

Remediation, Redress, and Affirmative Action in Comparative Frame: Thinking Through Histories of Race and Caste*

Anupama Rao

Barnard College

You know as well as we do that right... is only in question between equals in power while the strong do what they can and the weak suffer what they must....

Thucydides, *The Peloponnesian War*

I am quite prepared to say that I shall be the first person to burn the [Constitution]. I do not want it. It does not suit anybody. If our people want to carry on, they must remember that the majorities cannot ignore the minorities by saying: 'Oh no, to recognize you is to harm democracy'.

B. R. Ambedkar

I begin this essay with the simple historical fact that India, like the United States, has produced a distinctive branch of case law that addresses structural inequality as the consequence of historic discrimination. At first glance, the Indian example is yet another instance of how the process of redressing historic inequalities works on the ground, and what one side can learn from the other given divergent histories. India is a postcolonial society like the United States, but their differences are worth noting. The United States was among the first revolutionary societies (together with France and Haiti) to articulate the principle of a social order predicated on man's innate freedom and natural rights. In contrast India inherited caste, a complexly articulated form of social hierarchy whose longevity has to do with the system's innate suppleness, and capacity for transformation.

While the difference between *homo equalis* and *homo hierarchicus* might appear to be a key distinction, deeper comparison troubles the perceptual hierarchy. India, like the U.S., was faced with the problem of extending universal rights in the context of extreme inequality, and inequality on the basis of identities whose hierarchical nature was embedded deeply into people's sense of social reality. As is well known, the 3/5 clause of the U.S. Constitution enabled the South to gain a representational advantage, and instituted the porosity of property and personhood that structured American racism. Laws governing caste relations harken back to the philosophy of descent-based hierarchy and occupational segregation that is supposed to be articulated in Manu's *Dharmashashtra* or *Manava-dharmashashtra* (dated between 200BCE-200CE), a Sanskrit text, also referred to as the "Laws of Manu." However, given that caste society predates Manu, he was not really a 'law-giver,' but a theorist and ideologue of a system that had already been extant for centuries, in all probability. The *Purusa Sukta*, the ninetieth hymn of the Tenth Book of the *Rig Veda*, articulates the four-fold division of society that is fundamentally theoretical, and which diverges from the empirical history of caste formation anywhere on the subcontinent.

Unlike the U.S., however, India has been dealing with the inequities of caste continuously as an issue of constitutionalism and participatory democracy. The historical, and political reasons for this are the focal point of this essay, and have to do with the initial difference in how distinction was understood and then fought, perpetuated, or euphemized. Indian affirmative action, which goes by the name “reservations,” is more extensive in scope, and has a history that dates back to the colonial period, as opposed to the association of affirmative action with American civil rights. Of course one could take an expansive view of the history of civil rights in the United States starting with slave emancipation and Reconstruction, followed by the reversals of Jim Crow—and its entrenchment of white privilege in law and market relations—as a precursor to the struggles of the post-WWII era, which culminated in civil rights and affirmative action. The temporal gap between the end of Reconstruction and the start of affirmative action in the U.S. remains, however, as does the distinctive manner in which race, capital, and democracy have come to be associated with the problem of American racism. Meanwhile a colonial prehistory of separate representation, which was instituted for the management of minority identity, had a direct influence on procedural liberalism in independent India. This is reflected in India’s efforts to balance constitutional commitments to individual rights, economic development, and group equalization as conjoint aims of state. In contrast in the U.S. context (and indeed in other western European contexts more generally), the individual/group frame is critiqued on identitarian grounds, but this frame is not only misleading, it is also profoundly ahistorical. In this regard, and as I argue here, India is singularly instructive, both as a point of comparison and contrast.

Decolonization formed the (global) backdrop to India’s efforts to respond to complex structures of inequality with roots in religious exclusion, segregation, socio-economic deprivation, and colonial underdevelopment *via* constitutional means. How did the postcolonial Indian state seek to implement the norm of universal adult franchise in the context of mass illiteracy and myriad social inequalities? In particular, what conflicts, debates, and decisions animated the attempt to institutionalize the norms of procedural democratic equality in this context, a historical precedent without equal?

The Constituent Assembly began its deliberations on December 9, 1946, and adopted the Constitution on November 26 1949: the Constitution came into effect on January 26, 1950. American examples were critical for India’s experience with constitution making yet the history of Indian affirmative action reveals a number of constitutional provisions targeting social inequality, which distinguishes it sharply from the U. S. Constitution. India presents us with the interesting phenomenon of temporal compression with enfranchisement and social entitlements having been adopted near simultaneously, collapsing the elongated frame in which rights have been extended, and strategies of equalization justified in Euro-American contexts. (Recall that the same process took nearly two hundred years in the United States. Voting rights were central to the Civil Rights movement, but in the aftermath of successful enfranchisement we have seen gerrymandering, and the denial of voting

rights to incarcerated populations as two important mechanisms by which the African American vote is discounted.) While social identities figure prominently in Indian debates about inequality, the relationship of race to American capitalism and democracy remains among the nation's dirty, public secrets: it is known and episodically acknowledged, but always as aberration rather than as a constitutive contradiction of the body politic.

So far as similarities go, both nations have experienced fratricidal violence, albeit separated by a century: Civil War, and sub-continental Partition. Histories of violence, revolution, and social separation have thus preceded commitments to a constitutional resolution of the problem of historic discrimination via the bureaucratization of caste, and race. As a consequence, and in both cases, one could argue that affirmative action regimes have constrained the interpretation of the historic harms of race and caste, as much as they have produced visibility for them as redressable wrongs. To put it differently, does affirmative action resolve a socio-political contradiction at the heart of the republic? Or, does it permanently mark a rift in the social body that policy cannot resolve? My interest in exploring adjacencies between India and the United States arises from the effort to understand affirmative action as an institutional "innovation" that stitches law, politics, and history together with uncertain, or unexpected policy outcomes. How does an identitarian logic get embedded in the universalist logic of bureaucracy? How do states view this exercise in particularism?

Projects seeking to explore histories of connection and entanglement can be valuable, though such exercises also raise questions about scale and units of comparison, not to mention chronology. The tendency to take one's historical starting point as absolute can preclude gaining perspective on it. Without comparison there is merely the sense of pervasive injustice both for those who continue to suffer the effects of racism or casteism, as well, for those who feel that they have yielded place to the "less meritorious." Given the long history of comparison between race and caste, institutional responses to their exclusionary effects can be particularly valuable not because they reveal similarities, but for unveiling salient differences.ⁱ For example this paper does not compare *across* two affirmative action regimes so much as it strategically gestures to the sorts of problems institutional redress is meant to resolve, and uses those examples to trouble Euro-American genealogies of citizenship and democracy.

Historians of empire, in particular, have explored limits to the reach of universal ideas such as liberal individualism.ⁱⁱ However they have often done so by pitching historical facts against ideal-types: they have provincialized the concept by showing its susceptibility to history, and contingency. Better put, they have addressed themselves to the gap between political history, and political theory. However my purpose in placing a more elaborated discussion of Indian affirmative action against a "thin" account of its American counterpart is a little different. I seek to challenge normative models of democratic citizenship by locating the issue in a complexly

ramified global field, albeit one shaped by the *longue duree* of British imperialism. This allows us to expand the reach of concepts while remaining attentive to their creative transformation, including their vernacularization.ⁱⁱⁱ Relating history and theory in this dialectical manner allows us to go beyond critiques of imperial governance, and to take seriously the contribution of non-Western histories to theory making, and not merely for accounts of political resistance or cultural relativism.

Affirmative Action: A Brief Account

Affirmative action assumes a relationship between history, law and identity: historic injury is assumed to require correction in the present. The principle of equality—whether this is understood to mean equality of outcome, or of opportunity—grounds claims in the present for past exclusion, whether social, political, or economic. Regardless of the specific form that policies might take, affirmative action measures assume a relationship between group identity, on the one hand, and individual harm on the other. From the outset, this tension between individual and group challenges liberal theories of rights derived from models of individual freedom and autonomy. Furthermore, issues of group, or proportional representation cannot be easily accommodated by the principle of one-person one vote, which forms the basis of representative democracy.^{iv}

While affirmative action policies can take a number of forms, they ought to be distinguished from multiculturalism, which also mediates between state and community, but privileges diversity as a common good without asserting any necessary relationship between an exclusionary past, and the demand for restitution in the present. Thus the recognition of difference, including a commitment to the equal protection of difference, is to be distinguished from a commitment to eradicating inequality arising from *historic relations* of domination, subordination, and hierarchy.

One might agree with Iris Marion Young that debates about group preferences tend to convert questions of historic injustice, what are essentially political questions, into demands for distributive justice predicated on perfecting policy design.^v We should neither lose sight of the perils nor the possibilities of affirmative action policies, however. To give an example from my own work, I have addressed the paradox of affirmative action at two levels: the politics of identity, and policy outcomes.

1) How do we square social histories of working-class activism, civil rights or suffrage that privilege the extension of rights, against a history of exclusion? Vulnerable communities such as women, African Americans, or outcastes have historically demanded rights by arguing that their embodied particularism (color, female bodies, association with degraded livelihood, sexual preference, etc.) has been used to justify political exclusion: the extension of rights is contingent on the minimum requirement of autonomy and rationality, while those who possess certain *kinds* of bodies are understood to lack both. Ironically, it is the over-

determined association of the individual with the collective that is seen to preclude individuation, and hence the possibility of becoming a universal rights-bearing subject. This might be one reason why the *negative* relationship between individual and collective has to be thought anew in the context of positive discrimination, or affirmative action.

It may be helpful to think about the constitutive tension between *relational* and *embodied* identity as animating the perceived contrast between histories of the emancipated subject, on the one hand, and accounts of the inadequate subject who continues to experience structured exclusion on the other. The tension has historically required that “the terms of exclusion on which discrimination is premised are at once refused and reproduced in the demands for inclusion.”^{vi} Simply put, this involves emphasizing race (as identity) to undo racial exclusion, or speaking as an “untouchable” subject while demanding the annihilation of caste. This split between embodied and relational identity is manifest in the rather different ways in which “identity” matters for law, and for politics: the distributive logic of inclusion, an issue that is typically decided in the courts so far as affirmative action is concerned, is related to but not identical with the space of agonistic politics where the demand for rights and recognition occurs (and recurs). Law and politics are mutually entailed, but they also operate as sites of friction and conflict.

Affirmative Action Elsewhere: The Case of India

Though the United States has gained by far the most attention for its experiment with affirmative action, it is worth comparing with the example of India. A long history of anti-Brahmin struggles in southern and western India produced efforts to institute quotas for non-Brahmins in employment and education as early as the turn of the twentieth century.^{viii} These struggles arose in response to a complex association between the colonial administration, on the one hand, and upper-caste elites on the other: their combined effect was to *secularize* caste privilege and render it newly visible in modern state apparatuses such as schools, law courts, and hospitals. Meanwhile, enumerative technologies like the census took caste and religion as modal forms of social categorization and effectively gave them political pertinence.^{ix} Demands for proportional representation grew, and the category of ‘backwardness’ was positively valued in the demand for state entitlements. Mysore State first used the term “Backward Class” in 1918 to categorize everyone who was *not Brahmin*. Bombay included reservations for socially and economically backward groups in the Starte Committee Report of 1930. Madras had caste quotas for bureaucratic recruitment since 1916, while the princely states of Baroda and Kolhapur in western India instituted similar policies at the turn of the nineteenth century to curb Brahmin dominance.

Subaltern demands for reservation were thus an important, if unintended consequence of the logic of imperial rule, which operated through categories of culture, difference and distinction. Indeed the politicization of caste as a corporate identity occurred in tandem with colonial recognition of Muslims as a religious community. A brief detour through the colonial prehistory of group rights helps

illuminate continuities and significant breaks between colonial efforts to negotiate competing demands for community rights and recognition, on the one hand, and the postcolonial management of identity on the other. What is more, the detour suggests that it is insufficient to argue that colonies were an experimental site for metropolitan policy. That point is by now rather well known, and is not worth belaboring. Rather, I would argue that it is necessary to dig deeper to ask what these histories suggest by way of models for relating group with individual identity; histories that alter key assumptions of Western political theory.

As is well known, colonial intervention on the subcontinent was often justified as an extension of native, or pre-colonial practices of government. However collective life organized around caste and religion was invested with new political significance, though neither caste nor religion accrued value in a univalent, or monolithic way. As a consequence, officially separate domains of religion and politics were intertwined in practice. Their inter-animation defined the colonial state form: religion had a temporal life as community, while community gained political pertinence as constituency. This was the route by which religion was politicized. A paradox of political commensuration followed: religious communities were seen as *quantitatively incommensurable*, but *qualitatively equivalent*. In turn, the colonial state mediated the paradox between community-as- demography and community-as-identity.

We might thus extend Philip Abram's famous deconstruction of the political realism of state theory to examine what might be termed the "colonial state effect."^x Abrams argued that "the state" was an enabling fiction for masking decentralized practices of power, and that the putative materiality of the state as a thing or a place was in fact the "effect" of practices of power that produced the state as an autonomous whole. Misrecognition plays a critical role in Abram's account of the state effect, as it does in my description of the colonial state. However, the colonial state effect is derived from an opposite set of moves to what obtains in Abrams' account: colonial power was repeatedly denied, dissimulated, and devolved onto native social and political forms. This produced the effect of dispersion and disaggregation, rather than cohesion, and ultimately enabled colonial authoritarianism: community was politicized as the site of sovereignty, while the state was presented as either weak, non-existent, or failed. A distinctive politics of identity (and entitlement) ensued as a consequence of this political history, what can be loosely defined as the politics of minority.^{xi}

Muslims were colonial India's modal political minority.^{xii} In 1909, debates about a separate electorate for Muslims emphasized the community's "historic and political importance." These policy debates succeeded the failed effort to partition Bengal in 1905 into Hindu and Muslim majority provinces in the West and the East, respectively. The enumerative principle of weightage was accepted in the context of these discussions, to compensate Muslims for future demographic change. Simultaneously, caste Hindus discovered an interest in claiming untouchables as Hindus, especially after the 1908 census, when colonial officials began emphasizing

untouchables' separate identity as non-Hindus barred from entry into temples, from common water sources, educational access, and so forth. By the interwar, an expansion of colonial representation was followed by claims to nationality and minority on the part of Muslims and untouchables, respectively. The "Muslim" question, and the "untouchable" question were thus resolved along two separate lines. Their interconnection became evident in debates about Indian constitutionalism in the aftermath of Partition.

India granted universal adult franchise, and by so doing foreshortened what had been a contentious, incremental process of franchise expansion in the West. Whereas liberal democracies commit to the sanctity of procedure in order to guard against bias, India's emergent democracy specified desired outcomes.^{xiii} Vulnerable populations were "enframed" by constitutional logics: the Indian Constitution recognizes unmarked citizens, but they are also named as subjects defined by the markers of caste, poverty, and religion. The tension between economic empowerment, liberal individualism, and group equalization is written into the Constitution:

The Indian Constitution deals with social equality in three distinct contexts. In a society where severe poverty affects members of most communal groups, it asserts that government has a general duty to promote economic equality and well-being. In this respect It is an explicitly socialist document. In a society with a history of violent conflict along many different communal lines, the Indian Constitution forbids discrimination on the basis of religion caste, sex, region, language, etc. In this respect it is an explicitly liberal, secular, and individualistic document. Yet in a society in which the dominant religion, Hinduism, traditionally supported a social hierarchy placing certain groups at the bottom under inherited disabilities in every aspect of their lives, the Indian Constitution separately abolishes untouchability in all its incidents and prescribes a system of compensatory discrimination for its victims and their descendants. In this respect it is an explicitly remedial document.^{xiv}

The document is an interesting amalgam of competing ideologies mobilized to undo different sorts of inequality at one go, as it were. There are significant discontinuities between the colonial past, and the postcolonial present with regard to the management of minority identity, however. Against the backdrop of subcontinental Partition, and anxieties regarding Muslims' loyalty to the Indian nation Muslims representatives agreed to renounce the separate electorate "in the national interest" during the Constituent Assembly debates.^{xv} (The new political context gave them a wholly different valence for some decades, though Muslim identity was repoliticized with the rise of Hindu nationalism in the 1980s. But that is a separate story.) Meanwhile caste came to the center of the constitutional debates about social justice. Both a traditional category and a social evil, caste was to be excised from the body politic by all means necessary.

What was the balance of forces that led to “caste equalization”? How had caste become political, and a symptom of social inequality? Briefly put, caste came to be associated with its most extreme and dehumanizing aspect, with the practice of untouchability. By reducing 'caste' to the problem of untouchability, everyone could agree on its eradication: a definitional reduction was also a social victory of sorts. Unlike the historic association of race and capital, beginning with plantation slavery, it was the association of caste (and untouchability) with religion that proved enduring. In turn *politicizing caste also involved secularizing it*. The history of secularism is thus integral to the history of Indian affirmative action.

Caste's Secularity

A brief and necessarily schematic account of the politicization of untouchability follows. The important thing to note is the shared commitment to untouchability reform, together with the very different conception of its agents of transformation.

Colonial perspective:

As noted earlier, colonial administrators did not invent caste, but they reified it as a millennial structure of social stratification and an aspect of Hindu tradition. By treating caste as both traditional and political, the colonial state inadvertently enabled the bureaucratization of caste.

Reformist Perspective:

Upper-caste reformers and nationalists also understood caste to be religiously derived. But so far as they were concerned, caste was not an issue for colonial policy, but for Hindus.

By 1920, thirty-five years after the Indian National Congress was founded, M.K Gandhi, the creative and unconventional Congress leader acknowledged untouchability as a “reproach to Hinduism.” Because he understood the practice of untouchability to be the manifestation of a religious hierarchy of persons, Gandhi (and the Congress) in turn produced a religious and moral response to the problem. That response consisted of a variety of things—from exhorting upper castes to clean toilets and value stigmatized labor; to pressing half-heartedly for untouchables’ entry into temples; and finally, to renaming untouchables *Harijans*, or people of god.

Instead of focusing on the victims of caste discrimination, untouchable reform focused on the upper-castes guilty of prolonging the practice. Indeed in the hands of Gandhi and his followers, untouchability became a sort of test case for the possibility of reforming Hinduism through reformation of upper-caste Hindu practice for the purpose of achieving an authentically Indian self. It was not merely the identity of the untouchables that was in question, but the identity and religious legitimacy of Hinduism. Untouchability was incorporated into the political project of anti-colonial nationalism as a religious problem of reforming Hinduism. As a consequence, nationalists also made it possible—especially and ironically through the pursuit of legal action and court cases under the colonial regime—to remove

debates about untouchability from the purview of the colonial state, and to render it an internal problem for Hindus.^{xvi}

Anti-Caste Perspective:

Caste radicals had engaged with global discourse of rights from the middle of the nineteenth century. (Briefly put, they were inspired by radical republicanism in the Atlantic World, and drew heavily on the metaphor of slavery, or *gulamgiri*, in their critique of caste.) They argued that the distinction between the social and the political, and between the religious and the secular domain was artificial; that this bifurcation could not explain the complex and totalizing character of caste oppression. Untouchable politics, and the leadership of B. R. Ambedkar, the constitutional lawyer and radical political thinker, would take this further by making the practice of untouchability foundational to understandings of Indian inequality.

In 1928, Ambedkar described the relationship between caste Hindus and untouchables as a “fundamental and deadly antagonism.” He argued that Dalits possessed a cohesive political interest, derived in large part by their antagonistic relationship with Hindus. Dalits might be stigmatized but they could use their status as degraded Hindus to practical effect by uniting as a political collective. A community of suffering, Dalits required collective emancipation: freedom for the self depended on the emancipation of the community, rather than separation from it. But this freedom was contingent on identifying oneself as a stigmatized subject and a special kind of minority, as *non-Hindu* defined by an agonistic relationship to the Hindu order. A negative identity became the basis of collective political identity. Untouchability was the single point of unification of the touchable but otherwise fragmented Hindu castes. In every other aspect of life, differences of belief and practice fractured Hinduism irretrievably. Despised and marginalized, untouchables formed the glue of the Hindu order.

Ambedkar believed that separate representation was a strategy for untouchables to manifest their political strength as a pressure group between Hindus and Muslims, the two largest political constituencies. “Our untouchable brethren will recognize their own strength once they realize that Muslims cannot win without us and equally Hindus cannot win without us.” (May 20, 1927 editorial in *Bahishkrit Bharat*.) The demand for separate representation would lead to a historic confrontation with Gandhi in 1932: this included Gandhi’s fast-unto-death over the issue of separation between Hindus, followed by Ambedkar’s compromise on the issue of separate representation in what would come to be known as the “Poona Pact.”

The Resolution of Group Rights

One could argue that the religious and political aspect of the caste question was resolved by Indian constitutionalism two decades later.

1) Hinduism was secularized, which is to say that temples were thrown open to all Hindus, and a range of court cases in the first decades after independence produced something akin to a corporate Hinduism.^{xvii}

2) Second, caste was translated into the language of socio-economic deprivation, that is, it became class-like. The practice of untouchability was singled out, as were the Scheduled Castes, [hereafter, SC] and Scheduled Tribes [hereafter, ST] as vulnerable communities deserving constitutional attention. Article 15(4) specifies that the state must make special provisions for the advancement of any socially and educationally backward classes of citizens, or for Schedules Castes and Scheduled Tribes. Article 46 of the Constitution, a Directive Principle, stipulates: “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and forms of exploitation.” Article 330 provides SC/ST reservations in the Lok Sabha (the lower house of Parliament), while Article 332 provides for reservations in state legislative assemblies.^{xviii} Article 16(4) advocates “any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.”

Legislation for Scheduled Castes and Scheduled Tribes is thus of two kinds: a set of unusual provisions in criminal law that seeks to protect SCs and STs from violence, (an issue I have considered in detail elsewhere), and policy measures enhancing their socio-economic development. The latter has enabled three *kinds* of reservation, each focused on the provision of dignified livelihood: (1) in legislative bodies, government service, educational institutions, and milder forms in housing and land allotment; (2) in such provision of scholarships, grants, loans, health care, and legal aid for SCs; and (3) special measures, mostly legislative, to protect SCs and STs from practices such as bonded labor, untouchability, and land alienation.

Taken together, these measures index a complex set of (secular) transformations. Equality within Hinduism is predicated on equality between castes, and “Hinduism” has increasingly becoming a juridical construct. Second, because caste is associated with material deprivation, it has become central to narratives of upward mobility, self respect and dignity on the one hand, and to discourses of economic (in)efficiency and productivity on the other. Finally, since lower caste and untouchable populations constitute the numerical majority of the Indian body politic, the franchise has proved crucial to reordering structures of inherited privilege and social capital. We have here a situation of “democracy against capital, and against history.”

Let me pause here to draw attention not to postcolonial innovation but to colonial mechanisms such as the separate electorate and reserved representation, mechanisms assumed to have played a pernicious role in the politics of separation the preceded sub-continental Partition. The separate electorate associates identity with interest and seeks to render this into an identifiable politics, e.g., *Muslim*

politics. Meanwhile reserved representation—where a general electorate votes for a Dalit, or Scheduled Caste candidate—is predicated on a politics of upliftment, and empathetic identification. Uppercastes are asked to choose Dalit candidates who best represent their community: that is, a broader electorate is asked to decide who best represents the sectional interest of a deprived community. In this case the alignment of a sectional interest with the general will carries the greatest chance of success.

It is clear from the Indian example that policy politicized identity, but it is equally true that policy can become a significant site of politics. Postcolonial constitutionalism tried to undo earlier social distinctions, and to perpetuate new ones as the political rhetoric shifted from (colonial) governance, to (national) redistribution. In each case, some identities were recognized as exceptional, and worthy of special political dispensation. Justification for building exception into policy frameworks thus had a long life, whether the aim was to produce proportionality in representation, enhance representation for the vulnerable, or create parity between communities that were otherwise incommensurable.^{xix}

This is not merely an Indian story. A global history of interwar experiments with political representation remains to be written, though scholars have studied the range of forms that was produced to deal with this moment of political precarity: mandates, protectorates, federation, not to mention separate electorates, ethnic voting, and reserved representation. The effort to resolve the problem of representation through creative policy is thus an essential element in the story of democratic governance and political citizenship in colonial/postcolonial contexts, but as well, for Europe. What is specific to the subcontinent are the processes by which caste's secularization was conjoint with the problem of group equalization: its effect was to render caste newly political (as legislated identity), while depoliticizing it as a social identity. This is an issue I elaborate in the sections below.

The Politics of Comparison:

What, then, are the similarities and the differences between India and the United States as “affirmative action states”? Marc Galanter's book, *Competing Equalities*, on India's far-reaching efforts to transform the socio-economic disabilities of caste through an expansively conceived quota system played a central role in the initial framing of the comparison nearly thirty years ago. In his now classic text, Galanter made the startling and little-noticed claim that compensatory discrimination was “very much a domestic product, produced with little guidance or borrowing from abroad,” a unique kind of civil rights law that addresses caste (like race in the United States) as a collective structure of deprivation and impoverishment.^{xx} Galanter's statement about India's creative interpretation of affirmative action law is worth underscoring both for what it tells us about the general problem of producing equality in societies with long and complex histories of inequality, and in outlining distinctive aspects of India's affirmative action regime.

Two issues require emphasis. The first has to do with the role of the state. In his dense review of *Competing Equalities*, the political theorist Robert Meister argued that similarities between affirmative action in India and the United States should go beyond merely noting that each addressed the relationship between “individual” and “group.” Meister argued that it was necessary to explore how “the social characteristics which identify groups and individuals become linked to the criteria of legitimate and illegitimate advantage,” (938) and how “the social basis of individuation and equalization is articulated in the process of political mobilization and legitimation.” (938) Meister’s focus is political: how can social advantages (quotas, or preferential treatment in education and employment) be morally justified to produce consent? And here Meister finds a significant difference between American commitments to *non-discrimination* versus India’s focus on instruments for engineering *reverse discrimination*, two distinct interpretations of what it means for the state to be in the business of “undoing” historic harm.

No doubt political power anchors the question of how group advantage or disadvantage impacts the individual, but so does the relationship between state and society structure the difference. In the United States marketized social relations and a regime of private property have been highly effective in providing a structure of plausible deniability for racial discrimination, while India has produced a statist resolution of the caste question in the absence of deeper social transformation. Justifying racial exclusion through the protection of private property rights (covenanting, redlining, mortgage exclusion, etc.) is a distinctive element of American racism, and goes back to the troubling porosity of personhood and property that structured plantation slavery, and later defined the republic as a post-emancipation society.^{xxi} Meanwhile Nehruvian developmentalism combined democracy with social continuity. This contradiction was both symbolized and elided by a planned economy governed by upper caste technocrats. Capital has remained in the hands of dominant agrarian and commercial castes, and exclusion from the means of production has been a significant site of localized conflict, though these have taken the shape of peasant and proletarian struggles often Marxist, or autonomous left parties, and with occasional Dalit or lower-caste leadership. While the relationship between race and caste, or caste and capital is a significant one for activism, the state in the United States and in India utilize markedly different mechanisms for relating social difference with private property, and with market relations.

The differences are also apparent in policy design. In the United States courts are tasked with negotiating preferential treatment as a policy that must align with the constitutional commitment to “due process” and “equal protection.” Interpretational leeway in balancing preferential treatment against equal protection—note that this is the origin of the simplistic group vs. individual paradigm for framing the conflict—exists in the degrees of scrutiny (strict, intermediate, or minimal) that is afforded judges in making their decisions. In contrast, commitments to individual rights, poverty alleviation, and group equalization are embedded in the Indian Constitution as concurrent projects of state action. Compensatory discrimination is

primary: government is tasked with ensuring preferential treatment, and not merely the courts. “The Indian Constitution thus defines the duty of preferential treatment not through the rights of equality of opportunity and non-discrimination, but rather, as an *exception* to them.... *Compensatory preferential treatment, thus, does not have to be rendered consistent with non-discrimination.*” (my italics, 947)

The commitment to empowering Scheduled Caste and Tribes in particular, and lower-castes more generally, should not obscure major sites of legal conflict: courts are routinely asked to interpret the scope of rights and duties that are parceled out between different parts of the Constitution, for instance between Fundamental Rights, and Directive Principles. However, it is important to emphasize that the executive is tasked with remediation for a history of discrimination that is perceived to be so enormous as to render universal commitments to equality inadequate. “Thus, in the area of equality which has the highest constitutional priority, courts must defer broadly to initiatives taken by legislative and administrative bodies.” (947) The interpretive leeway for courts (and the state) in India has thus turned on eligibility, on deciding who the rightful beneficiaries of preferential treatment ought to be, and not on judicial scrutiny in balancing equal protection against affirmative action as in the U.S. context. The consequences are noteworthy: the inadequate subject has become the object of excessive (state) attention, and strategies of equalization need feel little embarrassment about privileging some groups over all individuals.^{xxii}

Courts in the United States routinely find themselves justifying the ethics of affirmative action each time they encounter a demand for preferential treatment, while the authoritarian character of state-sponsored reservations in India allows the policy to operate at a doxic level. Thus it would be possible to argue that India’s constitutional commitment to affirmative action is extensive as a set of policy measures, while the courts have rarely articulated novel interpretations of caste equality. This is evident in recent debates about the necessity for a caste census—there has been no counting of castes since the all-India census of 1931—that has pitted those who view a census as a troubling reminder of colonial reification of caste identity, against those who argue that updating robust policies to ensure social justice are hamstrung by the lack of data.^{xxiii}

What are the political consequences of affirmative action legislation? What political practices develop around social divides, with one side occupied by citizen-subjects who are the beneficiaries of historical discrimination, and the other inhabited by a demographic majority defined as socio-culturally deprived? What happens when policies of equalization, usually viewed as temporary and exceptional measures, become normative mechanisms of political socialization? In earlier work, I argued that one reason for the far reach of Indian reservations derives from a rather unique ideological assumption that animates it: the “subject of reservations” is the *demographic majority*, that is, lower castes, especially untouchables, who have experienced social suffering. This is quite different from normative models, which assume that it is the (demographic) minority that suffers the historic effects of

socio-economic discrimination. In the Indian context, it is the majority that has suffered from caste exclusion in one form or the other, while the demographic minority has historically functioned as a social majority.

The slippage between norm and number, between a normative commitment to equality of opportunity, and the policy of preferential treatment as inefficient and excessive is a social challenge launched by upper castes against state policy. Unlike charges of reverse racism by the critics of affirmative action in the United States, their criticism is not that policies of compensatory discrimination are casteist, or that it perpetuates untouchability. Instead, uppercastes in India have erected an artificial divide between “merit,” or the “open category,” on the one hand, and reservations on the other. This bifurcation of social space—which does not hew to the population ratio of upper to lower castes, it should be noted—divides society into a meritocratic order, on the one hand, and a society of relaxed norms and regulation to enable “backward” caste mobility on the other. One can’t help but notice that this maps onto the divide between intellectual and manual labor that governs caste hierarchy. Or, that the domain of merit can be *unrepresentative* from a democratic perspective—it could contain only uppercastes, for instance—without this being viewed as a problem. The problem arises, perhaps, when one realizes that the division of social space into spheres of merit and reserved representation relies on two rather different principles of social organization that the state has tried to balance. The first is the principle of ascription, now given a new lease of life through the state’s argument that castes persist, though as remnants of a discriminatory order. The other is the liberal conception of the majority as a community of preference, or in this case, a community of excellence and achievement, rather than an aggregation of primordial identity clusters. Though arguments for merit might appear both modern and emancipatory, they scant the history of unequal accumulation of scarce resources, histories that become enabling contexts for resource maximization in the present.

The divide between history and the present, between tradition and modernity, and between reservation and merit has become an incendiary site for political action in India today. Though it is more complexly configured than the group vs. individual division that characterizes American debates about affirmative action, this paradigm nonetheless secures caste hegemony. Pernicious histories of stigma and hierarchy empowered Indian efforts to convert differences of caste into inequality, but there should be little doubt that there has also been severe resistance to their commensuration including through the sanctioned violation of Dalit bodies.

The past two decades have transformed both the character of affirmative action, and the state in India. (The situation in the United States post-Bakke is similar, of course.) Beginning with a set of political-legal challenges for expanding reservations to include the so-called Other Backward Classes, conflicts over reservations have shifted to demands for preferential treatment in private sector employment, and the adoption of American-style demands for diversity in the workplace.^{xxiv} As well, the emergence of Dalit capitalism is challenging the focus on state employment as the

route to caste mobility, and posits entrepreneurial capital as a substitute for engagements with an unresponsive state. Newer forms of disadvantage—Muslim deprivation, gender inequality—function as *competing inequalities* that alter the state's earlier focus on caste discrimination.^{xxv} Together and separately these developments point to two kinds of retreat from a focus on the state: the first is by uppercastes whose hold on moveable and immovable capital remains hegemonic, and who have embraced economic liberalization. (Dalit capitalism seeks to make inroads into this space, and for this reason remains caught in an accumulative, rather than a redistributive mentality. Dalit capitalism might be viewed as a politics of resentment par excellence in its aggressive pursuit of neoliberal policies.) The second is a more insurgent form of retreat that criticizes the tokenism of the state, the collusion of state and society in the continued violation of vulnerable castes, and increasingly makes common cause with global antiracism and human rights. In either case, the present incarnation of the affirmative action state is under assault as it responds to privatization, globalization, and new practices of progressive politics. Though law and policy are important on their own terms, they are also vulnerable to the exigencies of politics, which functions as a putatively "absent" albeit structuring presence.

The Cunning of Recognition

This paper has focused on addressing some of the more distinctive aspects of Indian affirmative action, and for that reason has purposefully exaggerated differences between the American and Indian examples, or otherwise scanted the complex historical circumstances of the United States in many an instance. In lieu of a conclusion, and as incitement for your comments, suggestions, and criticism, let me extend or elaborate upon some of the points of this paper.

1) At its broadest level, the dilemmas of affirmative action (either in the Indian or the American iterations) are illusory, and tied to the reifying qualities of the state form more generally. One might be tempted to ontologize the reification of oppressed groups (e.g., Dalits, African-Americans, women, homosexuals, and others simply *are* that way): this is how historic discrimination against them has worked, after all. Adopting the liberal stance that discrimination is wrong is not an adequate response to the fact that state reification operates as/sets in place social ontology. Challenging discrimination is a first and necessary step, but this ignores the ways in which identity categories become embodied, "this is who you are because this is the body you inhabit." State functionaries operationalize race and caste through bureaucratic constructs, while simultaneously claiming that the categories are "real," and thereby disavowing any responsibility for their perpetuation. This is what allows states to be invested in antiracist policy while misrecognizing the social reproduction of unequal relations as diversity, or "difference." Thus anti-racist activism that takes the partial (and public) politicization of caste and race at face value risks being reactive in its response. The trick is to understand instead that the state effect, which functions on the model of misrecognition, is itself ideological and malleable in surprising ways.

Looking at the two trajectories, Indian and American, may give us clues about how to get beyond the impasses that currently bedevils each. In this regard, the tension between the exceptional and the universal subject—and the Indian Constitution’s privileging of exception as the route to universality (and caste equality) more generally—reverses liberal democratic norms, which assume universality as the operative condition. This position carries its own dangers, e.g., that an effort to balance competing inequalities against each other exacerbates political particularism as the route to political universality. What the model offers, however, is a more complex and layered understanding of the formation of identity as implicated in a number of domains—ritual, religion, law, economy, and society.

2) How might we account for apparently similar manifestations of casteism and racism such as exclusion, incarceration, ghettoization, and oversymbolization? The affirmative action state is a historically specific state form that has emerged out of histories of violent exclusion and dehumanization. It is even possible to speculate that it is specific to settler-societies—Australia, South Africa, the United States come to mind, while one would have to work harder to make India “fit” into this paradigm, though the characterization would not be inapposite. The argument was central to nineteenth century polemics. For instance, caste radicals adopted the Aryan/Dravidian divide, a troubling nomenclature derived from ethnology and comparative philology to be sure, to characterize Brahmins as Aryan invaders who had conquered the indigenous Dravidians through cunning and treachery.

The euphemization of violence as law distinguishes all state forms. What is distinctive in this case is the institution of an elaborate legal edifice for the management of identity. Can we therefore go beyond assertions of “the state effect,” to prioritize law as a crucial site for addressing the effect of the state? If so, we would need to think about law’s specificity: one must act *as if* legal structures are capable of delivering justice once harm and injury are presented in familiar legal idioms.^{xxvi} A peculiar quality of law has this effect: though law has the power to define, it also appears to be an external source of redress. It is the seeming externality of the law, the sense that law is somehow different from categories that govern, that leads people to accept the force of law. This aspect of law—law as always already excessive, law experienced as the *force of law*—must be balanced against the self-sufficiency of law as linguistic practice and a regime of punishment, as the legal theorist Robert Cover has argued.^{xxvii} It is the dual character of law that has empowered the appearance of caste and race as legislated identities, even as constitutional commitments to universal rights have also, and necessarily pulled courts into the adjudication of historic harm.

3) The last word belongs to those who engaged with and expanded the imagination of rights, who conceived new political utopias. Attending to this world of subaltern thought opens up the possibilities of connection and comparison across global social processes. Below I offer a glimpse of how two moments of global significance—slave emancipation, and interwar internationalism provoked by the Bolshevik

revolution—provided opportunity to address the interanimation of race, caste, and capital.

a) In 1863, or thereabouts, the “Colored Man,” who appears to have been a neo-literate ex-slave in New Orleans, commented on the brutal and enduring contradictions of slavery, and the hypocrisy of its abolition. He did so by writing in the margin of selections from the Constitution and the Emancipation Proclamation, and by inserting commentary that contrasted the emancipatory potential of the texts, against evidence of whites’ denial of rights to newly freed black citizens. This dialogue with the founding documents manifests a difficult love. The Colored Man painstakingly reproduced the text of the Constitution in his uncertain hand as if to make the Constitution a part of his very being. He challenged those parts of the text where his appearance was marked by its simultaneous devaluation [e.g., the 3/5 clause] by channeling the radical democratic aspirations of Preamble: “We [are] the people.”¹

Settling historical accounts is important, but it is equally important to recall historical openings, those brief moments of possibility. Slave emancipation is one such moment of global import: it was quickly foreclosed but not before anticaste thinker Jotirao Phule had expressed his admiration for Abraham Lincoln who had freed the American Negroes, or W. E. B. Du Bois located the origins of modern racial capitalism in slavery’s legislated abolition. The America of law and constitution had exerted her long shadow across the Atlantic, and beckoned Jotirao Phule (1827-1890), founder of the Satyashodak Samaj [Truth Seeking Society] who rewrote history as the history of caste enslavement by using the model of Atlantic world slavery. We will recall that for Du Bois, the “Negro problem” begins with the legal freedoms announced by the Thirteenth, Fourteenth, and Fifteenth Amendments.

b) In *Black Reconstruction*, Du Bois sets himself the difficult task of addressing how race is refigured, occluded and dematerialized by modern capital; he sets himself the difficult task of stretching Marxism while holding it accountable for its inability to explain the racism of the white proletariat. B. R. Ambedkar would also criticize Marxism for its inability to imagine a radical politics that did not merely avenge capitalist exploitation with proletarian violence. Both Du Bois and Ambedkar were obsessed with the law, and legislated hierarchy. Du Bois’s luminous term *abolition-democracy* creates proximity between a specific history (American slavery), and a universal idea (democracy), and thus functions as a pithy reflection on the grounding contradictions of American democracy: its historical entanglements with enslavement and unfreedom. Obsessed with Hindu juridicality, Ambedkar would end his life as the modern Manu, the eponymous lawgiver, by leaving his mark on the Indian Constitution. His posthumous text the *Buddha and His Dhamma*, finds a

¹ Christopher Hager, “A Colored Man’s Constitution,” *New York Times*, August 30, 2013. Last accessed September 7, 2013: http://opinionator.blogs.nytimes.com/2013/08/30/a-colored-mans-constitution/?_r=0

new origin for the history of caste and inequality, after the defeat of Buddhism. His Dalit-Buddhist is the subject to come, but she is also the originary insurgent.

Researching the travel of ideas and their transformation is a project that a number of scholars including myself are embarked upon. The examples above have the very humble aim of gesturing to that deep and extensive archive, by noting how moments of rupture became occasions for insurgent thought, for imagining social justice. The appearance of these social worlds of struggle and suffering within legal domains is a great triumph, an affirmation; meanwhile the impossibility of commensuration becomes the occasion for creative politics.

ⁱ There is an extensive literature on the issue which includes: engagement with the history of the race/caste question in the context of Indian indenture (C. F. Andrews, G. K. Gokhale, Gandhi are some important figures in the debate), the intersections of caste and race as comparable systems of dehumanization, a major focus for anticaste and antiracist thought (B. R. Ambedkar, Jotirao Phule, W.E. B Du Bois, M. L. King, C. van Woodward), literary influences of African-American literature on Dalit writing; and the place of caste for the sociology of race (Oliver Wendell Cox, Gunnar Myrdal), and the influence of studies of race for anthropologists of caste (Gerald Berreman, Louis Dumont). A very small selection of recent work I consider to be important includes: Manan Desai, "Caste In Black and White: Dalit Identity and the Translation of African American Literature," *Comparative Literature*, forthcoming; Daniel Immerwahr, "Caste or Colony: Indianizing Race in the United States," *Modern Intellectual History*, 4, 2, (2007): 275-301; Paul Kramer, "Harsh Deviations: The Rise and Fall of the Caste School of American Race Relations, 1936-1948," unpublished papepr presented at the workshop on race and castem Columbia University, September 27-28, 2013; Balmurli Natarajan and Paul Greenough, *Against Stigma: Studies in Caste, Race, and Justice Since Durban* (Hyderabad: Orient Blackswan, 2009); Nico Slate, *Colored Cosmopolitanism: The Shared Struggle for Freedom in the United States and India* (Harvard University Press, 2012); Kamala Visweswaran, *Uncommon Culture: Racism and the Articulation of Cultural Difference* (Durham: Duke University Press, 2010).

ⁱⁱ Select titles include: David Armitage, *The Declaration of Independence: A Global History* (Boston: Harvard University Press, 2007); Susan Buck-Morss, *Hegel, Haiti and Universal History* (Pittsburgh: University of Pittsburgh Press, 2009); Lynn Hunt, *Inventing Human Rights: A History* (New York: W. W. Norton and Co., 2008); Uday Mehta, *Liberalism and Empire* (Chicago: University of Chicago Press, 2000); Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Harvard University Press, 2012)

Sankar Muthu, *Enlightenment Against Empire* (Princeton: Princeton University Press, 2003); Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton: Princeton University Press, 2005); Andrew Sartori, *Liberalism in Empire* (Berkeley, CA: University of California Press, 2014).

ⁱⁱⁱ I suggest a more dialectical model for addressing the relationship between Euro-American theory and non-Western social specificity than does Dipesh Chakrabarty, in his discuss of provincialization, which does not allow for thinking about how new modes of abstraction and concept-formation could develop in these spaces. Chakrabarty's injunction to "put thought in its place," and to recognize the historical provenance (and therefore parochialism) of democratic liberalism is predicated on its impossibility: Chakrabarty acknowledges (even as he resists) European thought as a geohistorical universal. Ultimately Chakrabarty acknowledges the poison in the "gift" of enlightenment thought, for this gift burdens the colonized with living incommensurable orders of abstraction; of navigating between universal categories, and resolutely stubborn practices of daily life and lived belief. Dipesh Chakrabarty, "Translating Lifeworlds into Labour and History," *Provincializing Europe* (Princeton: Princeton University Press): 72-96.

^{iv} Lani Guinier has argued that racist societies experience "qualitative vote dilution" through the one person-one vote principle. Instead, Guinier suggests a system of distributed voting where "voters get the same number of votes as there are seats or options to vote for, and they can then distribute their votes in any combination to reflect their preference." Lani Guinier, *The Tyranny of the Majority: Fundamental Fairness in Representative Democracy* (New York: Free Press, 1994), 7. As I hope to show, the history of colonial societies reflects long-standing experiments with proportional voting, separate representation, and political weightage, which was mobilized for a rather different set of purposes: to maintain parity between religious, ethnic, or caste communities with a culturalized framework of colonial governance.

^v Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 2011).

^{vi} Joan Scott, "The Conundrum of Equality," Institute for Advanced Study, Occasional Papers, March 1999, Paper Number 2: 3.

^{vii} The well-known essay by T. H. Marshall, makes the point by arguing that the divide between formal and substantive rights is to be bridged sequentially with rights claims progressing from civic, to political, to socio-economic rights. Marshall, *Citizenship and Social Class* (Cambridge: Cambridge University Press, 1950). Oddly, the recognition vs. redistribution argument put forward most famously by Nancy Fraser, posits a conceptual divide between elements that are, in Marshall's argument, part of an evolutionary framework. Nancy Fraser, "From Redistribution to Recognition: Dilemmas of Justice in a post-Socialist Age," *New Left Review*, 1/212 July-August 1995; the responses by Judith Butler, Joan Scott, and Iris Marion Young in later issues of the *NLR*; and Nancy Fraser, "Rethinking Recognition," *New Left Review* 3, May-June 2000

^{viii} Terms such as non-Brahmin, Depressed Classes, and Scheduled Castes were produced in response to social struggles by lower caste and untouchable groups to consolidate themselves demographically (the term non-Brahmin is an "invention" in this regard), render themselves into pan-Indian collectivities, and challenge stigmatizing social descriptions that reproduced their low status in the Hindu order.

^{ix} By fixing tribe, race, religious groups and especially caste as modes of social categorization, the imperial census of 1871–72 instigated complex interactions between indigenous class-caste formations and colonial classification. Requiring people to identify themselves by governmental categories, census technology emphasized the differential electoral weight of religious communities, promoted identification with caste, and facilitated lower-caste demands for rights and representation.

^x Abrams, “Notes on the Difficulty of Studying the State.” See also Timothy Mitchell, “Economy and the State Effect.” More....

^{xi} The minority question in the European empires was a crucial precursor to WWI, of course, and structured global transformations of the first half of the twentieth century, of course. I do mean to suggest that this “European” problem would develop in a distinctive manner in the colonies at the time.

^{xii} Marx’s essay “On the Jewish Question,” stages a tension internal to liberal thought by emphasizing the troubled dependence of the citizen, a figure of political universality, on forms of embodied particularism such as religion. Marx understands minority as a political form that exposes the internal tensions of liberal thought, and an identifying mechanism by which liberalism incorporates difference. In Marx’s prescient observation, the secularization of religion is what makes religious difference politically consequential. By asserting that minority is “the political manner of emancipating oneself from religion,” Marx prescribed freedom *from* religion as the first step toward human emancipation. (The troubling part of this argument is Marx’s assertion that the divide between religion and politics mirrors the material contradiction of the liberal state form, and that this is a contradiction enabled by Jewish capital.) If for Marx it was necessary to annihilate religious particularism, religious identity was the grounds for inclusion and exclusion, immanent rather than extraneous to the political field in colonial India.

^{xiii} The Constitution articulates the state’s responsibility for group equalization in both the Directive Principles, and Fundamental Rights clauses. Additionally, government is tasked with group equalization as an essential function of government. I return to these issues later in the essay.

^{xiv} Robert Meister, “Discrimination Through the Looking Glass,” *Wisconsin Law Review*, 1985: 946-947.

^{xv} Austin Granville, *Working on a Democratic Constitution: The Indian Experience* (New York: Oxford University Press, 1999). For studies of minority identity and the Constituent Assembly debates, see Iqbal Ansari, “Minorities and the Politics of Constitution Making in India,” in *Minority Identities and the Nation State*, ed. D. L. Sheth and G. Mahajan (Delhi, 1999), 113–37; Rochana Bajpai, *Minority Rights in the Constituent Assembly Debates, 1946–1950*, QEH Working Paper Series no. 30 (Oxford: University of Oxford, November 30, 1999); James Chiriyankandath, “Constitutional Predilections,” *Seminar*, no. 484 (December 1999); Shefali Jha, “Secularism in the Constituent Assembly Debates, 1946–1950,” *Economic and Political Weekly* 37, no. 30 (July 27, 2002); and Ralph Retzlaff, “The Problem of Communal Minorities in the Drafting of the Indian Constitution,” in *Constitutionalism in Asia*, ed. R. N. Spann (London: Asia Publishing House, 1963), 55–

73. Also see Faisal Devji, "Hindu/Muslim/Indian," *Public Culture* 5, no. 1 (1992): 1–18; and Gyanendra Pandey, "Can a Muslim Be an Indian?" *Comparative Studies in Society and History* 41, no. 4 (1999): 608–29.

^{xvi} Hindus historically did not all share what was supposed to constitute a religion: not creed, deity, ritual or text. Those wished to promote Hindu identity consequently had a problem that was the reverse of Christianity's in the secular age. They had to assert the existence of a common religion and give it an overarching status, when for more than a millennium there was little that linked the various sects and faiths in the subcontinent. Except for two things, whose importance varied over time: one was the invisible thread that united "caste Hindus" against so-called untouchable castes; the other was the idea of an external enemy, such as Christians, "secularists," and above all Muslims.

^{xvii} More broadly, secularism was identified with the state's equal protection of all religions, rather than a retreat of the state from the domain of religion. This has meant that debates about religion have been central to the changing character of Indian secularism. It has also meant that religion is a public issue, and the site of enormous state intervention.

^{xviii} Recent constitutional amendments, the Seventy-Third and Seventy-Fourth Amendments of 1992, respectively, provide reservations in local government at the rural *panchayat* and municipality levels, and stipulate that one-third of those seats be reserved for women from the SC/ST communities.

^{xix} This is not a paper on constitutionalism *per se*, but it might be interesting to speculate that constitutional design, e.g., the minimalism of the American constitution, as opposed to the over-specification of populations, problems, and their remedies in the Indian Constitution has to do with their varying responsiveness to context and history.

^{xx} Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (Delhi: Oxford University Press, 1984), 361. A more recent evaluation of the reservations regime can be found in Marc Galanter, "The Long Half-Life of Reservations," in *India's Living Constitution: Ideas, Practices, Controversies*, ed. Zoya Hasan, E. Sridharan, and R. Sudarshan (New Delhi: Permanent Black, 2002), 306–18. Though space prohibits me from taking this up, Indian affirmative action can be periodized before and after "Mandal." This recognizes the significance of government efforts to implement the recommendations of the Mandal Commission (1979) in 1989, by acknowledging the necessity for extending reservations to the Other Backward Classes. The decision that set off massive uppercaste protests and legal challenges with regard to excluding the 'creamy layer,' or those whose socio-economic positions did not reflect group disadvantage (*Indira Sawhney v. Union of India and Others* 1996). Recall that in the same period, affirmative action policies in the United States have come under new legal constraint if they are take recourse to quotas for producing racial diversity in education: *United States: Regents of California v. Bakke* (1978), followed by *Grutter v. Bollinger* (2003).

^{xxi} I am not forgetting about the extermination, mass displacement, and resettlement of native Americans on the one hand, and the history of immigration on the other: these issues complicate a singular focus on racial exclusion. Though it does not

make a strong case for reparations *per se*, see the brilliant (and wildly popular) essay on race and capital, Tahnise Coates, "The Case for Reparations," *The Atlantic*, June 2014: www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631/ (Last accessed February 25, 2015).

^{xxii} I hope it is clear that this is a reading of constitutional measures for their founding assumptions and internal consistency, and not for the fairness of their results. Implementation of policy is another question altogether and I think there would be near-universal agreement as to their failed outcomes.

^{xxiii} Mary E. John and Satish Deshpande, "The Politics of Not Counting Caste," *The Economic and Political Weekly*, Vol. XLV, No. 25, June 19, 2010 for a discussion of different stakes in the debate.

^{xxiv} Mandal: Marc Galanter, "Who are the Other Backward Classes? An Introduction to a Constitutional Puzzle," *Economic and Political Weekly*, October 28, 1978;1812-1828; Rochona Bajpai, "Rhetoric as argument: Social justice and affirmative action in India, 1990," *Modern Asian Studies* 44, 4, 2010: 675-708; Ashwini Deshpande, *Affirmative Action in India* (Oxford University Press, 2013); Satish Deshpande and Usha Zacharias eds. *Beyond Inclusion: The Practice of Equal Access in Indian Higher Education* (New Delhi: Routledge, 2013).

^{xxv} Sachar Committee Report; Veerappa Moily Oversight Committee for enhanced OBC representation in higher ed.

^{xxvi} Slavoj Žižek, "The Supposed Subject of Ideology," *Critical Quarterly* 39, no. 2 (Summer 1997): 39-59.

^{xxvii} Robert Cover, "Violence and the Word," in *Narrative, Violence and the Law*, ed. Martha Minow, Michael Ryan, and Austin Sarat (Ann Arbor: University of Michigan Press, 1995), 216.