In the Shadow of State Law?

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BOOK REVIEWS

Iterations of Law: Legal Histories from India
edited by Aparna Balachandran, Rashmi Pant and Bhavani Raman, *Oxford University Press, 2017; pp 312, ₹950.*

Iterations of Law: Legal Histories from India edited by Aparna Balachandran, Rashmi Pant, and Bhavani Raman is a valuable contribution to the fields of history, sociology, law and jurisprudence. The editors as well as contributors take us back to the formative era of common law in India. They show us how the social norms dispute settlement and ideas about law and order (jurisprudence) coexisted, competed, conflicted, mutated, and began to yield to emergent incipient colonial law and its forced monopoly of the modern state.

In many ways, this work fully lives up to the introductory quote from the veteran Robert Cover who insists that far from exhausting its capacity to imbue acts of "resistance or disobedience," the law "is a resource in signification that enables us to submit, rejoice, struggle, pervert, mock, disgrace, humiliate or dignify" (p 1). In the editor's words, the law appears in various guises and "people's hopes and aspirations are caught up in it, as are their dream of justice" (p 1). I do not undertake, in this brief review, a fuller examination of the historical and empirical studies valuably offered by this volume, but merely explore the many significant conceptual takeaways.

Series of Normative Landscapes

Among their shared aims is to trace the historicity of normative concepts; the normative aspect that the book studies is formed not merely by the law of the state but is also "shaped by normative commitment to an ethically defined sense of justice" (p 5). Legal pluralism studies ought not to conduct itself as if disputants meet "in landscapes stripped of normative habitation" (p 7, fn 5). The idea of law as a series of normative landscapes of ethical normative closure is important, because it connotes an absence of traffic between state and non-state forums. What is needed is an understanding of the dynamic interplay between the various relations of the state and people's laws, which I have broadly identified as hegemonic, antagonistic complementary, symbiotic relations between/among SLS (state legal systems) and non-state legal systems (NSLS) (Baxi 1982).

Rejected all through is the idea that the law constitutes an (in Rashmi Pant's quotable terms) "amoral territory" for the colonised, subject to "tactical modulation and intrigue." Rather, it was being framed by counter-narratives to the stories of inheritance, the strategic contestation between the rights of inheritance and claims of equality and care (pp 84–85). This leads us to another central insight: the law presents an internally inconsistent culture, that is, "an assortment of norms that contend and collide with each other" (p 64). An important message (emanating from Pant's painstaking study of litigation between 1894–1956 in the Garwhal Civil Court) is that while the discourse of the good was largely absent from the formal discourse of the law, it will disserve legal pluralism studies to disregard the underlying ethico-normative nature of legal contestation (p 61).

Put another way, law always is a contradictory unity. This was a central insight of Roscoe Pound (1912)—which Julius Stone (1966) redefined—that modern law (especially as legislation and interpretation) always is an ad hoc adjustment of rival and conflicting interests (Pound 1912; Stone 1996). Pertinent here is also Morris Cohen's (1961) idea that law is a treaty of peace among warring interests.

Changing Inter-legality

Janaki Nair further valuably reminds us that intrusion of non-metropolitan masses discloses quite another life of law, especially "religious institutions such as the *matha* … which have been known in village communities" leading us to a grasp of "their *radical contemporaneity*," that is, "new engagements with the political economy of the region, style of individualisation ... and constitutional law" (p 16). This thesis of "dual source of matha's authority" is refreshingly different from the Cold War discourse concerning modernisation of tradition, as it presents the hybridity of state and non-state law in changing ways. It testifies to the resilience of Sally Merry's insight that far from describing a type of society, legal pluralism studies disclose a condition found in varying degrees in all societies (p 24). Nair's counsel is not just to go beyond binaries, but instead to reconfigure our understandings of legal pluralism through context-sensitive grasp of changing inter-legality (pp 53–54).

A similar message emanated in my own ethnographical studies of the Lok Adalat at Rangpur (Baxi 1976, 1985). However, Nair's tantalising conclusion about the tenuousness of *Nyaya Peetha* resolutions compared with the far more taxing but more strictly just ways of state legal system, invite further explorations, as the latter reveal as much precarity of justice qualities as the non-state legal institutions. "Far more strictly just ways" do not empirically characterise the law-ways of the SLS just as one need not over-romanticise the democraticity of NSLS (Baxi 1982); but Nair's interlocution surely invites greater theoretic anxiety.

The theme of violence and law remains welcome, and the poignant reminder by Neeladri Bhattacharya underscores that modernity does not end the violence but refigures it. Violence stands enacted through the procedures of law, and its languages and legitimation of violence occurs through the law (p 119). Extending the insights of Giorgio Agamben (1998, 2005), Bhattacharya maintains that "... the colony is the ultimate space of exception;" the colonial (and the modern) law operate with a sanitised notion

of violence which "purges liberal law of the taint of violence and force" and only with this "sanitised notion of the normal can the operation of violence and force appear as the suspension of law" (p 117). The notion of double exception that Bhattacharya hints at is vastly exciting: those subjected to begar (peasants, artisans, pastoralists) were regarded "first, as colonial subjects, and then as begaries" (p 118). All subaltern subjects everywhere are "normal" in colonial law as double exceptions. But one must also recognise that it was tormenting for officials to search "for a space within legal that could not be introduced within the frame of the colonial legal within its ideal form" (p 118). It is crucial to grasp more fully the inner tensions in rule-following that conscientious administrators of the rules of law undergo. Further, the rules of law are not always conversant or compatible with notions of the Rule of Law, but perhaps more crucial is "how they are reconciled and in what form they are articulated" (p 119), and, if one may add, how they are received.

To give a legal form to a manifestly illegal and unjust colonial action (p 118) is a dilemma that even haunted early colonial counter-insurgency operations, such as those traced in fine detail by Bhavani Raman faced. Expounding in rich detail the working of military commission trials, she describes these as fluid sites, replete with hyper-legality" (p 144). She echoes Sergeant Spankie, who in his comment on Cuttack rebel trials, animatedly observed that the military "seem to have acted as if they had an unqualified jurisdiction over all treasonable and rebellious acts without limitations of time or place of circumstance" (p 141). The proliferation of military law from the mid-18th century to 1845 (p 129) seems to have escaped not just the gaze of colonial historians but also social historians of Indian law. In the later phases of state-building efforts there was equally a belief that a dynamic jurisdictional order that could respond to risk, threat, and intelligence—which would imbricate law as an economy of power as interplay between exemplary and persuasive violence—was crucial for the performance of habitual obedience to law (p 145).

Legal Pluralism

Chapters 5–7 demonstrate the differing role of petitions in the consolidation of colonial power and the law. Aparna Balachandran shows that the concept of legal pluralism works in early colonial Madras only when we "seriously interrogate notions of agency of legal subjects associated with it," and that the "voices of petitioners are not exhausted by the choices law gives to them, even as they appropriate and are immersed in its language and rationale" (p 167). She finds that "subjects were aware that they inhabited heterogeneous legal context with multiple forums" and were "deeply constrained by the hierarchies of caste and law" (p 157). While I applaud the conception of legal habitation, I remain uncertain about what gets said about the closure of "forum shopping" (p 157), and perhaps despite the stories of the ills or evils thereof, the arguments for a contrary position are certainly attractive (Bookman 2016).

Nandita Sahai—whose essay in the book is, alas, posthumously published—traces the itinerary of an 1857 petition written by a Sunar regarding the right of a groom to ride a horse, which was contested by the *shaukars* as belonging only to higher castes. Sahai focuses on the unequivocal verdict in favour of the petitioners in 1867 "manifesting a shift from oral testimonies and religious ordeals" towards "increasing trust and dependence on documentary evidence to verify everyday claims" (p 173). This change signifies the emergence of a nascent "literate mentality," further supported by judicial verdicts. This emergent documentary culture in Rajasthan suggests a new form of legal selfhood (both community and individual) and is linked with "a growing contract economy" which privileged the written over the oral cultures. The linkages between legal selfhood and capitalist cultures ought to claim greater attention from legal pluralists and historians of law.

Phillip I Stern explores "the nature and varieties of legal pluralism that supposedly rose in the aftermath" of then-troubling and troubled "European dispossession and repossession in the extra-European world," and the "fragile, inchoate, and above all negotiated" sovereignty in which the world of petitions flourished. But, this world had the unintended consequence of leading "to the expansion, rather than rescission of the power of the colonial state" (p 188). At the same time, petitions as an expression of an inchoate civil society at Bombay served both as negotiation of emerging sovereignty and the "sort of advice and counsel … for the administration of civic life" (p 228). The conceptions of dispossession (Butler 2013) and consolidation of sovereignty need close attention in the light of archiving sovereignty (Motha 2018). Also notable remains the fact that there is no conceptual transition here (as with Sahai) to the development of a distinctive autonomous public sphere. Therefore, even when given a wide margin of contextual interpretation, the issue of whether petition cultures are to be regarded as cultures of governance or of citizen participation and even as forms of protest, survives still.

The difficult and changing relations between resources and representative democracy are not usually engaged in studies of legal pluralism, but Eleanor Newbigin shows how they ought to be. She takes a wide but largely unattended arena, despite Ritu Birla's (2009) provocations about taxation and gender justice. How the state's engagement with demands of personal reform that are related to wider economic changes, particularly taxation laws and policy, furthers the larger political project in the perspectives of political economy, is the fascinating story that Newbigin narrates.

Even less well-considered in histories of legal pluralist studies is the materiality

of the pervasive, but lowly stamp paper, which Shrimoyee Ghosh narrates. This materiality, in turn, proved both to be the "technology of tax extraction and evasion" (p 215), which the social technology of law may only effetely combat. Thus it comes to pass that the "colonial sate … continue(s) to haunt contemporary attempts at regulating this iconic and contradictory legal artefact," (p 241). This truth of technology pervades all law, and that is why and how "materiality matters in the histories of law" (p 215).

Overall, this bouquet of essays helps us rethink the craft of Clio (the muse of history), as well as ways of doing sociology of law.

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