

EDITED BY

Rajeev Bhargava

Michael Dusche

Helmut Reifeld

JUSTICE

POLITICAL,
SOCIAL, JURIDICAL



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Preface

Justice is a core value not only in the fields of theology, law and political philosophy, but also in politics, social life and economics. It is a value that generates other values. For many different religions and cultures, it has been a guiding principle in the realm of philosophical thinking as well as in many areas of public life. At all times, issues, points of controversy and innovative ideas have been debated according to the respective understanding of justice. What is it that makes these different perceptions of justice comparable? Is there an interest in learning about the perception of others? And what can it help us to learn?

The stage of globalisation we have reached today insists in addition on the demand for finding new answers to these old questions. Inter-cultural dialogue, especially in the field of values, has become an imperative. This is true in particular for a 'cardinal virtue' such as justice which is, no doubt, not only respected and appreciated among Christians in Western Europe but among human beings everywhere regardless of religion, race, gender, nationality or other identities. The inter-cultural relevance of this dialogue is not limited to particular aspects or depending on certain solutions. It is an ongoing dispute for which in a globalised world, there is no alternative. The aim here is not to level down differences but to understand plurality.

The essays in this book emanate from a conference with the same title, held in Jaisalmer, India, in November 2003. This conference was initiated and organised by the Konrad Adenauer Stiftung (Foundation), Germany, as part of

a worldwide series of conferences, workshops or seminars embedded in a programme called: 'Dialogue on values'. Although there is already, on the part of the Konrad Adenauer Stiftung, a long tradition of dialogue programmes in general, the topic and different concepts of justice as a core value for all fields of public life in South Asia as well as in Europe have, on our part, not been addressed before. The intention was neither to enter deeply into theological or even dogmatic disputes nor to use this kind of discussions about cultural differences as an explanation for political problems. The present book not only provides respective information mainly about South Asia, but rather hopes to contribute to the promotion of a worldwide process of dialogue. The articles were written with the idea to promote and carry forward this spirit of dialogue.

It should be mentioned that all opinions and judgements expressed in the following chapters are those of the individual authors. Inputs, however, have come from several sides in the process of preparation, implementation as well as of publication. In the first place, the Konrad Adenauer Stiftung is grateful to Rajeev Bhargava who encouraged and supported the original idea of this conference from the first discussion to the day of publication. Without his excellent contacts this outstanding group of scholars could not have been formed. He constantly kept in contact with all of them, made numerous suggestions for revision and never lost confidence in the importance of this project. Equally, we are grateful to Michael Dusche who, in the course of all these years, kept a vigilant eye on each and every revision and finally wrote a comprehensive and enlightening introduction. Without the help, enthusiasm and friendship of both, this book would never have seen the light of the day. Sincere words of thanks also have to be given to all the contributors, who not only presented a paper and participated in the discussion,

but who made the effort to revise their paper in the light of these discussions.

Further on, our gratitude goes to the editorial team of Sage who brought out this book with an imperturbable commitment despite the long time of preparation. Like in many similar projects before, neither the implementation of the conference nor the final publication would have been realised without the constant vigilance and manifold efforts of Manu and Mohita.

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Helmut Reifeld

Introduction

MICHAEL DUSCHE

In the present volume, we look at conceptions of justice from various religious and cultural traditions (Hinduism, Islam, Christianity, cosmopolitanism, tribal cultures), and different methodological perspectives (history, theology, philosophy, political theory, sociology, literary criticism and so on). A unifying point in the diverse contributions assembled here is their reflection of universalism and their reference to the basic values of the Constitution of India. The title itself is a variation of the preamble where it is stated, ‘We, the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure to all its citizens: justice, social, economic, and political...’

One or another form of universalism lies at the bottom of almost every philosophical attempt to define justice. Often, however, the generalisation is carried to a level of abstraction where no path seems able to lead us back to a meaningful application of the theory in a concrete context. Thus, it may be universally true of justice that it amounts to treating all equal things equal and all unequal things unequal (Aristotle). Or, may be at the basis of all conceptions of justice, no matter which culture or religion has inspired them, lies the golden rule that you should treat others as you would want everybody to treat everybody else, including yourself (Kant). However, what that means in practice is far from obvious.

The more such universalistic conceptions of justice are concretised and the more attempts are made to make them suitable for particular purposes (elevation of the least advantaged, empowerment of the poor and excluded), the higher the risk of subconsciously generalising on the basis of a limited perspective. When Locke conceived of individual liberties, the individuals he had in mind were independently rich males. Similarly, Kant thought of economically self-sufficient males as the only possible citizens of a liberal democratic state (except for government servants, which includes university professors, of course). The bias of their perspective is all too obvious to us today. At their time it was not, and it is very likely that we fall prey to similar biases when we conceptualise justice for our present requirements and on the basis of today's 'universally' cherished basic convictions. The protection against the hazard of unintentionally excluding certain kinds of people(s) from considerations on justice is their inclusion in the dialogue process on justice. This is what this volume attempts to do for some sections of the Indian population whose voice was not always very prominent in theoretical debates on justice and its practical implications—Muslims, Christians, Dalits, slum dwellers, new social movements and tribal people. Their perspectives on justice are contrasted with mainstream conceptions of justice, whose problematic representativeness for India today is thereby expounded.

While naïve universalism holds the danger of abstract generalisation and hence partiality, its opposite—relativism—would deprive us of our 'tertium comparationis', that is of the common point of reference with respect to which we are only in a position to assess the adequacy and relevance of a given conception of justice for our specific needs and for the needs of others. Neither naïve universalism nor normative relativism¹ is sustainable, as we can see from

the contributions assembled in this volume and from the following reflections. A concept of ‘internal universalism’ may be offered as an alternative to naïve universalism. In conjunction with various forms and stages of ‘reflective equilibrium’ as conceived by John Rawls, this framework provides us with the necessary reference points to assess the adequacy and relevance of historically or culturally specific conceptions of justice as they are proposed in this book, and to engage in a comprehensive dialogue on questions of justice.

META-ETHICAL CONSIDERATIONS

Today, few philosophers still believe in metaphysics in general and in a metaphysical foundation of ethics in particular.² Instead, many have come to accept a certain ‘indeterminacy of reason’, which means that the possibility of several reasonable accounts of justice being equally adequate can never be excluded. Ultimately therefore, a choice in the selection of a preferred conception of justice that is ultimately not founded philosophically, cannot be avoided.³ If this choice is to be relevant in the context of a certain society, the moral beliefs that people in that society already have are to be taken into consideration. Every society is governed by an implicit and often sub-conscious background consensus on moral norms that moral theory can explicate and critically assess but cannot ignore.

Implicit in the background consensus of any society, are normative assumptions that would carry universalistic claims if they were to be made explicit. In ancient religions, such normative assumptions often carry cosmological premises. In the Abrahamic tradition (Judaism, Christianity, Islam), the idea operating in the background is that of an original expulsion from paradise and thus the desire or need

to return to this primordial state of bliss by means of just acts and/or piety in the present life. In Indic religions, the background notion is that of a never-ending circle of births and rebirths. Only just behaviour and/or piety can assure betterment in the next life or even the ultimate goal—the exit from the circle of rebirths. The universalistic claim in both cases is inherent in the belief that certain fundamental facts such as the expulsion from paradise or the existence of, and possible release from, a cycle of rebirths hold true for every human being (or even non-human beings, as in the case of the Indic religions) and not only for the followers of that religion. In post-traditional liberal democratic theories of justice, the background assumption is that all humans have equal value and should therefore be treated as equals, as well as by equal laws. The universal assumption is that equally positioned humans are the authors of moral and legal norms. It is such background assumptions that can be called ‘internally universalistic’. Each of these background assumptions has normative implications that are spelled out by theologians, pundits or philosophers in different ways at different times and according to circumstances. Nevertheless, the broadest of these claims purport to hold true for all humans while the background assumption is only valid for a part of humanity. They may be acceptable only to one society but their claim to validity transcends that society.

To understand, explicate, justify or critique the normative background assumptions of a given society, individuals in society may be perceived as engaged in a project of ‘collective hermeneutics’ (Dusche 2000: 3). This view has been inspired by a footnote taken from a 1995 debate between John Rawls and Jürgen Habermas in *The Journal of Philosophy* (Rawls 1995).⁴ In his ‘Reply to Habermas’, Rawls elaborates his method of ‘reflective equilibrium’ and includes a discursive element. However, first the methodology

of reflective equilibrium and its application to moral theory needs explanation before collective hermeneutics can be explained as an extension of this conception.

THE METHOD OF REFLECTIVE EQUILIBRIUM

The method of reflective equilibrium was first described by Nelson Goodman in 'Fact, Fiction, and Forecast' (1955) where the logician gives a pragmatist account of the methods of *induction* and *deduction*. The method of reflective equilibrium resembles the method of hermeneutics in its avowed circularity. In both cases, a preliminary understanding (of a text in the case of hermeneutics; of reasoning in logics) gives rise to a hypothesis of interpretation (regarding a text or a rule of logical consequence), which in turn helps to further understand the initial text/practice. The application to moral theory is straightforward due to the analogy of norms governing logical consequence, and norms governing human actions and institutions. In devising a normative theory of human action, a preliminary understanding of what is commonly understood by a 'morally right action' or a 'just institution' is used as a point of departure. Based on this preliminary understanding, a comprehensive ethics or theory of justice is devised, making consistent the various intuitive tenets of the preliminary understanding. At various points, difficulties will arise resulting from the fact that not all intuitively valid moral propositions will fit harmoniously into a comprehensive theory of justice. Now, there are two options—either the preliminary ethics/theory of justice is discarded as invalid since it does not prove fit to accommodate all valid intuitions about moral behaviour and justice, or a conflicting intuition is dismissed as irrelevant by the ethics/theory of justice in question.

A famous example of the method of reflective equilibrium as applied to moral theory in general and theory of justice in particular is John Rawls' conception of 'justice as fairness'. In devising his construct of an 'original position', which later helps him to motivate his 'justice as fairness', Rawls resorts to pre-theoretical moral intuitions by calling upon 'considered convictions of justice'.⁵ He takes it for granted that all, on thorough reflection and in a mood of sincerity, would subscribe to a certain set of moral propositions. Subsequently, he uses these moral propositions to define his 'original position'. The 'original position' is defined by what the 'veil of ignorance' prevents us from seeing—it makes us blind with respect to race, class, and gender; for example, with the underlying 'considered conviction of justice' being that a just society should offer the same opportunities to every human being regardless of race, class or gender.

In his 'Theory of Justice', Rawls has proposed a model of just institutions for democratic societies.⁶ Herein he draws on certain pre-theoretical elementary moral beliefs ('considered judgements'), which he assumes most members of democratic societies would accept.

[J]ustice as fairness [...] tries to draw solely upon basic intuitive ideas that are embedded in the political institutions of a constitutional democratic regime and the public traditions of their interpretations. Justice as fairness is a political conception in part because it starts from within a certain political tradition.

—Rawls (1999a: 390)

Based on this preliminary understanding of just institutions in a democratic society, Rawls aims at a set of universalistic rules with the help of which the justice of present formal and informal institutions can be assessed. The ensuing conception of justice is called 'justice as fairness'.

Rawls does not subscribe to a strict separation between descriptive and normative ethics. The considered judgements on a descriptive level are not only justified by the ensuing conception of justice but already possess a *prima facie* acceptability. Therefore, not only does the ensuing conception of justice sanction our considered judgements but the considered judgements also help justify the ensuing theory of justice—just as the method of reflective equilibrium would lead one to expect. Rawls (1999a: 21) writes:

A conception of justice cannot be deduced from self-evident premises or conditions on principles; instead, its justification is a matter of the mutual support of many considerations, of everything fitting together into one coherent view.

Now, what if moral intuitions conflict with the basic tenets of justice as fairness? One of the consequences of Rawls' theory of justice is gender equality. Suppose a person who believes in different male and female natures, has 'intuitions' about the role of the sexes in society that are radically at odds with the theory of justice in question. If this person were to elaborate an alternative theory of justice with the help of Rawls' framework, s/he would have two options. S/he could either say that Rawls' conception of justice is after all so convincing that s/he is willing to grant that Rawls has proved his/her own intuitions about gender inequality wrong. Alternatively, s/he could reject Rawls' theory of justice and devise one suiting his/her own 'considered judgements' by lifting the 'veil of ignorance' in one case, in the case of gender. Let us say a propounder of patriarchy would want to maintain that men are to be privileged over women. He would then have to staff the original position only with males. The parties in the original position would deliberate about the basic norms governing their future society, knowing that they would occupy the position

of males in that society. They would naturally come up with a set of norms that would privilege males over females. In both cases, reflective equilibrium between pre-theoretical moral intuitions and moral theory would eventually emerge. The point at which this equilibrium emerged, however, would be radically different from what Rawls had intended.

The important detail to note about moral theory is that there seems to be no position outside this process of finding an equilibrium between the pre-theoretical moral intuitions and the ensuing theory that would allow to judge whether Rawls or the stipulated gender in-equalist is right. In taking up a position with regard to the two alternatives, all that can be done is devise a third theory of justice from which to evaluate both Rawls and the gender in-equalist. This third option, however, would be in no privileged position with respect to the two others. There is no escaping the theory-relativity⁷ of any conception of justice and there is no way to avoid the indeterminacy of any such theoretical enterprise (Dusche 2002: 21–30).

COLLECTIVE HERMENEUTICS

In recent years, Rawls has further elaborated the idea of reflective equilibrium. He now differentiates between four different kinds, that is, ‘narrow’, ‘wide’, ‘general’ and ‘full’ reflective equilibrium. The narrow reflective equilibrium is the one in which one takes note only of one’s own judgements. In a wide reflective equilibrium, everyone has carefully considered all alternative conceptions of justice and has reached a state where general convictions, first principles and particular judgements are all in line. Both, ‘narrow’ and ‘wide’ reflective equilibrium are reached individually for each member of society. For the two other concepts, ‘general’ and ‘full’ reflective equilibrium, Rawls, probably

inspired by discussions with Jürgen Habermas (Rawls 1995: 132–80), introduces a change in perspective. Now, it is no longer the individual citizen or moral philosopher who carries out the task of bringing into line his/her considered convictions and those of others in a comprehensive theory of justice. Instead, it is a community of citizens engaged in a virtual process of communicative action, who, upon reaching a consensus on a particular conception of justice (or a set thereof), feel they have reached a reflective equilibrium. If some of these citizens have reached a wide and some only a narrow reflective equilibrium, then the ensuing collective equilibrium is called general. If all citizens have reached a wide reflective equilibrium, the ensuing collective equilibrium is called a full reflective equilibrium. Rawls writes:

Wide reflective equilibrium (in the case of one citizen) is the reflective equilibrium reached when that citizen has carefully considered alternative conceptions of justice and the force of various arguments for them. More specifically, the citizen has considered the leading conceptions of political justice found in our philosophical tradition (including views critical of the concept of justice itself) and has weighed the force of the different philosophical and other reasons for them. We suppose this citizen's general convictions, first principles, and particular judgements are at least in line. The reflective equilibrium is wide, given the wide-ranging reflection and possibly any changes of view that have preceded it. Wide and not narrow reflective equilibrium (in which we take note of only our own judgements), is plainly the important philosophical concept. Recall that a well-ordered society is a society effectively regulated by a public–political conception of justice. Think of each citizen in such a society as having achieved wide reflective equilibrium. Since citizens' recognise that they affirm the same public conception of political justice, reflective equilibrium is also general: the same conception is affirmed

in everyone's considered judgments. Thus, citizens have achieved general and wide, or what we may refer to as full, reflective equilibrium. In such a society, not only is there a public point of view from which all citizens can adjudicate their claims of political justice, but also this point of view is mutually recognised as affirmed by them all in full reflective equilibrium. This equilibrium is fully inter-subjective, that is, each citizen has taken into account the reasoning and arguments of every other citizen.

—(1995: 141, Fn 16)

The essential innovation that Rawls brings into moral theory by introducing the concept of full reflective equilibrium is the link of the theoretical enterprise of devising a theory of a justifiable moral practice for a democratic society with such a society's practical enterprise of engaging in a process of self-understanding and self-determination regarding its own normative foundations. Here, theory and practice are understood as being mutually dependent. Theory becomes a part of practice in the sense that theory is not conceived as so independent of a lived practice that it can assume a privileged standpoint outside the process of democratic self-understanding, whence it can pronounce strictly universal and atemporal truths. The practices of democratic self-understanding and self-determination, on the other hand, require a common reference point that only theory can provide.

This common reference point,⁸ however controversial it may be, is indispensable as a regulative idea if anything like a democratic collective should come about. For a democratic society, it is indispensable that not only different egoistic interests find expression—only to be miraculously and quasi-automatically bundled into a unified thrust for a common good by just democratic institutions—but the normative foundations of these institutions need to be constantly

contested, re-formulated and made aware of by a critical public, lest they are allowed to erode under the impact of vested interests. Already the idea of a public point of view from which a balance of various interests can be judged as fair or unfair obliges every party to formulate its interests in such a way that it can claim to be, in principle, acceptable from the standpoint of 'public reason' (Rawls 1999b: 129–80).

From the point of view of research and theory, Rawls' conception of reflective equilibrium resembles the notion that Goodman introduced as a way of justifying logical deduction and induction. In the context of the collective practice of a democratic society embarking on a quest for normative self-understanding, the concept of reflective equilibrium resembles the circular process of hermeneutics. Elsewhere, I have therefore suggested that the process of moving towards full reflective equilibrium be dubbed as a process of 'collective hermeneutics', that is, a hermeneutics that proceeds not by way of philosophical monologue but collectively and discursively (Dusche 2000: 9). Such a process would have to be understood as a process of communication within a political community regarding its own normative foundations, whereby, self-understanding is not the only aim but self-determination also. That way, collective hermeneutics turns into an instrument for the critical public of a democratic society.

Ethicists (philosophical or theological) play no privileged role in this process (Dusche 2002: 21–30). Their judgement does not rest on any Archimedean point outside the societal process of self-understanding and self-determination. Instead, its plausibility depends on the same societal practice upon which it attempts to bring its bearing. Here it becomes obvious that justification in ethics is something qualitatively different from justification in epistemology. Whereas in epistemology, truth is the aim and a theory is justified if it

proves to be true, in ethics, consensus is the ultimate criterion and a conception of justice is legitimate only if it is accepted by all that it concerns.⁹

CAN CONDITIONS OF ADEQUACY BE UNIVERSALISED?

These considerations lead us back to our initial question about the common point of reference for the comparison of theories of justice stemming from various historical, social and cultural contexts and for the assessment of their relevance for our present circumstances. With a process of collective hermeneutics at its core, it seems, a (collectively-shared) conception of justice cannot automatically claim universal validity. Its degree of universality depends on the extent of participation of those concerned by the moral or legal norms under discussion. Thus, a strict difference must be drawn between ‘universalisability’ on the one hand and actual universal validity on the other. The former warrants only the possibility of universal acceptance. The latter is ensured by the actual acceptance of all those concerned. With the former, the only possibility is to engage in more or less grounded speculation about the likelihood of universal acceptance; the latter amounts to its actual validity.

Keeping in mind that moral theory cannot afford to become completely abstract from lived human practice, but that it should also accomplish more than only making explicit the social and moral rules implicitly governing that practice, its relevance and adequacy to a given context depends on the ability of those concerned to take into account the prevailing circumstances of justice, both objective and subjective, that is, the material circumstances as well as the conditions for the theory’s acceptability to those concerned. This is what this book attempts to do, by looking at conceptions of justice as they are reflected in different religious traditions, with

respect to mythology, poetics and literary criticism, from a cosmopolitan perspective, and in application to relevant contexts such as poverty, environment, class and tribe.

All the contributions in this volume take for granted modern Indian constitutional values, which are in harmony with globally accepted standards of justice and law, and relate them to various traditional conceptions of justice. Where this leads to conflicts, a reflective equilibrium is sought between modern constitutional values and traditional precepts. As a consequence, both modern and traditional conceptions of justice experience revisions and new fine-tuning to make them more acceptable to people identifying with that tradition.

In his chapter on *Natural Inequality*, Kunal Chakrabarti takes a critical look at Brahmanical discourses of justice. Of these discourses, concepts of purity, caste, karma and transmigration of the soul are constitutive. Through these concepts, we are led to understand why Brahmanical conceptions of justice discriminate between people of different castes. Birth to a certain caste is not arbitrary. People are, therefore, not discriminated against or punished for something for which they bear no responsibility. On the contrary, the fact that someone is born to a lower caste is seen as a just consequence of his/her deeds in a previous life. Low birth, in this conception, thus appears as a cosmic punishment for sins committed in previous lives. Human conceptions of justice that would dare to interfere with this cosmic justice would themselves be considered sinful. Therefore, in this scheme of things, earthly justice has to mirror the cosmic plan in treating people commensurate with their caste.

Although this justification through a cosmology of karma—and an anthropology that presumes humans are subject to birth, rebirth and the results of action—is specific

to the Indian context, differentiating human beings according to birth, gender and station in life is not. There is hardly any traditional society that does not, in one way or another, do so and does not justify such differentiation. Chakrabarti, therefore, does not contrast Brahmanical society with traditional Christian or Islamic society but with modern precepts such as equality before the law, uniformity of legal codes, fundamental rights, access to basic opportunities and non-discrimination for members of different societal groups. According to these precepts, human beings are born free and equal in dignity and rights. Interestingly, as Chakrabarti notes, even Brahmanism created a platform, if only a mythological one, on which all differences of birth, caste, or gender could be levelled—the attainment of ‘moksha’. Although moksha was first conceived as being available only to the higher castes, in the later development of Brahmanism, it was promised even to women and people of the lowest caste, provided they followed the norms governing the roles Dharma had ascribed to them. One can see in this an indirect recognition of the modern view, that in the face of justice all men and women are equal.

Today, the conceptions of textual Hinduism are not necessarily believed by practising Hindus, as anthropologists have found out in recent times. People especially those who belong to the lowest castes reject the doctrine of karma and its justification by reference to sins in previous lives. Chakrabarti points to the many alternative mythologies that can replace Brahmanical myths. The mythical past of the lower castes is full of references to injustices done to their predecessors which explain their downtrodden state of being. It seems obvious that mythology serves the upper and lower castes alike to rationalise their status by denying responsibility for the less fortunate on one hand and by easing the pain of injustice on the other hand. In folk tales,

Chakrabarti notes, it is rarely the morality of one's actions in past lives that determine a person's destiny. He is sceptical, however, regarding the power of such alternative visions to subvert the engrained system of caste that continues to persist in India.

In his chapter on *Justice and Political Authority in Medieval Indian Islam*, Najaf Haider is concerned with an apparently unique work of medieval Indo-Islamic literature that deals with the concept of justice in a way that goes beyond the expression of an ideal of righteousness or practical determinations of disputes within the department of justice and the imperial court of grievances at the Delhi Sultanate. This is the *Fatawa-i-Jahandari* by Ziyauddin Barani, a theologian and historian in the first half of the 14th century at the court of Sultan Muhammad Tughlaq.

The main schools of classical Islam held the view that justice was one of the few divine attributes Allah was willing to share with his creatures so that they could strive for it in their personal lives and in the creation of a just social order. In the classical conception, therefore, Allah is the source of all justice on earth. According to this received view, Allah communicated his views on justice through his revelations to Muhammad, which were recorded in the Qurān. Later, Qurānic exegesis was combined with three other sources to form the four principles of Islamic jurisprudence, that is, the record of the prophet's sayings and doings (*hadith*), the methods of analogical reasoning (*qiyas*), and the consensus of the theologians (*ijma*). These four sources combined to form Islamic law (*shariā*), the bulk of which had been codified by the end of the 9th century. Since that time, Islamic theologians and jurists have treated justice as an objective and universal moral truth ingrained in the human soul as a permanent source of guidance, independent of particular spiritual beliefs and actions. Since this universal human

propensity for justice is offset by human weakness, Allah has from time to time helped humans with prophets and scriptures. Humans, due to their free will, can always reject this help, but they can never completely deny their innate sense of justice, Haider points out.

Only limited guidance is provided by the Qurān regarding questions of just political organisation except for a general exhortation to obey 'one who is authority amongst you'. First, the community of believers (*umma*) was ruled by religious leaders (*caliphs*) with hardly any institutionalised framework, but as early as the late 7th and early 8th centuries, political power came to rest in the institution of monarchy, which was no longer based on religion alone but also on ideas of worldly political power. Haider describes this appearance of secular political authority as reaching its peak in the 10th and 11th century with the emergence of the institution of sultanates in the eastern half of the Islamic world. The sultanates, according to Haider, were fully differentiated political bodies without intrinsic religious character but loyal to Islam and committed to its defence. This process is not only reflected in the writings of Islamic scholars but also in a new type of literature on political authority and justice, which typically takes on the genre of 'mirrors of princes', an old branch of Persian literature influenced by ancient Iranian manuals of court etiquette. Haider refers to Ghazali's *Nasihat ul Muluk* (Counsel for Kings) as an influential example for synthesising both strands of literature. In this, and other similar works, justice appears not only as an equally important category beside religion, but even gains priority over religion in that a series of dependency is established between religion, kingship, the army, material prosperity and ultimately, justice. According to Haider, this shows how Islamic political thought was once beginning to come to terms with the separation of religion and politics.

Barani's *Fatawa-i-Jahandari* belongs to the same genre of princely advisory literature. Haider begins with a discussion of Barani's justification for kingship. Barani makes it clear that kingship is essentially un-Islamic but necessary under the prevailing circumstances. It is un-Islamic because it fosters the vices of pride, dignity, eminence and grandeur in the king—all of which are obstacles to devotion and submission to Allah. The king is thus constantly in danger of misusing his power for his own comfort and the satisfaction of his greed and carnal desires unless he restrains himself. Justice, in Haider's depiction of Barani, is essentially a means to this end. By devoting himself to the welfare of his subjects, the king saves himself from the pitfalls inherent in his own spiritually precarious position.

The innate sense of justice, according to Barani, is a hereditary disposition that human beings possess in different quantities. This innate sense of justice pertains to the king as the shadow of Allah on earth and to his representatives. The king and his representatives have to ensure equity and equality among the male Muslim subjects of the realm regardless of their respective strength, wealth or social position. Barani places great emphasis on the all-pervasiveness of justice. Thus, he writes, unless justice prevails everywhere without exception, it exists nowhere. Haider points out that Barani is the only writer in India, and probably in the entire medieval Islamic world, to place substantive justice so squarely at the heart of political authority and to treat it at such length. By making justice the primary legitimating criterion for kingship he places a strong constraint on despotism.

In the introductory part of his chapter on *Traditional Conceptions of Justice in Christianity*, Gerhard Kruip guards himself against several possible misunderstandings. First, he is aware of the fact that cultures and religions are not

self-contained entities but the result of communicative and often self-conflicting historical processes. Thus, Christianity has undergone great changes in the encounter with various cultures and civilisations such as the Roman, Byzantine, Germanic and Slavic worlds, and later in diverse colonial encounters. However, even across the many evolving Christianities, even across Christian and non-Christian cultures, Kruip stipulates universal human commonalities that arise from the fact that human conditions are, on a fundamental level, similar in otherwise dissimilar parts of the world. Kruip mentions the principles of reciprocity, the impartiality of judges, the non-arbitrariness of punishment, and a general sense of injustice, which humans share across a wide range of cultures.

Kruip points out that Christianity has developed not only one congruent conception of justice but many and it is hard to make out which are to be taken as 'typical'. Kruip admits the unavoidability, for a Catholic, of a certain bias in his way of telling the story about Christian conceptions of justice. Furthermore, he points to the fact that some parts of the story may not be considered part of tradition but are nevertheless very important from a philosophical perspective. Tradition only points to historical importance and not necessarily to systematic significance. Furthermore, from a systematic point of view, as Kruip reminds us, justice is not the same in all the spheres of application. We have to distinguish between the concepts of commutative, distributive and legal justice, for example. Overemphasising one of these concepts at the expense of others may lead to a distortion of the picture and to a corruption of overall justice.

All this said, Kruip ventures into a theological discussion of the concept of justice as it originated from Judaism and later evolved into a Christian variant. With the evolution of monotheism in West Asia, justice, formerly represented as

a goddess, became a central attribute of god himself. Jewish law, the Torah, insists on a relation of mutual fidelity and compassion between God and his chosen people, which is expressed, for example, in the Jewish *deuteronomium* festival. God is the warrantor of justice on earth. He rewards the obedient and punishes the disobedient with a bad life. To begin with, according to Kruip, this was conceived of as occurring within a lifetime. Later, the notion of reward and punishment in the afterlife became the dominant one. The early Christians, notably apostle Paul, disagreed with the Jewish insistence on obedience to the law as a means to salvation by pointing to the inherent limitations of the human being. Instead, Paul centred on good faith in spite of bad action and the grace of God by way of the death and resurrection of Christ, as the only ways to deliverance. Salvation through faith as opposed to good deeds was re-emphasized by Luther and other protestants and led to the breaking up of Latin Christendom during the Reformation. Today, Lutherans and Catholics agree on the joint importance of grace *and* good works for salvation.

From an Old Testament prophetic tradition of criticising vain rituals and inconsequential prayers and demanding the practical implementation of divine justice in human affairs, Christianity has retained its sympathy with the oppressed, its openness to people of all categories and its emphasis on faith being expressed through practice. A contemporary development of this tendency can be seen in the various social theologies in Europe, Latin America and India that, according to Kruip, converge in the idea that not only individual good deeds are required for salvation but collective action is necessary to counter structural injustices inherent in the institutional framework of society. In the Indian context, which is seen by Kruip as a world yet to be converted by Christian mission (*sic!*), this means that missionaries have

to focus on relief from the social consequences of injustice. This mission, according to Kruip, should not look at the number of converts first but place its emphasis on relief for the deprived and marginalised.

In another part of his chapter, Kruip raises the question of universalism versus particularism in the context of mutual understanding between cultures and religions. Kruip rejects the idea that such an understanding would emerge by coincidence due to accidental commonalities between different conceptions of justice. Instead, he believes that an understanding can only be reached by also taking into account the reflective and argumentative dimensions of ethical and religious self-understanding, whose forms again vary from culture to culture.

Modern Catholic social doctrine tries to be compatible with the predicaments of today's democratic liberalism and engages in intense discussions of liberal theories such as Rawls' theory of justice or Habermas' discourse ethics. In particular, the liberal distinction between moral theory and virtue ethics is mirrored in the Catholic distinction between universal and supererogatory norms. More fundamentally, modern Catholicism accepts that we have to make a distinction between religion and justice, the latter being reflected in many religions but also being conceived of independently of all religion in a purely secular way.

A *Cosmopolitan Perspective on Justice* is offered by Michael Dusche as an alternative to traditional approaches to justice. It is argued that a cosmopolitan perspective on justice is neither universalist in a naïve way nor relativist in a bad way, but is global in the right way. Naïve universalism for one is rejected because it causes subjective problems of justice instead of resolving them. By universalising conceptions of justice from one legacy, naïve universalism is not sensitive to other legacies. It thereby fails to meet the

subjective conditions of justice. Instead a concept of internal universalism is introduced, analogous to Hilary Putnam's internal realism. Besides being internally universalist, the cosmopolitan perspective on justice is globally adequate in that it meets the challenges of objective conditions of justice before an emerging world polity. Its chances of global acceptability increase to the extent that it is purged of theoretical accessories (anthropological, cosmological, metaphysical) irrelevant to the task. In thus being thin and non-intrusive, it parallels John Rawls' conception of freestandingness, if only on a global level. Furthermore, it is argued that a cosmopolitan perspective of justice is not Eurocentric, for not the circumstances of its genesis are relevant here but those of its application. While the former point to a European connection, the latter prevail worldwide. Like the cosmopolitan politics of Antiquity, the age of globalisation is marked by urbanisation, migration, multiculturalism and a loss of agency in democratic set-ups such as the nation state. The topicality of a cosmopolitan perspective of justice is argued for by dissociation from essentialising discourses on identity, culture, religion, nationalism and ethnicity. Maximal in its reach but minimal in its assumptions, cosmopolitanism proves at the same time broad enough in its scope to meet the challenges of a globalising world and unassuming enough to be acceptable to humans simply on the basis of their humanity.

In the preliminaries of his chapter on *Poetic and Social Justice*, Alok Rai defines the concept of poetic justice as the duty of the poet to create his/her fictitious world in accordance with moral principles. The concept of poetic justice, in spite of its problematic equation of the unjust with the un-aesthetic, can be found across times and traditions. In response to the expectations of their readers, authors have to strike a balance between a necessary amount of

realism for fiction to be relevant to the reader and a certain amount of idealism for the reader to feel compensated for the injustices experienced in the real world. Subsequently, Rai introduces the concept of social justice and defines it for the Indian context as pertaining specifically to caste injustices. He distinguishes social justice from poetic justice by contrasting their goals—justice in the real world versus that in the imaginary realm. In the context of the Dalit controversy, however, these otherwise independent concepts intersect as demands for the representation of Dalits, which are sought in limited social spaces more as a symbol than as a remedy. Recognition and dignity are part of social justice but at the same time, highly symbolic. Rai reminds us of the contingency of the aesthetic experience and of its dependence on the historic moment and the dominant social group therein. He observes that, while we have an account of how social groups rise and decline in history, we know very little about the modalities of change in the parallel sphere of aesthetics. Rai points to often unarticulated views and beliefs regarding plausibility, viability and likelihood on which our aesthetic judgements rest. That aesthetic change is a function of the transformation in these beliefs, is Rai's central thesis, which he attempts to validate through a discussion of the Premchand–Dalit controversy in the main part of his chapter.

When modern literature emerged at the turn of the 19th/20th century, aesthetic expectations were such that a depiction of the life-experience of lower caste Hindus or ordinary Muslims would have been unacceptable to the dominant urban elite, whether Hindu or Muslim, Rai remarks, although he concedes that the nascent Hindi literature was more likely to absorb new trends than the long-established Urdu literature. He attributes Premchand's turning from Urdu to Hindi to this fact. In the Hindi camp,

however, Premchand encountered the opposition of Hindu *savarna* classes who at that time would not even accept Kabir and the Bhakti tradition into the canon of Hindi literature.

Premchand, according to Rai, was concerned with the inhumanities and injustices of the Brahmanical caste system. In his journalistic work in particular, he followed opinions that were not necessarily original nor, according to Rai, very current in Premchand's social environment. His originality, as Rai points out, lies more in the long-term effects on the moral economy of his time to which Premchand contributed, among other progressive writers. Rai credits Premchand with the achievement of helping in disturbing the apparent harmony between injustice suffered and destiny deserved. He helps introduce a moment of sympathy for hitherto marginalised groups even among those readers who would typically belong to the castes and classes benefiting from these injustices. Premchand, according to Rai, has first to create the 'guilty reader' for his 'literature of conscience', which then helps to disturb the moral economy of his day by attaching a stigma of 'wrong' to behaviour that seemed up till then unobjectionable. In this process, as Rai describes it, the guilty reader accumulates moral debt while those on the other side of this newly felt imbalance build up moral capital that they can later claim by way of socially corrective affirmative action programmes and the like.

Rai describes the way Premchand deals with his reader as a negotiation process in which the conscience of the 'guilty reader' can be stressed, but not to the point that the bond between reader and writer breaks. In this process, Premchand's story 'Kafan' represents a bold step towards doing away with limitations of poetic justice that correspond to common expectations in his readers. A conventional reader of a literature of conscience that gained currency in

Premchand's times would still have expected the victim of social and caste injustices to be physically and mentally intact in spite of the hardship suffered, and deserving of the compassion and remorse of the reader. Premchand broke a taboo by depicting the heroes of his 'Kafan' as damaged and brutalised, as well as themselves brutal, with no prospect of improvement, whether materially or morally, as incapable even of rebellion because trapped in the hegemonic discourse of caste and destiny, not themselves understanding the wrongness of the social order that victimises them.

'Kafan', Rai informs us, was the immediate cause of an aesthetic crisis among progressive writers and their readership. The crisis involved a controversy over the problem of representation of those who were not capable of representing themselves, not only because they were materially not capable of doing so but also because they were caught in the narratives of those who oppressed them. In this regard, the claim of the Dalit essentialist that only Dalits could legitimately write about and represent Dalits offered only a very problematic solution, as Rai points out. In effect, this suggestion would only help perpetuate the traditional logic of oppression that takes caste for destiny. As a possible way out, Rai urges that the notion of universality not be completely rejected—not the self-satisfied universalism of the dominant narrative, to be sure, but a 'negotiated universalism', as he calls it, where the other is engaged with, and not only accused and told off.

In *Representation and Testimony*, Udaya Kumar looks at the problem of justice in the novels of Anand, one of the most significant contemporary novelists in Malayalam. According to Anand, the original impulse of culture in general, and of literary writing in particular, is the yearning for justice. Kumar, therefore, is interested in the relationship between literature and justice. Kumar looks at the novel *Alkkuttam*

(‘The Crowd’) as an example for Anand’s preoccupation with the impoverished crowd as a theme for justice. The central theme of discussions in *Alkkuttam* is the Indian national politics in the early 1960s when the young Indian state was at war with China. Anand’s intellectual protagonists lament the decline of political morality and the widespread corruption, and perceive themselves to be rational citizens who can negotiate their discursive claims in the space of modern public sphere. This is undercut by the murmur of the crowd: the less educated and the deprived.

In Kumar’s own words, the

affective anchoring of the subject of justice in regions and languages is dismantled in his work to present a plane of subjectivation which is more directly political, more directly caught up in the juridical idiom of a secular modernity. Labour prison complexes run by the army, the crowded compounds of judicial courts, refugee camps, urban slums and the state’s institutions of rehabilitation—these new localities cannot find a place in maps built on geographical feeling. The nation-space is turned into non-places of a catachrestic modernity, where strands of sovereign power and governmental technologies crisscross with each other. The critical subjects and anonymous crowds in Anand’s novels merge in these sites, and the testimonial voice in his writing emerges from there.

From conceptions of justice as reflected in different religious, philosophical and literary traditions, we now turn towards different engagements with justice in the life-worlds of present-day India. In her chapter on *Slum Development as a Justice Forum*, Roma Chatterji explores the Dharavi slum in Mumbai as a forum in which justice is articulated. Her focus is on civil society organisations that help slum dwellers in forming communities, express their demands as citizens

and experiment with institutional forms of democracy. In her conceptualisation of local forms of self-governance in Dharavi, Chatterji relies on Juergen Habermas' discourse theory of law and democracy. Justice, in Chatterji's view, serves as an aporia through which the ambiguities of everyday existence lived out at the margins of the state can be understood. Slum dwellers consider the state less as a protector of their rights but as a cause of great insecurity when it comes to evictions and the demolition of their homes. They are less interested in a discourse on the adequacies of positive law as it applies to slum populations which are faced with the unchallenged power and corruption of the lower echelons of government bureaucracy. In such contexts, self-help and self-organisation prove to be more promising than mobilising public opinion at large and calling the state to account through a discourse of rights. Thus, Chatterji looks at slum development programmes and makes out how these can stimulate the processes of collective identity formation around political conceptions of common good rather than mobilising local or ascriptive identities for particularistic interests.

In particular, Chatterji deals with the discourse of community based organisations. Their action programmes are not only supposed to serve immediate pragmatic interests but are also to foster long-term goals of democratic accountability and secularism. The way community organisations function, they emulate models of parliamentary democracy in the form of representative bodies and regular elections. Thereby, they generate a generalised and abstract form of social solidarity based on principles of communicative rationality. They represent associations based on common interest with contractual relations freely entered into in a common public sphere rather than communities based on ascribed cultural or religious identities, which are often not

collectively authored or striving for a common good but mobilised to instrumentalise people for sectarian interests. Community organisations are conducive to the promotion of self-determination and participatory citizenship. Chatterji agrees with Habermas that an ethical view of democracy would restrict its sphere of communication to collective and generalisable interests, that is, interests which emerge from the life world but which can be made universal. As this depends on an effective public sphere which is positioned outside the system of authority and independent of market forces, she raises a sceptical eyebrow at the introduction of private developers in more recent schemes of urban development that involve the market as a new player in the field.

In his chapter *Environment and Justice*, Satyajit Singh explores the 'public purpose' of water by evaluating a number of approaches to environmental justice such as anthropo-centric vs. eco-centric, deep vs. shallow ecology, inter- vs. intra-generational conceptions, economical vs. sustainable development approaches, environmental economics vs. bio-economics and finally, environmental Marxism vs. eco-socialism. Singh finally decides on an eco-socialist approach keeping in mind that 'socialism' is one of the declared purposes of the Indian polity as by its constitution. He discards eco-centric approaches on the grounds that they may be appropriately handled in the realm of philosophy but not in politics which is concerned with real world concerns of environmental justice. Singh pleads for a broader and more practical understanding of environmental justice by linking it to pressing social concerns of access and rights to water.

In view of a situation where in most states of the Indian federation, land reforms have been postponed indefinitely, hydraulic property rights and the sustainable use of water resources can enhance the empowerment of people by increasing the productivity of labour and raising the

utilisation of land. Although in the long term, this should not lead to a substitution for the redistribution of land, in the mid-term the empowerment of the poor through better and more equitable access to water, accompanied by devolutionary and democratic decentralisation, would serve as a counter-balance to the common pampering of the agrarian elite through large-scale irrigation works that are financed from public money but benefit only the few who, through the linkage of water rights and land ownership, gain privileged access.

To substantiate his hypothesis, Singh considers alternative irrigation methods and institutions that are being developed by environmental and people's movements in India today. In a number of cases, experiments with alternative distribution schemes such as entitlement to water being dependent on the adult members of families, simple households or members of land-holding households have produced positive results. In cases where landless labourers were entitled to water, these could either sell their share or acquire land and start farming and thereby improve their situation. In other examples, the intensity of irrigation was called into question. A more equitable distribution of water would help to restrain the cultivation of water-intensive and labour-extensive industrial crops like sugar cane in favour of more sustainable crops such as millet and thereby increase the amount of employment in the countryside as a welcome side-effect.

In *Class, Democracy, and Conceptions of Justice in India*, Vidhu Verma questions the timeliness of a class-based analysis of problems of justice in the name of new political subjects—women, national, ethnic and sexual minorities, anti-nuclear and anti-development movements. He argues,

apart from conceptual problems in a class-based theory of justice we must recognise that the context for the debate on

distributive justice has undergone major changes in India. The first thing to note is that there have been rapid shifts in the political involvement of people from social-economic struggles to caste- and religion-based movements inspired by identity and recognition.

Alongside class-based analyses and identity politics, Verma offers a third way, which takes citizenship as a central notion as it constitutes a 'real political identity' instead of displacing political controversies to the symbolic realm of traditionally-ascribed identities such as caste, culture or religion.

Virginus Xaxa in *Tribe and Justice* gives a detailed account of how the values and conceptions of justice inscribed in the Indian constitution affect and concern tribal individuals and communities. Tribal society, for the most part, is more egalitarian than classical Hindu society in that it does not divide people into different castes. It also emphasises solidarity. Thus at first sight, Indian constitutional values, which are based on equality, liberty and solidarity between individuals are more in congruence with the values prevalent in tribal societies than with those dominating the Indian mainstream. It is all the more disturbing, Xaxa points out, that Indian tribals have benefited so little from the safeguards of the Indian constitution.

For a long catalogue of fundamental rights, Xaxa demonstrates how tribals have been deprived of the fair value of their rights. While the right to justice, for example, is formally not denied to them, they often cannot make effective use of it for lack of material and legal assistance. Great numbers of tribals have suffered the loss of their livelihoods as victims of land alienation to non-tribal communities and the Indian state. Through non-respect for their traditional idea of collective ownership, forests have been declared the property of the state and tribals have been denied their

customary usufruct rights. Non-tribes have acquired tribal lands through fraudulent transfers of ownership, forcible eviction, mortgages, leases and encroachments. The fact that customary tribal law is passed on orally and does not know of written land registries makes it hard for them to take any legal action against such transgressions. As a consequence, 40 per cent of all forcefully displaced people in India are tribals. The percentage of tribal cultivators has steadily decreased and tribals have an almost 20 per cent higher incidence of poverty than the average Indian.

Although there is evidence showing that tribals are discriminated against by people from the majority communities on the basis of para-institutional norms still prevailing in workplaces and in the education system, Xaxa does not go so far as to demand a different legal status for tribals altogether. Instead, he embraces the values of the Indian constitution and applies them to customary law within tribal communities. He points out that in most tribal communities, although discrimination based on caste or class is low, there is a strong case for discrimination on the basis of gender and sometimes lineage. Women are often denied their rights to marry the partner of their choice, move freely outside their home and work, share equitably with their male siblings the inheritance of movable and immovable property, hold public office or to learn how to read and write. On the other hand, Xaxa finds strong arguments in favour of reservation quotas for tribal men and women, and he appeals to the civic morality of the majority community to refrain from subverting the intention of affirmative action programmes out of anti-tribal prejudice and even hostility.

All the chapters consolidated in this volume show a commitment to India's way of adapting liberal constitutionalism to its own circumstances, always with a view to post-traditional

cosmopolitan values. Thus they reject the tradition where it is implicated by:

- hierarchical notions of society (Chakrabarti) and the discrimination of tribals (Xaxa), Dalits (Rai) or the destitute (Chatterji);
- the differential treatment of women (Chatterji, Xaxa);
- lack of solidarity with the less and least advantaged of society (Chatterji);
- a disengagement with the regulative ideal of universalism, acquiescence with relativism or the indulgence in self-satisfied universalism (Rai);
- the perpetuation of ascriptive identities or the manipulation of people on the basis of essentialised identities (Chatterji); and
- privileging big land-owners at the expense of small farmers and the landless (Singh).

Many contributors point to the connectivity of tradition and Indian modernity by identifying historical precursors of modern constitutional values such as secularism (Haider) or sympathy with the oppressed (Kruip). Several point to the need of a discursive, reflective, argumentative engagement with justice and tradition (Kruip), negotiated universalism (Rai) and an effective anchoring of justice in regions and languages (Kumar). They examine the way by which moral sensibilities are influenced and sometimes changed through an engagement with literature (Rai). Thus, literature becomes an important medium for the ‘moral economy’ of its time—another word for the procedure which was called ‘collective hermeneutics’ at the outset of this introduction.

Not only literature, but art in general (film, theatre and so on) proves a powerful tool in this process since it can help

induce empathy for the hitherto marginalised categories of people. Empathy, by putting us in the shoes of others, serves as a starting point for a reflection on the ‘universalisability’ of our own conceptions of justice. By disturbing the hegemonic normative discourse, it can help subvert it and influence it in the direction of a more comprehensive inclusion of people, who were formerly not considered eligible co-authors in a collective attempt at re-formulating the social contract.

NOTES

1. For a discussion on various sorts of relativism, including ‘normative relativism’, see Brandt (1967).
2. Cf. my argument against Kuhlmann (1986) in Dusche (2000: 2).
3. Cf. (Ibid.: 95). and Dusche (2002), available at *TRANS—Internet Journal for Culture Studies*, 0(July 2002) <http://www.inst.at/trans/0Nr/dusche0.htm>.
4. In German, ‘Erwiderung auf Habermas’, in Hinsch (1997: 196–262).
5. Rawls (1971: 19). see also ‘considered judgements’ (Ibid.: 47).
6. In fact, the theory is about the ‘basic structure’ of a democratic society (Ibid.: 7–11).
7. ...which is something radically different from normative relativity ... cf. Brandt (1967) and further below.
8. Rawls (1993) has named it the standpoint of *public reason*. Also see Rawls (1999a: paper 26).
9. Correspondingly, Rawls speaks of justification as a societal objective as opposed to an epistemic problem; Rawls (1999a: 388, Fn. 2).

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PART I
REFLECTIONS OF JUSTICE IN RELIGIOUS
TRADITIONS AND BEYOND

1

Natural Inequality: Conceptualising Justice in Brahmanical Discourses

KUNAL CHAKRABARTI

I

When we say human beings are unequally placed, we mean that they have unequal opportunities and are unequally rewarded. But it also suggests that they are endowed with unequal abilities and, therefore, are of unequal worth. However, as Andre Beteille has pointed out, the idea of natural inequality is inherently ambiguous, for nature presents us only with differences. With human beings, these differences become inequalities only when they are selected and evaluated by processes that are cultural and not natural (Beteille 1987: 7–8).

All social systems are iniquitous, but perhaps the most plainly revealed system of inequality is associated with the Hindu order of castes. This system divides the whole society into four *varṇas* (social ranks according to their functions), and innumerable *jātis* (occupational groups), both of which are characterised by a strict order of ranking and other restrictions. For instance, members of each caste group have fixed occupations; they can marry and partake food with members of only their own caste; one acquires membership

of a particular caste through birth alone and remains a member until death; and the castes are arranged in a hierarchy with the brāhmaṇas at the top.¹ Each caste has its assigned functions or range of occupations. Since the *varṇa* is an overarching category, subsuming the *jātis*, I will cite example pertaining to the *varṇas*. The canonical law-giver Manu—whose injunctions have governed the Brahmanical society for nearly two millennia—delineates the ‘duties’ of the four *varṇas* thus:

[T]o protect this whole creation, the lustrous one made separate innate activities...For priests (brāhmaṇas), he ordained teaching and learning, sacrificing for themselves and sacrificing for others, giving and receiving.

Protecting his subjects, giving, having sacrifices performed, studying, and remaining unaddicted to the sensory objects are, in summary, for a ruler (kṣatriya). Protecting his livestock, giving, having sacrifices performed, studying, trading, lending money and farming the land are for a commoner (vaiśya).

The Lord assigned only one activity to a servant (śūdra): serving these (other) classes (*varṇas*) without resentment.²

These injunctions are, at least theoretically, inviolable.

This classificatory scheme may appear arbitrary from outside, but the brāhmaṇas believed that it corresponded to the natural order of things. Two kinds of arguments have been put forward to justify caste differentiation. First, that in essence, it represents the division of labour and not inequality, and second, that the division of labour, being dependent upon one’s natural endowments or *guṇas*, actually correspond to the natural scheme of things (Beteille 1987: 10, 16).

However, the difficulty is not so much with the correspondence between natural endowments or inherent skills and the division of labour, but with the rigid hierarchy to which the resulting occupational groups have been subjected

in the caste society. Many sociological theories, political ideologies and moral philosophies have opposed the idea that caste is some tangible or essential property of the person which people *have*, favouring instead the relational view that caste denotes a particular kind of social relationship *between* people, which is established historically. Yet, in the Brahmanical conception of caste, ideas concerning the inherent superiority and inferiority of particular kinds of people have often maintained their highest justification precisely in the relational view that these kinds are parts of a broader whole (Smaje 2000: 1–4).

Brahmanism could reasonably take this position in view of the fact that according to its earliest cosmogony, which appeared in the later portion of the *Rg-Veda*, the four *varṇas* emerged from the dismembered body of a cosmic being, called Puruṣa. We are told that in the beginning, the thousand-headed Puruṣa pervaded the earth on all sides. When the gods performed the sacrifice with Puruṣa as the oblation, his mouth became the brāhmaṇa; his two arms were made into the rājanya (kṣatriya); his two thighs the vaiśyas; from his two feet the śūdra was born.³ Thus, the four *varṇas* were once intrinsic parts of an organic whole.

Through this origin myth, three vitally important aspects of caste were established, which helped to validate the system later. It showed that the castes appeared with the creation of life itself, that the body parts produced the four categories of humans in a descending order of purity, and that the hierarchy was based on a supernatural authority, which made it theoretically irreversible and legitimate. Understandably, of all the explanations offered by Brahmanism in justification of the origin of castes and their component elements, this was found to be the most comprehensive by the orthodoxy, for Manus endorses it.⁴ It is evident that this inherently restrictive and discriminatory system denies the possibility of a universal moral order.

II

Let us look at a few examples of the implications of this system in the administration of justice. It is generally understood that equality before law is the primary precondition of a just society. Since caste divided society is based on the premise of innate and irrevocable difference between social groups, the Brahmanical law-givers completely disregarded the principle of equality before law. On the contrary, they took it for granted that a member of the caste society was liable to be treated differently, depending on his or her location in the caste hierarchy. And not just caste; Manu declared: 'Taking into consideration the laws of the castes, districts, guilds and families, a king who knows justice should establish the particular law of each'.⁵ Clearly, there was no notion of a uniform civil or criminal code in Brahmanical thought, or in ancient India for that matter. It is very likely that the *samatā*, which the Mauryan emperor Aśoka—a Buddhist in faith—instructed his officials to employ in their judicial dealings, refers to consistency rather than equality (Swain 2004: 441).

In the later Vedic period itself, some *brāhmaṇas* claimed to be above the law. At the end of the royal consecration ceremony, the chief officiating *brāhmaṇa* turned to the assembly and pronounced, 'Here is your king, O Kurus... for us, our king is (the god) Soma' (Swain 2004: 441). The *Dharmasūtras*, which precede the more authoritative *Dharmaśāstra* texts such as Manu, emphatically state the immunities enjoyed by the *brāhmaṇas*. According to Gautama: 'The king should exempt such a man (a learned and dutiful *brāhmaṇa*) from six things: he should not be subjected to corporal punishment, imprisonment, fines, banishment, upbraiding and abandonment'.⁶ This virtually places a *brāhmaṇa* beyond the purview of law, though other law-givers content themselves with exempting him from all corporal punishments.

Āpastamba allows a brāhmaṇa, who is guilty of killing a man, stealing or appropriating land, to be blinded. However, Patrick Olivelle, the editor of the text, points out that the original *cakṣunirodha* is ambivalent. It may mean to blind, a meaning favoured by the German translator R. Friedrich, but that is unlikely, because the Brahmanical law texts generally prohibit corporal punishment of brāhmaṇas. Therefore the term, in this context, should be taken to mean—to be blindfolded.⁷ However, the brāhmaṇa was indisputably exempt from capital punishment. Manu is unequivocal: ‘Shaving the head is ordained as the punishment consisting in the loss of the life’s breath for a priest, but for the other classes the punishment should be the (actual) loss of the life’s breath. (The king) should never kill a priest, even who persists in every sort of evil: he should banish such a man from the kingdom, unhurt and with all his wealth. There is no greater (act of) irreligion on earth than priest-killing; therefore the king should not even conceive in his mind of killing that man’.⁸ It is noteworthy that even the considerably lighter punishment recommended for the brāhmaṇa was often symbolic in nature, just as blinded should be read as blindfolded.

But the most startling departure from the principle of equality before law appears to be in cases where variable punishments were prescribed for members of different caste groups for the same offense. For instance, Āpastamba declares: ‘If someone kills a kṣatriya, he should give a thousand cows to erase the enmity, a hundred if he kills a vaiśya, and ten if he kills a śūdra’.⁹ However, if someone kills a learned or even an ordinary brāhmaṇa, he becomes a heinous sinner, and the text mentions a long list of arduous penances to be undertaken by such a man to atone for his sin.¹⁰ If one reads this passage in conjunction with the statement of Baudhāyana that the punishment for killing a śūdra is the

same as killing a Haṁsa goose, Bhāsa vulture, peacock, Cakravāka goose, chameleon, crow, owl, frog, Ḍiḍḍka rat, Ḍerikā rat, dog, Babhru mongoose, common mongoose and the like,¹¹ one can envisage the degree of variation in Brahmanical understanding of the intrinsic worth of members of different caste groups, which explains the discrimination in treatment.

Here is what Manu has to say regarding punishment for sexual offence:

If a virgin makes love with a man of superior caste, (the king) should not make her pay any fine at all; but if she makes love with a man of the rear castes, he should have her live at home in confinement. If a man of the rear castes makes love with a virgin of highest caste, he should be given corporal or capital punishment; if he makes love with a virgin of the same caste as his own, he should pay the bride-price, if her father wishes it;¹²

for assault:

If a man of the lowest caste injures a man of higher caste with some particular part of his body, that very part of his body should be cut off... If a man raises his hand or a stick, he should have his hand cut off; if in anger he strikes with his foot, he should have his foot cut off. If a man of inferior caste tries to sit down on the same seat as a man of superior caste, he should be branded on the hip and banished, or have his buttocks cut off. If in his pride he spits on him, the king should have his two lips cut off;¹³

and for defamation:

A ruler who shouts abuse at a priest should be fined a hundred (pennies); a commoner who does this, a hundred and fifty or two hundred (pennies); a servant (should be given) corporal or capital punishment... If a priest and a ruler (calumniate one another), a discerning (king) should impose the lowest-level fine upon the priest and the middle-level fine upon the

ruler. If a commoner and a servant (calumniate one another), punishment should actually be applied to them in the very same way, according to their respective castes.¹⁴

Thus, there is no scope for doubt that the Brahmanical law-givers genuinely believed that as human beings are arranged in an order of precedence in terms of their relative purity by birth, they naturally deserve differential rewards and punishments.

In an instance of an interesting inversion of this principle, Gautama tells us that when a śūdra steals, he must be made to repay the loss eightfold, and the fine is progressively doubled for thieves belonging to each of the prior castes.¹⁵ Thus, in normal course, a brāhmaṇa should be required to pay sixty-four times the value of the stolen object, but Manu adds that he is liable to pay a full hundred, or even twice 64 times, for he knows about virtues and vices.¹⁶ One wonders why this knowledge did not apply in the case of a brāhmaṇa indulging in murder, assault, adultery or abuse.

III

These injunctions must appear to our modern sensibility as instances of complete travesty of justice and may lead us to believe that the Brahmanical law-givers were only interested in preserving the interests of the ruling class at the expense of a just society. This will be an error, for the law-givers were extremely responsive to the need to uphold justice within the parameters defined by them, for the greater good of the society, as they perceived it. And they expressed their anxiety about the consequences of possible miscarriage of justice in no uncertain terms. Manu declared: 'When justice is destroyed, it destroys; when justice is protected, it protects. Therefore, justice must not be destroyed, or justice destroyed may kill us'.¹⁷

Since Brahmanism considered monarchy to be the only valid form of political organisation, the king was regarded as the supreme judge in his realm and was charged with the responsibility of ensuring that disputes were settled justly. For this, the essential quality required of him was impartiality. Let me cite the opinions of four important law-givers in a roughly chronological order. Manu says: 'A king who inflicts punishment correctly thrives in the triple path, but if he is lustful, partial and mean, he is destroyed by that very punishment'.¹⁸ Yājñavalkya says: 'The king, free from anger and greed, should give justice assisted by learned brāhmaṇas, in conformity with the (percepts of) treatises of *dharma* (justice)'.¹⁹ Nārada says: 'When the king is seated on the justice-seat (*dharmāsana*), let him be devoid of passion, equal towards all, performing the vow of Vivasvat (Yama, the god of the underworlds, who fixes the destinies of the dead according to their past actions, good and bad)'.²⁰ Bṛhaspati says: 'A judgement should not be passed in reliance upon the texts of the *śāstras* (legal treatises) alone, for a trial (of the case) without taking account of the circumstances of the case leads to a loss of *dharma*'.²¹ Thus, a just king is one who, without fear or favour, consistently follows the textual precepts, listens to the advice of the learned brāhmaṇas, and applies his own mind to arrive at the correct decision.

Indeed, this function of the king was considered so important that giving justice has been compared to performing a sacrifice, the most sacred of all ritual acts. The simile of Bṛhaspati is the most elaborate: 'In the sacrifice, Viṣṇu is the object of worship, in the case, it is the king. The plaintiff who wins his suit is (equal) to the sacrificer (*yajamāna*) and he who loses is like the victim (*paśu*, sacrificial animal). The plaintiff and the defence are (like) clarified butter, and the grounds of the plaintiff (*pratiḥjñā*) like a vegetable offering (*havis*). The *Vedas* here are the *śāstras*, the judges the priests who officiate (*ṛtvij*), and the fine resembles the ritual fees (*dakṣiṇā*)'.²²

Manu is austere and direct: 'A king who protects living beings justly and puts to death those who should be killed is virtually sacrificing everyday.'²³ Kauṭilya, the 'author' of *Arthaśāstra*, the paradigmatic text on polity in early India, situates impartiality as the central motif in this analogy: 'For the king, the (sacrificial) vow is activity, sacrifice the administration of affairs; the sacrificial fee, however, is impartiality of behaviour, (and) sacrificial initiation for him is coronation.'²⁴

In dispensing justice, the king draws his strength and legitimacy from the *daṇḍa* (literally, the rod). *Daṇḍa* is the royal prerogative of punishment by force (as opposed to excommunication). It is no ordinary rod: 'For (the king's) sake the Lord in ancient times emitted the Rod of Punishment, his own son, (the incarnation of) Justice, to be protector of all living beings, made of the brilliant energy of ultimate reality'.²⁵ Therefore, the judicial administrator is no mere arbitrator, but a servant of the *daṇḍa* (Derrett 1999: 214). Predictably, the normative texts have instructed the king to use this potent instrument judiciously and with extreme caution. Manu warns: 'Properly wielded, with due consideration, it makes all subjects happy; but inflicted without due consideration, it destroys everything.'²⁶ Kauṭilya is more explicit: 'Therefore, the (king), seeking the orderly maintenance of worldly life, should ever hold the Rod lifted up (to strike). For, there is no such means for the subjugation of beings as the Rod', say the (ancient) teachers. 'No', says Kauṭilya.

For, the (king), severe with the Rod, becomes a source of terror to beings. The (king) mild with the Rod, is despised. The (king), just with the Rod, is honoured. For the Rod, used after full consideration, endows the subjects with spiritual good, material well-being and pleasures of the senses. Used unjustly, whether in passion or anger, or in contempt, it enrages even forest-anchors and wandering ascetics, how

much more than the householders? If not used at all, it gives rise to the law of the fishes. For, the stronger swallows the weak in the absence of the wielder of the Rod. Protected by him, he prevails.²⁷

Thus, the king had the Brahmanical sanction to rule and this was backed up by the coercive power of the rod. And yet, the authority of the king was not unrestrained. It was circumscribed by the imperative condition of his having to be just. The law-givers never tire of repeating that the just king must uniformly apply the law as laid down by them. For instance, they prescribe the penance for specific crimes; it is the king's duty to ensure that it is carried out and punish the recalcitrant.²⁸ If a king fails to punish, he should perform a penance himself.²⁹ Vasiṣṭha explains the penance which the king and his chaplain should perform, if he leaves the culprit unpunished or punishes the innocent: 'If a guilty man is allowed to go free, the king should fast for one day and his personal priest for three days. If an innocent man is punished, his personal priest should perform an arduous penance and the king should fast for three days.'³⁰ And Āpastamba explains the principle: If the king fails to inflict punishment when it is called for, the sin recoils upon him.³¹ Manu is more severe on the king who is unjust in trial. 'His enemies soon get control over the evil-hearted king who is so deluded as to try legal cases unjustly',³² or indiscriminate in imposing punishment: '[P]unishment has great brilliant energy, and for those who are undisciplined, it is hard to maintain; if a king swerves from justice it strikes him down, together with his relatives, and then his fort, his territory and the whole world.'³³

That this vision of an honest and impartial ruler who presides over a just administrative and judicial machinery was a fairly influential and pervasive one is suggested by the fact that the two Sanskrit epics—the *Rāmāyaṇa* and the *Mahābhārata*—repeat these imageries in almost identical terms. In the *Rāmāyaṇa*, when Bharata went to the forest to

persuade Rāma to come back and reclaim his rightful throne, Rāma declined but expressed his concern for the welfare of Ayodhyā by asking Bharata a set of questions. Here is what Rāma had asked, among others:

No noble or honest man is ever charged with theft, I hope, without being interrogated by men learned in the sacred texts, and if innocent, is never imprisoned out of greed. And when a thief, either caught in the act or discovered with the stolen property, has been seized and interrogated, I hope he is never set free, bull among men, out of greed for money. I trust your wise ministers, Rāghava, render judgement impartially when a rich man and a poor man are engaged in a suit.³⁴

In the *Mahābhārata*, when the Pāṇḍavas were settled in the resplendent assembly hall built by Maya-dānava in their capital Indraprastha, the celestial seer Nārada paid them a visit and instructed Yudhiṣṭhira by asking leading questions on state policy. After making initial enquiries such as ‘Does your mind delight in the Law?’ or ‘You do not hurt the Law for profit?’ Nārada asked:

Do you examine the court cases fully and act like a Yama to those who must be punished and those who must be honored, whether you like them or not? You do not, ever, from pride, confusion, or whim, dismiss, O lord of the people, litigants who have come to you? And do you ever, from greed or confusion, withhold a livelihood from those who confidently or loyally seek shelter with you?... Is no pure-spirited honorable man falsely jailed for theft by greedy persons who have neither knowledge of the textbooks nor competence, and put to death? Or is a thief, who has been questioned and apprehended and seen by witnesses to commit a crime with his tools, set free for a bribe, bull among men? Or do your ministers corrupted by bribes see matters falsely if something arises between a wealthy man and a poor man, Bharata?³⁵

This striking similarity between the two epic passages and the general tenor the Smṛti literature cannot be entirely accidental.

Despite the widespread and somewhat obsessive pre-occupation with transparency in judicial procedure, the ideal must have been at least occasionally violated, for the law-givers themselves have laid down the strategy to deal with such delicate situations where one of the litigants in a suit is a rich and powerful person. Medhātithi, one of the major commentators of Manu, presents the following scenario:

Let us suppose, says he, that someone has commenced a suit against a client of the prime minister and that it appears to the trial court that he might well win his case. If the minister's protégé were not held to lose the case or were not compelled to comply with the judgment, the administration of justice would be faulty and the king's subjects would not fail to accuse the king of either partiality or weakness. On the other hand, if the minister's dependant were cast, that would grieve his patron and could provoke unrest in its turn. Under such conditions, if those who are in charge of the hearing are really *mantra-jña* (wise), they would adjourn the decision on some pretext and would inform the king of the situation, with the suggestion that he should urge the parties to come to some compromise. Thereupon, the king would tell the prime minister that his man was on the point of losing his case, that a respite has been arranged simply to save his (the minister's) prestige, and that it was up to him to arrange matters so that the protégé would escape judgment being given against him. The prime minister would of course follow the king's advice, and thus both *artha* and *dharma* would be satisfied (Lingat 1988: 253–54).³⁶

Needless to say that this dubious way of reconciling *dharma* and *artha* was not what Rāma and Nārada had in mind when they asked their instructive questions.

IV

This is clearly an instance of aberration of the ideal. However, there are far greater problems with the ideal itself. Denial of certain fundamental rights, exclusion from access to basic opportunities, and differential treatment in awarding rewards and punishments to members of the same society for merely belonging to one caste group or another make the ideal inherently discriminatory and thus highly questionable. If the first principle of a just society is that 'All human beings are born free and equal in dignity and rights',³⁷ then the Brahmanical society can hardly be described as one such. And yet, the Brahmanical pre-occupation with justice does not seem to be mere rhetoric. It reflects a genuine concern for a uniform and consistent application of the legal provisions, except in cases where a compromise would be required to meet the demands of expediency. What Brahmanism does not allow is the space to question the founding principle of its social organisation. The difference in natural endowments and the resulting inequality—indeed, the hierarchy itself—is divinely ordained from the moment of origin of the creation of the human race and is therefore beyond the purview of human intervention. Some people are simply not entitled.

This theme has been very dramatically highlighted in the many epic-Puranic myths on the encounters between the gods and the demons. Powerful demons often staked their claim to heaven, some attempting to occupy it by force, others using the more conventional and non-violent method of asceticism and good behaviour. Both invariably failed, because the Brahmanical system does not permit it. In Brahmanical cosmogony, the relationship between gods and demons is a complex one. Although they exist in polar opposition, they are also in a sense complementary to one another. But permanent residence in heaven is a privilege

exclusive to the gods; the demons are not entitled. The most oft-repeated example of such an encounter is the myth of the churning of the ocean of milk, which produced Lakṣmī, the goddess of fortune, the devastating poison *kālakūṭa* and the elixir of life, *amṛta*.³⁸ Although the gods and the demons were equal partners in the enterprise and, therefore, should have had an equal share in the treasure, when the coveted nectar emerged from the depths of the ocean, the gods decided to have it all. In order to distract the demons, Viṣṇu employed his *māyā* (magical power of illusion) to take the form of a charming maiden, Mohini (literally beguiling), and retrieved the nectar from the demons. Those who opposed Viṣṇu were destroyed by him. A variant of the story tell us that Viṣṇu distributed nectar to the gods and deluded the demons into forgetting it. The texts—the two epics, the *Viṣṇu*, the *Matsya*, and the *Bhāgavata Purāṇas*—do not even consider it necessary to rationalise and justify this blatant act of betrayal on the part of the gods. According to the divine scheme of things, the demons cannot be immortal, and that is sufficient reason why they must be deprived of what normally should have been their due.

But let me cite an even starker example of injustice. The demon Ghora was devoted to Viṣṇu and Brahmanical ways of life. When he hoped to attain heaven, the gods sent the sage Nārada to corrupt him, so that Ghora was displaced from the path of *dharma*. Nārada told Ghora, ‘You should learn to take pleasure in the enjoyment of property and women. Kingship and possession of young women are the fruits of worshipping the gods. Trilocana went to the pine forest to play around (*prakṛīḍāya*) with the daughter of sage and Viṣṇu keeps Lakṣmī...close to his breast.’ Ghora replied, ‘What you said is not in accordance with *dharma*. Abstinence is auspicious and rewarding. Those who are intemperate and acquisitive of wealth end up in hell, while those who conquer

their senses become respectful and humble. Sensuousness only feeds on itself.' When Nārada realised that Ghora was being guided by his conscience, he indulged in guile recommended by *dharma* (*dharmavyāja*) and said,

Kingdom leads to acquisition of wealth. Enjoy your kingdom, your wife and other women. There is no harm in consuming meat and wine or indulging in copulation, if you feel so inclined. If a man enjoys one hundred women, he acquires a fortune; if he enjoys a thousand women, he is considered blessed; if he enjoys a hundred thousand women, he achieves equivalence with Kāmadeva; and if he enjoys ten million women, he achieves liberation. One who always revels in the company of teenage girls adorned with firm breasts, achieves immortality. Life, semen, vitality and power are all bestowed by women. It is through the grace of beautiful women that men rejoice and succeed in every venture. This is the way to fulfill one's obligation to *dharma*, *artha* and *kāma*. There lives a daughter of the mountain in the Vindhya hills (i.e., Vindhyaśinī, a form of the warrior goddess Durgā), who is eighteen years of age and is fit for your wealth and home. Go and take possession of her.

Being dissuaded by Nārada, Ghora lost respect for the *Vedas* and stopped worshipping the brāhmaṇas. Then Candramati, the virtuous wife of Ghora, became anxious about his well-being and told him, 'One should never lust for unknown or unwilling women. One who accepts food and drink, seat and bed, and mount and women without discretion, becomes diseased and falls prey to death. I am saying this for the safety of your kingdom and your own good', Nārada felt that these wise words might bring Ghora back to his senses. Therefore, in order to delude Ghora, he began to chant the *bhairavā padamālā* (a Tantric formula, which is quoted in full). As a result, Ghora, his ministers, priests and the army came under its spell and deviated from the path of *dharma*. The queen Candramati became devoted

to the *pāṣaṇḍas* and the *digamvaras* (as the Buddhists and the Jains) and began to abuse Śiva and Viṣṇu. She lost interest in preparing for the performance of sacrifices and lost respect for the Mātṛs, the brāhmaṇas and cows. Ghora and all his associates were brought to their ruin. Encouraged by Nārada, he proceeded to take the goddess of the Vindhya by force and was killed in battle.³⁹

Ghora entertained an impossible hope of attaining heaven, and this initial act of transgression eventually led to his doom. This also justified the devious means adopted by Nārada to achieve his goal and helped to overcome the ethical problem of a virtuous person being deliberately misled into self-destruction. On the other hand, the means adopted by Ghora to realise his ambition, however desirable, was of no avail because his original lack of entitlement made him irreversibly disqualified.

V

Despite the claim of divine origin and unconditional brahmanical support, it required a strong theoretical justification for such a severe system to function effectively over a long period of time. The system also needed to hold out some promise of improvement of their present condition in the future for the lower orders to bear their current deprivations with fortitude and hope. Both these purposes were served by the formulation of the twin concepts of *karman* (action) and transmigration of the soul.

The idea that each living being has a soul and that, unlike the body, it is indestructible, first appeared in the later Vedic literature. In the *Āraṇyakas*, and more importantly in the *Upaniṣads*, the fundamentals of the complex of ideas associated with soul were laid down. The *Taittirīya Āraṇyaka* proclaims that human beings are subject to repeated deaths;

their actions eventually devour them.⁴⁰ The *Kaṭha Upaniṣad* more explicitly affirms that human beings die and are reborn like corn. They may be born again as human beings or as lower forms of life depending on their actions committed in the previous birth. Rebirth is inevitable for those who die without knowing the Brahman (the ultimate reality).⁴¹

The logical implications of these ideas for the society were first clearly articulated in the *Mahābhārata*. It states: 'When a śūdra serves the brāhmaṇa, the kṣatriya and the vaiśya properly and to their satisfaction, his suffering comes to an end with his death and he enjoys residence in heaven.' And again: 'The soul, traveling from one body to another, is ultimately born as a brāhmaṇa.'⁴² Predictably, Manu presents a long discourse on action and its consequence through various births.⁴³ *Karman* and transmigration of soul are two of the most enduring concepts of brahmanism, which have explained and provided justification to the caste system for two millennia.

However, as an explanatory device this scheme falls short on several counts. To begin with, it is not clear whether suffering precedes action or vice versa (Bhattacharji 1994: 68–69). Besides, in this formulation the relationship between *karman* and fate (*niyati/daiva*) is not apparent. It has been repeatedly stated, especially in such philosophical texts as *Yogavāsiṣṭha*, that fate is the supreme power, which decides human destiny. More accessible mythological texts, such as the *Purāṇas*, reiterate *ad infinitum* that fate is so powerful that it actually determines *karman* (Bhattacharji 1994: 75, 85–86). Interestingly, even medical texts such as the *Carakasamhitā*, which attempts to explain diseases primarily in terms of material causes, is made to admit that a disease can be cured only when both the physical imbalance and the negative residue of action are simultaneously neutralised (Bhattacharji 1994: 80–81). But, fate should have had no

place at all in this scheme of things, for the doctrine of *karman* is founded on the indisputable logic that appropriate consequences must necessarily follow action. However, since the knowledge of actions committed in the previous birth is withheld in the next birth, this causal linkage can never be clearly established (Bhattacharji 1978: 354). It is through this breach in the argument that fate entered and assumed its pre-eminent place in this explanatory scheme. Being unpredictable, fate is anything but just.

The theory, however, leaves just a little room for human initiative, for it claims that the machinations of fate can be partially thwarted by the exercise of free-will or *puruṣakāra*, though its effect is negligible. On the contrary, since it is often unambiguously stated that the actions of one's previous birth cannot be undone in the next, it follows that human beings need not assume responsibility of their actions. This turns them into immoral beings (Bhattacharji 1994: 119–20).

Thus, this elaborate explanation could not really allay the fears—and possible resentment—of the lower castes, for the promise of redemption it had held out to them was so elusive and tenuous, and it was set in such a remote and unspecified future, that it very nearly lost all practical value. Brahmanism, therefore, had to think of a more realistic alternative.

Let us look at the successive stages in the evolution of the creation myth in Brahmanical thought, in search of the solution that Brahmanism finally offered to this problem. I have already referred to the original myth of the sacrifice of the cosmic *Puruṣa*, mentioned in the *Rg-Veda*, that brought forth the human race, classified into four *varṇas* and arranged into a hierarchy in terms of their relative purity. This ritual scheme of the *Saṁhitās* gave way to a philosophical one in the *Upaniṣads*. The *Bṛhadāraṇyaka*, one of the most important among the principal *Upaniṣads*, says that in the beginning Brahman was alone. It knew itself (*ātman*) only as 'I (*aḥam*)

am Brahman'. From this, it became everything. In the beginning this (world) was just the self, one only. He desired, 'would that I had a wife, then I may have offspring. Would that I had wealth, then I would perform rites.' This much indeed is the range of desire.⁴⁴ It is this sense of I (*ahamkāra*) and the desire (*kāma*) to possess objects that would be mine that brought about the phenomenal world. Madeleine Biardeau describes this vision of creation by a God who is a *yogin*, as the renouncer's model (Biardeau 1989: 95–96).

Curiously, a few verses preceding the statement cited above, the *Bṛhadāraṇyaka* declared:

Verily, in the beginning this (world) was *Brahman*, one only. That, being one, did not flourish. He created further an excellent form, the *Kṣatra* power, even those who are *Kṣatras* (rulers) among the gods, Indra, Varuna, Soma (Moon), Rudra, Parjanya, Yama, Mṛtyu (Death), Isāna. Therefore there is nothing higher than *Kṣatra*. Therefore at the Rājasūya sacrifice, the Brāhmaṇa sits below the Kṣatriya. On Kṣatrahood alone does he confer this honour. But the Brāhmaṇa is nevertheless the source of *Kṣatra*. Therefore, even if the king attains supremacy at the end of it, he resorts to Brāhmaṇa as his source... Yet he did not flourish. He created the *Viś* (the commonalty), these classes of gods who are designated in groups, the Vasus, Rudras, Ādityas, Viśvadevas and Maruts. He did not still flourish. He created the Śūdra order, as Pūṣan. Verily, this (earth) is Pūṣan (the nourisher), for she nourishes everything that is. Yet he did not flourish. He created further an excellent form, justice. This is the power of the Kṣatriya class, namely, justice. Therefore there is nothing higher than justice. So a weak man hopes (to defeat) a strong many by means of justice as one does through a king.⁴⁵

It seems as if the *varṇas* appeared even before the actual process of creation began with the proliferation of the self, as described in the verse mentioned earlier. More significantly,

dharma, rendered as justice by Radhakrishnan, followed immediately after as a safeguard to the system, restraining the coercive authority and protecting the weak. Arvind Sharma reads this passage as an example of assertion of ‘human rights’ to contain the arbitrary exercise of power by the ‘state’ (Sharma 2003: 62). However, the more likely interpretation seems to be that, despite the explicit reference to the relative strength and weakness of men, it is an early statement anticipating the later concept of *svadharma* where *dharma* protects if only one keeps to one’s *varṇa* duties. Given the larger context, it also suggests an element of unresolved tension between the brāhmaṇas and the kṣatriyas.

In the next phase of the cosmogonic narrative, predominantly in the *Purāṇas*, it is Brahmā—a deity endowed with *rājasika guṇa* or the quality to act—who initiates the process by ‘wishing to create’. Brahmā begins by creating ignorance. He eventually creates man, the only creature that satisfies him because, suffering pain caused by ignorance, he seeks liberation. This desire for liberation impels men to act, which is the performance of *dharma* (Biardeau 1989: 98–99).

In the *Purāṇas*, the term *dharma* increasingly came to signify proper conduct. The *Viṣṇu Purāṇa*, one of the most important of the early *Purāṇas*, expresses its anxiety about the need to preserve proper conduct in its description of the degenerate Kali age—the last period in a cosmic time cycle—when the *varṇas* will give up the performance of duties assigned to them by the *Dharmaśāstras*, and women will become independent and self-willed. Yet, the brāhmaṇa seer Vyāsa, the ‘author’ of the *Purāṇa*, proclaims that *Kaliyuga* is the most blessed age, for liberation from the endless cycle of births and deaths (*mokṣa*) can now be most easily obtained by simply invoking the name of god. ‘Blessed are the sūdras’, he says, ‘blessed too are women’, because they also can attain liberation—a concession that the Brahmanical orthodoxy had denied them so far—by merely adhering to their *svadharma*, their caste

duties. And all these are encased within the frame of *bhakti* or unqualified devotion to god, which is the highest and most efficacious of all *dharma*s, for it inheres the religious and social duties of all description (Biardeau 1989: 104–05). This provision also reserves the possibility of liberation of women and śūdras for an unknowable future, but it considerably shortens the waiting period.

Thus, one can see that some of the most restrictive features of the caste system were considerably qualified in the later reformulations. For instance, the possibility of social mobility, prohibited in this life, was opened up in the next, when a śūdra might be born as a brāhmaṇa. Similarly, it was proposed that one's caste status, inherited by birth in this life could change in the next depending on the extent of one's current adherence to *dharma*. Thus, in principle, ascription was replaced by merit. Finally, the rigidity of caste hierarchy and the resulting social separateness was theoretically overcome by the concept of *mokṣa* or liberation. It was sought to be achieved either through the acquisition of knowledge that the self (*ātman*) and the ultimate reality (Brahman) are identical and that all differentiated identities are an illusion due to ignorance, or through *bhakti* devotionism which emphasised the availability of liberation to all by ensuring the devotee's permanent companionship with god in his celestial residence or a final merger with god eliminating all possibility of a rebirth.⁴⁶

From the above discussion, two conclusions are inescapable. First, in Brahmanical cosmogonies, no creation is complete without the creation of the *varṇas*, and second, however unequal the social relations and the distribution of the privileges may be, Brahmanism had to create at least one platform where, theoretically, all members, irrespective of caste and gender distinctions, are equal. It chose attainment of *mokṣa*, the ultimate goal of human existence, as that platform of equal opportunity.

VI

However desirable this final goal may be, and however steadfastly one may pursue it, its achievement remains unverifiable. Just as one cannot learn about one's previous birth, one does not know whether one will be born again. This equality of opportunity is therefore elusive. But one has to contend with the very hard reality of inequality and injustice in actual life and must find ways and means to cope with it.

Those anthropologists who have worked on *karman* in popular Hinduism suggest that most Hindus do not accept literally the worldviews of textual Hinduism. They found that the doctrine of *karman* is widely and deeply diffused in Hindu culture, but it is only an element in a wider blend of religious ideas, some of which even contradict each other. Oscar Lewis, for instance, reported that some of his informants were sceptical about the theory of rewards and punishments for actions in past lives, insisting that the karmic effect of action would be experienced in this life itself. More specifically, many low caste people reject karmic rationalisations of their caste status. The community of north Indian sweepers, whom Pauline Kolenda had studied, would not concede that their low status had anything to do with sins committed in previous lives. Instead, they explained their situation in terms of origin myths that portrayed the sweepers as having fallen, as a group, from a formerly high status because they were victimised and tricked by others in the remote past. Similarly, the informants of Ursula Sharma from Himachal Pradesh always used the doctrine of *karman* to account for misfortune in abstract terms, but attributed specific misfortunes to the malice of a deity or a personalised agent (Babb 1983: 163–81). Thus, the lower castes accept the theory of transmigration of soul, but refuse to assume

direct responsibility for their current situation. In these circumstances, the most convenient and theoretically compatible explanation is the caprice of a powerful being, who dupes or bullies his helpless victims, usually for perverse pleasure and occasionally for personal profit.

In folktales, which contain popular wisdom and provide insight into the strategies employed by the deprived people for survival, this powerful being is often represented as Fate. In an inversion of the reality they experience, in these stories it is the powerful being who is tricked into submission. Here are two examples of the proverbial weapon of the weak:

Once Rāvaṇa, king of Laṅkā, while taking a stroll by the seaside, met Bidhātā (Fate), engaged in determining the daily measure of food for each man. The proud king asked him to withhold his measure for the day, wanting to test the power of Fate. Bidhātā agreed and Rāvaṇa went away satisfied. On his way home, he bought a large fish head at the local market and sent it to the royal kitchen. When the king went in for lunch, the cooked fish head was there waiting for him. When he saw the head he burst out laughing, for how could such a creature as Bidhātā prevent him from having what he wanted to have? Mandodarī, the queen, was in her period, and because of her unclean state, her sister-in-law—the wife of Bibhiṣaṇa had prepared the meal. When he laughed out loud, Mandodarī thought that Rāvaṇa was reacting to the poorly cooked meal and rebuked him for not being kind to the makeshift cook. The king had spent a busy morning and was in no mood to withstand his wife's carping. He got up from his seat right away, out of disgust, and left the meal untouched. When his temper cooled a little, however, he realised the significance of what had occurred. He had missed his day's measure (Beck et al. 1987: 240–1).

In this story from Assam, Fate triumphs over Rāvaṇa, but from the point of view of the folk narrator there is not much

to choose between the two imposing and unpredictable figures. Rather, the king has been reduced to the status of a common man by the operation of Fate, and some kind of divine justice has been done.

In the following story from Bengal, it is Bidhātā's turn to be tricked:

A poor brāhmaṇa was fated never to eat to his heart's content. One day he was invited to dinner by the king and was at last enjoying himself when Bidhātā (Fate) took the form of a golden frog, and in order to stop the brāhmaṇa from eating, tumbled into his food. The brāhmaṇa was too busy to notice anything. He ate up his rice, frog and all. As a result, there was a terrible commotion in the three worlds. Without Bidhātā to regulate matters, the universe was on the verge of a collapse. When the brāhmaṇa realised the significance of what he had inadvertently done, he kept his mouth tightly shut and even had a good smoke to add to the discomfort of Bidhātā, trapped in his stomach. Finally, at the intervention of Śiva, the brāhmaṇa agreed to release Bidhātā, but on condition that he will be taken to heaven. His term was accepted (Ramanujan 1993: 20–23).

There is little to comment on this story, except that here the poor brāhmaṇa stands for the common man and, on behalf of him, defeats the inexorable Fate, even if for once. In both cases, however, it is the hierarchy of power that has been subverted. It is also noticeable that in folktales, a person's destiny is only rarely determined by the morality of one's action in past lives.

The popular responses, however, underscore the fact that they are the product of a social system and a pattern of thought structured by Brahmanism. Neither the Brahmanical concessions, which have little operational value, nor the subversive tales, which attempt to outwit the system through

individual initiative, question the basis or make any perceptible difference to the social order. Only the radical *bhakti* movements of the medieval period fundamentally critiqued the principle of Brahmanical social organisation from within; but these were eventually absorbed by the system itself. The concept of social justice in India has undergone endless revisions, but seldom without reference to caste. The principle of natural inequality, devised by the brāhmaṇas, continues to define the system till today.

NOTES

1. For a discussion of the features most commonly associated with caste, see Dutt (1931: 3) and Klass (2004: 33–4).
2. *The Laws of Manu*, I.87–91, Doniger (1991).
3. *The Hymns of R̥gveda*, X.90, Griffith (1986).
4. ‘Then, so that the world and people would prosper and increase, from the mouth he created the priest, from his arms the ruler, from his thighs the commoner, and from his feet the servant’ *The Laws of Manu*, I.31, Doniger (1991).
5. *Ibid.*, VIII.41.
6. *The Dharmasūtra of Gautama*, VIII.12–3, Olivelle (1999).
7. *The Dharmasūtra of Āpastamba*, II.27.17, Olivelle (*Ibid.*).
8. *The Laws of Manu*, VIII.379–81, Doniger (1991).
9. Olivelle (1999, I.24.1.1–3).
10. *Ibid.*, I.24.6–22.
11. *The Dharmasūtra of Baudhāyana*, I.19.6, Olivelle (1999).
12. Doniger (1991, VIII.365–6).
13. *Ibid.*, VIII.279–82.
14. *Ibid.*, VIII.267.276–7.
15. *The Dharmasūtra of Gautama*, XII.15–6, Olivelle (1999).
16. *The Laws of Manu*, VIII.338, Doniger (1991).
17. *Ibid.*, VIII.15. Manu goes on to suggest that justice should be preserved at all cost, for it is the one friend who follows even after death, while everything else is lost along with the body (*ibid.*, VIII.17).
18. *Ibid.*, VII.27.
19. *Yājñavalalkya-smṛti*, II.1, cited in Lingat (1998: 250).
20. *Nārada-smṛti*, I.34, cited in *ibid.*: 250.

21. *Bṛhaspati-smṛti*, II.12, cited in *ibid.*: 250.
22. *Bṛhaspati-smṛti*, I.118–9, cited in *ibid.*: 249.
23. *The Laws of Manu*, VII.306, Doniger (1991).
24. *The Kauṭīlīya Arthaśāstra*, I.19.33, Kangle (2000).
25. *The Laws of Manu*, VII.14, Doniger (1991). Manu (*ibid.*: VII.17–8) adds, ‘The Rod is the king and the man, he is the inflictor and he is the chastiser,...wise men know that justice is the Rod’.
26. *Ibid.*: VIII.19.
27. *The Kauṭīlīya Arthaśāstra*, I.4.5–15, Kangle (2000).
28. *The Dharmasūtra of Āpastamba*, II.10.12–16.11.1, Olivelle (1999).
29. *The Dharmasūtra of Gautama*, XII.48 (*ibid.*).
30. *The Dharmasūtra of Vasiṣṭha*, XIX.40–2 (*ibid.*).
31. *The Dharmasūtra of Āpastamba*, II.29.13 (*ibid.*).
32. *The Laws of Manu*, VIII.174, Doniger (1991).
33. *Ibid.*, VII.28–9. The fact that Manu keeps on issuing such warnings throughout the text reveals his very real anxiety about the disastrous consequences of misrule. Ray (1996: 29–30) has rightly pointed out that the *Jātakas* are more varied in their treatment of unjust kings and even recommend public action against them, which the Brahmanical lawgivers do not. However, one must remember that the *Jātakas*, being illustrative stories with morals, have a much wider scope in dealing with the fate of an unjust ruler. They are also not bound by the conventions of didactic texts.
34. The *Rāmāyaṇa* of Vālmīki, Vol. II, Ayodhyākāṇḍa, 94.47–9, Pollock (1986).
35. *The Mahābhārata*, Vol. II, II.(20)5.5–10, 75–85, 90–100, van Buitenen (1975).
36. For a detailed discussion of such and other instances of corruption in early India, see Chakrabarti (1998).
37. Article 1 of the Universal Declaration of Human Rights of the United Nations Organization.
38. For a detailed analysis of this myth, see Long (1982).
39. *Devīpurāṇam*, summary of chapters 8, 9, 13 and 20, Tarkaratna and Nyayatirtha (1988).
40. *Taittirīya Āranyaka*, I.8.6, cited in Bhattacharjī (1994: 50). The discussion on *karman* and transmigration of soul that follows is primarily based on Bhattacharjī. The book was originally published in Bengali and was subsequently translated into English as *Fatalism in Ancient India*, Baul Man, Calcutta (1995). Citations in this essay are from the Bengali original.
41. *Kaṭha Upaniṣad*, I.1.6; III.2.2; II.3.4 (*ibid.*: 50).

42. *Mahābhārata*, V.40.26; XII.28.5, (ibid.: 52).
43. *The Laws of Manu*, XII.1–82, Doniger (1991).
44. *Brhadāranyaka Upaniṣhad*, I.4.10, 17, Radhakrishnan (1994).
45. Ibid.: I.4.11–4.
46. For a detailed discussion of the relationship between the caste system and Hindu eschatology, see Milner Jr. (1994: 205–09).

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2

Justice and Political Authority in Medieval Indian Islam

NAJAF HAIDER*

In medieval Indo-Islamic literature, the word justice (*'adl*) was generally used to express a high ideal of righteousness. But more often, the literature was concerned with the practical determination of disputes either within the department of justice (*dar ul qaza*) or the imperial court of grievances (*diwan ul mazalim*) (Hasan 1936; Ahmad 1961; Qureshi 1971; Bilgrami 1984). The only work that deals with the concept of justice in some detail is the *Fatawa i Jahandari*, and the present essay is based on an analysis of the information contained in this text. Since it deals with justice in the context of the ideas and political institutions prevalent in the medieval Islamic world, it is important to preface the discussion with an overview of the concepts of justice and political authority prevalent in the Central Islamic Lands (the Fertile Crescent, Iran and Central Asia).

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THE CONCEPT OF JUSTICE IN CLASSICAL ISLAM

Major schools of Islamic religious thought held the belief that the purpose of the creation of humankind was the worship of God and the establishment of a just social order. On the Day of Judgement, human beings were to be judged on the basis of individual piety (*taqwa*) and public dealings. The Islamic law similarly conceptualised its provisions in terms of rituals (*ibadat*) and public affairs (*mu'amalat*). In a sense, the twin objectives of creation were interlinked. An important aspect of piety was the recognition of divine virtues which helped the devotee to comprehend the nature of divinity. Justice (*'adl*) was one of those rare divine attributes that God was willing to share with his creatures in their individual conduct as well as the realisation of a just social order. Allah, therefore, was not only just (*adil*) but also the source of justice on earth. This view was communicated to the believers through revelations received by Muhammad—as the prophet—most of which were assembled and recorded after his death in the form of a book, the Qurān (Rippin 2001).

In the Qurān's numerous references to justice, the term is neither defined nor explained. It appears either as a course of action which was right, fair, straight forward (the literal meaning of *'adl* in classical Arabic), balanced and impartial, or in binary opposition to oppression (*zulm* or *jawr*), wickedness and lust (*huwa*). Justice is a virtue which God enjoins upon his prophets, notably Muhammad, to inculcate and exercise in their dealings with the people ('judge with justice'), both believers and non-believers. The believers are specifically exhorted to do justice since it is the equivalent of piety (Qurān: 4:58, 135; 5:8; 6:152; 7:28-29; 16:90; 17:35; 33:72; 38:26; 42:15; 49:9; 57:25; 91:8).¹

When Islam began to expand and the need was felt to prepare specific guidelines for the believers to model their

lives in accordance with the ideals of the religion, the Qurānic exegesis combined with another source, the prophet's sayings and doings ('traditions' or *hadith*) and two methods—analological reasoning (*qiyas*) and consensus (*ijma*)—to constitute the four principles of Islamic jurisprudence (*usul al fiqh*). The bulk of the Islamic law (*sharia*) was codified in this manner by the turn of the 9th century and was held to constitute, by defining and delineating concepts, rituals and practices, the most authoritative source of guidelines for Muslims (Goldziher 1981; Schacht 1964). While preparing, reading and commenting upon the *corpus juris*, the jurists and other theologians (*ulama*) agreed on the divine nature of justice and retained the emphasis placed on its establishment by the Qurān (Khadduri 1984). Treating justice as an abstract maxim, they defined it as an objective and universal moral truth which is engrained in the human soul as a permanent source of guidance, being an abstraction from the human nature of everything that is considered righteous by Islam, independent of particular spiritual beliefs and actions. It is a gift of God to the entire humanity by which human beings are expected to develop their ability to judge their actions and to choose what would lead them to the creation of a just public order. Since this required intense spiritual and moral development, not an easy task in view of the weaknesses inherent in human nature, the structural disposition in the soul is reinforced, from time to time, with scriptural and prophetic guidance. Insofar as human beings are free agents, they could decide not to accept the second form of guidance, although their innate disposition would still urge them to follow the right path. This was also a way to wriggle out of the dilemma of free will and pre-destination posed by the equivocal verses of the Qurān on the omnipotence and justice of God (Sachedina 1988; Watt 1948).

POLITICAL AUTHORITY AND JUSTICE IN MEDIEVAL ISLAM

One specific area in which justice figured prominently in the writings of the *ulama* as well as the lay scholars is political authority. The creation of a community of believers (*umma*), and a state to protect its interest, was the most important contribution of Muhammad to a society where tribal solidarity (*asabiya*) was the basis of social organisation and statelessness was the political norm. If Allah was central to the faith of Islam, *umma* was central to its organisation (Donner 1981). After the death of Muhammad, who derived his political authority from his religious position, the issue of the leadership of the community became controversial. The Qurān provided guidance to the extent of urging the believers to obey, after God and His messenger, ‘one who is authority (*ulil amr*) amongst you’ [4:59]. The first four caliphs (632–661 AD) followed different paths to become leaders of the *umma* and built no institutionalised framework for the exercise of political power. They, however, emphasised the primacy of justice in state actions and in the case of the fourth caliph, and the first Shiite Imam, Ali, justice became the most important qualification for political authority (Madelung 1997; Sachedina 1988).

The transformation of the Caliphate into a monarchical institution took place under the Umayyads (661–750 AD), collaterals of a family which ruled the Central Islamic Lands almost for a century. The Umayyads derived their authority and legitimacy from a series of political actions guided by the expedients of statecraft, united Arabism, protection of the common interest of the *umma*, and the loyalty they commanded over Syrian troops and tribal chiefs (Shaban 1971; Hawting 1986). The Islamic state stood now as a more mundane imperial power, no longer directly based on religion. The caliphs enjoyed greater freedom of action in the evolution of government and the framing of legislations,

borrowing substantially from the Byzantine and Sasanian Empires (Gibb 1962; Crone and Hinds 1986; Hodgson 1974). For their success in imperialising the Arab-Islamic polity, the Umayyads had to pay a price and were overthrown in the Abbasid Revolution (750 AD), led by disgruntled Arabs and Iranians who appealed to the piety, justice and equality of all believers (Sharon 1983). By critiquing the Umayyad rule and legitimising the Abbasid, the opposition movement raised a variety of issues concerning the nature of political authority and justice in Islam. The discussion of these issues reached a critical stage in the 10th and 11th centuries with a precipitate decline in the power of the Abbasid caliphate and the emergence of a somewhat secular political institution—the Sultanate—in the eastern half of Islamdom. The Sultanates were differentiated political bodies without any intrinsic religious character, though they were officially loyal to Islam and committed to its defence (Lapidus 1975).

In these historical circumstances, the concepts of political authority and justice became the focus of attention both in the writings of Islamic scholars and the 'Islamic Mirrors for Princes'. A branch of Persian *belles lettres* influenced by ancient Iranian manuals on court etiquette, the Islamic Mirrors, were normative texts on statecraft concerned with the problems of religion and government, the establishment of a unified administration, and definition of the power and authority of the ruler. Together, the two sets of writings developed ideas akin to political thought, that is, the study of the exercise of power, who should exercise it and to what extent. They did not enquire too much into why states exist (that question was already settled), but what they should try to achieve.

In both sets of writings, justice (*ʿadl*) appears as an idea and an institutional process linked with the exercise of political power. The interface between the two sets of writings

is best exemplified by the *Nasihat ul Muluk* (Counsel for Kings), the work of an Iranian mystic-theologian, Ghazali (d. 1111 AD). In Ghazali, justice is that essential quality of a king which, in his actions, reflects the presence of knowledge and belief in his heart. The two (belief and action) together constitute the right faith. As a concept, it means that the king 'should treat people in a way in which, if you were a subject and another were Sultan, you would deem right that you yourself be treated' (Ghazali 1971). Ghazali provides an example of complete impartiality in giving judgement and the equitable treatment of people, although the notion itself was not entirely new. What is perhaps novel in Ghazali, as compared to his predecessors, is that in his exposition, Islamic ethics combine with expediency to demand the practice of justice. Referring to the famous doctrine of the circle of power, Ghazali argues that the Persian kings made efforts to keep the world 'prosperous because they knew that the greater the material prosperity, the more extensive their dominions and the more numerous their subjects. They knew the sages had rightly said "religion depends upon kingship, kingship upon the army, the army on wealth, wealth on material prosperity and material prosperity on justice"' (Ghazali 1971; Lambton 1980).

For the Seljuq vizier, Nizam ul Mulk Tusi, a contemporary of Ghazali, justice, rather than right religion, is the basis of kingship which, in the personal conduct of the ruler, means the observation in all things of the 'mean' (*i'tidal*). Tusi quotes the statement of 'Great men' that 'a kingdom may last while there is irreligion, but it will not endure when there is oppression' (Tusi 2002). Although there is very little advancement towards the amplification of the concept of justice, these writings indicate how Islamic thought was coming to terms with the separation of religion and politics and looking towards non-Islamic ideas and institutions of governance for inspiration.

POLITICAL AUTHORITY AND JUSTICE IN MEDIEVAL INDIAN ISLAM

The *Fatawa i Jahandari* (Opinions on Statecraft) of Ziyauddin Barani, a theologian, historian and boon-companion of the Delhi Sultan, Muhammad Tughlaq (r. 1324–51 AD), belongs to the genre of Mirrors for Princes. Written for the purpose of advising rulers on how to maintain a stable political regime and run state affairs in accordance with the ideals of Islam (*sharia*) as much as possible, it is organised in the form of advices (*nasihat*) which Barani makes Mahmud of Ghazni deliver to his sons; a device which the author employs to communicate with his audience (Hardy 1957). Each piece of advice is concluded and illustrated with anecdotes (*hikayat*) drawn from the ‘history’ of Islam and ancient Iran.

Barani’s discussion of justice is premised on a curious paradox that although kingship is violative of the act of creation, it is necessary for religion and society. Barani echoes the traditional Muslim view that true Islam, pure and pristine, existed only during the period of Muhammad and his companions, the first four (rightly guided) caliphs. For this primordial religion, Barani uses the word *din i hanifi* or the religion of Abraham, implying that it was the synthesis and culmination of all religions that have preceded it. As time progressed, the world changed for the worse and humanity became more and more sinful. People became so disobedient that a ruler was needed to discipline and order them and make them conform to the will of God: ‘the world is full of wild and demon-like men and without the punitive power and majesty of kingship (*qahr o sitwat i padshahi*), it can never be set on the right path’ (Barani 1972: Advice IX).

Barani’s acceptance of the relevance of kingship comes with the firm conviction that the institution is un-Islamic. Citing a Qurānic verse [51:56], he argues that the object

of creation is the worship (*bandagi*) of God, whereas the necessary attributes of a king—pride, dignity, eminence and grandeur—are the opposites of those required for devotion and servitude and are, in fact, among the special attributes of God. It is sinful for humans to claim such attributes for themselves and such an action can only lead to ‘darkness’ [Advice V]. Thus, the mode of life and governance of a king remains in contrast with that of Muhammad and the four caliphs. Yet Barani admits that ‘if [later] caliphs and kings were to follow the Prophet’s traditions, they would not have been able to rule for a single day’ [Advice IX, and Supplement to the Book].

Hence, the big problem with Barani was to make sense of the deep difference between the high ideal of Islamic leadership and the reality of worldly kingship. The concept of justice gave him the opportunity to resolve the contradiction at the level of ideas and he devoted two out of the 24 chapters of his book to a discussion of this subject [Advices V and XIII]. Here Barani assumes the existence of a type of monarchy in which the king possesses an innate sense of justice (*adli i jibilli*) which enables him to dominate over his desires and accomplish the execution of justice in the most perfect manner. In the absence of justice, the imperial power (*qudrat i padshahi*) gets alloyed with carnal desires (*hawai i nafs*) and comforts of life (*talazzuzat o tan‘amat i duniya*), to become their captive (*maghlub*) and lose the ability to distinguish between right and wrong [Advice IV, V and XIII].

The Social Context of Innate Justice

The context for the discussion of justice is set with a general statement that although justice (*‘adl*) is religious in nature, the function it performs is social. The function of justice is to evaluate the merits of mutual affairs. For Barani, all social

exchanges (*muamalat i yak digar*), necessary for the survival of human beings, have the inevitability of bringing together people of differing qualities and orientations ('strong or weak, good or evil, Muslim or non-Muslim, learned or illiterate, ruler or subject'). Justice is the balance (*tarazu*) in which their dealings, good or bad, are weighed and their claims, rightful and wrongful, are ascertained. By evaluating the worth of all social actions, justice exposes (*mubarhan*) oppression, tyranny and violence, and makes reward and punishment worthy of acceptance and appreciation. Without justice, the difference between the property of one man and another (*ibahat*) ceases to exist, and no one is able to perform any transaction to acquire self-sufficiency (*khud-dari*) in their worldly affairs. The world plunges into anarchy and disorder (*harj wa marj*) and becomes less and less habitable. Once justice is restored, everyone devotes himself to his own craft (*hirfa*), profession (*pesha*) and trade (*kasb*), and the world becomes prosperous (*m'amur o abadan*).

It is noteworthy that in this scheme, justice ensures stability and general prosperity through the preservation of a hierarchical social order. In Barani's opinion, from the beginning of time (*azal*), higher and lowly qualities (*fazail o razail*) are embedded in the very depths of human nature and made to accompany their spirits (*hamrah i arwah*) till eternity. On the basis of the noble and base qualities of human beings, God determines their callings. On earth, they follow those very crafts (*san'at-ha*) they were inspired with, practice them generation after generation, and excel in them by ingenuity of mind and perspicacity (*jaudat i zihn wa tezi i khatir*). Since the diversity of functions is essential for the survival of society, it is imperative for human beings to differ from one another in their natural dispositions as well. Professional categories, therefore, collectively constitute definite social categories of high and low, through which the

human population could be understood and dealt with. Barani's imaginings of the ordering of social classes derive partly from Perso-Islamic notions of hierarchy (Habib 1999) and partly from his reading of the scripture. He quotes the famous Qurānic verse: 'The most noble (*akram*) among you in the sight of God is the most pious (*atqa*)' [49:13], to suggest that in the impure and impure born (*palid palidzada*), and the low and the low born (*kam asal kam aslazada*), there can be no piety (*itqa*). If piety is seen in a base-born *bazari*, then indeed the blood (*arq*) of his ancestors must have got mixed with noble blood [Advice XXI]. It is interesting that a verse which, in the opinion of medieval exegetes and modern commentators, implied moral objections to hierarchy and advocated egalitarianism was used by Barani to mean exactly the opposite.²

Justice in the economic sphere protects the social equilibrium by regulating profit and accumulation, and negating social mobility. 'Whenever excessive profit is seen in [selling at] high prices (*arzani*) and regrating (*ihlikar*), and not much profit remains in other crafts and professions, people, by a natural instinct, abandon their own profession. Soldiers take to agriculture, peasants adopt trading, men of noble birth (*ashraf*) become caravan merchants (*karwani*), and caravan merchants aspire for the posts of high state officials (*amiri*) and commanders (*sipahsalari*). As a result, employments do not remain according to the established order (*kar-ha barqarar namand*). But no disorder or division appears in the country from low prices' [Advice X]. The historical experience which informed Barani's reasoning was the market regulations of the Delhi Sultan, Alauddin Khalji (AD 1296–1316). But the critique of social mobility also navigated Barani's search for the explanation for his personal discomfiture, the denial of a suitable office till the age of 50 and dismissal at the death of his patron.

The settlement of secular affairs paves the way for the stability of religion. Barani argues that unless there is stability (*pa'idari*) in human affairs, there will be no stability in the practice of faith and injunctions of religion. It is the 'splendour of justice that enhances the glory of religion'. By pairing justice and religion as twins (*dugana az yak madar*), Barani dilutes the ancient Iranian and medieval Islamic notion of political authority ('kingship and religion are twins') and invests it with concrete social obligations [Advice V].

The Political Context of Innate Justice

With its significance for society and religion laid out, Barani makes it incumbent on the ruler (*amir*) to enforce justice among the people. 'The supreme object of kingship is to establish justice and equity (*daddahi wa insaf*)' [Advice IX]. The establishment of justice as the basis of governance and social order is not a function of practical wisdom and reason (*hikmat i amali wa asar i aqli*), but of power into the hands of a strong ruler (*amir i qawi*). Justice serves to protect the money, property, women and children of those who were weak and helpless only when the punitive power (*qahr*) of a king breaks the strong arm (*dast i qudrat*) of oppressors, rebels and those who do not believe in the Day of Judgement [infidels!], and eradicates injustice from the affairs of human beings. Given the ferocious and contumacious nature of human beings, this could be achieved only when the orders of the king command obedience in all parts of the kingdom [Advice V].

Much like any other inherited merit, innate justice is a quality which cannot be acquired. A person is 'created with an innate sense of justice (*adli i majbul*)', that is, 'he is born out of his mother's womb with this quality and from Eternity justice is made a companion of his soul (*hamrah i ruh*)'. But

even among those who possess an innate sense of justice, there are some who are unique. Barani breaks up the concept of innate justice into two types in order to reinforce the contrasting dichotomy he envisaged between the classical Islamic leadership and kingship. The first type of justice is to seek equality from an *elite* pedestal (*masawat talbi i khas*) between the two parties at suit (*mutakhasimain*). In this, anyone who holds the power of decision in his hands for any reason ('caliph, king, judge, governor, commander') treats the 'plaintiff and the defendant as equal to each other in speech and action, and does not allow any preference to any of the parties on any ground. At the time of passing the verdict, he is not moved by the sight of the strong or rich or persons of authority and power. No considerations of status, skill, virtue or greatness prevent him from dispensing [impartial] justice. Kinsman and stranger, wealthy and indigent, noble and commoner, appear one and the same before his eyes during the enforcement of justice. Gift, bribe, service and souvenir, big or small, are never accepted from any of the two parties. Favour or mediation has no esteem in his eyes, and he does not act to cover anyone or entertain recommendations. A person who contravenes the above-mentioned principles cannot be called just ('*adil*'), since justice is a reflection of these virtues'.

The signs (*alamat*) of the innate sense of justice are inscribed on the heart of the king. They are twenty in number and include solidarity with the oppressed, complete impartiality and detachment, a mind which is naturally inclined to seek truth and reject deception ('because the touch-stone for distinguishing the false from the true is present in his heart'), selflessness ('stern in enforcing the just claim of others, yet forgiving where he is personally concerned'), and the urge to establish absolute justice. The last holds considerable importance for Barani. He believes

that injustice anywhere is a threat to justice everywhere. In Advice V, he makes it obligatory for the king to inspire the functionaries of the state, and his kin and companions, who are his partners (*sharik*) and associates in the exercise of power and authority (*ulu'l-amri*) to do justice. Until justice pervades the entire state apparatus, it will not be possible for the common masses to be just in their affairs. And unless 'all paths lead to justice and it is in currency everywhere, the king will not be considered just by his people. If the king allows to perpetuate a single act of injustice committed by his subject then he is not just and equitable (*'adil wa munsiif*'). Barani urges the king to stretch the limits of his power and breach the praiseworthy maxim of 'observing moderation in all actions', enjoined by *sharia* and reason (*'aql*), to the extremes in the pursuit of absolute justice. The signs of the success of absolute justice are that the kingdom suffers the least from calamities (*balaha*) and rebellions (*fitnaha*), and the grace and favours of heaven (*barkat i faiz i asmani*) continuously descend upon it [Advice XIII].

Barani's elaborate discussion of the virtues and signs of justice creates the ground to transform an earthly office into a semi-divine institution. A just king becomes the fountainhead of all good things (*khairat*) and acts of devotion (*ta'at*) taking place in his kingdom. As a reward for discharging his obligations with justice, all good deeds of his subjects worthy of the reward and divine blessings are entered in the king's name as his remuneration (*masubat*). 'No reward ever earned by a created human being (*afrida*) reaches the heights of the reward earned by a just king'. Premised on the unique concepts of metempsychosis of merits and colossal reward (*sawab*), justice becomes an act of the highest religious merit. It is in this context that Barani quotes a tradition of the prophet that 'one hour of justice is better than seventy years of prayers' [Advice V]. Once it is

imbued with divine blessings, kingship can no more remain an ordinary political institution and can claim a position next only to prophethood. The king, too, no more remains an ordinary ruler and becomes the shadow of God (*saya i khuda*) on earth and His vicegerent [Advices IX, XVIII].

Power and justice underwrite all the trappings of monarchy (*padshahi*) such as dazzling display of pomp and splendour. Practices such as building big palaces (*qasr hai buland*), wearing silk, gold and jewels (*zar o jawahar o afrisham poshidan*), and gathering large harems, says Barani, are against the model behaviour of the Prophet (*barkhilafi sunan i muhammadi*), and yet necessary for the ruler [Advice X; Habib 1999]. The monarch thus has the right to acquire, hoard and spend an unlimited amount of money. Besides, he needs money to keep a large and well organised army and to look after the welfare of his subjects [Advice VII; Barani 1972]. The first argument towards this position is advanced in the *Tarikh i Firozshahi* when Alauddin Khalji took issue with a cleric, Qazi Mughis, over the legal status of the wealth he amassed from expeditionary raids. The Qazi declared it to be the property of the public treasury (*bait ul mal*), while the Sultan claimed it for himself on the ground that he acquired it by putting his life, and the lives of his men, in danger. On further probing, the Qazi gave him three legal options, none of which was acceptable to the Sultan. In the end, the Qazi conceded that no limits could be placed on imperial income and expenditure because they are necessary to run the affairs of the state (*maslahat i mulki*), and to enhance the prestige of the king in the eyes of the people (*izzat i padshah dar nazar i mardum bar mazid kardad*) (Barani 1862: 292–4).

In *Fatawa i Jahandari*, Barani is less equivocal and airs his views more freely. Although he strongly argues that imperial expenditure is free from any legal constraints of

just and unjust (*rawadari o zulm dar kharj i an m'azur ast*), he maintains that the king could be held accountable on the Day of Judgement for spending beyond his needs (*zarurat*). The only area where the precept of over-expenditure does not apply is charitable endowments, that is, money given out to the *sayyids* of high merit (*ashraf az saadat*), *ulema*, *mashaikh* (certified sufis), men of virtue, intellect (*khiradmandan*) and skill (*hunarmandan*), travellers (*ibnau'l susbul*), the helpless (*darmandagan*) and the needy (*muhtajan*), as well as to schools (*madaris*) and mystic houses (*khanqahs*).

The Religious Context of Innate Justice

The second type of innate justice is seeking equality with the mass (*masawat talbi i am*) and this, according to Barani, is an aspect of perfect piety (*kamal i taqwa*). 'It is [therefore] a quality of the Caliphs of the Muhammadan faith (*din i muhammadi*) and ended with the Great Siddiq [Abu Bakr], Umar Khattab and Ali Murtaza. The radiance of the light of the seeking of equality with the masses also shone through [the forehead of] 'Umar Abdul Aziz [the Umayyad caliph]'. And it is that the Caliph or King, seated on the throne of *Jamshid* and *Kaikhusray*, and placed over realms, after fulfilling the obligations of seeking equality from an *elite* position, in respect of parties at suit (*mutahakimain*), endeavours to seek equality while spending his own personal life with the poor and the indigent. And inspite of being in such a position of authority, status, influence and power, he leads a life of poverty, humility and austerity, and spends the days of royalty (*aiyam i badshahi*) in penury, indebtedness, distress and destitution. In his dress and food, he puts himself at par with the lowest of the poor. He does not take any more from the public treasury (*bait ul mal*) than is necessary for his barest needs. He endeavours to be like his slaves (*mamalik*)

in food and dress. This conduct, which appears as a union of opposites (*ijtima' i ziddain*), that is, uniting in one—royalty (*padshahi*) and indigence (*bi-nawa'i*)—is one of the miracles (*mu'jizat*) of the Prophet and wondrous deeds of the Caliphs of his community (*karamat i khulafa' i ummat*)... Seeking equality from an *elite* pedestal is a necessary pre-requisite for seeking equality with the mass, but the latter is not a pre-condition for the former' [Advice XIII].

It is quite clear that Barani does not regard justice as an exclusive preserve of Islam; if elite justice is practiced to perfection, it can uphold any religion, whether true or false. Referring to the pharaohs and other kings who claimed ('blackened their face with') divinity, Barani maintains that they too established and protected justice in accordance with their own faiths, customs and manners. However, justice based on the equality between the ruler and the ruled remained the hallmark of the reigns of only the first four caliphs. 'Umar Khattab [the second caliph] had followed Naushirwan's practices, but Naushirwan could not anticipate Umar's', which are, apart from innate justice of the first kind, 'devotion, piety, renunciation and self-sacrifice'. Barani says about Umar, who turns out to be his hero in this matter, that 'despite occupying a seat of authority from where he ruled over the inhabited part of the world, he passed his days in poverty, and brought his lifestyle to the level of the poor and deprived people of the community, and became their equal'.

CONCLUSION

Barani appears to be the only writer in the entire medieval Islamic world and India to treat the idea of substantive justice at such great length and place it so squarely at the heart of political authority. His reflections may not be sufficiently

systematic or profound to earn the designation of a theory, but much of what he writes appears to be original and derived only indirectly from known external sources. They represent the views of a man who is disappointed not only with past developments in the Islamic world, but also with the turn of events in the present Delhi Sultanate. Barani is aware that monarchy displaced the caliphate in the Central Islamic lands and, in India, the same institution caused the destruction of the older nobility of high-born Muslims and promotion of low-born Muslims and Hindus. Barani reacts to these developments with resentment but not with pessimism. Whatever hope he nourishes allows him to imagine an ideal state, which is capable of maintaining a stable polity and a just social order in which life and property are safe, and every one follows his calling. This ideal state can only be established by a powerful king. Barani is aware, from his experiences of the politics of the Delhi Sultanate, of the consequences of absolute power and unrestrained despotism. By making justice as the only legitimising force for kingship, Barani not only delimits the exercise of unbridled despotism, but also rationalises the political history of medieval Islam from the days of the Umayyads to his own times.

Justice in Barani's writings appears as an inherent quality of heart and mind, which ensures impartiality in the arbitration of disputes, works as a weapon against tyranny and oppression, maintains the social equilibrium and, above all, ensures equality between the ruler and the ruled. The first three are essential to inspire loyalty to the ruler and maintain the stability of political regimes, and can be seen to have existed in societies which were not Islamic. Barani's views on these aspects of justice appear without any explicit reference to Islam and remain free from his usual diatribes against Muslim heretics and philosophers, and the Hindus. The last and perhaps the most unique aspect of Barani's conception

of justice remained in operation for about half a century and disappeared with the ideal political authority and the ideal community. It set apart the classical age of Islam both from the preceding and succeeding epochs.

NOTES

1. The first number refers to the chapter (*sura*) and the second to the verse (*aya*). All standard editions and translations of the Qurān are numbered accordingly.
2. For a discussion of hierarchy and egalitarianism in Islam, see Marlow (1997) and Crone (2004).

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3

Traditional Conceptions of Justice in Christianity

GERHARD KRUIP

INTRODUCTION

When we try to learn something about traditional conceptions of justice in different cultures or religions, such as Hinduism, Islam and Christianity, we are running the risk of conceiving these religions or cultures as ‘containers’, which in their interior hold a setting of homogeneous cultural elements but without relations or correspondences to other ‘containers’. This, however, is not the case.

First, these religions themselves are the result of long, varied and communicative historical processes that produced not only a great plurality of conceptions but also contradictory conceptions within the same religion. Today, Christianity for instance, is the result of a long history which began in Egypt and Mesopotamia, has its main religious sources in Judaism, which was then integrated into Greek and Roman cultures, later into Frankonian, German and Slavic cultures, and was marked by the polarity between religion and secularity in the modern ages, mainly by the enlightened critics of religion (some of whose main arguments were received and intensively reflected by Christian theology). In a certain sense, secularism is a part of the history of Christianity—although

this does not mean that secularism would be a characteristic element of Christianity or of Christianity alone. But, we cannot avoid talking about some secular aspects of justice when we talk about justice in Christianity. During the last centuries, Christianity was part of a process of globalisation, surely a very violent process in many cases, but at the same time, Christianity was forced to relativise its own traditions by its project of enculturation into other cultures, thereby changing and developing its own self-understanding. Today, by the process of globalisation, every religion and every culture loses its unquestioned traditional validity and has to elaborate a post conventional identity.¹

Second, these religions are all projects of 'good life', built on a communal basis of human conditions.² That makes it very probable that there is a kind of common nucleus in these projects of good life which could also include some common conceptual elements of justice. I suppose, an intercultural dialogue will show that part of the commonly shared concepts of justice will be such principles as reciprocity,³ which in connection to the 'Golden Rule' we found in practically all religions, the principle of impartiality of judges or the concept of corrective justice which means that no innocent person may be punished.⁴ Furthermore, there seems to exist an inter-culturally shared 'sense of injustice', deeply connected to human emotional reactions as moral indignation against injustices of different kind.⁵

Because of these two reasons, we should refuse to think of cultures or religions as 'containers' or homogeneous systems,⁶ but should think in concepts of complex networks and a common process of cultural learning about what it means to be a human being. Communicative rationality (Habermas 1998) may give the chances necessary for such a process of common learning.

After these beginning remarks, nobody will be astonished to hear that among Christians too, there are a lot of different

and also contradicting conceptions of justice. Therefore, I am very glad that in the title of my essay, we have included the plural 'conceptions'. Indeed, they are many and they vary through times. This causes the problem that it is not easy to choose what to talk about in this text. What is 'traditional'? There are old traditions which, today, are not considered very important, and there are rather new elements which perhaps cannot claim the predicate 'traditional'. I hope I have chosen to talk about the most important and most characteristic conceptions of justice in Christianity.⁷

Apart from this diversity of conceptions of justice, we also must make clear that justice itself is not the same in all kinds of situations or contexts. There are different 'spheres of justice' (Walzer 1984) with different meanings of justice that can easily appear contradictory. In the scholastic tradition, following Aquinas (who himself relied heavily upon Aristotle), we traditionally make the difference between commutative, distributive and legal justice.⁸ The first concerns the relation between equals, for example, in an economic exchange or the agreement to a contract. The second concerns the relation between the whole of society and the individuals or groups belonging to it regulating, for example, the systems of social security. The third, on the other hand, concerns the relation between the individual and the whole of the society, and gives fundamental rules concerning the necessary obedience to law, other common rules and the orientation to the common good. Exaggerating or absolutising these different 'justices' can turn them all into injustices. When commutative justice neglects relevant inequalities in a formally equal relation, which needs at its basis a major part of equality between partners, it can make a relation unjust. Distributive justice can degenerate to egalitarianism or collectivism, legal justice into legalism, both of which can be very unjust.

In the following section, I will first talk about religious or theological aspects of justice. In Christianity—as, probably, in all religions recognising God as a Person—justice cannot be discussed without questioning whether and in what sense God is just. The second step will be to talk about the relation between human and divine justice: the faith in a good and just God implies that man is able to be just to others, but at the same time is obliged to act corresponding to this ability. In the Christian tradition, the justice of God is at the same time the condition for human justice and implies the obligation that humans be just. In the third step, I hope to make clear that to know what that justice means, Christians cannot only rely on their own tradition but have to listen to the wisdom of others, so that, by their own tradition, they must enter into rational argumentation and have to open themselves to intercultural discourses.

At the end of my beginning remarks, to make things clear and to avoid misinterpretations, I have to confess that I am a European Roman Catholic and therefore cannot avoid seeing things by a European and by a Catholic perspective. Because I am unfamiliar with current affairs in present India, I have to do without referring to India's socio-political context.⁹ Nevertheless, I will try to practice my hermeneutical starting-point of understanding in a way corresponding to the original sense of the word 'Catholic' which means: concerning the whole, general, open to greater horizons, ready to learn from others.

JUSTICE OF GOD

In the Hebrew Bible, which is a very important part of Christian Holy Scriptures, we found some traces of the influence of polytheistic religions as were the religions of Egypt and Mesopotamia. At the beginning, justice in

Hebrew (*sādaq*) was a deity as was the Egyptian *ma'at*. After monotheism had got its way in old Israel, justice was no longer a deity but became a central quality of the unique God. Furthermore, justice was a very wide 'connective' concept regarding the relations between God and the king, the king and God's people, between different groups or individuals of the people, partly including the relation between man and nature. The Hebrew Bible tells stories about the alliance between God and the people. He selected as His own and to whom He promised to be faithful. This fidelity also is called justice; and justice implicates the grace of God and is the basis for freedom. There was no difference between a soteriological and a juridical concept of justice; Nor was there in the concept of man's justice a difference between obligation and moral action going beyond obligation.

One of the main ideas to reflect the compassion of God with his people was the rule of the jubilee year of the Deuteronomium (Scheuermann 2000). Every 50 years, all properties should be given back to reach a kind of 'original position' and all debts should be relieved. The Jewish law (Torah) is seen as God's instruction for the way his people should live, an instruction that reflects the fidelity of God to his people and reciprocally claims the fidelity of the people to God, and therefore, the justice of the life of the people. Due to the translation of the Hebrew term of justice (*sādaq*) into Greek (*dikaionsyne*) and Latin terms (*iustitia*), the aspect of God's grace and compassion tended to be lost, which later grew into an often misconceived contradiction between justice and compassion.

Another important element of God's justice is the correspondence between man's action and his destiny, guaranteed by God himself. The just will have a good life, the unjust will be punished; this is a very deeply rooted conception in old Israel. God cares that the consequences of the deeds of men come back to their authors. The later traditions doubt

whether this connection will always be realised during the life of a man. The books of the Bible, *Job* and part, *Ecclesiastes* are marked by reflections about those doubts. Their authors accuse God of not keeping his promise to punish the unjust and to reward the just. The prophets had to announce the destruction of the people because of their evil lives and their forgetting the fidelity of God. Later, the guarantee of reward for the just and of punishment for the unjust only could be held by enlarging the perspective to the eschatological end of all days in the apocalyptic tradition and by the concept of resurrection of the dead. The suffering of God's servant, praised in Isaiah 42 as the servant to whom God had put his Spirit upon to bring forth justice to the Gentiles, is later interpreted as prediction to the suffering and death of Jesus.

The New Testament recalls this conception of the correspondence of action and destiny when it tells us that by the birth of Jesus, the Son of God, all outstanding compensations are evened out. It is sufficient to mention the Magnificat in Luke 1,47ss, one of the most beautiful texts of the New Testament. Mary magnifies the Lord,

for he that is mighty has done to me great things;
 And holy is his name.
 And his mercy is unto generations and generations
 On those that fear him.
 He has showed strength with his arm;
 He has scattered the proud in the imagination of their
 heart.
 He has put down princes from their thrones,
 And has exalted those of low degree.
 The hungry he has filled with good things;
 And the rich he has sent empty away.

In the New Testament, however, the mentioning of the term 'justice' and its derivatives occur in the letters of St Paul, mainly in the letter to the Romans. There is an important

criticism of the Jewish law as how it was seen by the first Christians. Foremost of all, Paul insists that the believer will not be redeemed or justified by following the rules of law, but by his faith. Man is too weak in relation to God; he is too much involved in structures of sin to liberate himself without the grace of God. It is by the death and resurrection of Jesus that God makes accessible his grace to all humans who believe in Christ. This importance of Christ naturally is the point at which Judaism and Christianity most differ. By the sacrament of baptism, each Christian is integrated into this dynamic of grace, and if he believes in this grace of God, he will be redeemed.

In the history of Christianity, this conception of ‘justification’¹⁰ of man by God’s justice was very important. It was the key element for protestant reformation and the separation of the Protestant Churches from the Catholic Church. Martin Luther (1483–1546), fighting against the Catholic exaggeration of the value of good works in the matter of justification, insists that original sin has so completely destroyed man’s moral faculties in the natural order that his will has lost its freedom regarding works, morally good or bad. Therefore, men are consequently condemned to commit sin in every action, and hence only God’s grace can save them. But even when man is justified by God he remains connected to the limits of original sin. Because of that, Luther calls the Christian ‘*simul justus et peccator*’, both *just* and *sinner*¹¹ at the same time. On the other hand, catholic tradition in the council of Trent proclaimed as undeniable truth that original sin has weakened the freedom of human will, but not entirely destroyed or extinguished it. While the protestant tradition tended to conceive justification as a merely external declaration as just by God’s grace, catholic tradition insisted in what it calls ‘sanctifying grace’ that makes the human soul truly just and holy. Whereas—corresponding to Luther—justification only ‘covers’ sin, for the Catholic Church, justification is real ‘forgiveness’ of sin, so that the soul is able to

know, and to distinguish good and bad, and therefore can receive reward or punishment. Faith without 'works' is seen as 'dead faith' and, as Catholics proclaimed, dead faith devoid of charity cannot possess any justifying power.

The strict pronouncements of Luther confused even his followers. It would be too complicated to show that in the midst of Protestant tradition there took place a heavy discussion about the question whether and in what sense man could cooperate with God's grace (the famous Synergist Dispute). Today, a lot of such discussion has lost importance, because the former bitterness and heaviness of the controversy can only be explained by the historical context in which it took place. Fortunately, some years ago, the Catholic Church and Lutheran World Federation found theological solutions to articulate a common understanding of justification and to lift the mutual doctrinal condemnations of the 16th century. Today, together they confess: 'By grace alone, in faith in Christ's saving work and not because of any merit on our part, we are accepted by God and receive the Holy Spirit, who renews our hearts while equipping and calling us to good works.'¹² Roughly speaking, you can summarise the common declaration in this way: When Protestants insist in the importance of grace, they do not deny that justification calls Christians to do good works. And when Catholics insist in the necessity of good works, they do not deny that Christians only are able to do them by grace.

THE RELATION BETWEEN GOD'S JUSTICE AND THE JUSTICE OF MAN

The historical nucleus of the justice of God in old Israel was the experience of the people that have been liberated from slavery in Egypt and liberated to live in their own country. This is the very beginning of the alliance of God with his people. The experience of Exodus profoundly marked the

religion of Israel. The prophets again and again insisted that the Exodus obliges the people to obey rules of justice, mainly in the relations between the king and the people, the rich and the poor, men and women, the inhabitants and the strangers. Remembering the Exodus they obtain important resources to criticise religious and social practice that neglects justice between members of the people. For instance, in the book of the prophet Isaiah, just at the beginning (1,11ss), we can read a prophetic word attributed directly to God who criticises radically the practice of religious sacrifices:

What to me is the multitude of your sacrifices?' says the LORD: I have had enough of the burnt-offerings of rams, and the fat of fed beasts; and I delight not in the blood of bullocks, or of lambs, or of he-goats. When you come to appear before me, who had required this at your hand, to trample my courts? Bring no more vain oblations; incense is an abomination to me [...]. I cannot away with iniquity and the solemn meeting. [...] And when you spread forth your hands, I will hide my eyes from you; when you make many prayers, I will not hear: your hands are full of blood. Wash you, make you clean; put away the evil of your doings from before my eyes; cease to do evil; learn to do well; seek justice, relieve the oppressed, judge the fatherless, plead for the widow.

We could easily add a multitude of such quotes from the enormous critical potential of prophetic tradition to demonstrate the intimate relation between God's justice and man's obligation to comply with it.

In the New Testament, there is a following up of such a prophetic criticism to unjust relations in society and unjust religious practice. There is the promise of a new alliance between God and the people, opening the membership of this people to all nations and all cultures. Therefore, St Paul can say in his letter to the Galatians (3, 28): 'There can be neither

Jew nor Greek, there can be neither bond nor free, there can be no male and female; for you all are one in Christ Jesus'.

As we already heard about St Paul's theology of justification, the indicative promising man's salvation is prior to the imperative that man should act according to God's justice. Nevertheless, confessing one's faith in such a God who sympathises with mankind and liberates it is not possible and will never be credible without acting in a just way or without fighting for a more just world. Therefore, there is a strong practical aspect of a Christian's religious faith. We should talk about faith-praxis.¹³ You may find this in a lot of texts of the Christian Holy Scriptures; for instance, in the famous speech about the final judgement in Matthew 25. There, Jesus says to the just on his right side:

Come, you who are blessed by my Father. Inherit the kingdom prepared for you from the foundation of the world. For I was hungry and you gave me food, I was thirsty and you gave me drink, a stranger and you welcomed me, naked and you clothed me, ill and you cared for me, in prison and you visited me

—(Matthew 25: 34–36)

There cannot be faith in God without a struggle against suffering and in favour of justice.

Such a strong correspondence between God's justice and the justice of man was often forgotten in the history of Christianity. Often, Christians and church leaders participated in cruelties against humanity; for instance, during the time of crusades, the crimes of the 'Holy Inquisition' or in colonialism and imperialism. Even today, the Iraq war is an example for the temptation to legitimate one's own interests by religious motives. But again and again, Christian movements which arose in different historical moments criticised these aberrations and fought for a better understanding

of justice. I would like to mention the movement of poor monks in the Middle Ages and the movement of Social Catholicism, beginning in the 19th century and giving start to Catholic Social Doctrine. Most recently, Latin American Theology of Liberation and other Third World Theologies including Dalit theology in India¹⁴ (Massey 1998; 2003), made the point that justice of man can not only lead to a virtue ethical understanding of justice referring to the good will and the moral attitude of an individual, but more importantly, has to combat bad social structures and institutions to liberate men and women in a social, economic and political sense. These theologies inclusively came to the concept of 'structures of sin' where 'sinful' can be applied to both the deeds of a morally responsible person as well as unjust social institutions as a result of complex and often unconscious co-operation of people in society.

The universal reception of Theology of Liberation reached its apex at the Bishops' World Synod 'Justice in the World' in Rome in 1971. It is, at the same time, the most important ecclesiastical document of the Catholic Church of the last decades on justice.¹⁵ Scrutinising the 'signs of the times' (2.) and seeking to detect the meaning of emerging history, the bishops perceived serious injustices which 'are building around the human world a network of domination, oppression and abuses which stifle freedom and which keep the greater part of humanity from sharing in the building up and enjoyment of a more just and more loving world' (3.).

Listening to the cry of those who suffer violence and are oppressed by unjust systems and structures, and hearing the appeal of a world that by its perversity contradicts the plan of its Creator, we have shared our awareness of the Church's vocation to be present in the heart of the world by proclaiming the Good News to the poor, freedom to the oppressed, and joy to the afflicted (5.).

According to Catholic Social Doctrine and its renewal by the Second Vatican Council, the bishops together with the Pope reaffirm the unalienable rights of the individual person, but at the same time the collective right of development of all peoples. They insist in the moral fact that all peoples belong to the same human family which has to organise its life by solidarity on the global level as well, recognising the specific identity of all peoples, religions or cultures. Some parts of the text seem as if they were written today:

In the last 25 years a hope has spread through the human race that economic growth would bring about such a quantity of goods that it would be possible to feed the hungry at least with the crumbs falling from the table, but this has proved a vain hope in underdeveloped areas and in pockets of poverty in wealthier areas, because of the rapid growth of population and of the labour force, because of rural stagnation and the lack of agrarian reform, and because of the massive migratory flow to the cities where the industries, even though endowed with huge sums of money, nevertheless provide so few jobs that not infrequently one worker in four is left unemployed. These stifling oppressions constantly give rise to great numbers of *marginal* persons, ill-fed, inhumanly housed, illiterate and deprived of political power as well as of the suitable means of acquiring responsibility and moral dignity(10.).

And the bishops reaffirm the relation between faith and struggle for justice, saying ‘unless the Christian message of love and justice shows its effectiveness through action in the cause of justice in the world, it will only with difficulty gain credibility with the people of our times’ (35.).

Since 1971, the Theology of Liberation movement has lost a lot of influence and impact, but on the other hand, central concepts of its thinking were recognised by the Catholic Church as a whole; for instance, the ethical importance of

reforming unjust social structures, the importance of politics for Christian practice, the option for the poor and the intense connection between evangelisation and liberation.¹⁶

Consequently, the understanding of the Christian mission—in India and other parts of the world—cannot be dissociated from the emancipation of the poor and the quest for justice¹⁷—which, however, does not mean that the quest for justice can be reduced to a mere pretext for the recruitment of believers. Mission as a struggle for justice will only be credible when it is an unselfish project.

THE NECESSITY OF RATIONAL ARGUMENTATION—ALSO FOR RELIGIOUS PEOPLE

Given the plurality of religions and cultures today, all of them have to learn that global justice and peace will only be possible if there is peace and mutual understanding between religions and cultures. I will not enter into the discussion on the difficult questions of particularism or universalism; I only want to insist that such an understanding cannot be conceived as a kind of accidental set of elements common to all religions¹⁸ without taking into account the reflective and argumentative dimensions of ethical and religious self-understanding. In every culture or religion, how these argumentative elements are developed and shaped depends largely on that culture's history and social forms of living. Probably, there are similar elements of rationality in all cultures and religions, always in combination with idiosyncratic elements difficult to understand for others. In Christian history, there are a lot of important, and in part, painful experiences, showing that its own religious doctrine with its ethically relevant traditions can be very inhuman and unjust. Therefore, Christianity had and has to learn from rational arguments in ethics to be able to develop its own moral standpoint. Perhaps, Christian history is marked by these

experiences more than others' histories are. Nevertheless, I suppose that in the last consequences, the following assumption is true for all religions: To be a believer it is important for intensively seeking justice, but it is not enough to know what justice means in a given situation.

When Christian faith began to spread over the Roman Empire, it had to develop a theology plausible to its pagan environment mainly marked by Greek and Roman philosophical reflection. At this moment of its history, Christianity was confronted with philosophical ethics trying to resolve moral problems by rational arguments and without recourse to religious dogma; for instance, by taking recourse to the writings of Plato and Aristotle, later also to those of Cicero and others. The benevolent and interested reception of philosophy by the Fathers of the Church called 'apologetics', marked the whole of the Middle Ages and the theological and philosophical reflection of scholasticism. By the way, a similar process took place in Islam which in a certain time was the most important transmitter of Aristotle for Christian Philosophy.

In the Middle Ages, the numerous and often violent conflicts between the Emperor and the Pope, the secular and the religious authority, and some centuries later also the cruel religious wars between different Christian confessions—all of these were strong motivations to learn, first that state and religion should be separated; second, that people have to learn to live together in peace without confessing the same religious beliefs; and third, that the moral basis for living together in peace cannot rely on particular religious beliefs that people no longer share. Thus began a slow process of differentiation between moral and religious forms of argumentation without which modern societies with their relatively autonomous civil societies would not have come to exist in Europe.¹⁹

Other experiences reinforced that process. For example, in the period of Spanish colonisation of America, it was not religious faith which was able to recognise the human rights of the indigenous people. It was a set of rational arguments later contributing to the development of natural law, and the law of peoples which helped to reach a better understanding of the moral status of the indigenous people called 'Indians'. But it is true that we cannot claim this part of Christian history without saying that these arguments of Francisco de Vitoria and Bartolomé de Las Casas were minorities and could not prevail against centuries of cruel exploitation and colonisation.²⁰ Furthermore, other Christian nations later did not have the same pangs of conscience as the Spaniards.

During the 19th century, Christians who were confronted with new social questions due to the dynamic industrialisation process in Europe had to learn that the causes of it did not lie in the people's revolting against traditional Christianity or in their losing faith, but rather in social structures and their impact on the living conditions of the people, mainly the poor.²¹ These social structures are visible by sociological and economic theory in such a way that only rational arguments in favour of new institutional settings of society could help to find solutions, which often at the first view seemed contrainuitive. Consequently, in the tradition of the Catholic Social Doctrine, there is a clear consciousness of the importance of rational ethical arguments understandable for 'all human beings with good will'.²² In Christian moral theology therefore, one of the mainstreams is the so called 'autonomic moral', a theological conception of ethics that gives rational argumentation in ethics, and complete independence from religious authority to the investigation of the situation.²³ The idea behind this is that God himself wants man to be a rational and self-deciding moral subject. The tradition of

Social Catholicism furthermore knows that human societies can not only rely on personal attitudes and virtues but must try to construct institutions with appropriate incentives for helping members of the society to live in a just way. And it knows that its principles of personality, solidarity, subsidiarity and sustainability can only be put in practice, if the society provides personal liberties to individuals who are conscious about their social responsibility. Therefore, the old difference between universal moral norms and supererogative²⁴ norms finds its correspondence in the liberal distinction between universal norms of justice and particular conceptions of 'good life'; a distinction which is not only compatible with Christian faith but which is an irrenouncible principle of an attitude which (as Christian religion also happens to do) gives high importance to the individual's personal freedom. The most important Christian conceptions of justice today are marked by liberal conceptions of society, but avoid individualism. They are aware of the complex reality of modern society and its mechanisms, so that market economies—if there are some kind of social regulation and risk minimisation—seem ethically acceptable, although capitalism needs profit oriented individuals.

In the professional ethical reflections about justice by Christian theologians, consequently there is an intensive dialogue with modern theories of justice; for instance, with institutional economics of Buchanan, with the theory of justice of Rawls, the discourse theory of Habermas, or the capabilities approach of Sen and Nussbaum (Buchanan 1985; Habermas 1990, 1993; Nussbaum 1993; Rawls 1971, 1993; Sen 1982). All these theories try to develop a conception of justice without taking recourse to particular conceptions of good life. They rely, rather, on arguments that they claim to be understandable by all human beings. Thus they try

to come to moral rules which are universalisable. It is yet unclear whether such projects can be successful. Whether they are or not, we need to seek a common basis in ethics; and since we live together in one world, belonging to different religions and cultures, the task of seeking justice and peace will necessarily entail fair dialogue and rational understanding. Given the fact that it would be a far more illusory and unrealistic idea to come together by all sharing the same religion all over the world, we will be forced in our conceptions of justice, to make a difference between justice and religion. This will allow for a moral foundation of justice without having a common religion. In my opinion, most Christians and most members of other religions, too, are ready to join such a project of understanding and are ready to accept secular and intercultural conceptions of justice as far as they really reach the quality of modelling the 'moral point of view', which is found in all religions in the form of different expressions of the Golden Rule.

NOTES

1. Some years ago I tried to show that this kind of post conventional identity marked the situation of Mexican self-understanding in the occasion of the Fifth Centenary of the Discovery of America. See Kruip (1996a).
2. I rely on the misiological and intercultural work of Pablo Suess, for example: Suess (1983; 2001).
3. See the famous theory about reciprocity as a common rule among all cultures by Gouldner (1960).
4. This, for instance, is shown by Otfried (1999).
5. In a scientific project of the Hanover Institute of Philosophical Research we tried to see whether this approach could be fruitful. See Kaplow and Lienkamp (2005).
6. Therefore, the famous analysis of Huntington is more an ideological construction than a contribution to a better understanding of intercultural processes. See Huntington (1993).

7. For other presentations on the same subject (including bibliography) see the corresponding articles in important dictionaries as: 'Gerechtigkeit', in *Religion in Geschichte und Gegenwart*, Vol. 3, 4th ed., pp. 702–16, Tübingen: Mohr. (2000); 'Gerechtigkeit Gottes', in *ibid.*: 717–27; 'Gerechtigkeit', in *Lexikon für Theologie und Kirche*, vol. 4, 3rd ed., pp. 498–504, Freiburg: Herder. (1995); 'Gerechtigkeit', in *Staatslexikon der Görres-Gesellschaft*, vol. 2, 7th ed., pp. 895–906, Freiburg: Herder. (1986); 'Gerechtigkeit', in *Theologische Realenzyklopädie*, vol. 12, pp. 404–48, Berlin: de Gruyter. (1984); 'Justice', in *Catholic Encyclopedia* (www.newadvent.org/cathen/08571c.htm), accessed: 20 September 2007.
8. For a general introduction to a philosophical theory of justice, see Otfried (2001). See also 'Distributive Justice', in *Stanford Encyclopedia of Philosophy* (www.science.uva.nl/~seop/entries/justice-distributive), accessed: 20 September 2007), and 'Justice as a Virtue', in: *ibid.* (www.science.uva.nl/~seop/entries/justice-virtue), accessed: 20 September 2007).
9. For such a contextualisation, see Manchala (2000: 42–55) and: Wilfred (2002).
10. Justification by faith and by grace, as the theological tradition uses the term, means forgiveness of sins and by that the condition for an existence according to God's will. See also from a Catholic point of view 'Justification', in *Catholic Encyclopedia* (www.newadvent.org/cathen/08573a.htm), accessed: 20 September 2007).
11. Even in today's Protestant representations of Social Ethics you can find the enormous importance of the justification doctrine for Ethics, so that Protestant Ethics, generally speaking, is more theological and biblical than Catholic Ethics. See for instance Herms (1991), Körtner (1999), and for a comparison of Protestant and Catholic Social Ethics, see Langner (1998).
12. Joint Declaration on the doctrine of Justification by the Lutheran World Federation and the Catholic Church, 16 June 1998, (3.). This declaration can be found on http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/documents/rc_pc_chrstuni_doc_31101999_cath-luth-joint-declaration_en.html, accessed: 20 September 2007.
13. For a more profound presentation of this practical-theological approach on faith-praxis see Emunds, Hengsbach and Möhring-Hesse (1993: 215–291).

14. For an Indian theology of liberation, see Wilfred (2002: 83–112), Felix: *On the Banks of Ganges. Doing Contextual Theology*. Delhi: Indian Society for Promoting Christian Knowledge 2002, 83–112.
15. *Justice in the World*. World Synod of Catholic Bishops, 1971. (http://www.osjspm.org/majordoc_justicia_in_mundo_offical_test.aspx, accessed: 20 September 2007). The following numbers refer to the chapters of the document.
16. As a summary of theology of liberation see Ellacuría (1990). For the reception of theology of liberation in German social ethics, see Kruip (1997a). After the end of socialism in Eastern Europe and Russia, theology of liberation had some difficulties to reconceptualise its approach. See also Kruip (1996b).
17. For the contemporary missiological debate see Nalunnakkal and Athyal (2000).
18. For this approach see Kung (1991).
19. For a corresponding concept of civil society, see Cohen and Arato (1992), Dubiel, Frankenberg and Rödel (1990).
20. See the early but very interesting analysis of the later Cardinal Höffner (1969).
21. Bishop Ketteler was one of the most typical personalities to understand this process. For the history of Catholic Social Doctrine in Germany, see Kruip (1991).
22. There are a lot of introductions to Catholic Social Doctrine, see for example, Olzog, (1985) 'Gerechtigkeit und Freiheit', in *Grundzüge katholischer Soziallehre (Geschichte und Staat 273)*, München; Anzenbacher (1998); Carrier (1990); Emunds, Hengsbach and Möhring-Hesse (1993); Heimbach-Steins, Lienkamp and Wiemeyer (1995); Höffner (1968); Höhn (1997); Kerber (1998), and Kruip (1997b).
23. The most famous author of this approach is Auer (1971).
24. Supererogative norms demand more than moral duties do.

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4

World Society and Global Justice: A Cosmopolitan Perspective

MICHAEL DUSCHE

INTRODUCTION

This chapter develops a cosmopolitan perspective on justice. It is argued that a cosmopolitan perspective is neither universalist in a naïve way nor relativist in a bad way, but global in the right way. Naïve universalism, for one, is rejected because it causes subjective problems of justice instead of resolving them. By universalising conceptions of justice from one legacy, naïve universalism is not sensitive to other legacies. It thereby fails to meet subjective conditions of justice. Instead, a concept of internal universalism analogous to Putnam's (1976) internal realism is introduced. Besides being internally universalist, the cosmopolitan perspective is globally adequate, in that it meets the challenges of objective conditions of justice before an emerging world polity (Meyer 2005). Its chances of global acceptability increase to the extent that it is purged of theoretical accessories (anthropological, cosmological and metaphysical) which are irrelevant to the task. Being thin and non-intrusive, it parallels Rawls' (1993: 10) conception of freestandingness, if only on a global level. Furthermore, it is argued that a

cosmopolitan perspective is not Eurocentric because what is relevant to the task are not the circumstances of its genesis but the circumstances of its application. While the former point to a European connection, the latter prevail worldwide. Like the cosmopolitan world of classical antiquity, the age of globalisation is marked by urbanisation, migration, multi-culturalism and a loss of agency in democratic set-ups like the nation state. The topicality of the cosmopolitan perspective is argued for by dissociation from essentialising discourses on identity, culture, religion, nationalism and ethnicity. Maximal in its reach but minimal in its assumptions, the cosmopolitan perspective proves at the same time to be broad enough in its scope to meet the challenges of a globalising world and unassuming enough to be acceptable to humans simply on the basis of their humanity.

The fact that justice is an affair which concerns human beings in their contingent this-worldly circumstances, and not anything based on natural laws or necessary rules (i.e. of logic, action theory, game theory, or theory of rational choice), caused Hume (1978: Section VIII) to remark, ‘...justice is not founded on reason, or on the discovery of certain connexions and relations of ideas, which are eternal, immutable, and universally obligatory ... *but arise from artifice and human conventions*’.

In this sense, whatever we are seeking when we are looking for a theory of justice, we will not find it in the form of a universal theory, a theory which would be true independently of all historically contingent circumstances. On the contrary, instead of superimposing a universalised version of our own tradition on people adhering to other traditions, it seems it would be better to engage people of different traditions in a common quest for a cosmopolitan conception of justice.

Moreover, a theory of justice with universal pretensions could pose a serious obstacle for the solution of the problem at hand, since any such solution would have to take into account not only the interests of those concerned which could perhaps be described 'objectively', but also their readiness to accept the proposed solution. This acceptance would be contingent upon certain subjective conditions that are formed by diverse legacies of justice found among people reasoning within various traditions. Theories with universal pretensions can, and have been developed, out of the legacies of such traditions. Due to their universalist aspirations, however, they also want to subject those people to their norms who do not feel any allegiance to their particular tradition. Thus, what could make a universalist theory acceptable to people of one legacy, renders it unacceptable for people holding on to some other legacy. Since the managing of these problems of acceptability is itself an important task, a universalist approach is bound to fail before any theory of justice is evolved. Justice, therefore, is not only a human affair that is contingent upon certain objective circumstances, but important subjective circumstances also come into play.

Proving the relevance of contingent circumstances for considerations of justice, Hume (1978: Section VIII) argued that there could be plenty of counterfactual situations that would render any consideration of justice superfluous. If there were an abundance of supply for our material needs, for example, and if there were no greed or selfishness among human beings, no-one would have to rack his or her brain over theories of justice, ... 'tis only from the selfishness and confin'd generosity of men, along with the scanty provision nature has made for his wants, that justice derives its origin'.

These are the objective conditions of justice—a scarcity of goods and a human propensity for avarice. Since justice is based on convention alone, we can think of yet other

conditions that, if they were to hold true, would render considerations of justice superfluous—if human beings, in view of the aforementioned objective conditions of justice, were in a position to agree in a spontaneous and consensual manner on rules and institutions governing their co-operation, a theory of justice that would tell them on what to agree and why, would be equally superfluous. Unfortunately however, ideas about how to deal with the obstacles imposed on us by objective conditions of justice seem to vary greatly. Different and often disparate conceptions of justice are many. Often they are interspersed with fragments of other theories—anthropological, cosmological and metaphysical, to name but a few—whose relevance to the problems at hand is not always obvious. The fact that we are debating justice against a backdrop of various already existing religious and secular conceptions of justice limits the chances for our agreement. Theorising about justice, therefore, is not only called for because of objective conditions of justice but also because of the obstacles posed by the disparate ideas that people already have about justice. These are what I call the ‘subjective conditions of justice’ (Dusche 2000a; Rorty 1979: 985).

Wherever objective and subjective conditions of justice hold true, a certain amount of agonising over theories of justice is required. Today, as has been noted by many, objective and subjective conditions of justice can no longer be seen as limited to collections of human beings as small as individual communities or nation states. Since human beings interact with one another on a global scale, since individually or collectively they compete for resources that are becoming scarce on a global level, and since means of communication and transport link the remotest corners of the world into a single global network, the plausibility of restricting considerations of justice to individual societies is diminishing at the same rate as that at which global inter-dependencies

are growing. This is nothing new in principle—it was already felt by Kant who in his essay on Perpetual Peace observed that:

The injustice which they [the commercial states of our part of the world] show to lands and peoples they visit (which is equivalent to conquering them), is carried by them to terrifying lengths. America, the lands inhabited by the Negro, the Spice Islands, the Cape, etc., were at the time of their discovery, considered by these civilized intruders as lands without owners, for they counted the inhabitants as nothing. In East India (Hindustan), under the pretence of establishing economic undertakings, they brought in foreign soldiers and used them to oppress the natives, excited widespread wars among the various states, spread famine, rebellion, perfidy, and the whole litany of evils which afflict mankind. [And:] Since the narrower or wider community of the peoples of the earth has developed so far that a violation of rights in one place is felt throughout the world, the idea of a law of world citizenship is no high-flown or exaggerated notion.

—Kant (1991)

Therefore, from the viewpoint of objective conditions of justice, today even more so than in Kant's days, any considerations of justice have to begin by taking into account global human society as a whole. From the outset, any conception of justice has to be global in its reach as far as objective conditions of justice are concerned. Moreover, since globalisation brings people of various traditions into contact with one another and since these legacies not only provide a resource from which to draw in considerations of global justice but equally pose a challenge to any such consideration in terms of subjective conditions of justice, some reflection on those conditions seems to be necessary. In sum, it seems we should be looking for a conception of justice

that is only global in its reach but not universal in its pretensions (as Hume advised us). It should benefit from already existing conceptions of justice without limiting its acceptability to people who feel they belong to a particular legacy. After all, ‘...tis our own consent alone, which binds us to any submission to magistracy’ (Hume 1978: Section VIII). What is required, therefore, is what I would call a ‘cosmopolitan conception of justice’.

HISTORY OF THE CONCEPT ‘COSMOPOLITANISM’

Today, a cosmopolitan conception of justice can try to present itself as being in line with a number of conceptions of justice and their legacies. However, reflexivity demands that we be aware of cosmopolitanism’s own legacy. Linked with this is the question of whether cosmopolitanism has an in-built bias towards the context of its own genesis.

Cosmopolitan ideas originated in the cynicism and stoicism of Hellas and Rome. They experienced a renaissance in the age of Enlightenment and have been revived in recent debates about global governance and justice. Despite its genesis from within European intellectual tradition, however, it would be premature to infer that the acceptability of cosmopolitanism should also be limited to that context. For one, cosmopolitan ideas demonstrably have an appeal across traditions and legacies outside Europe. Plus, more principled, the usefulness of an idea should not be determined by the circumstances of its inception but by the circumstances of its application—just as the value of light bulbs is not determined and limited to the West, where they were first conceived, but by their usefulness in similar circumstances prevailing the world over.

Moreover, cosmopolitanism has inspired not only the Western but also the Islamic traditions. Plus, it was never

uncontested even within the West, as the following argument will make apparent. Furthermore, the specific conditions that gave rise to cosmopolitan ideas in Antiquity bear a striking similarity to conditions prevailing in the present age of globalisation, which is marked by large scale urbanisation (mega-cities), migration engendered multi-culturalism, and a sense of loss of democratic control over one's collective fate in the context of the nation-state. Just like the Athenian *demos* lost agency after the incorporation of the Greek city states into the Macedonian empire at the time of the inception of Stoic cosmopolitanism, today the nation-state seems to be losing agency to an economic regime of multi-national companies playing off one state against another. With threats of withdrawal of resources (removal of investments, tax-payers and employment opportunities to more favourable places), global players are in a position to blackmail the nation-state into obedience. Nation-state based democratic polities lose their power to shape their own destiny, which undermines democracy and favours authoritarianism.

The ideas of cosmopolitanism grew out of the experience of the urban lifeworld of the Mediterranean towns of the Hellenic and Roman empires (Brown 2006: 549–58). The lifeworld of Mediterranean cities in imperial antiquity was multi-cultural and multi-religious. Therefore, it is conceivable that the generation of cosmopolitan ideas in this period had something to do with the experience of such cosmopolitan lifeworlds. The reverse, however, seems less plausible. Diverse lifeworlds do not necessarily generate cosmopolitan ideas. Insofar as cosmopolitanism implies that human beings are taken as moral subjects irrespective of their *ethne* or creed, cosmopolitanism is not a necessary consequence of a multi-ethnic or multi-religious experience. Other forms of organising ethnic or religious diversity

are conceivable and have been conceived and tried historically. Both options are again open to us today. There are advocates of cosmopolitan and democratic egalitarianism as well as advocates of 'guided democracy' or outright authoritarianism based on conceptions of group supremacy derived from religion, class, caste, or self-style elitism. It would take a conscious embrace of egalitarianism to shun the forces of authoritarianism.

Traditional societies such as ancient Greek, Roman, Indian, Persian, Arabic, Ottoman or traditional European societies tended to be organised by imposing hierarchical orders onto different societal groups. The status of tribes, castes, estates, dhimmi, or millets may have been secure at times but it was never based on equality. Although Greek, Roman, Indian, Persian, Arabic, Ottoman or European metropolis were cosmopolitan and people may have been open minded and tolerant vis-à-vis people of other groups, the governing norms were not cosmopolitan, that is, they precluded the idea of a single moral community for all humanity. Instead, they allowed for (or forced) different communities to co-exist in a specifically hierarchical way under the aegis of one ruling community (the *aristoi*, *patricians*, *priests*, *arya*, *ashraf*, or noblemen).

Against this backdrop, Stoic cosmopolitanism held that all people have the same universal faculty of reason and should accordingly be seen as on par with one another. Living according to reason and virtue meant to live in harmony with the divine order of the universe and in recognition of the essential value of all human beings. Accidental differences such as rank and wealth, ideally, were of no importance in the normative perspective. The Stoics recognised and advocated the brotherhood of humanity and the natural equality of all human beings, even slaves. Some Stoic philosophers were slaves themselves.

The emergence of Stoic cosmopolitanism coincides with the abolition of Athenian democracy in the course of Macedonian expansion in the 4th century BCE. With this major rift, the polis ceased to be a primary point of reference for political and normative thinking. From being part of a self-ruling *demos*, Athenians were reduced to ordinary human beings along with the inhabitants of other European and Asian cities. Consequently, for the Stoics, humanity became the point of reference and the known world became its horizon. While some historians argue that this is not a mere coincidence, but that the displacement of the Greek polis by the Hellenist, and later the Roman empire had a causal effect on the emergence of cosmopolitanism, others argue against such a causal explanation. Thus Kleingeld and Brown (2006)¹ argue that:

...it is wrong to say what has frequently been said, that cosmopolitanism arose as a *response* to the fall of the polis or to the rise of the Roman empire. First, the polis' fall has been greatly exaggerated. Under the successor kingdoms and even—though to a lesser degree—under Rome, there remained substantial room for important political engagement locally. Second, and more decisively, the cosmopolitanism that was so persuasive during the so-called Hellenistic Age and under the Roman Empire, was in fact rooted in intellectual developments that *predate* Alexander's conquests. Still, there is no doubting that the empires under which Stoicism developed and flourished, made many people more receptive to the cosmopolitan ideal and thus contributed greatly to the widespread influence of Stoic cosmopolitanism.

But even if the causal effect of political incapacitation is doubtful, the emergence of Stoic cosmopolitanism coincides with a degree of loss of agency on the part of the citizen of the polis. This may account for some of cosmopolitan's

quietist and soul-searching tendencies. It seems that it was the superimposition of the emerging Hellenic empire on the Athenian political system that helped Stoicism to spread and gain in popularity. Therein, quietist cosmopolitanism is marked by a stark contrast to later political cosmopolitanism. The latter served as an inspiration to the leading political circles of the expanding Roman empire and lent legitimacy to the extension of equal citizenship rights to conquered people, independently of their nationality or creed by Caracalla in 212 CE. Rulers began to understand their function as a service to the common good and not to their self-interest or to the interest of a client group.

In the Middle Ages, Christianity and Islam embraced cosmopolitanism in one form or another. Based on their different adaptations of the philosophy of the ancients, they developed competing universalist claims. Cosmopolitanism, however received a twist by Christian and Muslim theology. For Augustine, for example:

...the cosmopolis ... becomes a community for certain people only. Augustine makes this point most explicitly by limiting the citizenship in the city of God to those who love God. All others are relegated to the inferior—though still universal—earthly city by their love of self. These two cities of the world, which are doomed to coexist intertwined until the Final Judgment, divide the world's inhabitants.²

The result is a dual cosmopolitanism that unites all believers in one worldwide community and all non-believers in another. A similar binary cosmopolitanism becomes prevalent in Islam where the *umma* unites all believers irrespective of their local cultural, tribal, or national allegiances and all others are thought of as being part of another global community, that of the disbelievers, the *kuffar*.³

It is important to note in this connection that conflict between the emerging Muslim and Christian spheres of influence did not result from an incommensurability of different values but from a competition over the right interpretation of shared values. Cosmopolitanism is just one of them. Both Christianity and Islam invited individuals to join their ranks irrespective of their gender, tribe, status, or nation; the only requirement being that they were human beings. Both Christianity and Islam attempted to create a *cosmo*-polis (ecclesia/umma) of fellow believers. The idea that faith could become as insurmountable a divisive factor among human beings as nation or tribe, presupposes the notion that it could be legitimate for different people to hold on to different beliefs, all being 'true' simultaneously. This idea was not readily available to Muslims and Christians until the age of Reformation, and the many religious wars in Europe and the time of Akbar in India, that is, the 16th and 17th centuries (although there are many exceptions to this general rule). 'Religion' as a category of which there could be many equally legitimate instances is an idea predominantly of the modern era. Cosmopolitanism in the Middle Ages was based on 'true faith', of which ideally there could be only one. It is thus in the sharing and yet disagreeing on the implications of the common value of 'true faith' that Christians and Muslims got themselves embroiled.

European humanism took up ancient cosmopolitanism during the Renaissance. Notably, Erasmus of Rotterdam, in his *Querela Pacis* of 1517 (Erasmus 1986: 289–322), drew on ancient cosmopolitanism to advocate the ideal of peace. He advocated for the unity of humankind and against its division into nations and religions. Erasmus pleaded for international and inter-religious tolerance and regarded all humans as his compatriots. From here, a direct line leads to enlightenment cosmopolitanism as expounded in Kant's essay on a *Project of a Perpetual Peace* of 1795 (Kant 1900: 341–86), in which he develops a global political theory based

on the concept of world citizenry and the idea of a federation of republics. During the same period, the self-portrayal of enlightened absolutist rulers such as the Prussian king Frederick II, who perceived himself as the foremost servant of his people, mirrored the Stoicist ethic of the Roman ruling elite. For the whole age of modernity, the idea of natural and secular law seems to fall in line with this cosmopolitan strand of thinking, for it conceives of legal subjects as marked by nothing else but their common humanity (as opposed to medieval personal law or religious canonical law). Drawing on this cosmopolitan tradition, Grotius, Pufendorf, and other theorists prepared the foundation of international law. They envisioned a society of states bound by a 'law of nations'.⁴ The historical context of the philosophical resurgence of cosmopolitanism during the Enlightenment is made up of many factors, as Kleingeld and Brown (2006) note:

The increasing rise of capitalism and worldwide trade and its theoretical reflections; the reality of ever expanding empires whose reach extended across the globe; the voyages around the world and the anthropological so-called 'discoveries' facilitated through these; the renewed interest in Hellenistic philosophy; and the emergence of a notion of human rights and a philosophical focus on human reason. Many intellectuals of the time regarded their membership in the transnational 'republic of letters' as more significant than their membership in the particular political states they found themselves in, all the more so because their relationship with their government was often strained because of censorship issues. This prepared them to think in terms other than those of states and peoples and adopt a cosmopolitan perspective. Under the influence of the American Revolution, and especially during the first years of the French Revolution, cosmopolitanism received its strongest impulse. The 1789 declaration of 'human' rights had grown out of cosmopolitan modes of thinking and reinforced them in turn.

The above quotation re-emphasises the connection between the growing popularity of cosmopolitanism, and a perceived lack of possibilities, of democratic expression and participation on the part of the citizenry. At the sametime when an effective public sphere emerges in Europe (Habermas 1989), and a growing number of economically independent and educated people (the emerging bourgeoisie) develop an interest in public matters, many states in Europe develop as absolute monarchies with a strong sense of controlling the public. All possibilities of active participation failing, citizens face the alternative of either turning to cosmopolitan, and for the most part utopian, ideas of a worldwide moral community of human beings, or to resort to the surrogate of participation—the emphasis of parochial identity. Being part of a nation that is vying with other nations for a share in the goods of the world, gives citizens an illusion of participation in a collective political enterprise.

The afore-mentioned connection would also explain why cosmopolitan, as well as nationalist ideas, were particularly strong in German lands where both the formation of a modern nation-state and the establishment of democratic institutions was much delayed. In 1777, Johann Georg Schlosser, in the critical poem ‘Der Kosmopolit’ wrote, ‘It is better to be proud of one’s nation than to have none’.⁵ In contrast, the early Johann Gottlieb Fichte argued for cosmopolitan popular sovereignty as a layered concept where, states would transfer to a federal level, the part of their sovereignty that concerns their external relations to other states while retaining a degree of autonomy in their internal affairs.⁶ The early Friedrich Schlegel argued for a cosmopolitan ideal in terms of a worldwide republic of non-coercive republics (Schlegel 1996).

In the 19th century, political cosmopolitanism developed as a counter movement to emerging nationalism in Europe.

In particular, communist and socialist internationalism bore the traits of political cosmopolitanism. In reaction to leftist cosmopolitanism, chauvinist and national-socialist circles developed the stereotype of the 'cosmopolitan Jew' and a 'global conspiracy of Jews'.⁷ Thus adherents of cosmopolitan ideas were defamed along with the 'world Jewry' and the 'proletarians of all countries' as unpatriotic and anti-national.⁸ Today, cosmopolitanism is often belittled as wishful thinking, at best. These objections, however, fail to realise the extent to which formerly utopian cosmopolitan ideas have already been realised. The League of Nations of the earlier part of the 20th century would not have been conceivable without cosmopolitan ideas preparing the ground for it as well as for the current United Nations Organization. Similarly, today's International Criminal Court represents a form of institutionalised cosmopolitanism that goes far beyond Kant's conception of *Weltbürgerrecht*, in that it supports the idea of individuals bearing rights under international law, in ways that cut through the shield of state sovereignty. Conversely, they can also be held responsible for crimes under the international law, independent of the state in which they were committed. Furthermore, international NGOs fight human suffering, oppose slavery and apartheid, and defend the emancipation of women without regard to nationality or creed.

The topicality of the concept of cosmopolitanism today lies in its all-inclusiveness and its abrogation of any ethnically or religiously defined 'us' and 'them'. In the face of a heightened 'identity mania' (Meyer T. 2001), cosmopolitanism offers a way out of identity discourses that are frequently essentialising and exclusivist (Modood 1998), and often prone to foster violence (Sen 2006). An emerging world polity cannot afford to cultivate parochial ethics at the expense of an attempt to reach a global level in moral and political

debates (Meyer 2005). Cosmopolitanism bases morality strictly on humanist principles, focussing on the human being as such, without regard to nation, ethnic group or creed. It is only on this level that the pros and cons of any particularist ethics can be discussed on a global scale. Maximal in its reach but minimal in its assumptions about human beings (as being marked but never determined by their belonging to family, ethnic group, creed or nation), cosmopolitanism proves at the same time large enough in its scope to meet the challenges of a globalising world and unassuming enough to be acceptable to humans simply on the basis of their humanity.

Recently, the political scientist Kwame Appiah published *Cosmopolitanism: Ethics in a World of Strangers* (Appiah 2006) where he pursues 'the legacy of a cosmopolitan ethic of flexibility and creative exchange that extends from antiquity to the UN declaration on human rights' (Suchsland 2006). His approach is more about justice as a qualifier of individual human action and less about justice as a virtue of institutions as it concerns us here. It therefore touches our project only tangentially. But in a debate over timely conceptions of family (same sex marriages) and in view of conflicts between people of different ethne, creed or nationality, Appiah demonstrates the topicality of the cosmopolitan legacy by showing how it helps to transcend, at least theoretically, the limitations of narrow and incommensurable reference points.

When more ambitious normative systems, secular or religious, tend to be in permanent and irresolvable conflict with each other, cosmopolitanism sounds a note of humility. It steps back and acknowledges the fact that no ambitious conception of justice, religious or secular, will ever convince everybody and that an insistence on one's own comprehensive worldview or creed in public affairs will invariably lead to exclusion or even violence vis-à-vis those who happen

to be of a different view. This is not to say that a cosmopolitan conception of justice can avoid taking a stand on controversial issues, but it attempts to do so, based on assumptions that seem the least controversial among all alternative conceptions of justice. A cosmopolitan conception of justice would also tend to emphasise the importance of dialogue and negotiation, and the procedural character of justice instead of engaging in speculations over concrete hard-and-fast doctrinal rules.

A cosmopolitan perspective on justice, thus, is a higher level perspective over other conceptions of justice. It acknowledges the legitimacy of any reasonable conception of justice, but at the same time, it also emphasises the duty for its adherents to coexist with adherents of other such doctrines and to make allowances for a viable coexistence. This implies placing non-violence as a rule of interaction between people of different convictions on a higher plane than any norm that may be propagated within each particular system of belief. It requires the acceptance of a least presumptuous higher level ethics as a basis for the engagement in a process of dialogue and negotiation between groups of different convictions. This may necessitate change in the doctrinal structure of anyone's favoured system of belief and thus the admittance that no such system can ever be regarded as permanent and fixed in its interpretation.

Secular and religious conceptions of justice, if they are not to be a mere academic phenomenon, are normally embedded in the semiotic reference frames of a given culture. The antipode of a cosmopolitan conception of justice would thus be one that views cultural and religious identity as a value in itself, and seeks to preserve those identities in the name of an imaginary collective 'right to identity'. The notion of identity, here, is a static one against which I have argued elsewhere.⁹ Such a conception would have difficulties accounting for

the procedural and principally open character of any identity formation, whether collective or individual. Just as there can be no 'right to immortality' for the individual human being, equally, the idea of a 'right' to have one's cultural or religious identity preserved for all times belies the fact that cultures and religions are 'born', develop, change, and even 'die' eventually. When permanence cannot be attained for empirical reasons, it makes no sense to aspire for it on a normative level.

Some have argued that cosmopolitanism is meaningless without the context of a world-state. However, even those cosmopolitans who do favour a world-state tend to support something more sophisticated that cannot be dismissed out of hand, that is, a thin conception of global governance with layered sovereignty (Beitz 1979, 1983; Pogge 1992, 1994, 2001). The existence of the United Nations, of states like India with more than a billion people with diverse cultural and religious backgrounds, and of the European Union, are all evidence against the alleged impossibility to evolve the Westphalian system of sovereign nation-states into a global system of multi-layered state-like institutions. Though even among cosmopolitans, defenders of a loose, voluntary and non-coercive federation warn that a world-state easily becomes despotic,¹⁰ defenders of a more integrated form of global governance counter that a form of a global federation of states would be the only way to meet today's global challenges. Pogge and others have argued that a concern for human rights should lead to a focus on an international institutional reform that would disperse sovereignty vertically (Pogge 2001). On this view, peace and progress would be better served by a system of global governance in which the loyalties of individuals would be dispersed over a number of political units on various levels, without any one layer dominating and thus occupying the usual role of the state (Dusché *op cit.*: 7; 2000b: 24–36).

OUTLINE OF A COSMOPOLITAN CONCEPTION OF JUSTICE

As mentioned above, a cosmopolitan conception of justice would be a thinner, higher level form of ethics in relation to more fully fledged conceptions of ethics as provided by more comprehensive secular or religious worldviews. Since people in the emerging global polity can not be expected to share in great detail the subjective normative conditions necessary for a full-fledged global theory of justice, a cosmopolitan approach to justice would therefore limit itself to defining the basic conditions that each comprehensive conception of justice would have to meet, in order for groups of people adhering to disparate conceptions of justice to live together peacefully. To achieve this, a cosmopolitan conception of justice would have to be simple and minimal in its presuppositions—anthropological, cosmological, metaphysical, theological—to be acceptable to the greatest possible number of people across regions and cultures. This basic requirement is a reflection of John Rawls' idea of a freestanding conception of justice, if only at a global level (Rawls 1993).

Simplicity is expressed by the fact that a cosmopolitan conception of justice would apply to all human beings as such. Such an assumption is less demanding, for example, than a theory that carries with it presuppositions about the nature of different categories of human beings (depending on family, tribe, class, caste, race, nation etc.) and their societies (whether stratified or based on equality, for example). A cosmopolitan conception of justice does not have to take a stance on any of these issues. It can limit itself to saying: 'Whatever you think that matters for the organisation of your particular society, such and such are the basic conditions that have to be met so that your society can live peacefully with other societies.'

Because a cosmopolitan conception of justice, for reasons of simplicity, applies to human beings, plain and simple, it must be global from the start, since from its perspective, any division of humankind should not be taken as the basis for any theory of justice, but can only be its consequence. Whether it makes sense, for example, to cast the world in the mould of the Peace of Westphalia model of a plurality of sovereign nation-states, or whether today it would make more sense to think along the lines of a shared sovereignty on different levels of governance, from local and national to supra-national and global, is an open question. Debate about this question should not be pre-empted by simply assuming that justice can only be discussed on national and international levels. Equally, it should be open to debate whether or not some sort of global institutions of governance should not be equipped with the necessary interpretative, financial, and even armed powers to take on responsibilities that have generally been confined to the discretion of the nation-state.

Scepticism about such institutions is often based on the gratuitous assumption that global state-like institutions would not work or would be impossible to control. This may be true for a full fledged world-state. But let us take global juridical institutions as an example. International courts and tribunals have worked quite well in a number of cases in Europe and worldwide. There is no reason why such institutions should not be made to work on a more permanent and comprehensive footing. Only the illegitimate national interests of some member states of the United Nations currently stand in the way of such a project. These nations cannot be forced to comply, in view of their overwhelming power, but they could develop an interest in a self-commitment to principles of global justice, once they realised that with all their might they cannot dominate other nations into accepting their idiosyncratic and short-lived interpretations

of humanitarian intervention, human rights, or 'perpetual peace' by way of 'infinite justice'.

Besides being simple, a cosmopolitan conception of justice needs to be minimal in its presuppositions—anthropological, cosmological, metaphysical, theological. Agreement on what man is, on what the world we live in is like, or on what we can expect in an after life, if there is any, cannot be expected within any reasonable time span. Yet, meanwhile, we want to live together peacefully. For this, we need not know the detailed answer to all these questions, if we can only agree on some minimal but irrefutable preliminary answers. Thus, we need not know the whole formula of *what is man* if only we grant that whatever else human beings may be like, they will only abide by norms that they accept. One can say that there is a naturalist fallacy involved—what is *actually* accepted by all humans concerned in a given situation is not necessarily the same as what *should* have been accepted by all in that circumstance.¹¹ The rejoinder would be—in that hypothetical situation—whatever should have been accepted by all, it is irrelevant as long as it does not get *actually* accepted. Note that a crucial constraint lies in the formula 'accepted by all humans concerned' (and not 'accepted by a majority'). This should be taken quite literally for it guards against a potentially despotic form of democratic voluntarism. Only a gapless consensus would ensure that the human rights of a minority (or of a single person) would not be sacrificed in the name of the interests of the majority. However unlikely a gapless consensus were in practice, the hypothetical case serves to demonstrate the sufficiency of democratic voluntarism for questions of justice. Given the unlikely event that a group of people would take a collective decision based on an uncontradicted consensus, and no one outside that group is concerned by the consequences of that decision, there is nothing that this group could not decide. The limiting case of

a gapless consensus thus serves to prove the irrelevance of any extraneous constraints (anthropological, metaphysical and theological) on justice other than democratic voluntarism.

In order to bring into line the minimal requirements of a cosmopolitan conception of justice with the more fully expressed requirements of a more comprehensive conception of justice, we can take Rawls' idea of an *overlapping consensus* and take it to a global level. The fundamental idea is that we can, maybe, achieve a consensus on certain minimal requirements of justice, if we focus on results and leave aside their justification. Thus, while any comprehensive conception of justice, religious or secular, may follow a different rationale in arguing for the preferability of non-violent conduct between human beings plain and simple, and as members of different societies or nations, we can let these rationales be different, even incompatible, as long as we can agree on the outcome, that is non-violence.

This overlapping consensus, however, cannot be achieved without cost. It should not be denied that there are conceptions of justice that do propagate illegitimate means in achieving their ends. A cosmopolitan conception of justice would be incompatible with such notions. People who propagate their conception of justice and deny others the right to do the same, for example, cannot be seen as contributing to an overlapping consensus. They have to either be reformed or isolated. In this sense, a cosmopolitan conception of justice is not a meta-theory of justice. Its claims, however non-interfering, are on the same level as those of more interfering conceptions of justice. The difference is not one of levels (object-/meta-) but of intrusiveness.

A cosmopolitan conception of justice can be called thin, or minimal, because it limits itself to the regimentation of as little as necessary in a persons life, whereas comprehensive conceptions of justice tend to regulate as much of human

life as possible. Why, for example, would it be necessary for all humans to believe that the earth is either flat or round, that the universe is finite or infinite, or that time is circular and infinite (wheel of life), or linear and finite (from creation to doomsday), in order to live together peacefully? The task is, therefore, to purge our conception of justice from all irrelevant anthropological, cosmological and metaphysical accretions that make it unlikely to be acceptable to people with widely disparate worldviews.

RELATIVISM AND UNIVERSALISM IN MORAL THEORY

Here, I am coming back to the question of universalism in moral theory and to the delimitation of this term with respect to relativism and cosmopolitanism as proposed in this chapter—if a cosmopolitan conception of justice is not universalist, the question arises as to whether a cosmopolitan conception of justice amounts to relativism? And if so, whether that is bad?

Universalism in moral theory is generally understood in an epistemological sense. In this understanding, ethical universalism is marked by similar deficiencies as is metaphysical realism (Putnam 1976: 123–40). Hillary Putnam (*ibid.*: 123) has demonstrated that metaphysical realism is inconsistent. Correspondingly, I will argue that naïve universalism is self-defeating. Just like metaphysical realism, which aims at modelling the relationship between the one theory with the one real world, ethical universalism, in its simple form, aims at modelling the relationship between the one moral theory in correspondence with the one realm of moral universals, that serves as a timeless and context-independent device for the resolution of moral problems. As an alternative to metaphysical realism, Putnam (*ibid.*) proposes

a different kind of realism, which he names ‘internal realism’ and in which the practice of theorists (speakers) forms an integral part:

The realist explanation, in a nutshell, is [...] that speakers mirror the world [...] in the sense of constructing a symbolic representation of that environment. [I refer to] realism in this sense—acceptance of this sort of scientific picture of the relation of speakers to their environment, and of the role of language—as internal realism.

For Putnam, internal realism is distinct from naïve realism in that it takes into account the collectivity of speakers for whom a given model is realistic or not. Unlike naïve realism, internal realism allows collectivities of speakers or communities of researchers to express themselves in a specific language (theory). Such collectivities are defined by a specific linguistic practice that—for them—forms the basis for the generation of models of reality. These models are realistic in relation to these communities and not in any absolute sense.

Correspondingly, we can look at moral universalism as standing in relation to a collectivity whose members are united in a norm-governed social practice that gives rise to a universalist moral theory that these communities may generate. In analogy to Putnam’s term ‘internal realism’, the term ‘internal universalism’ may be proposed for any theory that takes into account the fact that moral theory is always universal *for* a particular group of people who share a common moral practice. The most we can achieve is to enlarge the relevant reference group to include all human beings. The result would be a cosmopolitan theory of justice but not *a universal* theory of justice. The theory would be universal only *for* humanity and not as such (that is, for other intelligent life that may exist in the far corners of the universe). Thus in the sense that a cosmopolitan theory of justice would be

relative to the shared practice of a globalised humanity, it would be relativist. This is, however, not a dangerous way of being relativist, as I will argue presently.

As Hume reminded us, there can be no ethical universalism in the absolute sense, in abstraction, so to say, from any human practice. Such a position would correspond to the naïve realism discussed above and could be called naïve universalism. Naïve universalism ignores human practice as being the only available reference point in relation to which norms are generated and justified. The false assumption that moral norms could be justified in the abstract fails to take into account what Rawls (1993: 54) had called the *burdens of judgement*, and what could also be called an *indeterminacy of human reason* (Dusche 2002: 21–30). Too often, the justification of moral norms is thought of in analogy to the justification of propositions from the realm of natural science. Propositions in science are justified when they are true. In moral theory, however, truth is not the relevant criterion. Rather it is acceptance. Moral norms are justified when they are accepted by all (quite literally) they concern. Those concerned cannot be abstracted away in the process of justification. Moral universalist claims, therefore, remain inescapably bound to a moral practice that generates norms and gives rise to moral theories reflecting upon these norms.

Putnam (Putnam 1976: 138) concludes his remarks on internal realism with a metaphor that is even more enlightening when applied to moral philosophy:

Kant's image was of knowledge as a 'representation'—a kind of play. The author is me. But the author also appears as a character in the play [...]. The author in the play is not the 'real' author—It is the 'empirical me'. The 'real' author is the 'transcendental me'. I would modify Kant's image in two ways. The authors (in the plural—my image of knowledge is social) don't write just one story: they write many

versions. And the authors in the stories are the real authors. This would be ‘crazy’ if these stories were fictions. A fictitious character can’t also be a real author. But these are true stories.

Thus, internal universalism (and by implication our cosmopolitan conception of justice), in one sense, is a relativist position. The conditions of internal universalism are met *if and only if* a given norm or normative theory N is formulated against the backdrop of a practice P, and (1) the scope of N is intended to include all human beings, and (2) N is justified in terms of acceptance by the members of P. (1) makes N universal in intention, and (2) restricts it to P in terms of justification. Thus, in terms of justification, N is relative to P. In terms of its intended scope, N is universal. There is one case in which the justification of N for P nearly matches N’s universalist aspiration—if N is justified relative to a practice in which all humans take part. The question of norms or normative theories being globally valid thus hinges on the concept of a globally shared social practice. If one accepts this concept, a truly cosmopolitan moral theory, or theory of justice, becomes conceivable. Still, even this globally justified normative theory would only be internally universal—that is, internal to the global perspective—but this may be all that the universalist ever wanted!

Theory-related relativism does not fall into the trap of *normative relativism* (Brandt 1967: 75–78). One can distinguish three forms of relativism—descriptive, meta-ethical and normative. Within descriptive relativism, we can further distinguish between a fundamentalist and a non-fundamentalist variety. Descriptive relativism makes the uncontroversial claim that conceptions of justice are varied and conflicting for different individuals or groups of individuals. Within non-fundamentalist descriptive relativism no decision is taken, whether or not one of the conflicting conceptions is ‘truer’

than the other; or whether an agreement across conflicting conceptions can be reached. Only in its fundamentalist variety does descriptive relativism draw the fatal conclusion that the conflict of norms is impossible to resolve and that, therefore, we have to accept the alternative of either peaceful but separate coexistence or violent conflict between disagreeing groups.

From the point of view of internal universalism, descriptive relativism is unproblematic, even desirable, for it only tells us why we need ethics in the first place. If there were no disagreement on normative questions, ethics as striving for the resolution of normative conflicts would be superfluous. Internal universalism, however, does not lead to the fatal consequence that fundamentalist descriptive relativism embraces, for it emphasises the possibility of overcoming principled normative conflict through the establishment of a common social practice that can then serve as a basis for common deliberations on normative questions. Internal universalism rejects the view that there has to be (and can be) only one right answer to a given normative problem. Instead, it emphasises the possibility of a collective and plural choice of solutions that conflicting parties deem suitable for themselves. Internal universalism can thus qualify as a form of meta-ethical relativism. Meta-ethical relativism rejects the view, '[that there is any] method of ethical reasoning that can be expected in principle to show, when there is a conflict of values or ethical principles, that one and only one solution is correct' (Brandt 1967: 76). Thus internal universalism is a relativist position in two ways. It is a form of descriptive relativism in its non-fundamentalist variety and it is a form of meta-ethical relativism. Neither of the two, however, makes it a relativist position in the normative sense. From the point of view of normative relativism, it would be always wrong for a member X of reference group C to do action

A in situation S, if members of C believe that A for X in S is wrong. Let us call this axiom 'R'. Within internal universalism, R in its generality cannot even be formulated, for it presupposes what internal universalism rejects—a point of view that is neutral with respect to all social practice, its generation of norms and its ways of justifying them. This seemingly neutral point of view assumes that a particular reference group C is always the authority for the justification of N. Here, however, normative relativism presupposes a normative principle that in turn is not justified by any allusion to a reference group. Therefore, such a position is self-defeating. Normative relativism stops short of applying its own tenets to the universal claim that is implicit in R. By contrast, internal universalism, unlike normative relativism, does not fall short of including R in the set of questions that any moral theory has to address. For internal universalism, the question of whether R is correct or not must be decided on the basis of a conception of justice. The answer is theory-dependent and many different theories are conceivable.

To illustrate this, let us construct an example in which two incommensurable meta-ethical views are in conflict regarding the justification of a given norm N. Let the two meta-ethical views be one of a theocrat and the other of a democrat. According to the theocrat, the relevant authority for the justification of N is God (or the Gods) or rather the theocracy in proxy for God himself. For the democrat, the relevant criterion is the gapless consensus of the concerned political community. From the point of view of the theocrat, the question of whether an action is right or wrong is independent of members of a reference group, believing that the action is wrong because the justification of the relevant norm N is not dependent on the reference group but on the directives of the theocracy. From the point of view of

the democrat, on the other hand, the relevant question is whether or not N has been unanimously endorsed by the political community. Both make a universal claim. The theocrat claims that norms are justified for all humans when they are endorsed by the theocracy; the democrat claims that norms are justified for all humans when they are unanimously endorsed by their political community. Both draw on an established practice of justification of norms: a theocratic practice on one hand and a democratic practice on the other. Thus, both points of view can be characterised as internally universal. The argument below demonstrates that a common formulation of the principle of normative relativity, a formulation with which both parties could agree, is not conceivable. Therefore, normative relativism cannot be expressed within a framework of internal universalism—a common formulation of a principle of normative relativity would have to look like the following proposition, ‘It would be wrong for X as a participant in practice P to do action A in situation S, if, and only if, A is not in agreement with the rules governing P (let us call this proposition “R*”).’ From the theocratic point of view, the rules governing P are those of the established practice of theocracy. From the democratic point of view, the rules of P are those of the established democratic practice. Each interprets R* in its own way and each interpretation is unacceptable for the other party. The theocrat and the democrat could never agree on a common interpretation of R*.

CONCLUSION

From all this we can conclude that internal universalism, and therefore our cosmopolitan conception of justice, is an independent position between naïve universalism and normative relativism. Since we have shown the latter two to be

inconsistent, cosmopolitanism presents itself as the only viable alternative. In addition, cosmopolitanism does not preclude the possibility of theocrats and democrats converging towards a common conception of justice. They could come to an agreement in which they would settle which cases are to be treated according to the theocratic conception of justice and which are to be treated according to the democratic conception. Matters of the 'church', for example, might fall into the domain of theocracy, whereas matters of general concern would come into the domain of democracy. Each of the two parties would have to restrain their universalist pretensions and agree to restrict the scope of their principles of justice.

Normative relativism is dangerous because it suggests that people are trapped, as it were, in their respective social life-forms that constitute the communities to which it refers. Cosmopolitanism avoids this pitfall by not depending on any particular existing community for the justification of norms but by referring to actual, as well as possible social practices of shared genesis and justification of norms. People are always free to develop new, overlapping forms of social interaction across existing communities, to reshape communities and to redefine their normative basis. Thus, cosmopolitanism avoids the dangers of normative relativism. While it grants that principles of justice cannot be completely unrelated to the moral practice of various social groups, it refuses to view established social practice as final. It refuses to perceive humans as unavoidably caught in their respective communities, and encourages them to find political and peaceful solutions to problems resulting from their interaction. If both sides accept that their claims can only be internally universal (and not universal in an absolute sense), and that they have to gain the acceptance of the other

side in order to widen the scope of their favoured principles of justice, then cosmopolitanism can provide mutual understanding and peaceful solutions to conflicts in norms and values. Cosmopolitanism allows us to understand why, in every conception of justice, there is a claim to universality, and why this claim remains relative to a certain context until the context is broadened in a joint effort to eventually include all of humanity.

NOTES

1. Accessed on 15 February 2007, at <http://plato.stanford.edu/entries/cosmopolitanism/>
2. Kleingeld and Brown (2006); Augustine, in Kalb (1929), later edited and translated by Dyson (1998).
3. Arabic: *kāfir*; plural *kuffār*.
4. Grotius (1625) in Kelsey (1925); Pufendorf (1672) in Simons (1995).
5. Schlosser, Johann Georg. 'Politische Fragmente'. *Deutsches Museum*, February 1777; quoted after Kleingeld and Brown. (op. cit.).
6. Johann Gottlieb Fichte in Neuhouser (2000).
7. During anti-semitic campaigns between 1948 and 1953, a similar concept evoking feelings of hatred and fear was conjured up in Stalinist Russia where 'rootless cosmopolitan' became a common malediction of Jews.
8. In the time of Bismarck's anti-socialist laws, German socialists were defamed as *vaterlandslose Gesellen* (journeymen without any allegiance to their fatherland).
9. 'Identity, Language, and Culture', paper read at the International Seminar on 'Language, Meaning, and Text', Centre for Philosophy, School of Social Sciences, Jawaharlal Nehru University, New Delhi, India 5–6 November 2004. Published as a part of 'The Study of Migrant Identities through Migrant Literatures', in Jecht and Mazumdar (2006).
10. Rawls (1999). 'The Law of Peoples', in Shute and Hurley (1993), originally published in *Critical Inquiry* 20: 36–68.

11. ... by some standard other than acceptability to the people concerned such as correspondence to Gods will, the *Shariāh* law, the Christian *logos*, and so on.

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PART II
REFLECTIONS OF JUSTICE IN
LITERARY TRADITIONS

5

Poetic and Social Justice: Some Reflections on the Premchand–Dalit Controversy

ALOK RAI

The concept of ‘poetic justice’ is believed to have been invented by Thomas Rymer in 1678, in *Tragedies of the Last Age Considered*. This is the idea, broadly speaking, that the poet or artist has not only the freedom but even a duty to invent his imaginary worlds in such a fashion that, in it, the wrongs of the everyday world are redressed. There, the guilty do not go unpunished and villains do not prosper. Legitimate lovers are united, and illegitimate ones meet their just deserts. The underlying assumption, of course, is that an unjust world is also unaesthetic. Consequently, in the domain of aesthetic representation, the injustices of mere life *can* and *should* be corrected.

Not surprisingly, the concept soon became a subject of mockery and disdain. Thus, in Alexander Pope’s *Dunciad*, ‘Poetic Justice’ is one of the ‘four guardian Virtues’ of the Majesty of Dullness:

Poetic Justice, with her lifted scale,
Where, in nice balance, truth with gold she weighs,
And solid pudding against empty praise.

—(*Dunciad*, Book 1, ll. 52–54)

But while the concept might well have fallen into disrepute, the underlying idea—of imagined, aesthetic worlds being, somehow, compensatory and corrective—is to be found in other traditions also. And it has indeed continued to exert an influence on artistic practice in times and places far removed. Thus, even overtly realistic fiction—such as in the English 19th century—was under pressure, often from its readers, even to temper its representation of the actual with some idealist, some sentimental amelioration, some massaging of the cold facts. (The altered ending of Dickens's *Great Expectations* is a famous example.) It is this that lies at the root of the sudden transformations that one finds in so much of such fiction. The main narration is under obligation to be faithful to the known world of injustice and so on. Because, after all, a *wholly* imaginary universe would have no relevance to the real world of experience, and consequently have no consolatory power. The compensatory and 'just' transformations can only be tacked on.

Similarly, under the dispensation of socialist realism, the writer was under obligation not only to show what was actually there in the lived historical world but was also required to divine, further, the shapes of the still-forming future, and indeed, to assist in the shaping of that future by showing what might be, and could be, and ought to be true. Here, far away from Rymer's 17th century world, we can still see the idea of poetic justice exercising its influence.

The concept of 'social justice' has a very specific Indian inflection. The Preamble to the Constitution mentions three kinds of justice: political, economic and social. The first refers to political freedom and so on; the second pertains to poverty and the inequities of class. The last 'social justice' refers and is understood to refer specifically to caste injustice, and addresses issues of reparation and recognition for the victims of savarna Hindu society. A kind of urgency, an

uncompromising insistence on priority, is built into the very origins of the Indian concept. Thus, Ambedkar who is its proximate progenitor, differed crucially with Gandhi over the question of timing. I am sure that there are many ways of reading the Gandhi–Ambedkar controversy that was ultimately resolved, after a fashion, through the Poona Pact. But the part that is relevant for my argument here, in counterposing social justice and poetic justice, is simply the implication that the needs of social justice, which can hardly wait even for the attainment of independence from colonial rule, cannot be met by the fantasy resolutions of imagined worlds.

In this sense, poetic justice and social justice are polar opposites. While the former provides consolation and courage in an imaginary realm, the latter seeks tangible gains in the immediate political and historical context. Normally, one would expect these to be non-intersecting discourses, operating as they do on entirely different planes. However, as the Dalit cultural upsurge of the last few decades shows, there is an aesthetic corollary of the claim of social justice. And it is at that level that one may see some infection by the notion of poetic justice, that is, in the demand for representations in which that which is yet to become actual in the material–historical world, is represented as already-achieved. This is the familiar ‘is–ought’ slippage that signals the long reach of the notion of poetic justice. Thus, Kanwal Bharati (2000) writes,

गंगी का विद्रोह काबिले तारीफ़ है, पर प्रेमचन्द वर्ण और जाति पर उससे कोई चोट नहीं करते [कराते?] हैं। कोई मुक्ति-संग्राम लड़ा होता गंगी ने, तो हो सकता था, गंगी की जान चली जाती, पर वह दलितों की अस्मिता की कहानी बन जाती और जोखू वही मैला-गन्दा पानी नहीं पीता। डॉ. अम्बेडकर ने भी कहानियाँ रची थीं। पर वे कहानियाँ उन्होंने कलम से नहीं, कर्म से रची थीं। (Gangi's revolt is praiseworthy, but Premchand does not make any attack on caste and community through her. If only Gangi had fought some battle of liberation, though she may well have lost her life,

but it would have become a story of the Dalit fight for recognition, and Jokhu would not have had to drink that dirty polluted water. Dr Ambedkar also created stories. But he did not create these by his pen, he created them by his actions.)

This prescriptive militancy is to be distinguished from that coldly matter-of-fact writing in which the quiet representation of actuality is itself subversive. The aesthetic that demands more, that demands sentimental excess and imaginary amelioration—whether in the form of improbable goodness or improbable militancy—is what I have classed under the rubric of ‘poetic justice’. Here, one demands of art that it compensates for the sluggishness and defect of reality.

There is one further distinction that one needs to make with respect to the concept of social justice. Basically, it seems to me that the notion needs to be disaggregated. There is an important part of it that pertains to the world of rules and laws. There is another not less important part that pertains to attitudes and feelings, to the persistence of the past in ways that, while they may be insubstantial, are far from being inconsequential. I speak of prejudice and predisposition; and this is the part that is identified by keywords such as dignity and self-respect, but also—and there is an important difference here—with the need for recognition. And, whereas the former component of the notion of social justice can and should be legislated into unambiguous reality, there is no immediate way in which the latter—dignity and recognition—can be brought into existence by fiat. Obviously, there are ways in which action on the first level has consequences, over time, at the second level of attitudes and feelings also. But the latter is, willy-nilly, a slow and *necessarily consensual* process—and that is why the cultural-aesthetic question becomes one of paramount importance. It takes two to play the game of recognition.

There is an inherently conservative, trans-historical pretence that is part and parcel of traditional aesthetics. This is the idealist claim that the aesthetic domain is autonomous of the claims of history and other contingencies. It is, on this account, a kind of utopian space in which the hierarchies of the real historical world are held in abeyance, because the aesthetic realm is subject to its own, mysterious rules. This is an untenable claim—but I hope to argue later that the notion of aesthetic autonomy fulfils an important function, and therefore still needs to be defended, albeit in a modified form. Still, the fact of the matter is that notions of the aesthetic— notions of what is or is not acceptable, ‘artistic’, ‘beautiful’ and the like—*do* change over time. In the historical snapshots that we can get of this process, there often appears to be a mysterious consonance between the interests and predispositions of socially dominant groups and the ruling aesthetic ideas of a particular time. By the same token, any new ‘content’—the experiences and perceptions of hitherto excluded groups—is resisted by retreating behind the notion of aesthetic autonomy.

The social and historical contingency of the idea of the ‘aesthetic’ hardly needs strenuous demonstration. Pierre Bourdieu’s work on the workings of the notion of ‘taste’—and of the ways in which cultural capital is unevenly distributed, rather like the other kind, except that the two distributions do not overlap exactly—has complicated the idealist–aesthetic defence significantly. However, apart from the gross ‘power’ considerations—like who gets to man the institutions and establish the pecking order—there is a subtler level at which inertial resistance might account more for the glacial pace at which aesthetic ideas change. This is the operation of those often unarticulated views and beliefs regarding plausibility, viability, likelihood and so on, on which judgements of aesthetic quality rest. These views

and beliefs are not in themselves aesthetic, but they have profound aesthetic consequences.

I referred earlier to those historical snapshots that reveal the mysterious consonance between notions of the 'aesthetic' and the social configuration in a particular time. And if we look at such 'snapshots' over a period of time, we notice that what appears in each snapshot as frozen, eternal and beyond the reach of mere time, in fact changes over time. *But the point or process of change never becomes visible—there are no snapshots of 'process'*, and even a movie is only a fast succession of snapshots.

We know something about the diachronic movement of the real, historical world, and we have accounts of the vertical synchrony between particular moments of this real historical world and the corresponding aesthetic formations—to put it crudely, we know something about the emergence and consolidation of the urban middle class in the 18th and 19th centuries in Europe; and we know something about the ways in which their tastes and their worldviews got translated into the forms of art. But we know very little about the necessary diachronic movement at the aesthetic level, without which, all we are left with are jerky snapshots, spurts and ruptures. And yet, if we wish to understand the process by which new 'content' is first resisted, then accommodated and assimilated in a new aesthetic configuration, it is precisely this elusive 'change' that we need to understand.

I referred to views and beliefs that are not in themselves aesthetic, though they underline our aesthetic judgements. These views and beliefs are produced in a wide variety of ways and locations—in families, in classrooms, on playgrounds and so on. But they are also generated in that twilight zone between life and art that is not life, but is sufficiently informed by it to reflect a transformed and transforming light upon it. Anyone who has experienced the power of literature—its ability to take us out of ourselves

and into other unlikely selves and experiences, only to bring us back enriched and transformed—will understand readily the commonplace everyday experience that I am trying to describe here. It is this power that all those who endeavour to use literature in the service of social transformation and attitudinal change must seek to understand and to yoke.

When one looks at the Hindi literature that emerged in the last quarter of the 19th century and in the early 20th century, the silence with regard to the life-experience of the so-called Hindu lower castes is nearly total. It should perhaps be said that this silence is pretty much there in the Urdu literature of the time as well. Indeed, the pressure of the elite, urban literary culture sits rather more heavily on the Urdu writer, and is indeed part of the reason why Premchand, looking around at the unregarded life of his time, ‘switched’ from Urdu to Hindi. The literary culture of the latter was still forming, and Premchand had an important formative influence upon it.

But the strongest influence by far was that of the Hindu savarna classes that were, indeed, inventing themselves as a class-for-itself through the process of inventing the language that Hindi was soon to become. What is more, these classes (or groups, or castes) saw themselves as excluded—with some justification. As such—and for all the traditional reasons of caste prejudice and the like—they could hardly be expected to pay much attention to groups (or castes) that were even more completely excluded than they were—excluded, crucially, by the Hindu savarna themselves. *The emergent Brahmin of the post-1857 Hindi heartland was particularly ill-positioned to be sympathetic to the anti-Brahmanical critique that was gathering strength elsewhere.*

For complex historical reasons, these early-Hindi ideologues were not even particularly sympathetic to the anti-Brahmanical voices of past centuries. Thus, even a figure

like Kabir, and a tradition like Bhakti, had to wait for recognition by a later generation of ‘progressives’ before it could be assimilated into—and then *become*—the glorious past of modern Hindi. Thus, Ramchandra Shukla’s dismissal of Kabir as mere *sadhukkari* is well-known. However, the near-total silence with regard to what, in a later idiom, we call the Dalit experience, is an essential background for understanding the Premchand–Dalit controversy. The rage of the Dalit ideologue is instantly understandable—the choice of the target, Premchand, will take somewhat longer.

In many respects, Munshi Premchand has become a hoary icon, a sometime sentimentalist from a bygone age, firmly established in the dubious immortality of a curricular classic. He has become part of our cultural shorthand, the familiar and rubbed-down currency of our social imagination. It requires something of an effort to focus on his apparent ‘organicity’, the manner in which ‘Munshi Premchand’ came, through what was a remarkable personal story of self-invention, to crystallise and symbolise also a zone of social consciousness. Premchand was both, a creator and a symptom of that great movement of consciousness whose accents can be heard throughout India in the decades around 1900.

When Stephen Dedalus sallies forth into the future in James Joyce’s *A Portrait of the Artist as a Young Man*, he intends, famously, ‘to forge, in the smithy of my soul, the uncreated conscience of my race’. Similar young men dominate the modern traditions of many of India’s languages—encyclopaedic Renaissance men (not many women, alas, for all the well-known reasons), towering and formative individuals whose cultural influence goes far beyond their considerable achievements and competencies. The manner in which these great originary figures work is by picking up disparate aspects of the life of their times, and endowing

those with an unprecedented coherence. In that precise moment, a new cultural subject is born. New continents of experience open up suddenly and become available both for social action and cultural appropriation. What unites these past masters of conscience—Tagore, Karanth, Senapati, Bharati—is the fact that they significantly enlarged the range and reach of the social imagination by making a greater proportion of the marginalised life of their times available to the imagination for being given narrative shape, and so form the basis for a moral order. There is a very real sense in which, even without our consent or knowledge, we *inhabit* the narratives that were invented by these master fabulists, these masters of ‘conscience’: we live in the worlds that these writers have imagined for us—imagined, and so rendered thinkable, capable of being experienced and acted upon.

It follows from this that Premchand—unlike any other writer of his time, across a wide swathe of north India—was deeply concerned with the inhumanities of the caste system, with the kinds of social experience that the conception of social justice seeks to address. As a journalist, he wrote fearlessly and trenchantly about the injustice that was, for him, a constitutive feature of the Brahmanical order. The accents are sharp—sharp enough, I would have thought, to satisfy even the Dalit ideologues of today who have attacked him. Kanti Mohan (2003: 85) cites Premchand.

प्रेमचन्द, ‘महान तप’: क्या अब भी हम अपने बड़प्पन का, अपनी कुलीनता का ढिंढोरा पीटते फिरेंगे? यह ऊँच-नीच, छोटे-बड़े का भेद हिन्दू जीवन के रोम-रोम में व्याप्त हो गया है।... हम आदमी पीछे हैं, चौबे या तिवारी पहले।... इसकी गहरी जड़ों को खोद कर समाज से निकालना होगा। (Will we continue to boast loudly about our greatness, about on our being high-born. All this business of high and low of big and small, this has penetrated every fibre of Hindu life. ... Our humanity means little, what matters is that we

are Chaubays or Tiwari. ... The deep roots of such attitudes will have to be dug up and removed from society.)

They were certainly sharp enough to have invited the wrath of the Brahmins, who accused him of having used his writing in order to generate 'loathing' for Brahmins. Thus, one Jyoti Prasad Nirmal called him, with some justification, *ghrina ke pracharak*, that is, preacher of disgust. Premchand's only regret, expressed as such, was that he was unable to do more along those lines, unable to do more to bring down the Brahmanical social order, the *varna-vyavastha*.

Kanti Mohan again citing Premchand in *Udhabhavana* (p. 86) from Jan. 1934 'क्या हम वास्तव में राष्ट्रवादी हैं?' (Are we Nationalists?)

...शिकायत है कि हमने अपनी तीन-चौथाई कहानियों में ब्राह्मणों को काले रंगों में चित्रित करके अपनी संकीर्णता का परिचय दिया है...हम कहते हैं कि अगर हममें इतनी शक्ति होती, तो हम अपना सारा जीवन हिन्दू जाति को पुरोहितों, पुजारियों, पण्डों और धर्मोपजीवी कीटाणुओं से मुक्त कराने में अर्पित कर देते। हिन्दू जाति का सबसे घृणित कोढ़, सबसे लज्जाजनक कलंक यही टके पंथी दल हैं, जो एक विशाल जोंक की भाँति उसका खून चूस रहा है... (...the complaint is that in three-fourths of my stories, I have shown my prejudice by painting Brahmins in dark colours... . What I say is that if I had enough strength, I would devote my whole life to freeing the Hindu community from the priests, the parasites who feed off religion. The greatest disgrace, the leprous scab of the Hindu community is precisely such petty groups, who are like a gigantic leech, sucking away the life-blood of the community.)

That is why it is particularly intriguing to find a Dalit ideologue accusing him of betraying, finally, a lingering affection for that same *varna-vyavastha*.

Kanwal Bharati, (2000: 87–88) cites Om Prakash Balmiki-

'प्रेमचन्द ने दलित चेतना की कई महत्वपूर्ण कहानियाँ लिखी हैं...लेकिन अंतिम दौर की कहानी कफ़न तक आते-आते वह गाँधीवादी आदर्शों,

सामन्ती मूल्यों, वर्णव्यवस्था के पक्षधर दिखायी पड़ते हैं। एक अंतर्द्वन्द्व है उनकी रचनाओं में—एक ओर दलितों से सहानुभूति, दूसरी और वर्णव्यवस्था में विश्वास।' (Premchand has written several important stories that show Dalit consciousness... but by the time he gets to the last story 'Kafan', he appears to be in favour of Gandhian ideals, feudal values and the caste system. There is a deep struggle in his writings—on the one side, there is sympathy for Dalits, on the other, faith in the caste system.)

These journalist writings, however, for all their trenchant vivacity, their forthright condemnation of *savarna* Hindu society—leeches and parasites, he called them—are still a restatement of opinions that were available in the political discourse of the time, albeit not very current in Brahmanical Uttar Pradesh. What is really remarkable in his achievement is the extension of *imaginative citizenship* to the hitherto out-caste and the downtrodden. In insinuating *these* figures into the cultural discourse of the literate and overwhelmingly *savarna* Hindu society of his time—particularly in the Hindi register—Premchand was bringing about a fundamental and far-reaching change in the moral economy of his society. He was altering the established moral equilibrium, in which there was a rough coincidence between desert and destiny, between what is and what ought to be.

This destabilizing manoeuvre is at the heart of what might be called the literature of conscience. This is essentially a 19th century mode in which the writer endeavours to widen the circle of sympathy by including hitherto excluded categories of persons within it. Key to the phenomenon of this literature of conscience is the guilty reader, except of course, that the challenge for a pioneer of this kind of literature—such as Premchand unarguably was in the Hindi heartland—is actually to *invent* the guilty reader, to extend the stigma of 'wrong' to yet more categories of hitherto acceptable or at least tolerated behaviour. This is recognised by some dalit critics. Thus, Sheoraj Bechain (2000) refers to

the 'Dalit' literature produced by the liberal/progressive *savarna* writers as 'स्वजाति संकुचन का साहित्य' which may be translated roughly as the literature of embarrassment of one's own caste.

However, such an invention requires not only an advanced awareness of social injustice but also, crucially, a sensitivity to the tides and limits of contemporary social consciousness. The reader can be pushed—and if this is done with sensitivity and creative vivacity, might after a time even desire to *be* pushed—but if he is pushed too far or too fast, as Dalit ideologues may well discover, he soon ceases to be a reader at all. It is not a question of aesthetic autonomy, as conservatives might suggest, but rather a question of aesthetic *tact*.

The altered moral economy that results—not only but also because of the operations of this kind of literature—is characterised by a generalised sense of *moral debt* that is owed to those whom caste society has brutalised. It is difficult to quantify this debt—it does not show up in the account books of the hopelessly practical world; but this debt is nevertheless available, as a form of *moral capital*, even to those who are, or can plausibly represent the victims of that injustice. In my understanding, it is something similar to this that gets transformed into the socially corrective, affirmative action programmes that get instituted after 1947. Numbers are an important part of this story—but it is still incomplete without calling to mind also the necessary and entirely deserved guilt of the *savarna*.

The real rage of the Dalit ideologue, however, is directed not so much against either the journalism or most of the stories—it is directed against the last, great story, 'Kafan'. Kafan is, in many respects, a breakthrough, which only sharpens the regret at Premchand's premature and abrupt demise at the age of 56, for, Kafan is the last story he wrote.

Hitherto, Premchand's Dalit stories, so to speak, had remained within the familiar forms of the literature of conscience: the victims are shown as suffering inhumane and cruel treatment, but they are themselves sufficiently human to permit that necessary identification whereby this literature works. Creeping timidly with Gangi towards the forbidden well of the Thakurs (in *Thakur ka Kuan*); dying with Dukhi outside the heartless Pandit's house in *Sadgati* (in *Sadgati*)—we extend to those excluded others and to others like them, first in literature and then, more reluctantly, in life also, the generosity of our *temporarily liberal* humanity. But it is crucial to this psychological transaction that the victims must be simultaneously damaged and undamaged, wronged but essentially unharmed, *needing but also deserving* salvation. If, on the other hand, the victims are shown as truly damaged—as they *must* be, at some level—then we, the would-liberal but essentially privileged readers of this literature, stand doubly accused. Because of course, *we* are responsible for that damage: the accusing trace of the practice of cruelty. By the same token we are, gratefully and surreptitiously, exonerated by that miraculously undamaged condition.

Kafan violates this taboo, crosses this threshold. The protagonists of Kafan, Ghisu and Madhav, are entirely human in their inhumanity: the violence that the unjust social order has inflicted on them is registered in their damaged natures, their existential necessity to seize an all-too-rare moment of happiness from the unlikely bounty that the death of the son's wife has provided them. There is a bitter condemnation of the social order that has produced these brutalised individuals, just as there is a mockery of the legitimating ideology of that social order in the bits and pieces of standard-issue Brahminism—*karma*, *maya*, and so on—that the two dredge up drunkenly from time to time to assuage their residual guilt at partying, while the young woman dies. It is an unforgettable story—a clear advance over the basically sentimental

stories that preceded it. Because of course, that sentiment is the staple of the literature of conscience. Kafan on the other hand is radical and uncompromising. It offers no toehold for optimism—not in the miraculously undamaged humanity of the victims, and therefore, by implication, not in the improbable eruption of humanity in the victimisers. Kafan subverts that ultimately liberal game. There are some truths after which no reconciliation may be possible.

Though the rage of the Dalit critic is directed against Kafan in particular, there is a generalised complaint also. Premchand did not write as today's Dalit writers aspire to write, bristling with Ambedkar-inspired aggression. Sheoraj Bechain (2000: 11) analyses the alleged moral transaction explicitly in terms of the ideological division between Gandhi and Ambedkar:

इस कहानी [सद्गति] में प्रेमचन्द का लेखक पीछे छूट गया और चमार विरोधी गाँधीवादी कायस्थ आगे आ गया है। ... यही कारण है कि सद्गति के दुखी चमार के चरित्र पर गाँधीवादी कायरता की प्रतिछाया स्पष्ट दिखायी पड़ती है। दलित चेतना के पात्र के व्यक्तित्व में वर्ण-व्यवस्था के प्रति आक्रोश, असमानता, के प्रति विद्रोह अपेक्षित है, जो प्रेमचन्द के पात्रों में नहीं है। दया, सहानुभूति, करुणा और कृपा का मोहताज दलित नहीं हो सकता। उसमें अधिकार चेतना भी होनी चाहिए। (In this story (Sadgati), the author Premchand has been left behind, and the Chamar-hating Kayastha has come to the fore. ... That is the reason why there is a clear shadow of Gandhian cowardice in the characterisation of Dukhi Chamar in Sadgati. What one expects to find in the consciousness of a Dalit character with respect to the caste system is rage, anger with respect to inequality—but these are missing in Premchand's characters. Any character who lives in anticipation of kindness, sympathy, generosity and pity, can not be a Dalit. He must also have a consciousness of his rights.)

Further, Premchand's characters, the poor, ground-down folk of rural Avadh in the early 20th century are, broadly, passive, timid, trapped in the hegemonic ideology of the dominant savarna. Surely, a Dalit critic advises, Premchand could have, at least in his imagined universe, improved a little on this all-too-familiar, melancholy reality—a touch of poetic justice, a spark of rebellion, perhaps?

And even when he does get around to depicting awkward, unaccommodating and unaccommodated characters like Ghisu and Madhav, they take the form not of angry idealists burning with a passion for social justice, but rather two derelicts, down and out, snatching desperate solace from a life and a social order that gives them nothing. They understand something of the wrongness of a social order that gives charity for a shroud for the dead woman, but not help for medicine while she is still alive. But this ironic perception does not take them in the direction of a social and political critique. Within the terms of the story, the final reaction on their part might well be of gratitude—the charity that comes too late might as well be used for the purposes of the living duo rather than the dead woman.

It is entirely appropriate that Kafan should be the immediate cause of an aesthetic crisis. And the point of talking about this crisis is certainly not a defence of Premchand, who scarcely needs such defence. Only the generalised form of the aesthetic crisis need concern us here. It boils down to a problem that is, I suggest, perhaps already too much with us: this is the 'problem' of representation, the question of who has a right to speak *for* whom. It is, I believe, entirely comprehensible that when historically submerged groups seek to emerge from the shadows, they find themselves imprisoned not only in physical ways but also, and this might well be the most difficult imprisonment, in hegemonic systems of representation, in the narratives of other people.

A possible 'solution' to this—although one that I believe is deeply problematic as it is understandable—is the assertion that only those who are born Dalits can write Dalit literature—which is an ironic reprise of the traditional logic of oppression, that caste is destiny: the accident of birth is both enablement and disability.

Bharati said (2000: 91):

‘दलित साहित्य दलितों द्वारा लिखा गया साहित्य है।’ (Dalit literature is literature that has been written by Dalits.)

Bechain (2000) goes even further on p. 106:

‘आवश्यकता इस बात की है कि समूचे साहित्य में दलितों द्वारा लिखा गया साहित्य भी शामिल हो और उसकी व्याख्या के लिए दलित साहित्य के दलित विशेषज्ञ नियुक्त होने चाहिए। (What is required is that literature written by Dalits should be included in the whole literary corpus, and that for commenting on it and explaining it, Dalit specialists on Dalit literature should be appointed.)

There is a further suggestion that, while being born in particular castes is a necessary condition, it is not a sufficient one. Thus, there is a distinction sought to be made between ‘Harijan’ writing—borrowing Gandhi’s well-intentioned but now patronising term—and proper Dalit writing: In a sense that I understand and even sympathise with, this gesture of ‘secession’, the hard assertion of ‘difference’, is an essential moment in the cultural politics of identity. But the field of literature, at any rate, offers an illustration of something that I believe to be true, namely, that it is possible to suffer from ‘too much difference’ just as it is possible to suffer from ‘too little difference’.

I would not dare to offer a general theory of the way in which this politics of difference works: different situations, different strategies. But culture offers an extremely valuable

interface of the aesthetic and the moral: the relative autonomy of the aesthetic domain offers a liberated, utopian space within which unfamiliar experiences and perceptions may be encountered. On the other hand, as I have argued earlier, there is a constant and necessary osmosis and seepage between the aesthetic and moral realms—effective precisely because it is unacknowledged, and often, even unconscious. Notions of what is aesthetically acceptable and narratively plausible are of course, both, historically contingent and parasitic upon underlying moral conceptions—but these in turn seep from the aesthetic realm in order to influence behaviours and expectations—that is become morally consequential.

It seems important to me, however, *not* to abandon the notion of ‘universality’. It is entirely understandable that the complacent ‘universalist’ assumption of dominant groups gets challenged by emergent ones. But this bland and even arrogant universalism needs to be replaced by something that I can think of as a *negotiated universal*—a horizon of universality, towards which all utterance presses, unless it is content to become and to remain the dialect of a ghetto, incomprehensible to outsiders. The impatience with sentimental ‘poetic justice’ inspired writing is entirely comprehensible and even traditional. But it is important also to acknowledge the origins in something like ‘poetic justice’ of the remorselessly militant Dalit who is never tired and never wrong, and certainly never like Ghisu and Madhav. Further, and this is crucial, it is important to keep open those channels of communication that ‘poetic justice’ sought to set up—between groups, between domains—albeit in its own fashion. Because if ‘recognition’ is a key desideratum of the struggle for *social* justice—particularly in its cultural forms—then that struggle must involve, and not merely implicate and castigate, the other. Without that necessary

involvement and possible transformation, there are already other, traditional identities waiting to be resumed, available for ascription even as they are sought to be rejected: the mutual name-calling that passes for social discourse in a deeply divided society.

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6

Representation and Testimony: Anand's Novels and the Problem of Justice

UDAYA KUMAR

Given the centrality of issues of justice for ethical life, their pervasive presence in literary texts will surprise nobody. Questions of fairness, legitimacy, conflicting frames of normativity, procedures of validation and judgement, asymmetric relations of power, institutions of enforcement—these are frequent concerns in literature. From the *Mahabharata* and Attic tragedies to the works of Kafka and his successors, literary texts have repeatedly shown how human subjects are situated in relation to justice—assuming the roles of decision-makers, interlocutors, dispensers or victims. Does literature engage with justice primarily as yet another theme, as one of its myriad objects of representation? Or, is the relationship more fundamental: could we say that the tonality of some texts—the very texture of the literary discourse they present—is constituted through an encounter with the problem of justice? Could we go further and say that it is in the link between literary enunciation and the problem of justice that we need to locate historicity of literary texts—that is, the way they occupy a specific world of judgements

and evaluations? The fictional work of Anand, one of the most significant contemporary novelists in Malayalam, insistently poses these questions.¹ In one of his essays, Anand writes about a nomadic tribe which carried its sacred text on all its journeys. However, the pages of this text, carefully carried from place to place over the years, remained stubbornly silent to its bearers: the tribe had long forgotten the script in which the text was written. Anand considered this story as a parable of the relationship between literature and justice. The originary impulse of literary writing, and indeed of all culture, Anand claims, is the yearning for justice: ‘Culture is written in the alphabet of justice. It was the insatiable longing for justice that gave birth to culture. Literatures develop; languages evolve; but the script they are written in remains the same’.² How do we read literature as an inscription in the alphabet of justice? How does it affect our conception of literary enunciation? This chapter will explore these questions in relation to some of Anand’s novels.

Anand’s readers cannot but be struck by a recurrent image in his fiction—that of crowds in movement. Refugees, migrant workers, prisoners in labour camps, people who throng urban streets and public spaces—these gatherings appear in almost all of his narratives as a key preoccupation. It is not surprising to look back and see that Anand’s first novel was called *Alkuttam* (The Crowd). Its opening pages showed milling multitudes emerging from a long-distance train arriving in Bombay. After a few moments, the platforms empty out as the crowd disperses:

Where did all those people, expelled by that train, go? Which roads did they take, which doors did they knock on? Where did they disappear? Nobody knows. The city is filled with buildings and vehicles and people; yet its narrow crevices let them slide inside. They merged into the city and ceased

to be. Erasing their names and addresses, the crowd, faceless, contained them in its embrace and rhythm.

—Anand (1995a: 5)

When *Alkkuttam* was first published in 1970, passages like this were read often as bemoaning—in an existentialist vein dominant in literary modernism in Malayalam at that time—the erasure of authentic individual subjectivities. However, Anand's main preoccupation—in *Alkkuttam* as well as in his later novels—has never really been with unique subjects and their authentic moments of choice. The novels seem to be concerned far more with an anonymous level of social existence, where individual trajectories converged or crisscrossed without forming any intelligible totality.

Parallel to their preoccupation with the crowd, Anand's novels also display an impoverishment in individuated characterisation. *Alkkuttam* is dominated by discursive exchanges between six major characters. However, it would be difficult to regard the long conversations that fill up most of the novel as expressions of personal interiorities. All the major characters seem to speak in the same idiom, which in turn is not really different from that of the narrator. Even though the personal histories of major characters have been sketched in, individual markers do not substantially inflect the texture of discursive transactions. Personal experiences and emotions do not appear very frequently in their conversations, and even when they do, they function as themes spoken about in an exteriorised way, hardly demonstrating the uniqueness of inner selves. These exchanges are nonetheless sustained and animated—they relentlessly grapple with ideas and issues in contemporary politics and everyday life. Experiences of individual characters are at times plugged into this discursive world, mainly as examples. One could argue that the insertion of the personal or the

experiential into these discussions is made possible by the assumption of a common level of situatedness by the main characters in the novel. They consider this also to be shared by the anonymous crowds of the city. It is tempting to call this level of contextuality ‘ethical’ as it is incessantly concerned with questions of justice.

Most of the discussions in *Alkkuttam* centre on national politics in the early sixties. The young Indian nation-state, the war between India and China, the decline in political morality, and the widespread corruption in the state apparatus dominate them. One might consider these exchanges as structured at two levels. First, the conversations between the major characters form what may be called the discursive foreground. The interior thoughts of the characters are often continuous with this field, as a sharp distinction between interior monologues of characters and their public utterances is alien to Anand’s work. Second, adjacent to the discourses of the major characters, often forming a background to them and interrupting them at times, we find the utterances of innumerable minor characters. While the major characters appear to be self-conscious about their discursive production, performing the role of engaged intellectuals, the second set—often comprising of poorer workers, or members of the families and neighbourhoods of the major characters—participate in these exchanges rather unselfconsciously as part of their everyday lives. The main characters at times cite statements made by these minor quasi-anonymous figures. More importantly, the conversations of the principal figures are situated against the background of these overheard utterances from an almost faceless crowd. One can argue that this two-pronged discursive machine plays a central role in articulating the shared space of situatedness in Anand’s novel.

How do we understand this space? At first sight, it may seem that the unremitting exchanges of Anand’s protagonists occupy the space of the modern public sphere, where

rational citizen-subjects of the young nation-state negotiate their discursive claims. This is however undercut by the expansive crowd of anonymous subjects and the murmur of their utterances. Many of these minor figures are failures or dropouts or fighters of losing battles in life's projects of improvement. Their voices do not quite belong to any coherent field of rational discursive exchange. They occupy a grey region, a penumbra of the public sphere, where the comforts of full citizenship are not available. Nonetheless, the experience and language of citizenship are not entirely absent here: daily encounters with institutions of the nation-state forms them as incomplete citizens.

It will, however, be a mistake to consider these two spheres as binary opposites. The six major characters in *Alakkuttam*, for all their ability for reflection and criticism, occupy an unstable economic space. Their seemingly autonomous world of intellectual exchange is shown to be fragile and tottering on the brink, liable to fall any moment into the surrounding grey expanse of anonymity. It may be reductive to see in this, merely the ambivalent positioning of the educated lower middle class. For Anand, this unstable region is a privileged site of ethical situatedness. In this domain, the vocabulary of citizenship is available as discursive tools; however, the subject who is to make use of them is situated on the brink of an imminent invalidation and disappearance. The intellectual lights of the public sphere may go off any moment, incorporating this island of citizens into the vast faceless ocean of the crowd. We would need to differentiate this from Ashis Nandy's well-known argument about the anxiety of the Indian middle class about their imminent fall into the slum (Nandy 1998: 1–18). For Nandy, Bollywood cinema taps into the popular imagination of the slum to provide a critique of national politics from the slum's point of view. Anand's novels do not give up their engagement with

the universe of citizenship and civil society. They locate critical enunciation at the frontiers of this domain, where the discursive tools of the public sphere encounter a strange and complex destiny. Anand's novels are about this border terrain where enunciation cannot be understood fully in terms of stable and full subjectivities.

The domain of the crowd in Anand, extending beyond the frontiers of citizenship, is not really outside the ambit of politics, or of the reach of the state. The exercise of state power is evident in this realm too, manifested in processes of administration and management. In other words, the citizen is not the only true object of the state apparatus; the realm of the non-citizen—the crowd—is equally within the state's purview. Without guaranteeing the shadowy figures in the crowd the privileges of civil rights, the state subjects them to policies and designs that are not transparent to them. Now we can see that the two-pronged discursive apparatus in *Alakkuttam* in a new light: this arrangement of discursive spaces reproduces a conception of the political space of the subject, where two techniques of subjection are in operation. The citizen and the crowd are simultaneously the objects and the sites of this operation.

While the concept of the citizen is well articulated in political theory, the anonymous crowd of inadequate citizens has received far less theoretical elaboration. Discussions of the crowd have generally treated them as contingent and transitory phenomena. Anand's crowds need to be understood, however, according to a different principle. They are not entirely contingent, and possess a unity different from the totality of integrated communities. The commonality shared by Anand's crowds—railway passengers or refugees or migrant labourers—invokes as its background a more systematic regularity from which it deviates. In most instances, Anand's crowds are in transit; they occupy an in-between

space between homes and offices, public and private spaces, regular employment and unemployment, legitimate and illicit identities. One may see these crowds as catachrestic deviations from those segments of human society which can be clearly identified in terms of a unity or enumerated as a finite series.

Studies of systems of power in modern western societies, such as Foucault's, have pointed out the increase in the importance of technologies of governance since the 18th century, leading to a 'governmentalisation' of the state (Foucault 2002: 201–22). One could say that in Europe, since the late 18th century, a new realm of the 'social' as a site of governmental policy arose alongside discourses of citizenship. The centre of this new conceptual field was not the relation between the subject and the state, but that between the government and the 'population'. The population is constituted as an object of management by a dispersed set of governmental mechanisms, in which enumeration plays a crucial role. For Foucault, these technologies and the emergence of the problem of the population signified a shift in modern Europe from juridical models of power centred on sovereignty to a new model which he called governmentality.

The population now represents more the end of the government than the power of the sovereign; the population is the subject of needs, of aspirations, but it is also the object in the hands of the government, aware, vis-à-vis the government, of what it wants, but ignorant of what is being done to it. Interest as the consciousness of each individual who makes up the population, and interest considered as the interest of the population regardless of what the particular interests and aspirations may be of the individuals who compose it: this is the new target and the fundamental instrument of the government of the population.

—Foucault (2002: 217)

Scholars of colonial India, for example, Bernard Cohn and, later, Nicholas Dirks, have studied some of the modes and consequences of the deployment of technologies of enumeration such as the Imperial Census (Cohn 1987: 224–54; Dirks 2001). They argue that technologies of colonial governance played a crucial role in constituting identities in modern India, especially in the fields of ethnicity and caste. Partha Chatterjee has traced the emergence of a ‘political society’ in postcolonial India as a product of and response to the exercise of state power through governmental technologies (Chatterjee 2004). This realm is distinct from the civil society in countries like India, where the privileges of full citizenship have been available only to an elite minority. Large sections of the population lie beyond this realm, and their interface with the government is mediated through struggles and forms of organisation which have at best an ambivalent relationship with legality. For Chatterjee, democratic processes in postcolonial societies will remain unintelligible if we were to ignore the workings of political society.

It is against these theoretical discussions of the concept of the ‘population’ as a category of governmental deployment of power and its transformation in postcolonial societies that we need to place Anand’s preoccupation with crowds. These forms of unstable collectivity, which arise in specific social or political contexts, and which do not possess the definable frontiers of ‘bound serialities’³ produced by enumeration, can be seen as catachrestic forms of the population. Like bound serialities, the crowds in Anand possess a relationship to governmental technologies, particularly to enumeration and documentation. This connection receives increased prominence in Anand’s later fiction, as we shall later in the chapter. However, unlike well-defined target groups of governance, crowds in Anand have a certain amorphousness,

evident in their blurred borders. These similarities and differences make it useful to juxtapose the figure of the crowd in Anand with the category of the population, and see in the former a postcolonial, adaptive translation of the latter.

The earliest form of the crowd in Anand's work, as I argued above, is formed by clusters of faceless lower-middle class urban figures in *Alkkuttam*. We also saw how the discursive community of the novel's protagonists is constantly threatened with submergence in this crowd. This figure—of a subject who slides from the assumed certainties of citizenship to the nameless mass of underprivileged populations—comes up repeatedly in Anand's later novels. In his second novel, *Maranasarttiphikkatt* (*The Death Certificate*), it assumes the form of an encounter with that quintessential state apparatus of enumeration: the registry of births and deaths. This novel too, at the time of its publication, was commonly considered as an 'existentialist' novel, with pronounced parallels with Kafka's narratives. Such readings often missed the obsessive preoccupation of this text with the political technologies of governance and subjection, themes which would become more prominent in Anand's subsequent novels. With hindsight, one may now regard the protagonist narrator of *Maranasarttiphikkatt* as sliding down a scale of stable identity, from the position of a citizen with a right to the state's validation of identities to that of a petitioner before a system of documentation and administration which has gone out of gear, making any retrieval of identities impossible.

Anand's later novels present these babelised systems of governance as intrinsic to the workings of the state. In *Marubhumikal Undakunnathu* (*Desert Shadows*), the protagonist is the labour officer in a camp jail. The novel opens with an official ritual of identification, performed when new prisoners are admitted to the jail. This turns out to be a moment of disruption from which the narrative complications

of the novel will emanate: the body of a prisoner does not match with his photograph in the records.

Having drunk his tea, with a clear throat the project warder called out: 'Pasupati Singh, height hundred-and-seventy, weight seventy-five.'

The man who rose from the row of prisoners was not unruffled like other prisoners; he stood before Kundan with a pitiable face. He was slim and short.

'Stop. Come again.' Kundan asked the warder, who had in the mean time called out the identifying marks, to repeat what he said.

'Small finger of the left hand – cut in half', he repeated.

The man, who was looking at the warder from the city jail with a pleading look, did not attempt to show his fingers. Yet, Kundan realized that there was no problem with any of his fingers. Also that the Pasupati Singh who stared at him with hateful eyes from the card in front of him was not this weak and fearful person.

—Anand (1995b: 12)

The labour officer protests against this irregularity, only to learn that the prisoner is a poor man standing in, under threat of death, for the rich goon Pasupati Singh, and that this substitution was effected with the connivance of the state. The incorporation of the illegal, Kundan eventually comes to know, is an essential element of the state's mechanisms of governance. Techniques of enumeration and identification produce not only stable and verifiable identities, but also mismatches between bodies and designated identities which create a realm of non-subjects whose names disappear from registers and official documents. This illegitimate domain is nonetheless within the scope of the state's power, especially its manifestation in the form of coercion. There are moments in Anand's world where the state cannot be considered as the only agent of governance: 'it is not one

government but several that seek to rule us now' (Anand 1995b: 7—'Introduction'). NGOs, a wide range of political groups, and organised economic interests appropriate the state's functions in subjecting and managing the population. Kundan, in his attempts to ensure justice, comes up against a wide range of such mechanisms and agents. The more he tries to be just, the more deeply he finds himself in a zone of illegality, vulnerable to coercive intervention from above. His attempts to save subjects who have been stripped of their rights eventually lead to the divestment of his own rights and identity as a citizen. Towards the end of the novel, we find him moving as part of a crowd of prisoners released from jail. The fragile existence of the intellectual sphere in *Alakkuttam* is developed here into a trope of constant slide: the critical citizen is constantly sinking into a state of facelessness and anomie.

Most of Anand's novels thus share an investment in the precarious location of the critical subject who straddles two worlds: one endowed with the rights of citizenship and a critical public sphere, and the other devoid of the identifiable attributes of full subjectivity. The centrality of this space demands a closer analysis than is permitted by class-based explanations of Anand's protagonists. They cannot be understood in terms of stable social spaces which can be located within a structural totality; rather, they refer to an unstable moment in the differentiation of the regime of the citizen from the impossible realm of the non-citizen, which can neither be located coherently on social maps, nor accounted for by registries or archives. Its existence presupposes the babelisation of registries and the unplottable crevices of maps.

I suggested earlier that in Anand's fictional world the irregularities of governmental procedures are not extrinsic or accidental: they are central to the constitution and working of the state apparatus. In other words, the state manages

its population precisely by converting parts of it into faceless crowds. Governmental technologies of social individuation, which give rise to the modern political categories of the citizen and the population, here lead to the production of a crowd of the disindividuated. In fact, the state's supreme instrument in the governance of the population is this shifting frontier of the social. Anand's later novels present a picture of the social world where the entire population is vulnerable to desubjection and invalidation: no one can be considered absolutely secure from the threat of anomie. In such a situation, the location of Anand's protagonists becomes both typical and exceptional: they inhabit an exceptional situation of desubjection, which is present for the entire population as an imminent possibility.

The convergence of the exceptional and the typical: we are here in the terrain of Giorgio Agamben's inquiry into the nature of power and subjection in the contemporary world. Following Foucault's work on biopower, Agamben argues that the deployment of power in our times raises new questions about sovereignty (Agamben 1998).⁴ Carl Schmitt famously defined the sovereign as the one who decides on the exception (Schmitt 1976). Agamben reads the 'exceptional' as the instance when the operation of the law is withdrawn through an act of decision, as for example in a state of emergency. He points out a paradox in the conception of the exception: the law applies to the exception through its non-application. In other words, the exception is in the grip of law through a designated exclusion or withdrawal. For Agamben, the figure of the *Homo Sacer* in ancient Roman law epitomises the structure of exception. The term *Homo Sacer* refers to a subject who cannot be sacrificed to the Gods but who can be killed with impunity. In other words, in the case of the *Homo Sacer*, the law withdraws the right to life without sentencing him to death.

He is placed outside the purview of divine and human law: the ineligibility for sacrifice signifies the former, while the impunity granted to his killing evidences the withdrawal of the protection of human law. Agamben presents the figure of the *Homo Sacer* as the correlate of the sovereign: he embodies 'bare life', the true site of the exercise of sovereign power. Agamben sees technologies of biopower, characteristic of modern societies, as the recent avatar of sovereign power. For him, the contemporary deployment of power increasingly pushes the entire subject population to a situation of the exception. In other words, the exception becomes the typical instance of subjection. While the holocaust is the most vivid instance in the West when an entire segment of the population was turned into the state of 'bare life', the operation of sovereign power and the decision on the state of exception is ubiquitous, cutting across traditional distinctions between liberal and totalitarian regimes. Agamben argues:

The transformation of a provisional and exceptional measure to a technique of government threatens radically to alter—in fact, has already palpably altered—the structure of meaning of the traditional distinction between constitutional forms. Indeed, from this perspective, the state of exception appears as the threshold of indeterminacy between democracy and absolutism.

—Agamben (2005: 2–3)

The very technologies which produce the subject in modern states also constitute them as occupying a state of exception, as objects of a possible annihilation which is assured of impunity.

We saw that no clear distinction between exceptional and the typical is available in the political imaginary of Anand's novels. The ambivalent and uncertain space occupied by

his protagonists can be considered as a sign of this indiscernibility. This, I shall argue, has crucial consequences for the status of literary enunciation in Anand's work and its relationship with questions of justice. While discussing the two-pronged discursive machine in *Alkkuttam*, I suggested that it should be seen as instituting and highlighting a common ethical situatedness, grounded in a common encounter with structures of power. The educated protagonists (critical subjects) articulate this situatedness in the public realm of discursive exchange, and thus give cogent expression to the condition of an entire population. This is exemplified powerfully in the figure of Kundan in *Marubhumikal Undakunnathu*. Kundan, as we saw, begins by questioning a procedural irregularity, but soon realises that the man in front of him needs to be protected from his own demand for admission into the prison. Kundan's aim is to give voice to a level of victimhood which is invisible even to the victim. This can be seen as implying a structure of representation, where the representing subject articulates a mute experience of the victim; in other words, the language of representation displaces a silence. This model of representation has been the object of considerable philosophical critique in recent years. Gayatri Spivak contrasts two approaches—the attribution of unmediated political agency to a generalised subject of injustice, and a deconstructionist engagement with strategies of representation—and chooses the politics of the latter (Spivak 1988). The path of the critique, for Spivak, is bound to traverse the woods of representation: it is by assuming the burden of representation that the space of the victim's silence can be located. Anand's protagonists have their own way of bearing this burden of representation—in the course of the moral act of representation they turn into victims, moving from a regime of the voice to one of silence.

This does not however mean that they stop thinking or speaking: their voice, in however attenuated a form, subsists, bearing traces of their earlier articulate statements but deprived of the discursive field to which they had belonged. One might consider this as an in-between mode of the voice—between speech and silence—where the subject is neither active nor passive in relation to discourse.

The form of enunciation with which Anand thematises this special situation of the subject is that of the testimony. Testimony is simultaneously a statement and a performative act. J.L. Austin, while making the distinction between constative and performative speech acts, had noted that all constatives imply a performative of the order: 'I state that...' (Austin 1962). In the case of testimony, this dimension of enunciation is foregrounded: 'I state that...' becomes 'I make a claim to the truth of the following statement: ...' The juridical or religious rituals of testimony such as taking an oath, swearing, and so on emphasise the gestures by which the subject makes this claim, and stakes itself in it. Such acts belong to sphere of ethics, since the cognitive claims of the subject possess a moral dimension here. The first-person utterance bears witness not only to what it states but also to the act of staking, to the moment of the subject's ethical implication. Therefore it is not surprising that most testimonies take the form of an appeal or a demand: they bear witness to a condition which by its sheer existence demands a response. In this testimony, regardless of who its direct addressee is, is a public utterance.

How does the enunciative mode of the testimony come to determine literary production in Anand's works? What is the mode of the subject produced here? How does this help us to understand the relationship between literary discourse and concerns of justice? We saw that the protagonist

subject's position in many of Anand's novels is that of a witness who progressively slides into the status of the victim. This makes it difficult to make stable distinctions between victims and witnesses. Enunciation of the subject's condition thus oscillates between third-person representation and first-person testimony. To explicate the structure of the testimony and its relevance for understanding Anand's writing, we may usefully return to Agamben once again. In his discussion of survivor's accounts from the Nazi holocaust, Agamben engages with the form of the testimony and its significance for unravelling some aspects of contemporary subjectivity. I shall confine myself to a few points from his argument. Agamben shows a structure of proxy witnessing at work in the testimonies. The survivor, in bearing witness to the holocaust, is constantly haunted by the inadequacy of his/her voice, as the real witnesses of the tragedy did not survive to tell the tale. The survivor speaks on behalf of them—he/she is a witness to an impossible testimony, lived out by the real victims who did not survive. Agamben goes on to demonstrate, drawing on writers such as Primo Levi (1986), how the distinction between the perpetrator, the victim and the witness is made unstable by the 'grey area' produced by the 'exceptional' situation of the camp.

The coming together of the active representative agency of the survivor–witness and the passive muteness of the victim is, for Agamben, a feature of the testimony in general. This indicates not an accidental convergence, but a theoretically significant mutual implication of activity and passivity in all enunciation. In other words, testimony is not just one mode of enunciation for Agamben; it is the typical mode in that it reveals a hidden logical structure presupposed by all enunciation. His discussion takes Foucault's analysis of the statement and the archive as its point of departure. Agamben argues that Foucault's concept of the archive,

poised between the system of language (langue) on the one hand and the corpus of statements on the other, is the

mass of the non-semantic inscribed in every meaningful discourse as a function of its enunciation...the unsaid or sayable inscribed in everything said by virtue of being enunciated; it is the fragment of memory that is always forgotten in the act of saying "I".

(Agamben 1999: 144)

From here, Agamben (*ibid.*: 144–45) moves in a different direction to look

from the site of enunciation not toward an act of speech, but toward langue as such: that is, of articulating an inside and an outside not only in the plane of language and actual discourse, but also in the plane of language as potentiality of speech.

Here the significant distinction is no longer between the said and the unsaid, but between the sayable and the unsayable; between language as potentiality and as actuality; as possibility and as impossibility. It is this dimension of enunciation that Agamben (*ibid.*: 145) calls testimony:

In opposition to the archive, which designates the system of relations between the unsaid and the said, we give the name testimony to the system of relations between the inside and the outside of langue, between the sayable and the unsayable in every language—that is between a potentiality of speech and its existence, between a possibility and an impossibility of speech.

Unlike the bracketing of the subject in the study of the archive, 'the empty place of the subject becomes the decisive question' in testimony. This does not however mean

positing a full subject and analysing the constraints on its entry into language. 'Rather,' Agamben writes, 'it is a matter of situating the subject in the disjunction between a possibility and an impossibility of speech' (Agamben 1999: 145). Testimony therefore can exist only through a relationship with the impossibility of speech, that is, to the subject's capacity not to have speech. It is by following this relationship with the impossibility of speech or infancy that Agamben (*ibid.*: 146) establishes the relationship between testimony and the figure of the witness:

This is why subjectivity appears as witness; this is why it can speak for those who cannot speak. Testimony is a potentiality that becomes actual through an impotentiality of speech; it is, moreover, an impossibility that gives itself existence through a possibility of speaking. These two movements cannot be identified either with a subject or with a consciousness; yet they cannot be divided into two incommunicable substances. Their inseparable intimacy is testimony.

For Agamben, testimony is thus characterised by a paradoxical combination of subjectivation and de-subjectivation. Testimony here signifies both, a level of analysis of enunciation, as well as a genre of utterance-events.

I invoked Agamben's analysis of the testimony to foreground two aspects of Anand's work. First, his positioning of the critical subject as the principal site of enunciation in his novels combines the moments of activity and passivity, making it difficult to distinguish between witnesses and victims. We looked at this structure in some detail when explicating the instability and constant slide of Anand's critical subjects towards a domain of de-subjection. Second, the question of witnessing is insistently framed in his work in relation to question of power and justice. This point needs some elaboration.

The political frame of enunciation in Anand's work is easily seen in novels that take as their themes the structures and institutions of governance. The protagonist subjects initially appear in these novels as agents in governmental apparatuses: Kundan, as we saw, is the labour officer of a prison labour camp, and Ganeshan in *Apaharikkappetta Daivangal* (Stolen Gods) is a recently retired official of an urban governing body—the municipal corporation. By the time Anand comes to write his later novels, his preoccupation with the governmental machinery shifts from a general discussion of the state or the public's encounter with the bureaucracy to a focus on mechanisms that deal with special sections of the population. A new set of institutional topoi emerges in novels such as *Marubhumikal Undakunnathu* and *Apaharikkappetta Daivangal*: the labour prison camp, the orphanage, institutions for rehabilitating prostitutes, beggars or delinquents. *Apaharikkappetta Daivangal* locates these institutional structures at the point where the projects of the state and of non-governmental organisations converge. They are both seen as following the same logic of managing populations: the developmental or rehabilitative initiatives of the NGOs often work within the frame of state governance which relegates certain sections of the population for special treatment for one reason or another. The exception produced by the state is actualised and maintained by the institutional structures managed by the non-governmental sector. It is as if the NGOs were an extended arm of the state, operational in those social spaces from which state power has apparently withdrawn its direct operations. The machineries of the state and NGOs converge in their preoccupation with charting, enumerating and classifying their object domains. The orphanages and rescue shelters in *Apaharikkappetta Daivangal* are built as much by discursive procedures as they are by brick

and stone. It comes as no surprise when one of the characters in the novel attempts to free the inmates of an orphanage by attacking files and documents, tearing pages of entries pertaining to individual inhabitants.

In Anand's novels, as I indicated earlier, documentary procedures of governance are anything but regular and reliable. They are corroded from the very outset by an indiscernible principle of deviation. Fake identities, people without identities, files where the names and the pictures do not match, disappearance of individuals or the documents on them—all these recur, creating a mystery around the workings of the state. Sometimes this is understood in terms of corruption: external interests and individuals participate in these operations without proper legal sanction. A young boy who tries to run away from an orphanage is caught by the security and handed over to a goon in the neighbourhood for interrogation, leading to the boy's death. The police, the management of the orphanage, and the illegal underground world of criminals and gangsters—all of them seem to have a role in governmental operations in Anand's novels. It might be inadequate to see in this a corrosion of the state machinery from the outside; it needs to be seen as part of an internal inflection of the system. At its crudest form, this may take the form of conspiracies by individual agents. But most of the time, the agents are not entirely aware of the design behind their actions, except that the state wants them to be carried out. A mystery surrounds the operations of authority as in Kafka's work. The similarity that we see here between Anand and Kafka is based on their estimation of the nature of sovereign power and its operations on the subject. In Anand, however, the imagination of sovereign power draws upon an oneiric process of condensation typical of the postcolonial imaginary. The figures of the goon, the police commissioner and the manager of non-governmental

institutions easily merge into one another: 'it is not one government but several that seek to rule us now'. This series of motifs of sovereign power should be seen in terms of a mechanism of condensation than a negotiated correlation of interests.

One might also say that Anand's works displace the reassuring non-political sites of modern society such as the family, with institutions dealing with populations. The family is in a process of disintegration in *Alkkuttam*, it is hardly present in *Marubhumikal Undakunnathu*, and it becomes a space of unfamiliar alterities in *Apaharikkappetta Daivangal*. Furthermore, even when it is available, the family provides no non-political anchoring to subjects. There is no effect produced in the family which can be contrasted meaningfully to a public and political realm. In fact, the effects of the political traverse the family, making its members unstable and shadowy: the ethical self-definitions of family members do not derive from familial relations; they emanate from the political space of disintegrating citizen-subjects. This does not, of course, mean that there is no affection or friendship between Ganeshan, Naseem and Aman in *Apaharikkappetta Daivangal*. But their affective relationship is similar to the discursive companionship enjoyed by the protagonists of *Alkkuttam*, based on a shared ethical predicament as citizens under a certain regime of governance. In other words, the home is yet another political space in Anand. Even the apparent oppositions between the home and the orphanage become more problematic as the novel proceeds—Aman's disappearance and return to home after six years, the performance of his band at a dhaba where children who escape from the orphanage work, the mysterious appearance of Ganesan's address among the belongings of a child murdered in the orphanage—all these underline the difficulty of maintaining this distinction.

Sometimes the protagonists articulate their criticism of governance in terms which may appear to valorise individuals in their uniqueness. Ganesan, in *Apaharikkappetta Daivangal*, tells his former colleague, the city commissioner:

From the side of governance, we see only numbers. The forest and not the trees, as one says. Primeval man did not know how to count; but even then chiefs used to take the tally of members in their tribes. Perhaps, by identifying them one by one.

—Anand (2001: 153)

However, a process of recognition that does not compromise the uniqueness of individuals remains an impossible project.

...I know that, apart from the plane of governance, there are also other planes to view a society from. What I have with me now, to tell you the truth, are a number of individuals. Those who have disappeared, those I have not met, perhaps those who do not even exist.

—(ibid.: 153)

How do you take the tally of these non-subjects? How do you represent or bear witness to them?

The resources of humanism, founded on a conception of the full individual subject, become seriously inadequate here. One could read Anand's fiction as an exploration of this inadequacy. The discourse of the novel relies on the vocabulary of humanism and runs it to the limits of the social, in order to evacuate it, revealing its poverty as a source of ethics. This is accomplished less at the level of the arguments stated in the novel than at the various planes where identities are presented. Anand's insistent preoccupation with unstable subject figures—revealed in the recurrence of disappearance, mismatch, renaming, unreliable documents and other

tropes of displacement of identity—needs to be seen not as a mere critique of an anonymising modern society, but as indicating the impossibility of recovering pure and full identities. The more one pursues a project of recovery using the vocabulary of humanism, the more one ends up with increasingly shadowy subjects. In *Apaharikkappetta Daivangal*, it is not even clear whether the protagonist's son Aman who disappears at the age of six is the same person who returns after eight years. His death in an accident can be seen as an amplified instance of the logic of his life, rather than as its abrupt termination. In fact, the shift in the identities of Aman continues; in the discovery of his writings and in the sporadic appearance of his friends. These, instead of clarifying who Aman was, only add to the confusion about him. A search for the individual subject in his uniqueness leads only to moments of disindividuation.

Anand's techniques of characterisation also would need to be seen in this light. I had mentioned earlier that it is not easy to appreciate Anand's character figures as sites of psychological inwardness, and that their utterances strike us more by their exteriority rather than by their expressiveness. It is easy to mistake this for an instrumental conception of characters: the use of characters as tools for a moral or political inquiry and not as entities in themselves. We must remember that the full, interiorised characters of psychologically convincing novels also have a dimension of instrumentality about them: they are parts of a literary machine which produces a certain set of real effects. The question we need to pose in relation to Anand's characterology should be addressed then to the function it performs in Anand's literary apparatus.

In 1995, Anand published a novel entitled *Govardhante Yatrakal* (Govardhan's Journeys), which amplifies a theme he had introduced in an earlier short story called 'Govardhan'.

Anand's (1995c: 5) remarks in his introduction to the novel stress the relationship between the crowd, governance, and the question of justice:

Those who have visited the judicial courts in northern India must surely have been struck by a sight: people who have been camping under the trees in the cutcherry compound, spreading their mats and bed sheets, their boxes and bundles and cooking utensils. Women and elderly people would be among them. From remote villages they have come all the way to the cutcherry to wait for justice, along with their witnesses and helpers. If you have tarried for a while to look closely at them and their faces, you cannot but feel that they have been camping there since the time of Warren Hastings or Dalhousie.

With the growth of justice alongside courts, there must have emerged a society in wait for justice. When buildings and lawyers and files appeared on the scene to assist the courts, shops also came up to cater to the needs of this crowd. Restaurants for them to eat at, garments shops for them to change their old clothes for new ones, dentists to remove their shaky teeth, cobblers, palmists, shops selling transistor radios, vendors of rat poison...I felt that these bazaars in the court compound wove a pattern of eternity not only on the institution of the court but also on the wait for justice. After all, haven't our cities arisen around those who stay in wait for justice and those who have stolen justice from them?

These remarks indicate two themes central to *Govardhante Yatrakal*. First, they refer to a seeming immemoriality, a condensation of time, produced by the scene of a population in wait for justice: the colonial institutions function as the primal scene that is staged in altered forms on the post-colonial landscape. The logic of repetition suggested here makes possible a syncopation of history and the creation

of a collage that violates chronological sequencing. Second, Anand's remarks also provide a clue for locating the subject of enunciation in his works. This subject is a witness to the population in wait for justice. Their identities as plaintiffs and defendants are inseparable from the history of legal institutions, but they also demand that their plight be witnessed from outside the law. The enunciative space of *Govardhante Yatrakal* can be seen as constituted by this demand. The critical subject, the writer, becomes a witness to the predicament of a population-in-waiting without being able to occupy a space outside the scene.

The novel centres on the figure of Govardhan, a character in Bharatendu Harischandra's farce *Andher Nagari*.⁵ In Anand's narrative, Bharatendu frees the character Govardhan from his authorial control and from the textual universe in which he had lived till then. The novel tells the story of Govardhan's journeys through centuries of India's history. The motif of the journey in this novel may be contrasted with another tropological use of the journey familiar to us from the history of the novel. Goethe's *Wanderings of William Meister* is perhaps its most typical example, where the journey appears as the metaphor for the process of self-discovery and individuation. The topographical movement of the subject signals temporal progress or growth—the journey here is the image of a secular teleology of the individual subject; it is the principal trope of the Bildungsroman. Anand's novel reverses this image of the journey—it is not that the teleology is abandoned in favour of a random itinerary. Govardhan's movements constitute a flight from his pursuers. Having been condemned to death in a whimsical exercise of sovereign power, Govardhan functions as an instance of bare life, singled out arbitrarily to bear the full weight of coercive subjection. The transfer of a character from fiction into the historical world may at first appear to invoke an opposition

between the textual and the real worlds. However, in Anand's novel this also gives rise to a textualisation of history, making it a collage of representations, an intertextual universe. One might say Govardhan's exit from Bharatendu's text, rather than conferring on him the status of a historical personage, turns figures from the domain of historical memory into characters. What does this process mean for our understanding of the relations between history and literature?

Anand's arguments about literature point to a necessary incompleteness in the literary text—Govardhan's exit from Bharatendu's play signals this. The supreme ethical gesture of an author is not the authorial signature indicating the conclusion and closure of literary texts, but a gesture of unsigned, which liberates one's characters from the tip of one's pen. This move of erasure or crossing-out is also an invitation for further inscriptions. Anand's reworking of Govardhan's story is a response to this invitation, involving his own gestures of signing, as well as his final unsigned at the end of the novel. The character exits the authorial text not into a closed realm of historical memory, but to a field of reappropriations and overwritings. Literature's reaching out to its outside, its appeal to the real, thus involves a two-fold disappearance of the subject: the freeing of the character-subject into a realm of reinscriptions, and the abandoning of the author-subject as a source of final authoritative meaning.

The exit of a character from the fictional realm does not signify the realisation of a fuller subjectivity that representations cannot capture. Govardhan's journeys lead to new repetitions and reinscriptions, and not to the recovery of a 'truer' Govardhan. This reinscription is possible on account of a shared situatedness of the subject in relation to the question of justice. Govardhan in Bharatendu's play needs to be taken out of the play's reassuring closure to

embody the repeated figure of human subjection—an empty space before the law, the locus of its arbitrary operation. The particular experiences and emotions with which this space comes to be invested may bear the marks of different political formations and systems for administering justice. A character in literature, no less than ‘real’ figures of history, is an empty site for such investment. Here, once again, the conception of the subject in Anand’s texts needs to be differentiated from universal definitions of human nature or human condition. The impoverished interiority of Anand’s characters points to this constitutive emptiness. The figure of the subject is formed in an originary movement of sovereign power. The absurd gesture of the King in Bharatendu’s play is typical: it summarises the constitutive gesture of sovereign power. The author’s gesture of unsigning stands in direct contrast with this.

It is the deep connection between Anand’s conception of character and his ideas on the originally political constitution of the subject that makes Agamben’s arguments relevant for a reading of Anand. I tried to show above that the space of enunciation in Anand’s novels is that of the witness—subject who slides from the position of the citizen into the anonymous crowd of managed populations. The narrators of Anand’s novels often stay close to these witness figures without merging into them. This makes an exterior perspective on them possible, without allowing any substantial inferential assessment of their interiority. A mechanism of unstable witnessing organises discourses in Anand’s work. His protagonists seek to represent and give voice to the anonymous non-subjects who throng around them; but in the process gradually slide into the state of a crowd without voice. The narrators’ voices stand in the same relationship of witness-representation in relation to the discourses of the protagonists. None of these voices, including

those of the narrators, is allowed fullness or containment. Each act of speaking is shadowed by an instance of emptiness or instability, a moment of desubjectivisation.

The most evident manifestation of this in Anand's work can be seen in its announcement of the original as an already-translated work.⁶ Anand's use of the Malayalam language denies the reader the pleasures of a language at home, rooted in the identifiable loci of the community or the region. The syntax, the turns of phrase, the idioms of address, all these indicate foreignness, as if the utterances originally took place in another language, and then were translated into Malayalam. Initially this might appear to reflect the location of Anand's novels: most of them take place outside Kerala, and many of his protagonists do not speak Malayalam. Yet, it would be simplistic to see a realistic impulse here. The narrator's own language has the same foreignness about it. And, as I pointed out earlier, the idioms of different characters remain undistinguished, as if language no longer bore marks of an individual differentiation. The translatedness of Anand's Malayalam is not a relationship to any other determinate language which constitutes the original site of enunciation; rather it is a sign of an internal emptying out of Malayalam itself, a rendering of the original as translation. There is no original utterance to be recovered from translation; translatedness is an intrinsic feature of originality here.

The refusal of anchorage to subjects in an originary language in Anand needs to be placed in the context of our discussion of the language of testimony and its moment of desubjectivation. Following Agamben, one could say that the subject of enunciation bears witness inescapably to his own desubjectivation, and that this is the site of testimony. Anand's engagement with translatedness is closely connected with an understanding that the essential modality of enunciation is the testimony. Anand's protagonists and narrators

are equally caught up in the task of bearing witness to an impossible testimony—that of the non-subject, whose names have disappeared from the ledgers and whose existence cannot ultimately be ascertained. It is the strength of Anand's work that this act of witnessing is denied the comfort of a homely language, a monolingualism of the home, be it one's region, nation or community.

Unlike most of the prominent novelists in Malayalam, Anand's work has stayed away from identifiable regional preoccupations. At first sight, it may look as if he is concerned with questions of the Indian nation, and that his work thus would need to be placed against the non-localisable urban middle-class milieu of contemporary India. Yet, this novelist writes only in Malayalam, and his novels in their English translations do not produce the same complex discursive effects of emptiness and foreignness. In fact, it is all too easy to fall into the trap of normalising Anand's Malayalam texts while translating them into English, and restrict their engagement with the subject and the political field solely to a thematic plane. Such translations miss the importance of Anand's use of the testimonial mode and the emptying of the mother tongue. This is where Anand's engagement with contemporary forms of the nation-space becomes important. The affective anchoring of the subject in regions or languages is dismantled in his work to present a plane of subjectivation which is more directly political, more directly caught up in the juridical idiom of a secular modernity. Labour prison complexes run by the army, the crowded compounds of judicial courts, refugee camps, urban slums, the state's institutions of rehabilitation—these new localities cannot find a place in maps built on geographical feeling. The nation-space is turned into non-places of a catachrestic modernity, where strands of sovereign power and governmental technologies criss-cross with each other.⁷ The critical

subjects and anonymous crowds in Anand's novels merge in these sites, and the testimonial voice in his writing emerges from there.

NOTES

1. Anand (pseudonym of P. Sachidanandan, b. 1936) is the author of several novels in Malayalam, including *Alkkuttam* (The Crowd, 1970), *Maranasarttiphikkatt* (The Death Certificate, 1974), *Abhayarthikal* (Refugees, 1984), *Marubhumikal Undakunnathu* (How Deserts Come to Be, 1989), *Govardhante Yatrakal* (Govardhan's Journeys, 1995), *Vyasanum Vighneswaranum* (Vyasa and Vighneswara, 1996) and *Apaharikkappetta Daivangal* (Stolen Gods, 2001). English translations of *Maranasarttiphikkatt* (*The Death Certificate*, tr. Geeta Krishnankutty (Bombay: Sangam Books, 1983)], *Marubhumikal Undakunnathu* [*Desert Shadows*, tr. K.M. Sheriff (Delhi: Penguin India, 1998)], and *Vyasanum Vighneswaranum* [*Vyasa and Vighneswara*, tr. Saji Mathew (Delhi: Katha, 2000)] have been published.
2. Anand (1998: 116). All translations from the Malayalam, unless otherwise indicated, are mine.
3. For a discussion of 'bound' and 'unbound' serialities, see Anderson (1998: 29–45). For a critical response to Anderson's arguments from a post-colonial location, see Chatterjee (1999).
4. Foucault's discussions on biopower can be found especially in Foucault (1990: 133–59—Part Five). See also Foucault (2003).
5. Bharatendu Harischandra (1849–82), author of several plays, essays and poems, was one of the major exponents of Hindi literature in the 19th century. Harischandra's farce *Ander Nagari Chaupat Raja* is set in an imaginary country ruled by Chaupat Raja, known for his eccentric ways in administering justice. In a case where death sentence is given, the neck of the condemned man turns out to be too big for the hangman's noose. Chaupat Raja orders that another person whose neck fits the noose be substituted for the condemned. Govardhan is chosen as the substitute. For a discussion of Harischandra's intervention in the history of Hindi language and literature, see Dalmia (1997).
6. For a more detailed presentation of this argument, see Kumar (2000: 135–57—'Afterword').

7. These spatial strategies in Anand can be—in fact, need to be—understood in the context of the politics of spatial strategies in contemporary India. For an analysis of some of these spatial strategies, see Deshpande (1998).

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PART III
DEMANDING JUSTICE

7

Slum Development as a Justice Forum

ROMA CHATTERJI

Regardless of whether anthropologists have been able to decide on a strict definition of the law that is universal we have been able to document the universal presence of justice forums. The search for justice is a fundamental part of the human trajectory.

—Nader (2002: 32)

Integrity to Justice, the attempt to be just with Justice, demands no less than this responsibility, to expose the limits of what has been established as law through the perpetuation of the legal system, as well as in other circumstances or reinstatement.

—Cornell (1992: 12)

In this chapter I shall articulate one ‘forum’ in which justice comes to be articulated. For the past 10 years Deepak Mehta and I have been doing fieldwork in Dharavi, a shanty town in Mumbai. We have been trying to understand the institutions through which slum dwellers manage to secure their everyday lives, specifically in the aftermath of the riots of 1992–93 (Mehta and Chatterji 2001; Chatterji and Mehta 2007). My own research is largely to do with housing

practices and with the ways in which these become sites on which slum dwellers come to experiment with institutional forms of democracy—with community formation, local self-governance and with modes of expressing citizenship.

Slum housing is a well-researched field in Mumbai. Scholars and activists have used this theme to critique the state and the law that serves to legitimise it. The majority of such studies are located in the gap between the legal apparatus as it applies to slum populations and the democratic principles of freedom and justice. Justice, in this view, is articulated through the discourse of rights. This discourse is used to call the state to account, to show how unjust the law really is when it comes to the democratic rights of marginal groups. At first sight, my work seems to go against the grain of this argument. Whilst I accept that the discourse of rights assumes the centrality of the state in securing these rights, I do not focus on the contradictions between the law and the fundamental conceptions of human justice. I examine the ways in which slum dwellers use the contradictory registers of state institutions, laws and conceptions of democratic rights to negotiate for a more stable life. From my perspective, justice serves as an *aporia* through which I try to understand the ambiguities of everyday life lived at the margins of the state.

For people who live on the margins, the state is not an abstract entity. It enters into the intimate spaces of the household and is manifest in the concrete relationships that slum dwellers perforce have to establish with the lower echelons of government bureaucracy. The ubiquity of the state's presence can be a source of great insecurity. Face-to-face relationships between the state and local level communities enable the unrestrained exercise of power and corruption (Nelson 1999; Scott 1998). However, it is also the site on which powerful feelings of right and wrong, of injustice are expressed.

In this chapter, I shall use the discourse of slum rehabilitation to talk about what Laura Nader (2002) calls the ‘justice motive’ that is part of all human interaction. I am less certain than she is about the ubiquity of its presence in everyday life; though it is certainly an important motif in the state’s master-narrative of slum rehabilitation as well as in the public discourse of slum dwellers. I shall describe some of the slum development programmes through which the state comes to acquire a face for slum dwellers. They also come to acquire a public presence and a collective voice that transcends local and ascriptive identities in the course of negotiating with state bureaucracies for entitlements due to them through these programmes.

To understand the relationship between state and community, I begin by examining some of the important policies and schemes for slum re-development in Mumbai, specifically with a view to examine the process of community formation in Dharavi. Each of the three schemes that I discuss marks a significant moment in the process by which the inhabitants of Dharavi are first constituted as a population, which is then transformed into a community attributed with agentive capacity. A population—a passive enumerative object is transformed into a public that acquires agentive capacity in the process of acquiring voice.

SLUM POLICY AND STATE-COMMUNITY RELATIONS

I begin this section with a review document produced by the public housing policy taken from the *Draft Report of the Brihan Mumbai Regional Development Authority (BMRDA) 1991–2011*. This review document is interesting primarily because of the way that the government is presented in the discussion of each policy—acknowledging major shifts in its self-presentation while trying to rationalise these shifts by presenting them within a single frame of reference.

According to the report, 'The Maharashtra Slum Areas Improvement, Clearance and Redevelopment Act' of 1971, marks a radical change in the government's attitude towards its slum population. With this Act, the report says, we see the government recognising for the first time that slums could be an answer to Mumbai's chronic housing shortage rather than being a problem that has to be resolved. Thus, the government moves from the role of 'controller' to that of 'facilitator', providing facilities to slum colonies. It is claimed that this change of role is not only accompanied by a radical change in viewpoint but it also makes legitimate that which was previously thought to be illegitimate by the legislation on housing.

Gautam Chatterji, who used to be the Chief Executive Officer of Slum Rehabilitation in the Maharashtra Housing and Area Development Authority (MHADA), spoke to me about the 'unintended consequences' (to use his own words) of urban land ceiling and rent-control measures that had once been thought of as beneficial for poor people and based on the principle of distributive justice. He explained that the official restrictions on legitimate land use by private owners helped to create an 'illegal' nexus between land owners and slum lords; so that rental housing came to be taken over by the 'informal sector'. Similarly, the Slum Clearance Act of the 1960s reinforced the power of slum lords by creating an unofficial nexus between them and the government officials doing the clearing. The Act, as Chatterji said, did not specify that the rubble produced when illegal structures were demolished had to be cleared so that the rubble could be used to re-construct houses on the same location and government agents sometimes demolished the same structure over and over again reporting each instance as a new demolition.

The Slum Act of 1971 was followed by the Slum Improvement Programme of 1972 (SIP). It was supposed to

provide basic civic amenities like water, electricity, latrines and sewage disposal to slum areas. However, it could not be properly implemented as no comprehensive census of the slum areas of Mumbai existed. Such a census was carried out in 1976. (The articulation of new domains of legitimacy is accompanied by procedures that must make them legible. Cultures of bureaucracy often use procedures of enumeration to achieve this.) However, the 1976 census was restricted to slums on state government land and it was thought to be incomplete.¹ The SIP is still being implemented in Dharavi on land that is owned by the municipal corporation. But it has not been very successful because it has made no plans for the day-to-day maintenance of the amenities that were provided under it. However, the SIP was an important first step because it recognised for the first time that the slum dweller had a legitimate status and had, as Chatterji put it, a right to acquire land in slum areas.

There is some ambivalence around the term 'legitimate status' however. After 1976, residents of the surveyed slums were issued photo identity passes and were required to pay a licence fee of 20 rupees of which, one rupee was taken as 'land rent'. For most residents of Dharavi, however, it is not clear whether this amount of one rupee is a fine for occupying government land 'illegally' or a kind of 'ground tax' (*bhumi* tax). The term 'rent' circumvents the question of legal status articulated in terms of ownership. Instead, acquisition is thought to refer to right of use and to the state government's responsibility in providing alternate residence if it has to displace the population residing on its land.

This ambivalence is built into the Slum Act itself, which empowers the government to declare particular slum colonies as unfit for human habitation, while simultaneously affirming its objective of slum re-development for those colonies that are declared safe. Here we see both roles of the

government co-existing simultaneously—its role as controller hidden behind the fiction of facilitator (Desai 1991).

THE SUP AND THE FORMATION OF HOUSING COOPERATIVES

The Slum Upgradation Programme (SUP) of 1980 is the next important scheme that I will discuss, not because I intend to provide a chronological account of slum development in Mumbai, but rather to demonstrate how sites of legitimacy are constantly shifting as each new governmental action seeks to redress the unintended consequences of previous schemes. Thus, I will discuss the SUP together with the SIP and the 1976 slum census as each one of the ‘actions’² had unintended consequences only revealed in the stage of implementation which was then taken up by the next improved action plan. (One must remember, however, that this mode of presentation is also part of the government’s own discourse about its interventions in the lives of slum dwellers. This narrative is one of the ways in which the state presents itself as accountable and responsive to the public that is, by taking responsibility for its errors and rectifying them. It also assumes that the public has the capacity of articulating its own interests.)

To return to the account of slum rehabilitation—the SIP was instituted as part of the government’s new initiative as facilitator after the Slum Act was passed in 1971. However, it only became effective after the registration of slum pockets through the 1976 slum census. Security of land tenure given to slum dwellers with registration allowed for the implementation of concrete developmental schemes that required stable populations to be effective. With the World Bank aided SUP, we find that the focus of government intervention shifts from that of population to that of community. The SUP required that slum dwellers organise themselves into

housing cooperatives which could then be given secure tenural rights on land at the rate of one rupee a month as I have already said.

The importance of the SUP for the purpose of this paper is that tenure was given to cooperatives formed by a group of contiguous huts rather than to individuals. This was supposed to enable the housing societies to undertake 'upgradation' work in their respective colonies. This proposal, it was felt, would take care of the problems of maintenance of amenities that had not been catered for in the SIP of 1972. Houses could not be rebuilt as regular apartments or as reinforced concrete structures (RCC), but could instead be reconstructed with materials such as plaster and brick instead of tin, mat and plastic sheeting. Also, provision was made to extend the habitable area of these residential units to allow for the construction of lofts by raising the permissible height of the roofs. Water and electricity were also provided. However this scheme was wound up in 1991 since it was under-utilised. Poor response to the scheme on the part of slum dwellers was attributed to administrative difficulties especially with the complex procedures involved in forming and registering housing societies, and also to the fragmented nature of land ownership, to the fact that it was easier to implement this programme on state government land that came under the direct control of the municipal corporation. It was thought that developmental activity could not be undertaken on private land, under the de facto control of slum lords who would interpret this as an encroachment of their power base.

FROM PERIPHERY TO CENTRE: PRIME MINISTER'S GRANT PROJECT

The next landmark as far as Dharavi is concerned is the Prime Minister's Grant Project (PMGP) started in 1985, with

a grant-in-aid of a 100 crore rupees sanctioned by the then Prime Minister, Rajiv Gandhi, out of which 30 crore rupees was reserved for Dharavi alone. The PMGP like the slum projects that came before it, tried to address the perceived lacunae in the way that slums had been conceptualised. All projects that became effective after the 1976 slum census talk about the security of tenure for slum dwellers as being an essential prerequisite for the amelioration of their living conditions; yet their concrete proposals belie this. Slum development, according to Kalpana Sharma (2000), is conceptualised in piecemeal fashion not merely because of inadequate information regarding slum populations as I have mentioned earlier, but because slums are thought to be inherently unstable dwelling sites. Recall, for example, the SUP of 1980 that permitted improved material for the construction of dwellings but insisted on their impermanent status. The PMGP was the first scheme that actually considered slum redevelopment in a systematic fashion and planned for the construction of new residential structures for slum dwellers on the same site where they squatted.

It was also acknowledged in this scheme that slum communities were capable of taking initiative when it concerned issues such as housing. It allowed housing societies to appoint their own architects who would be accountable to them, with the provision that the government would appoint the building contractors even though they would be working under the supervision of the architects. It was also recognised, for the first time, that slums in Mumbai were often centres of commercial activity, and that slum dwellers needed to live near their place of work. Huts were not just dwellings but also commercial resources—places from which people could generate income. Dharavi was no longer considered to be peripheral to Mumbai. Dharavi's location

near a new business district—the Bandra–Kurla complex—gave it a new significance. Thus, there was an attempt to broaden roads within Dharavi, to make it more accessible to vehicular traffic and so on. However, the PMGP like all the schemes that preceded it was not able to implement its plans in the way that it conceived them. The reason was simple—it had failed to consider the fact of spatial density; and the development work that it was able to undertake was largely confined to the area along the two main roads that skirt Dharavi.

In the next section, I have tried to map the process by which slum dwellers are first constituted as a specific population, which is then transformed into a community through strategic governmental practices. However, between the exercise of mapping a population and the formation of concrete neighbourhood communities to negotiate for housing rights, there is a vast gap. The role of community-based organisations in filling this gap is significant. I shall describe the part played by one such organisation, PROUD (People’s Responsible Organisation for a United Dharavi), in the constitution of a public voice for slum dwellers in Dharavi. But before this, I first need to discuss the process by which the exercise of mapping populations can lead to the generation of community consciousness.

SELF-ENUMERATION AND COMMUNITY CONSCIOUSNESS

Enumeration is an activity conducted on a regular basis in slums in which non-governmental organisations have a significant presence. To understand what this means, let me describe the process by which this enumeration is conducted. I refer to a report by SPARC (Society for Promotion

of Area Resource Centres) that also has a base in Dharavi (SPARC 2004). This report describes enumeration as a 'technology for community mobilisation' and divides the activity into a number of stages. The first is called 'hut counting'. This takes place when members of the organisation visit the slum area for the first time. As part of the activity of holding meetings with residents, they—together with some residents—begin to mark the doors of houses with chalk. Residents are made aware that this is the first step towards mapping the settlement. They begin to think about the criteria involved in establishing numbers for their houses and in the boundaries between their houses. (This is important because slum dwellings grow over time and it is often difficult to decide where one hut stops and another begins.) The report emphasises that a dialogue must be allowed to develop around enumeration so that residents become conscious of their property rights and entitlements. The next stage, 'rough mapping' of the settlement, is also done by residents. This is supposed to help them translate their experience of place (habitation) into an abstract spatial category. The third phase, 'numbering', involves the matching of house numbers with the map. The chalk numbers are re-done in paint. After this stage, official surveyors take over. Residents are made aware that they have a responsibility regarding accurate self-reporting since this process will be repeated and any claim that they may have to municipal or state services will be evaluated through these surveys. However, as the report says, self-surveys have another equally important role. They make slum dwellers aware of a new identity based on abstract citizenship rather than on more ascriptive features like caste and religion. I shall have occasion to elaborate further on this further. Let me first turn to the work of PROUD and to the ways in which active links of solidarity are achieved in Dharavi. (However, the introduction of the idea of self-regulation and self-discipline

through the survey mechanism is worth noting here; as well as Foucault's idea of the panopticon—the invisible eye that is transcendent precisely because it is nowhere and everywhere. It is, as if emancipation is achieved paradoxically through a normative standardisation [Foucault 1995]. This must surely have implications for the way we think of normative standards being implicated in institutions that function as justice forums. One has to give up one's personal freedom to acquire social being.)

PUBLIC VOICE AND FORUMS OF JUSTICE

Community-based organisations like PROUD strive to forge links between different sections of Dharavi's population by turning common civic issues into social causes. Supported by the Christian Institute for the Study of Religion and Society (CISRS), PROUD has been active in Dharavi since 1979. PROUD defines itself in terms of an 'action-based approach'. Each one of its programmes routed through specific 'issue-based' committees is defined as an 'action', and the successful implementation of its goals is called a 'victory'. Committees are often formed as a direct response to particular government directives. Thus in February 1980, when the BMC (Bombay Municipal Corporation) issued a verbal notice to evict approximately 800 families from Dharavi, PROUD formed its 'Land and Housing Committee' on the very day on which the notice was issued. The Committee was put in-charge of organising the protest against eviction in the form of protest marches, signature campaigns and delegations to meet the concerned authorities. According to PROUD, it was the campaign that was responsible for stopping evictions (PROUD Report 1989). Such action programmes serve not only immediate pragmatic interests, but are also supposed to foster long-term goals of democratic

accountability and secularism. PROUD's annual reports stress the fact that it functions like the 'parliamentary body of a democratic country'. It conducts regular elections and the general body in its periodic meetings approves all its policies and programmes before they are implemented.

By focusing on common civic problems rather than on the particular concerns of individuals or families, organisations like PROUD are able to generate a generalised and abstract form of social solidarity—a solidarity that is based on the principles of communicative rationality (Habermas 1996) as I have just shown. I use the term 'public voice' to speak about this. In Dharavi, the term 'public' is used for collective self-reference; the voice that speaks for the abstract public, articulates generalised social interest. The public voice is anchored in a public space, constituted by contractual relations freely entered upon by persons who form associations based on common interest. The public voice is distinguished from the 'individual voice' that speaks of private, and therefore, selfish concerns. The public voice, thus, refers to the collective authoring of the group by striving for the common good.

To this end, PROUD divides its activities on the basis of two sorts of programmes—action programmes and awareness programmes. Thus, the notion of the common good is anchored in institutional arrangements and practices. For example, it has started programmes on 'community voters awareness' and on 'legal education and awareness'. These two programmes were started after the riots of 1992–93 specially to promote communal harmony and to discourage the propagation of sectarian interests in the election process (PROUD 1989). More importantly, however, these issue-based committees and programmes are supposed to promote self-determination, hold out a promise of autonomy, and a sense of participatory citizenship. The following

extract from PROUD's 10th yearly report, on the land and housing committee, will show what I mean:

At the beginning, PROUD was concerned about issues like water, drainage, garbage, pollution etc. but in the first week of February 1980, when the Municipal Authorities served a verbal notice to some eighty families that their houses would be demolished within a week, on the same night 'Temporary Planning Committee Members' of PROUD met together and formed the PROUD Land & Housing Committee. On 7 February 1980, along with 35 members they went to a local Municipal office and submitted a Memorandum starting with the slogan DESH HAMARA, DHARTI HAMARI, DHARAVI HAMARA HAI³ and demanded—

1. No demolition of any hut/house in Dharavi.
2. Land and Housing Committee will not accept the validity of photo pass if not issued as per State of Maharashtra Govt Act issued in February 1980.
3. PROUD will not allow any outsiders for any kind of Relief and Development without prior negotiation with PROUD. ...

On 20 April 1980, in their meeting the Land and Housing Committee decided to make a survey of open spaces in Dharavi and make use of them according to the people's own choice. Particularly in Mukund Nagar in front of Subhas Chandra Bose chawl, which was reserved by the BMC for a Fire Station, but the surrounding people wanted to use the place for a public latrine. When the people asked the Ward Officer and Executive Engineer, they got a negative reply, due to the BMC's plan for a fire station. The people were mobilized a number of times on the same issue including blocking the traffic on 11 August 1980. For 1000 families there was no latrine, and thus, men, women and children were forced to use vacant land across the main road. But still the issue continued until people threatened the Municipal

Commissioner, Traffic Manager and Government authorities to block the road in a regular basis between 7 to 9 in the morning and evening. Finally, the Municipal Commissioner arranged a joint meeting with PROUD leaders and Municipal officers and the Fire Brigade on 10 December 1981, at his chamber. Lastly, they were forced to change their plans for Fire station and they released the land for the construction of latrines.

Annual reports for organisations like PROUD, are more than neutral accounts of events that have taken place through the year. There is an ethical component built into the reports. The various committees and programmes function like ‘justice forums’ in the way that Laura Nader (2002) has used this term. There is a sense of distributive justice, that is, negotiations with the state for the rights of slum dwellers. But there is also the ideal of a just society enshrined in the idea of participatory citizenship—the idea that slum dwellers should be the authors of their own destinies and should be involved in the institutions of decision making. It is as Habermas (1996: 418) says, ‘...the idea of a just society is connected with the promise of emancipation and human dignity’.

CONCLUSION

Justice, in this chapter is linked to questions of agency and with institutional capacities for self-authorship and self-legislation. This means that agency cannot be restricted to questions of individual self-interest. In fact, as Habermas (1996) says, that a normative and ethical view of democracy will restrict its sphere of communication to collective and generalisable interests. That is, interests which emerge from the life world but which can be made universal. I suggest in this chapter that the community-based organisation may have a significant role in creating institutional spaces through

which marginal communities may be able to re-define themselves in terms of new and more universal identity markers such as citizenship rather than community ones.

Agency is an important philosophical theme that is often discussed in the sociological literature on housing practices. Thus Emma Tarlo (2003), in an ethnography on slum clearance during the Indian Emergency of 1975–77 in Delhi, shows that poor people are not merely passive victims of state oppression.⁴ When confronted with draconian programmes like slum clearance and sterilisation, they were able to turn it into a market relationship. Incentives, such as rights to property for housing were offered for participation in the family planning programme. People who were potential victims of the slum clearance drive would either get themselves sterilised or buy sterilisation certificates from people who had actually undergone sterilisation to secure housing rights. Thus people were able to subvert the programme by mimicking the documentary practices of the state, that is, by producing ‘paper truths’ that did not directly reflect the practice of its owner. Tarlo does not think of this kind of agency as a form of emancipation. She describes the existential dilemmas of the slum dwellers with great sensitivity but she also stresses that individual self-interest was articulated as a kind of unofficial market principle. She also says that it was the particular situation of the Emergency, that is, censorship and banning of all civil society institutions, which led to a direct relationship between the slum dwellers and the state. In Mumbai, non-governmental organisations, such as the ones discussed above have always played an important role in the field of slum housing and have mediated all relations between the state and slum dwellers.

However, the more recent schemes involving slum redevelopment in Mumbai involve the market as a new player in the field. Thus, according to the schemes that have come after the Prime Minister’s Grant Project, private

developers have an important role to play in the field of slum housing. Incentives such as development rights to property in commercially lucrative areas are offered to building contractors in turn for building free houses for the poor (Mukhija 2003). This has meant a radical restructuring of the relationship between slum dwellers, community-based organisations and the state. Private developers sometimes try to take over the role of the community-based organisation and develop direct channels of communication with slum dwellers. They have also started using the discourse of social justice. Conversely, the state is increasingly envisioning a more central role for community-based organisations in its programmes. Thus, Sheela Patel, the director of SPARC, is also a member of the newly constituted Slum Development Authority. Non-governmental organisations can no longer maintain an oppositional stance vis-à-vis the state. They have also had to negotiate with the market either directly, such as SPARC which now functions as a developer and has raised funds directly through international funding agencies, or indirectly like PROUD that is facilitating interaction between private developers and slum cooperatives. In these new circumstances, can such organisations still facilitate the growth of justice forums in slum communities? After all, as the quotation from Drucilla Cornell's work, at the beginning of this essay, states, the position from which one speaks of Justice must be outside the system of authority. The voice that speaks of justice can only then offer a critique of institutionalised and indeed of normative structures of legitimacy. It is too early to judge whether the new experiments with slum housing in Mumbai will sustain the development of the public voice or not. However, institutions like PROUD and SPARC have shown that, for the health of society, it is necessary to develop spaces in which the limits of institutional legitimacy can be exposed. Without such spaces we cannot expect structures of accountability to develop.

NOTES

1. The land on which slums have come up can be classified into three types depending on whether it belongs to the state government, central government or is owned privately. Slum colonies on state government land are called surveyed slums and are opposed to notified slums on private land. There is virtually no official data on the status of populations that comprise the slum colonies on central government land, as they have never been officially surveyed. (Source: Gautam Chatterji, private conversation; *Indian Express*, Mumbai, 11 May 1996.) The land on which Dharavi is situated is largely owned by the Mumbai municipal corporation with pockets of privately owned land and some 'collector' (central government) land.
2. This is a local term, used in Dharavi to characterise collective intervention in the lives of slum dwellers. I have heard it being applied to schemes implemented by non-governmental organisations as well as to government schemes. This implies that the state is not always seen in oppositional terms.
3. 'This country is ours, this land is ours, Dharavi is ours.'
4. Indira Gandhi, the Prime Minister of India declared Emergency, in 1975. This allowed the state to enforce several draconian programmes like slum clearance and sterilisation, euphemistically referred to as the 'family planning programme'.

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8

Environment and Justice: The 'Public' Purpose of Water

SATYAJIT SINGH

Karl Wittfogel stated in 1957, that every society is based on hydropolitics. Wittfogel attached great importance to the politics of water use and distribution, as water is a crucial resource, especially in agricultural production. It was the distribution of water, according to him, which laid the foundation of society, state and empire in the East. His thesis on the all powerful, centralised, despotic state has been subsequently refuted through historical and sociological studies pointing to the peasant and communal control of hydraulic property. Clifford Geertz, for example, provides a detailed account of a *subak*, or irrigation society, in the Indonesian island of Bali, which among other things, plays a central role in the regulation of water supply to the community. As he puts it, 'Theories of hydraulic despotism to the contrary notwithstanding, water control in Bali is an overwhelming, local and intensely democratic matter' (Geertz 1980). Similarly, Goran Djurfeldt and Staffan Lindberg, drawing upon their study in Tamil Nadu, point out that the control of the irrigation system is not the basis of power in hydraulic society; rather, 'Power is the basis for the control of the irrigation system' (Djurfeldt and Lindberg 1975). However

unacceptable Wittfogel's thesis of Oriental Despotism based upon control of irrigation systems might be, he has nevertheless drawn attention to the contest over a critical environmental resource like water. What then is the relation of water to the concept of environment and justice? Does the distribution of water have a role to play in perpetuating the inequalities in Indian society? Which environmental theory and its understanding of the concept of justice helps address the concerns of those sections of the society that have not benefited from the state's irrigation policies? Can the concept of environment and justice make a case for the establishment of hydraulic property rights that are not linked to property rights in land? This chapter, divided into two sections, tries to answer some of these questions. The first section reviews the understanding of the concept of environment and justice. The second section uses a particular strand of environmentalism to help address the problem of unjust distribution of water, raised in contemporary India.

ENVIRONMENT AND JUSTICE

The concept of justice is fundamental to the environmental concerns of contemporary society. The environmental concepts of justice are multidimensional and perhaps give the broadest possible understanding to the term itself. This section reviews the understanding of the concepts environment and justice by pointing to the key issues raised by the terms—anthropocentrism and eco-centrism, inter-generational and intra-generational justice and sustainability, and Marxism and eco-socialism. However, before we do that, it is important to pause and remind ourselves of the two major ecological critiques of modern industrial societies. First, these societies are not sustainable as they aspire for

continuous growth in a world that has limited renewable resources and a restricted ability to absorb the pollutants of this society. Second, the aspiration for unending growth is not just impossible but also undesirable; for it places human beings at the centre of the world and the natural world is seen as simply a means for human consumption. A sustainable society has to respect the limits imposed by nature and redefine human needs and wants.

Anthropocentrism and Eco-centrism

There are eco-centric and anthropocentric perspectives on environment and justice. The eco-centric or bio-centric approach talks about an egalitarian perspective that calls for justice to all life on earth—plants, animals and humans. It advocates ‘bio-spheric egalitarianism’, a notion that does not prioritise human life. The eco-centric approach critiques other ideologies for their anthropocentrism. It questions political life on the assumption that human beings are at the centre of the world and the measure of all values. The eco-centric approach, in itself, has various strands ranging from instrumental value, where humans need to be more careful of the environmental impact of their actions to arguing that the environment has intrinsic value and needs to be cared for it. Arne Naess, the Norwegian philosopher, distinguishes between ‘deep’ and ‘shallow’ ecology. The argument for an intrinsic value contests humans as the measure of value for a defence of non-human natural world (Naess 1973; Tobias 1984).

However, it is not easy to specify what rightfully belongs to non-humans. At the same time, eco-centric justice depends on the intellectual and deductive ability of the human mind that makes the entire concept subjective. Yet, the non-humans cannot be denied their existence as they are not

major environment modifiers and without forms of changing cultures, their existence is limited to occupying portions of the physical environment. It is a matter to extend Rawls' theory of justice to the realm of environment before one can speculate on the distribution of rights and liberties, and differential access to resources between humans and non-humans. Then there is also the issue concerning the domestication of other species by humans and their use for social and economic well-being of humans. Nevertheless, evolutionary theories such as that of Charles Darwin point to the necessity of some form of ecological justice due to the intrinsic role that nature plays for maintaining and sustaining human life on planet earth. Many would say that an eco-centric perspective is too broad and much before its time for popular acceptance. This is especially so for political thought that has concentrated solely with matters concerning homosapiens.

It will not be an exaggeration to state that anthropocentric political philosophy has been grossly inadequate from the point of view of environment. Political philosophy has made giant strides on various issues that concern homosapiens. On issues concerning equality and justice, political philosophy has ably articulated that, every person matters equally. Yet it fails to recognise that other species have a right to life akin to the right to life of humans. The ecological concern seeks the widening of the community of rights holders to animals, trees, plants and inanimate nature. If one were to philosophise on the domination of the homosapiens over all life on earth in the last few thousand years in the life of planet earth, over millions of years, then it would be safe to conclude that human domination is merely derived from some form of genetic lottery. The ecological concern therefore, is not just a moral theory; for its destruction can bring

to an end not just an end of human civilisation as we have known in this generation, but indeed of all life in the planet. The domination of the homosapiens over other species in the recent history of the earth, and their lifestyle has brought to the fore questions about the sustainability of resources and quality of life. It is therefore essential that political philosophy that governs the homosapiens addresses the ecological concern.

Indeed, one also needs to ask the question whether the principle of social justice, rights and liberties are extendable to the animal and plant life when the 'law of the jungle' determines the survival of the lesser species that are preyed upon by the physically dominant ones. Similarly, does the prevalence of the law of the jungle that has led to the domination of humans undermine the need for humans to accept some form of environmental responsibility and ensure environmental justice? Again, does the notion of environmental justice provide an unfair burden on humans; for the animal world, as we know it, is unable to intellectually and morally comprehend human efforts to extend the principle of social justice on it.

It is indeed a major challenge to draft a theory of environment justice that does justice to an eco-centric approach. Many may find such a task impossible. However, for critics like Brian Baxter (1999), it is important to at least address some concerns of ecological justice and what that may mean to human culture and economy, as we know them. He, however, concedes:

The principle of social justice, which concern the distribution of resources among human beings so as to permit basic needs for all of them to be met, have priority over principles governing the distribution of resources between humans and non-humans so as to meet basic needs of the latter.

Yet, he argues that in case of a clash, the requirements of ecological justice puts limits on the way in which human basic needs are to be met. He argues in favour of three constraining principles:

1. If such basic needs can be met either by mobilising natural resources or by redistributing them among human beings, then the latter should be chosen in those circumstances where the former destroys the conditions necessary for non-humans to meet their basic needs.
2. Human beings must seek to arrive at some conception of 'enough' to define the degree of material well-being and consumption which is acceptable to all human beings.
3. Human beings have the responsibility to limit their numbers so that they do not get into the position of having no alternative in order to meet the demands of social justice, but to destroy the conditions necessary to the existence and flourishing of non-human creatures.

Baxter goes on to advocate the setting up of a regulator in the form of an 'impartial human guardianship body' that ensures that the interests of other species are taken into account and which sets norms on how to acknowledge and recognise diversity of human interpretations of environment.

Inter-generational, Intra-generational Justice and Sustainability

Environmentalists point out that the two dominant ideologies of the 20th century; Leninism and Keynesism converge on material affluence achieved through an efficient exploitation of nature. The conquest of nature has alienated

man from nature and led to a destruction of the natural world. This in turn has brought the human species itself close to destruction. Environmentalism therefore represents a new style of politics, which regards humans as an inseparable part of nature that has to respect the limits that nature imposes. The quest for growth and a vision that science and technology can solve all problems is replaced with humility to nature and search for new concepts like sustainability.

There have been many other liberal responses to the issues of environmental justice. The Club of Rome highlighted the inadequacy of political theory to deal with concerns that demand that there be some form of equality among the interests of those humans alive and the future generations. A. Peccei, an Italian economist and businessman, founded this school to look into the problems related to nature and societal interaction (Peccei 1970; 1971). The most powerful of these works, *The Limits of Growth*, attempts to provide an insight into the future development of human beings. The basic arguments that they put forward are:

- that the threat facing humanity arises from the exhaustion of natural resources;
- that the increase of industrial production inevitably leads to pollution; and
- that growth in population increases pressure on resources.

The Club of Rome expresses an anti-growth sentiment and calls for a conscious move from exponential growth to global equilibrium. In their view, unless we respect these ultimate limits, the planet would soon perish. *The Club of Rome* report had advocated an end to the era of growth, to be replaced by achieving a balance between resources and population (Meadows et al. 1972; Forester 1971; Daly 1973).

The environment is also seen as something to be distributed among the present generation. Often, environmental destruction is seen as a result of environmental conflicts and its resolution only by a just distribution. Environmental historians like Ramachandra Guha (1988) point out that environmental movements in the developing countries are an extension of peasant movements that have called for an egalitarian distribution of resources. These movements question the reservation of the forests for the timber lobby and its exploitation for the elite or international markets. Instead, they emphasise that public goods such as forests are critical for livelihoods of the poor. The environmental problem therefore needs to be understood with reference to the consumption of natural resources between the rich and the poor, developed and developing countries, and indeed, man and women. To take an example, it was said in the 1980s that the United States of America (USA), with less than 6 per cent of the world population, uses about 50 per cent of the world's resources every year. To extend the logic, it can be said that the birth of a baby in the USA is a greater disaster for the world than—say—that of 25 Indian babies. It has been seen that different classes and nations have an unequal access to resources, and unless the rich curb their resource consumption, the shortfall in availability of resource would continue.

It has been asked whether a just distribution of resources will lead to sustainability that many environmentalists advocate. Indeed, a just and equitable distribution of resources worldwide at par with the per capita consumption of a North American will lead to an ecological catastrophe. Yet, as neither sustainability nor justice has determinate meanings, it is open to the pursuit of either of them, in terms of the other. The issue whether justice and sustainability are compatible objectives needs to be resolved. The idea of

combining the pursuits of justice and sustainability will clearly require a body of empirical research and theoretical articulation that is currently not available. It needs to be pointed out that population growth also relates to resource distribution; a point being forcefully made by the developing countries (Dobson 1998). However, in spite of sharing common ground, the social justice movement and the environmental movement differ with respect to the natural environment. The ecological movement would like to extend the concept of just distribution to the natural world. The social justice movement will like the discourse on resource distribution to be limited to humans and would specially target marginal groups like women, colour, caste, class and disability for greater equity. Only a naturalisation of the justice movement and a socialisation of the environmental movement can take the discourse on justice beyond its current anthropocentric bias.

This brings us to the issue of allocating resources and penalties for a sustainable and just world—the world of economics and public policy. Environmentalists and economists have stereotypically been regarded as two sides of the same coin, with no meeting point. This has been so, because the economists have been concerned with economic growth, while environmentalists have regarded growth as the major destructive force. However, bridges between the two disciplines have been attempted that aim to reconcile the injustice of growth on the environment as well as the injustice of no growth on humans.

A just environmental strategy of the neo-classical economics is based on their judgement that it is proper to discount the future effects of present activities at a positive rate. The widespread acceptance of this judgement with reference to the environment by economists is of a recent origin. Till the 1960s, economists were largely against the

notion of discounting of natural resources, as demonstrated by Ramsay (1928), Pigou (1932) and Harrod (1948). This disapprobation, however, began to give way from the mid-1960s to the notion of positive discounting of natural resources. The neo-classical economic framework is largely restricted to some microeconomic decision-making techniques to calculate the best depletion and pollution rates (Dasgupta and Heal 1979; Fisher 1981). The depletion theory can be traced to the early 20th century in the works of Gray followed by that of Hotelling. The key concept here is that depletion is an activity in which the opportunity cost of production today is equivalent to production at some future date. Thus, the royalty price reflects the natural scarcity of a resource in finite supply. The theory of pollution control emerges after the discounting theory. The major contributions to the literature are by Boulding (1966), Ayres and Kneese (1969), and Knesse, Ayres and d'Arge (1970), who argue that the increase in the wastes generated in the production process create a problem of pollution that the price system is ill-equipped to handle. The pollution problem is dealt in a manner similar to that of depletion. The emission standard replaces the natural limits on the availability of the resource.

Based on this understanding of discounting the future, environmental economics as a discipline became increasingly sophisticated in the 1980s, encouraging an exponent, David Pearce (1985) to define it as 'bio-economics'. Pearce argues that economics, through an extended 'cost-benefit analysis' can quantify and measure human concern for the environment, thereby working towards sustainable development. According to Pearce, economics is part of the environmental solution, not part of the environmental problem. Pearce et al. (1989) have further developed this methodology and provided in great detail the method of calculating the price of the environment, for a sustainable world. However,

Pearce's attempt at synthesising economics and ecology has been questioned by economists themselves. Hodge (1986) questions the 'appropriate' rate of discount, as well as the notion that long-term environmental changes can be the subject of discounting. Others, like Norgaard (1984, 1985) suggest that neo-classical economics in its existing stage is incapable of meeting the environmental challenge, as its concept of the world being 'imaginary' and 'without surprise' does not meet the challenges posed by future discounting. Michael Redclift (1988), speaking of the desirability of sustainable development, points out that the convergence between environmentalists and economists attempted by Pearce is problematic due to the different assumptions of the two disciplines of economics and environment. While, 'economics assumes that resources are divisible and can be owned', it, 'does not acknowledge that resources bear a relationship to each other in the natural environment, as part of environmental systems'. In spite of these fundamental criticisms that question the nature or price of environmental goods, the neo-classical response does provide us with a method for some elementary environmental calculations based on principles of justice for this generation as well as those to come.

Environment, Marxism and Eco-Socialism

Karl Marx emphasised the unity of human beings and nature, and stressed on social conflicts arising from the distributional and consumption pattern of natural resources.¹ However, in practice the record of pollution and ecological degradation in the erstwhile socialist countries is as bad if not worse than in capitalist societies. In Marxist theory, environmental conflicts are seen as an extension of social inequalities, and their resolution is based on the ability to remove these inequities. However, little attention has been

paid to environment per se. Even though Marxism is the only political theory that envisages a unity of man and nature, the solutions to the social conflicts are anthropocentric. Though the Marxian response to the ecological crisis has its problems, what it has to offer is unique to it. For, it attempts to look at society with particular reference to political economy, classes and conflicts related to resource distribution.

Reiner Grundmann (1991), who believes that Marxism can respond positively to the ecological crisis, characterises the Marxian response into three schools. The 'Marxist dissidents', who believe 'that the new questions posed by ecology cannot be solved within its (Marxist) theoretical framework'; 'Marxist orthodoxy', 'which aims to defend central elements of the theoretical corpus'; and a third group which he does not name, but we can call it in accordance with his analysis as 'Marxist ecologists', who are 'convinced that ready-made answers are contained within Marx's thought'. However, this kind of characterisation focuses on the relevance of Marxist thought to an environmental understanding, rather than highlight the Marxian tools of analysis and critical inquiry, which would help us understand and confront the ecological crisis. The intention here is to explore how far the insights of Marxist analysis can help towards developing a sustainable, egalitarian and just theory of nature and society.

Marx constantly deplored the destruction of the environment during his times, and at one point even commented that it was ecological issues that brought him to use the method of Political Economy to understand society.² In the 1820s, he resisted the Prussian government's enactments of what he called the 'theft of woods', as it was directed against the local inhabitants and biased in favour of the industrial sector.³ In this, a class analysis of the use of natural resources was central in his interpretation of nature. While Marx does

not provide a systematic theory of Nature, he does refer to Nature time and again. A study of his method of studying society and economy provides us with an understanding of what may be called the Marxist approach to the environment. Marx's own works, particularly *The German Ideology* (Marx and Engels 1970), and *Capital Vol. 1* and 3 (Marx 1887, 1894) are invaluable for understanding his concept of nature. In the former, Marx and Engels emphasised the unity of man with nature. Unlike the positivist conception of science, that abstracted humans from the external world of nature, and led to the development of scientific knowledge and application, which was devoid of social and historical processes, Marx emphasised the unity of society and nature as a fundamental concept, which needed to be grasped. Prior to Marx, philosophers posited a dualistic treatment of Nature distinguishing 'external'⁴ and 'internal'⁵ Nature.

Engels' *Dialectics of Nature* (1925) completed after the death of Marx, however, negated the understanding of the unity of humans and nature. His concept of Nature seemed to separate it from human beings. He stated that natural forces, that is, external Nature also functioned dialectically. Dialectics was thus applied separately to both external and internal Nature. Some Marxist critics of Engels today, however, feel that Engels analysis is misplaced, as they think that Marxist theory already contains dialectics of Nature. For Engels, this had to be supplemented further with a dialectics of external or the first Nature.⁶

Insights into Marx's concept of nature are also available in some applied works relating to environmental conflicts (Blackie 1985). Here, environmental destruction is seen as the inevitable consequence of capitalist development. In a capitalist structure, access to resources or environmental goods are unequal, and social institutions and practices like short-term profits exist that accentuate environmental

destruction. The ecological issue is seen in relation to the structure of capital itself. Attempts are made to link the capitalist and imperialist structures with resource degradation, which leads to an impoverishment of people, especially in the colonial and post-colonial societies. The Marxian notion of alienation provides an ethical argument to maintain the harmony of humans and nature. Environmental conflicts find an expression as new social movements, which question the capitalist basis of society. The environmental conflict, thus, is rooted in capitalist material production, though at times, it seems to cut across mode of production lines.

Marxist critique of capitalism highlights the major cause of environmental destruction, and sets us to look for answers to the problem. The tools of political economy, its critique of capitalism, understanding of classes and class conflicts and the insistence on viewing things in their totality, provides Marxism with an edge over other philosophies in examining and coming to grips with environmental problems. However, it should be borne in mind that preserving the earth's regenerative capacity was not the concern of Marx's intellectual and practical pursuits. Ideas of an equitable and just world, free from exploitation would be found in his works. However, the Marxist notion of the unity of nature and society, and its critique of the capitalist and imperialist structures is remarkable, and does provide the theoretical basis on which a sustainable society can be built. The current green interpretations of Marx emerge when ecological issues have become important concerns of society. These interpretations provide valuable insights towards understanding the ecological crisis and indeed, do point to the directions where some solutions for a just world can be found.

The Green movement in Germany, for instance, has a distinct socialist strand comprising of individuals who have

been sympathetic to the left ideology. They espouse the cause of eco-socialism by drawing on some of the works of Marx and Engels to bring about a 'Red' and 'Green' synergy. A leading German eco-socialist, Rudolph Bahro (1984) argues that capitalism is the root cause of environmental problems. It is the peculiar characteristic of capitalism that has unleashed the forces of production like never before. Capitalism's quest for profits has led to the neglect of the natural world. The eco-socialists take pains to point out that capitalism is not only characterised by class conflict, but also alienates Man from Nature, which inevitably leads to ecological catastrophe. Capitalism views both—Labour and Nature—as a resource that is to be exploited for profits and markets. Eco-socialists also question the monopolisation of the natural resources and point to the need to distribute it equitably. It is on this count that they articulate the same concerns as the environment and social justice school. The eco-socialists attempt to bring about a social change in society is therefore a project that engages with both, Labour and Nature. It is argued that ecological destruction is caused by an inequitable distribution of natural resources and its just distribution would not only abolish capitalism but also preserve the environment.

The eco-socialists would argue for a convergence of the 'Red' and 'Green' parties, as the ecological destruction is nothing but a by-product of capitalism. However, critics argue that socialism in practice wishes to do nothing more than exploit the wealth of the planet. The only difference being, the exploitation takes place for the entire society rather than for a small class of capitalists. While there is much in common between the Reds and the Greens, the German Greens proclaim that they are neither left nor right, but in front. Eco-socialists like Bahro argue that the ecological crisis is so pressing that it must take precedence over the class struggle.

Let us now turn to understanding the claims of socialists in the context of water and Justice in India. Water is a critical resource for agricultural production. Rights to water had undergone a transformation during the colonial period. With the creation of property rights in land, the colonial state sought to build alliances with a section of native Indians. Land alienation also led to alienation of water rights. The British state used water for political purposes. Whitcombe (1982) points out that irrigation development in Punjab sought the settlement of Ranjit Singh's army in agriculture. Similarly, in independent India, the political alliances with the landed led to the pursuit of irrigation policies that led to the marginalisation of sections of the rural population that were not connected with the power structure. The environmental movement in India and the call for a just resettlement policy, point to an unjust arrangement; where the benefits of development are confined to the well-connected landed class. From an eco-socialist perspective, this chapter argues for water rights that are not linked to property rights in land.

WATER AND JUSTICE IN INDIA

Central to water distribution is the concept of justice. The public sector led development strategy in Indian agriculture was inspired by the democratic and socialist principles of justice. Given the public goods, nature of irrigation for agricultural development and sustaining livelihoods, public funding of irrigation was advocated by almost all the political and intellectual quarters in India. This section examines the public purpose of irrigation development and finds that the water resources are inequitably distributed belying the socialistic aspirations of a just distribution of water, a

key component in agricultural production. Further, the particular model of irrigation development has caused serious damage to the environment. The consequences of the ecological destruction have a direct impact on the livelihoods of the poor and the ability of the nature to keep pace with the current demands of agricultural production. This section makes a case for the establishment of hydraulic property rights that are not tied to the highly skewed property rights in land. It will be argued that a just distribution of a public good such as water is critical to the sustainability of the resource and can indeed play a critical role in creating a society more just than the present one.

Context

Land distribution in India is highly skewed. In spite of the enactment of the Land Reforms Act 1968, the land question in India has been indefinitely postponed. As a result in 1982, 3.98 per cent of the rural households owned as much as 33.26 per cent of the land. The top 20 per cent of the rural households owned as much as 73.19 per cent of the land, while the bottom 40 per cent held a mere 1.2 per cent of the total landholdings. About 81.34 per cent of the rural households had either no land or less than 2 ha, amounting to 28.67 per cent of the cultivated area (Sharma 1994). In India, today, property rights in water are linked to ownership of land. Thus, the skewed distribution of land necessarily debars a huge majority from having a greater use of the 'common' resource, water.

In an agricultural economy that is primarily dependent on water, the sole emphasis on land rights has been questioned. What matters is not the land, but rights over water and irrigation ditches. As E.R. Leach has pointed out in his study on Pul Eliya, a village in Ceylon, property in land

can be worthless unless it is linked with rights to water to cultivate the land (Leach 1968: 232). Compared to monsoon dependent agriculture, stable irrigation can by itself result in doubling of the crop yield (Dhawan 1985). The centrality of land for rights over water ensures that the already privileged landed class is doubly privileged through subsidised irrigation. While it can be conversely argued that rights to water are useless unless linked with rights to cultivate land, the point contests the privileged position of rights over land over all other resources. The nature of property rights in water, linked to the skewed distribution of land, necessarily debars the majority from having a greater access of this 'common' resource. Sustainable and equitable irrigation strategies need to establish hydraulic rights to the collective and restore its place as a 'common property'. Thus, the necessity of establishing institutions strengthening collective rights to hydraulic property. This may not be difficult given the huge amount of public expenditure in irrigation.

Classical political economy defines forces of production, as means of production and labour. The means of production are understood in terms of natural resources, while labour is the ability to harness or transform these resources. The ability of labour to transform natural resources depends upon the tools and technology provided by an epoch (Marx 1887). The most important means of production in an agrarian economy is land. It becomes the central focus of contest for power. Water, too is a natural resource, which for purposes of irrigation, can be used only in land. Given the nature of hydraulic property rights, the pursuit for water is, thus, made by the landowners, and access to it is in direct proportion to the access to land. The apparently land-related nature of conflicts in rural India, has led to the neglect of understanding water as an important productive force in itself, which on its own, plays a very important role in dictating social relations. It is to understand this specific aspect

of the hydraulic conflict that one must now focus on. The approach adopted here, is not just a method of analysing the social context of irrigation, but by emphasising the need to view water as a truly public good, it would also have a policy implication for equitable and sustainable use of water ensuring environmental justice. Before we do that, let us examine the dominant discourse on irrigation development in India.

Irrigation Development in India

The foundation of agriculture planning and irrigation development was laid down prior to independence. Apart from the documents of the National Planning Committee (NPC 1947), these foundations can be traced to two other sources. The first is a book on planning by the renowned engineer trained by the British, M. Visvesvaraya that earned him a place at the NPC (Visvesvaraya 1936). The second is by the eminent nationalist economist, Khagendra Sen (1939), on economic reconstruction, which was endorsed by Nehru through a foreword. These three documents emphasised the use of 'stable' irrigation in the form of storage systems under medium and major projects, in other words they spoke of dams. Minor irrigation technologies like tanks, wells, and so on, were not given priority due to their 'uncertain' nature and the inability of the modernistic state to manage innumerable small technologies. At the same time it was emphasised that the output from Indian agriculture was low in comparison to the developed countries, and there was an urgent need to learn from their modern methods of farming, fertilizer use and animal husbandry. In this way, we find continuity between the British policies and those of the independent Indian state in relation to agriculture and irrigation. As pointed out by Partha Chatterjee in another

context, there is a divorce between the 'irrational political' process (of Gandhi) and the 'rational planning' (of Nehru) (Chatterjee 1994). This sought to undermine the whole gamut of anti-colonial ideology and political process that had emerged out of the concrete experiences and struggles of the people against colonial policies. In the case of irrigation, it manifested in the form of technological and professional supremacy acquired through western conceptions over indigenous political concerns.

Irrigation planning has been high on the agenda of the builders of modern India and has made giant strides forward since independence. The allocation to irrigation (and flood control) through the various five-year plans has continuously increased. The expenditure has galloped, more than 70 times, from Rs 459.77 crores in the First Plan, to Rs 32,525.29 crores in the Eighth Plan. About 70 per cent of the total expenditure was earmarked for major and medium irrigation.⁷ By 1979, India had 1,554 large dams, mostly constructed after independence with a financial outlay of nearly Rs 70,000 crores allocated to irrigation (GOI 1992). In other words, nearly 10 per cent of the total public sector outlay has been spent on irrigation. The irrigation potential of major and medium surface irrigation projects increased from 9.7 million (m) hectares (ha) in 1950 to 34.2 m ha in 1991–92.⁸ Food grains output has risen from 70 m tonnes in 1950 and is climbing up to over 200 m tonnes in this decade. Such figures are indeed impressive till one digs deeper into the realm of hydraulic justice.

During the colonial period, irrigation projects were subjected to a rigorous financial productivity test and the returns to the state were expected to be 6 per cent per annum. In independent India, the financial rate of return was lowered to 3.75 per cent per annum in 1949, and was revised from time to time, rising to 4.5 per cent from 1954–60, and eventually to 5 per cent in 1960. It can be assumed that the

internal rate of return was increased in an effort to maintain financial discipline. While this method of evaluation for the feasibility of a project continued, there was no strict appraisal of the returns.

However, this narrow monetarist approach for project evaluation in the form of internal rate of return was replaced during the Third Plan, actually in 1964, by a wider criterion of social benefit–cost analysis (GOI 1972: 256). Theoretically, the more sophisticated concept of benefit–cost analysis takes into account not only the financial costs and benefits, but can also account for wider social, institutional, organisational and political factors as well. However, this was not reflected in the new methodology that was adopted in India and the task of preparing project reports were not put under careful economic and financial scrutiny. It has been argued elsewhere that this shift was encouraged to promote the green revolution and appease the landed sections of the society that controlled the vast vote banks in rural India at huge economic costs.⁹ The cost-benefit analysis opened the flood-gates for the construction of large dams in India. As against 433 large dams that existed till 1965, 1121 dams were constructed in the subsequent 14 years after the adoption of the cost-benefit analysis.

Apart from the one-time capital subsidy at the time of constructing the dam and the canal network, recurring current account losses (subsidies) amounted to Rs 4.84 crore in 1955–56 and continuously increased to Rs 56.59 crore in 1967–68. As against a less than two-fold increase in the area irrigated, from 7.55 m ha in 1955–56 to 14.40 m ha in 1967–68, the losses went up nearly 11 times from Rs 4.84 crore to Rs 56.59 crore respectively. The gross receipts more than doubled from Rs 16.09 crore to Rs 37 crore but working expenses registered a three-fold increase from Rs 10.59 crore to Rs 32.9 crore during the same time span (GOI 1973a: 68). The Sixth Finance Commission was to

note that as against a marginal loss of Rs 58 lakh in 1950–51, the state governments sustained a loss of a huge Rs 150 crore on major and medium irrigation projects in 1971–72. The Commission further estimated that at an all India level the aggregate loss on irrigation projects, including interest charges, as projected during the Fifth Plan period, would be well over Rs 1,000 crores (GOI 1973b: 68). In spite of these reiterations, there has been little effort to curb this subsidy that is of a recurrent nature.

Yet, it is this rhetoric of providing food for the masses and the myth that modern science would help the state do so, has helped the state legitimise its huge investment in irrigation. The Indian population that is expected to reach to 1350 million by the year 2015 requires a stupendous increase in food production to 365 m tonnes.¹⁰ It is perceived by the planning establishment that in an agro-climatic region like India, any food production increase is necessarily linked to investments in large dams in India. This perception is not backed by hard data. The Government's own Sixth Plan document has admitted that the huge investment made in irrigation has yielded disappointingly low results. The national average of food production per hectare for irrigated land is only 1.7 tonnes of grain, while it is as high as 4.5 tonnes in many countries. It is suggested by some critics that the poor performance is due to an emphasis on major and medium irrigation technologies¹¹ as well as the 'uncertain' and 'unequal' distribution of water in the middle- and tail-end areas that such large projects entail. Indeed, there is a growing concern that agricultural productivity is on the decline in developing countries due to an emphasis on green revolution.

In a developing country like India, irrigation can lead to modernisation of agriculture and produce multiple effects on the generation of income and employment. It is also

a well recognised fact that creation of irrigation potential and its utilisation have a crucial role to play in changing the reliable shares of different farming groups in the countryside. However, the lack of foresight by the planners and academics has led to a situation where irrigation by dams helps in strengthening the existing feudal land relations. This is because of extreme inequality in the distribution of land- and water-intensive cultivation of cash crops in the command area. Critics point out that green revolution technologies do not regard the limits imposed by nature and the large-scale shifts in the land use pattern in favour of agriculture, increased use of pesticides, and canal irrigation are leading to the destruction of watersheds, contamination of groundwater, and degradation of fertile agricultural land due to increased alkalinity, salinity and water-logging.

Irrigation: A 'Public Good'?

It is important to pause and ask the question whether apart from increasing food production, public investment in irrigation development in India has helped alleviate social inequalities and injustices. Any discussion on a just distribution of water resources has to take into account the social, ecological and resettlement costs of large-scale irrigation development. The political economy of irrigation technology and site selection for irrigation development are important considerations for justice. Due to the land-centric understanding of agrarian society and change, the issues of equity in irrigation have remained concerned with questions like the promotion of particular crops, with the debate revolving around their water-intake at critical moments from the canals; or, at other times, with concerns for new technologies and their impact on the peasantry, once again using insights from political economy. Inter and intra-state distribution of water resources has over the last decade

gained enormous proportions. There has not been sufficient interest in questions that look at water as an important productive resource with an ability to influence social relations and change. While, part of such an enquiry has been conducted by the author elsewhere (Singh 1997), this chapter focuses on a relatively neglected aspect related to the land-linked distribution of the developed irrigation resources.

Even in states where efforts are underway to genuinely implement land reforms, or where it has been implemented with a relative degree of success, the changing social relations or the sociology of water distribution by canals is not put under close scrutiny. Water continues to be distributed in proportion to the ownership of land. It is in this light that one can question the nature of irrigation development in India, and indeed whether irrigation is a 'public good' or a resource monopolised by the landed with the assistance of the state. At the same time, it can easily be asserted that land reforms can also be implemented in certain irrigated areas through a control over the distribution of water by the state, especially as the state has enacted these land reforms and is the owner of the public irrigation schemes, like large dams. This could be done by releasing water to only those lands that do not come under the ceiling imposed by the land reforms acts.

This in fact, is being done by environmental groups or social movements outside the purview of major political parties or state institutions which have begun undertaking distribution of water from their communal projects on the basis of the number of members in a family and amount of labour time spent on the communal project, in contrast to land ownership; for example, Shramaik Mukti Dal's Bali Raja Memorial Dam in Sangli (Phadke 1989), the Gram Gourav Pratisthan, near Pune and Sukhomajari project near Chandigarh among the innumerable innovative projects.

Bali Raja Smruti Dharan was built on river Verala, one of the three dried up rivers of the Khanapur taluk in Maharashtra. The once perennial river had gradually dried after the drought of 1970–71, acting as drainage only during the monsoons. It is widely believed that the drying up of the river is due to the depletion of the groundwater necessitated by sugarcane cultivation. The local mass organisation, in consultation with a reputed engineering consultant, decided to undertake rainwater harvesting by constructing a 5 m high check dam along the river in 1987. The project was financed through an innovative mechanism by bidding for rights to sell the river sand from the state as well as collective labour contribution in the form of *shramdaan*.

Prior to taking up the project, it was decided that the beneficiaries could get only eight months of irrigation as against the 12 months that was being demanded throughout Maharashtra by the farmers. This meant that the project water should be distributed extensively to give guaranteed irrigation for subsistence crops as opposed to being monopolised for water-intensive cash crops like sugarcane. With this in mind, the 24 mcft of water stored could be used to irrigate up to 380 ha of land. The scarcity of water over the past years had driven home the point that individual profit maximisation had threatened the livelihood of the two villages. Discussions around the institutional mechanism to sustain water led to the realisation that water is a common good and hence it can be sustained only if it is treated as one. Hence, it was decided that as the project could not be sustainable without the collective effort of all in the two villages, water had to be distributed equally. Every adult member in these two villages would be entitled to an equal share of water. Perhaps for the first time, even landless labourers were entitled for water rights under this scheme. The landless in a water-scarce region can sub-let land or

sell their share of water. There is, thus, a greater potential for poverty alleviation by giving everybody, including the landless, water rights. This is only fair, as most of the irrigation works run on public funds.

Over the last two decades some progressive developments have taken place to bring about a more equitable water distribution where water right is not attached to land rights. The Sukhomajri project near Chandigarh provides each household (including the landless) with an equal right to water. A new method was designed to allocate water primarily to the 'people' and only secondarily to 'land'. Some were found to be unable to utilise a part or whole of their share. For their benefit, a suitable mechanism, for marketing the surplus, has been evolved. The method ensures a water right for every family, even if it is landless, and has been named as *haqbandi*. Similarly, a lift irrigation scheme run by the Gram Gourav Pratisthan, in Purandar Taluka near Pune, provides water on the basis of the number of members in a household. However, in this case, every household has to make a contribution and should have land.

Apart from spatial distribution and technology and institutional biases, another area causing growing inequity is the intensity of irrigation. Intensive irrigation leads to more utilisation of water in one plot that result in fewer farmers benefiting from irrigation. As such, additional output and incomes are concentrated in a few hands. Such policies lead to the promotion of 'rich peoples' crops like sugarcane and rice that require many times more water than 'poor peoples' crops like jowar and bajra. Hence, these policies go contrary to the frequently stated benefits of public irrigation works, namely, providing food security and drought resistance to the poor. Crops like sugarcane are stated to generate among the lowest net farm business income per million cubic-feet of water consumed. The cultivation of water intensive crops

can be restrained quite effectively by restricting the total quantum of water supplied in different seasons, as suggested by the Dandekar Committee for Maharashtra. The canal management could regulate the timing, duration and volume of deliveries at each outlet.

Groups concerned about ecological and equity issues like the Shramik Mukti Dal, Gram Gourav Pratisthan, Sukhomajri and Pani Panchayats of Ralegoan Siddhi among others also point out that unequal distribution of water can lead to choice of crops that may be profitable, but provide reduced amount of employment in the countryside. For instance, crops like sugarcane require 300 ha cm of water to irrigate one hectare of crop, in comparison to only 10 ha cm require for millets, 15 ha cm for gram, 21 ha cm for sorghum, 28 ha cm for groundnut, 35 ha cm for wheat and maize, 70 ha cm for rice, onion and cotton. As such, if a farmer has access to unlimited amount of water, then the output per ha can be as high as Rs 60,000 for grapes, or Rs 30,000 for fruits, or Rs 25,000 for sugarcane, while being Rs 2,500 for gram, Rs 3,600 for sorghum and Rs 4,250 for millets. On the other hand, if the amount of water were fixed, then the cultivable land and crop produced would depend on the water availability. If let us say, only 300 ha cm of water was given to a farmer with as much as 30 ha of land, then the farmer would definitely choose not to grow sugarcane or rice, which will earn him only Rs 25,000 and Rs 29,400 respectively. In comparison, millets will earn him Rs 75,000, irrigate 30 ha of land and also create 2,700 man-days of work (compared to 360 man-days for sugarcane and 420 man-days for rice) (Shiva et al. 1991). The choice of his crop would depend on an assured market, predicted profits and the availability of labour. The assurance of supply of water, it has been seen, plays an important role in the choice of crops, production and market relations. The 'scarcity' of water on the basis

of which more irrigation is justified, is thus linked to the production of particular water-intensive crops. This once again points to the need for environmental groups to focus on issues of social relations and control of water.

CONCLUSION

However, one has to be cautious. The establishment of hydraulic property rights to every agrarian family should not be seen as a substitute to redistribution of land. The establishment of hydraulic rights would not rid the countryside with the rentier class of landlords, merely cut their rents to a certain extent. In the case of Baliraja Dam in Sangli, the establishment of these principles has worked, as land distribution is not very unequal. In large parts of the countryside, this is not so. The emphasis on hydraulic property rights linked to property rights in land, merely states that the interests of the landlords have directed the obvious, that is, state intervention in irrigation. The state has used this intervention in the name of public good. At the same time, collective efforts at genuine land redistribution have not been successful and met with state repression.¹² Even though water rights are no substitute to land rights, it is seen that access to a resource like water can greatly enhance the productivity of labour. In this light, the establishment of hydraulic property rights would go a step further in the empowerment of the people, better utilisation of land, and a sustainable use of water resources.

As pointed out earlier, the entitlement to water is soldered to the right of ownership of land. As such, only the privileged land owners who constitute a minority, benefit from the national irrigation policy. The policy of hydraulic rights in proportion to land rights encourages large landholdings, which runs contrary to the stated national objectives of

'socialism', poverty alleviation and land reforms. Ironically, the public spending on irrigation is justified to feed the 'hungry masses'. Any explanation justifying large landholdings due to high per acre productivity of large farms under comparable conditions has been contested quite some time back (Khusro 1968: 123–59). The reason then, for not working out a different sort of hydraulic rights even though large irrigation works are made from public money, is due to the desire of the state to pamper the agrarian elite.

There is however a very strong case of turning hydraulic property relations over its head, in line with equitable justice. If water is given in proportion to people or households and not land, then, the socio-economic relations in the rural countryside can be dramatically overhauled, even in the absence of land reforms. Land left uncultivable due to lack of irrigation could be leased out to the peasants holding water rights, thus restructuring the production process. However, to be really effective, this radical concept of hydraulic property rights will have to be supplemented with providing land to the tiller. The environmental movements today relate to the demands for empowerment of the poor, devolutionary and democratic, decentralisation and social change. The peculiar nature of irrigation development in India has generated ecological movements or more specifically, water related conflicts calling for greater justice. These movements question as to how a production process, involving water is to be organised. These movements raise the injustice of displacement, unequal ecological impact, as well as the injustice in the distribution of water.

Alternative irrigation methods and institutions are being evolved by the environmental and peoples' movements in India today, which have emphasised sustainability and equitability as the principles for an alternate development model. A new attitude towards irrigation has to be central

in creating agricultural prosperity based on these new principles. The recent efforts at social mobilisation of the underprivileged sections of the society by political parties have only concentrated on reservations in employment, and focused attention on their social welfare in fresh government resources but have not even taken on board the potential for rural transformation through a redistribution of water harnessed by the public sector.

This chapter has reviewed the various approaches to environmental justice. This theoretical exercise has been supplemented with an understanding of real world concerns of environmental justice. While the environmental conflicts around large dams have concentrated on issues of environmental degradation and displacement, this chapter calls for a broader and practical understanding of environmental justice by linking it to pressing social concerns of access and rights to water. The empirical data is examined through the lens of the social justice movement; for that framework presents an understanding of the present day reality. This is not to say that concerns for an eco-centric approach are not relevant in everyday politics, rather these concerns are more appropriately handled in the realm of philosophy than in politics. A process of political reconciliation requires future and non-human actors to be present for a demonstration of power and bargaining. In their absence, there is a need to develop institutional arrangements through which their concerns of justice are adequately addressed. In the meantime, it is up to the social justice movement to widen the discourse of environmental justice within a pedagogy that is currently accepted in social and political circles. These concerns of environmental justice have been neglected by political theory and the institutionalised political structures and it has been left to the voices from civil society to address these concerns.

NOTES

1. Marx was greatly influenced by Charles Darwin's *Origin of Species* to the extent that he dedicated the first volume of *Das Kapital* to him. It is not known whether Darwin received a copy that was sent to him and what he thought of it.
2. He confessed, 'The proceedings of the Rhenish Parliament on theft of woods ... provided one of the first occasions for occupying myself with economic questions' (Marx and Engels 1956).
3. An issue which even today fits the agenda in the Southern environmental movement.
4. Prior to man—pristine or 'first' nature.
5. Nature of human society or culture—'second' nature.
6. The debate took place in Marxism Today. See Thompson (1975), Greaves (1977) and Rayner (1977).
7. As a percentage of the plan allocation, the outlay for irrigation was 22.2 per cent in the First Plan, declining to 9.2 per cent in the Second Plan when the Nehru-Mahalanobis model was adopted. After that it has hovered around 7.1 per cent in the Annual Plan period 1966–69 to 12.5 per cent during the Sixth Plan. It was 9.4 per cent during the Seventh Plan (1985–90) period (figures calculated from plan documents and Economic Surveys) (GOI 1992).
8. At present the aggregate irrigation capacity for all minor irrigation works is 40 m ha and that of all major and medium irrigation is 30 m ha. See Government of India (1985), Chapter on Irrigation; and also Central Water Commission (1987).
9. See Chapter 3, (Singh 1997).
10. These projections are based on annual nutrition requirement of 270 kg/person.
11. For a closer examination of the planning process and choice of irrigation technologies see Singh (1997).
12. For example, the Naxalite movement (Banerjee 1980; Dasgupta 1974). It is estimated that there were 5,424 agrarian movements between 1967 and 1970. As many as 1.5 million people participated in the Naxalite movement, occupying as much as 3.34 lakh ha of land in the country. The state finally managed to quieten the countryside through repressive measures, including the arrest of about 62,000 agitators (Rao 1971).

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9

Class, Democracy and Conceptions of Justice in India

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INTRODUCTION

In many traditional religious and political texts, justice is viewed as an overarching virtue of individuals and of societies meaning that almost every issue comes in under the notion of justice. In the Greek tradition Plato shows that it is rational for individuals to be just since it is in everyone's interest. Justice in the state then consists in each person doing the job he is naturally most suited to doing (Plato 1986). Some texts have disparate and rival conceptions of justice but there is no way provided in settling the disputes between these conceptions.¹ Modern political theorists also relate justice to individual morality and the idea of righteousness or moral goodness in human beings (Heller 1987). But in modern usages, justice covers only part of the individual morality and relates more to issues having to do with the state and the arbitrary or unjustified basis for making distribution of goods among citizens. In this chapter, I will chiefly concern myself with the second aspect of justice that I refer to as distributive justice. I am concerned primarily in defining distributive justice in the broadest sense, as the just

allocation of resources and benefits of all kinds, decision-making, rights, freedoms and cultural goods.

The fact that virtually all societies are plural raises the question of how far a society should deviate from standard principles of equal treatment of citizens to accommodate aspects in which they are different. The question of distributive justice is a central concern in every society that aims to defend unequal or equal relations among individuals or groups. They grapple with the nature of goods that are subject to distribution (income, wealth, opportunities) or on the basis the goods should be distributed (desert, needs, welfare and rights).

Distributive justice, therefore, as a reasoned argument about fundamental unequal relations is concerned with delineating crucial dimensions of variation—dimensions which are significant for judging of the value of societies and their policies. If this was all there is to distributive justice, the debate would end here. But it gives rise to two inter-related and unresolved issues; one epistemological and the other political.

The first revolves around the problems related to egalitarianism in the two broad ways of understanding justice and injustice of societies. Theorists who uphold universalism would argue that certain aspects of justice transcend social contexts. Justice is more than a mere description of prevailing norms in a society; it serves as a standard for judging those norms. For Rawls (1971: 7) justice is about the way 'the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation'. Fundamental objections are raised against these ideas of universal theories of justice. To begin with, a variant of relativism questions the view that principles of justice are valid eternally and everywhere. The idea

of justice they argue is conditioned both culturally and historically. Contextualist theorists of justice claim that there is an integral link between social structures and their conceptions of justice, and they deny that a core principle could be defended in a theory of justice.²

For many years utilitarianism claimed a universal place in theories of justice as it focused on the sum total of the good enjoyed by a society or a community producing maximum happiness or net satisfaction (Rawls 1971; Williams and Sen 1982). Along with John Rawls, Amartya Sen has argued that it provides a rather limited theory of justice because it concentrates on solving the problem of aggregating individual preferences. It develops as a theory that emphasises people's mental states and neglects other aspects of their well being. This focus on aggregating individual preferences is unable to incorporate participation and inclusion in democratic decision making. According to Martha Nussbaum, we can have an adequate theory of gender justice only if we are willing to make claims about fundamental entitlements that are to some extent independent of the preferences that people happen to have—preferences shaped by unjust background conditions (Nussbaum 2000: 87).

The validity of some of these objections to universal theories of justice does not mean that there can be no universal conditions of distribution of goods which are advantageous to all and which are the object of universal consent. Indeed, simple egalitarianism and neutrality in enactment of laws in universalist theories of justice are useful starting points because questions of distributive justice are judged without the locally shared understandings of justice. But this disengagement from plural distributive norms can lead to a mistaken account of justice. How does one determine the distributive norms of several unequal spheres of justice in a plural society? (Walzer 1985).

The political problems involved in analysing theories of justice related to distribution of goods arise out of the complex nature of the phenomenon of injustice. Injustice manifests itself at the level of social structures and social relations that support such structures and the relations of power. A further difficulty in the analysis of justice arises because injustice often generates attempts by those subjected to it to transcend their situation. Thus the problem is not merely to describe and analyse structures and social relations that create injustice, but to take into account the perceptions of those subjected to injustice. It concerns the status of justice as a notion that unites groups of people to transcend their unjust situation that might be governed by different distributive principles.

From the perspective of justice, securing the conditions that enable individuals to play their role as citizens, require different sets of strategies and policies for different sets of groups. From the perspective of democracy, with its emphasis on equal participation in the political domain, the pursuit of equality of social and political conditions entail that individuals should always be treated in a similar way by the state. But does the creation of equal political and social conditions mean that individuals must or should eventually do all the same things, pursue all the same activities and live under identical conditions? Even if broadly equal conditions were established, it would not follow that the correct and only principle of justice would be the constant and further pursuit of equality in distribution. State policies that promote equality between individuals may well have unjust outcomes for groups.

We could then argue that the first problem of justice is about how far societies should deviate from standard principles of equal treatment of citizens in order to accommodate the demands of various groups. The second problem

is how far respect for differences is constrained by the need to maintain a cohesive democratic community of equal citizens. This chapter does not claim that there can be a solution to these problems. We run into difficulty if we try to appeal to abstract principles of justice alone; instead we must explore about local history and culture to find solutions to these problems.

This chapter has a limited aim to indicate certain obstacles that stand in the way of formulating theories of distributive justice in India. I critically examine some of the normative principles designed to allocate goods that influenced the policy makers in India and then look at specific issues that arise for contemporary politics in India.

This chapter also explores the limits of a class-based theory of justice and argues that the decline of the role of the state along with democratisation in countries like India have raised political and social demands that are based on contextualist notions of justice; especially from social movements and cultural minorities previously subjected to repression.

For most of the 20th century, socialist and interventionist ideologies saw the state as the promoter of social change. In fact, after independence, Indian government inspired by these ideologies tried experiments with redistribution; and today these can be seen as bringing about a limited if not significant change. Democracy has encouraged people to put pressure on state institutions for greater political and social equality, often also described as 'a passion for group equity' (Bardhan 2002: 226). After universal suffrage was introduced, even the economically poorest and culturally most backward groups have been included in policy making. Indeed the very process of democratisation has contributed to unleashing non-class demands; democracy has tended to give voice to previously disempowered groups while, at the same time, legitimising popular demands for justice.

Historically, notions of exploitation and injustice have come into prominence outside democratic theory—in socialist literature and classical Marxist political economy. In this literature, surplus transfer from one class to another is fundamental to a class-based theory of justice that also involves denial of rights over one's product and external resources. In the case of class discourse, the hierarchisation in society is often based on seeing class positioning as an expression of unequal property relations. But the types of injustices faced by new social movements based on gender, community, or religion are exactly the ones where this surplus transfer is missing. The claims for removing injustices arising out of exclusion, subordination and marginalisation occur on the basis of gender, caste, culture and so on. The question, though, is how one is to argue for distributive justice that will satisfy the aspirations of all these groups. As I shall argue, there is considerable controversy over the analyses of the producing sector in a class-based theory of justice and this leads to incoherence in its analysis of structures of domination beyond the sphere of production.

THE LIMITS OF A CLASS-BASED THEORY OF JUSTICE

Like liberal theories of justice, the analyses of injustices in the Marxist tradition belong to the family of universal theories of justice. But in the Marxist tradition, the critique of the juridical model and the concept of exploitation play a predominant role in discussions on 19th century capitalism. This critique of the principles and institutions that sustained capitalism fuelled many arguments in Marx's work that have turned out to be false (Calhoun 1982). Capitalist private ownership has, for very different reasons than he anticipated, turned out to be an attractive ideal for people all

over the world. Indeed the problem with socialism in practice is a fact whose implications reach far beyond our topic and we would need to write another paper to engage with it (Callincos and Harman 1987: 23). Here we focus on the understanding of inequality and injustice that inform many of Marx's arguments and moral judgements. More specifically, I focus on some of his writings in which emerge a fundamental dilemma between ideals of equality and universality on the one hand, and criteria for distribution of goods on the other.

In his assessment of capitalism as a social system, Marx attacks the main components of a juridical model that presume a minimalist notion of equality or simple egalitarianism. Juridical equality rests on the assumption that all individuals irrespective of their differences, matter equally before the law in virtue of being persons. The Marxist response is that, this model undermines the idea of equality by defining it as formal application of laws. It also undermines democracy if it is restricted to the political sphere while despotic forms of property rule prevail in the economy (Verma 1999).

In its vision of political arrangements for the future, the Marxist tradition emphasises considerations of justice in the distribution of benefits and burdens, and in considerations of equality and liberty. In developing this position, Marx wants to believe that no society can be politically legitimate if it is based on the Lockean idea of self-ownership. The self-ownership thesis (henceforth SOT) states that every person has the right to the entire product of his labour. He views an equality based on equal rights to labour as inadequate, as it cannot assess how social arrangements affect the needs and capacities of individuals. The contribution principle pays attention to natural endowments—skill, ability, effort—as fundamental criteria for distributing goods. By invoking labour as more privileged, this excludes by definition members who are unable to work and to whom the idea of equal

rights cannot be applied. Further, the application of equal standards to different individuals will result in an unsatisfactory treatment. The main defect of the equal right of labour contribution is that it overlooks differences among members; a right can by its nature, only consist in the application of an equal standard, but unequal individuals can only be measured by the same standard if they are looked at from the same aspect, if they are grasped from one particular side; for example if in the present case, they are regarded only as workers and nothing else is seen in them (Marx 1974: 347). Thus the contribution principle can capture only a limited viewpoint from which individuals are regarded equal; in this case labour. He eventually favours a fairer criteria of distribution, based on the needs of individuals (Sopers 1981).

Exploitation and Justice

In his later writings in *Capital Vol. 1*, which is mainly concerned with propounding what I would call a standard theory of exploitation (henceforth STE), Marx has a concept of surplus labour which is trans-historical, that is, characteristic of all market societies. The institutions of capitalist social relations (free wage, labour, means of production) extend the scope of market transactions to appropriation of surplus value in the labour process. The conceptual problem is that, by invoking the labour theory of value, the notion of unequal exchange and surplus extraction is limited to the labour process. Furthermore, this formulation is weak in ignoring and not taking into account categories of workers—unemployed, unorganised workers—who can work but do not produce any surplus value for the capitalist to appropriate (Arneson 1993). Hence, the argument of the simple version does not seem conclusive enough to establish the inequality and injustice of the exchanges under capitalism.

Over the years, there have been various proposals to amend STE. Some scholars have argued that labour values are building blocks in working out a theory of surplus value under capitalism, but they are also dispensable. Exponents of the analytical Marxist tradition claim that the idea of exploitation depends on the proposition that people are the rightful owners of their powers and is similar to the thesis of self-ownership which states, 'a person should be sovereign with respect to what he will do with his energies and efforts. He should not deploy them under another person's orders in the manner of a slave and have part or all of his product taken from him for nothing in return' (Cohen 1990: 366–67). For reasons that will emerge as we proceed, ascribing the notion of entitlements to producers is contestable. SOT claims that people are the owners of their labour powers. However, if exploitation is based on the proposition that workers are entitled to their products because they make it, then how do we allow deductions from the social product to meet the demands of the needy? Indeed it is argued that the idea of a rights-based critique of capitalism that I presented earlier is inconsistent with the claims to entitlements in the Marxist tradition.³

Without going into the reasons for these inconsistencies, the merit of these recent modifications of STE is to reassess two central claims in a class-based theory of justice: (a) entitlement thesis, which states that the producer is entitled to his labour power and product (Marx 1976: 342–43, 728–30); (b) redistribution thesis, that states distribution on the basis of needs; and (c) which is a corollary of (d) that the non-producing sector has a claim on the social product (Marx 1974: 345). Whatever finally is made of the concept of exploitation in the context of free markets, assessments of its viability depend on yet another claim central to Marx's work that capitalists appropriate part of workers' product

and exploit them due to their control over the productive resources/means of production. In all class-divided societies, the unequal distribution of the means of production is the cause of exploitation (Marx 1976: 344–5).

The main question for us is whether in elaborating a class-based theory of justice, it is possible to eliminate exploitation by giving priority to producers and their respective entitlements to labour (protection of rights under a minimal state), or through a redistribution of resources (tax on incomes, affirmative action through an interventionist state)? By selecting the unequal distribution of resources as the cause of exploitation, a class-based theory of justice is committed to a redistributive egalitarian policy that involves distribution of resources. But the claim that the producer is the owner of his labour power is close to advocating an in-egalitarian policy that overrides the claims of non-producing sector. Even if these two claims are reconciled, this leads to problems in connecting exploitation and class to a theory of justice. To formulate a theory of justice that would unite these non-producers who are not exploited according to STE, but are unfairly treated and are needy, is the main challenge. The problem is in identifying the exploited (proletarian), the needy and non-exploited (sick, handicapped, unemployed, old people), and the producer who is not exploited in the same way as the proletarian but oppressed, subordinated and unfairly treated (tribals, Dalits, female workers and minorities).

Given the magnitude of inequalities in which class, caste and gender are interwoven in new ways, we encounter a whole new set of problems in conceptualising justice. A major change relates to work organisation and practices. The assembly line production and standardisation of work procedures—that is, routine of work and more recently, the push for flexibility in labour—has been a model for industries in the post-Fordian production processes. The other

key factor is an abundant and cheap source of labour that draws multinationals across borders—more so since the era of trade liberalisation. The phenomenon of flexibility of labour often translates into part-time, temporary and shift-work, all of which means lack of benefits for an unorganised labour force. Related to this is the gendered nature of the labour force, a process that goes hand in hand with export processing zones, service industries (data processing, telecommunications, tourism, finance and insurance) and an informal sector which is connected to export production through subcontracting (Verma 2004).

The Case of India

Given these conceptual problems in a class-based theory of justice, it is not surprising that among the social scientists writing on India there is a wide difference of opinion ranging from a denial that social classes exist to an elaborately worked out scheme in which a rigorous use of class, coexists with other categories like caste, gender, region, community and ethnicity (Beteille 2005: 97).⁴

Lloyd Rudolph and Susanne Rudolph (1987: 20) in their book *Pursuit of Lakshmi* argue that a leading condition for centrism in India is the marginality of class politics. The explanation of the marginality of class politics in India is the lack of suitable objective conditions that include the presence in the economy of the third actor, the Indian State. Some scholars argue that class formation in India has very different meaning than other western countries since the concept of class as control over property relations is misleading in the Indian context.⁵ There is little agreement as to how individuals are classed according to their relation to the means of production; between those who own or do not own the means of production; and those who work and those

that live off the labour of others.⁶ For ancient India, there is an obvious difficulty. The Brahmins were a defined group involved in priesthood, ritual and vedic practices, possessing formalised privileges in governmental and legal spheres, and standing in a hierarchical relation to others; the Kshatriyas were largely involved in maintaining the state through military action; the Vaishyas were in the beginning engaged in agriculture but subsequently took up trade; the Sudras worked as artisans and as agricultural workers. But there is one respect in which these caste categories acquire a class dimension: it was assumed that these castes were closed occupational groups and their work was not only hereditary but rigidly exclusive that kept intruders out by informal sanctions as by legal means (Ilaiah 2001).⁷

Many scholars claim that the reductionist features of the Marxist paradigm prove to be particularly restrictive in the Indian context. By reducing political to economic and class power, Marxism tends to marginalise or exclude certain types of issues from politics.⁸ Pre-occupation with private property and wage labour are reflected in class analyses of the plural and multifarious character of contemporary social struggles. These analyses deduce the centrality of waging class struggle by subordinating struggles of peasants, tribals, women and dalits to it from such a theory.⁹

New Social Movements

Apart from conceptual problems with class, it has been argued that in India, where capitalism is struggling to emerge and transform a very different kind of pre-existing social order, we cannot simply take the existence of classes for granted. In most parts of rural India, class interests or class affiliation do not always dominate politics. The protracted collapse of the Congress party since the mid-1980s has in many ways been

interwoven with a broader diversification of political actors and political parties in the states (Manor 1997; Hasan *et al.* 2002). The most important mass movements of the 1970s that were led by either the communist or socialist political parties were centred around the interests and demands of workers, landless labourers and poor peasants of West Bengal, Bihar and Andhra Pradesh. In contrast, the 1980s saw the rise of distinct regional politics in each state and regionally based parties with distinct configurations of caste mobilisation and minority rights. Liberalisation policies, particularly after 1984, allowed easier access to foreign capital and foreign technology. Against this background, there was a further increase in political action based upon regional, caste and religious identities along with new social movements (henceforth NSM) initiated by peasants, women, environment groups, tribals and dalits (Omvedt 1993: 300). This was accompanied by the emergence of Other Backward Classes (OBC) and the Scheduled Castes (SC) as more distinct and self-conscious political constituencies, and the growth of Hindu nationalist politics among upper caste Hindus, urban middle classes and upwardly mobile groups in northern and western India (Hansen and Jaffrelot 1998; Jayal 1999).

The main difference between NSMs and the class-based labour movement in India is that NSMs express a fundamental critique of conventional politics questioning the operation of representative party democracy with its formal and institutional procedures, recruitment of elites, and configuration of informal power. NSMs do not always organise on wage issues and do not confront those who exploit them directly as owners of property. The reason for this being that these movements have mainly opposed development that has taken place and have directed themselves against the modernising effects of the centralised state, and their rhetoric as described by a noted scholar 'is laden

with the vocabulary of decentralisation, plurality, autonomy and participation' (Ghosh 1989). Hence, claims of injustice are no longer only about rights over surplus product. On the contrary, matters regarding depletion of natural resources and proposals for decentralised natural resource control are questioning explicitly decision-making power and procedures, and implicitly both the development policy and system of production being followed.

NSM activists as compared with labour activists emerge from different social strata and embrace different value orientations. They are oriented towards action within civil society and are suspicious of centralised bureaucratic structures; and are oriented towards changing aspects of culture and participation in the politics of protest.

In contemporary Indian society, many public appeals to justice do not concern primarily the distribution of income or resources and material goods. If they are economic demands, they mostly are directed against the state; asserting the community's control over resources (environment groups), reservations in jobs (caste based), higher prices for agricultural products (farmers), enforcement of legal rights (women) and human rights.¹⁰

As I argued above, surplus transfer from one class to another is a fundamental idea in a theory of exploitation that involves denial to rights over one's product and resources. But some of the injustices faced by NSMs are cases of denial of rights over external resources and cultural rights, without any surplus transfer to a particular class.

Many scholars are still prone to exaggerating the centrality of class and exploitation to understand all forms of injustice including those of NSM. They expand the ambit of exploitation to cover all forms of distributive inequality. Indeed, a large element of what distinguishes NSMs from class conflicts revolves around the question of identity of

its participants; NSMs present a case for an increased participation by many more members of the political community. Most of them are oriented towards bringing about a change in the existing system of values, norms, institutions and procedures. Another aspect of these movements is that they focus on cultural questions of the good life along with distributive issues. Politics is not only limited to bargaining over benefits that the welfare state can provide, but rather with the question of defending or reinstating endangered ways of life.

These new social movements cannot be analysed in the same way as the working class because of an imprecisely defined theory of exploitation and its relation with class. Class analysis suggests that the facts of exploitation arising out of ownership of the means of production unify class interests, despite differences in occupations and identities. By focusing on the interaction between agents, STE relates class and exploitation. But if STE's notion of class is inflated to include all unfairly treated members of society, then the Marxist notion of class loses its explanatory power. Hence in a certain way, any attempt to correct class reductionism leads us to the other extreme, that is, the portrayal of classes as malleable and free floating. It simply assumes that all other sections are exploited like workers and their interests will achieve compatibility in another universal conception of justice.

The Debate on Distributive Justice in India

As I argued, a fundamental assumption of a class-based theory of justice was the claim that, redistribution of resources can rectify economic injustices. Second, since principles of egalitarian justice did not seem decisive, a lot of prudent balancing and need sensitivity was required to overcome the economic disparities between different groups. These assumptions found favourable response in many of the policies advocated by nationalist leaders like Jawaharlal Nehru in

the first few decades following independence (Nehru 1983). While both, the Communist Party of India (CPI), and later the Communist Party of India (Marxist), acknowledged the predominance of capitalist relations, the CPM emphasised the presence of semi-feudal relations in many parts of India and hence attacked concentration of assets in the rural areas (Joshi 2002). Although they all sought to promote economic development within the framework of an elite-dominated representative democracy, there can be no doubt that the dominant rhetoric in the 1970s—socialism, abolition of traditional privileges, reform of the caste system—was that of social justice and economic equality. This rhetoric inspired the development of many state policies and was a potent motivating force in the development of the modern Indian state.

The Congress party which held power much over this period, initially proclaimed its commitment to redistributing wealth through land reforms, and through public ownership and government regulation of the private sector. But expansion of the public sector did not make much impact on the redistribution of wealth. The rhetoric of the Nehruvian notion of distributive justice that involved commitment to land reforms, ‘did not entertain the idea that radical restructuring of economic and social relations might be the precursor and foundation for industrialization and modernization’ (Hasan 2000).¹¹ This produced with time a shift of emphasis from redistribution of resources or wealth to assurance of basic minimum living standards or in being committed to reservations for the scheduled castes and tribes.

These changes occurred because along with those who viewed redistribution of economic resources as important in the development of democracy, there was a wide range of views on achieving social justice through some kind of affirmative action policies. Consequently, the orientation of theories of justice in the social science literature in India

gradually has been to equate economic equality and social justice. Many scholars in India viewed social justice as related to a more just and equal society. This understanding meant that rectifying social inequalities based on the caste system would correct the distributive outcomes produced by the structural logic of feudalism and capitalism (Verma 1999).

On close scrutiny, the socialist, liberal and nationalist paradigms of justice although vastly different in their perceptions, became united in their claims about a universalist notion of formal equality and about justice as distribution of social positions. They claimed that equality was to be achieved in part through democratic institutions and procedures; particularly, universal suffrage and through socialist planning, that would benefit all social classes in India (Weiner 2002). With time, the justice paradigm implicit in all these discourses became primarily concerned with the distribution of social positions among society's members.

On the debate on democracy in India, we could argue that in the constituent assembly the central claim was that, while electoral democracy would preserve formal political equality it will deny substantive economic equality.¹² In a narrow sense, this claim argued for a political process that facilitated a modest degree of distribution of power and other valued resources such as status and dignity. In a broader sense, it put the question of social hierarchies integral to Hindu society at the centre of the arguments on democracy, implying that arguments for economic development and nation building were bound to fail if they were only committed to principles of formal democracy. The real meaning of democracy was located in reversing the discrimination and cultural marginalisation that groups had suffered in Indian society. Thus lower caste groups must be emancipated from upper caste domination; religious and cultural groups should be protected from cultural majoritarianism. However, these kinds

of arguments placed the idea of redistribution of positions in jobs and inter-group equality as central to the arguments in social justice for substantive democracy (Mahajan and Sheth 1999). Consequently, the state sought to eliminate disadvantages by bringing in reservations for Scheduled Castes and Scheduled Tribes in governments and legislatures. It also showed a possible conflict between the strand of economic reform that focused on redistribution of resources through land reform, and political emancipation that was concerned primarily with granting individuals a set of fundamental rights.

Class, Gender, Caste and Community in Indian Society

The relationship between class and caste, and between these two categories and other group interests, is a complex one given India's cultural diversity. Over the last two decades, apart from dominant classes that organise their interests—industrial capitalists, large traders, white-collar workers, rich farmers and professionals (largely in the public sector)—numerous social groups in India have made their presence felt in the political process. The nation-state drew several groups into the public sphere through democratic organisations such as political parties, trade unions, interest groups and by granting equal citizenship rights to all its members: some of these groups are products of economic development; others have become politically active with the spread of universal suffrage and electoral politics.

The very forces that dissolved the class lines of feudal society acted in the post-independent period to prevent classes from being fixed in India, and created new patterns of social power and status. Modernisation and democratic processes contributed to changes in the labour structures and traditional social hierarchies in India. Economic development

and spread of egalitarian values slowly undermined the hold of the traditional elite and gave rise to new groups in the competition for political power.

Agrarian reforms and the green revolution transformed caste, class and land relations by displacing upper castes from positions of power in the state government hierarchy in certain regions (for example, UP and Bihar) by a new leadership drawn largely from the middle castes (for example, the Yadavas) (Pai 2002; Chandra 2000). Particularly significant have been the role of the middle peasants whose economic status was enhanced through the green revolution in a number of Indian states. A number of intermediate castes—often called backward castes—who were ignored by the elite that dominated the Congress party, have also in recent years thrown their weight behind various opposition parties (Jaffrelot 2000). In north India as well as in Maharashtra and Gujarat, to a certain extent, the OBCs have gained in political power after the announcement of the Mandal Commission by Prime Minister V.P. Singh (Jaffrelot 2003). Several studies show how pro-backward caste parties such as the TDP, DMK and AIADKM have held sway in Andhra Pradesh and Tamil Nadu for a long period. In both UP and Bihar, political alliances between OBCs and dalit-based parties are handicapped by class conflicts on the ground. OBC peasant landowners and Dalit agricultural labourers confront each other over agricultural wages; the latter face atrocities when they make attempts to change their social status. Though most members of the backward castes are agricultural labourers, tenants and small landholders, OBC leaders are drawn mostly from the better-off cultivators (Weiner 2002).

The most significant among the recent developments has been the victory of Bahujan Samaj Party led by Mayawati in the assembly elections in UP. The political implications of a 'sandwich coalition' in which the top bottom of society

and all other social denominations in between are located, have engaged upper castes with OBCs and Muslims in Uttar Pradesh (Verma 2007: 2039). Thus, dalit leaders and their organisations have been more effective than those belonging to the OBCs in making use of the political process. The picture that emerges is of an intense power struggle as many lower castes and minority groups enter the democratic world and redraw the relationship between social cleavages and political loyalties.

Many studies have highlighted the multifaceted nature of social stratification in India and the injustices in its social relations but there is no uniform pattern of the nexus between caste and class (Beteille 2005: 185; Sharma 2001: 21).¹³

For theorists who rely upon the 'modern' approach, caste and religion represent the badge of backwardness. On the other hand the attempt to add caste to accepted class categories of workers, peasants, capitalist and landlords is also problematic. Class, defined solely in terms of the ownership of private property and control of the means of production, does not explain major aspects of oppression. Investigations show that class status can still be identified with caste status; this is specially true of scheduled castes and scheduled tribes who are among the poorest sections in rural areas accounting for a substantial percentage of agricultural wage workers. While it is true that community-caste membership is still an important factor in determining access to resources in most villages, traditional class methodology fails far short in understanding the power relations that go with it. The reason this idea does not hold is simply that economic power and ritual status do not always coincide. The caste system provides for a system in which the non-producers, as high castes in the system, accumulate surplus in some cases, and thereby sustain a system that oppresses and exploits. To a large extent, relations of exploitation are interwoven with community/kinship/tribal aspect; thus their battle takes place through

these groups. Furthermore, there is an interactive quality to the variables related to any caste group and identity. Caste identities have a contextual character, and within caste communities there may be differences of interests because the material benefits to the lower castes have largely gone to their more advanced members; and thus there are growing class divisions within each of the lower castes.

Besides, in modern India, though political democracy has been adopted, the upper caste Hindu culture has been presented in deities, icons, rituals, folklore and religious symbols as representative of mainstream modern India. The gods and customs of Sudras, Dalits and tribals are thus marginalised, and the cultural integrity of these groups is pushed further into the background (Illiah 2001: 213; Dev 1997).

If the discourse on distributive justice has been set aside in recent years, the pressures for changes in agrarian reform are not too strong either, because peasant unity as a class against feudal relations is very limited. But issues related to control over natural resources like land, forests, water and knowledge systems are very much alive in several backward regions like Chattisgarh, Jharkhand, Maharashtra and Orissa where some militant naxalite organisations have come to play a significant role among tribal groups (Guha 2007: 3308).

While democratisation has played a significant role in extending juridical equality for women, it has not challenged traditional patriarchal structures or helped them occupy decision-making positions. The gap between active political participation in regional, adivasi and anti-caste struggles on the one hand, and a failure to achieve positions of authority and leadership in them, on the other, has led to unequal gender structures being reproduced in Indian society (Rao 2003: 10–11).

Although most women confront patriarchal arrangements the specific nature of discrimination varies according to their position in the class and caste hierarchy. Thus

there arise extensive regional disparities in gender relations as hierarchies of class, caste and ethnicity intersect the hierarchies of gender. But in the realm of work, there is close correlation between class and caste in the lower strata of society with outcaste and tribal women working as wage labourers. Large sections of dalit women remain landless and have only their labour power to sell.

The path of mixed economic development followed by government and private industry in India has generated pressures that have intensified the marginalisation of women throughout the country. The recent liberalisation policies of the government with its emphasis on technological change has edged rural women in a number of states out of production and decision-making roles which they previously enjoyed (Bannerjee and Mitter 1998; Standing 1999).

During the past decade, a number of women's groups have focused attention on challenging the ideas of universal citizenship based upon abstract egalitarianism by raising specific injustices related to women—especially rape and violence, and personal laws associated with women's marital relations and economic rights. An important area in which the political dimension of women's rights has been ignored, relates to women's control over productive resources, and land in particular.

Women carry multiple identities with them as members of socio-economic groups. Conceptually women's oppression is linked to or determined by other available histories—family, class, religion, and other existing notions of moral order. In recent years, the rise of religious nationalism has elevated women as symbols and repositories of community/group/national identity (Hasan 2000).

Significantly, the issues related to women's rights intersect with broader issues related to minority rights. This has been due to the way the debate on justice for minorities in

the constituent assembly revolved around the need for preserving rights of religious and cultural minorities.

In the first phase of minority rights, most groups were concerned with attaining autonomy and cultural identity from the majority community with the assistance of the state. But they also emphasised non-interference in internal affairs of the community. The tensions within this formulation arose in particular when leaders of minority groups opposed a large number of women groups who demanded a uniform civil code applicable to women of all communities. Consequently, community personal laws which generally place women in a subordinate position, have continued to regulate the social life of its members.

With rapid democratisation of the Indian polity, minority communities have focused on procedural issues of participation in deliberation and decision-making, and of adequate representation in legislative and executive bodies. Further, some minorities maintain that only community members can best represent the interests of the community. This is because the idea of a political majority and minority has been determined by the electoral process that valorises numbers and assumes that people participate in the political process along community lines.

CONCLUSION

I argued that the claim for different conceptions of equality and divergent notions of justice that became part of our political discourse owes its plausibility and compelling nature only to a very special set of circumstances. The rise of the post-colonial interventionist state and the establishment of a constitutional form of pluralism based on universal citizenship served to foster the need for social and distributive

justice. In this regard, we find that some of these arguments for distribution to remove economic inequalities and social discrimination were inspired by a class-based theory of justice while others were drawn from the (liberal and national) constitutional recognition of group identity and historical disadvantage.

I argue that apart from conceptual problems in a class-based theory of justice, we must recognise that the context for the debate on distributive justice has undergone major changes in India. The first thing to note is that there have been rapid shifts in the political involvement of people from socio-economic struggles to caste- and religion-based movements inspired by identity and recognition (Bhargava et al. 1999). Politically, the 1980s mark the point at which a critique of class politics in the name of new political subjects—women, religious, ethnic and sexual minorities—has taken place.

The factors that have led to the decline of a class-based theory of justice raise the need for fuller participation and inclusion of citizens in their democratic institutions. Returning to my earlier point, within social movements a large number of people at the local and national level are identifying themselves as citizens and engaging in critical action—expressing their resentment of parties and competitive politics, representative institutions and hierarchical administration. Citizenship in that sense, constitutes a real political identity as they combine at different levels avoiding fixed programs and forms of action. However, the assumption that the universalisation of citizenship rights and the democratic process of open and competitive politics would evolve new, civic equations among members of the political community and between cultural communities is deeply flawed. Along with associative democrats, NSMs regard the devolution of political power to citizens at the local levels as a way to invigorate democracy in large-scale political societies

like India. They explicate a version of associative democracy aimed at showing how strengthening the discretionary power of the local, voluntary and self-government associations would combat social evils and promote participation in decision-making. The problem they set out to address is that focus on redistribution facilitates oppressive rule and sustains domains of subordination and marginalisation.

No one would deny that apart from structural inequalities of wealth, unequal status between groups has been perpetuated due to political inequality. But in India, it is not only marginalisation of religious and cultural groups, but also unequal access to resources that is the main cause for deprivation and exploitation of groups. Most of the newly empowered groups do not claim to organise around material inequalities or give primacy to political action as a way of reducing inequality, but in fact, claim that substantive political inequality is wrong in principle and this inhibits the fundamental ideal of democracy.

The main question that arises here is: what relation has democracy to substantive social justice, to the improvement of the conditions of those people who are socially, culturally and economically disadvantaged? Is inequality a significant source of discontent and injustice, and do people give primacy to political action as a way of challenging redistributive policies of the state?

It should be noted that inequalities of income and wealth translate into substantive political inequalities even though votes are equally distributed, roughly equally weighted and inalienable. Wealthy individuals and large corporations in India have control over productive assets that can be used in political campaigning and lobbying (Subramanian 2002). Inequalities of wealth frustrate substantive political equality indirectly. Thus in order to reduce political inequality, it is necessary that the distribution of wealth, status and socio-economic power become more equitable.

At the same time, in political terms, it is possible to see why class-based injustices might not attain significance since democratisation has spread political power in an unstratified way among voters. Parties, pressure groups and political associations have become more decisive as power tends to be plural, and elites tend to get divided and not unified. The mass character of the Indian state along with the sheer economic and social functions of the state, discharged by paid bureaucracies has rendered impossible the development of any single group united by class interests.

Furthermore, in economic terms there is the profoundly altered relation between property and economic power that followed the land reforms in the early 1950s. The separation between property ownership and corporate control in large parts of the Indian economy since the 1990s has demonstrated that officials can yield great economic and political power though remote from property ownership. When economic power derives no longer exclusively from the processes of capital accumulation or even management the relationship between property and class becomes more and more tenuous (Vaidyanathan 2002).

It should be stressed finally that this account by itself does not mean that charges leveled against the actual functioning of Indian democracy are inappropriate; that in its actual functioning, particular interests especially those wielding greater economic power wield political power as well. Ultimately whatever gaps there are in Indian democracy, what is at issue in this chapter, more generally, is the complex question of the connection between political equality and social justice.

Indian democracy has led to inclusion of a vast number of people and groups who not only participate in elections but also in various organisations with the explicit aim to determine public policy. The actual political power of the many disadvantaged minorities and caste groups should

over time make a real difference in the distribution of scarce social and economic resources—of income and wealth, of power and influence, of dignity and self-respect, and thus in turn improve the bases of political equality. Changes from a merely formal democracy towards these, represent advances both of democracy and of social justice. The more the balance of political power favours the interests of marginalised groups, the greater the chances of increasing their weight in democratic decision-making.

NOTES

1. There are many interpretations of terms related to justice in India. In most regions of modern India, the concept 'dharma' is used to mean justice while 'danda' is used to mean punishment. However, we need to remember that the Hindu notion of dharma in the Vedas and Puranas deals specifically with caste justice. The Mahabharata reflects on dharma and provides a plurality of conceptions of justice. Kautilya, the famous advisor to kings, argues in Arthashastra that every Varna must perform its functions and the person who observes his duty attains heaven. Kautilya instructs the king never to allow the people to transgress their caste boundaries. If they deviate from or violate them, *danda* has to be invoked. The Buddhist concept of justice based on non-violence and equality is the anti-thesis of the Hindu concept of *dandaniti*, which is essentially a coercive apparatus.
2. Here, I wish to pose the predicament that while our theories and conceptions (rational choice, game theory, analytical Marxism, liberal theory) are still universalistic, they do not quite match our pluralistic intuitions. By Universalism, I understand theories that have relevance not just within their own context but beyond their context and origin. See J. Rawls (1971) and Walzer (1985) for examples of these two notions of justice. Breaking out of this dichotomy, feminist scholars argue that gender bias in the conceptual basis of moral theories such as Kantian, utilitarian, contractarian and rights-based theories reveal a gender neutral account of sexual discrimination and hence remain limited (Kittay and Meyers 1987; Nussbaum 2000).

3. For an attempt to resolve this inconsistency by combining Marx's arguments on exploitation in *Capital* with the charges he leveled against Lassalle in Critique of the Gotha Programme (CGP), see Verma (2000).
4. Marxist scholars have applied class theory to the study of Indian society and to the understanding of the independence movement. For such class analysis of the Indian society in the pre-independence period, see the political theses of the Communist Party of India. The other important references include Rajni Palme Dutt's *India Today* (1992). After independence important contributions on class analyses are Joshi (2002), Namboodiripad (1966) and Desai (1959). Most studies present a dichotomic view of classes and class-contradictions, which underplays the multiplicity of classes and class-contradictions. A class view of Indian social structure is found in the analyses presented by social scientists like Bhambhri (2000), Goran and Lindberg (1975), and Thorner (1974).
5. Many scholars—like Kosambi—argue that the so-called *Varna* division of ancient India is nothing but class division. In many articles, Kosambi used the terms caste and class interchangeably. At times he uses *caste/class* so that exact definitions are avoided because the Indian reality with regard to class has always been complex. For more on this see D.D. Kosambi (1976), R.S. Sharma (1980) and Irfan Habib (1995).
6. Common sense views on class are likely to emphasise status (social position, lifestyles and patterns of consumption), occupation (kind of work) and income. The Marxist theory of class is mainly about the actual place of individuals within the relations of production.
7. Of course, there are studies which would argue that in pre-British Indian society there was mobility due to the fluidity of the political system, especially at the lower levels and the availability of marginal land; see Srinivas (2001).
8. Charges of reductionism are appropriate to direct towards assertions which hold that apparently non-class phenomena are to be the following: forms or expressions of class phenomena; effects of class phenomena; or that even if they have extra-economic origins it is necessary and sufficient to make changes in them that appropriate changes in class phenomena.
9. Many scholars like Gail Omvedt (1993) argue that the new social movements are 'new' in that they themselves, 'through the ideologies they generate, define their exploitation and oppression, in new

- terms—related to traditional Marxism but having clear differences with it'. For a critique, see Verma (1999).
10. It has been argued that social movements can be usefully characterised as movements that have been mobilised around identity issues—caste, language, religion—and those that mainly pursue specific issues and interests. Identity politics is further often expressed via electoral politics, whereas interest oriented movements have operated within the bureaucracy and the judiciary. See Kohli (2002).
 11. On the eve of independence, Nehru wrote that economic change is as necessary as political change. That change had to come around through 'democratic planned collectivism'. See for more, Nehru (1983) and Bandopadhyay (1998).
 12. I borrow these terms from Rawls (1993: 325–26). He says,

liberties are formally equal when there are clear institutional guarantees and protection. They are substantively equal when individuals equally have the material means to make use of them. The basic liberties are specified by institutional rights and duties that entitle citizens to do various things, if they wish, and that forbid others to interfere. The basic liberties are a framework of legally protected paths and opportunities. Of course, ignorance and poverty, and the lack of material means, generally, prevent people from exercising their rights and taking advantage of these openings. But rather than counting these and similar obstacles as restricting a person's liberty, we count them as affecting the worth of liberty, that is, the usefulness to persons of their liberties.
 13. Recent field studies suggest that class and caste are not viewed as different forms of social stratification. It is argued that rural middle castes have become a political force to reckon with, due to improvement in their economic position. The gains in economic and political fields have prompted them to get access to higher education. Thus, caste has not disappeared but has reconstituted itself. Caste operates as a social hierarchy in some backward areas, but as a means of social identity it persists throughout India. It is also argued that the lower castes have been able to make headway towards upward mobility because of the persisting caste-based hierarchy in regions like rural Uttar Pradesh. See Sharma (1994, 1995, 2001).

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10

Tribe and Justice

VIRGINIUS XAXA

INTRODUCTION

Caste has been one of the distinctive and pervasive features of the Indian society. It is therefore not surprising that tribes in social science literature have been primarily posited and studied keeping caste as the frame of reference. Caste has thus become the unit of comparison while studying tribes. The special provisions provided for them as well as for the scheduled castes in the Indian constitution for their social, educational and economic upliftment has only reinforced the view and image that tribes are on the same plane as castes. The scheduled castes and scheduled tribes have no doubt been the most deprived, exploited and undeveloped sections of the society, notwithstanding that the social origins of the two have been quite diverse. Indeed, for a meaningful understanding of the question of justice with regard to tribes, the delineation of their social origins is a must.

Juxtaposition of tribes alongside caste in general and scheduled caste in particular, provides only a partial or inadequate understanding of tribes and their transformations. Tribes in social science literature have been conceptualised in terms of certain social, economic, political and cultural characteristics. Characteristics are, of course, fluid. Despite this commonality, groups and communities identified as

tribes or tribal society are far from homogenous/identical. They differ from each other in respect of the size of the population, mode of making livelihood, level of differentiation within the society, exposure to the wider world, and so on. Despite such differences, these groups have all been described as tribes. This means that tribes in the Indian context have been couched more in relation to the larger Indian society than the attributes of the concerned society. This is not to say that the attributes have altogether been completely left out. Rather, the attributes are seen as the resultant of the kind of relation they have with the larger Indian society. The conceptualisation of tribes in relation to the larger Indian society assumes that tribes here have been juxtaposed against the larger Indian society as such and not against any segment of the larger Indian society. This means that tribes have been primarily identified as those who have been outside the larger Indian society. This outside, has been conceptualised either in terms of isolation from the larger Indian society or outside of the Indian civilisation (Beteille 1986, 1977; Singh 1993). Notwithstanding that the dimension of society has been glossed over in the overall understanding of the tribal question in India. It is paradoxical that despite conceptualising tribes as outside of the larger Indian society and hence conceiving it as a society, tribes have been juxtaposed exclusively alongside caste, though caste has just been one of the elements of the larger Indian society. A meaningful understanding of the tribes in India demands that tribes be treated like a society howsoever small and whatsoever level of development they may be in. It is these aspects of the tribal society, which have not been brought at the centrestage of the discourse on tribes in India.

Society is conceived as a self-containing unit. As a self-containing unit it assumes that it has a boundary. In fact, its boundary demarcates the limits of its interaction. The main

spheres through which such limits are set are language, culture, government or territory, economy, and so on. However, their role of boundary maintenance is far from smooth and perfect. Often the boundary collapses, which makes their existence as society quite problematic. Politically, economically and legally, the tribal society for example, has been drawn into the larger society. Even in respect of language, culture and social life, one can discern interpenetrating (Beteille 1977). This means that interaction does take place across boundaries but they are of a separate character. Notwithstanding that, in a very significant way, tribes do constitute a society. In terms of language, culture and social life, they are still set apart from the larger Indian society. They also occupy somewhat a distinct territory and have a legal system of their own (customary law) besides being subject to the law of the state. Hence, tribes have also their own notion of what they consider to be just and unjust.

What was just and unjust in the traditional tribal society was contingent upon the law at work. Law in turn reflected the values and ethos of the society. Traditionally, the tribal society was marked by lack of heterogeneity. There was little differentiation in regard to work, occupation and modes of economic activity. Every one was engaged in the same kind of activity; every one thought in the same way, and so on. In short, there was little division of labour and social differentiation. If at all there was, it was based on age and sex. Correspondingly, the tribal society was marked by relative egalitarianism. This is not to say that there was no inequality. Inequality that was, was based more on rank and position than on the basis of wealth, power and status. Stratification based on wealth/income, power and status was absent. The only form of inequality that was striking over the society was one based on gender. Correspondingly, it was the egalitarian values and ethos that marked the tribal society. There was

thus correspondence between ideology and values of the society on the one hand, and the actual social structure on the other. Law in force aimed more at maintaining the social structure than one of creating the new social order. Law was seen as one which was primarily oriented to the maintenance of the social order. Anything which aimed at disturbing the social order or the existing social arrangement between people and groups was to be judged keeping in consideration the laws and values governing the society. In case of tribes, law in force was also in conformity with the law and values, which aimed at ensuring liberty, equality and fraternity.

Though tribes formed society unto themselves, they were not without interaction with the larger Indian society, especially those on its fringe. This not only resulted in acculturation among tribes, but also to their gradual integration into the larger Indian society (Bose 1975). Those so integrated came to be governed more by the laws, customs and regulation of the larger Indian society than one of tribes. Notwithstanding such acculturation process throughout the Indian history, hundred of groups and communities who later came to be delineated as tribes, had still been outside of the larger Indian society or were yet to be integrated at the advent of the British. These were brought under the British rule and administration through war, conquest and annexation in different phases. With this, tribes came under the same suzerainty and administration as the larger Indian society.

The British rule and administration introduced new and uniform laws and regulations all over its territory. Such laws and regulations were based on principles alien to the traditions and customs of the larger Indian society. And so was the case with groups and communities described as tribes. Prior to coming under the British, the two were governed by laws, traditions and customs specific to their own societies. After independence from the British rule, India adopted a

new constitution, which was again broadly based on the same principles as that of the British rule and administration. But it broadened and expanded the base and scope of such principles. Hence to understand the problematic of tribe and justice, the three strands/phases of its history have to be located. It is within these backdrops that the issue of justice requires to be confronted in the context of tribes in India.

JUSTICE IN TRADITIONAL SOCIAL STRUCTURE

Justice is a right—a right to be treated justly and fairly. But what is right, just or fair is contingent upon the law. Laws in societies may not necessarily be the same for all. Most traditional societies had laws, which were built on hierarchical and inegalitarian structure. Correspondingly, people situated at different positions in the hierarchy were governed and regulated by different laws and regulations. Whereas some had privilege and impunity under the law, others had no such claim. Justice in the setting meant that people are to be treated in terms of law applicable to the group. Justice did not mean here to be treated at the same footing as others. The notion of justice was thus incompatible with the notion of equality. The latter did not have a place of value in the traditional Indian social structure. The notion of justice enjoined with the notion of equality emerged with the introduction of new laws and rules founded on the principle of liberty, equality and fraternity. The foundation for such laws in India was laid during the colonial period. However, due to the very nature of the colonial rule of domination and subjugation, liberty, equality and fraternity had limited bases, and scope. And yet, laws and rules introduced during the colonial rule were radical since these went against the Indian ethos of hierarchy and in-egalitarianism. After India became independent, it followed broadly the same principle that

was at work under the British rule and administration. The only exception was that these principles were put on a more solid foundation as one can see in the adoption of the Indian constitution. Hence, to understand the problematic of tribe and justice, it is important that the question is cast within the broader compass of the Indian history.

Unlike the traditional Indian society, which was characterised by the rigid hierarchical structure and was built on the principle of inequality based on purity and pollution; tribal society was greatly free from such structure and principles. Of course, tribes in India have been far from homogeneous. They have been differentiated on the basis of language, region, physical features, demographic size, modes of making a living, ecological settings and even the stages of social formation. They have been marked by the absence of occupational division of labour. The division of labour prevailing in these societies was based mainly on age and sex. Hierarchical division of labour has been, on the whole, absent. If at all there has been inequality, it has been more of gender and rank than of any other form. This being the case, law has been relatively uniform throughout the society. That is, different laws for different groups were absent. Laws that were (prevailed or existed), mainly concerned with regulation of marriage and family, inheritance and succession, land and farming, law and order, use and access to common resources, and so on.

JUSTICE UNDER BRITISH RULE AND ADMINISTRATION

After tribes were brought under the British rule and administration—to begin with and post-independence state-structure thereafter—justice has been the worst casualty as far as tribes are concerned. Paradoxically, the root cause of injustice suffered by tribes has been the new state laws

and regulation themselves. State laws and administration introduced by the British aimed to a limited extent at doing away with iniquitous structure of the Indian society. However, this was of little relevance and benefit to the tribal society. Rather, the laws and regulations which aimed at securing justice and freedom for the people, opened up a space for innumerable injustice to be inflicted on the tribal people. Laws and regulation aimed at equality—limited though it had been—enabled one set of people to take advantage of it, and squeeze and dispossess. This is exactly what happened in the case of tribes in India. After all, these laws and rules completely altered the structural pattern of the relationship that was at work in the traditional tribal society. It brought tribes into relationship with an alien state structure which usurped unto itself, the power and resources that tribes had so far controlled and exercised. In the process, it also brought tribes into the relationship with an alien population.

The source of the misery and hardship of tribes under the British stemmed primarily from its measures in the economic field and administration. Like in many other parts of India, the British imposed upon the tribes the notion of private property and landlordism, in place of lineage- or community-based ownership of land. The revenue collectors/administrative officials were converted into owners and landlords, which they were not. This led to large-scale eviction of tribes from their land and installation of non-tribes in their place. In places where tribes had still control over the land, massive transfer of land took place from tribes to non-tribes through such measures as fraud, deceit, mortgage, and so on. Since tribes had no practice of record keeping and they did not have the knowledge of reading and writing, non-tribes took advantage of forging evidence and documents in their favour. The local administration, which was manned by the non-tribes, worked hand in hand with their ethnic kinder men to

ensure smooth transfer of land from the tribes to the non-tribes. The court language was alien to tribes and they had absolutely no idea of what was happening in the court. Over and above, the colonial state took upon itself the right over forests, thereby denying tribes the right to collect fuel and other daily necessities of life for which they were so heavily dependent on the forest. Such processes at work continued all through the colonial period on a different scale. Injustice, which was so alien to them in their traditional social setting, became something pervasive in a new setting.

CONSTITUTIONAL PROVISIONS AND LEGISLATION

Civil Rights

The tribal people, unlike those in the caste organisation, had no history of drive for equality. The drive they had, was for autonomy and independence. This being the case, the constitutional provision securing citizenship rights to its people has been a major break-through for the scheduled castes and other lower caste groups but not for the tribes. The tribes were not a part of the social system that was based on built-in inequality and hierarchy. Hence they did not experience the kind of discrimination—social, political and cultural—that the scheduled castes and other lower castes had to go through. Correspondingly, civil and political rights which the constitution extended for its citizens, was not of great consequence for the tribes as was the case with the lower castes in the caste hierarchy. The problems of the tribes stemmed not so much from within as from outside. If at all they were constrained in their enjoyment of freedom and equality, it came more from outside in the form of an alien state structure, in the form of the British rule to begin with and post-independence Indian state later. In the latter, tribes did not have the kind of rights which they had within their

own society. Neither did they aspire to be a member of that society. That explains as to why tribes' struggle has always been for greater control over their land, forest and other resources through articulation of political autonomy, than share for greater participation and control in state structure and state institutions.

They had been, however, too weak to resist their incorporation into the larger political and economic system. Once incorporated, they were given legally the same rights and status as those accorded to members of the larger society. However, the securing of citizen status hardly mattered to them for in the traditional structure of their relations, they already enjoyed those rights among themselves. Of course, it is doubtful if it could be conceived as that of the citizenship; for rights so enjoyed, have invariably been local. Citizenship in contrast, is by definition, national.

It will be interesting to examine the way and the extent to which the tribes have been able to make sense of these rights. This may be discussed with respect to each of the components of citizenship rights. Of the civil rights, the most crucial has been freedom of thought, expression, faith, occupation, property and justice. Of these rights, the most vulnerable has been one of property and justice. A large number of tribal groups in India have been dependent mainly on agriculture for their livelihood. They enjoyed proprietary rights over their land. Besides, they also held usufruct rights over forests and other kind of common property resources. However, the history of the last two hundred years including the years of the post-independence era has been marked by rampant transfer of land from tribes to non-tribes, especially in regions other than the northeast India. In the post-independence era, the alienation has been justified on grounds of right to make property and right to settlement in any part of the country. The right to property of one has

been the right to dispossession of property by another. The paradox is that, dispossession has invariably been of the tribes. The enjoyment of civil rights on the part of some sections has been the root cause of the loss of civil and social rights by another. Of course, tribes were provided with security to this effect in terms of legislation. Yet, violation of such rights through means—legal and illegal—have gone on unabated. Tribes of course, could go to court of law for restoration of justice. But it is a long drawn process, and one requires resources and assistance, which the state did not make available. The right to justice was closed in the absence of legal and social support from the state. The tribes could not enjoy civil rights as they had little social economic rights at their disposal.

The other area where tribes have been vulnerable in terms of exercise and enjoyment of civil rights has been in the domain of freedom of belief and faith. Tribes have their own distinct religion, which in the absence of any specific name has been described as tribal religion. Earlier, in the census they have been described as animists. Tribes have been, of course, drawn to other religions and have become in course of time, Hindus or Christians or practitioners of other major religions. The point made here is not one of conversion but the fact that tribes practicing their traditional religions are not being given the right to express and maintain their own religious identity. Ever since the adoption of the Indian constitution, they are either being guided or coerced into not to declare their traditional religion, but declare themselves as Hindus through the administrative measure such as census. They have also been coerced through political mobilization, intimidation and manoeuvring to enumerate themselves as Hindus. And yet, the state has been a silent spectator. Rather, as observed earlier, it has been a participant in a clandestine way.

Representation and Share in State Institutions

Reservation in employment and educational institutions has been at work for about 50 years. Tribes have no doubt taken advantage of these provisions. This is evident from the fact that they are now found at all levels of government service. It is a different story that in terms of their share or quota, the position is far from adequate, especially at the upper echelon of government service. In fact, even by 1999, the share of the tribes in classes II and I central government services, for example, stood at mere 3.39 and 3.35 per cent, respectively. Even in the case of Class III (6.07 per cent) and IV (7 per cent) services, the percentages fall short of the stipulated 7.5 per cent (GOI: 2001a). The scenario is similar in the sphere of higher education as well (Xaxa 2001). It is to be noted that the concern and urgency to fill in the stipulated quota is much strong at the central government services. The same concern and urgency in general is lacking at the state levels. Unfortunately, such data are not easily forthcoming.

Despite such a state of affairs, the inability of the state to fill in the quota is not considered as the violation of the rights enshrined in the constitution. This is so because first, necessary measures have been taken in pursuit of the rights enshrined in the constitution. Second, the extension of reservation to the candidates from the category is not automatic. Rather, it is contingent upon certain conditions or prerequisites, which are in general principles stipulated in the constitution itself (Article 335). Third, even though such rights have been given to the tribes, they can avail it only as individuals. As an individual one can secure access to it only on certain conditions. There is hence, an inherent difficulty in challenging the negligence or indifference of the state in the court of law.

The provision of protective discrimination though necessary is not sufficient in itself. To make the provision effective, the provision requires being supplemented by provision of economic and social rights not only in the form legislation or constitutional provision but also in the form of effective legal, administrative, infrastructural and financial support.

The exercise of citizenship rights by tribes is most pronounced in the domain of politics. This is evident both in respect to right to vote but most importantly in respect to right to be elected. But even here, it is not so much the right to be elected as the provision of reservation, that has been the most crucial. In the absence of reservation, the citizenship right to be elected would have been meaningless; for tribes rather than representing themselves, would have been represented by others. At least this would have been the case in the early phase of the electoral politics if not today. This can be inferred from the composition of the political parties of all ideological persuasions. Indeed there had been little participation of the tribes in the national political parties, and hence the question of their representation in the absence of reservation would have hardly been possible. In view of exercise of political rights from time to time at different levels, there has been heightened political awareness, interest articulation and aspiration among the tribal people. Indeed, politics and political mobilization are seen as the only option left for tribes towards protection and promotion of their interests and rights—civil and social.

Collective/Social Rights

It is in respect of social economic rights that tribes have been the most vulnerable. Tribes have been enjoying social security and protection in view of the control they had over land and other resources. The control over resources stemmed either

from the ownership or usufruct right that they had over these. It is precisely these rights that they enjoyed in the past, which are in the process of erosion now. These have been taking place in either of the two ways. One is the settlement of people from outside in the tribal areas. The settlers used money lending and other fraudulent measures in procuring the land of the tribes. But it is the development projects initiated either by the state or the private agencies that have been mainly responsible in uprooting tribal people from their life-support system. The state projects of national development—whether, industry, irrigation, power or exploitation of the mineral resources—may have benefited the country and contributed to general good but it surely did not contribute to the good of the tribal people. Of course, the state has been sponsoring the projects of tribal development; but most of such projects are of little consequence if tribes lack resources to fall back upon. Forms in which social economic rights are being eroded are as follows.

Alienation and Usurpation of Land and Forest

Land and forest have been the life support system of the tribes. The constitutional provisions aim to safeguard the interest of the tribes. Laws have been passed restricting alienation of lands from tribes to non-tribes. And yet the land has gone on passing from tribes to non-tribes through such means as fraudulent transfers, forcible eviction, mortgages, leases and encroachments. The state has not been able to protect them. Nor tribes have been able to take advantage of the law that exists, mainly due to lack of knowledge and resources to fight it in the court of law. Equally important has been the absence of strong grass root organisations to prevent such occurrences.

As per the information available with the Ministry of Rural Development in January 1999, 465 thousand cases

of alienation of tribal land covering an area 917 thousand acres have been registered in the states of Andhra Pradesh, Assam, Bihar, Gujarat, Himachal Pradesh, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and Tripura. Of these, the states affected by large-scale tribal land alienation are Andhra Pradesh (279 thousand acres), Madhya Pradesh (158 thousand acres), Karnataka (130 thousand acres) and Gujarat (116 thousand acres) (GOI 2001a: 39).

What this points to is that there lies conflict of interest between tribes and the dominant regional community members. The interest of the former has invariably been sacrificed in the interest of the latter. After all, state governments and administration is controlled and administered by the dominant community. This is evident from the fact that in some states, Acts have even been amended with a view to protect the interest of the non-tribes. The Andhra Pradesh (Selected Areas) Land Transfer Regulation, 1959 was amended in 1970 in an attempt to accommodate the interest of the non-tribes. The Kerala Scheduled Tribes (Regulation of Transfer of Land and Restoration of Alienated Land) Act 1975 has even been repealed to give effect to the concession made for the non-tribes (Verma 1990; Bijoy 1999). Alongside the alienation of land, there has also been curtailment of rights and privileges that tribals had over forest, thereby causing considerable hardship to their livelihood making.

Development and Displacement

Displacement has been the other important factor accounting for the loss of control over land and forest by the tribals. Displacement has occurred primarily due to large-scale projects like industries, irrigation and hydraulic projects, mineral exploitation, and so on. From such projects, a total of 21.3 million population has been displaced during 1951–90 in the states of Andhra Pradesh, Bihar, Gujarat,

Maharashtra, Madhya Pradesh, Rajasthan and Orissa alone. Of this 8.54 million, that is, 40 per cent have been tribals. However, only 2.12 million (24.8 per cent) have been resettled so far (GOI 2001a: 39). Not only that, but also that tribes have benefited little from these projects; both in terms of employment and benefits accruing from these projects. Thus a vast majority of them have been pushed into vortex of increasing assetlessness, unemployment, debt bondage and destitution. Here then lies the case of the conflict of interest of the tribes and national and regional development. For the greater cause of national development or the development of the state, tribes have to sacrifice their interest.

Marginalisation from Access to Livelihood

The large-scale alienation of land from tribes to non-tribes as well as massive scale of their displacement largely explain as to why the percentage of tribal cultivators has steadily decreased from 68.15 in 1961 to 54.5 in 1991. Conversely the percentage of agricultural labourers has increased from 19.71 in 1961 to 32.69 in 1991. Thus more than 87 per cent of tribal main workers are dependent on agriculture. Equally important point to be noted is that as large as 42.9 per cent of the operational holding of the tribes belong to the category of marginal farmers, which means that they hold less than 1 ha. Another 24.1 per cent are small cultivators with a holding of 1 to 2 ha. Only 2.2 per cent households have holdings more than 10 ha. As regards to bonded labour, the scheduled tribes are estimated to be around 25 per cent of the case reported in 1993 (GOI 2001b: 36).

Extent of Poverty

The linkage between large-scale land alienation and displacement of the tribes and high incidence of poverty

among them cannot be ruled out. Of course, it needs to be systematically probed. However, there seems to be strong linkage between land alienation and displacement of tribals on the one hand, and marginalisation of the operational holdings and the growth of agricultural labour among them, on the other. Even while this process has been at work, the allocation of resources for the development of the tribes, even as a measure to counter the damage caused by displacement and land alienation, has not been the integral component of the state agenda. That this has been so can be gauged from plan allocation earmarked for the tribal development under different five-year plans. It is interesting to note that until the introduction of the Tribal Sub-Plan in the fifth plan (1974–79), plan allocation of resources for the tribal development did not exceed even 1 per cent of the total national plan outlay. Since the fifth plan period, there has been increase in the resources (3.01 per cent in fifth plan, 5.6 per cent in sixth, 5.8 per cent in seventh); but even then the allocation has fallen short of the population proportionate of 7.5 per cent. Hence resources for tribal development have been invariably inadequate (GOI 2001b: 3).

It is therefore not surprising that a large size of the tribal population lives in poverty. In 1993–94, the people living below the poverty line were as high as 51.14 per cent compared to 35.97 per cent for the general population. The poverty level and size however varies across regions, state and even tribes (GOI 2001a: 43).

Problem of Justice Within

The tribes enjoyed many of the rights raised above in their traditional social structure. Yet rights so enjoyed had certain limitations, both in terms of reach and scope. There were limitations in terms of reach as there were sections within

the society, which did not enjoy some of the rights. The citizenship rights under the constitution filled in this void. Women could be identified as one of such sections. It is a fairly established fact that although women enjoyed the same rights as those enjoyed by men, in some respects like freedom to marry person of one's choice or divorce or free movement outside their home, work and so on, there were as yet many limitations. The customary law and tradition at work in tribal societies put women at a disadvantage, especially with respect to property and inheritance. Disadvantages were more glaring in the public domain. Neither did they have a say in the decision making process affecting public domain, nor could they hold office and position falling in this domain. In other words, political rights are something, which women in traditional social settings were deprived of. That explains as to why women representation is so poor in terms of their share in political institutions and government employment and access to education, health and nutrition in tribal society. The female literacy rate among tribes as per 1991 census stood at 18.2 per cent as against 29.6 for men. The discrimination is most evident in the domain of politics. The participation of the tribals in the political process ranges from participation in the local self-government such as panchayat, district-council and state legislature to national level bodies such as the parliament. Yet, in all these the participation of women has been glaringly negligible, if not altogether absent. The membership of the legislative assembly of some northeastern states is a pointer to this. In Arunachal Pradesh, out of total seat of 59, there was just one seat, which was held by a woman. The corresponding figure was three out of 57 for Meghalaya. There had been no women member in the 40 member legislative assembly of Mizoram and 60 member assembly of Nagaland (GOI 2000).

Besides women, there were other sections, too, which did not have such rights; especially those which were identified as commoners in some of the tribal communities. Their position in this case was similar to those of women. There were still other problems. The office either secular or religious such as headmanship/chieftainship on the one hand, or priesthood on the other, were more often than not confined to a privileged lineage or lineages; and thus not open to members of other lineages. It is in this context that citizenship rights conferred by the state has expanded the scope and base of rights existing in the tribal societies.

CONCLUSION

Tribes lived in isolation and much of the problem confronting them today (poverty, poor health conditions, low educational attainment, inadequate share and participation in state institutions) emanates from this. However, though tribes lived in isolation, they were not without access and control over land and other related resources. Integration of tribes with the larger world was viewed as panacea of their problems. And yet the process of integration had not resolved their problems either; as has been shown earlier in the discussion. Rather, with the process of integration, new set of problems have engulfed the tribes. The state and the non-tribal population have gone on usurping tribal land and their other resources. This points to the conflict of interest between national and regional interest on the one hand and tribal interest on the other. And since tribes represent groups and communities who are ethnically different from those of the dominant communities, the dominant communities and the states manned by them have no qualms about usurping the resources of the tribes.

While they expropriate their resources, they are determined to give nothing in return; not even menial jobs of regular and permanent nature. At least this has been case with all those state-sponsored projects that displaced millions of tribals from their land and their access to other resources since independence. Even resources earmarked for their development in different plan outlays, as observed earlier, has been very inadequate. More has been taken away from the tribes than they have got back from the state in return. The constitution, of course, promises to integrate and provide them space for participation and share in state institutions. The state administrative machinery which is manned mainly by personnel from the dominant communities is, however, indifferent, discriminatory and even hostile to the entry of the tribal people in these modern institutions. In short, tribes are snatched-off their resources without anything in return. While they try to enter the state and other modern institutions, at the same time they are discriminated on the ground that they belong to different ethnicity and culture altogether.

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