Press, 2004). However, as discussed in the previous chapter, the landscape of colonial South Asia continued to be riven by legal distinctions among British India, the princely states, and frontier regions known variously as "scheduled districts" or "non-regulation territories."

powerful foreign secretary, Harcourt Butler.[126] The *Manual of Instructions to Officers of the Political Department of the Government of India*[127] was issued confidentially to political officers in 1909.[128] A significant portion of the *Manual's* introduction echoed Minto's Udaipur speech. Butler emphasized that the government of India's policy was one of "non-interference in the internal affairs of States."[129] Consequently, he noted that political officers were to "ordinarily refrain from offering advice unless it is sought;" they were to "not interfere between the Durbar and its subjects;" and finally, and perhaps most importantly, in a statement that summed up the document, they were to "leave well alone."[130] Butler contended that the government of India was opposed to "anything like pressure on Durbars to introduce British methods of administration," preferring instead that reforms "emanate from the Durbar, and grow up in harmony with the traditions of the State."[131] Such an approach would ensure stability since "[t]he methods sanctioned by tradition in States are generally well adapted to the needs and relations of the ruler and people," and reforms that brought efficiency but were unsuited to local conditions had the potential to weaken the loyalty of the people to the rulers.[132]

Like Minto, however, Butler added a rider to this statement of non-interference. He claimed that since the British guaranteed the internal independence of the states and had undertaken to protect them from external aggression, they had also assumed "some responsibility for the maintenance of order and fairly efficient government in them, and cannot consent to incur the

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[126] Butler was appointed foreign secretary in 1907 and was later the chairman of the Indian States Committee in 1928-29. See F. H. Brown, "Butler, Sir (Spencer) Harcourt (1869-1938)," rev. Francis Robinson, in *Oxford Dictionary of National Biography*, online ed., ed. David Cannadine (Oxford: Oxford University Press, 2004), https://doi.org/10.1093/ref:odnb/32218 (accessed October 13, 2020). Butler's appointment as foreign secretary generated a storm of protest from within the Political Department as he had no experience of state matters and did not possess the requisite seniority. See Ashton, *British Policy Towards the Indian States*, 42-43.

[127] *Manual of Instructions to Officers of the Political Department of the Government of India*, 1909, IOR/R/2/18/117. Despite its significance, the *Manual* was described as "a singularly uninspiring publication" by the political officer Kenneth Fitze. See Kenneth Fitze, *Twilight of the Maharajas* (London: John Murray, 1956), 25. Perhaps on account of its dry nature, the *Manual* has only been briefly considered by scholars. See, for instance, the references in Copland, *The British Raj and the Indian Princes*, 209; Ashton, *British Policy Towards the Indian States*, 44; Copland, *The Princes of India in the Endgame of Empire*, 31; and Ramusack, *The Indian Princes and their States*, 97.

[128] Copland, *The Princes of India in the Endgame of Empire*, 31.

[129] *Manual of Instructions to Officers of the Political Department of the Government of India*, 1909, iii, IOR/R/2/18/117.

[130] *Manual of Instructions to Officers of the Political Department of the Government of India*, 1909, iii, IOR/R/2/18/117. Lennox Russell, who played a major role in compiling the *Manual*, was later appointed as the resident at Hyderabad, where he was famous for his refusal to take any decisions at all. K. P. S. Menon, one of the first Indians to be inducted into the Political Department and a junior officer at the Hyderabad residency at that time, pithily noted that Russell was true to the *Manual*'s motto that "the best work which a Political Officer often did was what he left undone." See K. P. S. Menon, *Many Worlds Revisited: An Autobiography* (Bombay: Bharatiya Vidya Bhavan, 1981), 81.

[131] *Manual of Instructions to Officers of the Political Department of the Government of India*, 1909, iv, IOR/R/2/18/117.

[132] *Manual of Instructions to Officers of the Political Department of the Government of India*, 1909, v, IOR/R/2/18/117. In fact, in a handing-over note to his successor in 1910, Butler declared, "… we have much to learn from Native States. The indigenous system of Government is a loose despotic system tempered by corruption, which does not press hard on the daily lives of the people and relies for its sanctions on occasional severe punishments of erring or offending individuals. Our system is a scientific system which presses steadily on the people in their daily lives, controls them, regulates their actions, attempts to be preventive and through its hosts of subordinates makes itself everywhere felt. … But he would be a bold man who said our system was always the better." See Handing-Over Note, 1910, quoted in Terence Creagh Coen, *The Indian Political Service: A Study in Indirect Rule* (London: Chatto and Windus, 1971), 17.

reproach of being an indirect instrument of oppression."[133] Consequently, the government of India had the right to be interfere when there was misrule in the states, although the degree of maladministration that merited such intervention was a question that had to be decided on the merits in each case. Generally, he advocated that no "overt measures" be taken unless "misrule reaches a pitch which violates the elementary laws of civilisation."[134]

Butler expanded on this emphasis on treating political questions relating to each state according to their "merits" by claiming that questions of British policy could not be "reduced to terms of compendious generalisation" since the "circumstances of States vary enormously as regards treaties, local conditions, economic and political, and the idiosyncracies [sic] of Ruling Chiefs."[135] Although he admitted that it was imperative for political officers to receive some general instructions for guidance, he noted that the rules set out in the *Manual* were necessarily "elastic" since uniformity was "unattainable and undesirable."[136] He also explicitly termed precedents to be "valuable as a guide, but no more" since they could only be applied when all conditions were the same, which they rarely were among different states.[137] Reliance on history and political practice, long a cornerstone of British colonial policy towards the princely states, was relegated to the past. Butler instead argued that the government of India would regulate matters based on "imperial concern or because the States require some protection."[138] These issues included: the employment of Europeans, Americans, and Australians by the states; mining concessions; coinage and currency; military co-operation; posts, telephones, and telegraphs; railway management and jurisdiction; and opium.[139] The protection of imperial interests, therefore, became the primary basis for determining the circumstances in which the British would intervene in the affairs of the states, and thereby also the grounds that governed the extent of sovereign powers exercised by the British in relation to the states.

The precedent-based *Indian Political Practice* was soon supplanted by the coolly practical *Manual*,[140] with its relentless focus on imperial interests. Like their counterparts in the Foreign Office in London who argued in favour of a "political" League of Nations to manage economic issues, political officers in early twentieth-century India also advocated a functionalist approach that was focused on solving specific problems with the tools available to them. British colonial officials started characterized the relationship between the princely states and the British government as "political;" consequently, importance had to be given not only to purely

[133] *Manual of Instructions to Officers of the Political Department of the Government of India*, 1909, iv, IOR/R/2/18/117.
[134] *Manual of Instructions to Officers of the Political Department of the Government of India*, 1909, iv, IOR/R/2/18/117.
[135] *Manual of Instructions to Officers of the Political Department of the Government of India*, 1909, i, IOR/R/2/18/117.
[136] *Manual of Instructions to Officers of the Political Department of the Government of India*, 1909, i-ii, IOR/R/2/18/117.
[137] *Manual of Instructions to Officers of the Political Department of the Government of India*, 1909, i, IOR/R/2/18/117.
[138] *Manual of Instructions to Officers of the Political Department of the Government of India*, 1909, iv, IOR/R/2/18/117.
[139] *Manual of Instructions to Officers of the Political Department of the Government of India*, 1909, iv, IOR/R/2/18/117.
[140] In 1929, the Indian States Committee noted that political officers were trained in administrative work in a British district and then passed "examinations in Lyall's "Rise and expansion of the British Dominion in India," Lyall's "Asiatic studies," Tod's "Rajasthan," Malcolm's "Central India," Sleeman's "Ramblings and Recollections," the Introduction to Aitchison's Treaties, and the Political Department Manual." See *Report of the Indian States Committee, 1928-29* (London: H. M. Stationery Office, 1929), para 75. *Indian Political Practice*, perhaps the most significant nineteenth-century text on relations between the British and the princely states, did not even feature in the study materials of new political officers.

legal instruments like treaties, but also to "imperial interests." Since the scope of these imperial interests remained persistently undefined,[141] this turn towards functionalism in British colonial thought provided a means to unrelentingly expand the scope of British jurisdiction within the states and minimize the exercise of sovereign powers by the states in relation to their own internal affairs.[142]

The exploitation of the flexibility of "imperial interests" is exemplified in one of the most notorious cases of British intervention in the states in the 1920s: the dispute between the government of India and the state of Hyderabad over the fertile, cotton-producing region of Berar. In 1853, Hyderabad had been persuaded to "assign" Berar to the East India Company in lieu of payments for military protection; half a century later, Lord Curzon bullied the *nizam* (ruler) to permanently hand over the management of the region for a fixed annual payment.[143] In 1925, the *nizam*, Mir Osman Ali Khan,[144] decided to reclaim full sovereignty over Berar in a letter to the viceroy, Lord Reading.[145] Since the *nizams* of Hyderabad "have been independent in the internal affairs of their State just as much as the British Government in British India" save for matters relating to foreign affairs, he argued that the dispute over Berar was "a controversy between two Governments that stand on the same plane without any limits of subordination of one to the other."[146] Consequently, he proposed that "the dispute should be investigated and reported upon by a Commission of impartial men,"[147] a demand that was rejected. Reading noted that "[t]he sovereignty of the British Crown is supreme in India, and therefore no Ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing."[148] In addition, since the British government had guaranteed the internal and external security of the princes, it also had the "ultimate responsibility for taking remedial action" in cases "where Imperial interests are concerned, or the general welfare

[141] In 1929, the Political Department came up with an impressively long list of the various situations that would require British intervention in order to protect the interests of the empire but also qualified it as being a "purely tentative and non-committal statement of the various factors" that might come under the heading of "imperial necessity." See Note by H. Wilberforce-Bell, 7 November 1929, IOR/R/1/1/4679(1).
[142] Barbara Ramusack argues that once the original policies and principles of late nineteenth century British policy had been discarded, "the British hierarchy seemed unable, or unwilling, to formulate any set of consistent principles to guide their relations with the princes." See Ramusack, *The Princes of India in the Twilight of Empire*, 61-62. Rather than inability, I would focus on unwillingness; by claiming that the "interests of the empire" were the sole consideration for deciding disputed exercises of sovereign powers, the British were greatly able to expand their own authority.
[143] Ian Copland, "The Hyderabad (Berar) Agreement of 1933: A Case Study in Anglo-Indian Diplomacy," *Journal of Imperial and Commonwealth History* 6, no. 3 (1978): 285.
[144] As the last of the *nizams* of Hyderabad, the life of Osman Ali Khan has attracted significant scholarly attention. See, for instance, Zubaida Yazdani and Mary Chrystal, *The Seventh Nizam: The Fallen Empire* (London: The Author, 1985); V. K. Bawa, *The Last Nizam: The Life and Times of Mir Osman Ali Khan* (New Delhi: Penguin, 1991); and Barbara Ramusack, "Asaf Jah VII [Osman Ali Khan] (1886-1967)," in *Oxford Dictionary of National Biography*, online ed., ed. David Cannadine (Oxford: Oxford University Press, 2004), https://doi.org/10.1093/ref:odnb/48824 (accessed October 19, 2020).
[145] Reading was successively solicitor-general and attorney-general during his time as a Liberal member of parliament. After nearly having his career derailed by a political scandal, he was appointed viceroy of India in 1921. See A. Lentin, "Isaacs, Rufus Daniel, first marquess of Reading (1860-1935)," in *Oxford Dictionary of National Biography*, online ed., ed. David Cannadine (Oxford: Oxford University Press, 2004), https://doi.org/10.1093/ref:odnb/34119 (accessed October 19, 2020).
[146] *Nizam* to Viceroy, 20 September 1925, in *Documents and Speeches on the Indian Princely States*, vol. 2, ed. Adrian Sever (Delhi: B. R. Publishing, 1985), 413-414.
[147] *Nizam* to Viceroy, 20 September 1925, in *Documents and Speeches on the Indian Princely States*, vol. 2, ed. Adrian Sever (Delhi: B. R. Publishing, 1985), 415.
[148] Viceroy to *nizam*, 27 March 1926, in *Documents and Speeches on the Indian Princely States*, vol. 2, ed. Adrian Sever (Delhi: B. R. Publishing, 1985), 416.

of the people of a State is seriously and grievously affected by the action of its Government."[149] Reading noted that the "varying degrees of internal sovereignty" that the states enjoyed were "all subject to the due exercise by the Paramount Power of this responsibility."[150] This conceptualization of sovereignty as "divisible," with the precise allocation of sovereign powers between the princely states and the British government being determined by "imperial interests," is the clearest statement of the approach taken by political officers to questions of sovereignty in the interwar period. In contrast to the idealism of British international lawyers like Hersch Lauterpacht and James Brierly, who argued in favour of the supremacy of law over politics, British colonial officials in South Asia, akin to politicians in London, pursued a relentlessly pragmatic policy on the question of the sovereignty of the princely states: legal concepts had to be "flexible" and "imperial interests" rather than "law" or even "precedent" would determine the exercise of sovereign powers in the region. As I will argue in the following section, however, it was this very emphasis on the flexibility of legal concepts that both provoked and enabled a backlash from the princely states.

The Princely States in the Interwar Period

The First World War brought about extensive changes in the organization of the colonial state and the political economy of South Asia. It also provided the princes with the opportunity to carve out a higher profile for themselves and the states more broadly. In addition to proving themselves as "natural leaders" through military service, princes such as Ganga Singh, the *maharaja* of Bikaner,[151] Bhupinder Singh, the *maharaja* of Patiala,[152] and Ranjitsinhji, the *jam saheb* of Nawanagar,[153] became imperial and international players by participating in imperial war conferences and later by representing India at the League of Nations.[154] Building on these experiences, the princes sought to challenge paramountcy by demanding a greater voice in decision-making relating to "all-India" matters, such as maritime customs, excise policy, and railway jurisdiction. The construction of the infrastructure of communication in the late nineteenth century increased trade links between British India and the states. However, the states soon found themselves at the mercy of decisions made by the government of India; the maritime states were forced to adopt British Indian tariff rates to prevent traders from

[149] Viceroy to *nizam*, 27 March 1926, in *Documents and Speeches on the Indian Princely States*, vol. 2, ed. Adrian Sever (Delhi: B. R. Publishing, 1985), 417.
[150] Viceroy to *nizam*, 27 March 1926, in *Documents and Speeches on the Indian Princely States*, vol. 2, ed. Adrian Sever (Delhi: B. R. Publishing, 1985), 418.
[151] The Mintos considered Ganga Singh to be a close personal friend. See Minto, *India, Minto and Morley*, 298. For details of Ganga Singh's life, see K. M. Panikkar, *His Highness the Maharaja of Bikaner: A Biography* (London: Oxford University Press, 1937); and Barbara Ramusack, "Singh, Ganga (1880-1943)," in *Oxford Dictionary of National Biography*, online ed., ed. David Cannadine (Oxford: Oxford University Press, 2004), https://doi.org/10.1093/ref:odnb/31885 (accessed October 18, 2020).
[152] For details of Bhupinder Singh's life, see Barbara Ramusack, "Singh, Sir Bhupinder (1891-1938)," in *Oxford Dictionary of National Biography*, online ed., ed. David Cannadine (Oxford: Oxford University Press, 2004), https://doi.org/10.1093/ref:odnb/35408 (accessed October 18, 2020). A collection of his speeches relating to state affairs can be found in Bhupinder Singh, *Public Pronouncements by His Highness the Maharaja Dhiraj of Patiala in connection with the Indian States Committee* (London: Spottiswoode, Ballantyne and Co., 1928).
[153] As a famous cricketer and someone who regularly punched above his weight in relation to the small size of his state, Ranjitsinhji has attracted a significant amount of scholarly attention. See Simon Wilde, *Ranji: The Strange Genius of Ranjitsinhji* (London: Aurum Press, 1999); Ann Chambers, *Ranji: Maharaja of Connemara* (Dublin: Wolfhound Press, 2003); and Satadru Sen, *Migrant Races: Empire, Identity and K. S. Ranjitsinhji* (Manchester: Manchester University Press, 2004).
[154] Ramusack, *The Princes of India in the Twilight of Empire*, 43-44.

circumventing duties by importing through the states,[155] while consumers in inland states effectively paid British Indian as well as state tariffs.[156] In order to resolve the problem of customs, the princes proposed a range of options, including exempting goods imported by the states from British Indian customs duties, providing states with a share in British Indian customs revenue, and having state representation on rate-setting bodies like the tariff board.[157]

On account of princely demands for change, particularly on account of their services in the war, the British began to contemplate the creation of formal structures where the princes could get together to discuss their views and offer their opinions to the government of India. Two informal conferences were convened in Delhi in 1916 and 1917, where the participating princes were able to overcome internal squabbling to present a scheme of reforms.[158] Within the broader manifesto, the princes sought to establish two bodies: a Chamber of Ruling Princes through which the viceroy and the princes would jointly engage with proposals to maintain the states' internal autonomy and a Joint Committee of Reference comprised of representatives of the states and British India to advise on questions that were of "common concern," such as tariffs, currency, and railway policy.[159] The demand for a joint committee was a non-starter but the Chamber of Princes was established within the broader constitutional reforms enacted after the war.[160] Given the large number of states, the size of the Chamber was a concern; ultimately, it consisted of 108 permanent members and 12 representatives of "lesser" chiefs. Most of the Chamber's activities, however, were actually conducted by the Standing Committee that was elected at each session to hold office between sessions, and a Chancellor, who was its principal officer, and *liaison* between the government of India and the princes.[161]

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[155] For an extended discussion of the dispute over sea customs in the context of the states of the Western India States Agency, see John McLeod, *Sovereignty, Power, Control: Politics in the States of Western India, 1916-1947* (Leiden: Brill, 1999), 88-114.

[156] A discussion of these two different implications of British Indian tariffs on the states can be found in George MacMunn, *The Indian States and Princes* (London: Jarrolds Publishers, 1936), 236-238.

[157] Ian Copland notes that for many princes, their problems could be traced to their lack of influence in imperial decision-making. See Copland, *The Princes of India in the Endgame of Empire*, 56-58. A number of states sent lengthy representations to the government of India protesting against "taxation without representation" and alleging that exaction of customs duties on goods imported through British Indian ports but meant for consumption in the states amounted to a transit duty, which the government had persuaded all states to abolish. See Letter from the Political Member, Government of Gwalior to the Resident at Gwalior, 21 March 1922, IOR/L/PS/10/1211/1; Letter from the *diwan* of Baroda to the Resident at Baroda, 3 April 1922; IOR/L/PS/10/1211/1; and Letter from the Chief Secretary, Government of Mysore to the Resident at Mysore, 3 March 1923, IOR/L/PS/10/1211/1. The full range of reform proposals can be found in the memo *The Position of Indian States in the Future Indian Polity*, 1926, NAI – Bhopal, Chamber Section, bundle no. 4, file no. 7, old file no. 1/26.

[158] Ian Copland provides details on the splits among the princes as to the exact proposals of the scheme, with the more "liberal" *darbars* seeking greater participation in all-India matters, while others expressing concern that such participation would entail greater interference by the government of India in their affairs and reduce the status of the princes by forcing them to sit with "commoners." See Copland, *The Princes of India in the Endgame of Empire*, 38-40.

[159] Draft Memorandum on the Scheme for Establishing Improved Relations between the Government of India and the Indian States, NAI – Bhopal, Chamber Section, bundle no. 4, file no. 7, old file no. 1/26; and Draft Scheme, NAI – Bhopal, Chamber Section, bundle no. 4, file no. 7, old file no. 1/26.

[160] Many of these reforms were based on the recommendations set out in the Report of the Joint Committee on Indian Constitutional Reform in 1918. For details of the reforms and how they worked in practice, see Sarkar, *Modern India*, 165-168; Metcalf and Metcalf, *A Concise History of Modern India*, 167-168; Bose and Jalal, *Modern South Asia*, 114-115; and Stephen Legg, "Dyarchy: Democracy, Autocracy, and the Scalar Sovereignty of Interwar India," *Comparative Studies of South Asia, Africa and the Middle East* 36, no. 1 (2016): 44-65.

[161] Urmila Phadnis, *Towards the Integration of Indian States, 1919-1947* (Bombay: Asia Publishing House, 1968), 27, 30-31. For a discussion of the organization of the Chamber, its membership, and its powers and functions, see R. P. Bhargava, *The Chamber of Princes* (New Delhi: Northern Book Centre, 1991), 31-63.

Although several major states (including Hyderabad, Mysore, and Indore) did not join the Chamber,[162] and its advisory and deliberative nature meant that it was largely unable to effect change,[163] it proved to be an important means through which several princes attempted to pursue various objectives, one of which was the (re)definition of the relationship between the states and the British as paramount power. The creation of the Chamber also had the effect of generalizing disputes between the princes and the British government. Although individual disputes continued to exist (for instance, Hyderabad's claim over Berar or Nawanagar's contentions over customs revenue), the creation of a collective forum expanded discussions between the princes and the British to broader issues of political reform from the individual jurisdictional disputes that had proliferated in the late nineteenth century.

Closer economic and political links with British India, however, came at a price, particularly in the context of increasing interference by the government of India on the basis of "imperial interests." Attempts to minimize such interventions became all the more urgent in light of the stated British policy of "the gradual development of self-governing institutions with a view to the progressive realisation of responsible Government in India as an integral part of the British Empire."[164] Although the promise of self-government was vague and accompanied by violence and repression,[165] it unnerved the princes, who feared interference by a government that was responsible to the British Indian electorate. This trepidation was exacerbated by the often-antagonistic relationship they had with Indian anticolonial nationalists,[166] as demonstrated by increasing criticism in the nationalist press, which portrayed them as irresponsible and

[162] Ian Copland notes that the Chamber came to be dominated "by a group of middle-sized, mainly Rajput states whose states were situated within relatively easy travelling distance by motor car from Delhi, who were fluent in English, who had acquired political skills in forums such as the wartime chiefs' conferences, and who, in the last resort, had little to lose and much to gain by moving into a wider political arena: Alwar, Dholpur, Nawanagar, Palanpur, Cutch, Rewa, Sangli, and, above all, Bikaner and Patiala." See Copland, *The Princes of India in the Endgame of Empire*, 47. Attitudes among the rulers towards the Chamber did not remain static. For instance, Sultan Jahan, the *begum* of Bhopal, kept aloof from the Chamber, partly on account of objections to mixing with rulers of an "inferior status," and partly because it was dominated by Hindu rulers, but her son, Hamidullah Khan, who succeeded her in 1926, reversed this policy and played a vital role, being elected Chancellor on two separate occasions. See Siobhan Lambert-Hurley, *Muslim Women, Reform and Princely Patronage: Nawab Sultan Jahan Begam of Bhopal* (London: Routledge, 2007), 64.

[163] Phadnis, *Towards the Integration of Indian States*, 28-29.

[164] Speech of Edwin Montagu, House of Commons, 20 August 1917, in *Speeches and Documents on Indian Policy, 1750-1921, volume 2*, A. B. Keith, ed. (London: Oxford University Press, 1922), 133.

[165] The Rowlatt Acts preserved the government's wartime powers of detention and trial without a jury; protests against such legislation were met with violence, as seen in the tragedy of the Amritsar massacre in 1919. See Metcalf and Metcalf, *A Concise History of Modern India*, 168-169; Bose and Jalal, *Modern South Asia*, 120-121; and Kim A. Wagner, *Amritsar 1919: An Empire of Fear and the Making of a Massacre* (New Haven, CT: Yale University Press, 2019).

[166] Although some British Indian politicians, such as Tej Bahadur Sapru, were close confidantes of the princely states, others could barely conceal their dislike for the princes, considering them a hindrance to Indian independence. Jawaharlal Nehru, for instance, referred to the states as "sinks of reaction and incompetence and unrestrained autocratic power, sometimes exercised by vicious and degraded individuals" that were "propped up and artificially maintained by British Imperialism." See Presidential address of Jawaharlal Nehru, Annual session of the All-India States' Peoples' Conference, 15 February 1939, in *Speeches and Documents on the Indian Constitution, 1921-47*, vol. 2, ed. Maurice Gwyer and A. Appadorai (Bombay: Oxford University Press, 1957), 759. Taraknath Das was equally vehement, calling on the princes to give up "the retrograde tendency to autocratic government" and "their special pretensions," particularly since, in Das's view, the idea of the princes "having sovereign rights as rulers, is really a myth and a fiction." See Taraknath Das, *Sovereign Rights of the Indian Princes* (Madras: Ganesh & Co., 1924), 16-18.

pleasure-loving autocrats completely under the thumb of their British masters.[167] In such a situation, many princes believed that they faced a fight for their sheer existence, with increased links with British India enabling nationalists to critique state affairs during the course of joint discussions.

In order to benefit from close economic ties with British India but simultaneously maintain their political distinctiveness, the princely states adopted a new strategy in the interwar period. They moved away from their late nineteenth-century assertions of exclusive, territorial sovereignty to adopt the idea of "divisible sovereignty;" the division of sovereign powers was not, however, based on precedent or imperial interests but rather on state consent and the terms of treaties or engagements between the states and the British government. By arguing that sovereign powers were divisible, the princes imagined that they could participate in forums to discuss matters of common concern. Simultaneously, the focus on consent as the basis for the division of sovereign powers would, in the view of many princes, limit the interference of British officials to a specific list of issues, rather than being based on the nebulous idea of "imperial interests." By relying on divisible sovereignty, the princes would manage to both gain a voice in all-India affairs and restrict British interference into the internal affairs of the states.

Initial indications of this strategy can be seen in the reports prepared by a special committee of princes and their ministers in 1926 and 1927.[168] Representatives of Mysore, Baroda, Kashmir, Gwalior, Patiala, Jodhpur, Bikaner, Bhavnagar, Bhopal, and Datia attended the meetings, making for a fairly wide range of states. For the princes, the key to determining the relative powers of the states and the British government was state consent, which could be derived from treaties, engagements, or other types of formal relations. This emphasis on state consent could be broken down into several sub-arguments. First, the princes amplified their emphasis on treaties to argue that the states were "in direct relations" with the British Crown with whom their treaties were "originally contracted."[169] Consequently, they claimed that the states were "semi-international" in status, on account of being "in alliance" with the Crown rather than being under the authority of the government of India.[170] As a result, they contended that these

[167] The princes were so concerned with what they considered to be unwanted propaganda and blackmail that they lobbied the government of India to enact legislation for special protection against press attacks. This caused a storm of protest amongst British Indian nationalists. Even Tej Bahadur Sapru, known for his sympathetic view of the princes, was strongly critical of the special legislation. See Ramusack, *The Princes of India in the Twilight of Empire*, 122-128. An overview of the special legislation can be found in K. N. Chopra, *Law Relating to the Protection of the Administration of States in India* (Lahore: Universal Book Agency, 1939), 25-82.

[168] See Report of the Ministers' Meeting held at Bikaner, 1926, NAI – Bhopal, Chamber Section, bundle no. 5, file no. 14, old file no. 11; and Report of the Committee of Ministers appointed to consider the future position of the Indian states and other allied questions, 1927, NAI – Bhopal, Chamber Section, bundle no. 4, file no. 7, old file no. 1/26. For other discussions of the results of these meetings, see Ramusack, *The Princes of India in the Twilight of Empire*, 140-142; and Copland, *The Princes of India in the Endgame of Empire*, 62-64.

[169] Report of the Ministers' Meeting held at Bikaner, 1926, NAI – Bhopal, Chamber Section, bundle no. 5, file no. 14, old file no. 11.

[170] To emphasize the "semi-international" status of the states, the princes also pushed for reforms in the Political Department to claim a more diplomatic rather than constitutional relationship. Specifically, they sought that the head of the department be a "comparative senior member of the *corps Diplomatique*," since such an officer would be "well-accustomed" in the interpretation of treaties and his training would have equipped him "to deal with the affairs of semi-international bodies such as are the Indian States today." See Report of the Sub-Committee appointed to investigate the question of the present and future organization of the Political Department, Appendix C, Report of the Ministers' Meeting held at Bikaner, 1926, NAI – Bhopal, Chamber Section, bundle no. 5, file no. 14, old file no. 11.

relations could not be transferred to a future responsible government without state consent.[171] Second, the princes argued that the relationship between the states and the Crown was "legal" and governed by the original treaties and engagements. Hence, they sought the elimination of "political practice" that was in "fundamental opposition" to the treaties, maintaining that such usage had often been the result of states yielding under pressure.[172] On account of this focus on "law" over "political practice," the princes argued that disputes between the states and the government of India ought to be referred to a judicial tribunal, and called for the creation of a "Supreme Court of Justice."[173] Finally, by focusing on state consent, the princes also attempted to clearly demarcate the "internal affairs" of the states from matters that were of "common concern" with British India (such as tariffs, railways, posts, telegraphs, and currency), arguing that there had to be agreement that "[t]here would be no attempt to cross the border-land."[174] In relation to matters of common concern, the princes proposed a range of structures, including the representation of the states in the houses of the British Indian legislature, joint consultation between the Chamber of Princes and the Council of State (of the British Indian legislature) on issues of common concern, and a separate All-India Committee of Joint Deliberation consisting of representatives of the states as well as British India.[175]

Although there were serious differences among the princes on the extent of political reform that was necessary within the states (for instance, on demands for an independent judiciary or a fixed privy purse),[176] Bhupinder Singh, the Chancellor of the Chamber, managed to unite the delegation[177] that met the viceroy, Lord Irwin,[178] in May 1927.[179] They urged the appointment of a special committee to investigate the relationship of the states with the British Crown and suggest means for "securing effective consultation and co-operation on an equitable basis

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[171] This argument tracks that made by the British constitutional lawyer, A. B. Keith, in Arthur Berriedale Keith, *The Constitution, Administration and Laws of the Empire* (New York: Henry Holt and Company, 1924), 260-261. However, British Indian jurists such as P. S. Sivaswamy Aiyer and Gurmukh Nihal Singh both strongly refuted this claim, arguing that the Crown had only entered into the treaties in the capacity of the ruler of British India. See P. S. Sivaswamy Aiyer, *Indian Constitutional Problems* (Bombay: D. B. Taraporevala Sons & Co., 1928), 211; and Gurmukh Nihal Singh, *Indian States and British India: Their Future Relations* (Benaras: Nand Kishore & Bros., 1930), 96.

[172] Report of the Committee of Ministers appointed to consider the future position of the Indian states and other allied questions, 1927, NAI – Bhopal, Chamber Section, bundle no. 4, file no. 7, old file no. 1/26; Chancellor's Office, Patiala, Note on the Future Position of Indian States, 1927, NAI – Bhopal, Chamber Section, bundle no. 4, file no. 7, old file no. 1/26.

[173] Report of the Committee of Ministers appointed to consider the future position of the Indian states and other allied questions, 1927, NAI – Bhopal, Chamber Section, bundle no. 4, file no. 7, old file no. 1/26.

[174] Report of the Ministers' Meeting held at Bikaner, 1926, NAI – Bhopal, Chamber Section, bundle no. 5, file no. 14, old file no. 11.

[175] Report of the Ministers' Meeting held at Bikaner, 1926, NAI – Bhopal, Chamber Section, bundle no. 5, file no. 14, old file no. 11.

[176] On these differences, see Ramusack, *The Princes of India in the Twilight of Empire*, 141-142; and Copland, *The Princes of India in the Endgame of Empire*, 62-63.

[177] The rulers of Alwar, Bhopal, Bikaner, Kashmir, Nawanagar, Patiala and Rewa attended, along with Mirza Ismail (Mysore), Manubhai Mehta (representing Baroda and Bikaner), K. N. Haksar (Gwalior), Prabhashankar Pattani (Bhavnagar), and Rushbrook Williams (Patiala).

[178] Irwin's paternal grandfather, Sir Charles Wood, had been secretary of state for India, but despite these personal connections, he was hesitant to accept the viceroyalty when it was offered to him; he only agreed after his father persuaded him to go. See D. J. Dutton, "Wood, Edward Frederick Lindley, first earl of Halifax (1881-1959)," in *Oxford Dictionary of National Biography*, online ed., ed. David Cannadine (Oxford: Oxford University Press, 2004), https://doi.org/10.1093/ref:odnb/36998 (accessed October 19, 2020).

[179] On the discussions at this meeting, see Ashton, *British Policy Towards the Indian States*, 118-119; Ramusack, *The Princes of India in the Twilight of Empire*, 142-143; and Copland, *The Princes of India in the Endgame of Empire*, 64-65.

between British India and Indian States on all matters of common interest."[180] Irwin put the case for such an independent inquiry to the secretary of state for India,[181] Lord Birkenhead,[182] who was sceptical, but ultimately conceded.[183]

On December 16, 1927, Birkenhead appointed the Indian States Committee, whose terms of reference were "(1) to report upon the relationship between the Paramount Power and the States with particular reference to the rights and obligations arising from:- (a) treaties, engagements and sanads, and (b) usage, sufferance and other causes; (2) to enquire into the financial and economic relations between British India and the States and to make any recommendations that the Committee may consider desirable or necessary for their more satisfactory adjustment."[184] The Committee was chaired by Harcourt Butler, the former Indian foreign secretary and architect of the *laissez-faire* policy that had enabled British interference based on pragmatism. The other two members of the Committee were Sidney Peel,[185] a former financial advisor to the British government, and William Holdsworth,[186] the Vinerian Professor of English Law at Oxford University and a preeminent legal historian whose works included a multi-volume history of English law. The submissions of the states to the Committee, together with the report that the Committee members produced, form the most sophisticated versions of the sovereignty arguments of both the princes and the British in the interwar period; I turn to them in the next section.

The Indian States Committee

The Indian States Committee relied on a number of different mechanisms to fulfil its mandate. The members toured individual states and held discussions with the princes and state officials in early 1928; they also took the opportunity to meet British political officers. In addition to personal meetings, the Committee also sent a questionnaire to all states.[187] And finally, the Committee held oral hearings in London. Some states (for instance, Mysore and Hyderabad)

[180] *Aide-Mémoire*, May 1927, IOR/R/1/1/1682(1). The princes claimed that the interests of the states would be best served by the nomination of an entirely distinct committee from the proposed Statutory Commission that was to be appointed to discuss constitutional development in British India. See Informal Conference held at Viceregal Lodge on 6th May 1927 to consider questions relating to Indian States, IOR/R/1/1/1653.
[181] Letter from the Government of India, Foreign and Political Department to the Secretary of State for India, 15 September 1927, IOR/R/1/1/1682(1).
[182] Birkenhead had been a successful barrister and author of legal texts before he entered Parliament. His biographer, John Campbell, has noted that he refused to consider Indians to be fit for self-government and spent a lot of energy trying to block any further political reform. See John Campbell, "Smith, Frederick Edwin, first earl of Birkenhead (1872-1930)," in *Oxford Dictionary of National Biography*, online ed., ed. David Cannadine (Oxford: Oxford University Press, 2004), https://doi.org/10.1093/ref:odnb/36137 (accessed October 19, 2020). For a more detailed look at his life, see John Campbell, *F. E. Smith, First Earl of Birkenhead* (London: Jonathan Cape, 1983).
[183] Letter from the Secretary of State for India to the Viceroy, 8 December 1927, IOR/L/PS/10/1211/1.
[184] Questionnaire issued by the Indian States Committee, Appendix I, *Report of the Indian States Committee*.
[185] For details of Peel's life and career, see Pat Thane, "Peel, Sir Sidney Cornwallis, baronet (1870-1938)," in *Oxford Dictionary of National Biography*, online ed., ed. David Cannadine (Oxford: Oxford University Press, 2004), https://doi.org/10.1093/ref:odnb/47815 (accessed October 19, 2020).
[186] Holdsworth and Birkenhead traced their friendship to their time together at Oxford; he even dedicated the first nine volumes of his history of English law to Birkenhead, indicating the closeness of their relationship and perhaps also the basis of his appointment to the Committee. See H. G. Hanbury, "Holdsworth, Sir William Searle (1811-1944)," rev. David Ibbetson, in *Oxford Dictionary of National Biography*, online ed., ed. David Cannadine (Oxford: Oxford University Press, 2004), https://doi.org/10.1093/ref:odnb/33933 (accessed October 19, 2020).
[187] A copy of the questionnaire issued by the Committee can be found in Appendix I, *Report of the Indian States Committee*. Replies to the questionnaire were collected in a single volume, *Replies Received to the Questionnaire Issued by the Committee*, IOR/V/26/272/3.

submitted individual responses to the questionnaire, while a large number were represented by the Chamber of Princes.[188]

To trace the legal arguments made by the princes, I will focus on the case put forth by the Special Organization, the body established by the Standing Committee to work on the issue.[189] In addition to Bhupinder Singh, the *maharaja* of Patiala, and the Chancellor of the Chamber of Princes at the time, a number of princely state advisors were influential in developing the legal case:[190] K. N. Haksar, the political member of the state of Gwalior;[191] L. F. Rushbrook Williams, the foreign minister of Patiala;[192] K. M. Panikkar, political advisor to the *maharaja* of Kashmir;[193] and Leslie Scott, a Conservative privy councillor who was politically close to Lord Birkenhead and had a flourishing private legal practice.[194] In order to obtain a comprehensive overview of the princely position before the Committee, I will examine a number of different works, including: a book written by Panikkar on the relationship between

[188] Historians of South Asia have focused on the politics surrounding the Committee but have only briefly dwelt on the legal arguments (and specifically the sovereignty arguments) made by the princes. For discussions of the proceedings before the Committee, see R. J. Moore, *The Crisis of Indian Unity, 1917-1940* (Oxford: Clarendon Press, 1974), 32-33; Ramusack, *The Princes of India in the Twilight of Empire*, 144-152; Ashton, *British Policy Towards the Indian States*, 120-124; Copland, *The British Raj and the Indian Princes*, 277-280; Ramusack, *The Indian Princes and their States*, 128; and Copland, *The Princes of India in the Endgame of Empire*, 65-72. Legal historians have briefly traced the legal arguments made by the princes, primarily within a broader discussion of Indian constitutional structures. See Rohit De, "Between Midnight and Republic: Theory and Practice of India's Dominion States," *International Journal of Constitutional Law* 17, no. 4 (2019): 1227-1228.

[189] The Special Organization was responsible for appointing counsel to present the Chamber's case to the Committee; it also lobbied British politicians and the press for favourable publicity. This strategy was, of course, expensive; one estimate is that the princes spent £59,000 on legal fees and propaganda efforts over a two-year period. See Copland, *The Princes of India in the Endgame of Empire*, 67.

[190] The proceedings before the Indian States Committee also demonstrate the conspicuous role played by the ministers and legal advisors of the princes in shaping the agenda and strategy of the princes in their negotiations with the British and anticolonial nationalists. On the multiple roles of these bureaucrats, see Ramusack, *The Indian Princes and their States*, 249.

[191] The Haksar family had a long tradition of service in the states of Gwalior and Indore. For a brief snapshot of the various members of the family, see Henny Sender, *The Kashmiri Pandits: A Study of Cultural Choice in North India* (Delhi: Oxford University Press, 1988), 97-104. Haksar also had personal and political relations with moderate Indian nationalists, most prominently. Tej Bahadur Sapru; Haksar's daughter was married to one of Sapru's sons. See K. N. Haksar, "Intimate Glimpses," in *Tej Bahadur Sapru: Profiles and Tributes*, ed. K. N. Raina and K. V. Gopala Ratnam (Chandigarh: Tej Bahadur Sapru Commemoration Volume Committee, 1971), 109-115.

[192] Rushbrook Williams was a historian who taught at the University of Allahabad before he became involved as an advisor to the states. See Percival Spear, "Obituaries: Professor L. F. Rushbrook Williams," *Asian Affairs* 10, no. 1 (1979): 113-114.

[193] Panikkar was a lawyer and had been editor of two nationalist newspapers, the *Swarajya* and the *Hindustan Times*. He was appointed political advisor to Hari Singh, the *maharaja* of Kashmir, who then deputed him to assist Haksar and Scott with preparations of the princes' case before the Indian States Committee. See K. M. Panikkar, *An Autobiography*, trans. K. Krishnamurthy (Madras: Oxford University Press, 1977), 33-38, 48-54, 67-79. On account of his nationalist leanings, the government of India included his name in a list of political suspects, terming him as one who was prone to "seditious talk," and concluding that he was "anti-British," as well as "thoroughly disloyal and anti-Government." See "Antecedents of K. M. Panikkar," IOR/R/1/1/1714. For discussions of Panikkar's views on nationalism, see P. Subbarayan, "A Tribute to Panikkar," in *Sardar K. M. Panikkar Shashtyabdapoorty Souvenir*, ed. B. J. Chacko (Kozhikode: Mathrubhumi Press, 1954), 93; and Rita Paolini, "An Indian Student in Oxford During World War I: Kavalam M. Panikkar Between Nationalism and Princely States," *Monde(s)* 9 (May 2016): 59-74.

[194] For details of Scott's life and career, see P. A. Landon, "Scott, Sir Leslie Frederic (1869-1950)," rev. Marc Brodie, in *Oxford Dictionary of National Biography*, online ed., ed. David Cannadine (Oxford: Oxford University Press, 2004), https://doi.org/10.1093/ref:odnb/35992 (accessed October 22, 2020).

the states and the British government;[195] a tract titled *The British Crown and the Indian States*, which comprised the Standing Committee's written submissions to the Committee;[196] Scott's written legal opinion,[197] and Scott's oral arguments before the Committee.[198]

An emphasis on state consent formed the lynchpin of the case put forth by the princes before the Committee, with treaties and other formal engagements being the key sources of such consent. The princes and their advisors repeatedly emphasized the importance of treaty rights, with Bhupinder Singh explaining that the fundamental source of the "present uneasiness" of the princes was based on the belief that "political practice" threatened to seriously undermine some of their rights and privileges that had "hitherto believed to be inviolably safeguarded by their treaties and engagements," that had been continuously and repeatedly affirmed by British authorities.[199]

By focusing on these treaties, the states argued that their relationship was with the British Crown, and not the government of British India.[200] This claim ensured that any move towards representative government in British India would not affect the states. However, although the states claimed to be in alliance with the Crown, they did admit having given up some sovereign rights, including, for instance, control over external affairs. Given this unusual position of the states, Panikkar advocated for the application of "a kind of semi-international law."[201] In some cases, for instance, treaty interpretation, the princes argued that the principles of international law would be useful; Scott specifically argued that international law continued to govern the terms of the transfer of sovereign rights from the states to the Crown.[202]

In order to reconcile their subordinate position with claims of being allies of the British, the princes, unsurprisingly, turned to Henry Maine to contend that that the *sui generis* nature of the states amounted to a "repudiation of the Austinian principle of sovereignty."[203] The princes, for the first time, explicitly argued that sovereignty in the states was divided between the states themselves and the British government. Panikkar, for instance, termed "[t[he undivided

[195] K. M. Panikkar, *An Introduction to the Study of the Relations of Indian States with the Government of India* (London: Martin Hopkinson, 1927).
[196] *The British Crown and the Indian States: An Outline Sketch Presented to the Indian States Committee on Behalf of the Standing Committee of the Chamber of Princes* (London: Walterlow and Sons: 1928), IOR/L/PS/20/248. Panikkar claimed he wrote the first part of this study. See Panikkar, *An Autobiography*, 79.
[197] Scott issued a joint opinion along with Stuart Bevan (a barrister and Conservative MP), Wilfrid Greene (a highly respected practitioner and scholar of administrative law who was later appointed Master of the Rolls and Law Lord), Valentine Holmes (a member of Scott's chambers and later counsellor for the Treasury) and Donald Somervell (a barrister and future Conservative MP who served as attorney-general). See Joint Opinion of the Right Honourable Scott F. Scott, KC, MP, Mr. Stuart Bevan, KC, MP, Mr. Wilfrid A. Greene, KC, Mr. Valentine Holmes, and Mr. Donald Somervell, Appendix III, *Report of the Indian States Committee*. An earlier version of the opinion was published as "The Crown and Indian States: English Counsels' Opinion," *Indian States Review*, 27 October 1928, IOR/R/1/1/4673(2).
[198] The oral evidence submitted to the committee can be found in *Oral Evidence Recorded Before the Committee*, IOR/V/26//272/3.
[199] Speech delivered by the *maharaja* of Patiala on the occasion of the visit of the Indian States Committee to Patiala, February 1928, in *Public Pronouncements*, 12-13.
[200] Joint Opinion, para 7.
[201] Panikkar, *Relations of Indian States with the Government of India*, xxi. In a later text, Panikkar pointed out that the states were considered to be foreign territory in relation to British India, states' subjects were not British subjects, and treaties made by the Crown were not *ipso jure* binding on the states; the states, therefore, had a "subordinate international position." See K. M. Panikkar, *Inter-Statal Law: The Law Affecting the Relations of the Indian States with the British Crown* (Madras: University of Madras, 1934), 25.
[202] Joint Opinion, para 1.
[203] Panikkar, *Relations of Indian States with the Government of India*, xix.

sovereign of the Austinian school" to be "a meaningless metaphysical conception;"[204] in fact, he claimed, that the acceptance of the principle of unitary sovereignty was the very reason that the states were declared to be "non-sovereign communities."[205] Sovereignty, therefore, was "the complex of public powers," whose division was "constantly undertaken in the relation between states."[206] Scott, in his legal opinion, agreed, noting that "the complete sovereignty of the state is divided between the state and the Crown."[207]

Despite the shared view of sovereignty being capable of division, the princes differed from British colonial officials on the basis for dividing sovereign powers. Rather than focusing on historical precedent or pragmatic considerations of imperial interest, they advocated a "contractual" view of sovereignty. They argued that the division of sovereign powers was set out in treaties, engagements, or other means by which the consent of the states could be determined. By focusing on consent, the princes aimed to limit the extensive jurisdiction that the British government claimed to exercise within the states. Since the states retained all powers of sovereignty that were not expressly conceded to the Crown, "residuary jurisdiction" remained with the states.[208] In his legal opinion, Leslie Scott argued that "[t]he Crown has no sovereignty over any state by virtue of the Prerogative or any source other than cession from the ruler of the state," while "all sovereign rights, privileges and dignities not so transferred remain vested in the ruler of the state."[209]

Changing these original treaty obligations also depended on state consent. As Panikkar argued, the princes' claim was that "the rights, jurisdictions and authorities of the sovereign princes of India are based on treaties and political practice arising out of mutual agreement, to alter which the consent of both the parties is required."[210] Scott focused on the attempts of British administrators (such as William Lee-Warner) to change the mutual rights and obligations by relying on precedent, arguing that "usage" could only be considered as a source of obligation if it was backed by agreement. He also noted that agreement could be inferred only under limited conditions when it could be proved that the contracting parties intended to enter into an agreement.[211]

On account of the emphasis on treaty rights and consent, the states also highlighted the legal nature of the relationship with the Crown. The Standing Committee's sketch, for instance, noted that the states had "absolute rights" that were "based on contract with the Crown" and were ascertainable by "the application of well-known legal principles."[212] Scott built on this logic in his opinion to argue that the relationship between the Crown and the states was a legal rather than a political one. Consequently, both sides had definite rights and obligations that could only be ascertained by reference to legal principles. Drawing on the analogy of international law, he contended that "the absence of judicial machinery to enforce rights and

[204] Panikkar, *Relations of Indian States with the Government of India*, 125.
[205] Panikkar, *Relations of Indian States with the Government of India*, 121.
[206] Panikkar, *Relations of Indian States with the Government of India*, 125. This statement Panikkar had argued in favour of the sovereignty of the states being "divisible" even while he was a student at Oxford. In an article published in 1919, he relied on Maine to argue "[t]he right of sovereignty is thus divided, but the proportion of that division depends upon the individual state and on the treaty by which it is bound." See K. M. Panikkar, "The Native States and Indian Nationalism," *The Modern Review* 25, no. 1 (1919): 37-44.
[207] Joint Opinion, para 2.
[208] *The British Crown and the Indian States*, 82.
[209] Joint Opinion, para 2.
[210] Panikkar, *Relations of Indian States with the Government of India*, 143-144.
[211] Joint Opinion, paras 3(c) and 5(d).
[212] *The British Crown and the Indian States*, 98.

obligations does not prevent them from being ascertained by the application of legal principles."[213]

Since the relationship was legal, the princes argued, the term "paramountcy," and thereby the scope of the powers of the British government in relation to the states, was capable of being defined and limited, rather than being dependent on "imperial interests." Rather than challenging the entire edifice of paramountcy, the states instead chose to rely on the divisibility of sovereignty to limit it. Bhupinder Singh, for instance, repeatedly noted that the princes admitted the paramountcy of the British government but believed that "paramountcy had in its origin a definitely circumscribed ambit, and should be equally defined in its operation."[214] This strategy was necessary in order to minimize British interference in the internal affairs of the states but simultaneously retain a link with the British government as a defence against the attacks by British Indian anticolonial nationalists.

In his legal opinion and oral arguments, Scott attempted to provide a definition of paramountcy that would satisfy these princely aspirations. He argued that paramountcy was "the sum total of specific rights and obligations" that resulted from an "[a]greement between the Crown and a State by which the State cedes to the Crown certain rights in consideration of its accepting certain liabilities in connection with the foreign relations and security of the State."[215] The terms of the paramountcy agreement had to be ascertained "by a consideration of what is essential to the constitution of the relationship, to the mutual acknowledgement of that minimum of rights and obligations without which Paramountcy would not be Paramountcy" and also "by the rejection of every term, however reasonable, however convenient, which is not absolutely essential and necessary."[216] Although there could be specific instances that justified interference by the paramount power with the internal sovereignty of a ruler, for instance, in cases of misgovernment that imperilled the security of a state, there was no "general discretionary right" of the Crown to interfere with the internal sovereignty of the states.[217] Instead, the rights and obligations possessed by the Crown as against all states on account of paramountcy were, Scott argued, limited to "foreign relations and external and internal security."[218] There was, Scott argued, "no justification for saying that the rights of the Crown in its capacity as Paramount Power extend beyond these matters."[219] With this argument, the

[213] Joint Opinion, para 1. There was some dissent among the princes over the creation of an independent judicial mechanism for settling disputes between the states and the Crown. The Standing Committee's official submission demanded the establishment of a tribunal to settle disputes so that the government of India shall "no longer be a judge in their own cause." See *The British Crown and the Indian States*, 98. Mirza Ismail, the *diwan* of Mysore, which had submitted a separate response, told members of the Committee than an independent mechanism of arbitration was required in the case of "justiciable" questions between the states and the Government of India, although he conceded that "purely political" questions ought to be left to the discretion of the viceroy. See *Oral Evidence Recorded Before the Committee*, Minutes of a Discussion at Government House, Mysore, between the Indian States Committee and representatives of the Mysore Government, Monday, 19 March 1928, 51-54. On the other hand, Mahdi Yar Jung, political secretary to the *nizam* of Hyderabad, expressed concerns around the proposal for judicial settlement of disputes, preferring instead to advocate for a political relationship. See Letter from the Political Secretary to the *nizam* to the Secretary to the Indian States Committee, 24 April 1928, National Archives of India, Government of India, Foreign and Political Department, 1928, Reforms, File No. 12-R.
[214] Speech delivered by the *maharaja* of Patiala on the occasion of the visit of the Indian States Committee to Patiala, February 1928, in *Public Pronouncements*, 15.
[215] *Oral Evidence Recorded Before the Committee*, Minutes of Evidence given before the Indian States Committee at Montagu House, Whitehall, Monday, 26 November 1928, 648.
[216] *Oral Evidence Recorded Before the Committee*, Minutes of Evidence given before the Indian States Committee at Montagu House, Whitehall, Monday, 26 November 1928, 650.
[217] Joint Opinion, para 6(c).
[218] Joint Opinion, para 6(b).
[219] Joint Opinion, para 6(b).

princes sought a clear definition of paramountcy, and specifically of the scope of the rights of the British as paramount power, as well as the recognition of the internal sovereignty of the states.

The princes, therefore, argued for a split between external affairs, powers over which had been ceded to the British, and internal affairs, over which the states claimed to retain full control.[220] On matters of "common concern" such as railways or customs tariffs, the states contended that they retained sovereign rights to formulate policy, while remaining open to the need to collaborate with the government of India, various types of formal machinery could regulate such cooperation and allow for the "border" between internal affairs and common matters to be maintained.[221] In sum, the princes relied on the idea of sovereign powers being divided based on consent in order to argue for a parcelling out of sovereign powers that would permit them to both retain their close and valued relationship with the British Crown in light of pressures from British Indian nationalists and limit British interference into their internal affairs to maximize the internal autonomy of the states.

The British response to the princes' case, in the form of the political secretary's written opinion[222] and the report published by the Indian States Committee,[223] posed an unwelcome surprise to the princes, who considered their legal case to be comprehensive.[224] Although the Committee members were supposed to be independent, they had been briefed by British officials on the possible consequences of the report's conclusions. After being advised by Birkenhead,[225] Irwin wrote to Butler to warn him that the terms of reference were limited to reporting on the "actual position" of the states, and did not extend to recommendations to revise the relationship between the states and the British government; he also suggested that Butler "hint" to Scott that the Committee would not accept any proposals for such changes.[226] Given the close relationship between the Committee members and the British government, as well as the fact that the Committee was chaired by Harcourt Butler, who had been the principal author of the turn towards "imperial interests" in the early decades of the twentieth century, it is productive to consider the Committee's report as part of the British reaction to the princes' arguments.

In their report, the members of the Committee conceded that "the relationship of the states to the Paramount Power is a relationship to the Crown, that the treaties made with them are treaties made with the Crown, and that those treaties are of continuous and binding force as between

[220] Panikkar, *Relations of Indian States with the Government of India*, 127.
[221] *The British Crown and the Indian States*, 98-99.
[222] Précis of Political Secretary's Opinion placed before the Indian States Committee, IOR/R/1/1/4673(1).
[223] *Report of the Indian States Committee.*
[224] In letter to Bhupinder Singh, Leslie Scott claimed that he was "absolutely convinced both of the justice and of the strength" of the case of the states, and boasted that the states were bound to both "win recognition of the rights to which they are entitled in law" and "get a sound, workable machinery which will be calculated to prevent infringements of their rights in the future" if they followed his advice. See Letter from Leslie Scott to the *maharaja* of Patiala, 18 December 1928, NAI – Bhopal, Chamber Section, bundle no. 5, file no. 1, old file no. 2/2.
[225] Ian Copland notes that Birkenhead was concerned about Butler's reputation as the architect of *laissez-faire*. See Copland, *The Princes of India in the Endgame of Empire*, 70. However, as I have argued earlier, the *laissez-faire* policy itself laid the foundation for increasing intervention into the states through its focus on imperial interests.
[226] Letter from the Viceroy to Harcourt Butler, 19 February 1928, NAI, Government of India, Foreign and Political Department, 1928, Reforms, File No. 91-R.

the states which made them and the Crown."[227] But rather than accepting the princes' argument in favour of "semi-international" status with the possibility of international law applying in some instances, the Committee was rather more circumspect in its conclusions. It noted that the relationship between the states and the Crown was "*sui generis*" since the states had no parallel to their position in history and were governed by a "body of convention and usage not quite like anything in the world."[228] Rather than being subject to international law or municipal law, the states were governed "by rules which form a very special part of the constitutional law of the Empire."[229] However, by accepting the claim that the relationship of the states was with the Crown rather than the government of India, the Committee also recognized the concern of the states when it came to responsible government in British India; it opined that "in view of the historical nature of the relationship between the Paramount Power and the Princes, the latter should not be transferred without their own agreement to a relationship with a new government in British India responsible to an Indian legislature."[230]

The recognition of a direct relationship with the Crown, however, turned out to be the lone bright spot for the princes in the Committee's report. Relying on Henry Maine, the Committee agreed that "sovereignty has always been regarded as divisible;"[231] but unlike the princes, whose advisors had argued in favour of a "contractual approach," the Committee relied on a more flexible idea of the division of sovereign powers. The relationship between the states and the Crown, the Committee concluded, was not merely contractual but was a "living, growing relationship shaped by circumstances and policy, resting … on a mixture of history, theory and modern fact."[232] This conceptualization reframes Butler's original focus on "imperial interests" in the *Manual of Instructions to Officers of the Political Department of the Government of India* to an emphasis on "history, theory and modern fact" along with "policy" considerations. The result, however, was much the same: a deeply pragmatic view for determining the manner in which sovereign rights were divided between the princely states and the British government, which matched the submissions of British political officers.

In one internal memo, political officials denounced Leslie Scott's arguments as "somewhat preposterous."[233] Charles Watson, the deputy political secretary, took particular issue with Scott's focus on treaties and consent. Since many of the treaties had been drawn up before the British became the paramount power, Watson argued that they did not accurately reflect and "define completely in all cases the relations which now exist between the Crown or Government and the Indian States."[234] Many treaties, he admitted, contained nothing on the right of interference; however, he claimed that "it cannot be denied that such interference is

[227] *Report of the Indian States Committee*, para 38. Some members of peoples' movements in the states, who lobbied for political reform, tried to argue that the Committee had not specifically set out that direct relations with the Crown were distinct from relations with the government of India as an agent of the Crown; consequently, the Committee's conclusion was not nearly as favourable to the princes as they made out. See P. L. Chudgar, *Indian Princes under British Protection: A Study of their Personal Rule, their Constitutional Position and their Future* (London: Williams & Norgate Ltd., 1929), 149-155.
[228] *Report of the Indian States Committee,* para 43.
[229] *Report of the Indian States Committee*, para 43.
[230] *Report of the Indian States Committee*, para 58. Members of peoples' movements in the states were dismayed at this portion of the report and tried to argue that a responsible government would not be a "new Government" but only "a development of the existing Government." See Chudgar, *Indian Princes under British Protection*, 182-186.
[231] *Report of the Indian States Committee*, para 44.
[232] *Report of the Indian States Committee*, para 39.
[233] Note by [AKK?], 1 November 1928, IOR/R/1/1/4673(1).
[234] Note by C. C. Watson, 9 November 1928, IOR/R/1/1/4673(1).

not only the right but the duty of the Paramount Power."[235] Watson firmly refused to accept that the relation between the Crown and the states was "purely contractual," instead arguing that paramountcy was "a source of rights" and, therefore, "the only limit to interference with the sovereignty of the Protected States is the discretion of the Paramount Power itself."[236] In particular, changing circumstances required a readjustment in the division of sovereign powers, particularly since the "Paramount Power has not only the interests of one individual State to consider but also the welfare of neighbouring territory whether of British India or of other States."[237] The Committee built on these ideas, asserting that "the Paramount Power has had of necessity to make decisions and exercise the functions of paramountcy beyond the terms of the treaties in accordance with changing political, social and economic conditions."[238] Consequently, the Crown was justified in extending its jurisdiction within the states (for instance, over cantonment areas, European British subjects, or servants of the Crown) despite specific clauses in treaties providing that British jurisdiction and laws would not be extended to the states, since it was "necessary" to do so.[239] The shadow of "imperial interests," which had underlined Butler's *laissez-faire* policy, reared its head again to extend the sovereign powers exercised by the British government in relation to the princely states.

The British also argued that obtaining state consent was unnecessary to modify the treaty relations between the states and the Crown. Unlike the princes, who had rejected the significance of "usage" that was not backed by agreement, Charles Watson argued that "the explicit provisions of the Treaties may be found to have been modified by practice and usage when accepted without protest by the parties to the Treaties."[240] The Committee built on this sentiment to conclude that usage had "shaped and developed the relationship between the Paramount Power and the states from the earliest times, almost … from the date of the treaties themselves."[241] Usage had supplied material when treaties, engagements and *sanads* did not exist, and also operated "to determine questions on which the treaties, engagements and sanads are silent;" therefore, usage was a "constant factor in the interpretation of these treaties engagements and sanads."[242] In the words of the Committee, "[u]sage, in fact, lights up the dark places of the treaties."[243]

On account of the emphasis on usage, policy, and circumstances, the British refused to consider the relationship between the states and the British as paramount power as a legal one, focusing instead on the significance of political discretion. Proposals relating to the resolution of disputes between the states and the government of India provide an example. The Committee was circumspect about judicial resolution. Instead, the members suggested that the viceroy could rely on his political knowledge to appoint a representative committee that would provide advisory opinions, with the final decision being left to the secretary of state for India.[244]

More significantly, interpreting the relationship between the states and the British government as "political" enabled colonial officials to claim that their powers in relation to the states were incapable of being defined or limited. Bertrand Glancy, the political secretary, claimed that any

[235] Note by C. C. Watson, 9 November 1928, IOR/R/1/1/4673(1).
[236] Note by C. C. Watson, 9 November 1928, IOR/R/1/1/4673(1).
[237] Note by C. C. Watson, 9 November 1928, IOR/R/1/1/4673(1).
[238] *Report of the Indian States Committee*, para 21.
[239] *Report of the Indian States Committee*, para 56.
[240] Note by C. C. Watson, 9 November 1928, IOR/R/1/1/4673(1).
[241] *Report of the Indian States Committee*, para 40.
[242] *Report of the Indian States Committee*, para 40.
[243] *Report of the Indian States Committee*, para 52.
[244] *Report of the Indian States Committee*, para 70.

attempt to define or codify paramountcy was objectionable "both because a complete list of the practical restraints on their powers would be unpalatable to the Princes and because new conditions may give rise to new occasions and new ways of the Paramount Power exerting its authority."[245] The Committee's report followed suit, insisting that it was "impossible" to define paramountcy owing to the rapidly changing conditions of the world and "imperial necessity."[246] Paramountcy had to "remain paramount," the Committee noted rather unhelpfully, and had to "fulfil its obligations, defining or adapting itself according to the shifting necessities of the time and the progressive development of the states."[247] Since the Committee interpreted paramountcy extensively, it found it historically inaccurate to suggest that paramountcy only vested definite rights and imposed definite duties on the Crown with respect to a specific set of matters, i.e. foreign affairs and internal and external security. Instead, it concluded that the Crown had the power and the duty to do all acts that were considered "necessary for imperial purposes, for the good government of India as a whole, the good government of individual states, the suppression of barbarous practices, the saving of human life, and for dealing with cases in which rulers have proved unfit for their position."[248] Imperial interests, therefore, could justify almost any action taken by the British in relation to the states.

The flexibility of sovereign power also blurred the lines between the internal and the external, at least in the case of the princely states. Since the paramount power had the duty "to protect the states against rebellion or insurrection," the Committee noted that it also possessed "correlative obligations in cases where its intervention is asked for or has become necessary."[249] Intervention was, in the eyes of the Committee, both the right and the obligation of the British as paramount power, and could take place "for the benefit of the Prince, of the state, of India as a whole."[250] Consequently, rather than affirming the internal autonomy of the states, the Committee listed a number of situations in which the British government would be required to intervene into the internal affairs of the states in order to preserve peace within and outside the state as well as for the economic benefit of India as a whole.[251] Even in relation to areas of common concern, the Committee was lukewarm about the possibility of establishing formal machinery to ensure state participation in decision-making,[252] proposing instead that the viceroy have the discretion to appoint committees that could advise him on questions that affected the states and British India.[253] This final suggestion encapsulates the British approach to their relationship with the princely states: they viewed it as a political one that was defined primarily by imperial interests.

Debates over the British-princely relationship continued after the Committee's report was published. William Holdsworth, one of the members of the Committee, published a piece accusing the princes and their advisors of "unduly" magnifying the importance of treaties and

[245] Précis of Political Secretary's Opinion placed before the Indian States Committee, IOR/R/1/1/4673(1).
[246] *Report of the Indian States Committee*, para 57.
[247] *Report of the Indian States Committee*, para 57.
[248] *Report of the Indian States Committee*, para 42.
[249] *Report of the Indian States Committee*, para 49.
[250] *Report of the Indian States Committee*, para 51.
[251] *Report of the Indian States Committee*, paras 52-55.
[252] The Committee rejected a number of the proposed solutions on offer, including having a political member on the council of the governor-general, a scheme to create a council of princes and British members as a layer between the Political Department and the viceroy to discuss matters of common concern to British India and the states, and a scheme for federation. See *Report of the Indian States Committee*, paras 63-66.
[253] *Report of the Indian States Committee*, para 69.

minimizing the importance of usage, which, in his view, was contrary to historical fact.[254] The London barrister Julian Palmer voiced his support for the Committee, claiming that Leslie Scott's "contractual" approach was a "specious attempt to gain the advantages (without assuming the liabilities) of international status" and suffered from "radical unsoundness;"[255] instead, the British as paramount power enjoyed "special rights" against particular states, but also "general rights" such as allegiance and intervention against all Indian states.[256]

This emphasis on imperial necessity as the basis for extensive British powers drew vociferous responses from the states. Although the princes claimed to accept "wholly and without qualification, the Paramountcy of the British Crown," they also feared that they "would have no rights" if the "extreme view of Paramountcy" adopted by the Committee prevailed.[257] Their advisors spelled out these concerns in greater detail. Donald Somervell, one of the co-signatories of the Scott legal opinion, pointed out that the Committee's view of the British-princely relationship as a "living growing relationship shaped by circumstances and policy" would conflict with "the many solemn undertakings by the Crown to the states to "maintain unimpaired their privileges, rights, and dignities"."[258] Others were more trenchant; Bhupinder Singh's legal advisor, D. K. Sen, claimed that the Committee had "translated the doctrine of paramountcy into a theory of divine rights of the Paramount Power."[259] Manubhai Mehta,[260] the prime minister of Bikaner, warned of the consequences of "uncontrolled" paramountcy,

[254] W. S. Holdsworth, "The Indian States and India," *Law Quarterly Review* 46, no. 3 (1930): 407-446. However, Holdsworth admitted that Britain's suzerainty over the states had "elements of consent" on account of "the quasi-international element in the relationship between the Paramount Power and the States." As a result, he noted, usage could not "be altered at the will and pleasure of the Paramount Power, because the usage defines the distribution between the Paramount Power and the States of the various powers involved in sovereignty, and thus sets limits to the powers which it confers upon both parties to the relationship." See Holdsworth, "The Indian States and India," 427-428. This reference to consent led Manubhai Mehta to claim that Holdsworth had conceded Leslie Scott's argument that consent was essential in usage as well as treaties, since he had admitted that usage could not be altered at the will and pleasure of the paramount power alone. Mehta also scathingly noted, "it is really pathetic to observe the struggles and shifts the learned Professor is reduced to when he takes up the task of defending the conclusions arrived at by his own Committee." See Note on Paramountcy, NAI – Bhopal, Chamber Section, Bundle No. 15, File No. 51, Old File No. P/56.

[255] Julian Palmer, *Sovereignty and Paramountcy in India* (London: Stevens and Sons, 1930), 17.

[256] Palmer, *Sovereignty and Paramountcy in India*, 100-104.

[257] Note communicated to the Viceroy by the Standing Committee of the Chamber of Princes on the occasion of their conference with His Excellency before his visit to England, upon the Report of the Indian States' Committee, 28 June 1929, NAI – Bhopal, Chamber Section, bundle no. 7, file no. 2, old file no. 2/5. See also the concerns expressed by Bhupinder Singh in a letter to his fellow princes in Circular letter from the *maharaja* of Patiala, 29 April 1929, NAI – Bhopal, Chamber Section, bundle no. 7, file no. 2, old file no. 2/5 and the views expressed in an informal meeting of the princes in *Proceedings of the Meetings of the Chamber of Princes (Narendra Mandal)*, 1930, 50-51.

[258] D. B. Somervell, "The Indian States," *British Year Book of International Law* 11 (1930): 57. In fact, K. N. Haksar, a fellow advisor, accused the Committee members of deliberately misunderstanding the sources on which they based their arguments. See K. N. Haksar, An Analysis of the Butler Committee's Report with Comments, NAI – Bhopal, Chamber Section, bundle no. 7, file no. 2, old file no. 2/5.

[259] Sen, *The Indian States, Their Status, Rights and Obligations*, 205. A. P. Nicholson, a British journalist who was sympathetic to the princes, also used the language of the "divine right of paramountcy" in his denunciation of the Committee's report. See A. P. Nicholson, *Scraps of Paper: India's Broken Treaties, Her Princes, and the Problem* (London: Ernest Benn Limited, 1930), 62.

[260] Mehta had been the *diwan* of Baroda between 1916 and 1927, after which he moved to Bikaner as the prime minister. See R. Venkoba Rao, "Sir Manubhai N. Mehta," in *Ministers in Indian States* (Trichinopoly: Wednesday Review Press, 1928), 13-14. Like Haksar and Panikkar, Mehta also had close links with nationalist circles. His daughter, Hansa Mehta, was a member of the Congress, later being elected to the Constituent Assembly, as well as representing India at the United Nations.

claiming that it would result in "a steady decline of [states'] internal autonomy and an ever-growing erosion of their Sovereignty under the crushing inroads of imperialistic necessity."[261]

In sum, the British government and the princes had very different visions of the nature of their relationship. While the princes admitted the paramountcy of the Crown, they also claimed "to be members of the British Empire in their own right exercising their own sovereignty within their own territories and subject only to the necessary limitations upon their powers which result from the division of sovereignty between them and the Paramount Power;" this "division of Indian sovereignty" was "definite and not indefinite, and the rights and obligations of both High Contracting parties must be capable of determination."[262] In contrast to this legalistic view of the relationship, British colonial officials put forth a more flexible representation of the division of sovereign powers, claiming that "imperial interests" determined the extent to which the British could intervene in the affairs of the states. If these debates over the legal/political nature of the relationship paralleled those of the nature of the League of Nations at the international level, it is unsurprising, given that a number of the players (including Ganga Singh, Bhupinder Singh, and Rushbrook Williams) had participated in League meetings as well.[263] Although the legal case before the Committee was a failure for the princes,[264] the constant flow and exchange of ideas made it logical for the princes and their advisors to choose as their next strategy yet another idea with a long imperial and international history – federation.

[261] Note on the Report of the Indian States Committee, 1928-29, NAI – Bhopal, Chamber Section, bundle no. 7, file no. 2, old file no. 2/5.
[262] Note communicated to the Viceroy by the Standing Committee of the Chamber of Princes on the occasion of their conference with His Excellency before his visit to England, upon the Report of the Indian States' Committee, 28 June 1929, NAI – Bhopal, Chamber Section, bundle no. 7, file no. 2, old file no. 2/5.
[263] For the argument on how the League provided a model for later discussions of Indian constitutional reform in which the princes were involved, see Stephen Legg, "Imperial Internationalism: The Round Table Conference and the Making of India in London, 1930-1932," *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 11, no. 1 (2020): 32-53.
[264] Even after the disappointing results before the Committee, at least some princes considered seeking further legal resolution of the question, either through the appointment of a special judicial tribunal or by approaching the Privy Council, a move that the British government was keen to avoid. See Note communicated to the Viceroy by the Standing Committee of the Chamber of Princes on the occasion of their conference with His Excellency before his visit to England, upon the Report of the Indian States' Committee, 28 June 1929, NAI – Bhopal, Chamber Section, bundle no. 7, file no. 2, old file no. 2/5; Letter from the Secretary of State for India to the Viceroy, 6 June 1929, IOR/R/1/1/1841; and Note by C. C. Watson, 10 June 1929, IOR/R/1/1/1841.