LONDON STUDIES ON SOUTH ASIA NO. 5

CRIME, JUSTICE AND SOCIETY IN COLONIAL SRI LANKA

JOHN D. ROGERS

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The publisher has gone to great lengths to ensure the quality of this reprint but points out that some imperfections in the original may be apparent

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ABBREVIATIONS

AG	Attorney-General
AGA	Assistant Government Agent
AR	*Administration Report*
CC	Crown Counsel
CH	*Ceylon Hansard*
CO	Colonial Office Records
CP	Central Province
CS	Colonial Secretary
D	Diary
DJ	District Judge
E	Enclosure
GA	Government Agent
M	*mudaliyar*
MC	Missing Cases
NWP	North-Western Province
NCP	North-Central Province
Ord	Ordinance
P	Police
PkC	Pitigal Korale Central (Chilaw District)
PkN	Pitigal Korale North (Chilaw District)
PkS	Pitigal Korale South (Chilaw District)
PM	Police Magistrate
PO	Police Officer
PR	Prisons
QA	Queen's Advocate
Sab	Sabaragamuva
SG	Solicitor-General
SLNA	Sri Lanka National Archives
SP	*Sessional Paper*
SP	Southern Province
R	*ratemahatmaya*
UCHC	*University of Ceylon History of Ceylon*
WP	Western Province

PREFACE

The main aim of this book is to explore aspects of the history of crime in Sri Lanka during British colonial rule. It follows the approach of much recent writing by attempting to place crime within its economic, political, social and cultural settings. The intention is not only to contribute to an understanding of modern South Asia through a fresh approach to social history, but to provide a case study of the history of crime in an Asian, colonial context. Enough background information is provided so that the book may be profitably read by those without any previous knowledge of Sri Lanka.

Although the entire British period (1796 – 1948) is covered, there is more detail for the years between 1865 and 1905, the era when the colonial state was established, secure and confident. If in 1905 British officials had been able to foresee the events of the coming fifty years, they would have been shocked at the suddenness of their own demise. The emphasis of this book is thus on the colonial heyday, before officials were challenged by nationalist sentiments, but after the initial period of insecurity dominated by the need to consolidate power. The research upon which the study is based was more thorough for these years. Evidence for the earlier and later periods is drawn from some of the more accessible printed and archival sources.

The geographical scope is limited to the provinces where Sinhala, the language of the majority Sinhalese ethnic group, was spoken by most people. Therefore the Northern and Eastern Provinces are excluded. Fifteen per cent of the population of the island lived in these two provinces. Their inclusion would have provided interesting comparative material, but also would have broken the overall social unity of the area under study, thus introducing another level of analysis which would have necessitated a less detailed treatment of the Sinhala regions. Few Sinhalese or other persons born in the Sinhala areas lived in the predominantly Tamil-speaking provinces, and close social links were limited to élites. Ethnic minorities within the Sinhala areas are not excluded from the study. The term 'Sinhala Sri Lanka' is used when specifically excluding the Northern and Eastern Provinces.

Sinhala place names, titles and terms are transliterated according to the system used by the Library of Congress. English forms

are used for some well-known places and for some localities which had English forms of non-Sinhala origin. Diacritical marks are omitted. Personal names are given in the forms found in the sources. In accordance with the recent trend in scholarship, the newer term Sri Lanka is used in preference to the older name Ceylon.

I would like to thank the staffs of the following libraries and archives where I consulted the evidence upon which this study is based: the National Archives of Sri Lanka, the British Library, the libraries of the University of London, the Public Record Office, the Boston Public Library, the Colombo Museum Library, Dodge Library of Northeastern University, the archives of the Oblates of Mary Immaculate and the archives of the Sacred Congregation of Propaganda Fide.

This study is a substantially revised version of a thesis submitted in 1983 to the University of London. I wish to thank the Governing Body of the School of Oriental and African Studies at that university for providing me with four years of financial support for my studies. I also wish to thank the Central Research Fund of the university for supporting my research in Sri Lanka. I have benefited from discussions with too many individuals to acknowledge them all, but I would particularly like to mention the suggestions, ideas and help of T. J. Barron, P. Kulasekera, James Manor and Anna Sabasteanski. David Taylor was very helpful in his capacity as chairman of the editorial committee of the London Centre of South Asian Studies. Christopher Reynolds spent much time teaching me to read Sinhala, and helped interpret many of the Sinhala sources which are used in the book. Kenneth Ballhatchet supervised the thesis, and I am grateful for his steady encouragement as well as his intellectual criticisms.

INTRODUCTION

The organization of this book is relatively straightforward. The introduction discusses theoretical and methodological perspectives on the history of crime, and explains some of the ways they are applied in this study. It is followed by a chapter which surveys major social, economic and political developments in colonial Sri Lanka, the purpose of which is to provide information necessary for an understanding of the arguments presented later in the book.

The goal of the second chapter, which examines judicial and police arrangements, is twofold: to describe the administrative setting in which crime was committed and repressed, and to put forward an interpretation of the legal system. For most of the nineteenth century officials paid more attention to the judiciary than to the police, but in the twentieth century policy shifted and the police became central to colonial efforts at crime control. Although judicial business was conducted in English and followed procedure alien to pre-British Sri Lanka, people were able to adapt themselves to the new institutions and the courts soon handled a very heavy criminal and civil load. Colonial tribunals were popular largely because they provided Sri Lankans with opportunities to use the power of the state, not because they efficiently enforced a widely-recognized concept of justice. During the late nineteenth century some of the more manipulable aspects of the judicial system were abandoned, but even in the twentieth century the courts generated little moral authority. The importance of the police gradually increased, but as in many societies they were often regarded with suspicion, fear or contempt.

The three middle chapters each consider individual crimes: cattle stealing, homicide and riot. These offences were selected both because of their importance and because there is sufficient evidence for detailed analysis. They also serve as case studies of crimes against property, the person and the state. The incidence, geography and social setting of each offence are analysed. It is argued that although cattle stealing was affected by administrative arrangements, particularly in the twentieth century, it was more sensitive to economic influences, especially changes in land use brought on by the expansion of plantations. Cattle theft flourished in circumstances where it was profitable, and the risk

of punishment was only one factor which thieves took into account when assessing this profitability. Homicide, on the other hand, is interpreted as a consequence of distinctive aspects of Sinhalese culture which changed little during the colonial period. Most homicides were unplanned, and few brought any benefit to the offender even if he avoided punishment. Neither government policy nor social change had much influence on this crime. Riot exhibited yet another pattern. Changes in types of disturbances are traced to the formation of new social groups, and to changes in the fortunes of older social groups, both consequences of structural economic change. These changes in social identity set the parameters of potential riots, but the actual incidence and seriousness of rioting often depended on the actions of individual officials and the presence of random catalysts which could prompt disturbances. The three studies, taken together, are illustrative of the variable and uneven impact of social change in colonial Sri Lanka.

The penultimate chapter examines selected features of crime in general, especially the social characteristics of persons thought to be responsible for various offences. Unlike most societies, the social profile of persons treated as criminal was not weighted towards the poor and otherwise disadvantaged. Crime was committed largely by Sinhalese adult men of respectable caste. There were however differences in the types of crime persons with certain social backgrounds were likely to commit. Emigrant workers, regardless of ethnicity, were more often accused of property crime, while some localities near the south-western coast produced a large proportion of violent offenders.

The conclusion draws together themes treated in earlier chapters, including two general issues which are discussed extensively throughout the book: the relationship between crime and broad forces of social and economic change, and the effectiveness of the administration of law and order. Both topics have attracted the attention of scholars seeking to interpret crime in other parts of the world.

Crime and Social Change

It has been long and widely believed that urbanization and industrialization cause large increases in crime.[1] The rise in recorded offences in many parts of the Western world in the first half of the nineteenth century played an important role in the

original formulation of this belief, which is still accepted by many scholars. The similarly large increase in recorded crime in many countries in the second half of the twentieth century has also been cited as support for this theory, which has strongly influenced interpretations of crime in the contemporary Third World. The standard book on crime in non-Western countries, published in 1973, asserts that social changes in developing countries in the mid-twentieth century are similar to those which 'suddenly produced extensive crime a century or more ago in Europe.' The authors explicitly link crime with progress: 'In fact, one measure of the effective development of a country probably is its rising crime rate.'[2]

Recent historical research has qualified and in many cases disputed the view that increases in crime are necessarily related to urbanization, economic growth or 'progress'. An alternative theory is that all crime rises in the initial stages of industrialization and urbanization, but that thereafter violence falls while property offences continue to increase.[3] The idea that modernization brings about a shift in criminal activity from violence to theft has also been put forward by scholars who do not necessarily accept that violence increases at the beginning of the modernization process. In Western Europe this change has been located anywhere between the sixteenth and nineteenth centuries.[4] This trend has been plausibly related to the transition from a feudal, aristocratic society which places premium on honour to a bourgeois, capitalist order which puts a higher value on property.

The most clear-cut counter-example of the link between rising crime and modernization is that of late nineteenth-century England.[5] Between 1850 and 1914 population doubled, urban population tripled and national income more than tripled. Yet recorded crime fell by one-third despite increased willingness among the police and public to institute prosecutions. Doubt has also been cast on the scale of supposed increases in crime in early nineteenth-century England, since these increases coincided with the rapid expansion of the police and changing attitudes towards lawbreaking.[6] Evidence from other European countries and the United States also points to declines in crime, including offences against property, over much of the late nineteenth and early twentieth centuries.[7] Although there has probably been a long-term decline in serious violence in Europe over the past several centuries, the relationship of this trend to patterns of theft and other property crime, or to broad forces of social change, remains obscure.

Historical research has thus proved more successful in demolishing old myths and theories about the relationship between crime and social change than it has in replacing them with sustainable generalizations. So long as criminological theory drew from ahistorical empirical data from the United States and Europe it was possible to construct theories relatively consistent with the available evidence. Historical and non-Western material has been more difficult to encompass. It is becoming increasingly evident that theories which seek to explain patterns of crime in socio-economic terms must do so in conjunction with cultural and political variables. The past practice of explaining discrepancies between theory and the empirical data as the product of 'cultural differences' is inadequate now that comparative data often show more variations than similarities.

Long-term social change, frequently defined as modernization but in studies of crime often measured by urbanization, is in this book defined by the expansion of the market economy. Although there was both urbanization and industrialization in Sri Lanka during the British period, neither of these processes were carried very far. By contrast, there was a general shift from subsistence agriculture to the production of cash crops and the provision of services. In 1796, at the beginning of British rule, the market economy was dominant only along the south-western coastal strip. In the 1840s, when coffee plantations were established on a large scale, it expanded into the central highlands. From this time on the position of subsistence agriculture declined in other regions, though the pace of this change was uneven. The process provides a good opportunity for correlating economic change with patterns of crime. The relevance of more specific indices of social change, including urbanization and rates of literacy, are discussed as sub-themes where appropriate.

My findings emphasize the importance of distinguishing among different types of offences, and point to the futility of seeking to interpret all crime within a single framework. The three crimes examined in detail, cattle stealing, homicide and riot, all exhibit different relationships with the expansion of the market economy, and even these three crimes are not representative of crime in general. Moreover, it is not clear that the changes which took place were related so much to any general process of social change as to the specific economic and social changes which occurred in Sri Lanka. In other words it is possible that local social and ecological facts may be of more importance when interpreting crime than broad processes such as modernization. For instance,

it may be that the rise and fall of certain forms of property crime is more closely related to their profitability than to changes in economic and social structures.

Little of scholarly value has been written on crime in colonial South Asia, but the work which is available has shown a strong positive relationship between property crime, including robbery, and depressed economic conditions.[8] It is probable that the importance of what has been sometimes termed in India as 'famine crime' preceded British rule. Research on crime in Europe before around 1850 has also shown a direct relationship between economic conditions, especially the price of grain, and crime, especially theft.[9] Sri Lanka, like India, was subject to periodic increases in the price of grain, but the link between crime and economic hardship was not as strong as one would expect from the Indian evidence. It is argued that this difference may be partially accounted for by the higher standard of living in Sri Lanka, but also that the motives and social composition of offenders in normal times were such that depressed economic conditions did not necessarily lead to substantial increases in criminal activities.

Criminological theory, supported by evidence from North America and Europe, assumes that the poor commit a disproportionate amount of crime.[10] As a corollary, it is generally accepted that many marginal social groups, especially economically-depressed ethnic minorities, also have high rates of crime. Historians of North America and Europe have generally confirmed the propensity of the poor to appear in criminal records. Scholars accept that prison statistics and other official data often discriminate against the poor and marginal, but the frequently overwhelming preponderance of these groups among those treated as criminal is thought partially to reflect social reality. On this point the Sri Lankan case proves to be striking. When considering a whole range of variables it is found that those social characteristics indicative of a low position of wealth or status do not appear among persons treated as criminal more often than one would expect from their proportion among the general population. In some instances better-off persons are disproportionately numerous.

Three possible explanations come to mind. It may be that the Sri Lankan system of crime control was more fair than most others, that it did not discriminate against those least able to defend themselves, and that the 'real' profile of Sri Lankan law-breakers was not much different from those of other societies. It

could even be argued that in the special circumstances of colonialism the judicial system was biased against mainstream groups in order to increase the state's control over them, and that in fact the poor and marginal, as in all societies, committed most crime. These suppositions are rejected because there is little evidence to support them. Instead it is argued that the unusual social profile of lawbreakers did reflect social reality.

Crime and the State

A second major theme is the effectiveness of the state in preventing and punishing crime. The importance of studying government activity is on one hand methodological. Since much of the information available about crime comes from officially-generated sources, it is essential to understand the workings of the administration even when interpreting crime within a social and economic framework. Attempts to analyse the increase in reported crime in early nineteenth-century England illustrate the point. Reported crime increased several times between 1800 and 1840, but so did the efficiency of government in recording offences. Those who seek to interpret this increase as a reflection of rapid social change which led to increased lawlessness must still consider the changes in administrative arrangements and popular attitudes which may have distorted the relationship between the reported and 'real' rates of crime. Similar problems arise in this study.

The failure to find broad patterns relating crime with social and economic change has led some scholars to examine in detail the possibility that government policy may have exercised an independent influence on patterns of crime. Research has shown clearly that a 'modern' pattern of crime control developed in Western Europe and North America in the nineteenth century.[11] The eighteenth-century practice of harsh but selective punishment was condemned as barbaric, and was replaced with an attempt to impose lighter but more certain penalties. To this end police forces on the contemporary model were created, and imprisonment became a standard punishment. Retribution was replaced with discipline. Traditionally this change has been seen as an aspect of progress, fuelled by humanitarian ideals. Some historians now view it as an attempt by the state to exercise more effective though subtle control over the lower classes.

In many ways changes in government policy in nineteenth-century Sri Lanka were similar to those in Britain. In some

instances reforms in Sri Lanka even preceded those of the colonial power. Treason and murder were the only capital crimes after the assumption of British control in 1796, but the death sentence continued to be imposed in Britain for less serious offences until around 1830. Moreover, the simplification of the structure of the courts along utilitarian lines proceeded more thoroughly in Sri Lanka than in Britain itself. But in other ways the colony lagged behind, especially when government expenditure was at stake. Consequently policing had a low priority, and regular police were established in rural areas only in the twentieth century. The gradual extension of the state's role in crime control certainly affected some sorts of crime, particularly property crime, but government institutions rarely worked in the ways intended by higher officials.

Besides these changes in government policy familiar to students of European history, the fact that Sri Lanka was a colonial polity had important consequences. This can be seen most clearly in the operation of the judicial system. The failure of the courts to operate according to the legal norms under which they were established is a familiar theme in South Asian studies. Charges of litigiousness and widespread perjury have gained widespread acceptance in both India and Sri Lanka.[12] The British established legal institutions in both countries around the same time and in similar political and cultural contexts. Although the rate of litigation in India was not as high as in Sri Lanka, interpretations by modern scholars of the Indian legal system provide some starting points for an analysis of Sri Lankan justice, and are worth pursuing here in some detail. Interpretations fall into two broad categories: those which emphasize conflict between Indian and British cultural values, and those which attribute the difficulties of the courts to the nature of disputes in South Asian society.

The most well-known exponent of the 'culture conflict' view is Bernard Cohn.[13] He has argued that differences between British and Indian legal norms inevitably led to a divorce in Indian minds between justice and the colonial courts. He identifies four specific value conflicts. First the courts treated persons as equals, but Indians viewed people as having widely different inherent worths. Second, legal decisions based on ideas of contract did not fit the value system of Indian villagers. Third, the courts desired a clear-cut outcome. According to Cohn, Indians preferred a compromise solution, or at least the fiction of a compromise. Finally, the colonial courts settled only disputes brought before them. According to Indian values the courts should have looked further

and settled the real dispute which lay behind the ostensible complaint. As a result of these value conflicts litigants had no respect for the courts and manipulated them.

There have been two important responses to Cohn's argument, both of which emphasize the nature of social conflict in Indian society. Robert Kidder has argued that there was no clash of values, but that on the contrary the attraction of the courts was that they were in theory able to pass down clear-cut and decisive decisions.[14] Litigants went to court because they had adopted 'Western' legal values. The difficulty was that the courts were unable to function effectively. Kidder's fieldwork, carried out after independence, shows that litigants who approached the courts honestly were unlikely to gain any benefit. Emphasizing the failure of the courts to resolve civil disputes within a reasonable period of time, Kidder argues that the fault lay with the structure of typical disputes in India. The personalized nature of disputes caused litigants to pursue all possible legal strategies even when it would have been more rational to compromise. Litigants were likely to be neighbours who had long been on hostile terms. Oliver Mendelsohn has carried Kidder's argument one step further.[15] He attributes the failure of the courts to the intractable nature of land disputes, rather than the structure of conflicts in general or faults in the system of justice. He believes that any judicial system would be overwhelmed by what he sees as contradictions in Indian rural society.

Although Cohn, Kidder and Mendelsohn all used some historical sources, their explanations of the deficiencies of South Asian courts were mainly inspired by fieldwork. This perspective is inadequate for an understanding of the colonial legal system because the post-independence practices evolved over a long period of time. Cohn does not show why Indians responded to alien courts with enthusiasm rather than indifference. It is after all unlikely that any culture conflict present when British courts were first established would continue unresolved and unchanged for over a century. The distinctions which he makes between South Asian and British values also seem exaggerated. Law in British India was not strictly locked into enforcing equality and contract.[16] Kidder and Mendelsohn, on the other hand, attribute litigiousness and perjury to an exceptional amount of hostility and conflict in South Asian society, but they fail to explain why this aggression was channelled into formal litigation. In addition, the stress which they place on the feasibility of indefinite delay as a cause, rather than a consequence, of the misuse of the courts

seems misplaced. Although there were delays in the criminal courts, they seldom lasted more than a few months. Yet the same problems which plagued the civil courts prevailed.

The interpretation of the courts advanced in the second chapter of this book accepts many of the arguments put forth by these scholars, but provides a fuller model of judicial behaviour which is historical as well as functional. It is argued that specific policies implemented at the outset of British rule led to the development of a judicial system which did not coincide with either British or indigenous notions of justice but which was none the less compatible with local culture. Aided by court officials, lawyers and unofficial legal advisers, Sri Lankans used the courts as they used the spirits and demons of popular Buddhism. Both were perceived as amoral sources of power which responded more or less predictably to specific modes of address. That the new system generated little moral authority was less important than the fact that it gave many Sri Lankans access to the power of the state.

Crime and History

My contention that the functioning of the courts was a consequence of the implementation of specific judicial policies in a unique cultural and social setting points to the historical approach of the book. Both the expansion of the market economy and the imposition of colonial institutions took place in the context of long-established and complex cultures which shaped the form of the new social arrangements that appeared during the colonial period. This study is not constructed to test general theories about the relationship between crime and social change or the state. These themes are dealt with time and time again, but the possibility that they may be irrelevant, or that unique cultural, social or ecological facts are more important, is left open.

Some of the other issues discussed in this book have been central to historical writing on South Asia which treats more traditional subjects. One of these is the importance of colonialism. Did British rule transform South Asian society, or was state penetration weak in most rural areas? The study of crime and justice is one of the few fields where there is evidence about relations between the state and the people at the lowest level. It is argued in this study that although the courts did matter, they often failed to operate in the ways intended by British policy-makers. A resilient indigenous legal culture grew up around the courts, and attempts

by government to change this culture were unsuccessful. The state was of course sometimes perceived as an alien entity by peasants living in remote rural areas, but this was not because it was Western. Such alienation from official institutions is common to many societies with isolated peasant populations; it was not necessarily an outgrowth of colonialism. The colonial courts, despite their formal structure which was modelled on British lines, were far less alien to the average Sri Lankan than they would have been to the ordinary Englishman.

Another important theme in the modern history of South Asia is the rise of nationalism. If, as is argued here, the representatives of the state at the local level were widely viewed as indigenous, what prompted nationalist agitation? The cynical answer is the spoils of patronage. Some historians have argued that nationalism was the outgrowth of the desire by élites to gain economic and political power, and that they manipulated indigenous symbols to this end. Few would deny that there are elements of truth in this explanation, but it has been criticized as incomplete because of its bias towards élites and its failure to explain why nationalist symbols had such wide appeal. In Sri Lanka Sinhalese-Buddhist cultural nationalism was linked with other grievances and was sometimes expressed through rioting, but in the absence of élite leadership it was not channelled into demands for constitutional concessions from the British. Events in India made this distasteful task unnecessary. There were few explicit and illegal anti-British protests during the last century of colonial rule.

There remains the possibility that much social protest was expressed indirectly through crime. In historical studies generally the interest in 'social crime' has declined because detailed research has found common thieves and bullies, not social bandits and grain rioters. Sri Lanka was not an exception in this regard. Some crimes were acts of protest, but within the overall context of illegal activity they were marginal. What is striking about crime in Sri Lanka is the relatively high economic and social status of criminals. Though certain crimes served to even out the distribution of power and income, other crimes had the opposite effect. Illegal activities often helped high-status groups maintain their positions.

Another current trend in historical writing in South Asia is to move away from analysis at the local, regional or national levels and instead attempt to trace the linkages between various localities and the wider society, economy and culture.[17] The study of crime offers some opportunities for this type of analysis.

Geographical comparison of patterns of lawbreaking sometimes throws light on more general differences in social and economic conditions. Criminal behaviour is important evidence for the reconstruction of all social relations.

Methodology and Sources

Crime has been studied from a great variety of perspectives. In part this diversity is the result of wide variations among legal systems, popular definitions of crime and patterns of illegal activity. It is also a reflection of differing disciplinary and ideological inclinations among scholars.

As a starting point, crime is defined as actions which are contrary to criminal law. Its content changes according to time and place. The main advantage of this definition is its precision. In societies such as colonial Sri Lanka, in which criminal law was made up of a set of rules, under this definition it is not normally difficult to determine whether or not an action was criminal. No claim is made for the universal usefulness of this definition; others would have to be found for societies in which law is not defined by a relatively clear, usually written, set of rules, or in which no distinction is made between civil and criminal law.

Under the legal definition of crime, it is in theory possible to determine the number of crimes committed in any one place over a period of time.[18] In practice neither scholars nor officials ever have sufficient evidence to put forth an accurate, exact figure. The 'dark figure' of crime, that is the difference between 'real' and reported rates of crime, may be substantial even for serious offences in twentieth-century developed nations.[19] Perhaps more importantly, the total number of crimes committed would be of little interest because there is great variation in the meaning and significance of individual criminal acts. To be useful, crime rates must be broken down into specific categories of offences.

A second advantage of the legal definition is that it reflects a political reality. Though not all laws are enforced with equal vigour, criminal law defines crime as it is officially recognized. Even when this definition differs from widely-accepted popular definitions, those who transgress the legal definition may well be punished. The administration of law and order may enforce another definition of crime which is different from the legal definition. This practical definition is equally a political reality, but it is constantly changing, lacks precision and may be arbitrary:

therefore it is not a useful definition to adopt. This is not to say that differences between the legal and practical definitions should not be an important theme for analysis.

Another view is that crime is those actions which are punished by the state.[20] This definition is partially motivated by the recognition that factors such as the race or social class of the offender and victim, rather than the nature or actual commission of an offence, may determine whether or not there is a conviction. It has the advantages of being very precise and of reflecting the social reality of the operation of the administration of law and order. Its weakness lies in its very narrow scope. Crime is equated with punishment, but most offences are unpunished.

Some scholars define crime as deviance from a social consensus of permitted behaviour.[21] This view takes into account the general view that crime is or ought to be those actions which are considered so immoral or damaging that they should be subject to punishment. Proponents of this definition often assume that criminal law is closely related to the consensus, although they accept that law may be tardy in reacting to changing attitudes. The main disadvantage of this definition is its vagueness. Since it is accepted that the consensus varies according to time and place, it is not clear how one distinguishes between a legitimate consensus and a deviant subculture. The scholar may assume that the consensus is the same as his or her own idea of crime. Alternatively, the moral values of a particular group within the society under study may be adopted. Another option, accepting criminal law as an accurate reflection of the social consensus, is less helpful than the legal definition because it precludes the study of differences between criminal law and popular conceptions of morality.

The legal definition of crime adopted here should be seen only as a starting point. The two alternative definitions discussed above point to its limitations. Whether one believes that ideas of morality determine the content of criminal law or that they instead serve as justification for the state or a social class to exert economic and political control, the relationship between law and morals is important. In either case, the actual functioning of official institutions may differ greatly from their declared purposes. The study of crime includes how and why the boundaries of crime change, the extent to which the legal definition is accepted, and the reasons why the authorities are more likely to punish certain legally-defined crimes than others.

This approach is consistent with much historical writing on crime, the quantity of which has increased greatly in recent years,

especially in relation to Europe and North America.[22] Previously many historians perceived crime as abnormal and peripheral, fit only for study by specialists in deviance. Current research assumes that crime and justice do not exist in a social vacuum, that they are at least partially political creations, and that they are inextricably involved in society. This view is not new; in fact it was put forward by Durkheim and other nineteenth-century writers, but it was often disregarded after the study of crime was taken over by the new discipline of criminology in the early twentieth century.[23]

The decision to organize the book around the analysis of specific crimes rather than district studies or thematic issues reflects my conviction that crime is best understood as an 'umbrella concept' which encompasses many different modes of human behaviour.[24] The diversity of crime accounts for the unconvincing nature of attempts to explain it by all-encompassing theories. Murder, petty theft and tax evasion, for instance, all have different motives and consequences. The fact that in many societies all three are illegal does not mean that they have a similar social or historical significance.

The use of quantification in studies of crime tends to obscure this diversity. Crime rates often distort more than they clarify. This point may be illustrated by the different ways of measuring the following set of crimes: (a) a gang robbery with six offenders and two victims, (b) five cattle thefts, involving sixteen offenders and eight head of cattle, and (c) a murder with a single assailant. According to one crime rate, for which the number of offences is counted, seven crimes were committed. Each case of cattle theft has the same value as the murder and the gang robbery. Under another widely-used method, for which the number of persons accused is used, there were twenty-three offenders. Here the value of the robbery is not equal to that of the murder, but is instead six times greater. The cattle thefts are five times more significant than the murder when offences are counted, but sixteen times as important when the number of offenders make up the crime rate. Some scholars and officials have sought to avoid distortions by counting only crimes defined as 'serious'; this adjustment would not affect the example given above, for all of the crimes mentioned would normally fall into this category. Another alternative is to create an index whereby a number of factors, including the 'seriousness' of the offence, and perhaps the value of any property involved, are taken into account. Such efforts may eliminate some common inaccuracies, but no set of

criteria can avoid distortion caused by the quantification of unlike incidents.

The approach of this book, with its emphasis on the study of specific crimes, reduces but does not eliminate the problem. As the case studies make clear, there was much variation in the circumstances of even the relatively narrowly-defined categories of cattle theft and homicide. Some distortion through the quantification of similar but not identical events is inevitable. None the less, crime rates for cattle theft and homicide prove very useful when analysed in conjunction with detailed information from other sources about the social settings of these crimes. In some instances it is possible to break down these rates further by motive or other circumstances.

The other methodological problem in determining crime rates is that of accuracy. It is well known that the authorities are aware of only a small proportion of crimes, and that administrative processing of those crimes further distorts official statistics. These difficulties are discussed in detail at those places in the book where crime rates are presented and analysed. At this point it is sufficient to mention that it is accepted that there were differences between the real and reported rates, but that for some crimes over certain periods of time the difference was fairly constant. A thorough understanding of the way official statistics were collected and of the workings of the administration is shown to be essential for the proper interpretation of these data.

Quantitative material is also used as evidence for the criminal proclivities of persons with certain social characteristics. Some data on convicted prisoners are available. More useful is my enumeration of persons who were listed in the *Hue and Cry*, a bi-weekly bulletin published by the police. This publication contained detailed descriptions of persons who failed to appear at court to answer a criminal charge. Their social characteristics, the type of crime of which they were accused and the district in which the crime took place were recorded for the period 1896 – 1905 (Appendix A). These 4,505 persons are treated as representative of persons considered responsible for crime during the mature colonial period.

Finally, the study of homicide is largely based on a quantitative analysis of details of 1,482 cases committed during the years 1883 – 9 and 1900 – 4 (Appendix B). Each case was examined and classified according to sixteen variables which describe some of the circumstances of the incident and the social characteristics of the persons involved. Again, this data base is not used to determine

the overall frequency of homicide, but to provide information about the types of people who were involved and the proximate causes of the crimes.

The above discussion may give the impression that this is a predominantly quantitative study. This is true only in the sense that the significance of crime is directly related to its frequency; the bulk of the evidence is found in narrative form. There are a few works by scholars which deal directly with aspects of my subject.[25] Official documents account for a large proportion of the primary sources. Several categories are used, including semi-official diaries, annual reports, the proceedings of special commissions and correspondence both within Sri Lanka and between Sri Lanka and London. Non-official sources are also important. The press, polemics and literature all provide perspectives and information not otherwise available.

NOTES TO INTRODUCTION

1 Jones, *Crime, Protest, Community and Police in Nineteenth-Century Britain*, 9; Monkkonen, *The Dangerous Class*, 8–9; O'Brien, 'Crime and Punishment as Historical Problem', 509; Tilly & Lodhi, 'Urbanization, Crime, and Collective Violence in 19th Century France', 296; Gatrell, 'The Decline of Theft and Violence in Victorian and Edwardian England', 238.

2 Clinard & Abbott, *Crime in Developing Countries*, v. Also see Shelley, *Crime and Modernization*, 41–2.

3 Shelley, 35–7; Clinard & Abbott, 18–19, 35; Zehr, *Crime and the Development of Modern Society*, 135.

4 Cameron, *Crime and Repression in the Auvergne and the Guyenne 1720–1790*, 191–3; Sharpe, *Crime in Seventeenth-Century England*, 191, 214; Stone, 'Interpersonal Violence in English Society, 1300–1980'; Zehr, 125–6.

5 Gatrell, 240.

6 Ibid., 239–40.

7 Shelley, 33–4; Tilly & Lodhi, 304; Gurr, *Rogues, Rebels, and Reformers*, 35–66; Brantingham & Brantingham, *Patterns in Crime*, 185–91.

8 Kitts, *Serious Crime in an Indian Province*, 16–17, 44, 64–5; Arnold, 'Dacoity and Rural Violence in Madras, 1860–1940'; Arnold, 'Looting, Grain Riots and Government Policy in South India 1918', 132; Bayly, *Rulers, Townsmen, and Bazaars*, 90–1, 198, 295–6; Yang, 'The Agrarian Origins of Crime', 292–3; Haikerwal, *Economic and Social Aspects of Crime in India*, 50–65; Trivedi, 'Law and Order in Oudh 1856–77'.

9 Zehr, 43–55, 84–5; Sharpe, 198–200; Rudé, *The Crowd in History*, 22.

10 Radzinowicz & King, *The Growth of Crime*, 13.

11 Wright, *Between the Guillotine and Liberty*; Emsley, *Policing and its Context, 1750–1870*; Gurr, 117–62.

12 For some historical references to India, see Carstairs, *Human Nature in Rural India*, 276–83; Carstairs, *The Little World of an Indian District Officer*, 14–15; Walsh, *Indian Village Crimes*; Walsh, *Crime in India*, esp. 9–57.
13 Cohn, 'Some Notes on Law and Social Change in North India'; Cohn, 'Anthropological Notes on Disputes and Law in India'. Also see Rudolph & Rudolph, *The Modernity of Tradition*, 255–61.
14 Kidder, 'Courts and Conflict in an Indian City'.
15 Mendelsohn, 'The Pathology of the Indian Legal System'.
16 Washbrook, 'Law, State and Agrarian Society in Colonial India'.
17 Robb, (ed.), *Rural India*; Bayly; Meyer, 'Depression et malaria à Sri Lanka'.
18 Gatrell, 245–7.
19 Radzinowicz & King, 21–4.
20 Taylor, Walton & Young, *The New Criminology*, 91–138.
21 Ibid., 139–71; Gatrell, 245–6.
22 Useful reviews of this body of research include Jones, 1–32; O'Brien. The periodical *Criminal Justice History: An International Annual* is a product of this trend.
23 Taylor, Walton & Young, 67–90; O'Brien, 509.
24 Sharpe, 189–91.
25 Two books mainly concerned with the administrative history of the police contain much information about crime: Pippet, *A History of the Ceylon Police 1795–1870*, I & Dep, *A History of the Ceylon Police (1866–1913)*, II. The history of the judicial system is covered in Nadaraja, *The Legal System of Ceylon in its Historical Setting*; Samaraweera, 'The Judicial Administration of the Kandyan Provinces of Ceylon, 1815–1833'; Samaraweera, 'The Ceylon Charter of Justice of 1833'. A more ambitious interpretation of the colonial legal system, discussed in Chapter Two, is Samaraweera, 'British Justice and the "Oriental Peasantry" '.

CHAPTER 1

POLITICS, ECONOMY AND SOCIETY

The aim of this chapter is to provide the background information necessary to understand the arguments of this book. The first section treats the colonial administrative and political structures. It is followed by accounts covering the main economic and social developments of the British period.

Administration and Politics

European penetration of Sri Lanka began in the sixteenth century, when the Portuguese established control over some coastal areas.[1] Their rule was rarely peaceful, for they competed for power with Sinhalese and Tamil states. The Dutch replaced the Portuguese in the seventeenth century and established a relatively stable colony in the coastal regions of the island. The main concern of their administration was to profit from the monopoly over cinnamon, the principal export commodity. Only the Kandyan Kingdom maintained its independence in the interior. After 1739 it was ruled by members of the southern Indian Nayakkar dynasty, who adopted the roles of Sinhalese kings. The British ousted the Dutch in 1796, and two decades later, in 1815, assumed control over the entire island. The Kandyan Kingdom fell quietly to the British as a result of its internal weaknesses and divisions, but part of the aristocracy led a major rebellion in 1817–18. After it was crushed, the British took direct administrative control over the Kandyan districts.

In the early years of British rule the avowed principle of government policy was the continuation of policies of the previous regimes, the Dutch in the coastal areas or Low Country, and the Kandyans in the interior.[2] In practice there were innovations, partially because of the perceived need to reduce the influence of headmen, and partially because British officials naturally governed on the basis of their own training and inclinations. In 1829 a Royal Commission of Enquiry, appointed because of recurrent annual deficits, began an investigation of the colony's affairs.

Four years later a wide-ranging set of reforms, named after the two commissioners, William Colebrooke and Charles Hay Cameron, was implemented.[3] Many of the institutions and practices established at this time remained intact until the twentieth century.

The island's administration was unified under a government structure shaped like a pyramid. At its apex was the Governor. He made policy with the aid of an Executive Council which was composed entirely of senior officials. He also presided over a Legislative Council which included a non-official minority. Governors generally appointed one representative for each of three Sri Lankan ethnic groups, the Sinhalese, Tamils and Burghers (Eurasians). The other three non-official positions were filled by local British residents. After the Legislative Council was expanded in 1889 a Ceylon Moor and an extra Sinhalese representative were also included.

All legislation had to be approved by the Legislative Council, but the Governor could control this body by ordering the official majority to vote in a certain way. Normally such action was unnecessary. In the 1860s there was open conflict between the Governor and the non-official members over the size of the colony's military contribution to the imperial budget and other financial matters, but this fracas was the exception rather than the rule.[4] The proceedings of the Legislative Council were sent to London for the perusal of the Colonial Office and were reported in detail by the local press. Legislation had to be confirmed by the Colonial Office, which took note of any opposition. Governors generally tried to get as much support as possible from the Legislative Council, and they usually succeeded.

Although the legislative branch was clearly subservient to the executive, the Supreme Court exercised power independently. Initially vacancies were filled from Britain, but by the late nineteenth century at least one of the three judges was Sri Lankan. Judicial officials at lower levels were normally members of the civil service. They were subject to transfer, but the executive branch was unable to interfere with specific decisions. Appeals were heard by the Supreme Court.

The Governor administered the colony through the highest ranking civil servant, the Colonial Secretary. All heads of department carried on a voluminous correspondence with this official. Outside of Colombo, the capital, the main representatives of colonial power were the government agents and assistant government agents. These officials were responsible for the