

## GEORGE TURNOUR AND BRITISH LAND POLICY IN THE KANDYAN PROVINCES, 1823—1841

George Turnour has usually had a good press from Sri Lankan historians. *The University of Ceylon History of Ceylon*, volume 3, identifies him as one of 'the more able administrators' of his period in Sri Lanka and recalls that his talent and industry were specifically commended by no less an authority than that of the Colebrooke-Cameron Commission of 1831—3.<sup>1</sup> Historians of an earlier period of history also remember him as one of the first western scholars to interest themselves in the *Mahavamsa*, part of which Turnour translated and edited for publication in 1837.<sup>2</sup> Turnour's writings are also used as those of an authority on the sources of Kandyan law in L. J. B. Turner's 1921 edition of John D'Oyly's *A Sketch of the Kandyan Kingdom*.<sup>3</sup> Indeed it seems possible to argue that Turnour deserves to rank as a scholar with contemporaries like Charles Wilkins or James Mill in an early generation of orientalist whose work, for good or ill, was to have a profound influence on western attitudes to Asia.<sup>4</sup>

Whatever his reputation as a scholar, however, Turnour's administrative work has not escaped criticism. Nearly twenty years ago, Professor K. M. de Silva suggested that the notorious Waste Lands Ordinance of 1840 may have been sponsored by Turnour, though that sponsorship need not have been direct or decisive.<sup>5</sup> De Silva based this view on the fact that Turnour, a pillar of the British administration, was also a planter who preferred plantation agriculture to *chena* cultivation and who saw no need to protect the sources of the water-courses which served the paddy fields of the Kandyan peasantry from planter encroachment. These charges, however, though serious, are not damning. Many of the British administrators of the period were planters, many of them thought *chena* cultivation wasteful, and many put unwonted trust in the magnanimity and integrity of their fellow countrymen. What marks out Turnour is the strength of his advocacy of the planter's

1. K. M. de Silva (ed.), *The University of Ceylon History of Ceylon*, Vol. 3 (Peradeniya, 1973), pp. 47, 84.
2. George Turnour (ed.), *The Mahavanso* (Cotta, 1837).
3. Sir John D'Oyly, *A Sketch of the Constitution of the Kandyan Kingdom* (ed. L. J. B. Turner), (Colombo, 1929, reprinted Dehiwala, 1975), pp. 116, 128, 162—4.
4. For a recent critique of the orientalist school, see Edward W. Said, *Orientalism* (London, 1978).
5. K. M. de Silva, 'Studies in British Land Policy in Ceylon - I', *Ceylon Journal of Historical and Social Studies*, 7, 1964, pp. 28-42, particularly p. 29. See also I. Vanden Driesen, 'Plantation Agriculture and Land Sales Policy in Ceylon, the First Phase, 1836-1886' I & II, *University of Ceylon Review*, 14, 1956, pp. 6-25, & 15, 1957, pp. 36-52, with which de Silva was contending.

views, the speed with which he acquired them and the dogmatism with which he maintained them during his period in office. To appreciate this, one needs to see his career in its fuller perspective.

Between 1823 and 1838 Turnour occupied three key positions in the British administrative hierarchy in the Kandyan Provinces: he was one of the Agents of Government (for Sabaragamuwa) from 1823 to 1827; Revenue Commissioner on the Board of Commissioners, the triumvirate responsible for the day-to-day administration of the territory, from 1828 to 1832; and the first Government Agent of the Central Province from 1833 to 1838.<sup>6</sup> These positions, supported no doubt by his scholarship, allowed him to appear amongst his fellow countrymen as an authority on the subject of Kandy. Whether that reputation was deserved or not is, of course, quite another matter.

In the 1820s and early 1830s, when the British plantations scarcely existed, Turnour as Agent to the Government was required to make it his business to discover as well as to implement 'the ancient laws of Kandy'. This was obviously not easy. With the Kandyan king gone, his court dissolved and many of his officials under a cloud through their participation in the 1818 rising, it was hard to know where to turn for sound advice. Moreover, it is now clear to us, though it was not always so to contemporaries, that the very conception of law in Kandyan and in English society differed, Kandy favouring a much more personal and decentralised approach, aiming chiefly at equity, the English relying on fixed precedent and impersonal rules, aiming mainly at impartial justice. Into this process of 'discovering' the law (which Prof. Nadaraja, Sri Lanka's leading legal historian, sees actually as a process of changing it<sup>7</sup>), Turnour threw himself with some enthusiasm. And, by the time he became Revenue Commissioner, his observations had led him to an interesting discovery.

In February 1833 Turnour wrote to the Governor calling for a legal procedural remedy to a problem which had begun to preoccupy him.<sup>8</sup> Kandyan law, he believed, was, with the exception of copper-plate *sannas*, utterly devoid of any secure title to property, unless it be that of prescription, founded upon a long period of uninterrupted, unchallenged possession. This was a conclusion Turnour had reached gradually over the previous decade while attempting to give an opinion on disputes between the Kandyan villagers and the tiny number of Europeans who had ventured to set up commercial estates in the

6. As far as I know, he has not attracted a biographer, but his career may be followed in the pages of *The Ceylon Almanac*.
7. T. Nadaraja, 'The Law' in K.M. de Silva (ed.), *The University of Ceylon History of Ceylon*, Vol. 3, pp. 327-342.
8. Board of Commissioners to Colonial Secretary (hereinafter C.S.), 5 Feb. 1833, enclosed in Turnour to C.S., 12 Sept. 1835, Sri Lanka National Archives (hereinafter SLNA) 6/1261.

region. The first such venture had been established on lands near Gampola gifted by the governor in 1824 to George Bird. Even before Bird had taken possession of his grant, various local claimants to parts of the land – with no titles other than prescription – arrived to challenge the governor's right to alienate the land. The Board of Commissioners investigated the claims and upheld them. In doing so, the Board also gave it as its view that all titles to paddy fields in Kandy also contained an undefined, unspecified but nonetheless valid title to high lands as 'appurtenances' of the paddy. Bird was left, therefore, with no option but to occupy only the parts of his grant which were not challenged (and to attempt to buy out the villagers) or of abandoning the entire grant and seeking another. In 1827 Bird opened a second estate at Kundasale in the Dumbara Valley; but he was only marginally more successful in trying to hold his land peaceably. In 1829, with Bird already in possession, claimants again appeared, forcing him ultimately to attempt to buy them out<sup>9</sup>. Both this and the earlier dispute in fact dragged on for decades and were still engaging the active attention of British administrators in 1847.<sup>10</sup>

Bird's efforts were followed by those at Gannoruwa of Sir Edward Barnes, sometime governor of the island. With these, Turnour was actively involved, but they met with no better success. Barnes attempted to buy off the claimants to his land, only to find that a society with no law of primogeniture was capable of producing apparently endless numbers of co-heirs in any case of hereditary property rights. As late as 1835, Barnes's title to a small portion of his estate was still in dispute. Barnes's efforts were followed by those of Henry Wright, Turnour's predecessor as Revenue Commissioner, on lands at Peradeniya. Parts of this estate were instantly claimed, one section by a temple (a claim rapidly upheld) and another by two families, rivals for the same portion. A fourth European planting adventurer, Captain Forbes, yet another Kandyan administrator, met the identical fate, the very announcement of his grant to lands near Matale being enough to bring forth a flood of claimants.<sup>11</sup>

What struck Turnour so forcibly about these cases was that the lands in question had been granted only after careful enquiries into ownership. He believed them all to be royal lands, mainly *gabadagam*, formerly in the possession of the Kandyan king, part of his royal domains; and it seemed to Turnour that what the King of Kandy had possessed, the King of Britain had inherited and his government could freely and safely alienate. If that was not true, what hope was there of the king being able to alienate unoccupied, uncultivated or waste land which, according to English law, would also be

9. Turnour's Diary, 19, Dec. 1832, enclosed in Turnour to C.S., 12 Sept. 1835, SLNA 6/1261.

10. For some of the later references, see Gibson to Buller, 4 Sept. 1846, no. 443, SLNA 7/693 and Buller to C.S., 7/8 Jan. 1847, SLNA 6/1918A.

11. Turnour's report, enclosed in Turnour to C.S., 6 June 1835, no. 173 SLNA 6/1260.

within the king's gift? Indeed where was any land to be found for offer to putative immigrant capitalists if the crown's title was open to challenge, the land owners dependent upon a lengthy period of ill-defined prescription, and the *Sangha* perhaps prohibited from alienating any of its property whatsoever?<sup>12</sup>

The problem that Turnour confronted was indeed an exceedingly abstruse one. Land-holding in the Kandyan provinces was a matter of great complexity. What mattered to the British was to discover who owned the land; what mainly mattered to the Kandyans were the various dues and services that accrued from landholding. Landholders performed services for the king, his agents and the public weal, but individuals and groups could also enjoy exemptions and privileges which mitigated the demands made upon them. Any attempt to establish fixed laws or precedent, therefore, was inevitably met by ambiguity, inconsistency, confusion. To add to the complexity, the traditional system of landholding had begun to accommodate more modern forms. Some Kandyans, for example, claimed individual ownership of land, *paraveni*, which could be inherited and alienated. Another form of tenure, *mudal dun peruwak*, purchased property, also signified a move towards a commercialised agriculture. Yet outside the *Sangha* and a section of the aristocracy, few could exhibit the copper *sannas* which the British regarded as valid land titles. A few more possessed manuscripts written on *ola* leaves (and now much decayed), conferring upon them various privileges to which they now sought to give a similar force. But fundamentally land rights rested on tradition and social convention. 'Prescription' is, perhaps, as close as the law of England could come to the matter.<sup>13</sup>

Turnour's despatch of February 1833 was an effort to establish a test case. George Bird's estate at Kundasale was undoubtedly formed from a royal possession, ten to fifteen thousand acres of forest, out of a part of which a garden had been created during the last years of the Kandyan dynasty. Yet, though indisputably royal and freely conceded by the contemporary ruling monarch (or his local agent), claimants had appeared to dispute possession. This was not only a legal matter, Turnour argued, but an economic one. By 1833 he had already made up his mind that the 'development' of the Kandyan provinces (which he strongly favoured) would require the extensive application of capital to agricultural production, and that this was likely to mean attracting primarily European settlers.

12. Turnour to C.S., 25 June 1833, enclosed in Turnour to C.S., 12 Sept. 1835, SLNA 6/1261.

13. This paragraph is based mainly on the articles by V. J. Samaraweera and Michael Roberts in K.M. de Silva (ed.), *The University of Ceylon History of Ceylon*, Vol. 3, pp. 48-65, 119-145. See also H. W. Codrington, *Ancient Land Tenure and Revenue in Ceylon* (Colombo, 1938).

He had also decided, precociously perhaps, that the European capital would be best applied to the coffee industry which had already, as an indigenous crop, grown in the villagers' gardens, enjoyed some measure of success in European markets. But if (as now appeared) virtually all Kandyans were farmers, and, through the absence of primogeniture, all had claims to hereditary estates, and if the only available title was that of prescription, then it followed that no title could possess that degree of fixity, security or stability which English property law could command. And without such security, speculators must be deterred - or would be once the sad tale of the fate of the planting pioneers became known. Worst of all, no European banker or investment house would be willing to lend money on property so inadequately held. That the coffee industry might be further developed under indigenous auspices seems never to have occurred to Turnour. Hence it was vital, in his view, that the government should act to defend Bird's title and thus lay claim to the whole Kundasale forest, the 'only' (Turnour's word) extensive tract of land near Kandy at the sovereign's disposal which was at the same time suitable in soil and climatic conditions for the production of coffee. Moreover, as the villagers intended to use the land they claimed merely for *chena* cultivation, what was at stake here was nothing less than how the agriculture of the Central Province was to progress, either through the 'comparatively.....unprofitable' local methods of the villagers or the comparatively more profitable methods of the Europeans.<sup>14</sup>

This theme, repeatedly sung to the secretariat at Colombo, was to become Turnour's eternal refrain. But to it he gradually added some new verses. In 1833 his views were still rather diffidently expressed: 'from want of experience and practical knowledge in the subject Mr. Turnour is unprepared to say with confidence what the remedy to be applied should be'. All he could say was that there seemed to be a danger in giving publicity to the problem and so, perhaps, provoking further claims, until virtually every square inch of the territory had been spoken for. Thus, edictal citation (i.e. making the claimants produce evidence of their titles in court), which the Queen's Advocate favoured as a means of eliciting a ruling on the point, was objectionable. It could not be carried out at all without further legislation (and so would offer wide publicity), and any attempt to call upon people to produce titles might be regarded as an invitation to manufacture them. It was enough, Turnour felt, for the government simply to declare that all lands formerly in the possession of the Kandyan kings were in future to be regarded as the property of the British crown. With the help of the 'best informed chiefs', the boundaries of the royal domains might be quietly established, surveyed and registered. None of this, of course, could debar the villager from lodging his claims against the crown. But at least it would strengthen the hand of the government, perhaps even marshal the local aristocracy in support of the

14. Board of Commissioners to C.S., 5 Feb. 1833, enclosed in Turnour to C.S., 12 Sept. 1835, SLNA 6/1261.

British view, and so form a barrier to automatic concessions. But in 1833, unfortunately for Turnour, the government preferred to ignore his advice. He was informed that the whole question would have to be deferred until the new Charter of Justice was finally completed and in operation.<sup>15</sup>

Two years later Turnour returned to the subject. By then the whole question of land policy in Kandy had been transformed by three developments. On the authority of the imperial government, all uncultivated, unalienated lands in Sri Lanka had become available for sale from 11th July 1833 under an auction arrangement and a minimum price scheme.<sup>16</sup> Secondly, in September 1833, one of the leading commercial firms in Colombo, Messrs. Ackland and Boyd, had announced to the governor that it had received from London a promise of capital for investment in coffee, providing that the 'litigious claims of the natives' could be securely rebuffed and peaceable possession guaranteed.<sup>17</sup> The third development was more purely domestic; in March 1834 Turnour had convinced the governor to declare that 'all the government paddy fields, as well those in royal villages as those scattered amongst private property, situated in the Central Province, should be disposed of by public sale.'<sup>18</sup>

There was much in Turnour's plan for disposing of royal lands which was genuinely liberal. Under the commutation settlement earlier introduced, service tenants in royal villages were left in possession, provided they accepted in return merely the obligation to pay the grain tax levied upon private landed proprietors. Now it was decided that all lands in manorial possession (i.e. *Muttetuva*, those which were cultivated on behalf of the king), were to be sold by auction on fairly easy terms. Turnour did not mean any of this as a species of altruism, however. He had decided that sale was preferable to the expensive and embarrassing necessity for the government of maintaining the irrigation system in the absence of *rajakariya*, which had been finally abolished in 1834. Thus, in effect, the purchasers were buying trouble—private, individual titles to lands which often could only be maintained by cooperative action on irrigation for which no individual or group was now responsible.<sup>19</sup> But, as some compensation for this risk, Turnour felt that the government should offer the land to the paddy farmers free of any tax, including the grain tax, which offer would have been of ultimate gain to all.<sup>20</sup>

15. This material is all contained as enclosures in Turnour to C.S., 12 Sept. 1835, SLNA 6/1261.

16. See Government Advertisement, 11 July 1833, SLNA 6/1839.

17. Ackland & Boyd to C.S., 13 Sept. 1833, SLNA 6/1186.

18. Turnour to C.S., 21 March 1834, SLNA 6/1186.

19. *Ibid.* & Turnour to C.S., 3 April 1835, no. 90, SLNA 6/1260. *Muttetuva* was land cultivated on behalf of a proprietor as opposed to land cultivated for services (*Rajakariya*).

20. Turnour to C.S., 18 May 1835, no. 114, SLNA 6/1260.

The implication of all this for coffee production may not be too obvious, but it is nonetheless important. Firstly, some villagers had shown a certain disposition to sell their lands to the British planters: some former royal lands could now also become available for re-sale. Moreover, deeds from the crown might have a security which other titles lacked.<sup>21</sup> But, more crucially, though Turnour did not spell this out, there was a further advantage: paddy lands and abandoned gardens, when sold, could be separated from waste, forest and *chena* lands, thus in effect isolating the paddy fields and gardens from the 'appurtenances' of the traditional system. But the most Turnour felt able to say about this was that some reservations would have to be made in the sales to protect village dams and water-courses and to permit future property exchanges.<sup>22</sup>

By September 1834, in a dispute over crown lands in Dumbara, the separation of the home farm from the appurtenances became a crucial issue. Dogmatic as ever, Turnour had now decided that shade was of key significance in coffee production. Trees, therefore, had to be preserved to maintain the sale value of the properties. Turnour's solution in 1834 was to propose a compromise. If the villagers would agree to concede to the crown title to those *chenas* only occasionally cultivated with dry grains (the so-called 'jungle', on which small trees grew), the government would recognise their title to *chenas* cultivated with paddy or to those which had been fenced and converted into gardens. The Dumbara valley, being relatively low-lying, was not likely to contain much high-grown paddy, but this suggestion seemed to be accommodating, and the government gave it its blessing.<sup>23</sup> To Turnour there would be a further gain from this in that the government, in granting titles, would survey the lands and affix deeds to them, so identifying and defining claims for the future.<sup>24</sup>

This attempt to distinguish between lands permanently cultivated and those cultivated only at intervals, recognising only the former as private lands, is by far the most controversial of Turnour's policies. In terms of the economy of the Kandyan villagers, it simply cannot be justified. It now seems certain that, despite great differences between one region and another, virtually all peasants relied on *chena* lands for some part of their subsistence or for use in dealing with short-term economic problems. As Dr. Samaraweera has pointed out, the Sri Lankan villages were not self-sufficient even in rice

21. One Captain Forbes was said to have bought land from over 50 'native proprietors': Turnour to C.S., 12 Sept. 1835, no. 401, SLNA 6/1261. On sale deeds, see Turnour to C.S., 18 May 1835, no. 144, SLNA 6/1260.

22. Turnour to C.S., 14 Feb. 1835, no. 47, SLNA 6/1260. The same may well have applied to non-royal lands under the commutation system: see Turnour to C.S., 21 March 1834, SLNA 6/1186.

23. Turnour to C.S., 23 Sept. 1834, SLNA 6/1187.

24. Turnour to C.S., 25 Sept. 1834, no. 277, SLNA 6/1187.

production in the early nineteenth century. In times of drought and flood particularly, *chena* production was an essential aspect of local agricultural production.<sup>25</sup>

On November 3, 1834 Turnour himself, in partnership with Colonel Lindsay, applied for, and in February 1835 bought for £ 395/16/9, nearly 600 acres of Dumbara land, thereby gaining a personal interest in a region over which he presided as administrative head. The process of sale, however, does suggest that Lindsay acted as the business agent, leaving Turnour as sleeping partner with no direct responsibility for day-to-day management.<sup>26</sup> Yet the decision to buy so much land is surely a clear indication of Turnour's faith in the future potential of coffee investment in the island. By 1835, however, others had entered the race, not all of them from the expected stables. Nearly 400 acres of land applied for by Lieutenant Meaden at Hangurankete had been put up for sale and bought-at over £1 and acre-by Warusa Henedige and Jeronis de Sozva ; sixty acres applied for by Molladande, *Rate Mahatmaya*, had gone to Dunuwille Tikiri Banda ; and Henry de Alwis, *Mudaliar*, had applied for and bought 100 acres of land in Yatinuwara.<sup>27</sup> It began to seem feasible that European capital might meet some serious rivalry in Sri Lanka.

Turnour's third major intervention, in September 1835, supposedly in response to an enquiry into a case of cattle trespass, was made, therefore, in a very different climate from the first two. By then he was able to point to developments which clearly indicated not only the viability but the enormously growing potential of the Sri Lankan coffee speculation. The promised equalization of coffee duties between Sri Lanka and its rivals in the West Indies (which hitherto had enjoyed a considerable advantage) and the predicted decline of West Indian output once slavery emancipation was accomplished, both pointed to one conclusion :

Even limiting the consideration of this question to these points, it appears to me to be a matter of the utmost importance that every exertion should be made at this critical moment to clear away whatever local disadvantages or discouragements may exist to the influx of capital into this colony... and to attract the capital let loose from the West Indian speculation to this colony before it is vested in other parts of the world.<sup>28</sup>

The problem, however, was not just the legal one of establishing a title which would provide undisturbed possession, but much more the financial one of providing the security which would guarantee a loan, for all planters had

25. K. M. de Silva (ed.), *University of Ceylon History of Ceylon*, Vol. 3, p. 61. Turnour, of course, was aware of the problem: Turnour to C.S. 6 December, 1834, SLNA 6/1187.

26. Turnour to C.S., 3 Nov. 1834, SLNA 6/1187.

27. Turnour to C.S., 29 Jan. 1835, & 5 Feb. 1835, SLNA 6/1261.

28. Turnour to C.S., 12 Sept. 1835, SLNA 6/1260. There is a history of the coffee industry in I. Vanden Driesen, 'Coffee Cultivation in Ceylon', *Ceylon Historical Journal*, III 1953, pp. 31-61; 156-172.

rapidly come to realise that, in an industry which required some years before returns could be expected (when the coffee tree came into bearing), they would have to depend heavily on borrowed capital. This point, however, like much of Turnour's communications with Colombo, went largely unsaid. Instead he presented his superiors not with the groans of the British planters but with the sighs of the Sinhalese magnates. Capital, he maintained, was available to proprietors of leasehold building lots or 'tenements' in Kandy, from the Loan Board or the Savings Bank, at 7% interest. But the Kandyan chiefs, lords of agricultural estates to which they possessed few or no visible titles, were either forced to accept loans at a crippling 18% interest or perhaps to suffer the humiliation of an outright rejection from the moneyed interest. If, therefore, any of them wished to borrow, in order to improve his estate or to commute his grain tax, for example, he would require government assistance to support his title. And, added Turnour, almost as an afterthought, no European who had purchased all or part of his lands from the local proprietors could offer any better title. The lesson was obvious.<sup>29</sup>

A year later, Turnour's distinction between land permanently cultivated and *chena*, and his preference for government titles, had been carried yet one stage further. The first, as always, to enunciate a new law on the subject, Turnour informed his superiors:

It has now been fully established by the test of actual experiment that shade is indispensable in the cultivation of coffee, and moreover that it should be the shade of old trees, which for the most part will consist of indigenous trees.<sup>30</sup>

Indeed it is striking that most applicants for land had begun almost invariably to specify 'forest' in their applications; and the deed of sale for Turnour's land, which arrived in June 1836, referred to 'a tract of government forest' though no such term appears in the application two years earlier.<sup>31</sup> One suspects, in fact, that the term 'forest' was here being used to provide a kind of property classification with clear legal overtones for, with the single exception of the move into Pussellawa's Black Forest range in the middle of 1836 (which derived directly from the opening of a new road to Nuwara Eliya), land purchases were still concentrated on the former royal lands in Dumbara, Matale, Yatinuwara and Hewaheta.

As with *chenas*, the primeval forest, though invariably seen by the British as uncultivated, unalienated, unproductive and, therefore, waste, had become an important element in the traditional economy of the villagers. Firewood,

29. Turnour to C.S., 12 Sept. 1835, no. 401, SLNA 6/1261.

30. Turnour to C.S., 10 March, 1836, no. 77, SLNA 6/1344.

31. E.g. Turnour to C.S., 20 Jan. 1836, no. 31, SLNA 6/1344 which may be compared with Turnour to C.S., 5 Feb. 1835, SLNA 6/1260.

fence-sticks, honey, roots, grazing grounds, game, are some of the ways in which the villagers mention their dependence upon the forest to maintain their domestic economy. The real problem for them, of course, was not simply that the forest would pass into the hands of new owners: it was that the forests would be cut down and the land put under the plough. Two rival systems of land usage were therefore in competition.<sup>32</sup>

By 1836, and with the move to Pussellawa, yet another complication had arisen to attract Turnour's attention. On 12 August 1833 a Government Minute on land sales had decreed that any land selected for sale should first have its boundaries marked, and then be advertised and sold by a headman, selected by the Revenue Commissioner.<sup>33</sup> This much of the scheme had Turnour's approval, perhaps because he was already planning to revise the headman system so as to subject these officers to strict control and supervision, and to put them in the pay of the British government.<sup>34</sup> But others had less confidence in the notion of headmen as auctioneers, and the plan, which may have presupposed that few of the applicants would come from outside the island, was soon altered. It was replaced by the scheme whereby applicants made known their wishes to the headman of the region, who then inspected the site, declared whether or not it was genuinely crown land, free of prescriptive titles, and then reported back to the Kachcheri where eventually the sale was held.<sup>35</sup>

If this was designed to enlist the aid of the chiefs on the government's side, it failed. Even in Pussellawa, which the British authorities regarded as a land of remote wilderness, most of it above 2,000 feet high, the local *Rate Mahatmaya* firmly sided with the villagers who, as was now customary, duly appeared to claim as their *chenas* the lands which the crown wished to sell. Turnour, of course, regarded the headman's opinion as unacceptable :

Claims equally well-founded will probably be made in all future cases of the sale of government lands, any portion of which may have been occasionally cultivated by the proprietors of the adjacent lands, and a further discouragement to the sale of land will be produced by the natives not being able to make out a good title...<sup>36</sup>

Colombo, for once, supported its Government Agent, but eschewed his remedy and instead suggested that this might be a suitable occasion to bring the matter to a legal decision - thereby ensuring a lengthy postponement while ordinances were searched and a case prepared.

32. The problem has not been much discussed except at a later stage when the main issue was that of pollution : e.g. Buller to C.S., 17 Dec. 1844, no. 654, SLNA 8/135.

33. C.S. to Board of Commissioners, 12 Aug. 1833, SLNA 6/1186.

34. Turnour to C.S., 17 Feb. 1834, no. 33, SLNA 6/1186.

35. The system is fully described in Norris's (Surveyor - General) report, 11 June 1841, SLNA 10/26.

36. Turnour to C.S., 15 Oct. 1836, no. 279, SLNA 6/1345.

Three months later, Turnour dropped all pretence at judging fairly between planters and local claimants. What was at issue, he now claimed, was not a civil but a criminal matter. Villagers with no pretence to any real title were encroaching upon unused government forests and *patanas*. This was not only harmful to the rights of the crown, it was destructive of any future development of the land for commercial agriculture since *chenas* not only burned down trees, valuable for shade, but also harmed nutrients in the soil, essential to prolong the life of a coffee tree. Yet no resort to the courts could solve the problem, he maintained, as the laws against unlicensed *chenaing* were completely inadequate: they applied purely to the estates of private owners (not the government) and purely to the theft of wood for building purposes (and not to firewood, a common use of *chena*). What was required to deal with this offence, he thought, was the British law on forcible entry:

If some protection of this nature cannot be afforded, the government will invariably be placed in the position of plaintiff in a civil action and be consequently compelled to prove a title which, I need hardly add, would be a matter of considerable difficulty.<sup>37</sup>

This, of course, was tantamount to saying that neither headmen nor villagers could possibly be regarded as disinterested observers on such questions. And indeed that was precisely his view - even though, with half the government servants landowners (and not a few of the district judges), it was not readily apparent that the government could be seen as decidedly more impartial.

What was so dangerous about 'encroachment', as Turnour saw it, was that it provided the villagers with a claim founded on possession. By April 1837, for example, the villagers of the Kotmale valley were laying claim to practically all the land above and below the road from Pussellawa to Labukele over the Ramboda Pass, on the grounds that the Kandyan king had allowed some of them to kill game and collect honey in this region. 'If they thought proper to exercise any act of proprietorship by taking possession of it, or selling it to a third party,' Turnour remarked, 'this would throw upon the government the obligation of proving a title before they could be dispossessed... I am not sure that I should be able to adduce any evidence which would avail.' But, to his chagrin, the government was still not prepared to take action.<sup>38</sup>

For Turnour, indeed, things appeared to be getting worse. He had always been a keen supporter of the notion of extensive and detailed surveys of property being undertaken in the province, for only in that way could titles be established and then held to. But by 1837 it was obvious that the British surveyors could not even keep pace with the rate of demand from immigrant planters. Turnour could offer only a characteristic willingness to sacrifice the interests of the paddy producers:

37. Turnour to C.S., 11 Jan. 1837, no. 15, SLNA 6/1345.

38. Turnour to C.S., 1 April 1837, no. 102, SLNA 6/1345.

I would propose that in future these surveys should be of a more cursory description than hitherto made—consisting of an outline boundary and an occasional intersection, without attempting to trace up the streams that flow through the land.<sup>39</sup>

So much for the government's safeguards. But clearly even this would not do more than to tinker with the problem.

It was at this point that Turnour made what was, perhaps, his most durable contribution to the debate. In June 1837 he joined to his established views on the weaknesses of Kandyan property law his theories about the history of the region (on which he could now speak as an authority at least within the Colombo secretariat). Dealing with a case from Nuwara Eliya where claimants challenged the government's right to confer a piece of land on a European planter, Turnour dropped the modesty which had marked his views some years earlier and now laid down the law. The Kandyan kings, he claimed, had relatively few royal possessions reserved exclusively for themselves. These, the sequestered forests (*Tahanam Kele*), were mentioned in old land grants. But elsewhere forest land and uncultivated land were given no particular value or importance in Kandyan society. They were referred to obliquely as 'appurtenances' of villages (always to be held in common); or the villagers were given certain rights there, to hunt for game, for example, or to clear patches for *chena*. In no case, however, were taxes demanded for such rights since, Turnour insisted, all such grants were mere concessions, privileges extended by the king to some of his subjects, exercised on sufferance only, except where the king chose to make a specific grant by a *sannas*. Such privileges could be as freely revoked as given, and it was recognised, he claimed, that the king might resume possession and dispose of the lands as he saw fit. This view, so apparently casually offered, was to become the established view of the colonial government for the next thirty years.<sup>40</sup> Its immediate results, however, were few.

A few months later, a planter who had come to an understanding with the village claimants to his land by agreeing to let them cultivate part of it as *chena*, provided they gave him a third share, was ordered to desist by the government and to pay for the 'crown lands' to which he was apparently laying claim.<sup>41</sup> Government grants to planters had now begun to specify that no paddy fields or the slips of high ground attaching to paddy could be

39. Turnour to C.S., 17 May, 1837, no. 172, SLNA 6/1473.

40. Turnour to C.S., 24 June 1837, no. 227, SLNA 6/1345. In their dispute (see footnote 5 above), de Silva mentions Turnour's scholarship but not his penchant for historical analysis, whereas Vanden Driesen mentions the analysis but does not attribute it to Turnour. The source of Turnour's view, however, was quite as much practical experience as scholarship, as any reading of his writings when Revenue Commissioner in the 1820s would show.

41. Turnour to C.S., 14 Aug. 1837, no. 283, SLNA 6/1474.

included in the area put up for sale.<sup>42</sup> Village gardens were thus clearly to be protected, as were also areas regularly cultivated as *chenas* and also perhaps *chenas* which were physically attached to the paddy fields, but it seems improbable that more remote *chenas* or lands cultivated only very occasionally were ever conceded. For that distinction, however, the opinion of the Headman was probably crucial: and by late 1837 Turnour was rapidly losing faith in the willingness of his headmen to embrace his views on the history of royal land grants in the Kandyan Kingdom.

In September, yet another case arose where the *Rate Mahatmaya* favoured the villagers' claims. The land in question was agreed by all parties to have once been a royal forest; the claimants merely asserted that they had always had the right to collect wood there to make charcoal for supply to the palace. But the *Rate Mahatmaya* contended that the forest was also the source of the streams which irrigated the paddy fields below, and so could not be alienated to anyone who proposed to destroy the trees. Turnour protested. It was possible, he claimed, for the government to insist that the planters should not disturb the sources of streams or water courses—and indeed it ought to do so. But to go further and deny a grant to forest land simply because the paddy fields below might be affected was, he insisted, virtually to strangle the coffee industry at birth :

For an unreserved admission of the validity of this plan would materially fetter government as to the disposal of forest land, which description of land recent experience has established to be the best, and perhaps the only, well-adapted land for the growth of coffee.

Once more, it appeared, science favoured the planter. Turnour's despatch concludes :

It is not reasonable to expect that a speculator should invest his capital on land his title to which is not satisfactorily established, and the establishment of which is dependent entirely on the oral evidence of the neighbouring native inhabitants who are all interested in impugning the rights of the crown.<sup>43</sup>

Equally unacceptable was the notion that villagers, denied title to their hereditary lands, might begin to offer to buy them (a development well-advanced by 1837), sometimes at rates beyond the minimum upset price of five shillings an acre. One enterprising indigenous firewood contractor, for example, had succeeded in buying prime forest land at 14/4 per acre over the head of a European coffee planter, even though, according to Turnour, poor land suitable for firewood collection was available in plenty elsewhere. Nor was this a

42. E.g., Turnour to C.S., 1 Sept. 1837, no. 302, SLNA 6/1474.

43. Turnour to C.S., 1 Sept. 1837, no. 301, SLNA 6/1345.

solitary incident. Turnour claimed to be able to quote other cases of Europeans forestalled by locals who had no other purpose in acquiring the lands than to use them for *chenas*.<sup>44</sup>

At this point in the argument, the Colombo secretariat chose to intervene. Proceeding by edictal citation (first suggested by the Queen's Advocate four years earlier), the secretariat rapidly found itself legally debarred from taking further action by the terms of the ordinance under which it attempted to act. Turnour's embarrassment at this is evident in his response. By now the problem to him was clear: it was not a matter of titles. It was simply the right of the crown to dispose of its waste lands; the need to avoid the misappropriation of valuable forest; and the desirability of preventing the villagers from obtaining forest lands in order to *chena* them, so producing 'a comparatively valueless crop of grain' at 10 or 20 year intervals 'to the ultimate prevention of the formation of coffee plantations from which more permanent wealth would be created in the colony.' As to relying on the courts for a solution, this was hopeless. The crown had no parole evidence on its side, no titles, no documents, and 'the interests of the whole community' were combined against it. Even if the crown could seize the land and force the villagers to become the plaintiffs, that was no solution, for the villagers would use *their* parole evidence to claim occasional cultivation in the past or some vague hereditary rights of occupancy, and in the end the old law of prescription involving a minimum period of ten years of uninterrupted, unchallenged possession, would once again be the only effective barrier. Only by insisting that forest lands must be held solely by purchase from the crown and subject to a prohibition on *chenaing* or firewood-cutting did there seem to be any acceptable solution.

Those who claimed that the planters could be fobbed off with the upper slopes of the mountains, well out of reach of the *chenas*, were also deluding themselves. Once more science was the taskmaster:

Experience has now fully proved that no description of ground but forest land is adapted for the growth of coffee in Ceylon—and forest land sufficiently level not to be exposed to the prejudicial consequences of having its soil washed away during the heavy rains when loosened under the process of cultivation, and at the same time situated sufficiently near to carriage roads to be benefited by them.<sup>45</sup>

The choice was, therefore, stark. Either the planter or the peasant had to concede.

In September 1838 the sale of a further 725 acres of Dumbara forest (at £181/6/11 $\frac{1}{4}$ —he clearly had no competitors) to Colonel Lindsay and George Turnour was announced.<sup>46</sup> This followed Turnour's final effort to free more

44. Turnour to C.S., 28 Nov. 1837, SLNA 6/1345.

45. *Ibid.*

46. Turnour's diary, 29 Sept. 1838, SLNA 18/4.

lands for the immigrant capitalists. In June he had written to the Colonial Secretary to express his discontent with the laws on land relating to temples and other corporate bodies. Why, he asked, were these exempted from the grain tax; why was it not possible to allow the alienation of all temple lands; why could not lands of other religious groups also be offered on the market? Cultivators on many temple lands, he claimed, were now free of their traditional obligations since the temples themselves had ceased to function following the ending of compulsory services for the general population. It seemed unfair that such tenants paid no grain tax; and where the temples were unable to maintain their properties, he suggested, such lands should become 'ipso facto' secular property. After all, he remarked, wearing his historian's hat again, the crown 'undoubtedly' could authorise the sale of temple lands and there seemed to be no reason why private incumbents of temples should not be declared to have the same power.<sup>47</sup>

In October 1838 Turnour was brought to Colombo to serve for nearly two and a half years as Acting Colonial Secretary. There, as the governor's spokesman in all communications with the government agents and the public, he possessed great influence. But there his views were also more liable to the process of compromise and consensus which distinguishes the group secretariat from the isolated provincial administrator. Yet it cannot be mere coincidence that Turnour's period in Colombo coincided with the passing of the highly controversial Waste Lands Ordinances of 1840, as well as the abortive attempt to restrain by legislative means gifts and dispositions of land for religious and charitable purposes (Ordinance 2, 1840), the new rules on registering and surveying land grants, and much more, all tending to widen the sphere of the planting interest and to define and limit the sphere of the small cultivator. It is surely not stretching the evidence unduly to see Turnour's hand behind many of these measures.<sup>48</sup>

Turnour's views on the agricultural development of Sri Lanka, then, had altered markedly over the two decades during which he had been active in administration. He had begun as an enquirer, anxious to understand but doubtful of his capacity to solve what he saw as the major problem, that of the insecurity of land tenure in Kandy. He moved rapidly from this to a position of assertive, confident analyses and clear prescriptions for action. This transition derived from two premises: firstly, Turnour came to believe that development was possible only by limiting and restraining the access of the peasant to the land and encouraging and promoting the emerging planter interest. Secondly, he thought that contemporary principles of agricultural science justified him, even required him, to call upon the government to

47. Turnour to C.S., 28 June 1838, no. 207, SLNA 6/1475. He was arguing here that the temple land services were never enough to keep up the temple properties before 1833. The abolition of *rajakariya*, therefore, by ending services upon which temples relied, adversely affected temple lands.

48. His successor, C.R. Buller, attributed the legislation to him: Buller to C.S., no date Sept. 1846, no. 577, SLNA 6/1841A.

intervene on the planter's behalf. These conclusions in turn suggested that the Crown had to be accorded secure proprietary rights over certain lands in Kandy, designated variously as 'waste', 'uncultivated' or 'unclaimed', but often, as in the cases of forests or *chenas*, forming part of the traditional ecology of the peasantry. And he thought any peasant encroachment on such lands in future had to be prevented by the importation into Sri Lanka of the British law on trespass. Given the premises, these views are defensible.

Yet, whatever the legal or historical facts of the matter, the truth is that most of Turnour's scientific observations and nearly all of his views on traditional agriculture are simply erroneous. Coffee could be grown successfully—and was so grown—in many different soils in Sri Lanka, with and without shade, with and without a primary forest base. Equally, the traditional ecology did not rest exclusively upon paddy lands and gardens. By devising 'scientific' laws on coffee cultivation, Turnour was at least in tune with the dominant school of planting thought of his day. But on traditional agriculture he rode roughshod over the very considerable opposition that was manifested to his views and so, inevitably, sacrificed the interests of some of the people he was employed to protect.<sup>49</sup>

It would be exaggerating, however, to paint Turnour as some kind of Svengali, the presiding evil genius of the coffee industry. He did stand personally to gain from the triumph of planting, and that, of course, must cast some suspicions on his motives. Equally, it cannot be denied that he stood to lose had he lived into the period of the coffee crash from 1846 onwards. In favouring plantation agriculture, Turnour probably saw himself as a realist, someone not afraid to break eggs in order to make an omelette; but his realism was strictly at the service of his imperial loyalties. In his vision, Sri Lanka would develop with the aid of western capital, settlers, technology, into a land of some commercial significance, profiting both its benefactors and, more incidentally, itself. Traditional society was quite incapable of achieving such results and must, therefore, yield. Christopher Elliott, the editor of the *Colombo Observer*, in an obituary, paid tribute to Turnour's 'gentlemanly manners and easy address'. Now that these are no longer available for us to inspect, what seems more striking are two other qualities that Elliott noted—aristocratic pretension and narrowness of sympathy.<sup>50</sup> Turnour's analysis of the problem of development may be defensible enough; what was lacking was any of the compassion, care and caution which ought to have been brought to its solution.

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49. The problem, of course, continues, as the current policy of the Ministry of Mahaveli Development in relation to *chena* cultivation in the Dumbara Valley shows.

50. See the entry on Turnour in J.P. Lewis's *Tombstones and Monuments in Ceylon* (Colombo 1913), which Mr. K. G. D. Wimalaratne kindly drew to my attention. I should like to thank Professor T.B.H. Abeyasinghe for offering helpful criticisms of an earlier draft of this article.