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**Institutions Collide: A Study of "Caste-Based"  
Collective Criminality and Female Infanticide  
in India, 1789-1871:**

A Critique of Nicholas Dirks's Castes of Mind:  
Colonialism and the Making of Modern India

**Maria Brun**

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**Development Studies Institute**

**London School of Economics and Political Science**

**Houghton Street**

**London**

**WC2A 2AE UK**

**Tel: +44 (020) 7955 7425/6252**

**Fax: +44 (020) 7955-6844**

**Email: [d.daley@lse.ac.uk](mailto:d.daley@lse.ac.uk)**

**Web site: [www.lse.ac.uk/depts/destin](http://www.lse.ac.uk/depts/destin)**

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## ABSTRACT

Nicholas Dirks in his book *Castes of Mind*, challenges the modern view of caste as universal and hierarchal. He argues that this view of caste was an invention of the British who, after declaring a policy of noninterference into Indian culture and tradition in 1858, used the census to universalize and ethnicize caste in order to identify and guard that tradition. By analyzing British encounters with female infanticide, this paper argues that the caste system as understood today is not a result of post 1850s policy, but has its roots in caste criminality dating back to the 1790s.

### Note on Citations:

Official papers and letters concerned with infanticide from the British Parliament House of Commons are grouped in two communications volumes, 1824 and 1828. In the case of the 1824 volume, the papers are also divided into sub-groups. Similarly, acts and proceedings regarding acts passed in India are held in compilations. In order to efficiently and effectively cite sources from these volumes, the parenthetical citation for each document includes the volume date and a number and where applicable, subgroup letter to identify which extract, translation, or memorandum the information was found in as listed in the reference section at the end of the paper.

## PART I: THEORETICAL FRAMEWORK

### NICHOLAS DIRKS'S CASTES OF MIND: COLONIALISM AND THE MAKING OF MODERN INDIA

The caste system is undoubtedly one of the most striking and unique characteristics of Indian culture. Its intricate socio-religious relationships, often identified as a complex network of hierarchies, has been the study and the source of much confusion and fascination of many since the West's first encounters with the Indian subcontinent. It was different: a characteristic that allowed a simplistic way for Orientalists to differentiate the modern West with Indian society. Caste, to Orientalists and early explorers, "worked both to explain how Indian society could be orderly in the absence of either political authority or tradition, and why it was that Indian society would never become mobilized around the political aims of national self-determination" (Dirks, 2001: 194).

Writings and inquiries into the nature of caste – the civil versus religious aspects as well as the interplay of caste with the political and the economic – filled volumes of books, letters, and official documents and became understood as a unified system which the British later used to police the native population. Nicholas Dirks, in his book *Castes of Mind: Colonialism and the Making of Modern India*, reviews missionary, Orientalist, and administrative writings as well as government documents to track the changing analysis and understanding of caste, starting from the late 18<sup>th</sup> to the mid 20<sup>th</sup> centuries. He focuses in particular on policies during the period after the Great Rebellion of 1857-1858 when power was handed over from the East India Company to the British Crown. As Sumit Guha summarizes, "The main proposition he advances is that political changes under colonial rule – especially the replacement of local kingship by colonial power – resulted in the creation of 'caste as we know it' from antecedent fluid and political forms of social identity" (2003, 459).

In 1857-1858, the Great Rebellion, strongest in the north and northwest provinces such as Oudh, Uttar Pradesh, and Bihar, disrupted and threatened the authority and supremacy of the British. Tension building from the early nationalist movement, further annexation, and finally, cartridges believed to be made with pork lard and hence, offensive to both Muslim and Hindu soldiers, sparked the rebellion that lasted a little over a year (Dirks, 2001). As the rebellion was believed to be a result of cultural insensitivities, after its containment and the British Crown officially took power, Queen Victoria declared that colonial policy would not interfere with the native tradition or culture. However, such a policy demanded a precise knowledge of Indian culture and tradition – what the British would not interfere in

– was across the subcontinent, and hence “...necessitated a new commitment to colonial knowledge about the subjects of its rule” (2001: 149). Consequently, the Great Rebellion,

“...made the anthropologization of colonial knowledge necessary for several reasons. Such knowledge could help explain why the rebellion took place, it could suggest how to avoid such disaffection in the future, it could delineate ways to claim the loyalty of subjects of the basis of custom and culture, and it could serve to differentiate the autonomous and proper domains of religion and custom” (Dirks, 2001:149).

Caste was a particular challenge to understanding and identifying tradition. Different regions, tribes, clans, and castes all had different religious and social practices. Sometimes only subtle nuances differentiated what was tradition for one group versus another. Even more difficult, it was often impossible to separate the religious and the civil aspects of both the roots of caste and its modern rules and justifications. Thus, as part of the noninterference declaration, caste had to be understood so that that in following the declaration, the government could and “...would seek to disturb caste sensitivities, whatever they were and however they were sanctioned, as little as possible” (Dirks, 2001: 40).

According to Dirks, in order to achieve the level of understanding to not interfere into tradition and culture in order to avoid causing another rebellion, the British used extensive and detailed ethnographic studies to ethnicize caste by cataloguing each caste’s “characteristics.” This was accomplished using the census as a key tool starting in 1872. Dirks describes the first census and the following one in 1881 as using classifications based on varna, wedding the census with “the most general of Orientalist categories for the classification of the social order, with the built-in assumptions about hierarchy and precedence” (2001: 202). Thus in their ethnography, the British did not start at a point of ignorance, but built on earlier findings and research into Vedic texts. These included the first missionary reports as well as Louis Dumont’s *Homo Hierarchicus* which explained caste as a hierarchy based on religious ideals of purity, as well as other prominent scholars including Dubois and Mill who translated the Vedic *Manu*. Dirks argues that the census, built on these early writings and anthropological studies of religion and culture, created a categorization of caste that had never existed before. Further, by forcing people to describe themselves, for the first time, as a member of a specific caste and thus having the characteristics of that caste, a new tradition and ethnic identification of the caste system was born.

One of the results of the ethnographic studies was what Dirks labels as the development of criminal castes. He states that

“The construction of entire castes by the British in colonial India as “criminal castes” was part of a larger discourse in which caste determined the occupational and social character of all its constituent members, though criminal castes were seen simultaneously as typical and deviant. The colonial notion of caste was that each group had an essential quality that was expressed in its occupational profile and its position in the social hierarchy, as well as in a whole set of moral and cultural characteristics that adhered to each group qua group” (Dirks, 2001: 181).

As part of the caste profile created by the census and ethnographic studies, criminal and deviant behavioral characteristics were included as part of caste descriptions and classifications. Accordingly, the “... institutional provenance of caste expanded, affecting...the implementation of legal codes that made the provisions of the law applicable on caste lines...” which in turn led to “...the criminalization of entire caste groups for local policing purposes...” (Dirks, 2001: 45).

Observable characteristics including deviant, criminal behavior were generalized and codified into *caste* descriptions and consequently, *caste* became the basis for understanding the “tradition” and “culture” British policy would not interfere with. This is what Dirks argues as the invention of tradition and the invention of the caste system as understood today. But the implications of Dirks’s argument goes beyond caste, and what he leaves out of his analysis becomes just as important as what he includes.

Dirk’s argument makes a bold statement not just about the caste system, but of the timing and progression of how caste was problematized and criminalized by the British across time. To Dirks, before the change in authority, “[to the British] India’s feudal past and then its village communities seemed far more important than the caste system...” (Dirks, 2001: 43). He even goes so far to label the British as taking a “relative silence” on caste related matters until the Great Rebellion and the declaration of noninterference. Caste, in Dirks argument, was not catalogued, ethnicized, and reinvented until the declaration of non-interference.

This paper argues that Dirks leaves out almost an entire century in developing his argument, and ignores earlier encounters with caste. In fact, the content of parliamentary papers, official correspondences, and other writings from British administrators from as early as 1790 suggest that there was a preoccupation with caste and the characteristics of different caste groups from the beginning. So much so, that policy was shaped by and simultaneously shaped and defined caste.

By focusing on one criminal behavior, female infanticide, and the corresponding official documents and academic writings starting from its first discovery in 1789, this paper will demonstrate how caste was not reinvented starting the 1870s, but much earlier. Further, caste criminality was not a result of caste ethnicization via the census beginning in 1782, but quite the reverse – that caste based criminal and legal regulations first codified in 1804 were early contributors to the ethnicization and standardization of the caste system.

THIS PAPER THEN DISCUSSES IMPLICATIONS? WOMEN?

## PART II: HISTORICAL OVERVIEW OF BRITISH ENCOUNTERS WITH FEMALE INFANTICIDE IN INDIA

Much of the writings of early British encounters with Indian society share many mixed sentiments. On the one hand, combinations of fascination and exoticism. On the other, horror and revulsion. It was those qualities of Indian society most different and least understood, and in particular, the deviant and criminal behavior witnessed, that the British had a particular preoccupation with from the very beginning of the colonization of India. From sati to hookswinging, volumes of writings from officers, administrators, academics, and missionaries alike were dedicated to the exploration of the strange and perverse – to those Indian customs which were most morally antithetical to British, “revealed” Christian values.

Female infanticide was particularly alarming for two main reasons. First, although not unique to India, early writings label the practice as particularly peculiar as unlike those of societies who had practiced infanticide in the past, ranging from the ancient Phoenicians to the Roman Empire, to Greece and Italy, the motivations behind female infanticide in India could not be directly connected to religion or superstition. Even many modern writers contend that “The practice of female infanticide in India did not arise from any superstitious or religious motive. The custom was not a survival of early savagery but grew up under certain specific conditions influenced by usage and the peculiar political and economic circumstances. It was a practice which arose out of the social institutions and customs of the people” (Panigrahi, 1972). Second, infanticide took place in the domestic realm, heavily protected and secluded from the outside world. As a result, criminalizing infanticide was a particular challenge, and notably so



in comparison to other deviant and criminal behaviors as domestic life and women were and far from the prying eyes of the British. Whereas sati and hookswinging were “committed with a considerable amount of display...infanticide was carried out in the privacy of the women’s apartments” (Panigrahi, 1972: 15).

This section provides an overview of the British encounters with female infanticide, tracking the progression of attitudes towards and actions taken towards preventing infanticide through parliamentary, administrative, and academic writings with a particular emphasis on the early onset of group and caste criminality

## DISCOVERING AND PROBLEMATIZING INFANTICIDE

Infanticide was first officially recorded or “discovered” by British rule in 1789 by the resident of Benares, Jonathan Duncan, who, in a letter to the Court of Directors, reported infanticidal practices among the Rajkumar Rajputs in Jaunpur (Duncan, 1789, in Peggs, 1830). He described the act as not an “infrequent practice among the Rajkumars,” committed by starving new born daughters to death (Duncan to Government, October 2 1789, quoted in Narain, 1959: 176). Soon after Duncan’s reports, Rajput clans such as the Chauhans and Bhadauriyas, ranging from Rajasthan, Punjab, to Uttar Pradesh all came under suspicion and were classified as infanticidal clans, (Vishwanath, 2004). Indeed, for several decades, the British perceived the practice not to be sporadic and widespread, but predictable and a feature of a select number of social groups. Specifically, until nearly the mid 19<sup>th</sup> century, it was believed that “The sacrifice is confined, it would appear, to females, and to Rajpoots, or such as claim to their descent from that military race” (Colonel Walker, August 1819, quoted in Peggs, 1830: 129). Other groups were soon added in the list of infanticidal clans or castes, including the Jats and Ahirs (Vishwanath, 2000).

This is further reflected in the two major groupings of parliamentary paper collections of all communications regarding infanticide in 1824 and 1828 where infanticide is almost exclusively discussed in reference to Jahrejahs, the Rajkumars, Jats, and Ahirs. Certain social groups became so centered in the discussions that it was assumed in some cases, that absence of these groups meant an absence of the practice. For example, G. W. Traill, Esquire Commissioner in Kumaoon reported to the Bengal Judiciary that “Infanticide exists in no part of this province, nor are there any persons of the caste by whom such custom is practiced” (Great Britain. Parliament. House of Commons, 1828: 1). This led to

entire provinces being targeted for infanticide and others that were not even considered. Such provinces included the North Western Provinces, Oudh, Uttar Pradesh, and Punjab.

Further, it becomes clear that by the 1820s, caste and race became such a key element in official proceedings with infanticide that it became a characteristic of the clans that committed the crime, and, as Mr. W. Cracroft, the Magistrate of Juanpore wrote, "It may perhaps not be advancing too much to say, that the practice of infanticide is indirectly a very considerable cause of the insubordinate character and violent disposition of the Rajkoomars..." (Great Britain. Parliament. House of Commons, 1824: 1). Thus, female infanticide and the customs and traditions of infanticidal groups that committed it became so intertwined that the two worked circularly to explain each other.

As stated in the introduction, female infanticide perplexed the British and was considered peculiar because it could not easily be tied to religious beliefs or superstition. But being understood early as a caste or clan characteristic, seeking answers as the cause of female infanticide, the British looked within the social, economic and political institutions and cited the customs and institutions of the races and castes who were found to be infanticidal.

Duncan himself, the first to report infanticide, also provided one of the first explanations for the practice that became one of the most often cited cause of infanticide in official letters and reports: marriage customs. The Rajputs, and many other castes found to be infanticidal in the north and west, practiced hypergamous marriage. Further, marriage was traditionally more than a symbolic joining of two people, but the joining of two families and was inextricably linked to social, political, and economic strategy. As Vishwanath summarizes, female infanticide was explained in many northern and western castes as being "...related to hypergamy, status, maintenance, and dowry avoidance. Castes such as rajputs, lew kanbis and patidars, jats, khutris and each of these castes tried to maintain their status and avoid substantial dowry payment which hypergamous marriage involved by resorting to killing of their female children" (Vishwanath, 1998: 1105).

What the British had discovered about the Rajputs was the function of marriage as part of social, economic, and political transactions and consequently, its role in honor and social hierarchy. As Malavika Kasturi writes, for Rajputs and in a similar manner for other north, northwestern, and western clans and castes,

"Marriage bears directly on the improvement, conservation, and dissipation of the economic and 'symbolic' capital of the kinship group and is one of the major

mechanisms of 'social reproduction'. Alliances seek to maximize the profits derived from the matrimonial transaction within the limits of the family's economic means and are one of the mainstays of the entire social system. Matrimonial strategies, therefore, were an integral part of the political economy of the Rajput family and household, and were one of the major mechanisms through which shifts in ritual rank, social status, and power were expressed and articulated" (Kasturi, 2002:102).

Strict marriage customs remained the most often cited cause of and further, most formidable impediment to ending female infanticide in official reports in throughout and long after the 1820s. As Brown reported in his book *Indian Infanticide: It's Origin, Progress and Suppression*:

"They [Rajputs] pride themselves in giving their daughters in marriage only to members of certain tribes on an equality with themselves of their superiors. Matches are difficult to be obtained, and attended with great expense which they can ill bear and are almost certain to cause the alienation of the whole or a great part of their hereditary lands. Hence the birth of a daughter is considered a most serious calamity and the unfortunate infant is very seldom spared" (Brown, 1857).

The considerable difficulty of finding a suitable match and the cost associated with marrying a daughter meant that the birth of a female was not celebrated but feared, deplored, and considered a misfortune. Thus, the natural conclusion of many British who encountered infanticide, including the governor in council of Bombay argued to the Court of Directors, was that

"The chief obstacle to the success of the measures for the suppression of the practice of infanticide, is stated by Mr. Gardiner to be the great repugnance which the Jharejahs feel at the idea of intermarrying, and that could we ever hope to overcome their scruples, the inducement to preserve their children would be greater; whilst, on the present system, they have in prospect not only the expenses of marrying their female children into families of Sodas, Wagellas, Jurwas, Ihallas, and other Rajpoot tribes, but also of purchasing wives for themselves from the same class of people" (Great Britain. Parliament. House of Commons, 1828: 2)

These first explanations follow an economic logic and consequently, were matched with initiatives that sought to help subsidize, in a manner of speaking, the cost of raising a female infant and later, marrying

her. In some districts, grain allotments were given to families who to offset costs. By 1828, an Infanticide Fund had been set up to fund such initiatives.

Although marriage customs among the Rajputs were referenced more often than other causal factors, there was considerable disagreement to the principal cause and hence, the greatest obstacle to its eradication. As it was conceived to be practiced among specific groups, many officials refer to the idea of the power of tradition and its ability to create cultural collusion as being the greatest barrier. Writing to Bombay, the Political Agent in Kattywar argued:

“The principal obstacle to be overcome in rendering the engagements effectual, is the difficulty in detecting those concerned in the perpetration of the crime; so long as the feelings and interests of the people render them disinclined to afford aid in discovering it, few are prompted to make it known by a sense of humanity, or even of interest. Though all classes are ready to admit the barbarity of the practice, they still they view it with so passive a spirit, that they feel indisposed to encounter the odium or animosity that the consequences of a disclosure might occasion” (Great Britain. Parliament. House of Commons, 1828: 3)

Despite disagreements on the causal factors of female infanticide as well as the greatest obstacles to its eradication, all views expressed by the British have one thing in common: racial or caste custom and identity. Female infanticide was not just a crime, but a characteristic of groups of peoples whose cultural and ethnic traditions perpetuated the practice within the institution of its race, caste, or clan. Given this understanding, the British did not just simply make female infanticide illegal, but modeled and pursued tactics of suppression that worked with and within these cultural characteristics. These tactics, specifically caste criminality, are discussed in the next section.

#### CRIMINALIZING FEMALE INFANTICIDE IN BRITISH INDIA – FROM PROMOTING CIVILIZATION TO NONINTERFERENCE

Colonial authority in India was by no means static in its aims or how it was exercised. However, despite dramatic transformations between the 18<sup>th</sup> and 20<sup>th</sup> centuries, there remained two core functions of British rule, “...*power*, in the sense of the ability—through institutions and brute force—to coerce and effect change, and *moral influence*, in the sense of providing the ultimate source for norms, and definer of what was appropriate” (Freitag in Yang, 1985 page 141). To both of the ends, a key means was controlling criminal behavior. But more so than criminal behavior in general,

“...most of the crime which preoccupied them was collective activity. In part this no doubt relates to the collective nature of life in India. In part it also reflects the fact that many of these collective actions were intimately connected not just to crime, but to indigenous values which were challenged by the British style of rule” (Freitag, 141).

These values which threatened both the legal and moral authority of the British were encapsulated and perhaps even amplified through collective and caste social structures. Freitag continues, “In a hierarchically organized society each discrete social unit had its locus of moral authority which in turn—as recognition of the coercive power of layers above it—owed at least a symbolic obeisance (and perhaps concrete contributions as well) to outside powerholders” (142).

The practice of female infanticide was an affront to both dimensions to British authority. It defied legal authority as it took place in the domestic, secluded arena of Indian life that could not easily be policed, or as Sen puts it, “To a degree, the domestic world was an uncolonized space, where British authority was not only alien but also powerless: here, the “observer” could not observe” (2002: 54). Further, it was committed in several and often unprovable ways. As Jonathan Duncan reported of the Rajkumar Rajputs, killing girl infants “or rather allowing them to die” was often done by slowly starving them to death (Great Britain. Parliament. House of Commons, 1824: 2b). Finally, as it was discovered among specific races and castes, the practice was perpetuated by custom and the institutionalized power and authority within those groups which was, in this case, not controlled or used by the British to further their own authority.

On the other hand, it defied the moral authority of the British as its continuation was a direct opposition of the Christian values of the British Empire. As expressed by one of the more influential writers on Indian “savagery,” James Peggs, “The facilities which Britain possessed for abolishing this rite are very considerable. The whole civilized world naturally looks to her duty in India, and suppress every sanguinary practice subverse of the principles of natural and revealed religion” (Peggs, 1832: 67). Peggs, along with other officials and missionaries alike, believed so strongly in the moral duty and superiority of the British Empire, that by 1830 he declared that the British had the ability “...by the means we possess at present, to suppress every where this revolting crime within the region of Hindostan” (Peggs, 1830:129). Accordingly, female infanticide was criminalized using both legal and socio-moral avenues.

Infanticide was first recognized as illegal by the British in 1804 by Regulation III. The Regulation deemed female infanticide as murder and thus punishable by fine or imprisonment. However, the Regulation

was far from universal. First, it covered only the Bengal Presidency. Further, the language of the Regulation is specific, and following the trend of most official documents of the 19<sup>th</sup> century as reviewed in the previous section, defined and set the parameters of the crime by its perpetrator. Indeed, one of the key parts of the legislation states that the Regulation acts toward “...prohibiting the inhuman practice hitherto prevalent among the tribe of Rajkoomars, of causing after the publication of the proclamation shall designedly prove the cause of the death of his female child, by prohibiting its receiving nourishment, or in other manner...” (Great Britain. Parliament. House of Commons, 1824: 2c). Beyond recognizing female infanticide as illegal, the regulation codified and set legal precedent for criminalizing female infanticide as a collective action and identifying it as a characteristic of a caste. Thus, female infanticide, like many other criminal behaviors, was understood and criminalized not as an individual offense, but as the moral and unlawful folly of racial groups or castes.

Despite the authority rendered to the British by making the practice illegal, the first attempts at intervention resorted to coercion and were either in conjunction with the Regulation or altogether separate. There is evidence in official correspondences that persuasion was used both by direct acts of British authority and by using an understanding of Vedic texts to incorporate Hindu moral authority. Missionaries also played a key role influencing and leading initiatives based not only on converting the native population, but introducing Christian morality to the “uncivilized masses” (Dirks, 2001: Panigrahi, 1972). A letter from the political agent in Kattywar provides a firsthand account of how persuasion, guilt, and preaching morality were used as a first attempt to control female infanticide:

“A constant intercourse with the Jharijahs during my annual circuit, has given me opportunities of impressing on their minds the interest taken by the British government in the suppression of the barbarous and unnatural practice, and the guilt attached to the commission of it by the dictates of their own religion. I receive continued assurances that they will discountenance it; but from this disproportionate number of females still existing, it is evident, that although this horrible practice may be somewhat subdued, it is still far from being relinquished” (Great Britain. Parliament. House of Commons, 1828: 3).

The “assurances” spoken of in this extract is of common mention throughout the 1825 and 1828 House of Commons papers related to infanticide. These assurances evolved into signed agreements that not only used coercion, but linked formally infanticidal clans formally to Regulation III and thus, demarcated the Regulation’s jurisdiction. Colonel Walker is the first notable British agent to be cited as using such

signed agreements, as well as the Political Agent in Kattywar. These first pledges were signed by high ranking Jarejha Rajputs, declaring that they recognized infanticide as irreligious and immoral and would abolish or desist from committing female infanticide (Great Britain. Parliament. House of Commons, 1828: 4)

Signed agreements with high ranking Rajputs also demonstrates the classic notion of the British strategy of “divide and rule” and using existing power structures combined with the presence of the British to govern and police the indigenous masses. In a letter to the first assistant in charge of Residency at Baroda, W. Miles, Lieutenant Colonel, Political Agent wrote:

“Reports having reached me, that certain Jareja Rajpoots subject to the British government continued secretly to destroy their female offspring...I beg to observe, that although it cannot be expected a custom existing for ages among these people, however unnatural, should be at once suppressed or abandoned, yet, as it is manifested, its prevalence has been greatly weakened by the operation of the humane regulations of government; the continued exertions of a moderate supervision, the good sense of the Jarejas of Choraur and Charchut, the example afforded them by their chiefs, and the impressions they have received of the wickedness of this practice, will, I firmly believe, in a short time, wholly eradicate it” (Great Britain. Parliament. House of Commons, 1828: 5)

To supplement Regulation III and formal and informal agreements, programs such as the infanticide fund and grain allotments were designed in accordance with the British observation of the economic hardship associated with raising a daughter and marrying her within Rajput and other similar caste cultures.

These correspondences and the methods used to control infanticide indicate that not only was female infanticide understood and defined in terms of caste or clan, but British authority used the internal institutional cultural and power structures of caste in conjunction with coercion to intervene into the criminal behavior. In this manner, the British were attempting to “colonize the ‘areas of darkness’ in native society by exposing, disrupting, and capturing political relationships that were seen as immoral and indifferent to British authority” (Sen, 2002: 74). Moreover, it shows an understanding of caste power as hierarchy. This is evidenced further in parliamentary discussions, where the authority to

intervene was justified on the grounds of the less moral and forcefully coercive nature of caste power structures. Sir C. Forbes argued to the House of Commons,

“...that the British government would do well to compel the Directors, and through them the local authorities, to interfere. It was absurd to suppose that the love of life was less powerful in the bosom of a Hindoo woman than in any other person. The sacrifices were not voluntary. They were the effect of persuasions from the Brahmins and the relatives of the women. The miserable victims would be happy to take refuge under a law of the British legislature making it murder for any one to aid or abet these sacrifices. Until something of this kind was done, it would be in vain to expect the suppression of the abominable rites” (*HC Deb 06 June 1825 cc1045-46*)

In other words, female infanticide was unnatural in Indian culture as it was in a Christian culture, and it was the power hierarchy of caste divisions specifically that perpetuated the crime.

By the 1850s as more investigations of female infanticide were conducted, the efficacy of persuasion, agreements, and erratic subsidy schemes started to be doubted. By the mid 1850s, a census took in 418 villages in Benares that “...rajput female children were deficient in 308 villages; of these, 62 villages, nearly one-fifth had no rajput female children below six years” (Vishwanath, 2004: 1). Consequently, official documents began to reflect a greater push for intervention and universal punishment. In particular, there was a call for greater detection of neglect and concealment of female infants via increased policing and interference (Panigrahi, 1972). Simultaneously, political circumstances in India shifted in the 1850s and unlike in the previous half century where much of colonial policy aimed at bringing civilization to “primitive” Indian society, there was a greater emphasis on non-interference, bringing two conflicting paradigms of rule into policymaking. This stirred debate in British Parliament, particularly in the House of Commons and especially in regards to controlling criminal behavior.

In the case of female infanticide, a notable argument made against non-interference came from Mr. Lowe, who argued that “the Government was not bound to respect every law and custom of the natives merely because it was the law and custom, independently of its good sense, reason, and morality,” and that, “So far, then, from wishing that Government should be restricted from putting down bad customs and bad laws, he trusted that they would gradually be able to improve them; and that, instead of Hindooising our own Government, we should be able to Europeanise theirs” (*HC Deb 21 July 1853 cc 558-559*). However, events in the late 1850s led to an official declaration of non-interference.



The Great Rebellion (also known as the First War of Independence), was the first major and widespread disturbance that threatened British authority – at this point in time, still in the hands of the East Indian Company. By 1858 as the East Indian Company relinquished official authority to the British Empire, any policy interfering with tradition and culture now became the blame of the Great Rebellion and avoiding cultural interference was seen as a necessary for retaining power. Consequently, a policy of noninterference was instated officially in 1858 when Queen Victoria proclaimed: “We disclaim alike the right and the desire to impose our convictions on our subjects. We declare it to be our royal will and pleasure that none be in anywise favoured, none molested or disquieted, by reason of their religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law...” (Queen Victoria, 1858, quoted in Dirks, 2001: 40). This, in theory, changed how British authority was exercised and consequently, changed the way female infanticide was theoretically and politically framed in the latter half of the 19<sup>th</sup> and into the early 20<sup>th</sup> century.

Nicholas Dirks argues that non-interference had several effects and in regards to criminality, shifted the focus from civilizing India to managing crime. He states,

“In late colonial India, anthropology appropriated barbarism from the missionaries. Barbarism was of interest to science, its scandal as much a justification for empire as it was something that had to be controlled and periodically contained in order to celebrate the civilizing mission of empire. But by the end of the nineteenth century, the civilizing mission was less urgent, and yielded increasingly to the imperatives of a colonial science that would contain barbarism through both the regulation and the recording of tradition that so frequently emerged out of policing activities. The Victorian policy of nonintervention thus became the charter for a colonial anthropology. It involved the delineation of religion, custom, and tradition, on the one hand, and the firm maintenance of public order in an imperial regime that held the colonized in place through the knowledge and enlightened protection of tradition, on the other” (Dirks, 2001: 194).

What Dirks is essentially arguing is that the anthropological and ethnographic studies mentioned in part I, referred to here as “colonial science,” took over for the civilizing ideology that shaped British policy and interaction with Indian society until then. To Dirks, post 1858 policy created a fundamental shift in history, that non-interference marked a change in how British authority interacted and changed Indian society in terms of both how they criminalized abhorrent behavior and how they created and assigned

tradition in order to determine what to criminalize and what to protect. It is this shift that led to the creation of “the caste system.”

The next section of this paper picks up in 1870, just before Dirks argues that the first census to “create” caste, the census of 1872, was deployed. In order to look critically analyze if there was truly a fundamental change in policy in regards to criminality and overall, the caste system, an overview and analysis of the Female Infanticide Act and Criminal Tribes Act will be given. More specifically, by looking at caste criminality and caste criminalization of female infanticide, the implications of the act on caste will be compared and contrasted with earlier legislation and interaction with female infanticide in order to discern if caste was actually reinvented and ethnicized because of a dedication to noninterference and by use of the census.

### PART III: CREATING AND CONFRONTING CASTE: CRIMINALITY AND CASTE ETHNICISATION – THE CASE OF FEMALE INFANTICIDE

The Act for the Prevention of the murder of Female Infants, also known as Act XIII of 1870 Infants (and from now on denoted by the Female Infanticide Act), is the focal point of this paper. Appearing in the 1834-1872 volume of “The Unrepealed General Acts of the Governor General in Council,” the Act is a short, nearly three page piece of legislation. Using direct, neutral language, the Act works toward two ends. First, it establishes its jurisdiction: the Act limits itself as only applicable to the Northwestern Provinces, Punjab, and Oudh, but could later be extended to include other provinces, and further, was only applicable in districts where local governments have established that female infanticide “commonly committed in any district, or by any class, or family, or persons residing therein...” and to castes or groups that have been identified as infanticidal (Government of India Legislative Department: 1929: 328). There was then to be an official announcement published in the Gazette of the guilty groups in each District in order to set the jurisdiction of the Act.

Second, it prescribes a specific set of actions to be taken in those districts to which the Act would apply to. First, the maximum punishment for offenders was to be up to six months imprisonment or a fine of up to one thousand rupees. However, as infanticide was hard to catch, a number of measures for policing infanticide were specified in the Act. For each infanticidal group, the local government was “...from time to time to make rules consistent with this Act...” towards several ends (Government of

India Legislative Department: 1929: 328). This included registering all births and marriages, maintaining a police force to punish offenders, and regulating the expenses and personnel needed to uphold and enforce the Act.

The Act itself does not declare female infanticide illegal, for as reviewed earlier, it had been declared so by 1804 by Regulation III. More accurately, the Female Infanticide Act establishes the right of district officials to penetrate deeper into the secluded, family sector of life that had largely been out of reach and to document and regulate those activities related to and considered causal of infanticide. It establishes the legal ability for local governments to monitor family growth and the behavior and to use data collected on births, marriages, and deaths to prevent and catch infanticide in order to *more effectively* police it.

On the one hand, when looked at as a standalone piece of legislation, the Female Infanticide Act does fit into Dirk's thesis that caste was reinvented after policy of noninterference and via ethnography and the deployment of the census. The Act is both post-noninterference and utilizes the identification of infanticidal castes and the use of registering characteristics and activities of those castes. Further, it can be argued that the Act represented a new step in policing activity. As Kasturi argues, "The [Female Infanticide] Act also represented an important moment in 19<sup>th</sup> century legal discourse on crime, where those sections of the colonial subject population whose culturally-specific actions were deemed deviant were interrogated, classified and controlled by the administrative, legal and coercive structures of the Government of India" (1994: 1). In other words, the Act was not just legislation, but an institutionalization of the policing of behaviors that were specific of caste or clan. This argument, labeling the Act as an "important moment" in legal discourse, and its reference to culturally-specific actions being regulated by the government, seems to lend support to Dirk's argument.

Sen agrees. He argues that

"First, the anti-infanticide campaign between the 1850s and 1870s flowed from a collectivist vision of Indian criminality that implicated not guilty individuals, but aberrant communities. These communities – defined in terms of caste, tribe, village, and the crime itself – were constructed dialogically with local elites in peasant society, and through extensive deployment of the census" (2002: 53-54).

He, like Kasturi, understands the infanticide campaign as beginning in the 1850s, and the Act itself as a separate and unique piece of legislation. Sen also links the use of the census work with infanticide in the same way Dirks links the census to caste transformation. Sen continues:

“Once the infanticidal reputation of a particular community had been established in the eye of the local administrator, the census could be deployed as a verification tactic, and as a method of intimidation and policing. It served also to gauge the success of anti-infanticide programs, allowing administrators to congratulate themselves and justify their persistence” (2002: 59).

This would seem to support the idea that noninterference did indeed mark a significant change in policy making. The infanticide campaign was largely a product of the 1850s through 1870s, and like caste, was transformed by the use of the census. The caste association of female infanticide legislation, one could conjecture, was a result of the same focus on ethnography and the identification of caste identity and tradition.

However the Act itself cannot alone be analytically limited and is better understood contextually when analyzed via the history leading up to the Act and in conjunction with a piece of legislation passed a year later, the Criminal Tribes Act, also known as Act XXVII of 1871. Both allow for a greater understanding of the events leading up to the Act, giving it a place in history, and the ideals during the time period of the Act, to assess changes from the past. Accordingly, this section draws on the reviews put forth in part II and discussions on both acts and furthermore, focuses on the connections between the two acts. When the Act is analyzed in this greater context, it is possible to trace deep path dependencies from late 18<sup>th</sup> and early 19<sup>th</sup> century ideals and policies to caste criminalization during the period of non-interference, directly contradicting Dirks’s argument.

#### OVERVIEW AND HISTORICAL ANALYSIS OF ACT XIII OF 1870

Despite the importance of the Female Infanticide Act and considering the amount of debate in the 1850s over the ineffectiveness of existing infanticide legislation, there are few official recorded debates and discussions. The majority of records that exist are of minutes of discussion put forth by the Honorable Mr. Strachey who was responsible for introducing the bill. He, like many others in both the administration for India and in British Parliament, expressed the need for more extensive legislation in order to control a practice that “had long been a matter of unhappy notoriety” (Government of India Legislative Department, 1871: 5).

Strachey cites the long history of British encounters with female infanticide, noting that since the time of Jonathan Duncan who first discovered infanticide among the Rajputs, female infanticide has been known as a caste crime. He states:

“From time immemorial, this crime had been practiced in many parts of India, and especially in the North of India, by many tribes of Rajputs. Although, speaking generally, it might be said that the crime was peculiar to the Rajputs, still this was not, strictly speaking, true; for there were other tribes of Hindus with whom the practice was common, and in some parts of the country female infanticide was practiced even by some classes of Muhammadans” (Government of India Legislative Department, 1871: 5).

Given the specificity of the Act itself, it makes sense that in this first introduction of the Act given by Mr. Strachey calls upon the historical studies that first identified infanticidal practices, and identifies castes known to have traditional practices and customs that led to infanticide. From this passage, it can be seen that in contrast to the early 1800s when the majority of emphasis was placed on Rajput clans, by the 1870s, the practice was found to be much more widespread.

However, even given the knowledge that the practice of female infanticide was more widespread, Strachey still identifies the practice along caste and class lines in the case of Muslim groups. Furthermore, the Act is, as highlighted in the introduction to this section, still directed at the same group of territories that discussions and previous legislations focused on as early as the beginning of the 19<sup>th</sup> century. Thus, the Female Infanticide Act, although more invasive and concrete, is not a major change from earlier legislation, but acts as an extension of earlier laws and is based on the same studies and writings that inspired the first anti-infanticide legislation.

As stated before, it does not make sense to look at the Female Infanticide Act alone, but in conjunction with the Criminal Tribes Act of 1871. The two Acts are incredibly similar in language, aim, and jurisdiction, and it is clear that the Infanticide Act either laid a precedent for or influenced the creation of the Criminal Tribes Act. As both are pieces of legislation that focus on caste characteristics, specifically criminal behaviors thought to be part of the fabric of specific castes, an analysis of both gives a more complete picture as to the so called “transformation” of caste that occurred at the time of noninterference.

## OVERVIEW AND HISTORICAL ANALYSIS OF ACT XXVII OF 1871

Collective criminality was by no means a new idea by 1871. As evidenced by female infanticide legislation reviewed above and by documents on all manner of crimes from hookswinging to sati, most of the crime that the British took keen interest in and most feared was collective crime. Collective crime, as discussed earlier, was a threat to British legal and moral authority. As Gordon theorizes,

“The development of the idea of the “criminal tribe” was the merging of two intellectual traditions, both with deep roots. First, there was the tradition of the Brahmin subordinates of the new British rule. Theirs was the plainsmen’s fear of the forest, the cultivators’ fear of hunting-and-gathering peoples, the high-castes’ fear of people without caste, the Hindu’s fear of non-Hindus and the bureaucrats’ fear of an uncontrollable population. To this was added the strangely parallel British tradition; it included a long legal association of migrating with “vagabondage” and the association of forests with crime and outlaws. To this mix were added the more recent ideas of criminals as a race apart, and finally, in line with nineteenth-century ideas of progress, the idea of redeemability. This entire heritage became crystallized and “institutionalized” in the criminal tribe laws of nineteenth-century India” (Gordon,139).

The idea of controlling a population that did not submit to the traditional means of social organization and committed acts that were contrary to a central authority is what drove fear of collective behavior. Given the caste oriented understanding of Indian authority beginning in early missionary and Orientalist writings, caste, clan, and tribe became the focal point of British legislation towards policing immoral and deviant behavior. The Criminal Tribes Act is no exception.

The Criminal Tribes Act or Act XXVII of 1871 passed a year after the Female Infanticide Act, is considerably more extensive than the Female Infanticide Act, yet very similar in language and prescription. Unlike the Female Infanticide Act, parts of the Criminal Tribes Act extend to all provinces. However, the majority of the Act is directly aimed, coincidentally like the Female Infanticide Act, at the Northwestern Provinces, Oudh, and Punjab.

Why this same specificity of region? Much of the discussions of the Criminal Tribes Act which are considerably longer and appear in greater number, explain the narrow focus of the Act. As an example, the Honorable Mr. Stephen, who was a key figure in the passage of the bill, declared that he did not believe “the natives of India were by any means a peculiarly criminal people...” but that there were

“certain parts of India, and in particular the North-Western provinces, the Panjab and Oudh, in which crime was carried on in a manner altogether dissimilar to anything which was known in Europe” (Government of India Legislative Department, 1871: 419). Additionally, there were “tribes of criminals who carried on theft and robbery as regularly, as systematically, and with as little sense of criminality as if they were following the most legitimate pursuits” (Government of India Legislative Department, 1871: 419). Thus, it was the “criminal nature” of the peoples in these specific regions that was of concern.

More specifically, the reasoning behind targeting specific areas was to target specific castes. He continues:

“We all know that traders go by castes in India: a family of carpenters now will be a family of carpenters a century or five centuries hence, if they last so long, so will grain-dealers, blacksmiths, leather-makers, and every other known trade...It means a tribe whose ancestors were criminals from time immemorial, who are themselves destined by the usages of caste to commit crime, and whose descendants will be offenders against the law, until the whole tribe is exterminated or accounted for in the manner of the thugs” (Government of India Legislative Department, 1871: 420).

This “caste logic,” where caste determines an occupational fate, is used to explain criminal pursuits. As the caste system structured Indian society by organizing and assigning people into specific social and economic functions by their caste identity, likewise it could assign criminal behavior. Accordingly, given the legacy and destiny of caste, that one “is an offender against the law, has been so from the beginning, and will be so to the end; that reform is impossible, for it is his trade, his caste, I may almost say his religion, to commit crime” (Government of India Legislative Department, 1871: 420). This is not so unlike documents from the 1825 and 1828 parliamentary papers on female infanticide which attribute female infanticide to characteristics and traditions of specific castes which caused a strong preference for male children and consequently, the frequent use of female infanticide to build families composed of most or exclusively of male children. Thus, caste as an institution had to be policed in order to correct for criminal behaviors that had become, over many years, part of the fabric of caste tradition and passed from one generation to the next, and would continue to be passed on for generations to come.

In order to do so, the Act empowers the local government to declare a tribe, gang, or other such group as criminal if it is believed that they are “addicted to the systematic commission of non-bailable

offences” (Government of India Legislative Department, 1928:179). Once this has been declared, the local government has the authority to register all members of each of the criminal groups, to relocate any such group that has no fixed place of residence, and establish “reformatory settlements” for children, and all the necessary actions that must be taken to those ends (Government of India Legislative Department, 1928:179). The bill thus was a means to identifying deviant groups, namely castes, registering them, reforming the youngest generation, and when a group was nomadic and hence hard to police, to settle and civilize them.

Although the actual goal of the Criminal Tribes Act is different than the Female Infanticide Act, the Criminal Tribes Act uses the same general tactics of identification and registration to control deviant behavior. Furthermore, like the Female Infanticide Act, the Criminal Tribes Act relies on the same assumptions and understandings of caste in order to identify and police behavior, and consequently, caste characteristics and criminality act to simultaneously explain each other.

#### CREATING AND REACTING TO CASTE: REFORMATION THROUGH COLLECTIVE CRIMINALIZATION

What does this mean for Dirks’s argument? Both Acts are targeted at specific groups. Neither are sweeping, universal pieces of legislation, but draw on ideas of group behavior to target punishment at specific castes that were known as characteristically criminal or in the case of the Female Infanticide Act, as infanticidal. Furthermore, criminal tribe legislation borrows heavily from the structure, aim, and means of the Female Infanticide Act which, drawing from the Act itself and historical encounters with the crime, is tied to a caste based understanding of infanticide. Consequently, roots of criminal legislation during the period of noninterference can be drawn back to the earliest periods of British exploration and rule in India.

As criminality was, according to Dirks, a significant piece of defining castes by tradition and characteristics, and as Sen argued, the census was used to the ends of identifying and policing criminal behavior, criminalizing castes played a role in the ethnicization and reinvention of caste. This has two major implications. First, since criminality became an assigned characteristic of castes, it is not the census that was the first tool to ethnicize caste, but legislation – the policing of criminal behavior – that was. Second, as caste criminalization began, in the case of Female Infanticide in the 18<sup>th</sup> century, the reinvention of caste began not as a result of noninterference, but as a result of Orientalism and a civilizing mission that began with the first encounters with criminal behaviors.



So although Dirks argues that the Great Rebellion sparked a fundamental change in policy that created the science of caste ethnography, criminal policies during the period of noninterference, those which worked to define caste as much as other characteristics, were influenced by and extended earlier caste-based legislation. Moreover, it is undoubtedly true that the British reinvented caste, but not in the manner Dirks writes. The British did not take a relative silence on caste ever. From the beginning, it was a cornerstone of British curiosity, fear, and policy making. And from the beginning, with the first encounters with Indian culture and most definitely through actions taken to control female infanticide, caste was continually transformed by the British.

#### PART IV: CONCLUSIONS

Caste continues to be the focus of endless studies, a focal point of political, social, and economic debate, and a challenge to policy makers. Even today caste is undoubtedly one of the most unique and striking characteristics of Indian culture regardless of what part of culture it exists as or how it became a part of tradition. And as Dirks argues, and correctly so, caste shaped the ideals of nationalist struggles and post-independence policy. However, this paper is not concerned with the consequences of caste and its place in modern Indian culture and society. Instead, this paper has aimed to provide an alternate explanation as to how the British interacted with and changed the place and function of the caste system during the 18<sup>th</sup> and 19<sup>th</sup> centuries.

As reviewed in part I, Dirks believes, given a comprehensive review of British encounters with caste, that the policy of noninterference declared in the late 1850s and the resulting goal of identifying culture and tradition, led to a recreation and ethnicization of caste. In particular, census work that began in 1872 forced people, for the first time, to identify themselves by a caste affiliation. This caste affiliation, as a result of ethnographic studies, also tied people to specific characteristics and behaviors – including criminal behaviors – that were considered a part of a caste's tradition and history.

Despite some validity to Dirks's claim that the census was a key tool in inventing and ethnicizing caste, the British's encounters with caste, as reviewed in part II, began much earlier and the first transformations of caste took place within the realm of criminality. By examining the early encounters with female infanticide as a case study, this paper has revealed that the ethnicization of caste and the assignment of caste-based characteristics began with the identification of criminal behavior and the creation of policies and legislation that targeted criminality via caste. Furthermore, although

noninterference marked a changeover in power and a change in policy in theory, tracking female infanticide before and after the declaration of noninterference by Queen Victoria reveals that, contrary to what Dirks argues, there was not a fundamental change in how the British impacted caste. In fact, policies during the rule of the British Crown drew on policies as far back as 1804 when Regulation III originally criminalized female infanticide. So although caste may have eventually become the guide for British noninterference policy, years of British encounters with what they viewed as caste-based crime and criminalizing as such is what led to this final codification of the caste system via the census.

But there is much more that can be learned. By reviewing caste-based criminality, it can be said that the creation of caste as we know it was not just a result of needing to differentiate the West from the exotic East, a way to explain why the institutions that existed to create a modern society in Britain were absent in India and why social and political life was still able to organize itself despite being in what the British and many Orientalists saw as a backward, savage society. Caste, most importantly, was an institution that not only posed a threat to British authority, but caste-based crime highlighted the collective nature of social institutions that were contrary and incompatible with the legal and social institutions of the British. It was this institutional incompatibility that is the most important and most deep piece of analysis that is missed by the analysis by Dirks that only superficially examines British interaction with caste before the 1850s.

Dirks ultimately argues that because caste had never been framed as being reinvented by the British, research surrounding caste had been misguided as it was based on false ideas of what the caste system really was. What needs to be understood now is how criminalization in particular impacted changes in the caste system. Research concerning criminality and female infanticide during colonial times focuses on the history, creation, and efficacy of legislation against criminal behaviors. Research focusing on the practice of female infanticide during post-independence periods is almost exclusively concerned with the socio-economic factors that perpetuate the systematic preference for male children and the resulting continuation and spread of female infanticide and nowadays, female feticide. Caste studies analyze the political and economic implications of hierarchy. What this paper reveals is the need for a greater connection between the historical analyses and contemporary studies of criminal behaviors – to understand the modern implications of colonial criminalization and the clash of incompatible legal institutions. In other words, there is a need to understand how colonial institutions interacted with the indigenous institutions of India at the time and to connect the resulting colonial caste criminality to modern studies in order to better understand the causalities and path dependencies that shape

dimensions of modern practices of female infanticide and child preference, and caste. Further, this paper reveals that, at least in India and perhaps in other countries that have been colonized in the past, there is a need to understand how the institutions of the colonial power collided and interacted with the institutions of the colonized to produce a colonial and modern knowledge of the colonized state to better understand the path dependencies of modern institutions.

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