



REVIEWS

THE INTRODUCTION OF ENGLISH LAW INTO INDIA : THE CAREER OF ELIJAH IMPEY IN BENGAL, 1774-1783. By B. N. Pandey, Asia Publishing House. 1967. Pp. xiii—248. Rs. 26/-.

THE PHILOSOPHY OF HISTORY has presented several problems that appear to be incapable of resolution. For this reason, they are revived, as subjects of controversy, by historians in all climates and epochs. One of them is, do men shape history, or does the historical process have a way of making the right man emerge at the right moment? There was certainly a school of historians which did believe that, had the shape of Cleopatra's nose been different, the Roman Empire would have had another destiny. On the contrary, leaving alone Karl Marx, many authors, who have by no means accepted the tenets of dialectical materialism, have nevertheless believed that economic and social forces mainly determine history. It is true that, but for Adolf Hitler, for instance, the course of recent European history might have varied. Still, even if Adolf Hitler had never been born, some historians believe that the complex of social and economic forces in Europe and Germany, after the First World War, would necessarily have brought forth some such leader, and precipitated the Second World War.

The work under review is a contribution of great interest, which seems to be impliedly based on that school of the philosophy of history, which does not disdain the emergence of fateful individuals. Written in impeccable English, it reads easily, and presents a fascinating thesis. This is, tersely, that the seeds of the rule of law were implanted in this country by the first Supreme Court of India, roughly between 1774 and 1783. The first Chief Justice of this Court was Sir Elijah Impey, and, according to the thesis, he has been greatly misunderstood, even maligned. Burke and Macaulay, though playing very different roles, were both men of genius. Each, in his own way, has made Sir Elijah Impey notorious, as a collusive friend of Warren Hastings, who brought about the execution of Nandkumar. That is how, at any rate, most students of history will recollect the now shadowy figure of Sir Elijah. They will also have some confused recollections of the conflict between the Supreme Court presided by Sir Elijah on the one hand, and the members of the Council of Warren Hastings, particularly Francis and Monson, on the other.

After a very pains-taking research, Dr. Pandey hastens to dispel these erroneous notions. The fruits of his research, can be briefly set forth here.



According to Dr. Pandey,

The establishment of the Rule of Law was a great British contribution to modern India....Nobody, howsoever humble, could be deprived of his fundamental rights except according to the process of law...When these principles of English law were first introduced into Bengal, by Impey and his fellow judges, there arose conflicts and a certain amount of confusion.¹

The proposition, as stated in this form, obviously requires at least one correction, from a strictly legal aspect. It is misleading, even erroneous, to speak of "Fundamental Rights" or "according to the process of law," as applicable to that epoch. These formulations really derive from the legal history of the United States, and the essence of the common law of England was that, such principles were historically the basis of common law, from the Magna Carta downward, but not in a formulated sense; further, they were subject to the doctrine of the absolute sovereignty of Parliament, and qualified by the absence of a written constitution.

However that might be, according to Dr. Pandey, Sir Elijah and the Supreme Court were faced with this problem of implementing the rule of law, in a hostile environment, from the very inception. "The Mughal system of Government, which the English Company had adopted in Bengal, was dictatorial, arbitrary and coercive."² Sir Elijah and his fellow judges had to deal with three categories of people, at whose hands the Indians suffered the worst excesses of power. The first category consisted of the farmers of revenue and the Zamindars, "the intermediaries between the government and the ryots." "[They] occupied a key position in the revenue administration of the country."³ The second category comprised those entrusted with civil and criminal functions, as judges of the *Diwani Adalat* and supervisors of the *Faujdar Adalat*. The Supreme Court, *per se*, had no powers over those officers, and their administration had become "corrupt, irregular and oppressive." The third category consisted of the private English merchants, who, merely because they belonged to the ruling race, exercised illegal powers of coercion, in fostering their private trade.

The only mode by which the Supreme Court could enforce the rule of law, was to deal with these persons as amenable to its jurisdiction in their individual capacities, particularly by the practice of the issue of writs of habeas corpus, in instances of illegal detention. The judges also enforced contracts, by compelling the Company servants to discharge their obligations. The entire period is seen by the author as a vast and constant battle, sometimes open and sometimes covert, between Sir Elijah and his fellow judges on the one side, and such inveterate enemies of the Supreme Court, as Monson, Clavering and Francis, on the other.

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1. Pandey, *The Introduction of English Law into India* 230 (1967).
 2. *Ibid.*
 3. *Id.* at 231.



The learned author makes a painstaking analysis of the celebrated *Forgery* case, which led to the trial and execution of Nandkumar in June-August 1775. According to him, we have been misled by Burke and Macaulay, into viewing this merely as an incident in which Hastings had to act on the defensive, to save his repute and prestige. The author refers to what Macaulay wrote in the *Edinburgh Review*, about a letter which appears to warrant the inference that "Impey hanged Nuncomar, in order to support Hastings." Dr. Pandey exposes this as a facile, erroneous and unjust summary of the events. He stresses that, though Impey was convinced of the prisoner's guilt, his charge to the jury tended towards acquittal, in more than one passage. The fact that all subsequent attempts to save the life of Nandkumar failed, was really a symptom that the rule of law was assuming its rightful place in the country, irrespective of the status, caste or dignity of the accused.

I cannot pretend to possess the equipment to judge the thesis of the learned author from the historical point of view. It is based on an extensive research into all contemporary and modern sources, including unpublished papers, and only an expert in the period can either refute or corroborate the author. But the work is a fascinating one, and it very amply repays perusal. A student of law might be tempted to add, that it probably over-emphasizes the importance of human personalities in legal evolution. Even the author does not claim that Sir Elijah always acted from the highest of motives, or with any definite perspective about the introduction of the rule of law into India. Partly, no doubt, he shaped that introduction, to a greater extent than has probably been realized; but, equally significantly, his acts, springing from personal motives, might have unconsciously tended to foster the Rule. However this work might be viewed, it is a contribution of great interest and value to the knowledge of a period of Indian history, which is still very obscure, and beset with controversies.

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ISLAMIC REFORM, THE POLITICAL AND LEGAL THEORIES OF MUHAMMAD ABDUH AND RASHID RIDA. By Malcolm H. Kerr, University of California at Los Angeles/University of Cambridge, England. 1966. Pp. 249. 42 sh.

WHEN A GREAT SOCIAL, religious or philosophical movement is described, there are two ways to do it: to be with it; to feel and analyze all the difficulties, to exult over the successes and to weep over

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