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History and the Social Problem: The Case of India

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In her book *On Revolution,* Hannah Arendt makes the following claim, "…every attempt to solve the social question by political means leads to terror."[1] By the social question Arendt meant issues of material destitution and inequality. I will return to Arendt's thought later, my purpose in starting with it is simply because Arendt's view is a specially trenchant perspective about the consequences of attempting to address or redress social inequities by political means. The claim was itself one of the central planks by which Arendt distinguished the American and French revolutions and the constitutions settlements that followed them. For her the singular calamity of the French Revolution, on account of which it lead to terror and constitutional instability, was that it attempted to address questions of destitution and social inequality within a political framework. In contrast, in the American case, by substantially ignoring the social questions of the day, the constitution was able to limit the ambit of political power, and hence secure the domain of public freedom. Arendt admitted and was well aware that the question of slavery, the material plight of slaves and the treatment of Native Americans were also largely ignored at that founding moment. For her these were judicious choices that the founders made. The fact that mass poverty was substantially absent in late eighteenth century America was just

the singular good fortune of the Americans, in contrast with the French, who faced a more dire situation.

It is a central feature of Arendt's political vision that for power to be chastened and public freedom secured, political institutions must be exempt, and must exempt themselves, from shouldering the burden of redressing material and social inequities. It was the intermingling of political power with social issues that led the former to become absolute and to exact a heavy price on freedom. Indeed, Arendt even saw the reference to "the pursuit of happiness" in the Declaration of Independence as a embryonic form of this intermingling, and hence the potential compromising of an autonomous political domain. Nevertheless, for Arendt, the American constitution served as an ideal in which political power was limited and public freedom secured and national unity anchored in the structures of political institutions, -- and all this was possible only because social questions were kept at bay. But it was the French example that served as the much more influential model for revolutions in the nineteenth and twentieth centuries and in which political power was constitutionally braided with issues of social uplift and in which moreover, French national unity was grounded on the shared material destitution of the French peasant. Citizenship was thus from the very outset a response to a social predicament and the power of the state was similarly a promissory rejoinder to redress that predicament.

Whatever one might say in response to Arendt's neo-Aristotelian conception of politics as an agonistic public domain for the expression of ideas and ideals, substantially relieved of social pressures, – and clearly a lot can be said of this rather pristine conception, including the claim, most often associated with the work of Amartya Sen, in which freedom far from being secured through a disassociation with issues of development is in fact conditional on the success of such a linkage; nevertheless, what cannot be disputed is Arendt's claim that it has been the French legacy that has been overwhelmingly influential in the subsequent history of revolutions and constitutionalism. With the short lived exception of the Hungarian constitution of 1956, which Arendt herself draws attention to, in the founding of new nations and the writing of new constitutions and thus in the articulation of the powers of the state the commitment to social uplift and equality has in fact been front and center of such enterprises. And so it was in India too.

In the voluminous writings, debates and speeches that inform constitutional reflections in India roughly from the mid-forties onwards, three issues have an unmistakable salience. First is an overriding concern with national unity; second, a deep and anxious preoccupation with social issues such as a poverty, illiteracy, economic development, and crucially the redressing of caste and tribal inequality; and finally, there is an intense concern with India's standing in the world and with foreign affairs more generally. These three broad issues constitute the template for much of the subsequent politics of the country; in fact it seems fair to say that they characterize with a special intensity the general contours of the politics of many newly independent countries in the second half of the twentieth century. This paper is a series of reflections on these issues, on how they acquired their salience, and on some of their enduring implications. My focus will be on the first two of these issues, that is the concern with national unity, and what following Hannah Arendt, I will call the social issue.

In the Indian case each of these three concerns had obvious exigent reasons that explain their prominence in expert and popular attention. It is plain that a country on the verge of independence, marked by dizzying, often fractious, and potentially centrifugal diversity --- not to mention a diversity that had long been used to justify imperial subjection and one in which the prospect and then the reality of partition had loomed for many years --- would be vigilant, indeed, obsessed with national unity. Similarly, under the depressing extant conditions of near ubiquitous social despair, illiteracy and many forms of destitution, most pointedly that of caste and tribal discrimination, the concern with such matters could hardly have been anything other than anxious and urgent. And finally, given the long history during which national identity had been denied, distorted and disparaged, and the struggle for independence during which it had been asserted as having a historical and objective warrant, it is only to be expected that a pressing and guiding feature of national idealism would have it alloyed with the question of recognition and standing in the international arena. If, as was the case, the claims of Western empires had been underwritten by a normative universality, which since the time Locke, if not Alexander, vouched for themselves in terms of some amplified conception of Reason; nationalism in its opposition to empire had to assert an alternative universality of which the nation was an agential exemplar. No doubt nationalism had its particularistic and cultural leanings, but at least among its more thoughtful advocates, figures such as Gandhi, Nehru and

Fanon, nationalism was also always alloyed to an ideology whose transformative political and spiritual energies were also thoroughly universal. Aurodindo's claim that "the attainment of independence for me is the search for truth" had political and spiritual analogs in the thought of Gandhi, Nehru and Tagore. Hence the claim of independence, not unlike that of imperial authority and imperial subjection, had to be, at least partially, vindicated by a referent beyond itself.

The three issues thus drew on urgencies and imperatives that were both historical and contemporaneous. They had an obvious logic that was both conceptual and material. Moreover, in their centrality, they explicitly signaled to a tradition of political thinking that extended back to the American war of independence and the constitutionalism that followed it, along with the French and Russian revolutions. The three issues also anticipated much of the constitutional reflections that were to follow in the second half of the twentieth century. A conspicuous feature of constitutionalism in the twentieth century was the emphasis it placed on national unity and identity, on social uplift and equality and on international standing.

Not withstanding these informing urgencies, there is a revealing irony in the emphasis that these issues assume. Much of democratic constitutionalism, and more generally anti-colonial nationalism, conceived of their provenance as a response to tyranny, and to the umbrage to collective freedom provoked by imperial subjection. In political terms, the response to tyranny and subjection could only have been an insistence on freedom. In the Indian and other colonial contexts this meant freedom *from* the tyranny of imperial subjection. Yet issues of national unity, social uplift and recognition - and this is the irony- make that very freedom conditional on an uncertain period of gestation, through which alone unity can be secured; on resources and extended effort, which are the requisite for social transformation; and on the vagaries of an international context, in which the assertions and recognition of sovereignty are at best conditionally secure. As a response to the temporizing and the various conditionalities with which empires typically opposed the demand for national freedom, it is ironic that newly independent nations, such as India, should themselves have made the assertion of freedom conditional on achievements which could at best only be prospective.[2] The irony goes beyond the familiar claim in which it is often remarked that new states tended to imitate the

constitutional forms of their former imperial masters; what is far more significant is that the terms in which new states conceived of freedom, once independence was secured, made its affirmation a most capacious *project* and a *promissory note* that was issued not just to all members of the nation itself, but to the world at large. It professed an agenda in which one could not, at any given point, and certainly not in the present, securely anchor the sentiment and singularity of national being on which the nationalist struggle had wagered so much. The nation and its freedom, following independence, was a project for the future. Independence, one might say, illuminated a condition of inadequacy. The irony is that the successful culmination to free oneself from imperial subjection led almost immediately to freedom itself becoming a subsidiary concern; that is, subsidiary to national unity, social uplift and a concern with recognition. To paraphrase and extend Homi Bhabha's insight regarding agency under condition of imperial subjection, one might say that independence turned on a sly continuance of the ideology and practice of the empire.[3]

Where freedom was only prospectively associated with unity, social uplift and recognition, it becomes, in effect, a measure of the public or national interest. It could not stand alone as something secured through independence itself. It indicated a collective journey -- to a still distant "tryst with destiny." In such a view, freedom is never in the moment, never singular or tangential to the larger national and collective purposes with which it is braided. The everyday materiality of life simply exposes deficient conditions for which national idealism offers a compensatory promise. The social conditions, that is matters defined by religion, caste, economic opportunity and prescribed identities all get imbued with the presumption of being antithetical to freedom. Even individual freedom is vouched for primarily to the extent that the individual bears the imprimatur of being a citizen, and hence can be conceived of as a part of a unitary whole. Indeed the enfranchisement of the individual, as citizen, becomes necessary not because he or she is "ready" or "educated," or "free" from sedimented parochial social identities --- as classical liberal theory would have required[4] --- but because citizenship is a category through which the nation can ratify its own purposefulness as an entity that will deliver on the promise of freedom.

Freedom, on this view, exists as a future prospect, as something that is part of a plan, and which can only be realized through the choices and resolution of that plan. [5] It becomes a captive instrument of a collective and national endeavor, and hence, freighted with the seriousness and responsibility of pursuing an arduous collective journey. For example, Nehru's speeches from the period shortly prior to and following independence are in their tone like a solemn dirge to the exacting, capacious and strangely, even to the inescapable burdens that India's independence imposes on her. [6] They are unremittingly burdened by a sense of necessity.

If, as I am suggesting, the idea of being free does not adequately capture that moment which extends roughly from the mid-forties through to at least the late sixties, because freedom itself is just an appealing and weighty lure of a future condition; one is led to ask how should one conceive of that specific and very distinctive energy that marks constitutional reflection in India -- and as it turns out elsewhere in the second half of the twentieth century? Relatedly one needs to ask what is it about national unity, social uplift and international standing, that gather in their fold the vision -- of which the Constitution is just one concrete expression, but which may also be the omnibus matrix of Indian political culture.

AN AGENDA OF SOCIAL UPLIFT:

The constitutional moment was underwritten by an ethos, which combined the patience that was requisite for the lofty ambitions to be fulfilled with an all-encompassing urgency, which was also required. The Constituent Assembly Debates (1946-1949) which led to the writing and adoption of the Indian Constitution are full of the sentiment that the nation had to be strong; it required enormous forbearance, fortitude and dedication, it had to be above all else a purposeful unified entity oriented to broad though singular vision of social justice.[7] When speaker after speaker repeats such sentiments, in debate after debate, by one national stalwart followed by another, one begins to realize that these are not just the grand pieties that momentous and grave occasions necessarily bring forth.

It is this vision of the nation that led to the articulation of the constitutionally mandated programs of affirmative action or what in India are variously called the policies of "reservations"

for historically disadvantaged castes and tribal groups. Marc Galanter one of the academic authorities on that system of mandated rights and policies has described it as follows; "India's system of preferential treatment for historically disadvantaged sections of the population is unprecedented in scope and extent."[8] The programs and policies of compensatory discrimination that were sanctioned by the constitution and by various governments are far too complex and various to be adequately described in any detail in this context. The broad informing purpose of these programs was seen in Article 46 of the Constitution. It declared that:

> The State shall promote with special care educational and economic interests of the weaker sections of the people, and, in particular, or the Schedule Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.[9]

The beneficiaries of these programs included a wide array of groups but the vast majority fell within three categories: First, Scheduled Castes, i.e. those who were historically deemed to be "untouchables" and at the bottom of Hindu caste system, second, the Schedule Tribes i.e. those who through their tribal culture and physical isolation were especially disadvantages, and finally, a group designated as "Other Backward Classes" which included a varied assortment of groups that had traditionally been low in terms of social hierarchy.[10]

The compensatory programs for these groups were also of three basic types. First there were "reservations" to facilitate access to valued positions ands resources. These included reserved seats in legislatures, coveted government jobs and in academic institutions. Reservations were also made for valued resources such as land and housing. The second form of redress was via special programs for additional expenditure on things such as scholarships, loans, land allotments, health benefits and legal aid, all ear marked for these groups. And finally, there were programs for the special protection of these groups from historical forms of exploitation and discrimination, such as forced labor, debt bondage and of course untouchablity, which for example restricted the access of certain castes from temples and other physical spaces.

All these programs were judged to satisfy the four obvious moral and political arguments that were proffered against them. For the present purposed I will simply list these objections: (1) Was it unfair to depart from the judgments of individual merit to instead favor beneficiaries over

other contenders for valued resources? (2) Was it unfair to compensate members for injustices perpetrated on their ancestors? (3) Was it unfair to compensate some victims while not compensating others? (4) Was it unfair that some should bear more of the burden of compensation than others?[11]I gloss over these important arguments because the question I most concerned with it somewhat different.

Instead I want to ask what is it about social uplift that allows it serve as a caption for a broader national endeavor, in a way in which the securing of public freedom had served as the caption for American constitutionalism in the eighteenth century?[12] Does the compulsive talk about unity and social questions conceal or rather only hint at something else which might in fact be its motive force and to which the constitution gives expression? I want to argue that it is in this language, for which, as I have already suggested, there are of course obvious and exigent reasons and explanations, that something else resides, and in virtue of which the constitution can be seen as doing something quite radical; indeed as connecting Indian constitutionalism with that other constitutional moment of the eighteenth century, namely the French revolutionary tradition. Unity and social uplift, I want to suggest, are the terms through which a purely political vision for the nation are articulated and other forms of power and authority eclipsed or, at least, rendered secondary. Politics becomes the ground for national unity and the redressing of social issues the central venue through which this ground and unity are constantly reaffirmed.

In the western tradition of political thinking Thomas Hobbes was the original theorist who tightly linked the securing life and living well (in his terms self-preservation and felicity) with political power and the specific national unity, which it alone could secure and sanction. It is with him that politics becomes the despositive currency of order and progress and where all other forms of unity and distinction exist at the mercy of political power. The fact that he endorses a form of political absolutism with a unified conception of power and authority, one which democratic constitutions like the Indian constitution expressly eschew, does not by itself settle the question of whether such constitutions can in fact -- given their commitments to unity and social uplift, secure a principled and practical distinction with the form of power Hobbes advocates. Notwithstanding the often-touted liberal credentials of figures such as Nehru and Rajendra Prasad, Hobbes may be, the largely unacknowledged, mentor of Indian

constitutionalism. The Indian constitution bespeaks a conception of power, which by serving as its own foundation articulates a vision that is in fact revolutionary.

Such a claim requires justification because it appears to fly in the face of the obvious facts about the Constitution, the debates that led to its adumbration, and to the relevant aspects of Independence itself. It is a familiar and often repeated fact that Indian independence, the event that occurred on August 15, 1947, was marked not so much by metaphors of novelty and revolutionary rupture, but rather, by those of transference and continuity. This is of course not merely a metaphorical claim. It was literally, that is to say politically and juridically, the case. An extant "interim" government of which Nehru had been the executive head, became the Government of India, and of which, following independence, he remained the head. Technically, King George VI, who had been titular sovereign prior to August 1947, remained sovereign until 1949. In terms of governmental and administrative machinery, the "transfer of power," as it was called, was just that, because it represented the simple succession of "personnel". Similarly the Constituent Assembly and the Constitution that it produced were anchored in strict legislative precedent because they were husbanded by the 1935 Government of India Act along with the additional guidance of the Viceroy and Cabinet Mission's Statement of May 1946. [13]

All these facts and circumstances suggest that the constitutional moment was anything but revolutionary because it was braced by clear judicial precedent, legislative authorization and deference to political convention. Moreover, unlike the French Revolution, and instead more akin to the American Revolution, in the Indian case the constitutional moment was not burdened by an inheritance of absolutism. Whatever one might say about British imperial governance, at least by the mid-forties, it bore no resemblance to Bourbon absolutism of the late eighteenth century. To the important extent that revolutions are predetermined by the regimes they overthrow, the inheritance of responsible and limited government might further vitiate the idea that Indian constitutionalism represented something revolutionary. And finally, one might add, again as in the American case, Indian constitutionalism plainly occurred in a context, that Burke had celebrated in the Hastings trial, where there existed a complex social skein of power and authority, and where therefore, neither anarchy, not the void of power were present to escalate revolutionary demands.

But along with these familiar facts there is another set of facts pertaining to the Indian constitution. Here was a document which granted universal adult franchise in a country that was overwhelmingly illiterate; where, moreover, the conditionality of acquiring citizenship made no reference to race, caste, religion or creed and in which, it is worth mentioning, there were no additional or more stringent conditions for the former British rulers to become citizens; which committed the state to being secular in a land that was by any reckoning deeply religious; which evacuated as a matter of law every form of hierarchy under extant conditions that were marked by a dense plethora of entrenched hierarchies; that granted a raft of fundamental individual rights in the face of virtual total absence of such rights. Here was a constitution which in its Preamble committed the state to the most capacious conception of justice, including thereby "social, economic and political" justice, "liberty of thought, expression, belief, faith, and worship", equality understood to include that of "status and opportunity," and in which under the heading of "fraternity" it professed to insure "the dignity of the individual and the unity and integrity of the Nation." Most importantly, the Constitution created a federal democracy with all the juridical and political instruments of individual, federal, local, and provisional self-governance where the nearest experience had been of imperial and princely authority.

A lot can be said about this document, which has aptly been called the "cornerstone of a nation." For one thing, it points to a truly remarkable self-confidence on the part of the framers and the Indian elite as they envisioned the future of this nation. When one considers for example, the Directive Principles of the Constitution, or the "strivings" of the state, they include an avid engagement with matters of health, education, individual and communal safety, equality and prosperity. One cannot but be awed by the extent and reach of such a political and social agenda. This constitutionally enshrined vision of the future is what has often been seen as implying an activist and capacious state that was responsible for the eradication of poverty, undoing the stigmas of casteism, improving public health and education, building large industry, facilitating communication, fostering national unity, and most broadly creating conditions for the exercising of freedom.

It is this second set of facts about the Constitution, which I wish to suggest, constitutes the grounds of sovereignty in a rather interesting and distinct way. And again it is these facts that I want to argue articulate a revolutionary agenda including in the familiar sense that implies an attempt at a radical disjunction and rupture with the past. There are obvious similarities here with the American constitutional founding. Despite the frequency with which ancient authors and examples are invoked and Montesquieu in particular praised, the consensus of opinion among the *Federalists* suggests a decisive distancing from any exemplary past. The first three words of the American constitution "We the People" alone suggest that break. They referred, as Judith Shklar pointed out, neither to the plebs of Rome nor to the "commons" of England, but rather to everyone.[14] They summarized what Benjamin Franklin had said at the Convention "We have gone to back to ancient history for models of Government, and examined the different forms of those Republics…we have viewed Modern States all around Europe, but find none of their Constitutions suitable to our circumstances."[15]

In the Indian and the American case the forswearing of a past was part of a piece with the denial of extant social conditions as being the basis of democratic citizenship. And in both cases the vote and the terms of franchise were the crucial grounds for authorizing a new kind of power and unity. In the Indian case there was a clearly conceived sense that the vote and citizenship would create a new network of linkages that was specifically political, and as such, relatively free from long entrenched and crowded social identities[16]. Voting did not stem from a historical entitlement, but rather a natural right in which neither poverty, caste, gender, educational disadvantage or the absence of property were disqualifications. In the American case of course the specific European fear of the property less armed with the vote was absent largely because mass poverty itself was absent and the plight of slaves and Native Americans ignored. But in the Indian case where one might have expected the elites to have such a fear that worry is clearly compensated for by the consolation that universal franchise would work to the advantage of a new kind of state power.

The same argument in favor of political power also addressed a familiar and longstanding colonial objection to independence. That argument had been a claim that countries such as India had not articulated themselves into that specific form of society that could represent itself

politically. Whatever forms of collective action they were capable of they were not capable of political self-representation. They were caught between anarchy, despotism, or as J.S. Mill emphasized regarding India and the East, in a surfeit of social norms and customary mores. They lacked and were as yet incapable of a political will of which a unified state was the only evidence. They had no state, which in effect could claim to be authorized by "We the People."

There were only two ways to disable this argument. There was the Gandhian alternative in which political agency to the extent that it required a monopoly on the means of violence was not in any case celebrated, and where moreover, agency it did not turn on the authorization of a central and unified state. Rather, agency rested on an adherence to universal ethical principles that were free from the instrumental logic of modern politics and which were largely nested in extant social relationships. Gandhi in effect was challenging the very conception of politics and agency that underwrote the colonial claim including the argument that required transcending of the social and the diversity that was implied by it. The issue of the requisite unity of politics and representation were thus disabled through the universality of ethics and the inherent diversity of the social.

The second alternative was the constitutional and democratic alternative in which the answer to the colonial question "Is there a political order and whom does it represent?" could only be "first that we have an order which is vouched for by a corresponding unity and it is one in which everyone is represented." The answer of course was itself largely wishful, especially under conditions where social identities were deeply entrenched and where in particular the very issue of the representation of minorities hardly felicitous. Yet it was an answer, which if nothing else indicated a clear constitutional orientation in which politics was to be ground of a prospective unity.

If one recalls the familiar distinctions between the conditions of liberation and the conditions of freedom, the conditions of liberation are typically associated with the culmination of a period of rebellion and revolutionary activity while freedom is likened with the quieter stage of framing constitutions, which become the foundation of freedom. Perhaps the most famous example of this mapping is the American case where the war of independence culminating in

1776 is known as the Revolutionary War and the Constitutional Convention in Philadelphia which issued in the constitution of 1787 is known for its more deliberative energy or as John Adams's expressed it, through the regulative image of the uniformity of time- which as he said, "Thirteen clocks struck as one."

This is not the appropriate context in which to discuss why constitution making has not been recognized as a truly revolutionary political moment. I hope it suffices to say that in the modern western tradition of political theory, revolutions have been associated with that dramatic and tumultuous moment when individuals, in for example John Locke's understanding, contracted with each other to leave the state of nature and form a new "body politic." In contrast, constitutions have been associated with that orderly act where the body politic "entrusted" its power in a particular form of government. As Thomas Paine put it while thinking of the American experience, "A constitution is not the act of a government, but of a people constituting a government."[17]

In the Indian case, I am suggesting it is quite the reverse of what one has come to understand through this generic Lockean narrative, and of which the American example is taken as paradigmatic. In India instead it is the constitutional moment that is revolutionary and rupturing. But this claim obviously provokes the question - revolutionary with respect to what and rupturing of what? What does the Indian constitution rupture? To this, I think, the answer is that it ruptures the particular relationship with time and with history as an expression of that relationship. It's from this rupture or distancing of history that sovereignty, and the political, as an expression of a capacious public will, comes to be formed. To put the point somewhat polemically, the Indian constitution along with the conception of the political that it puts in place, does not so much emerge from history as it emerges in opposition to history and with a firm view of the future. If political absolutism in Europe had defined itself following Bodin and Hobbes as *potestas legibus soluta,* i.e. power absolved from laws, one might say that in India, following the Constitution, the political became power absolved from history.

The relationship of power to history is fraught with imperial associations. In the nineteenth century, every major expression of European political thought had made history the

evidentiary ground of political and even moral development. In Hegel, Marx, J.S. Mill, not withstanding their differing accounts of historical development, history was the register through which alone a society's political condition and political future could be assessed. Hegel's articulation of the state as the embodiment of a concrete ethical rationality represented the realization of a journey of Reason that originated in the distant recesses of the East. Marx's vision of a proletarian future had its explanatory and political credence in overcoming the contrarian forces that fetter and spur historical movement. J.S. Mill's ideal of a liberalism that secured the conditions for the flourishing of individuality again explicitly rests on having reached a point of civilizational progress "when mankind have become capable of being improved by free and equal discussion." [18]

These arguments had a specifically imperial inflection. In J.S. Mill, who was by far the most influential liberal advocate of the empire, the argument went broadly along the following lines: political institutions such as a representative democracy are dependant on societies having reached a historical maturation, or, in the language of the times, a particular level of civilization. But such civilizational maturation was differentially achieved. That is, progress in history itself occurs differentially. Hence, those societies in which the higher accomplishments of civilization had not occurred plainly did not satisfy the conditions for a representative government. Under such conditions, liberalism, in the form of the empire, serviced the deficiencies of the past for societies that had been stunted through history. This, in brief, was the liberal justification of the empire. Its normative force rested squarely on a claim about history. It is what Dipesh Chakrabarty has called the "waiting room" version of history.[19] The idea being that societies, such as India, had to wait until they were present in contemporary time or what amounts to the same timing in contemporary history. They had to wait because their history made it clear that they were not "as yet" ready for political self-governance. The denial of an autonomous political realm was the debt paid by the present on behalf of a deficient and recalcitrant past.

The nationalist response to this historically anchored waiting room model was to agree with the idea and the logic of argument but to disagree with particulars of its application. Here, as elsewhere, Gandhi is the exception because his conception of civilization and its cognate progress were never historically driven. When Gandhi speaks of civilization, it is invariably as an

ethical relationship that an individual or community has with itself, with others, and with its deities. [20] Whatever else this does, it cuts through any reliance on history as the register from which alone progress can be read, evaluated, and directed. But the more typical nationalist response, including among the social reformers of the 19th century, was to concur with the claim that progress was historical but to demur on the point that India was not "as yet" ready. The nationalist claim instead was that India was in fact ready, that it had paid its debt on behalf of a "backward" past through two centuries of tutelage. Its claim to political autonomy was simply the other side of the claim that it was present in contemporary time and thus freed from the residual vestiges of historical time.

THE ABSOLUTE REACH OF POLITICAL POWER:

But what did it concretely mean to be freed from history? And to be present in what I am calling contemporary time? It did not mean that India was not affected or influenced by its past, or that the problems of poverty, caste and numerous other social and economic woes were without a historical dimension. That would have been rank stupidity but the framers of the Constitution and the members of the Constituent Assembly were not fools.

Instead I think the historical aspect of these problems is taken as part of their social scientific and political nature, but not as an inheritance that limited the potential of political power. Roughly what I mean by this is analogous to what I said about the sovereignty of the political. All historical issues get automatically translated in the language of politics and so they lose, for example, any temporal dimension of the past. To put the point perhaps overly starkly, the challenge of caste injustice becomes analogous to that of building industry or large dams. They are all challenges in which the state draws and leans on the guiding primacy of science and social science, much like the Federalists had invoked the "new political science." History becomes a social and contemporary fact on which politics does its work. By which I mean that history gets translated into a medium where it is available for political modification. This conception of the political is nothing if not presentist; it loses an element of temporality that one associates with notions such as inheritance. It is anchored in the amplitude of choice; everything

becomes an issue of choosing because the conception of politics that it belongs to is supremely about choosing.

It is in this context that the concern with social issues, which is such a conspicuous feature of the Constituent Assembly debates and the Constitution, becomes relevant. Issues such mass poverty and illiteracy and near ubiquitous destitution belong to the realm of necessity because they put human beings under the pressing dictates of their bodies. To the extent that political power concerns itself with, and under modern conditions it has to, this dimension of human life, it too becomes subject to a necessity. It can only represent freedom as something prospective. Its immediate ambit is dictated by the intensity of "mere life." And this ambit can have no limiting bounds. This simple logic transforms power from a traditional concern with freedom to a concern with life and its necessities. Hannah Arendt may be wrong to identify politics that concerns itself with social questions as leading to terror. In India and elsewhere it clearly has not. But her exaggeration offers an insight into a related feature of when politics is placed under such necessity, which is its absolutism. Here absolutism refers not to the capriciousness of the Prince or the Leviathan who can take his will as a synonym for right and power. That aspect of absolutism constitutionalism clearly checks. But absolutism understood as something in which there are no substantive limits on the domain of the political, is a feature of power that is committed to alleviate the pressing exigencies of life.

It is also the very pressing concerns of life that become a central mechanism for conceiving of and emphasizing the unity of the nation. Not unlike the Jacobin projection of *le people, toujour malheureux,* which served as a ground of French unity, poverty, illiteracy and destitution serve as a constitutional warrant for Indian unity. It is tempting to think of the perspective that proffers the generality of the *suffering people* as stemming from compassion. But that would be to mistake a central feature of its underlying motive. Compassion, in the face of suffering, has as its operative modality a commitment to co- suffering, to put oneself in the position of the sufferer or minimally to share in the suffering. It is tethered to a logic of singularity and exemplarity, i.e. taking the place of the sufferer. On both counts, it repudiates the perspectival distance that is required to produce a conception of a whole people, let alone a way of redressing the plight of a whole people. And finally compassion, as Martha Nussbaum and

Roberto Unger have insightfully pointed out, is deeply, even if not essentially, wedded to an epistemic and ontological uncertainty, i.e. to the question of whether the suffering was adequately appraised and fully shared.[21] For these reasons compassion for the most part has been politically mute, though of course in rare instances, such as with Gandhi, it has profoundly affected the political realm -- but even then it typically manifests a philosophical and temperamental reluctance towards the ordinary rationale of national politics.

In contrast, the perspective of pity faces no such obstacles. Because pity maintains a distance from its object, it can conceive of the object as embodying an abstraction, or representing a type, such as the poverty stricken or the disadvantaged castes or the people of India. And because it is not limited by the injunction to share in the plight of those it perceives, it can imagine a redress to their condition that corresponds to the generality of its perspective. Finally, the perspective of pity is replete with the potential for solidarity and hence unity. There is an important and still grossly under explored relationship that links pity with the politics of modern nationalism.

In the present context, my point is simply to emphasize that the concern with unity and social uplift emanates from a view of political power, which is in principle absolute and where such power is the ground of national sovereignty. The much-touted sovereignty of the people is in fact indistinguishable from the absolutism of politics.

Perhaps nowhere is this idea more plainly evident than in Part Three of the Constitution, which deals with fundamental rights. It has often been pointed out that the Indian constitution authorizes the most expansive raft of fundamental rights. In one sense, this is true and yet the meaning of this statement cannot be taken precisely because of the following prefatory note: "**No fundamental Right under Part III of the Constitution is absolute and it is to be within permissible reasonable restrictions. Hence, every individual right has to give way to the right of the public at large."** It is of course the case in most constitutional regimes that few, if any, rights are absolute. They get qualified in many ways including through the balancing with other rights. But in the Indian case, the qualification of rights occurs through a prior, or rather, a constitutional commitment to the public, which from the outset qualifies all individual rights.

There can, as such, be nothing that opposes the political as an alternative normative standard other than another concrete conception of the political. This, of course, is to say little more than that government can change. In an odd sort of way, one can see in this a peculiar affirmation of the Schmittian idea of the sovereign being the one who determines the exception. In the Indian case, the Constitution articulates a vision in which political sovereignty resides in the fact that there can be no exception to the political.

There is another case in which the rupture with history can be appreciated. The imperial argument, as I have tried to make clear, rested on the waiting room view. But what did it mean when the wait was over? What temporal register did one enter when one announced and gave credence to the claim that one was present in contemporary and not historical time? Put differently, what did it mean when one claimed no longer to be backward? I think, to the framers, it meant that one had an inheritance but something over which one exercised choice, and it was a feature of this prerogative of choice that one could now choose other peoples histories as one's own. If one was no longer bound to one's own distinctive past, one, for the very same reason, was not limited in choosing other peoples' present as though it was one's own. This is what I call a modular global present- where one can pick the pieces one wants. For example, here it is worth recalling a simple but telling anecdote. Sir B.N. Rao, the Constitutional Advisor to the Constituent Assembly and arguably the principal drafter of the Constitution, was asked shortly before his death in 1953 what his main influences were. He replied that they were the constitutions of Ireland, U.S.A., Canada, and Switzerland. When pressed as to why they were all foreign constitutions that had influenced the Indian one, Rao blithely responded, "There was nothing foreign about them. It was a sovereign choice made by the Constituent Assembly who were the representatives of the Indian people." I think what he meant was that the political, which had been shrouded by history, had now become autonomous just like the people and that it was an expression of that autonomy that nothing in principle was foreign to it.

CONCLUSION:

Finally, the main point I have been exploring in this paper can be made by way of a contrast. American constitutionalism in the eighteenth century, whatever else it was, stemmed from a deep distrust of power – of which a distrust of the absolutist prince was just a single

instance. The first impulse of this constitutionalism was thus to limit political power, to be suspicious of it and to constrain its reach. This was one of the things that most struck Tocqueville as he reflected on democracy in America – namely, that the central government was virtually absent and at best, severely limited in the power at its disposal. In this view, the freedom of the individual could never be assigned to a distant prospective hope. Perhaps because the American Founding Fathers did not have to contend with the problem of mass poverty and had little concern with the issue of slavery, or perhaps, because they were the last adherents to the idea that politics was about freedom and not the pressing necessities of life and the body, they could still articulate a constitutional vision in which political power was not absolute. When John Adams announced that "Power had to be opposed by power," he meant by this that power, specifically political power, had to be limited. A central part of that limitation was that it would not redress the sufferings of the body and would not allow its vision to be guided by that goal. Of course, in our own times, it has become clear that there is indeed an inhumanity to that limitation on power and the conception of the public interest that it can fashion. Such a chastened conception of power and politics is plainly not the case with constitutionalism in much of the 20th century and in India in particular. This constitutionalism must and does constitute power and increase and celebrate its ambit. It is only through politics that the nation can be imagined. In the Indian case, once Partition wrecks the geographical grounds of nationhood, politics becomes even more central to stitching the nation and giving expression to the whole.

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[1] Hannah Arendt, *On Revolution* (London: Penguin Books, 1990), page 112.

[2] Uday S. Mehta, *Liberalism and Empire* (Chicago: University of Chicago Press, 1999), See in particular chapter 3.

[3] Homi Bhabha, *The Location of Culture* (London: Routledge, 1994) pages 86 ff.

[4] J.S. Mill, *On Liberty*, especially Chapter 1 and *Consideration on Representative Government*, especially Chapter 18, in J.S. Mill, *Three Essays* (Oxford and New York: Oxford University Press, 1975)

[5] "For a long time we have been having various plans for a free India in our minds, but now, when we are beginning the actual work, I hope, you will be one with me when I say, that we should present a clear picture of this plan to ourselves, to the people of India and the world at large. The resolution that I am placing before you defines our aims, describes an outline of the plan and points the way which are going to tread." Jawaharlal Nehru, *CAD*, page 57.

[6] ". . . India after being dominated for a long period has emerged as a free sovereign democratic independent country, and that is a fact that changes and is changing history. . . . That is a tremendous responsibility. Freedom brings responsibility; of course, there is no such thing as freedom without responsibility. . . . Therefore, we have to be conscious of this tremendous burden of this responsibility which freedom has brought: the discipline of freedom and the organized way of working freedom. But there is something even more than that. The freedom that has come to India by virtue of many things, history, tradition, resources, our geographical position, our great potential and all that, inevitably leads India to play an important part in world affairs. It is not a question of our choosing this or that; it is an inevitable consequence of what India is and what a free India must be. And because we have to play

that inevitable part in world affairs, that brings another and greater responsibility. Jawaharlal Nehru, *CAD*, Book 2, volume vii, page 319-20.

[7] "I hope and trust that this Constituent Assembly will in course of time be able to develop the strength as all such assemblies have done. When, an Organization like this sets on its work it gathers momentum, and it goes along it is able to gather, strength which can conquer all difficulties and which can subdue the most, formidable obstacles, in its path. Let me pray and hope that our Assembly too will gather more and more, strength as it goes along." Dr. Rajendra Prasad (Chairman) *CAD*, Book 1, volume 1, page 52.

[8] Marc Galanter, *Competing Equalities* (Chicago: University of Chicago Press, 1984), page 1.

[9] The Indian Constitution, Part IV. Also see Article 37, which prescribes "the duty of the State to apply these principles in making laws."

[10] For a more detail discussion of the definitions of these categories see Galanter, op.cit. Chapter 3.

[11] Galanter, op.cit. page 552.

[12] See Judith N. Shklar, *Redeeming American Political Thought* (Chicago: University of Chicago Press, 1998) especially chapter 11.

[13] See Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford: Clarendon Press, 1966), Sir B. N. Rao, The *Making of the Indian Constitution* (New Delhi: Oxford University Press,) and H.M. Seervai, *Constitutional Law of India* (New Delhi: Universal Book Traders, 1999) Volume 1, chapters 1 and 1A.

[14] Judith N.Shklar, *Redeeming American Political Thought, op.cit*, page 160.

[15] Quoted in Max Farrand, ed. , *The Records of the federal Convention of 1787* (New Haven, CT: Yale University press, 1966) 1: page 397.

[16] Radhakrishan, Franchise Commission Report (1931)

[17] Thomas Paine, *The Rights of Man*, Part II

[18] J.S. Mill, *On Liberty*, op.cit., page 16.

[19] Dipesh Chakrabarty, *Provincializing Europe* (Princeton: Princeton University Press, 2000) page 8.

[20] For Gandhi's views on civilization and history see M. K. Gandhi, *Hind Swaraj.*

[21] Martha Nussbaum, *Upheavals of Thought*, chapters 7 and 8. Roberto Unger, *Passion*