
Sovereigns beyond the State: On Legality and Authority in Urban India

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“Legal consciousness,” the awareness of rights and the use of litigation, have for decades been integral parts of everyday life of millions of people across India. Yet, events over the past decade suggest that the awe of the law in India, and its corollary, the sovereignty of the state, are in sharp decline. Successive governments seem unable to curb, or prevent, clashes between religious communities and attacks on minority communities in the country; the police force is widely regarded as brutal and incompetent; a large number of crimes and murders are never reported or investigated; the courts are overburdened and ineffective with conviction rates below ten per cent; political parties, movements and criminal rackets routinely subvert the law, commit crimes with impunity, and so on.

In his study of communal violence and social order in North India, Paul Brass points out that the state and the police force, are not seen as constituting public resources enforcing impartial justice. The use of courts and litigation is but one among several means in the battle over authority and resources in the North Indian countryside where “. . . the use of force and violence is, if not routine, at least not something unexpected or exceptional” (Brass 1997, 275). The disregard of rules, the expectation of being able to “fix things” by pulling a few strings, or by merely asserting one’s importance, education and command of English vis-à-vis poorly educated policemen and officials are practices at the heart of the Indian middle-class world. Although the open contempt of courts by public figures elicit moral condemnation, few educated Indians will rely solely on courts, even fewer will trust a hallowed “civic sense” in their everyday lives.

How do we understand the coexistence of both a widespread endorsement of legality and a proliferation of legal arguments in India’s public

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culture, and an equally widespread endorsement of retribution and killings during communal riots and the widespread use of private revenge and violence when settling private affairs and family conflicts? Conventional arguments of the weakness and fragmentation of the state, or of the “incomplete modernization of society,” seem ineffective here. As Brass points out, India is not characterized by any Hobbesian state of lawlessness. Competing networks of power and authority seek to organize violence, retributions, and entitlements (Brass 1997, 275–79). This often happens through deploying the police, sometimes through the courts, and at other times through armed gangs of men from a community, or a political movement—and very often through the hired help of local strongmen. For all its conspicuous presence and repressive power, the Indian state obviously does not exercise any monopoly of legitimate violence. The central challenge is, in other words, to understand how *de facto* sovereign power—the right to kill, punish and discipline with impunity—historically has been configured and distributed in India. Not formally but in practice. In the following I shall merely attempt to sketch a preliminary historical and conceptual framework that may enable us to understand how, what I would call, three competing repertoires of authority¹ are organized around the *de facto* practices of sovereignty in the name of the law, the community and the local “big man.” These repertoires are founded on violence, or the threat thereof, but also structure distinct, if morally ambivalent, registers of public and political agency.

SOVEREIGNTY, STATE, AND LAW IN INDIA

Giorgio Agamben’s crisp formulation that “the sovereign sphere is the sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice” (Agamben 1998, 83) allows us to understand sovereignty as a fundamental, if often unacknowledged, dimension of different forms of power and authority.

Agamben starts from Carl Schmitt’s idea that sovereignty originates in what he called the exception (*Ausnahme*), that is, the capacity to suspend both laws and norms and thus to create a conceptual and ethical zero point from where “the Law” can be given. Sovereign violence presupposes an ethical vacuum—however delimited or temporary—wherein beings and bodies are reduced to what Agamben calls “bare life”—simple biological life. Agamben sees this operation of power as

¹ This is a slight reformulation of Jonathan Spencer’s idea of politics conducted in terms of a set of “repertoires of power” expressed as various styles of public conduct and speech (Spencer 2002).

an irreducible core of the practices of modern states—for example, in their capacity to take and exterminate life through its ethical neutralization and desymbolization. Linking sovereignty not merely to the formal right over life and death but to the actual disregard of life, Agamben affords us to think further and to disentangle sovereignty from its conventional moorings in territory and state power.

Georges Bataille's idea that the source of sovereign power resides in life itself—in the body—and in the will to disregard it, to take life at will and with impunity, may be helpful here. Let me make three preliminary propositions about the character of sovereign power.

First, sovereign power is essentially an unstable and precarious form of power whose efficacy as a social authority capable of disciplining and creating subjects is dependent on its constant public reiteration and performance, or the rumors thereof.

Second, sovereign power originates in acts of violence characterized by excess—not merely in their brutality but also in their apparent lack of intention and moderation. Sovereign violence—whether committed in the name of an individual, a community or a state—is essentially self-referential as it asserts itself through terror and disregard of life (Bataille 1991, 220–34).

Third, insofar as sovereignty is constituted by the capacity for excessive violence, abstaining from violence, or acts of generosity toward subjects, become perceived as equally excessive and lacking in rationality. This only adds to the mystical aura of sovereign power that also underpins the actions of the modern state. This couplet, terror and generosity, is at the heart of the inherent ambivalence of any form of public authority that in turn depends on what I, in a different context, have termed its profane as well as its sublime dimensions (Hansen 2001a).

Drawing on Dumezil's work on Indo-European myths, Marshall Sahlins argues that the notion of the king as a "stranger," an usurper who gradually gets acculturated through marrying a woman "of the soil," is at the heart of a large number of myths of origin of royalty across the world. This amounts to an ontology of the political, or kingship, argues Sahlins, as something that is not entirely reducible to society itself, because "usurpation itself is the principle of legitimacy" (Sahlins 1985, 80–81). The enduring magicality of sovereignty arises from this ineradicable element of something "foreign" (78)—that is, something which cannot be understood in terms of a society's everyday function. Sovereign power grows out of the combination and tensions between the violent and creative "war function" (*celeritas*) and the judicious, venerable and productive "peace function" (*gravitas*), the combination of "king and priest, will and law" (90). Understood in a more generalized sense, violence or terror remains the "foreign" and disrupt-

tive dimension, which the productive and generous dimensions of sovereign power always seek to domesticate.

Understood as fundamental in the ontology of political life, we can begin to understand sovereignty as existing in many overlapping and competing forms at many levels within the same territory and temporal frame: from the family and clan, to larger communities, to the nation-state. Local forms of adjudication of disputes, community elders meting out punishments, revenge killings, blood feuds, shadow economies or control of territories and people by gangster syndicates, or political organizations defying the state, are all examples that illustrate how fragile and incomplete the sovereignty of the state is in many parts of the world. The Hobbesian idea of sovereignty—the power to make final and incontestable decisions within a territory and its population—must, in other words, be seen as a tentative and never completed endeavor that constantly struggles to halt its own fragmentation.

Such an understanding of sovereignty as multiple, provisional, and always contested, and of the state as an unfinished and continuous project of control and subordination resonates meaningfully with the trajectory of colonial and post colonial state formation in South Asia.

The conceptual history of sovereignty in India has not yet been fully written but there exists a rich literature on both colonial and precolonial state formation. The debate on precolonial state formation especially in South India demonstrated the emergence of “segmentary forms of state” (Frykenberg 1977; Stein 1980). Here, the central state received tribute but served primarily as an arena for exemplary performance of power and privilege that subsequently were replicated and copied at relatively independent subcenters, or “little kingdoms” (Cohn 1987, 320–42), where much of the actual taxation and adjudication over life and death took place. This system accorded considerable room for independence and change of loyalties at lower levels while the sovereignty of the central state was often of a less tangible nature. Sovereignty was performed to maintain a moral-religious authority or “ritual sovereignty” (Inden 1978), that often revolved around performance of religious rituals and sponsorship of central religious institutions and pilgrimage sites (Appadurai and Breckenridge 1976).

This conception of sovereignty depended on what Dumont, in a reading of classical texts and inspired by Dumezil and Hocart, calls the “unity of the two forces,” *brahman* and *ksatra*, the spiritual and the material, the priest and the king (Dumont 1970, 63). This unity was, however, always contested and fragile, and the moral superiority of either of the poles never settled. Dumont concludes, nonetheless, that the realm of politics and the state—guided by *dandaniti* (lit. “the conduct of punishment”) and the principle of *artha* (interested action)—was only

“relatively autonomous with regard to the all-embracing domain of religion and absolute values” (86–87).

Dumont’s perspective is textual, classical and Hindu and cannot incorporate the types of sovereignty that developed over the nine centuries when Muslim political elites dominated northern and central India. This so-called Muslim period has often been interpreted as the introduction of an entire Muslim civilization and the imposition of a specific form of political organization on the subjected peoples.² It often has been assumed that the “foreignness” of Muslim rulers was a liability, and that legitimacy only could be established during periods of “indigenized” or “tolerant” rule. With notable exceptions,³ this perspective—which originates in efforts to portray British rule as saving India from the despotism of a corrupt and decadent Muslim elite (see Sen 2002, 41–56)—has inhibited the inquiry into the actual configurations of sovereignty and legitimacy of precolonial forms of state and rule. For our purposes it suffices to conclude, however, that precolonial India had a longstanding tradition of segmented, overlapping and stratified forms of sovereignty.

The East India Company governed large parts of the Indian subcontinent for almost 150 years. It acquired statelike features and its policies, military campaigns, and establishment of sovereign power on behalf of the Crown were hotly debated in Britain throughout the period. India became in many respects the laboratory for the development of technologies and ideologies of modern colonial rule, and, indeed, a central field of experience that shaped British ideas of race, culture, domesticity and domination. It was the encounter with India that consolidated the idea that British “forcefulness” and ability to establish its sovereignty throughout the world originated in the “natural liberty” of English men, a liberty founded on ownership of property and on patriarchal domination of domestic life (Sen 2002, 1–17).

The configuration of overlapping and parallel sovereign powers in the emerging colony was complex. It involved local landholding *jagirdars* and little kings retaining substantial rights of taxation and adjudication, local courts and *panchayats* (councils) deciding local disputes and offences, and religious authorities adjudicating matters considered exclusive to Muslims or to various Hindu castes or religious communities, and administering land and property. The military dominance

² This is evident even in scholarship of a materialist orientation, for example, Habib (1963).

³ Studies by Andre Wink on the character of Mughal sovereignty and land administration, Gordon’s study of the Maratha Empire, and Eaton’s studies of state formation in medieval Bengal all try to escape the civilizational perspective on so-called Muslim rule in India (Eaton 1996; Gordon 1994; Wink 1986).

won by the Company armies in the early nineteenth century and the economic resources at the disposal of the Company were not employed to create anything resembling the indivisible territorial sovereignty that was the ideal in Europe. This form of state was deemed unfeasible for India where reliance on the legitimacy of loyal local princes and allies was seen as the only means to maintain political stability. The Company experimented with a range of legal-political arrangements to maintain the formal and symbolic sovereignty of the Mughal empire and various notables across the subcontinent. Indian subjects were generally deemed “barbaric” and unfit for freedom and self-determination because of the absence of unalienable private property and stable domestic discipline. Company officials warned in the 1770s that if such conditions were created, the quest for freedom would also arise (Sen 2002, 17).

In 1790 it was decided to create a more uniform system of law in British-controlled India and to promote a professionalization of the legal profession (Cohn 1987, 463–82). Under the influence of Christian missionaries and in the interest of rationalization, it was decided to promulgate a uniform criminal legislation, and to create a native “colonial public” through Western education and selective incorporation of elite groups into the structures of what was to become a modern colonial society. The Penal Code promulgated in 1833 was, as Radhika Singha notes in her study, an important step in a process aimed at “civil pacification” and “disarming of Indian society” (Singha 1998, ix). The Code tried to establish a monopoly of violence and qua its representation of sovereignty as indivisible and the Company state as both universal and “neutral” vis-à-vis particular communities it also introduced a novel construct in Indian history: the universal legal subject. Moreover, the colonial state began to define the notion of a “public interest,” a term that obviously made very limited sense in a society structured by deep segmentation of morality, justice and economy along lines of caste, locality, and religious community. The construction of the public interest was driven by a desire to limit the power of obligations toward local notables and heads of households and thus produce freely available labor and more pliable subjects. Moral concerns in the name of universal standards of humanity, and the desire to create proper domesticity in India, also played a role in justifying bans on a range of practices within the family—*sati*, slavery, infanticide, adultery, and so on (121–62). Similarly, the application of uniform rules of taxation aimed at substituting local whimsical despotism with what was seen as rational law encouraged industriousness (xv). These types of legislation aimed at reforming Indian society, of exercising authority without consulting local communities and at establishing by decrees an

“enlightened” sphere of life, interest and opinion in the name of universal norms.

This imposition of the sovereignty of the colonial state through procedures of legality, taxation and the spectacles of the courtroom was based upon the use of systematic and often excessive violence and the assertion of the right of the local *faujdar* (military commander) to have the ultimate right to decide to take life. The Company’s courts used capital punishment much more often than any of the native courts, permanent gallows were erected on public places, prisons constructed and a great deal of effort went into modifying Islamic law into a stricter form that used capital punishment with more frequency (xi–xii). Punishment was institutionalized in a growing range of penal colonies and prisons. Although these institutions were explicitly modeled on European forms, the bodies of the convicts were nonetheless differentiated along lines of caste and religious communities and notions of pollution and appropriate food for the convicts remained highly contentious issues, often involving the local population around the penal colonies (Yang 2004).⁴

The body also was the site of various forms of resistance to the colonial assertion of sovereignty. Brahmin communities across North India refused in the eighteenth century to pay taxes as it violated the privileges of their ritual authority that exempted them from taxation and most punishments. Causing harm to a brahmin body was considered a grave sin. Brahmins would stage hunger strikes (*dharna*), sitting naked at the door step of the British collector, disrupting the household, refusing to get up and blaming the tax collector for the harm or death, caused. In other cases, brahmins would put old women on top of funeral pyres, or even behead their old mothers, in front of the colonial administration offices, thus inflicting “blood-guilt” and causing the restless spirit of the woman put to death to haunt the colonial officer (86–91). In an attempt to subject brahmins to its penal regime, the Company courts decided to turn the traditional tattooing, *godna*, into a penal instrument. Refraining from executing brahmins, their convictions were tattooed on their foreheads before being sentenced to prison terms and thus literally writing the sovereignty of the colonial state upon the bodies of the ritual specialists of the Hindu social order (Singha 2000, 166–67; Anderson 2000).

Even when draconian measures were taken, the Company insisted on presenting its governance and forms of justice as indigenized and in keeping with traditions of rule and sovereignty in the subcontinent. The revolt across North India in 1857 was a watershed that inaugurated

⁴ Anand Yang has pioneered a string of studies of colonial penal systems. See Yang (1985); Sen (2000); Mills (2000); Anderson (2000); and Mills and Sen (2004).

an era of direct rule and more intensive and biopolitical rationalities of governance.⁵ In the latter half of the nineteenth century scientific racism became a dominant paradigm in starkly paternalist forms of governance of colonial people, as well as the laboring populations of Europe and North America.⁶

Although racial distinctions kept Indians out of high offices until the last decades of the Raj, the more important distinctions were those of class and social hierarchies. The reproduction of a distinction between respectable and nonrespectable subjects became the bedrock of everyday governance and the incipient forms of native representation from the end of the nineteenth century. The political elites of the princely states, and the *zamindari* landlords dominating the countryside, were incorporated through a traditionalizing register. The *darbar*, the Mughal imperial court where the lesser lords paid their respect and tribute to the overlord, was reenacted at local levels and was also adapted to the lavish coronation of English royalty as Emperors of India up to 1911 (Cohn 1987, 632–79). Another register, decidedly modernizing, was employed in the efforts to create a modern, educated middle class as the backbone of the modern urban economy and bureaucracy.

Beyond these relatively small groups, the vast number of ordinary people encountered sovereign power in much harsher and more violent forms. The state's administration of justice was divided into criminal offences falling under the Penal Code, and other types of offences or disputes that fell within communitarian forms of justice, either as Personal Law applying to family, religion and inheritance, or as disputes adjudicated by caste *panchayats*, local notables or local headmen of villages. In many cases, members of the so-called criminal tribes—the traditional form of “bare life” and often itinerant and nomadic communities as the *banjaris* in western India—were punished for offences after the most superficial court procedures. The overriding problem was to gather information about criminal activities and as in other fields the colonial officers encountered multiple problems of classification and categorization. The campaigns against the *thuggees* in central India in the 1830s and 1840s and the passage of the Thuggee Act in 1836 created an important precedent in criminal law in India in terms of its attempts to know, classify, police, and ultimately eradicate what was called a “great pollution.” The unequivocal identification of individuals for the purposes of recruitment of labor, soldiers, and “coolies” in the large,

⁵ This is reflected in the academic literature on the period (see, e.g., Bayly 1998, 238–75; Washbrook 1978).

⁶ Many of the studies that are highly critical of colonial governance focus on this period (see Cohn 1987; Chatterjee 1993; Dirks 2001; Pandey 1990).

floating, and largely illiterate population was especially difficult. Despairing in the face of what appeared as “dishonest” and changing forms of self-identification, police officials began in the 1890s to apply fingerprinting techniques. The method proved extremely popular and soon the fingerprints became a ubiquitous means of identification used in a range of routine bureaucratic operations from exams to job and pension applications. Respectable Europeans, princes and gazetted officials and others “well-known by other means” were, however, exempted (Singha 2000).

In spite of this obvious fragmentation and lack of a monopoly of violence, the colonial officers were determined to assert and perform the paramountcy of colonial power. Although many of the colonial policies on crime, health and population resembled the policies pursued in Europe, “colonial biopolitics” seemed always be mediated by principles of indirect rule and segmentation. Except for the relatively small sections with western education who were believed to be able to behave like responsible quasi-citizens, ordinary Indians were not seen as individuals, or single subjects. The elementary unit of governance was communities, *jatis*, religious categories or sects whose inner affairs, practices, and beliefs were governed by passion and irrational impulses and therefore to be left to adjudication by authorities within those communities. The problem of public order, especially in urban areas, where supply of disciplined labor was a persistent concern, remained the main concern of the colonial police.

Among police officers in the urban centers, a doctrine of the specific requirements of colonial policing emphasized that the use of force had to be more resolute and excessive than in Europe because of the religious passions among the masses and the tradition of strong authority in the Orient (Chandavarkar 1998, 174–94). These notions of the necessity of visiting excessive violence on the bodies of the ordinary and impoverished groups in Indian society to maintain order and stability is still in vogue among police officers in contemporary India (Hansen 2001b, 121–59).

In spite of these efforts, the worlds of the colonial subjects remained somewhat opaque and impenetrable and were in most cases approached through what was assumed to be local informers and “natural leaders” of communities and localities. Colonial biopolitics shared many rationalities and modes of intervention with similar policies in Europe but the methods of disciplining, of persuasion and negotiation did not aim at creating responsible and self-governing individuals as Cruikshank points out in the context of the early-twentieth-century United States (Cruikshank 1999). The paramount aims of colonial bio-politics were to maintain stability and order, whereas the grooming of colonial quasi-

citizens was highly selective and always circumscribed by both class and race.

SOVEREIGNTY AND THE NATION

These configurations of authority and sovereignty in colonial India make it evident why the incipient Indian nationalism saw the nation as lodged in what Chatterjee has called “the inside,” family, language and community. In spite of multiple transformations and legal interventions, this was regarded as the uncolonized heart of Indian society, while the colonial state was seen to make its presence felt in only the “outer” and public domains (Chatterjee 1993, 1–14). This figure of thought, inspired by European ideas of popular sovereignty, resonated well with a lived reality of segmentation and fragmented sovereignties in India. In almost perfect inversion of colonial inability and reluctance to interfere in the moral life of communities, nationalists could now construct the community (*samaj*, *qaum*) in opposition to the “cold monster” of the state and the corrupted world of politics.⁷

The idea of the sovereignty of the nation and its constituent communities as separate from, and independent of, the state became more problematic as the state moved from being “outside” and alien to become the very heart of the national imagination. The new state and its constituent assembly set out to reform the enormously diverse society through constitutional and legal means. The unprecedented number of Directive Principles in the Indian constitution obliging the government to pursue social and cultural reforms on a large number of issues bears witness to the enduring power of legalistic thought. Sudarshan notes this continuity between the colonial and postcolonial state: “[the framers of the constitution] were more inclined to trust the judiciary and the civil service because these institutions were expected to remain aloof from politics and insulate the state from the consequences of partisan pursuit of narrow interests” (Sudarshan 1999, 108–09).

The era of Nehruvian reformism saw an unprecedented intensity of governance, of regulation in intimate matters of faith and family life,⁸

⁷ Ayesha Jalal’s recent work on sovereignty and selfhood among Muslims in South Asia (1999) attempts to straddle, unsuccessfully in my view, both an argument of the Muslim community as reified/constructed by the colonial state (e.g., pp. 570–76), and, at the same time, internally cohesive and meaningful on the basis of shared notions of *qaum*, attachment to *watan* (the territorial homeland) (13), and even the existence of a shared “Muslim psyche” (14).

⁸ Such as the Hindu Code Bill that standardized and legislated Hindu family law. For a critical discussion of this intervention, see Chatterjee (1995).

of interventions in the name of economic development, the use of law to uplift communities and ameliorate the effects of caste discrimination (see Galanter 1989). The constitution granted formal and equal rights to all citizens and unequivocally defined the individual as a legal subject. Yet, colonial assumptions regarding the constitutive differences between the educated who were fit for responsible citizenship, and the uneducated who should be dealt with as communities, persisted.

Marc Galanter's analysis of Supreme Court cases adjudicating the legitimacy and validity of conversions from one religion to another is a case in point. Galanter highlights the practice according to which the validity of conversion among the "lower strata" of society is made to depend on evidence of actually changed ritual practices. This is partly because rituals are assumed to be "of utmost importance for people of this class," as one judgment states, and, one should add, because the utterances and self-descriptions from "this class" supposedly cannot be trusted. In the case of educated people the required evidence is merely an unequivocal enunciation of intent, for example, "I am a Muslim and no longer a Hindu." It is noteworthy, however, that in both cases it is not enough to say, for instance, "I am not a Hindu," or to renounce all Hindu practices. One remains a Hindu, Muslim, etc. until one has proved in practice, or said unequivocally, that one is something else (Galanter 1989, 237–58). In practice, the secular state left no room for secularity and little space outside communities.

In spite of a concerted effort among leading bureaucrats, planners and political leaders to curtail the structures of indirect rule and community sovereignty in post colonial India, many decisions, also on life and death, were never taken to the state or the legal system. The everyday administration in localities, political mobilization, the implementation of laws and government decrees, as well as court proceedings and policing, remained firmly mediated, if not controlled, by local notables and hierarchies of "big men" who exercised *de facto* sovereignty in most everyday matters. I shall return to this below.

The disjunction between these discrete repertoires of authority widened as state interventionism intensified in the early 1970s. Emergency rule from 1975 to 1977 demonstrated how deep-seated and entrenched this configuration of authority was. Indira Gandhi sought to create a biopolitical dictatorship by administrative decree. The regime intruded deeply into intimate matters of the body and reproduction when it embarked on the infamous program of forced sterilization and extensive slum clearances. The regime also tried to enforce a conservative public morality and to discipline the working class and the poor—supposedly to safeguard the nation and further its economic development, while also aiming to curtail the power of informal sovereigns,

local middlemen and brokers. Even this grand experiment in authoritarian centralization ultimately had to rely on the very structures of informal sovereignty in slums and neighborhoods it sought to curtail. The functioning of the state at the level of localities had always depended on such figures. Soon, the draconian policies of the Emergency turned into a randomly brutal and dispersed despotism (Tarlo 2000).

Opposed to this biopolitical authoritarianism stood a coalition of disparate forces, among them the Hindu nationalist movement, rallying around Jayaprakash Narayanan's Gandhian call for "total revolution" of the outlook and ethos of the political world, the state and the economy. At one level, this was a protest against corruption and highhandedness appealing to the idea of the nation as a moral and sovereign entity beyond, and in opposition to, the state and the political world. At another level, it was a struggle over how far and deep the state and its sovereign prerogative should be allowed to enter into issues of family, morality and reproduction that conventionally had been regulated in the name of community norms.

ASSERTING THE SOVEREIGNTY OF THE HINDU COMMUNITY

Organizations and movements aiming at social transformation through moral reform and self-making beyond the realm of politics, the law, or the state, have proliferated in postcolonial India. They base their arguments on the historical reification of "communities" as the natural repositories of morality and ethical life in India, separated from, and conceptually opposed to, the state. The *locus classicus* of this reification of community was disputes over family matters and the control of female sexuality as in the protracted debates over the age of consent—from the 1860s to 1929—and the Special Marriage Act of 1872 that made assertions of religious and social barriers to marriage unlawful. The defense of the right of various communities to define their own sexual practices invoked a wealth of arguments: how climatic differences between East and West impinged on maturity and sexual desire, the impossibility of regarding an Indian woman as an individual in the Western sense, etc. (Gupta 2001, 121–40; Sarkar 2001, 191–262). These debates—premised on the rights of men to control, discipline, and punish members of their family, and to define the domain of worship and belief—were crucial in the formation of communities as more clearly bounded entities endowed with rights and public representation. In North India, colonial legislation and female education were widely portrayed as emasculating Hindu men and corrupting weak and gullible women. Ostensibly concerned with matters of religion and

morality, the formation of a Hindu community in the late colonial period revolved, in other words, vitally around notions of virility, pride, and potency vis-à-vis Muslims and the government, and a reduction of the feminine to the function of the reproductive mother made national icon (Gupta 2001, 120–222).

The Hindu nationalist movement has, with considerable success, exploited and redefined these deeply rooted historical definitions of the Hindu community as defined by a perpetual defense of Hindu bodies—male and female—against the state and the law. Hindu nationalists claim to organize Hindus in a parallel civil society of its own—a Hindu nation beyond the state with the *Rashtriya Swayamsevak Sangh* (RSS) as its chief executive, protector and purifier; with specialized mass organizations such as the *Vishwa Hindu Parishad* (VHP) and the *Bharatiya Janata Party* (BJP) intervening into families and exercising strict discipline over the bodies and minds of their members.

The so-called religious parliament, *Dharma Sansad*, organized by the VHP is supposedly adjudicating religious matters of importance to Hindus. This rather chaotic body of *sadhus* from all over India, is also passing resolutions on nuclear armament, international trade, Kashmir, globalization, and so on. According to the VHP, which seeks to control the *Sansad*, these issues cannot be fully adjudicated by courts or the state as they all concern faith, national feelings and other higher causes. These were also the arguments used when the VHP refused to respect High Court verdicts on the disputed Babri Masjid in Ayodhya in the early 1990s. The systematic violence against Muslims in the 1980s and 1990s organized by the VHP and other Hindu nationalist organizations has consistently been portrayed as expressions of “spontaneous anger” felt by “Hindus” as such, supposedly when their religious or national feelings were hurt. The burning and killing of Muslims by Hindu crowds were, in other words, nothing but expressions of the inert sovereignty of the Hindu community-nation, an entirely natural and inevitable violence that cannot—and should not—be controlled by the state.

The ambivalence regarding state power in the Hindu nationalist movement indicates the protracted attempt to straddle the tension between the sovereignty of the community-nation and an equally strong desire for a powerful state capable of maintaining order (Jaffrelot 1996, 169–71). This contradiction has been eased over the last decade. The Indian state has expanded its armed forces and promoted rapid capitalist development and the Hindu nationalist movement has been able to move the dominant national discourse toward a majoritarian-ethnic notion of Hindus constituting the core of the nation.

The recent pogrom in Gujarat in February–March 2002 was a chilling demonstration of how the RSS and BJP combine these repertoires. The

pogrom which lasted for weeks and in which thousands of Muslims perished, was justified as a “natural” reaction of the Hindu *samaj* as such to revenge the deaths of dozens of Hindu *kar sevaks* (temple volunteers) killed in the arson of a train in the town of Godhra. As so often before, the Hindu nationalist movement sought to become and embody the “community” by killing its imagined enemies in its name. The BJP government in Gujarat also provided crucial conditions for the pogroms by withdrawing the local police force and administration. Soon after, the government banned the direct reporting of the riots by privately owned TV channels. Similarly, the central government—also dominated by the BJP—refrained from effective measures for several days, allowing the local units of the RSS and VHP and their many local supporters to wreak deadly revenge on Muslims all over the state.

Although an official inquiry has been ordered into the riots, BJP asserted its *de facto* right to kill with impunity in the name of the Hindu community and its disregard for legal procedures and ideas of accountability by staging a large *yatra* (procession) in the state in August–September. The *yatra* was led by the state’s BJP chief minister—who on this occasion claimed to lead the procession in his capacity as a “Hindu leader.” The procession went through hundreds of towns in the state, many of which had been the scene of arson and slaughter of Muslims a few months before. To the BJP, the control of state power meant the capacity to prevent the assertion of state’s formal monopoly of legitimate violence, to suspend the law and legal procedures, to transfer what was seen as overly diligent police officers, and to openly celebrate that the Hindu community had taken revenge, and that “natural justice” had been exercised.

While the exoneration of crowd violence in Gujarat is part of a well-organized political strategy, it draws on a longstanding tradition in South Asia of regarding crowds as legitimate expressions of grievances of communities, and as spontaneous outbursts of anger and emotion. Police investigations and official inquiries characterize crowds as faceless entities and—in the tradition of the colonial police—the cause of riots are attributed to imprecise factors such as incitement of hatred, inexplicable “tensions” (*tanav*), rumors, and so on.

Crowds are regarded as sovereign entities in that they may be dispersed and controlled by the police as crowds, but individuals are never held accountable for violence or destruction in the course of crowd action. To kill in a crowd is, in other words, to kill with impunity. To enter the crowd is also to enter a momentary space of exception where normal rules of behavior and conduct are suspended for a time and other rules and norms prevail in the moment of effervescence. The other is not merely an enemy but is turned into “bare life”—simple life

upon which the sovereignty of the crowd and the community it claims to represent can inscribe itself. Crowds are driven by a search for “enemies” and their property that they can destroy and devour “in an almost cannibalistic fusion of self and other” (Tambiah 1996, 275). What Tambiah in passing calls the “substantialization” that evolves in a crowd (219) is obviously linked to a visceral economy of the physicality of the crowd: the sense of loss of bodily autonomy and the experience of a cosubstantiality that lead crowds to become “spaces of exception”—not with a single mind, but unified by a momentary sense of bodily authenticity, certainty, and exhilaration—driven by what Elias Canetti calls a crowd’s “love of density,” and therefore an entity without doubts or fear.

Although the Hindu nationalist movement has extended the logic and justification of crowd violence to become an index of community sovereignty, the use of the crowd and its violence as a legitimate political expression of anger and sovereignty is extensive across the political spectrum in contemporary India. As a repertoire of authority and moral argument, “community” is very powerful indeed *qua* its historical connotations of delineating a measure of “collective intimacy,” that is, its incorporation of issues of honor, family, bodies, and reproduction. It remains unclear if the Hindu nationalist movement harbors any larger project aimed at reconstructing the state into an expression of the Hindu community, resembling the merging of state, society, and nation into an organic whole that characterized European fascism.

Hindu nationalism is premised on an assertion of the sovereignty of (upper caste) Hindu communities, which makes any Jacobin project of reform and intrusion into the family rather improbable. Hindu nationalists are not opposed to authoritarian and violent methods, but their vision seems to be to *control* the state and the legal process rather than *becoming* the state and hence through the use of state power and the sovereignty of the law, to assert a Hindu nationalist worldview. There are, indeed, real apprehensions among Hindu nationalists regarding the legal system, the courts and the expanding culture of protest and litigation in India. There is also a desire to take strong action that hammers through the sovereignty of the state—but it is a rather selective authoritarian desire pertaining only to curtailment of the rights of minorities or the perceived danger of illegal immigrants or “antinational elements.” Most of the demands formulated in VHP’s document *The Hindu Agenda* from 1998 concern banning of cow slaughter, ousting of foreign missionaries, repealing the official recognition of Urdu, rewriting of history books, state support for Hindu charities and pilgrimage, strict censorship against criticism of “Hindu culture and tradition,” and so on (VHP 1998). In this document, VHP seeks to construct itself as the

very embodiment of the nation elevated above political divisions. In spite of its apprehensions regarding state power, it urges all political parties to adopt the appropriate legislation “to protect Hindus” and to enforce these laws by use of the full powers of the state.

For all its pride in organization and capacity for action, the Hindu nationalist movement has resigned itself to a rather limited and conservative set of goals that never impinges on the social world of the middle class it emerges from. Yet public violence, or the threat of such violence, is at the heart of the movement: the uniforms and display of masculine values of the RSS volunteers, their militant marches through cities, the emphasis on physical training and the strong male body, the violent rhetoric, and so on. The RSS has successfully made itself into the armed wing of the “Hindu community,” the war principle of *celeritas*, both disruptive, alien and fascinating, that neither the state, nor minority communities in India, dare to challenge anymore.⁹

“BIG MEN,” REPUTATIONS, AND RUMORS OF VIOLENCE

The local “big man” is ubiquitous in everyday life and central to most relationships between authorities and ordinary people in urban India. For those without education, such figures are vital in approaching authorities and formal institutions. In one of the few studies of its kind, Mattison Mines’s explores the making of “big men” in the city of Madras. Contrary to Dumontian ideas of the marginality of individuality in South Asia, Mines argues that individuality in South Asia is a quality that can be achieved within spatially and socially defined networks of knowledge, reputation, and trust. Individuality is accorded to those who are known as men of eminence, those who are respected and known as big men (*periyar*)¹⁰ by virtue of their generosity, their modest behavior, trustworthiness, and command of resources and networks. This earns respect as an individual capable of qualified judgments and as someone whose advice can be sought on a wide range of matters. Such men have what Mines calls “civic individuality” (Mines 1994, 18–23) and enjoy considerable autonomy. The maintenance of this status depends on one’s reputation which in Mines’s ethnography is constituted by three elements all conveyed by stories and rumors about the person: his good character (*kunam*), his generosity (*vallanmai*) and his efficacy, that is, his ability to prosper and make things happen according to his will within institutions, or in civic life more generally (42–43, 56–58).

⁹ The RSS and affiliated organizations were banned three times in independent India: in 1948–1950, in 1975–1977, and parts of the movement in 1992–1993.

¹⁰ In Hindi, such a figure is often simply known as *bare admi*, a big/important man.

Yet, generosity and power are surrounded by permanent suspicions of excessive self interest and public display of opulent wealth (60–65).

Mines's figures represent the *gravitas* of responsible and ostensibly law-abiding civic leadership. Other figures wield equal influence and have big reputations for both efficacy and generosity, but these are founded on reputations of violence, or connections with political parties or the underworld. These are men who represent the war-principle of *celeritas*. They are not necessarily respected but always feared, and even admired for their ruthlessness and their ability to "get things done."¹¹

Networks of strongmen, brokers, and fixers can be found in any neighborhood, slum and chawl in Indian cities. Most of the activities of these men defy conventional distinctions between legality and illegality: they assist in getting water connections, jobs, housing, school admission; they adjudicate in disputes between neighbors; they provide protection for those who are loyal and dependent on them, and so on. But some of them also service debt, extort money, beat up opponents, and threaten those who defy or betray them. However morally ambiguous these men and their activities are in the eyes of local residents, they are, nonetheless, the elementary units of local politics, of social work, and of cultural organization.

In western parts of India, many of these men have found a political home—and some respectability, visibility, and eminence in their locality—within the chauvinist organization and political party Shiv Sena (Shivaji's Army), taking its name from a seventeenth-century warrior king. Shiv Sena styles itself as the embodiment of the sovereignty of the Hindu *samaj*. Through its network of local branches (*shakhas*) in Mumbai and other urban areas in Maharashtra, Shiv Sena has for three decades provided symbolic centers of localities, structures of informal governance and everyday assistance to local people by assuming a role as defiant, angry, and self-made men who will confront the state, or other communities without fear. The organization has asserted its power through a systematic use of violence against opponents and its "enemies"—from South Indians, left wing trade unions to Muslims. Yet, Shiv Sena never aimed at creating a "shadow state" or alternative forms of governance. On the contrary, Shiv Sena's vague program revolves around the state as the provider of jobs and benefits, recognition, rights, order, etc. The organization has been a dominant political force in Bombay for several decades, and became the ruling party in the state of Maharashtra in the latter half of the 1990s.¹²

¹¹ Kakar (1996), Hansen (2001b), and Eckert (2000) have recently attempted to cover some of this ground, in Hyderabad and Mumbai, respectively.

¹² The establishment and early history of Shiv Sena is analyzed in Katzenstein (1981) and Gupta (1982).

Shiv Sena's maverick leader, Bal Thackeray, style himself as "a law unto himself." He strives to be the incarnation of the obstinate *sainik* style of masculinity that is so central to his authority in the organization and his popularity throughout Maharashtra. This style was succinctly articulated by a longstanding member of Shiv Sena: "A Shiv Sainik is not a man that if someone comes up to him and slaps him, then he will not simply show the other cheek. We are not that type. My hands work out and he will get the slap, not me. I will not be slapped and allow him to slap." Although Shiv Sena relied on long-standing practices of brokerage and local strongmen in urban neighborhoods, the organization systematized the use of violence against opponents and added a new spectacular and public dimension to violence. Protests in the streets, brutal enforcement of *bandhs*¹³ called by Shiv Sena, and generous sponsorship of spectacular popular festivals, now became ritual performances of the power of the organization and the popular world of the ordinary Hindus it claimed to express. Shiv Sena was essentially action, a young man told me: "With action we can at least achieve something [. . .] we always retaliate and react directly to any issue. We always react in mobs. We have the attitude of attack rather than tolerance. [. . .] In fact, the weapon is the most powerful. If you are armed you can get things done. They (the Muslims) have taught us that attitude and therefore we took up weapons." Thackeray asserts sovereignty as a person and a leader when he claimed that he had every right to defend Hindus by killing Muslims during the 1993 riots. This widely accepted discourse of retributive justice paints a picture of two sovereign communities locked in conflict onto death. Shiv Sena and other militant Hindus cherish the myth of the Mumbai gangster king Dawood Ibrahim as the secret leader and avenger of the Muslim community—its "monstrous double" so to speak. The Hindu community also needs protectors and avengers, and Shiv Sena performs this part, as men relieved from the burden of moral injunctions or the law, only faced with the fundamental task of defending the honor of Hindus in what they see as a state of permanent war.

Violence may be justified in various ways but the terror and surplus of meaning contained in violence, or the threat thereof, can never be fully contained or explained because it has no other cause than itself. Hence the attribution of sublime qualities and sovereignty to those who assert their own law, their seemingly archaic claim to sovereignty. After having been considered bad taste in the city's elite circles for decades, the Thackeray family became object of the most admiring writing and sycophancy.

¹³ The closure of shops and public services in protest against the government, or in reaction to political events or riots.

phancy as Shiv Sena assumed political power in the state (see Hansen 2001b, 200–05). The basis of this admiration was not only that Thackeray had demonstrated his will to break the law and create his own whimsical rules. It also was that he commanded the loyalty of thousands of men who had proved themselves to be willing to, and capable of, mimicking his style, creating havoc in the city they claimed to own.

Two biographical sketches may illustrate how the making of informal sovereign power combines both the reputation of violent ruthlessness—the self-interested and unpredictable—and acts of generosity and efficacy of the big man. Both these men were at various points connected with political parties and their careers and styles bear witness to a broader trend in the culture of politics in India.

Shashikant Sutar is a legend in the city of Pune. Sutar comes from a poor family and a lower caste community. He started his career as a tiffin-carrier in the industrial area in western Pune in the sixties. Through Shiv Sena he launched a career as a city councilor in the suburb of Kothrud, and was able to emerge as the primary political broker enabling the astonishing growth of the Kothrud area, which today is a residential middle-class area with more than two hundred thousand people. His political career was crowned by a period as minister in the Shiv Sena cabinet in the late 1990s. As a young man he was drawn to Thackeray's depiction of South Indians as the source of all the alienation and evils of city life. He liked Shiv Sena, "because it was so attacking": "In those days the South Indians were everywhere. [. . .] They had so much clout that it became increasingly difficult for the common man even to walk the roads [. . .] because of their business and their strong unity, they were very powerful [. . .] they were all over in the restaurant-business and they had small joints, also."

Sutar and some of his friends were active in Hindu-Muslim riots in the city in 1969 and the early 1970s and soon acquired a reputation as courageous and daring street fighters. Sutar recalled the period as exhilarating and formative: "We were rebels and several of us were nearly thrown out of our families because of our work in Shiv Sena. We were seen as hoodlums and criminals and only later did my family see that Thackeray was right. [. . .] I grew with Shiv Sena, it molded my political career and I will always remain loyal to Balasaheb."

Sutar and his group gradually established themselves as efficient and unorthodox in solving civic problems in the emerging suburbs where local landowners squeezed tenants into provisional slums while attempting to get permissions for the construction of houses. Sutar proved to be not only an effective protector of local residents but also an inordinately efficient operator in the politico-administrative structure in the civic administration. Deftly employing his personal charm,

his autodidactic knowledge of the law and the reputation of his *sainiks* as violent and ruthless, Sutar became the central access point for builders who wished to invest in housing schemes.

Within a decade, Kothrud emerged as one of the largest residential areas in Pune and Sutar became known as the “King of Kothrud.” Today he owns several big houses, has close connections with the municipal and state bureaucracy, most political parties, and enjoys an immense popularity among the residents of Kothrud. His house is open every morning and in the evening. Hundreds of people come every week to seek advice or help regarding civic amenities, tenancy-problems, or financial assistance. Sutar has established a dense network of contacts and a patronage power that enables him to solve most problems with a few phone calls. Sutar’s flamboyant lifestyle with several large houses, a fleet of cars, several semi-official mistresses, and his careful nurturing of his constituency has made him a living legend in Pune. His generosity, cunning, and efficacy are widely admired qualities. He donates money to charities, temples, to the Shiv Sena party and to local causes. “You never return from Sutar’s house with empty hands” as local residents would put it. Persistent rumors of corruption, extortion and *goonda* (criminal) methods have accompanied him throughout his career and even cost him the post as minister of state. Yet, none of this has affected his personal standing in the western parts of Pune where he is said to control four to six seats in the Municipal Corporation and one or two seats in the State Legislature (*Vidhan Sabha*). Sutar’s status as a big man with financial power, political clout, and a capacity for violence has given him considerable autonomy and a personal, territorially defined basis of power to the extent that his person almost expresses the ownership and identity of Kothrud. He adjudicates local conflicts, several political parties have tried to win him over, and bureaucrats know that Sutar can stall their careers, or have them demoted or transferred, at his will. Sutar is a force to reckon with, a local sovereign because his trajectory has created a reputation of generosity combined with a capacity for ruthless violence if his path is crossed.

The importance of the local strongman and his reliance on violence and *celeritas* is not a phenomenon specific to Shiv Sena, as my story of Javeed, a Muslim “big man” in Mumbai testifies to. Javeed came to Bombay with his parents from an impoverished village in Uttar Pradesh. He grew up in a chawl in the old mill district in Bombay. Javeed had to leave school early to help his father run the small flour-mill he had set up. Javeed learned traditional wrestling at the local *gymkhana* and soon emerged as the best *pehlwan* in the neighborhood. He acquired a reputation as a strong and short-tempered man who one

only challenged at one's own peril and who was involved with a range of dubious and illegal activities in the area. Javeed had become one of the hard men, colloquially known as a *bhai* (brother) aspiring to become a *dada* (literally grandfather) used colloquially as "elder brother" for a gangster/*bhai* of some standing.

Almost inevitably, he clashed with the local *dada* in his street and killed him in a street fight. He served time in prison but does not seem to regret anything. The murder, and his sentencing, were questions of *izzat* (honor) and self respect. "If I had not done it, he would have killed me or humiliated me—I had no choice." After his release, Javeed started a business in scrap metal that over the years has made him a relatively wealthy man with two cars and two of his sons studying in college. He has also turned to Islam and donates money to a local *madrasah* and to a local college attended by his sons. He is known to most residents in the neighborhood and respected for what he is—a warrior who can defend the neighborhood in times of crisis as it happened during the Bombay riots in 1992–1993. During those tense weeks Javeed was in the streets with his men and his sons, fighting the Hindu crowds (led by Shiv Sena) that attacked Muslim neighborhoods all over the city.

Most respectable and educated middle class families in the area despise Javeed and what he stands for. But many poorer residents, and particularly those who belong to the same kinship network (*biraderi*) as Javeed, will seek his help in the modest office with a telephone, a table, and a few chairs. Most evenings, Javeed receives visitors who ask for assistance in getting a job, help with getting a telephone connection, donations for poor families, or protection against abusive employers or landlords. Often a few phone calls from Javeed solves the problem, as his reputation in itself makes a difference. In other cases some of Javeed's men pay a "visit" to those concerned. These acts, in turn, only confirm the efficacy of his power and perpetuate his reputation. Like many Muslims, Javeed's family had supported the Congress party for decades but after the riots in 1992–1993, they turned toward the North Indian based lower caste Samajwadi Party for protection and representation. Javeed is now the chairman of their local branch and ran for office, unsuccessfully, at the latest municipal elections in Mumbai. He hopes to expand his reputation as a political leader in the future but is well aware that his reputation as a *dada* may be one of the obstacles: "Because I have been in prison people think that I am still a criminal. But one mistake when you are young should not follow you throughout life. I have changed and many people know that I will put myself at risk to protect our *mohalla*. They understand that and will elect me the next time."

Unlike Sutar and other Shiv Sena men, Javeed does not enjoy the pro-

tection and support of the police. As a Muslim with a criminal record he can be singled out as a threat although the police hardly interferes in the everyday life of Muslim *mohallas*. Like other low-income areas and slums these areas are governed and policed at a distance and always through ubiquitous local informers and leaders. To assist the police is another route to some local standing and power but not to respectability, or a good reputation. Javeed clearly hopes that a political career can enhance his autonomy and make him a more effective informal sovereign than he already is.

The reputations and autonomy of local big men are always contested and need to be maintained and reiterated. They have all established their reputations, their autonomy and their sovereignty through the killing of external enemies or internal rivals. Their reputations and power are circumscribed by other local forms of authority—the police force, political parties, the bureaucracy, and so on. They are also competing with men whose reputations are founded on money, education and prudence, the principles of *gravitas*, and whose claims to represent locality also carry much weight. While the local big man may challenge the authority of the bureaucracy at some junctures by bending the law, he may also be a useful partner in maintaining order and in creating legibility.

One key to understanding how the repertoire of informal authority operates alongside those of the community and that of legality lies to my mind in the concept of *mardangi*—manliness/virility—a Persian term found in Urdu, Hindi, and other Indian languages. As we saw styles of masculinity are at the heart of local registers of respect and eminence. It is the performance of a certain style of public authority—generous but also with a capacity for ruthless violence—that determines who can define and represent the community, defend neighborhoods, punish, and discipline. Adelhah's work on the ethic of *jawanmardi* (literally “young man”) in Iran suggests that *mard* is linked with a broader, and older model of playful and defiant masculine sovereignty. *Jawanmardi* refers to a code of ethics that combines generosity and courage and refers historically to the young, mobile, unattached men who are morally ambiguous, at the edge of respectable society, but also heroic and in the forefront of rebellions against injustice (Adelhah 1999, 33). Adelhah describes a number of popular and well known men in Tehran—entrepreneurs and political figures—who lived by this ethos that “is above all about building and assertion of the self” but also marked by moral ambiguity and contradictions, so that “while arousing recognition and admiration (the *jawanmard*) also provokes perplexity by his unpredictable, rash and sublime sides” (45).

This describes quite accurately the styles of masculinity and self-

assertion of many local political figures in India, the warriors, the dark side of the community esteem described by Mines (1999). India's political modernity have accorded an ever more prominent place to such ambiguous figures who through assertion of *mardangi* negotiate their own autonomy, the representation of community in the streets and at the ballot box, and the meanings and efficacy of legal regulation in most urban localities.

THE HOUSE OF MANY MASTERS

The material presented above suggests that the right and the capacity to make decisions, to adjudicate, to govern, and even to kill and punish, historically has been distributed between a range of authorities and institutions in India. The three repertoires of authority I have tried to outline operate in an intertwined and simultaneous way. Some acts of sovereign power are taken outside the state and the legal framework, as in the so-called underworld, whereas others, such as policing, operate within a legal framework—at least in theory. Political parties and social movements like the Shiv Sena often operate both within the framework of state institutions as well as outside where they are based in local and informal structures of authority and violence. This inordinately dispersed structure of governance and sovereignty indicates the limits of state authority in India.

To control the government, the state and the powers of legislation are important dimensions of the exercise of power in India. These forms of authority are also easily subverted and negotiated, and can be challenged in multiple ways because their efficacy depends on the informal sovereigns depicted earlier. The fragmentation of both governance and sovereignty in contemporary India—the historical roots of which I tried to indicate—should be borne in mind both when discussing the dangers of right-wing authoritarianism, and the possibilities of social reform and accountability through legislation. Given the antidemocratic impulses that many Hindu nationalists share with parts of the Indian elite and middle class, it is maybe a blessing in disguise that the Indian state in its present form offers little potential for imposition of authoritarian control throughout society.