

# The Duplicity of Paper: Counterfeit, Discretion, and Bureaucratic Authority in Early Colonial Madras

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## INTRODUCTION

Shifts in writing technology are usually taken to mark a shift from discretionary to rule-bound, impersonal forms of government. Equating writing technology with rules, however, obscures how counterfeiting, both alleged and real, and the exertion of official discretion can consolidate a government of writing. In his important study of Yemeni scribal culture, *The Calligraphic State: Textual Domination and History in a Muslim Society*, Brinkley Messick modifies Weberian models of domination by calling for the study of textual domination that intersects in diverse ways with other dimensions of authority. Messick relates the demise of the calligraphic state to the advent of legal codification and print technology. With the arrival of impersonal documents of government and a form of rational law, he argues, writing itself ceased to be the “non-arbitrary mark of the person” and the relationship between the sign and signified was no longer connected by an intermediary figure.<sup>1</sup> Similarly, the notion that the innovations of disciplinary writing constituted a new assemblage of control exercised through the “unavoidable visibility

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<sup>1</sup> Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California Press, 1992), 249. Michael T. Clanchy’s classic study of medieval English documentary practices similarly argues that a technological shift from memory to writing accompanied the routinization of royal charisma: *From Memory to Written Record, England, 1066–1307* (Oxford: Blackwell, 1993 [1979]), 67. For a recent departure from this perspective, see Morgan Clarke, “Neo-Calligraphy: Religious Authority and Media Technology in Contemporary Shiite Islam,” *Comparative Studies in Society and History* 52, 2 (2010): 351–83.

of subjects”<sup>2</sup> has been extremely productive in delineating the colonial career of modern infrastructural power. Following the work of Bernard Cohn, the colonial state’s “investigative modalities” have been shown to be integral to colonial command and the production of an ever-accumulating corpus of reports.<sup>3</sup> Statistical surveys, reports, and censuses in colonies did not create a uniform template of rule but did enable the operation of inherently selective, targeted, and differentially articulated projects of governance.<sup>4</sup> These gains notwithstanding, the debates over colonial governance have remained limited to differing estimations of the state’s successful mastery of information, and whether its taxonomies were collaboratively authored by intermediaries or imposed upon the colonized.<sup>5</sup> We need to give more attention to the complex articulation of records and reports with the law under conditions of exogenous rule.

The investigative modalities of colonial rule severed genres like the census report from local records and installed new filters to govern social relations that worked by stripping the notional individual of his or her universality.<sup>6</sup> In turn, officializing procedures turned the indexing of particulars into public records of legal status and wrought changes in social relations.<sup>7</sup> But as recent studies show, paper and signatures also work against the rationalizing logic of the model modern state by offering new strategies for subversion of and articulation with the law.<sup>8</sup> Files are variables that control the formalization and differentiation of the law.<sup>9</sup> And yet, far from fixing, codifying, and

<sup>2</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison*, Alan Sheridan, trans. (New York: Vintage, 1977), 189–90.

<sup>3</sup> Bernard Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton: Princeton University Press, 1996), 5; Nicholas Dirks, *Castes of Mind: Colonialism and the Making of Modern India* (Princeton: Princeton University Press, 2001).

<sup>4</sup> Radhika Singha, “Colonial Law and Infrastructural Power: Reconstructing Community, Locating the Female Subject,” *Studies in History* (n.s.) 19, 1 (2003): 87–126; and “Settle, Mobilize, Verify: Identification Practices in British India,” *Studies in History* 16, 2 (2000): 151–98. On how colonial enterprise reconfigured modes of rule to encompass new contexts, see Richard Saumarez Smith, “Rule-by-Records and Rule-by-Reports: Complementary Aspects of the British Imperial Rule of Law,” *Contributions to Indian Sociology* (n.s.) 19, 1 (1985): 153–76; and David Scott, “Colonial Governmentality,” *Social Text* 43 (1995): 191–220. A vast historiography on the colonial archive includes: Ann Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton: Princeton University Press, 2010); and Antoinette Burton, *Dwelling in the Archive: Women Writing House, Home and History in Late Colonial India* (Oxford: Oxford University Press, 2003).

<sup>5</sup> For an account of the debates on colonial knowledge, see Phillip Wagoner, “Precolonial Intellectuals and the Production of Colonial Knowledge,” *Comparative Studies in Society and History* 45, 4 (2003): 783–814; and Nicholas Dirks, “Coda,” in *Castes of Mind: Colonialism and the Making of Modern India* (Princeton: Princeton University Press, 2001).

<sup>6</sup> Smith, “Rule-by-Records.”

<sup>7</sup> Singha, “Colonial Law,” 99.

<sup>8</sup> Cornelia Vismann, *Files: Law and Media Technology*, abridged and trans. by Geoffrey Winthrop-Young (Stanford: Stanford University Press, 2008); and Benjamin Kafka, “The Demon of Writing: Paperwork, Public Safety, and the Reign of Terror,” *Representations* 98 (2007): 1–24.

<sup>9</sup> Vismann, *Files*; Matthew Hull, “The File: Agency, Authority, and Autography in an Islamabad Bureaucracy,” *Language & Communication* 23 (2003): 287–314; and “Ruled by Records: The

stabilizing or reconciling the contradictions of rule, acts of filing, listing, and registering generate domains for all manner of transactions at the margins of the documentary state.<sup>10</sup>

Study of infelicitous documentary practice has shown that the problem of “illegibility” exemplifies a peculiar paradox. When the state, Veena Das argues, “institutes forms of governance through technologies of writing, it simultaneously institutes the possibility of forgery, imitation, and the mimetic performances of its power.”<sup>11</sup> For Das, the realm of illegibility, or the gap between the rule and its performance in the margins of the everyday, reveals how the state is reincarnated in the life of communities by manifesting itself simultaneously as the bearer of rules and a spectral presence rendered visible in documents.<sup>12</sup> In what follows, I trace how the realm of illegibility constituted through the selective institution of writing installed a government of rules through counterfeit and discretion.

The selective use of writing is clearest in regimes of conquest that, ironically, valued perfect recordation as the foundation of the government of rules. John Stuart Mill for example, celebrated the British East India Company’s government of writing in India as a form of perfect recordation that was a necessary, if inadequate, substitute for a public opinion that he deemed the colonized incapable of possessing.<sup>13</sup> Perfect recordation was undertaken for metropolitan scrutiny. When writing formed the sinews of government, while acting as oversight on that government, ways of deeming what was true and false were not only reordered—the proliferation of paper was intimately tied to expansive official discretion. In early nineteenth-century Madras, the focus of this paper, we can see such connections as they emerged between ways of governing and ways of deeming things true.

In its efforts to counter metropolitan allegations of its corruption and to ensure the social reproduction of proprietors, the British East India Company government in Madras began to secure and regularize documentary

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Expropriation of Land and the Misappropriation of Lists in Islamabad,” *American Ethnologist* 35, 4 (2003): 501–18.

<sup>10</sup> U. Kalpagam, “Counterfeit Consciousness and the Joy of Abandonment,” *Sarai Reader 7* (Delhi: Centre for the Study of Developing Societies, 2007), 90–99; Emma Tarlo, “Paper Truths: The Emergency and Slum Clearance through Forgotten Files,” in Christopher John Fuller and Véronique Bénéti, eds., *The Everyday State and Society in Modern India* (New Delhi: Social Science Press, 2000), 68–90; Miriam Ticktin, “Where Ethics and Politics Meet: The Violence of Humanitarianism,” *American Ethnologists* 33, 1 (2007): 33–49.

<sup>11</sup> Veena Das, “Signature of the State: The Paradox of Illegibility,” in Veena Das and Deborah Poole, eds., *Anthropology in the Margins of the State* (Santa Fe: School of American Research Press; Oxford: James Curry, 2004), 225–52, here at 227.

<sup>12</sup> Das, “Signature of the State,” 250.

<sup>13</sup> *Parliamentary Papers*, 1852–53 (41), “Testimony of John Stuart Mill to a Select Committee of the House of Lords, 21 June 1852,” 301; Martin Moir, “Kaghazi Raj: Notes on the Documentary Basis of Company Rule, 1783–1858,” *Indo-British Review* 21, 2 (1993): 185–93.

transactions, but revenue and police subordinates were granted strategic exemptions from the resulting paper trail. Together, these efforts to self-regulate while policing subjects resulted in a dynamic relationship between intensified recording and the granting of these exemptions, which we can call “selective documentation.” On one hand, selective documentation installed signatures, oaths, and other attestation practices as the keystone of everyday bureau-rule, but it also rendered subordinates’ police powers and actions unaccountable. Unlike office secrets held in uncirculated files,<sup>14</sup> the activities of subordinate police, exempt from the record, were literally unknowable except through letters of complaint or petitions.

Such an orientation to writing enabled a type of discretion that sits uneasily with Weberian formulations. Weber acknowledges that outside the domain of law making and court procedure, general norms were conceived as barriers to the official’s creative activity to attend to individual circumstances. But this “creative administration” was not “the realm of *free*, arbitrary action and discretion, of personally motivated favor and valuation,” which he identified with “pre-bureaucratic forms” of administration. Rather, it was undertaken in the name of the “specifically modern and strictly ‘objective idea’ of *raison d’état*.”<sup>15</sup> To Weber, even if *raison d’état* is inseparably fused with power interests, and might quickly become arbitrary, in principle it remains a system of rationally debatable reason that stands behind every act of bureaucratic administration. As Radhika Mongia’s study of the passport demonstrates, the efficacy of the “unnamed racist strategy of law” lies in the operation of bureaucratic discretion between the letter and spirit of the law.<sup>16</sup> In the twilight world created by selective documentation, *raison d’état* and arbitrary rule were blurred. A government of rules was installed through the exercise of discretion and justified through the rule of difference. Furthermore, selective documentation operated such that the governed saw the colonial state to be duplicitous.

#### GOVERNMENT BY WRITING IN EARLY COLONIAL SOUTH INDIA

From its very inception in the seventeenth century, the British East India Company’s political dominance was forged by the sword and built on the spine of the accountant’s ledger.<sup>17</sup> As a militarized corporate institution, the Company pushed the limits of what was permissible for delegated agents of the Crown and played a crucial role in jurisdictional battles of the British Empire. By the late eighteenth century, dogged by corruption scandals, dire finances, and

<sup>14</sup> Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, Guenther Roth and Claus Wittich, trans. and eds. (New York: Bedminster Press, 1968), 992.

<sup>15</sup> *Ibid.*, 979.

<sup>16</sup> Radhika Mongia, “Race, Nationality, Mobility: A History of the Passport.” *Public Culture* 11, 3 (1999): 527–55, here at 545.

<sup>17</sup> Philip Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (New York: Oxford University Press, 2011).

allegations of despotism, the Company had begun to serve as a foil for British parliamentary debates on the proper place of government and the moral burdens of empire, two challenges that were assumed to be remediable through greater adherence to written procedure, law, and a trained body of professional civil servants.

Under increasing parliamentary oversight following the Regulating Act of 1773 and the Pitts India Act of 1784, Company officials elaborated an expansive view of exogenous governance that upheld a transcendental notion of law that derived its authority from procedure.<sup>18</sup> Two parallel judicial systems, representing the Crown and the Company, respectively, were installed in the Company territories: Bombay, Bengal, and Madras.<sup>19</sup> Under Lord Cornwallis (1738–1805), the district administration office (district, or *huzur cutcherry*) was made the heart of Company governance. A European collector who was a covenanted Company employee headed the office, which was staffed by un-covenanted scribal subordinates. Faced with the onerous task of collecting revenue without inciting revolt and adjudicating disputes without demur, these officials became increasingly enmeshed in the problem of discerning the juridical values of claims. The very domain of quotidian administration constituted by writing and procedure challenged the Company's claim to represent lawful rule. Above all, officers had to secure their own official documents and signatures from unauthorized duplication and circulation by others.

The underlying instability of the Company's documentary capacities at a time when it was expanding the apparatus of governance was expressed most vividly in an enduring anxiety over false evidence, specifically forgery and perjury. In 1857, a mere year before the Crown dismantled Company rule, H. Forbes, the acting secretary to Government, Revenue and Public Works Department, wrote about the widespread counterfeiting of documents in Madras Presidency: "There is probably no part of our whole judicial system or indeed of our whole system of administration ... that is productive of so much evil, or that gives more just cause of dissatisfaction to the people, than

<sup>18</sup> On the quotidian practice of exogenous rule, see Jon Wilson, *The Domination of Strangers: Modern Governance in Eastern India, 1780–1835* (Basingstoke: Palgrave and Macmillan, 2008); and Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism* (Princeton: Princeton University Press, 2010).

<sup>19</sup> The Supreme Courts, established by royal charter in Calcutta in 1773 and in Madras in 1800, represented the crown and applied common law in addition to making decisions by equity. Each court had jurisdiction over all Europeans, and also the non-European residents of the presidency town and the territories of princes allied with the government. All other inhabitants were under the jurisdictions of Company-run *adalat* (*adālat*) courts that operated in the hinterlands (in the Madras hinterlands from 1802). The *adalat* court system had a tiered structure, and was presided over by judges assisted by Indian law officers. The system was headed by the criminal court (the *Foujdaree Adalat*) and civil court (*Suddar Adalat*), both based in Madras. Both applied regulations written by governors-in-council that provided for adjudication by personal law and customary usage.

the very great facilities which our law and practices give to the production of false evidence, to perjury and forgery.”<sup>20</sup>

The persistent anxiety over false evidence in official correspondence was expressed as racialized cultural alterity, and sustained the universal claim of the rule of law and its application by force. In the nineteenth-century Madras courtroom, discourses of “native” duplicity provided the grounds for asserting summary control over courtroom procedure.<sup>21</sup> By late in the century, notions of Indian mendacity propped up the growing authority of medical jurisprudence and other truth technologies.<sup>22</sup> Forbes’s memorandum, however, hints at further complexities in the threat that counterfeit posed to bureaucratic authority.

Forbes’s intense concern with crimes of duplicitous writing and speaking—perjury and forgery—demonstrates the degree to which documents and their authenticity were crucial to the Company’s claim to sovereign authority and at the same time a source of its greatest vulnerability. Attestation protocols—the manner in which official documents were signed, sealed, and written, given, and taken—formed the basis of credible claims but at once generated their own refutability. What was so discomfiting to men like Forbes was that those they accused of being duplicitous, in turn, associated the new government of rules with duplicity. “Respectable inhabitants” told Forbes that half of the civil suits brought before Company courts were “either supported by forged documents and false evidence or answered by an assertion that the documents on which the suit is founded are forgeries.”<sup>23</sup> Inhabitants associated Company law courts with fraud, and counterfeit thus framed the very operation of the Company’s bureaucratic authority.

At one level, the official preoccupation with false documents in Madras was in keeping with empire-wide efforts to prevent fraud. An unprecedented moral value had come to be attached to forgery in Britain when worries emerged about the security of paper credit during the age of the financial revolution.<sup>24</sup> The Statute of Frauds of 1677 required conveyances to be in writing. The fear that written instruments were circulating like specie caused deep

<sup>20</sup> “Memorandum from the Madras Board of Revenue to the Madras Judicial Department,” Judicial Consultations, 21 July 1857, Government Order No. 854, no. 52, Chennai: Tamil Nadu State Archives [henceforth TNSA].

<sup>21</sup> Wendie Schneider, “‘Enfeebling the Arm of Justice’: Perjury and Prevarication in British India,” in Markus Dirk Dubber and Lindsay Farmer, eds., *Modern Histories of Crime and Punishment* (Stanford: Stanford University Press, 2007), 299–328.

<sup>22</sup> Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law* (Cambridge: Cambridge University Press, 2010). The codification of evidence, Kolsky notes, was motivated by the official concern to control violence perpetuated by unofficial whites, but distributed evidentiary burdens unevenly along race and gender lines.

<sup>23</sup> “Memorandum from the Madras Board of Revenue to the Madras Judicial Department,” Judicial Consultations, 21 July 1857, Government Order No. 854, no. 52, TNSA.

<sup>24</sup> Randall McGowan, “From Pillory to Gallows: The Punishment of Forgery in the Age of the Financial Revolution,” *Past and Present* 165 (1995): 107–40.



anxiety about the risk of paper.<sup>25</sup> Forgery was deemed a capital crime in Britain when the security of private credit came to be considered essential to national prosperity and public debt was institutionalized.

By the early nineteenth century, such preoccupations with unauthorized paper had begun to play out differently in the metropole and in Madras. Around the time that the official anxiety over duplication intensified in Madras, liberals in metropolitan Britain had begun to call for the end of capital punishment for forgery,<sup>26</sup> and the controversy surrounding counterfeits of the Bank of England's small notes triggered a public outcry in Britain around this. Soon after, the strengthening of the adversarial trial restricted the discretionary ambit of juries and gave greater prominence to what legal experts had begun to call "the law of evidence" in the metropole.<sup>27</sup> In Madras, by contrast, anxieties over duplicity resulted in a broadening of the definition of perjury, as a study by Wendie Schneider has shown.<sup>28</sup> The very question of duplicity was closely bound up with the operation of selective documentation. Important here, as we will see, were recommendations made by the prominent Madras official Thomas Munro (1761–1827) that paperwork be selectively reduced to expand the police powers of officials.<sup>29</sup>

#### THE REGULATION OF ATTESTATION IN EARLY COLONIAL MADRAS

When Company collectors were first appointed in the late eighteenth century to collect revenue and adjudicate disputes in the hinterlands of Madras they were less concerned with stabilizing oath-taking practices than with consolidating their presence in conquered territories. For example, Company officials took a flexible view of oath-taking practices. In the eighteenth century, the Madras Mayor's Court expected litigants to take the "pagoda oath." The oath consisted of bathing in a temple tank, solemnly declaring the truth, and then

<sup>25</sup> Randall McGowan, "Knowing the Hand: Forgery and the Proof of Writing in Eighteenth-Century England," *Historical Reflections* 24, 3 (1998): 385–414.

<sup>26</sup> John H. Langbein, "Shaping the English Criminal Trial: A View from the Ryder Sources," *University of Chicago Law Review* 50 (1983): 1–136; and *Historical Foundations of the Law of Evidence: A View from the Ryder Sources*, Yale Law School Faculty Scholarship Series, paper 551 (1996): 1168–202; also at: [http://digitalcommons.law.yale.edu/fss\\_papers/551](http://digitalcommons.law.yale.edu/fss_papers/551) (accessed 25 Jan. 2012); and W. L. Twining, *Rethinking Evidence: Exploratory Essays* (Cambridge: Cambridge University Press, 2006).

<sup>27</sup> Randall McGowan, "Managing the Gallows: The Bank of England and the Death Penalty, 1797–1821," *Law and History Review* 25, 2 (2007): 241–82; Philip Handler, "Forgery and the End of the 'Bloody Code' in Early Nineteenth-Century England," *Historical Journal* 48, 3 (2005): 683–702; and "The Limits of Discretion: Forgery and the Jury at the Old Bailey, 1818–1821," in John W. Cairns and Grant McLeod, eds., *The Dearest Birth-Right of the People of England: The Jury in the History of the Common Law* (Oxford and Portland: Hart Publishing, 2002), 155–72.

<sup>28</sup> Schneider, "Enfeebling the Arm of Justice."

<sup>29</sup> Thomas Munro, governor of Madras from 1820 to 1826, was the architect of the direct settlement with small cultivators called *ryotwari*, which he developed in opposition to Bengal's revenue officials, who favored large landed proprietors as agents of agricultural improvement.

confirming it by extinguishing temple lamps. When a group of Gujarati merchants refused, the court imprisoned them. But the Madras Governor, fearing a breach of peace, released them.<sup>30</sup> However, in 1791, while hearing a case against his tribute collector, or *peshkar*, Captain Alexander Read readily agreed with the prosecutor's demand that a witness who had already taken an oath in court also take the "pagoda oath."<sup>31</sup> Also at this time, Company officers relied on a settlement's accountants (*kaṇakkuppiḷlais*) and notables (*nāṭṭār*) to give evidence on revenue affairs and arbitrate disputes, even though they felt that "native juries" diminished the Company's sovereignty, and they tried to undermine them where possible.<sup>32</sup> In the hinterland, such mediation was crucial to the early British arbitration of land claims.<sup>33</sup>

Attestatory authority was wielded by accountant scribes, assemblies, and prominent notables and derived from their juridical powers. *Kaṇakkuppiḷlai* village accountants signed and witnessed bills of sales and other instruments and helped collective assemblies, or *mahānāṭu*, and *nāṭṭār* notables to resolve large-scale multi-caste disputes. Notables routinely accompanied investigators to the scenes of crime and guaranteed petitions.<sup>34</sup> A variety of signature practices thus flourished in the subcontinent because small groups of elites provided an important juridical interface between sovereigns and subjects.<sup>35</sup> Kin and friendship networks anchored the reputations of

<sup>30</sup> Mahabir Prasad Jain, *Outlines of Legal History* (n.p.: N. M. Tripathim, 1976), 42.

<sup>31</sup> "Trial of Lakshmana Rao, Captain Graham's Peshkar for Sundry Charges Preferred against Him by the Inhabitants of the Barahmahal by Order of Lieutenant Colonel Alexander Read, Superintendent," *Barahmahal Records* (1907), 138.

<sup>32</sup> In Board of Revenue [henceforth BOR] Consultations, 2 Nov. 1786, vol. 4, no. 7, pp. 1342–73, TNSA, we find references to the board summoning a village *kaṇakkuppiḷlai* to obtain evidence in a land dispute between Brahmans and Agambadiyars. On the Company undermining mediators, see Kankalatha Mukund, *The Trading World of the Tamil Merchant: The Evolution of Merchant Capitalism in the Coromandal* (Hyderabad: Orient Longman, 1999), 150–52; and Niels Brimnes, *Constructing the Colonial Encounter: Right and Left Hand Castes in Colonial South India* (Richmond, UK: Curzon Press, 1999).

<sup>33</sup> "Note on Justice in the District," Records of the Chingleput District, vol. 441, 12 July 1784, pp. 30–32; BOR Consultations, 5 Mar. 1787, vol. 6, no. 16–17, pp. 250–57, TNSA. Eugene Irschick's study of the settlement of Chingleput shows that notables *nāṭṭār* were, until 1790, important in adjudicating issues of inheritance: *Dialogue and History: Constructing South India, 1795–1895* (Berkeley: University of California Press, 1994). "Letter to the Board Regarding Civil Justice in Chingleput, BOR Consultations, 1 Mar. 1790, vol. 34, no. 19, pp. 666–69, TNSA.

<sup>34</sup> Merchants, brokers, and translators close to Company traders frequently led multi-caste *mahānāṭu* assemblies that included low-caste headmen. In response to a request from the police superintendent of Madras, the local police office produced a register that listed respectable inhabitants of the city indicating that this body of men also petitioned the Company regularly. These patterns were also found in French and Danish ports in the Coromandel. See Brimnes, *Constructing the Colonial Encounter*, 43, 148, 250.

<sup>35</sup> On the temporal powers of assemblies for South India, see Donald Davis, "Intermediate Realms of Law: Corporate Groups and Rulers in Medieval India," *Journal of the Economic and Social History of the Orient* 48, 1 (2005): 92–117. On the notarial powers of the Islamic judge, the *Qazi*, see J. S. Grewal, *In the By-Lanes of History: Some Persian Documents from a Punjab Town* (Simla: Indian Institute of Advanced Study, 1975).



agents of credit; the credibility of documents rested in the hands of professional scribes and accountants because they alone possessed the specialized expertise to examine handwriting and signatures on financial bonds. Discerning the authenticity of writing was the purview of those familiar with lexical knowledge and documentary forms, and those trained to make such assessments. For instance, Phillip Wagoner describes Niyogi scribal “graphological” awareness as a “mental catalogue of typical phrases and expressions occurring in the formal language” that allowed them to undertake practices of verification.<sup>36</sup> While individuals were certainly matched to their handwriting, document authenticity rested on a range of lexical traits and chains of attestation.<sup>37</sup> By the same token, signatures did not “bind” agreements in perpetuity; it was acceptable for an individual to dispute things like bond obligations, their signature notwithstanding.<sup>38</sup>

Cases of forgery were adjudicated in Company enclaves—the Madras Supreme Court adjudicated forgery, and in Bengal in 1775 the Nandakumar trial, in which the accused was hanged for forgery, acquired great notoriety. In Madras’s courtrooms, too, forgery and perjury were deemed crimes but were not initially considered a general public offense.<sup>39</sup> The tightening of attestation practices began only when the credibility of the Company’s management of credit networks was severely compromised and public scandals erupted in Britain regarding the circulation of forged bonds in Madras.

In 1808, allegations were made that the commission established to settle the debts of the deposed prince, the Nawwab of Arcot, had received forged bills of credit from many people who claimed to be his private creditors. An anonymous pamphlet published in London declared that when news circulated in Madras that the Government intended to adjust the debts of the late Nawwab of Arcot, a very considerable amount of the “nabob’s bonds appeared in the market of Madras, and many of them were daily hawked about at much lower prices than paper of the same denomination was sold for, before it was known that any arrangement of this debt was to take place.” It was suspected,

<sup>36</sup> Wagoner, “Precolonial Intellectuals,” 802.

<sup>37</sup> Counterfeiting coins and writing forgeries appear as crimes in many manuals of statecraft in Sanskrit and Persian. A *farmān* (royal letter) in Amir Khusrau’s *I’jāz-i Khusravī*, a fourteenth-century text of Persian letters, commands the prince not to be defrauded by writers and accountants and warns him to be careful about those scribes whose “inverted script” disrupted the affairs of Muslims. Syed Hasan Askari, “Material of Historical Interest in *I’jāz-i Khusravī*,” in *Medieval India-A Miscellany*, vol. I (Delhi: Asia Publishing House, 1969), 9.

<sup>38</sup> J. Duncan M. Derrett, “Nandakumar’s Forgery,” in *Essays in Classical and Modern Hindu Law*, vol. 2 (Leiden: Brill, 1977), 232.

<sup>39</sup> In the eighteenth century, forgery and perjury were prosecuted in the Madras town; see Jain, *Outlines*, 20. We have no evidence, however, that the regulation of forgery and perjury was at this time a systematic means of monopolizing and tightening attestation practice or introducing new norms of written credibility in Madras.

and proved, that the servants of the Arcot court had fabricated these spurious bonds.<sup>40</sup>

The Arcot forgery was the first serious crisis faced by the Madras government after its attempts to reestablish institutional credibility in the wake of other severe scandals,<sup>41</sup> and it dragged Madras officers through the proverbial mud in London. For the first time, people spoke of the “pervasiveness” of forgery among the natives. Subordinate scribes became the metonym for the governed. The accused in this case, Reddy Row and Ananda Row, both employees of the Arcot court, were publicly named “forgers” and “perjurers” and notices of their trial in the Madras Supreme Court circulated widely. By 1813, when writing about the problem of fraud and corruption in the Madras government, F. W. Ellis, a prominent administrator, could take for granted that perjury was “more frequent among the natives of India than among peoples of other countries.”<sup>42</sup> An orientation that selectively accepted diverse modes of attestation practice had turned into a political project in search of cultural forms of legality that would elicit truth in revenue offices and law courts.

The racialized cultural descriptions of purported “native” deception and dishonesty in Madras coincided with the Company’s regulation of attestation practice. In 1811, a modified version of the Bengal regulations on forgery was introduced. It redefined forgery and perjury as “public” crimes against the state. Forgery was now, “All fraudulent and injurious fabrications or alterations of written deeds or written or printed papers, counterfeit seals, or signatures and the illicit imitation of any public stamp or stamped paper established by the government.”<sup>43</sup> Perjury was defined as giving a false deposition upon an oath or under a solemn declaration to an officer of the Company in a court of judicature.<sup>44</sup> These redefinitions sought to control written communicative practice by asserting the Company’s control over attestation practices.

The regulation of attestation constituted the art of government by writing under Company rule. The regulations of 1811 capped a series of institutional interventions that subordinated notables, collective assemblies, and scribe-accountants by selectively dismantling their juridical powers. The 1802 regulations that brought a settlement’s scribe under the purview of the

<sup>40</sup> Anonymous, *A Short Narrative of the Circumstances Attending to the Late Trials in the Supreme Court of Judicature at Madras for Forgery, Perjury and Conspiracy to Cheat with Some Comments on the Unjustifiable Allusion Made to Them in the Recent Official Pamphlet in Defense of the Madras Government* (London: Printed for J. Ridgway, 1810).

<sup>41</sup> On scandal and empire, see Nicholas Dirks, *The Scandal of Empire: India and the Creation of Imperial Britain* (Cambridge, Mass.: Harvard University Press, 2006).

<sup>42</sup> BOR Consultations, 14 Dec. 1813, vol. 627, nos. 52–53, pp. 12922–42, TNSA.

<sup>43</sup> “A Regulation to Provide More Effectually for the Punishment of Perjury, Subornation of Perjury, and Forgery,” Regulation VI, 1811, *The Regulations of the Government of Fort St. George, in Force at the End of 1847 to which are Added the Acts of the Government of India in Force in that Presidency*, Richard Clarke, ed. (London: J. & H. Cox, 1848), 235–37.

<sup>44</sup> *Ibid.*

crime of forgery also endowed European officers with notarial powers. From 1808, the Madras government, following an empire-wide turn, began protracted attempts to enforce stamped documents, essentially stipulating that to be admissible in a court all legal instruments had to be written on stamped paper.<sup>45</sup> Police powers were also rapidly reorganized in the early 1800s as part of a military consolidation that followed the war against recalcitrant military chieftains, the “poligar” or *pālaiyakkārar*. In the hinterland, the Company curtailed the chieftains’ powers by decree, and deposed and deported them if they resisted.<sup>46</sup> By 1809–1810, in addition to law courts, ad-hoc “committees” of British police and revenue officers were investigating caste disputes and other events of political disturbance, assuming the juridical powers formerly exercised by multi-caste assemblies.<sup>47</sup> Thus, by 1810, elite inhabitants lost their autonomous juridical powers to collectively attest, marshal, and adjudicate evidence, except as and when directed by European officers. This allowed the Madras government to encompass attestation practices, yoking them to a new structure of rule whose lynchpin was not the forum of assembled elites, but the *adalat* courtroom and the Company’s office.

#### CONSOLIDATION OF THE SIGNATURE AND ENSUING STRUGGLES

The regulation and tightening of attestation practices reframed the signature as the keystone of governance. The regulation of 1811, for example, did not distinguish between acts of willed forgery and the inducement to forgery. Officials could now decide whether signing for another person, frequent in scribal societies, was an act of forgery. At stake was not just the legal form of documents that would be assessed or guaranteed by the scribal expert and his signature, but also the very act of signing. In short, discretionary control over attestation protocols endowed the signature with great and singular force.

These interventions, however, created the conditions for the signature-act to become a node of a fraught political struggle. In South India, as elsewhere,

<sup>45</sup> Stamp regulations represented an empire-wide move to stabilize authentic documents. In Madras, the stamp regulations did not preclude the admission of unstamped documents. See Regulation VIII, 1808, Regulation XIII, 1816, *Regulations of the Government*, 204–6; 326–39. Also see numerous modifications to stamp regulations in *ibid.*, 876–77.

<sup>46</sup> On the destruction of *pālaiyakkārar* sovereignty, see K. Rajayyan, *Rise and Fall of the Poligars of Tamilnadu* (Madras: University of Madras, 1974); Anand Yang, “Bandits and Kings: Moral Authority and Resistance in Early Colonial India,” *Journal of Asian Studies* 66, 4 (2007): 881–96.

<sup>47</sup> The 1809 disputes between Dalit and the Lingayat Panchalar caste groups mark this shift. A Company-appointed commission adjudicated them. The multi-caste assembly members were summoned to give evidence as “heads of caste” and instructed to broker agreements under Company direction and supervision. On the police committee system in force in the settlement, see Ravi Ahuja, “Labour Unsettled: Mobility and Protest in the Madras Region, 1750–1800,” *Indian Economic and Social History Review* 35, 4 (1998): 381–404.

the circulation of a sovereign's signature was restricted, and it was received ceremonially as an embodied insignia of incorporation.<sup>48</sup> Sealing also served as a talisman. Elaborate royal seals, held in the Mughal court by the senior ladies of the harem, stamped the document with the imprint of the sovereign's person. Kings rarely signed in their own hand except as a mark of special favor, which is why royal documents bearing his hand were received with ceremonial festivities in the presence of a locality's notables.<sup>49</sup> Śrīnivāsa Kavi's eighteenth-century Sanskrit poem *Ānandaraṅga vijayacampuh*, about the Dubashi broker and translator Ananda Ranga Pillai, describes a Mughal royal order (*farmān*) arriving in a silver palanquin in French Pondicherry in a Persianate style: fanned with flywhisks and received with ritual salutes (*salāms*) and by a convivial gathering where betel leaf and perfumes were served.<sup>50</sup> In the seventeenth century, grants engraved on copper (*paṭṭāyam*), bestowed to headmen and chieftains by Nayaka kings, were venerated and displayed along with other objects of office such as a carpet (*kampaḷam*), a spittoon, a vase for sprinkling water, and a pair of sandals.<sup>51</sup> Collective ritualized viewing of the royal signature and its restricted circulation anchored the royal person.<sup>52</sup> Writing for oneself was relatively unusual and tended to be an especially marked performance. This is why, when the Company began to demand routine signatures, local rulers objected that this denuded their authority. In 1809, when the British asked that documents leaving the Raja of Tanjavur's palace bear his signature, he protested that his minister usually signed the papers that were sent from his palace record rooms to the Company's law courts. He viewed the demand that his written responses be sent under his seal and signature as "dishonorable and a disgrace" to his position.<sup>53</sup>

Signatures also became the object of allegations of duplicity and corruption. In 1797, when the Company was compelling chiefs to pay it tribute, the Sivagiri chieftain complained that its Ramnad collector demanded excessive

<sup>48</sup> Béatrice Fraenkel, *La Signature: Genèse d'un Signe* (Paris: Gallimard, 1992).

<sup>49</sup> Momin Mohiuddin, *The Chancellery and Persian Epistolography under the Mughals, from Bābur to Shāh Jahān, 1526–1658: A Study on Inshā', Dār al-Inshā', and Munshīs, based on Original Documents* (Calcutta: Iran Society, 1971).

<sup>50</sup> Śrīnivāsa Kavi (and V. Raghavan), *Ānandaraṅga vijayacampuh* (Teppakkulam, Tiruchirappalli: Palaniyappa Brothers, 1948). Persian *Inshā'* manuals describe a similar set of ritual conventions for receiving royal documents.

<sup>51</sup> See Louis Dumont, *A South Indian Subcaste: Social Organization and Religion of the Pramalai Kallar*, M. Moffatt, L. Morton, and A. Morton, trans. (Delhi: Oxford University Press, 1986), plate 17.

<sup>52</sup> Official paper documents in the households of Maratha chiefs in the Deccan were authenticated by seals and lexical phrases written by specific office-bearers who had to write in their own hand. At least one account of signature practices, collected circa 1811, says that it was relatively late before the rajah began to sign in his own hand. See "A Statement of the Different Forms and Signatures Required to Authenticate Public Documents," *Madras Journal of Literature and Science* 12 (New Series) (Dec. 1861): 225.

<sup>53</sup> Records of the Tanjavur District, 6 Sept. 1809, vol. 3420, pp. 59–61, TNSA.

cash tributes and was pressuring him to sign a *muchalika*, a Persianate document of fealty executed by tenants, which he said demeaned his chieftaincy.<sup>54</sup> Signing a *muchalika* would turn the chieftain into a Company vassal. Jackson, the collector, in turn accused Sivagiri of sending anonymous letters to Company gentlemen accusing the Ramnad Collectorate of corruption. He claimed that the chieftain was dishonorable because the accusations were unsigned. Jackson wrote: “If the poligar had any real cause to complain of me as stated in the cadjan [palm leaf],... he would not have taken this method to obtain redress, when he could not be ignorant that he had the means easily ... to lay his grievances before your Board. His signature merely to the olai [palm leaf] would have been sufficient to procure him the most ample redress.”<sup>55</sup> By accusing Sivagiri of insincerity, Jackson proffered a preferred way of establishing credibility—the repetitive signature was the honorable mode of standing in public, being visible and legible to a governing authority. It was in these moments of mutual accusations of insincerity that the signature took on its full burden as the routine sign of an intentional subject and a primary mark of documentary authenticity in early colonial South India.

The Company’s documents bore seals and signatures much like Persianate documents had, but its efforts to stabilize the signature as a repetitive performance of authentication and sincerity in addition to a mark of consent transformed ordinary documentary practices. By the early 1800s, Company regulations commanded officers to personally and repeatedly sign documents in their own hand, and all their un-covenanted employees to sign *muchalikas* of loyalty. The flurry of signing led to insurmountable problems. After Company officers wrenched many *muchalikas* of fealty from princes and commoners, servants and subjects, F. W. Ellis, the collector of Madras, warned the governor and the Board of Revenue, that the *muchalika* would not deter “those predisposed to dishonesty. The papers may have some temporary effect, but when constantly demanded under the same circumstances it soon degenerates into mere form and loses all importance that might adventitiously be attached to it.”<sup>56</sup>

Ellis’ comments reveal the degree to which struggles over the signature resulted less from cultural misunderstandings of its significance or a lack of recognition between the Company and its subjects than from an official effort to

<sup>54</sup> “Remarks by Mr. Jackson on Letter Received through Vencataswamy Nayaka,” BOR Consultations, 19 Oct. 1797, vol. 187, no. 32, pp. 6602–14, TNSA; *Glossary of the Madras Presidency*, C. D. Maclean, ed. (Repr. Delhi: Asian Educational Services, 1982 [1893]). See also M. N. Srinivas on village arbitration in twentieth-century Mysore, regarding the continued use of *muchalikas*: “A Caste Dispute among the Washermen of Mysore,” *Eastern Anthropologist* 7, 3 & 4 (1954): 148–68; repr. in M. N. Srinivas, *Collected Essays* (New Delhi: Oxford University Press, 2002), 100–21.

<sup>55</sup> “Remarks by Mr. Jackson on letter received through Vencataswamy Nayaka,” BOR Cons., 19 Oct. 1797, vol. 187, no. 33, pp. 6602–14, TNSA, here 6604.

<sup>56</sup> “From F. W. Ellis, Collector of Madras to the Board of Revenue,” BOR Consultations, 14 Dec. 1813, vol. 627, nos. 52–53, pp. 12931–34, TNSA.

remake its significance. The Company's insistence on repeated inscription had stripped signatures of the value they had hitherto possessed precisely because of restrictions on their use. In effect, it had formulated attestation in ways that inhabitants could subvert, and subvert at will. Officers soon found that their own signatures and facsimiles were also vulnerable to duplication; subversive employees used unauthorized facsimiles for personal benefit,<sup>57</sup> and more blatant acts of the unauthorized use of official names were not unknown.

#### MUNRO AND THE "MISCHIEF MAKERS"

Following Thomas Munro's arrival in Tanjavur in 1814, rumors circulated that disaffected inhabitants had written letters to the great administrator complaining of embezzlement in the revenue office, and that change was imminent. The collector of Tanjavur dismissed these stories because they were spread by "notorious troublemakers," who were in his estimation, disgruntled former employees. The rumors resurfaced the next year with news that Munro had returned to the area. This time a crisis seemed to loom because the collector found collecting taxes difficult when subjects expected Monroe to indict him for corruption. More disturbingly, the collector wrote that Colonel Munro's name has been misused by some of the community's "worst characters" for the purpose of extorting money.<sup>58</sup> Apparently this time letters were now being written, under the favor of Munro's name, demanding money and grain from native public servants. By September 1816, fearing that government authority was under severe threat, the collector wrote to the Board of Revenue in Madras describing the agitated public and his inability to verify whether the use of Munro's name in these letters was authorized.<sup>59</sup>

While finding the writers of these letters was a pressing problem, there was an additional twist: several unsigned letters were received in the Tanjavur office charging Company offices and the collector with embezzlement and fraud. The collector, his integrity under question and fearful of the impression this made on his superiors in Madras, alleged that the anonymous letters had been written by troublemakers seeking to remove him. Some months later he responded to another inquiry from Madras, regarding a petition, by stating that the inhabitants of Tanjavur were fundamentally dishonest: "There is perhaps no district in India, where a knowledge of reading and writing is so common and where the mirasdars (landlords) have so much time to send and write as those in Tanjore, nor is there any district, where this advantage is more abused. Some ... consider their knowledge chiefly useful as it offers

<sup>57</sup> "Improper Use of Collector Garrow's Facsimile," Coimbatore District Records, 27 June 1816, vol. 584, TNSA.

<sup>58</sup> "Letter from I. Hepburn, Tanjavur Collector to the Madras Board of Revenue," 12 Sept. 1816, Records of the Tanjavur District, vol. 3279, pp. 54-61, TNSA.

<sup>59</sup> Ibid.



them means of spreading mischief and calumny.”<sup>60</sup> The collector argued that literacy among his subjects merely enhanced their proclivity for deceit and forgery. His racialized explanation is a counterpoint to the well-documented misuse of the coveted Mughal *farmān* in eighteenth-century Bengal,<sup>61</sup> which, Sudipta Sen argues, undermined the efficacy of the sovereign’s signature.

In Tanjavur, the unauthorized use of Munro’s name by subjects had created a veritable crisis in the everyday work of the colonial state. By this time, as well, officials had begun to routinely depict their subjects as duplicitous.<sup>62</sup> The crisis was more than one of colonial anxiety caused by Company’s inability to control information, and is not entirely attributable to an innate cultural misunderstanding over gift and contract; rather, the illegibility of paper emerged from official moves to intervene in attestation by attempting to remake the signature. *Pattayams* and *farmāns* were a mode of fealty that was simultaneously political, contractual-economic, and symbolic. The Munro episode, by contrast, was the effect of the Company’s commitment to extricating the document from this complex knot of relations while also installing a model that they believed was culturally appropriate for eliciting truth from and reducing the juridical autonomy of its subjects. The official insistence on making signatures everyday and routine dismantled the protocols of attestation. The new system, unfettered by the collective validation of respectable inhabitants, and bringing about the unrestricted use of signature, had created a new world in which writing’s vulnerability to fabrication would persistently threaten colonial authority.

#### DISCRETION, PROCEDURE, AND EVIDENTIARY PRACTICE

The goal of controlling the authenticity of documents continued to elude the Company; the problem of duplication could not be easily resolved. In part this was because the very forms of discretion that had been introduced by regulation stymied the Company’s *adalat* system. As many scholars have shown, the incremental modification by regulation of Islamic criminal law consolidated the discretion of judges over courtroom procedure and substantively modified extant modes of discerning evidence.<sup>63</sup> Judges were empowered to overrule

<sup>60</sup> “Letter from I. Hepburn, Tanjavur Collector to the Madras Board of Revenue,” 30 July 1817, Records of the Tanjavur District, vol. 3281, p. 21, TNSA.

<sup>61</sup> Sudipta Sen, *The Empire of Free Trade: The East India Company and the Making of the Colonial Marketplace* (Philadelphia: University of Pennsylvania Press, 1998), 31.

<sup>62</sup> See Dumont, *South Indian Subcaste*, “Appendix: The Headman’s Charter.” When the Company took over South India and inhabitants began to flood them with claims about their privileges, the Company’s concern in preserving these privileges as hereditary rights led it to reorient these documents to be “gift deeds” of status and inheritance, at the expense of their renewable character.

<sup>63</sup> Jörg Fisch, *Cheap Lives and Dear Limbs: The British Transformation of the Bengal Criminal Law, 1769–1817* (Wiesbaden: Franz Steiner Verlag, 1983); Radhika Singha, *Despotism of Law:*

their law officers' readings of evidence, as well as any exceptions they may have granted, if these opinions were considered repugnant to justice and conscience, even if legal innovations that followed were sometimes reincorporated as operating within the categories of Islamic law.<sup>64</sup> Regulations like the one about forgery and perjury entrenched and further consolidated the sphere of conscience-based judicial action.

Since discretionary powers of judges ran the gamut from determining punishment to overruling the opinions of native law officers on evidence and punishment, decisions often came down to playing hunches. Julia Maitland, a Judge's wife, joked in her letters home that her husband, a criminal judge in Rajahmundry in the 1830s, "judged by the manner and countenance of a witness rather than by his evidence."<sup>65</sup> Unlike judicial discretion in Britain, which emphasized the judge's assessment of evidence, the widening purview of judicial discretion in Madras, as Schneider argues, was over-determined by the fear of dishonesty. The very different assessments of the credibility of witnesses or documents made for low rates of conviction. Yet, the low conviction rates did not mean that the allegations of duplicity had no effect. On the contrary, they greatly affected the operations of courtrooms, which were now saturated with them.

The rulers and the ruled viewed each other with suspicion in a setting of selective documentation and a strategic thinning of the official paper trail. In 1816, the Madras government acted on Munro's recommendations to "reduce paperwork" in the name of efficiency. Munro, unlike Lord Cornwallis, opposed the separation of the judiciary and the executive favored by Cornwallis' reforms in Bengal in the 1790s. Munro's view was that the separation would make government inefficient and collectors indecisive and create a mode of government culturally alien to the inhabitants. The reforms of 1816, his brainchild, consolidated revenue and police powers in the collector's establishment. Collectors were given magisterial powers, the police powers of their native subordinates were enhanced, and the hearing of petty civil cases was devolved to village council elites. Paper trails of executive activity were made harder to arbitrate while the basic system of law courts was retained. The regulation of evidence in Madras was made subservient to police interrogation and revenue matters.<sup>66</sup>

*Crime and Justice in Early Colonial India* (Delhi: Oxford University Press, 1998); Scott Kugle, "Framed, Blamed, and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia," *Modern Asian Studies* 35, 2 (2001): 257–313.

<sup>64</sup> "Modifications to Mahomedan Criminal Law," *Regulations of the Government*, 837–38; Schneider, "Enfeebling the Arm of Justice," 313, 319. Schneider observes that the Bengal administrators remained more attached than did Madras officials to the idea of administering Islamic law.

<sup>65</sup> Julia Maitland, *Letters from Madras during the Years 1836–39* (London: William Clowes & Sons, 1846), 82.

<sup>66</sup> Regarding how revenue collection dominated concerns of law, see Douglas M. Peers "Torture, the Police, and the Colonial State in the Madras Presidency, 1816–1855," *Criminal Justice History* 12 (1991): 29–56.

## DISCRETION AND INTERROGATION

Munro's reforms were initiated to dismantle procedure and devolve authority to select natives who would now exercise greater powers over inhabitants. He argued that the delegation of police and revenue powers to native agents would help improve the character of the elite. "Nothing surely can tend more strongly to raise men in their estimation and to make them act up to it, than being thought worthy of being entrusted with the distribution of justice to their countrymen...." While Munroe conceived his reforms as a way to build character, he also saw in them a way to yoke the elites to his government by sending out the message that although "in a subordinate capacity they form a material part of internal administration."<sup>67</sup>

At the same time, the Madras Board of Revenue blamed "native duplicity" on a lack of proper moral education. In 1815, a few months before the introduction of laws delegating judicial powers, the secretary to the Board wrote, "We are far from believing that the artful intrigues, corrupt compacts, daring embezzlements, the hardy frauds and the shameless perjuries of the Native revenue officers which have of late so much disgraced this department ... can be traced to any depravity inseparable from the character of the Hindoos. We think they are to be attributed to very different causes, chiefly to the want of any inducement to resist temptations..., to their defective education and laxity of morals...."<sup>68</sup>

These worries about duplicity were expressed in a racial stereotyping of natives as corrupt coupled with a pious hope that the devolution of administrative powers would generate more honesty among the elite. Munro's reforms did bind native elites to the Company's paternalistic rule, as T. H. Beaglehole has argued,<sup>69</sup> but the 1816 delegation of power to them did not curtail the discretionary powers of collectors; it merely extended them in ways that enabled the Company's revenue establishment to dominate the justice system.<sup>70</sup>

In effect, the paternalistic reforms made the judicial system as a whole subservient to revenue collection and policing in Madras, and this had severe consequences for the collection of facts and evidence. The issue was not just that judicial proceedings relied on written documents, but also that legal reforms completely changed the terrain on which evidence was collected and crime investigated. The 1816 reforms gave collectors greater authority to deal with civil cases and the power to send people to jail for crimes. Collectors

<sup>67</sup> Cited in T. H. Beaglehole, *Thomas Munro and the Development of Administrative Policy in Madras, 1792–1818* (Cambridge: Cambridge University Press, 1966), 109.

<sup>68</sup> Board of Revenue to Government of Madras, Revenue Consultations, 22 Mar. 1816, vol. 218, no. 1, pp. 2361–62, TNSA.

<sup>69</sup> Beaglehole, *Thomas Munro*.

<sup>70</sup> For an excellent account of how the 1816 regulations enhanced the police powers of specific subordinate offices, see Peers, "Torture."

relied on the invariably high-caste Brahman *tahsildars* to investigate crimes, prepare reports, produce culprits, and most importantly, take preliminary depositions. This greatly enhanced their police powers and integrated policing and documentary practice. Unfettered by notables, *tahsildar* subordinates, responsible only to European superiors, could now define crimes and document them.

In 1821, subordinate officials, too, were allowed to conduct preliminary investigations in a variety of cases, and *tahsildars* were no longer required to write down depositions, both changes intended to reduce paperwork. The regulations extended investigative powers of subordinates: "Whereas it is also expedient that the preliminary powers of investigation for the discovery of offences and apprehension of offenders which are now vested only in *tahsildars* or other head officers of the district police should be delegated to competent subordinate officers in different parts of each talook..." The regulations also permitted *tahsildars* to dispense with taking depositions in petty cases: "The same exemption from the necessity of recording depositions is hereby granted to *tahsildars* and other head police officers of districts in the examination of cases in which it is competent to them to pass decision."<sup>71</sup> In the meantime, committees of village notables or elders, the *panchayat*, as well as native judges, were allowed to hear civil cases. Village headman could hear confessions and mete out summary punishments in "trivial" cases.<sup>72</sup>

Evidentiary practices were not changed by these devolutions of punitive and interrogation functions, instituted under the guise of judicial power and revival of ancient custom in the institution of village councils. They did secure petty officials immunity from written accountability. The result was a massive reorganization of power-relations in Madras. By the mid-1820s, a small number of Company-sponsored rural elite, village headman, native judges, village policemen, and revenue officers were wielding their new powers. They acted in the name of the Company regime, even as the regime operated through their discretionary authority. It also created the problem of "false depositions."

In cases where evidence was taken, the village and district officers' grip on rural society and their ability to extract confessions through coercion meant that deponents often went to court and retracted their preliminary depositions or confessions. Judges readily acknowledged the problem of coerced confessions in their departmental correspondence right into the mid-nineteenth century. The matter came to a head in 1855 when a commission of inquiry found that subordinate officials routinely tortured people.<sup>73</sup>

<sup>71</sup> Regulation IV, 1821, x, *Regulations of the Government*, 416.

<sup>72</sup> Regulation IV, 1816, x, *Regulations of the Government*, 254–55.

<sup>73</sup> Many circular orders were issued on the subject. *The Circular Orders of the Court of Foujdaree Udalt, from 1803 up to 30th June 1834* (Madras: Church Mission Press, 1835).

To that point, judicial pronouncements made to mitigate coerced confessions had served to only tighten discretion within the racialized bureaucratic structure. English judges saw contradictory depositions as acts of duplicity, corruption, or perjury. In 1827, a new regulation to modify the definition of perjury described the problem of contradictory depositions: “That numerous cases have occurred in which a party or witness has given two contradictory depositions in regard to the same matter or matters of fact, and although in such cases, one of the two depositions must necessarily be false, it is often difficult to ascertain in which the perjury was committed, and this heinous crime thus frequently escapes punishment.”<sup>74</sup>

Measures taken in the courtroom did not legally limit the discretionary or preliminary interrogation powers of police subordinates, but instead called for greater supervision by European superiors. Consequently, the everyday production of documents such as depositions and confessions remained mired in counterfeit and the threat of force. Radhika Singha suggests that contrary depositions and ready confessions were performances of compliance by offenders, but that they may also have been the result of police coercion.<sup>75</sup> Official correspondence on the subject suggests that documents being produced were inextricably tied to the use of force and counterfeit, and that allegations of misconduct were entirely deflected onto police subordinates.<sup>76</sup>

Though *tahsildari* policing abuses were quickly explained as being due to an innate “native” despotism, in fact they were the result of the policies of selective documentation and the novel structure of power produced to meet the Company’s policing needs. A year after the institution of the new regulation on prevarication (contradictory depositions), judges were instructed to write down depositions at their discretion.<sup>77</sup> The consolidation of discretion in this way suggests that the empowerment of local elites was not simply a reinstatement of an old-regime social group or a matter of colonial accommodation.

These regulations not only materially shaped the law archive of the Company state; they also had tremendous consequences for Madras inhabitants. Ordinary people became subject to the discretion of the *tahsildar* because he became the collator of criminal evidence for courts and the arbitrator of petty criminal cases. He could, without giving any reason, restrain

<sup>74</sup> Regulation III, 1826, *Regulations of the Government*, 454–55.

<sup>75</sup> Singha, *Despotism*, 304–7. See also Peers, “Torture.”

<sup>76</sup> Sir Alexander Arbuthnot, *Major-General Sir Thomas Munro: Selections from His Minutes and other Official Writings*, vol. II (London: Kegan Paul, 1881), 47. See Anupama Rao, “Problems of Violence, States of Terror,” *Economic and Political Weekly of India* 36, 43 (2001): 4125–33; and Anuj Bhunia, “‘Very Wicked Children’—‘Indian Torture’ and the Madras Torture Commission Report of 1855,” *Sur Journal on Human Rights* 6, 10, (2009): 7–27; also at: <http://ssrn.com/abstract=1567401> (accessed 25 Jan. 2012).

<sup>77</sup> The regulations introducing jury trials simultaneously empowered judges to dispense with writing down depositions and rely on their notes of the evidence. Regulation X, 1827, ii, *Regulations of the Government*, 474.

inhabitants without warrant for twenty-four hours, or threaten to haul them off to the collector's office where they would be subject to the collector's discretion. They could force people to sign or mark papers under the threat of perjury or forgery. Petty offenders became more vulnerable to harassment, policing, and extra-judicial means of extracting evidence. At the same time, stories abounded that inhabitants competed to offer the highest bribes in return for the *tahsildar's* discretion. Company correspondence made frequent note of native dishonesty in terms of rampant forgery and false evidence, and the criminality of the lower orders. In 1826, when the Madras government began to consider new regulations against false allegations, many collectors and judges submitted comments regarding the proliferation of false evidence and native duplicity, a clear indication that there was a serious problem. Officials now explained this entirely in terms of a deviant cultural and racial alterity.

By the 1850s, when calls for judicial and police reform in Madras were gaining ground, an anonymous pamphleteer told of one case of cattle theft in which both parties had bribed the *tahsildar* with amounts exceeding the value of the cattle. The *tahsildar* restored the cattle to the owner, sentenced the defendant to a fine or imprisonment, but let him alone and wrote a "false remark that on default of payment of the fine he was in jail."<sup>78</sup>

In cases that ultimately reached the Company court, native officers declared that they could establish the right of any party by manufacturing preliminary depositions: "The depositions of witnesses are taken down not verbatim but as smoothed down and freed for all contradictions by the dictation of the *tahsildar* or his subordinates without cross examination and the same statement is put in the mouths of all deponents [*sic*]. The witnesses on the other side are browbeaten . . . their statements give way before evidence of a large number of witnesses on the favored side [that are made] free from contradictions."<sup>79</sup>

Elite inhabitants resisted taking oaths in public or attending court in person because these acts diminished their honor as men who were true to their word. When upper-caste deponents refused to take an oath, this made their depositions suspect in the eyes of English judges.<sup>80</sup> Company regulations could coerce witnesses to appear in court and give evidence, and upper-caste witnesses were accommodated by allowing them to take a "solemn declaration."<sup>81</sup> On the other hand, indigent, low-caste, or powerless deponents were

<sup>78</sup> *A Native Revenue Officer, on Bribery as Practiced in the Revenue Administration of the Madras Presidency* (Madras: Hindu Press, 1858), 25.

<sup>79</sup> *Ibid.*, 24.

<sup>80</sup> Eventually, the Company had to accommodate the refusals to take oaths. In 1840, it changed its laws to permit individuals to take an "affirmation" rather than an "oath." Regulation V, 1840, *Regulations of the Government*, 614.

<sup>81</sup> There were many regulations issued on the summoning of witnesses. In 1816, special powers were given to Indian judges, like the district *munsiff*, to force witnesses to attend court and give evidence. See Regulation VI, 1816, xxviii and xxix, *Regulations of the Government*, 272–73. In



viewed with suspicion because they were more likely to confess too readily, or to insist on performing what judges thought “irrational ordeals.”

In this manner, judicial intervention in attestation contributed to two developments: First, the Company yoked subordinate officials more closely to the regime’s bureaucracy by giving them the power as individuals to extract evidence. In doing so, the Company state created a class of petty tyrants who used extra-judicial means to undertake preliminary investigations, and probably extracted written testimonies and confessions prior to trial. The power subordinate officers gained through Company bureaucratic expansion suggests that the powers of the village officers, accountants, and sub-district officers like *tahsildars* did not represent continuities with older forms so much as they were novel forms of influence created by the Company administration. Here, the domination of upper castes was greatly enhanced by their capacity to manage access to documentary transactions. Second, anxiety over duplication became the permanent condition for documentary transactions because judicial devolution was not accompanied by the reinstatement of collective attestation practices, and because discerning “facts” turned more on material recording procedures—signatures and the routine of oath-taking. In turn, “doctoring” documents through the discretion of petty officials became for subjects an important means for dealing with the state.

#### CONCLUSION: DUPLICITY, DISCRETION, AND ATTESTATION

In the proliferation of discourses about duplicity in Madras lies a story of wider importance about documentary practices, one that has remained obscured in conventional accounts of modern bureaucratization. When bureaucratic practice is examined through the lens of attestation, we find a range of contexts, which are particularly clear in Madras, in which a government of rules came to be instituted through allegations of duplicity and the exercise of discretion. Here we find a story of the signature resignified in the modern bureaucratic state. The Tanjavur collector’s allegations of “native duplicity” make obvious the threat that forgery posed to the state and to the collector’s reputation. And yet, the struggles over attestation—evidenced in the belief widespread among the rulers and ruled alike that documents submitted to courts were false—shaped the very exercise of colonial authority. The crisis of attestation became the ground upon which formed a new political imagination of “publick business” or governance. Quotidian ways of asserting juridical truth—signing, proffering testimony, and acting as a witness—were permeated with a counterfeit consciousness even as they acquired new authority. We see this in the misuse of Monroe’s name by the

1841, new rules were introduced to take the evidence of “absent witnesses”: Regulation VII, 1841, *Regulations of the Government*, 621–24.

Tanjavur “mischief makers.”<sup>82</sup> Officially sanctioned bureaucratic forms of signature took on a life of their own in transactions outside the courtroom.<sup>83</sup>

Although I argue that duplicity became a new mode for the installation of law, forgery itself was not new to the region, and discerning counterfeit was an old skill. What was new was that attestation protocols became grounded in the signature as Company officials began to claim that their authority rested on procedure. By the same token, the crisis of attestation and discussions of duplicity under early colonial rule involved more than mutual cultural misrecognition, or what C. A. Bayly called an “information panic.”<sup>84</sup> Ideas that duplicity was proliferating in the early nineteenth century are less an indication of the operative status of counterfeit “outside” the law and more a point of entry into the workings of the law itself. We might say that a counterfeit consciousness developed when the signature acquired a power-laden life of its own. The discretionary assessment of juridical truth and procedural ways that deepened the investigative powers of officials intensified the signature’s equivocal texture. This character of the signature, constantly demanded and duplicated, and suspected, became a central feature of documentary rule in colonial India.

<sup>82</sup> I borrow this phrase from U. Kalpagam, “Counterfeit Consciousness and the Joy of Abandonment,” *Sarai Reader 7* (Delhi: Centre for the Study of Developing Societies, 2007), 92.

<sup>83</sup> Singha tells of instances of stamped paper used in intimate transactions among commercial and literate groups, in “Colonial Law,” 89. Rosalind O’Hanlon writes that the anti-caste radical Jotiba Phule critiqued the practice of Brahmans mediating and manipulating transactions around petitions and deeds in western India, in *Caste, Conflict and Ideology: Mahatma Jotirao Phule and Low Caste in Nineteenth-Century Western India* (Cambridge: Cambridge University Press, 1995), 211–12. In the early twentieth century, western Indian historians concerned with demarcating original manuscripts sometimes published them with legal affidavits attesting that they possessed that status. See Prachi Deshpande, “The Making of an Indian Nationalist Archive: Lakshmi Bai, Jhansi and 1857,” *Journal of Asian Studies* 67, 3 (2008): 855–79, here at 874.

<sup>84</sup> Bayly used the term “information panic” to refer to the ad hoc realm of information crises that marked the early nineteenth century, in *Empire and Information: Intelligence Gathering and Social Communication in India, 1780–1870* (Cambridge: Cambridge University Press, 1996).

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