

❧

BARE ACTS



The Sarai Programme
CSDS, Delhi

February 2005

saraiREADER 05

SARAI READER 05: BARE ACTS

Produced and Designed at the Sarai Media Lab, Delhi

Editors: Monica Narula, Shuddhabrata Sengupta, Jeebesh Bagchi + Geert Lovink

Guest Editor: Lawrence Liang

Associate Editor: Smriti Vohra

Translations: Shveta Sarda

Editorial Collective: Monica Narula, Shuddhabrata Sengupta, Ravi Sundaram,

Ravi S. Vasudevan, Awadhendra Sharan, Jeebesh Bagchi + Geert Lovink

Design: Mrityunjay Chatterjee

Associate Design: Gauri Bajaj

Design Coordinator: Monica Narula

Cover Design: Gauri Bajaj

Published by

The Sarai Programme

Centre for the Study of Developing Societies

29 Rajpur Road, Delhi 110054, India

Tel: (+91) 11 2396 0040 Fax: (+91) 11 2392 8391

E-mail: dak@sarai.net, www.sarai.net

Delhi 2005

Any part of this book may be reproduced in any form without the prior written permission of the publishers for educational and non-commercial use. The contributors and publishers, however, would like to be informed.

A pdf file of this publication is available for free online browsing and download at http://www.sarai.net/reader/reader_05.html

Distributors: Seagull Books, Delhi & Kolkata and Autonomedia, New York

ISBN 81-901429-5-X

Published by the Director, Centre for the Study of Developing Societies
and printed at Excellent Printing House, Okhla Industrial Area, New Delhi

Price: Rs. 350, US\$ 20, Euro 20

C O N T E N T S

PREFACE - vi

ARGUMENTS - 1

- Invitation - *Sarai Reader Editorial Collective* - **2**
- Porous Legalities and Avenues of Participation - *Lawrence Liang* - **6**
- "...Bolti Band (SILENCED)!" - *Clifton D' Rozario* - **18**
- Lepers, Witches and Infidels & It's a Bug's Life - *Francesca da Rimini* - **26**
- Rested - *Colette Mazabard* - **39**

DISPUTATIONS - 45

- Of Butchers and Policemen: Law, Justice and Economies of Anxiety - *Gunalan Nadarajan* - **46**
- Down by Law: A Critique for the 21st Century - *Alexander Karschnia* - **57**
- 'New' Delhi: Fashioning an Urban Environment through Science and Law - *Awadhendra Sharan* - **69**
- Improbablevoices.net: An Improbable Monument to Witnessing and the Ethics of Trespass - *Sharon Daniel* - **78**

TRESPASSES - 95

- The Discovery of the Fifth World: Stealth Countries and Logo Nations - *Daniel van der Velden, Tina Clausmeyer, Vinca Kruk, Adriaan Mellegers (Meta Haven Project)* - **96**
- Transcoding Sovereignty: Naked Bandit/Here, Not Here/White Sovereign - *KR + CF* - **111**
- SMS to Passport - *Vishwajyoti Ghosh* - **115**
- The Strange Case of Qays Al Kareem - *Tripta Wahi* - **123**
- Marginalia - *Kai Friese* - **129**
- On Smugglers, Pirates and Aroma Makers - *Ursula Biemann* - **145**
- Sponge Borders - *Guido Cimadomo + Pilar Martínez Ponce* - **150**
- Notes on the Disappeared: Towards a Visual Language of Resistance - *Chitra Ganesh + Mariam Ghani* - **154**
- Dreams and Disguises, As Usual - *Raqs Media Collective* - **162**

HACKS - 176

- Trespases of the State: Ministering to Theological Dilemmas through the Copyright/Trademark - *Naveeda Khan* - **178**
- Harmony or Discord? TRIPS, China, and Overlapping Sovereignties - *Shujen Wang* - **189**
- Innovating Piracy: The Bare Act of Stealing, and Shaping the Future - *Menso Heus* - **202**
- Is Hacking Illegal? - *Yuwei Lin + David Beer* - **205**

Three Proposals for a Real Democracy: Information-Sharing to a Different Tune -
Brian Holmes - **215**
 Roots Culture: Free Software Vibrations "inna Babylon" - *Armin Medosch* - **222**

ENCROACHMENTS - **241**

Touts, Pirates and Ghosts - *Solomon Benjamin* - **242**
 Daily Journey - *Satyajit Pande* - **255**
 Complicating the City: Media Itineraries - *Media Researchers @ Sarai* - **258**
 Begum Samru and the Security Guard - *Anand Vivek Taneja* - **287**
 My Driving Master: A Story of Everyday Trespasses - *Zainab Bawa* - **297**
 Naye Qanoon (New Laws) - **301**

ANNOTATIONS - **305**

Vis-à-Visage - *I. Helen Jilavu* - **306**
 Cybermohalla Logs/Acts/Texts - *CM Labs @ LNJP-DP-NM* - **308**

NEGOTIATIONS - **323**

The Act of Leisure - *Iram Ghufuran + Taha Mehmood* - **325**
 Surveillance, Performance, Self-Surveillance: Interview with Jill Magid -
Geert Lovink - **339**
 Living Between Laws - *Ninad Pandit* - **348**
 Negotiating Territory - *Ateya Khorakiwala* - **354**

RECORDS - **359**

Tis Hazari Diaries - *Chander Nigam* - **360**
 Bare Acts and Collective Explorations: The MKSS Experience with the Right to Information
 - *Preeti Sampat + Nikhil Dey* - **385**

TRIALS - **397**

Zimbabwe's 'New Clothes': Identity and Power Among Displaced Farm Workers - *Amy R.
 West + Blair Rutherford* - **398**
 Standardised, Packaged, Ready for Consumption - *Ravi Agarwal* - **412**
 The Act of Instruction - *Jan Ritsema* - **420**

VIOLATIONS - **427**

Womanhood Laid Bare: How Katherine Mayo and Manoda Devi Challenged Indian Public
 Morality - *Alice Albinia* - **428**
 Literature and the Limits of Law: Crime, Guilt and Agency in Premchand's *Ghaban* -
Ulka S. Anjaria - **437**
 The Honourable Murder: The Trial of Kawas Maneckshaw Nanavati - *Aarti Sethi* - **444**
 Judicial Extract - **454**

Representing a Woman's Story: Explicit Film and the Efficacy of Censorship in Japan -
Hikari Hori - **457**
The Queer Case of Section 377 - *Siddharth Narrain* - **466**

ASSAULTS - **471**

"For God's Sake, Be Objective!" - *Somnath Batabyal* - **472**
Another 9/11, Another Act of Terror: The 'Embedded Disorder' of the AFSPA -
A. Bimol Akoijam - **481**
Warporn Warpunk! Autonomous Videopoesis in Wartime - *Matteo Pasquinelli* - **492**
'First, Do No Harm...!': Ensuring *Humanitarian* Military Interventions -
Bikram Jeet Batra - **500**
War Cake - *Linda F. Beekman* - **511**

DISSENSIONS - **515**

The Law of the Mother: Soldiers' Mothers and the Post-Soviet Army -
Irina Aristarkhova - **516**
Naked Protest and the Politics of Personalism - *Isaac Souweine* - **526**
Analytical World Statistics Wall Chart, 2003 - *Louise Kolff* - **537**
A Comparative Anatomy of Post-Mortem Acts - *Smriti Vohra* - **540**

ALT/OPTION - **551**

The Accidental Activist - *Fredrik Svensk + Kristoffer Gansing* - **552**
'Our'chitecture - *Jayson Claude* - **559**
Sex Workers' Manifesto - *Durbar Mahila Samanwaya Committee, Kolkata* - **564**
Bare Wiring - *Sophea Lerner* - **572**

Notes on Contributors - **574**
Image and Photo Credits - **581**

PREFACE

With the publication of *Sarai Reader 05*, the one you now hold in your hands or have downloaded from the Internet, we can safely say that we have at least achieved a handful.

From 'The Public Domain' (*Sarai Reader 01*) to 'The Cities of Everyday Life' (*Sarai Reader 02*), to 'Shaping Technologies' (*Sarai Reader 03*), to 'Crisis/Media' (*Sarai Reader 04*), we have also seen a process of reflection on the first half-decade of what promises to be a turbulent century. These are times that come to us with the sharp edge of newness, with violence, with confusion and with promise. The Sarai Reader series has, since its inception, responded by attempting to be a navigation tool, a rough and ready map for this unruly world. How far the readers of our Readers have accepted our claims is hard to say, but we do know that Reader 01 is sold out, that we are nearly out of stock for Reader 02, that Reader 03 is the most downloaded of them all, and demands for a second imprint of Reader 04 are making themselves heard as we go into press with *Sarai Reader 05*. Clearly something is working, and this despite the fact that we decided from the very beginning to have each of the books available in its entirety for free download from the Sarai website.

We have been asked before as to how and why the themes of the Sarai Readers get chosen, and how the Reader gets produced. Perhaps this is a good time to attempt a few answers. Each of the themes represents different facets of our intellectual and cultural curiosities at the Sarai programme at the Centre for the Study of Developing Societies in Delhi. As a programme geared towards interdisciplinary research, practice and reflection on urban spaces, modes of communication, media cultures and the role of information in society, we have found ourselves dealing with concepts, questions and issues that bully us into printing them on the title page of the Readers. At Sarai, we are squarely and inescapably in the public domain, we have thought at length about everyday life in cities, we reflect on how technologies shape the way we live, and how we shape technologies, we have had to explore the relationship between media and situations of crisis to understand the nature of the representations of our times, and we have had to consistently read between the lines of bare acts. Without doing any of these things, the object of addressing questions to the city, and to the place of information – of images, sounds and data within it – would have been impossible.

Urban space and culture, the politics of information, intellectual property, media forms and practices, technology and society, surveillance, forms of articulating liberty, pleasure and justice, free software, language and digital culture, the myriad everyday practices of negotiation and resistance in city spaces, and the ways in which law shapes lived experience – all of these concerns have woven themselves in and out of each Reader. Over the past five years we (and our public) have come to recognise the fact that these are the curiosities which characterise the work we do at Sarai.

This year, the Reader looks at 'Acts' – at instruments of legislation, at things within and outside the law, and at 'acts' – as different ways of 'doing' things in society and culture. Several essays echo and complement themes that have emerged in earlier readers. Piracy, borders, surveillance, claims to authority and entitlement, the language of expertise, the legal regulation of sexual behaviour and trespasses of various kinds have featured prominently in previous Readers. This collection foregrounds these issues in a way we hope can make a series of coherent but autonomous and interrelated arguments.

Each year, the Reader attempts to reflect our concerns at Sarai, and to respond to what has happened within our field of vision. We have been curious, not only about what happens in and around Delhi, but also to what is happening, or is being thought about, in places as far afield as Imphal, Lagos, New York, Aligarh, Kathmandu, Kolkata, Srinagar, Sarajevo, São Paulo, Rafah, Tel Aviv, Bangalore, Berlin, Chennai, Taipei, Singapore, Moscow, Beirut, Sydney, London, Karachi, Kanpur, Kabul and Mexico City. It is possible that but for the eccentric orbits that the Sarai Readers undertake, many of these voices would never have spoken to each other, or to the world. It is our conviction that a voice from Imphal must be heard in New York and New Delhi, because voices from New York and New Delhi tend to be heard, no matter what happens, in Imphal.

Reader 01: 'The Public Domain' relied mainly on material that was available within the public domain to construct its arguments. From Reader 02 onwards, the process of 'building' the book underwent a significant transformation. Each year in the summer we issue an invitation to contribute to the forthcoming Reader, spelling out what we are interested in. An important part of this invitation consists of an evocation of certain key words, or anchoring concepts, that leave ample room for interpretation, and at the same time are specific enough to speak to concrete realities. Take the expression 'Bare Act', for instance: on the one hand it seems to invite a philosophical unpacking of the essence of actions, while on the other hand it points to a specifically Anglo-Saxon culture of legal practice. Similarly, 'Cities of Everyday Life', 'Shaping Technologies', and 'Crisis/Media' all point to the possibility of polysemic inscriptions and multivalent readings. Poised between their capacious generalities and very pointed, but often veiled, references, the call for each Reader acts as a kind of 'strange attractor' which gathers many different kinds of content to itself. Our task as the Editorial Collective is then to enable 'unlikely encounters' to occur between the different ideas and texts that accumulate in our mailboxes.

This invitation is posted on to various electronic discussion lists, to the 'Reader-list' (which grew out of the process of discussing the contents of Reader 01, in 2001), and others such as 'Nettime', 'Fibre Culture', 'Spectre', 'Undercurrents' and 'Commons Law'. The invitation asks potential contributors to mail abstracts. These are collated, and a first

selection of possible articles is made by autumn. Selected authors are then contacted, and complete texts solicited. On some occasions, members of the editorial collective also solicit contributions from people they think have things to say, independent of the process that has just been described.

This process generates a great variety of tone and style. We have featured contributions by philosophers, software programmers, novelists, filmmakers, lawyers, historians, comic book writers, artists and students. Some of these people have chosen to write in an academic manner, others have consciously chosen not to. Some have been established and well-known names, others have become well known since they published in the Sarai Readers, and still others were having their work published for the first time. We have consciously sought to make different registers of writing, the academic, the literary, the journalistic, the autobiographical and the practice-based, speak to each other. We have also deployed visuality and design as arguments, as rhetorical devices in their own right, to complement the role of the written word. To us, this entails a commitment to a variegated and democratic universe of discourse production. The contents and design of the Sarai Readers refuse to make any one 'voice' feel more entitled to expression than others. Each expression makes a claim to knowledge, and brings its own protocols and practices of the making of knowledge.

'Eclectic' tends to be a pejorative term in the world of discourse. We, however, are happy to be termed 'eclectic'. In the ancient Greek usage of the word, 'Eclectics' were a class of philosophers who neither attached themselves to any recognised school, nor constructed independent systems, but 'selected such doctrines as pleased them in every school'. Diogenes Laertius speaks of an 'eclectic sect' founded by Potamon of Alexandria in the 2nd century. The term continues to be applied to those who combine elements derived from diverse systems of opinion or practice in any science or art. For the published flagship of a programme of interdisciplinary research and practice, the term 'eclecticism' should not be something to apologise for, but something to consistently aspire towards.

Finally, something that is obvious, but perhaps needs to be said, at least once in five years. The Sarai Reader series would never have been possible but for the generosity and intellectual capaciousness of the tradition for which CSDS is known, and for the partnership with the Waag Society in Amsterdam (for the production of Readers 01-03). It would also have been impossible but for the labour, skill, enthusiasm and love that all those who work on its design and production in the Media Lab at Sarai-CSDS bring to the Reader, year after year. It would also not have been possible but for all those who have responded to our call for contributions and to our urgent, and sometimes impatient, solicitation.

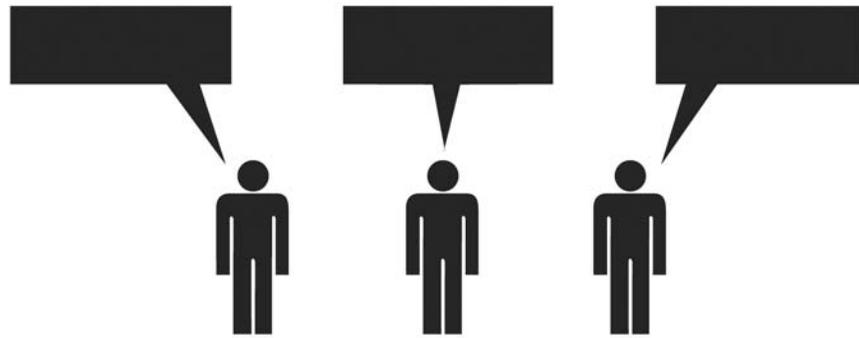
And of course, it would not have been possible for the community of readers of the Sarai Reader, who in time have also produced some of our most exciting writers.

Now, you, dear reader, could say to us, as they say so often in the country of television, "Gimme five!"

And we would, willingly.

Editors
Delhi/Amsterdam, February 2005

ARGUMENTS



Invitation

SARAI READER EDITORIAL COLLECTIVE

The 'Bare Act' is an expression used to specify the content of law, bereft of any interpretative gloss. In a legal library in India and many parts of the English-speaking world, a Bare Act is a document that simply codifies a law without annotation or commentary. The 'Bare Act' is legality pared down to its textual essence. It expresses only what the law does, and what it can do.

The enactment of law, however, is less a matter of reading the letter of the law, and more a matter of augmenting or eroding its textual foundation through the acts of interpretation, negotiation, disputation and witnessing. The law, and practices within and outside it, stand in relation to a meta-legal domain that can be said to embrace acts and actions in all their depth, intensity and substantive generality. This too is a stage set for the performance of 'bare acts', of what we might call 'naked deeds' – actions shorn of everything other than what is contained in a verb.

The 'Bare Act' that encrypts the letter of the law, the wire frame structure that demands the fleshing out of interpretation, and the 'bare act' that expresses and contains the stripped-down kernel of an act, of something that is done, are both expressions that face each other in a relationship of tense reflection and intimate alterity. Bare Acts generate bare acts, and vice versa. With this book we hope to consolidate and take forward a process of considered examination of this troubled mirror image.

We are interested in looking not only at what happens in law courts but also at customs, conventions, formal and quasi-formal 'ways of doing things' that are pertinent to communities, howsoever they may be formed. Thus, the conventions and codes evolved by the practitioners of a juridically 'illicit' trade or calling or way of life, such as that of software pirates, or 'illegal' migrants, or indigenous inhabitants of forests and common lands, or the way in which squatters make fallow land habitable, fall within the ambit of our concerns.

We want to speak of the relationships of conflict, co-existence and accommodations between different kinds of codes that make claims to our idea of what is right, or just, or functional, or even merely appropriate.

To see 'actions' arrayed across a spectrum in this manner is also to see a range of ways in which laws, codes and a variety of formal and informal arbitration mechanisms act on us. Sometimes this may take the form of executive force and fiat, but crucially it may

also rely on the powers of persuasion that characterise a host of quasi-formal interactions between state and non-state actors, and between non-state actors and individuals. This is the way in which non-legal entities like informally constituted councils, political formations outside the state, customary bodies and traditional councils would act to enforce their will or influence those within (and occasionally outside) their ambit. There remain many serious theoretical questions with regard to these issues, and it is our hope that even the silences and a few tentative utterances within this collection of texts will provoke inquiries in these areas.

The landscape of actions and deeds covers a far more subtle, slippery, nuanced and ambiguous ground (than the codes that seek to index, define or govern them). Actions have gradients. The political, ethical and semantic facets of acts shade off, and slope into each other, now revealing, now concealing hitherto unknown aspects of themselves and their consequences, often in unexpected ways. Laws are attempts to understand, interpret and govern action, but their enunciative capacity is bundled up with executive authority; they are words that decree what must be done. But just as the way in which a map is drawn can have consequences on the ecology of a terrain, the phrases spoken as law too can transform and erode as well as irrigate the ground of action.

Law is a creature of habit, of pattern, rhythm and repetition. The exceptional singularity of an action, which is precisely what law seeks to tame to the rhythm of the predictable, leaves us with a strange situation where the “bareness of an act” is precisely what is to be clothed by a ‘Bare Act’. This gives rise to many tensions and aporias, which we invite contributors to reflect upon and report from their locations in the real world.

You may be a human rights lawyer, or an intellectual property attorney, a philosopher, an artist, an activist, a combatant or peace maker in a conflict situation, a person who lives and works with ideas and words, a person who saves lives or takes them, a person who has custody of others, or who may be in the custody of an institution; in addition, you may be someone who either is, or identifies with, or sympathises with, a hacker, a pirate, a re-distributor of intellectual assets, an illegal emigrant, a non-heterosexual person, a compulsive traveller, a squatter, a sex worker, a terrorist of the imagination; you may be free or in confinement, you may be healthy or unwell – whosoever you may be and whatever you are, you have to act, and deal with the actions of others. All that you do, or do not do, is framed by a structure of the bare acts of the law. Yet, you shape the world with the things you do – to be yourself, to act in concert with others, to defend yourself, to pursue what you see as liberty and happiness, or simply, to survive.

We hope that this Reader is able to engender investigations into the production of ‘legal subjects’ through judgements (communiqués to the citizen/denizen) and petitions (appeals from the citizen/denizen) as well as through diverse mechanisms that include recording and registration mechanisms such as census records, land records, municipal records, forestry regulations, registers of citizens and aliens, and other instruments that define and enumerate the person addressed by the legal-formal apparatuses that govern day-to-day life. What is the language, the rhetoric, the tone of these acts of address? How are they scripted, rehearsed and staged?

All these are things to investigate when we look at the law, whether in the courtroom,

in a village council meeting, or in the narrative of a 'courtroom drama' in a film. Crucially, we want to investigate the figures of authorised and unauthorised interlocutors, expert and wayward witnesses and the myriad characters that constitute the theatre of the courtroom. We want to do this so as to explore the kinds of speech acts and modes of witnessing that find themselves excluded by the language of legal processes.

This Reader invites you to reflect on actions, yours as well as those of others; to act with your words, thoughts and images; to contribute to our understanding of the world, as we know it today. We are committed to an elaboration of positions that often find themselves identified with the interloper, the trespasser and the proscribed. This is not because we have any special affinity for the illicit, but because we feel that the growing constriction of the domain of the do-able by the letter of the law (which we all face in societies where the state and para-state institutions lay increasing claims to our fealty) leads to a situation where those committed to a modicum of social liberty, to expanding the territory of what may be creatively imagined and acted upon, have to invest in knowing and understanding an ethic of trespasses.

Interdictions need interrogation, and this Reader is a call for such interrogations.

A 'bare act', as we said at the outset, can also be taken to mean action divested of everything other than its essence as a deed. Encountering the naked deed, action in and of itself, on its own terms, means facing up to difficult and occasionally challenging ethical questions. What constitutes violence? What is generosity, or hospitality? Why does altruism have to be hedged in by qualifications and constraints?

It also means asking what it is to become someone through action: what is it to act, or play a part, in the theatre of social life? What is the border that separates action from expression? What connects the act to gesture and to performance, as much as it does to deed?

Moreover, what accounts can we give to the 'act' of witnessing, or bearing witness to a course of action, or to an event? Law or codes of action of any kind seem untenable without the notion of the witness. The presence of the witness is crucial to any notion of credence, the foundations on which arguments, petitions and judgements have to base their thrust and parry. We would like this collection to provoke reflections on the nature of the evidentiary and narrative protocols that frame acts of 'speaking' or 'speaking out' in the face of, or in the aftermath of, or in the memorialisation of, acts and events that leave a mark on our times. This can help us to instigate a more complex unravelling of the relationship between persons, actions, narratives and codes of behaviour.

To carry this argument further: in languages such as Arabic, Persian, Hebrew and Urdu, the roots for words as disparate sounding as 'martyr' and 'witness' (*shaheed*/martyr and *shahid*/witness) devolve to a common source. This suggests a febrile tension between the reality of a precipitate, even violent action, its consequence (the *shaheed*) and a recording presence (the *shahid*). In other words, given the fact that acts do speak for themselves (and sometimes make the claim to speak for others), we consider it necessary to take stock and reflect on what might be considered the heritage of the 'propaganda of the deed' – a doctrine that underpins violent terrorism, as well as non-violent civil disobedience and militant passive resistance – in order to see how such modes of acting stretch and

challenge consensual notions of the relationships between means and ends.

These are open questions with no satisfactory and coherent answers. But *Sarai Reader 05*, like its predecessors, would like to take them on, so as to map territories of thought about the things we all do, and the things that are done to us.

Today, there are different images of naked legality that we have grown accustomed to. We know that the law is often the last resort that the poor and the marginalised can turn to so as to appeal for redress; sometimes the only possible comfort when having to face obvious and naked oppression. Thus, the slum dweller facing demolition sees in a high court stay order a breathing space in which to try and muster some means of continued survival in the city as a householder. A person on death row can have little hope but to argue for an acquittal or a pardon. There are also occasions when international criminal courts may be seen to be effective instruments of redress for victims of genocide and war crimes. These are but the bare facts of a case for the law, and for a conscientious practice of the legal calling as a continuing good in human societies.

However, we have also seen pictures of naked human beings in judicial custody in the Abu Ghraib prison in Iraq. This too is naked legality. We have seen migrants waiting to be deported. We have seen the banal playing out of the script of domination and violence on streets, in educational institutions, in homes. We have seen attempts at the foreclosure of cultural and intellectual commons. We have seen attempts at surveillance and control, and we have witnessed resistances to each of these: quiet subversions, cunning negotiations and outright rejections, as well as attempts to scale the walls erected by the threat of interdictions, sanctions and prohibitions. *Sarai Reader 05: Bare Acts* is an invitation to celebrate this spirit, and a testament to what we see as the vital importance of the relationship between the Law, questions about the Law, and challenges to the Law.

From the "Call for Contributions to *Sarai Reader 05*", July 2004.

Porous Legalities and Avenues of Participation¹

LAWRENCE LIANG

Piracy and the Anxiety of the Contemporary

In recent years, copyright piracy has become a subject of popular discourse, appearing as it does on a day-to-day basis in our newspapers, and on crime programs on TV. These stories of copyright piracy are narrated through the language of statistics and figures and the narrative strategy of excess, designed to induce a 'shock and awe' response at the alarming rate of piracy and illegality that exists, especially in non-Western countries.² As with any story that seeks an international audience, the choice of narrative strategy is critical, and for the story to be understood and have appeal it will have to transcend the cultural specificity under which certain stories come to be appreciated. This is especially true when one is attempting one's hand in the genre of horror stories; and in the present case; the horror story of piracy just does not seem to work in terms of achieving its objective of generating a sense of anxiety and fear in countries like India.

One must, however, provide reasons for why these stories don't work in some contexts. For that we will have to travel to distant cities, from New Delhi to Sao Paulo; perhaps even walk through the more unfamiliar bylanes of 'familiar' cities like New York. Research in the field of urban studies has rendered the idea of an 'illegal' city familiar. One reads, for instance, that an average of 40% and in some cases 70% of the population of major cities live in illegal conditions. Furthermore, 70-95% of all new housing is built illegally³ (Durand-Lasserve and Clerc, 1996). The primary reason for this state of illegality arises from the nature of land tenure forms in cities, where the twin tropes of ownership and title are clearly unable to account for the myriad ways through which people assert a claim on land and to the city more generally. The people who live in this perpetual state of illegality also engage in other networks of illegality, such as stealing electricity, water, bribing their way through Kafkaesque bureaucratic structures to access civic amenities that the legal city takes for granted.⁴ A first glance at the official responses to this older illegal city reveals the familiar face of anonymous statistics and 'shock and awe' figures. Thus when we cut back to the piracy story and are told that over 70% of the software used in India is illegal, we encounter this figure not with a sense of anxiety, but of familiarity.

Clearly, any simplistic account of widespread illegality in terms of efficiency, morality, disorder or corruption, etc. would only perform an epistemic violence which does little to

aid our understanding of urban experience, and the ways in which people create avenues of participation and make claims to the city. The contribution of urban studies has been to provide a more nuanced sense of the phenomenon of the illegal city.

In a city like Bangalore, for instance, the urban planning authority (Bangalore Development Authority) provides for approximately 15-20% of housing requirements, while another 12-15% are met by private developers. The rest of the city emerges outside of planned development and is hence outside the law. Most urban citizens have no choice but to build, buy or rent illegal dwellings since they cannot either afford the cheapest legal accommodation, or because there is not enough supply to meet the demands of a growing city, marked by high migration as a result of the new information technology dreams.⁵

A liberal understanding of land tenure forms is limited because its understanding of interest in land relies too heavily on how ownership and legitimate claims are narrated through the title deed and other legal documents. Any attempt to understand the complexities of the ways in which people make a claim to land in the city would have to take into account the multiple forms of networks of relationships that constitute a land tenure claim (the hawker who has a designated place even though he is not entitled to the place in any formal manner, the squatter who pays a rent to the local policeman, the illegal slum that begs, borrows and steals electricity and water from the rest of the productive city, the unauthorised revenue layout that gets regularised or legalised near election time on the basis of their strength as a vote bank).

Writing about the modernist project of planning, James Holstrom comments, "...modernist planning does not admit or develop productively the paradoxes of its imagined futures. Instead it attempts to be a plan without contradictions or conflict. It assumes a rational domination of the future in which its total and totalizing plan dissolves any conflict between the imagined and existing society in the enforced coherence of its order. This assumption is false and arrogant as it fails to include as its constituent element, the conflict, ambiguity and indeterminacy characteristic of actual social life".⁶

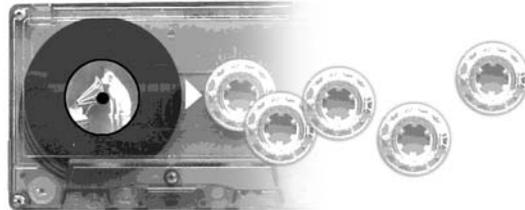
While the older illegal city has been in existence for a while, another layer has been integrated into the experience and narration of this illegal city in the past ten years. The proliferation of non-legal media practices ranging from pirated VCDs, DVDs and MP3s to grey market mobile phones informs the practices and imagination of the illegal city. As Ravi Sundaram says: "Pirate electronic networks are part of a 'bleeding' culture, constantly marking and spreading in urban life. Ambient sound and images are now part of all street/neighbourhood life; a crowded pirate aesthetic pervades video culture and local advertising. This is part of the culture of dispersal, which marks its resilience and is a nightmare to classify. In a world where information bleeding is part of the contemporary (SMS, television text scrolling, newspaper inserts, lamppost stickers, Internet pop ups, event branding), pirate culture uses the ruses of the city, but *immanently*, not *transcendentally*".⁷

This article attempts to understand this new layer of illegality and the manner in which it integrates into the



older city. The task will be to pose the question of how the older form and the newer form integrate and intertwine to collectively interrogate our liberal assumptions of legality, and highlight the limitations of any study based on a strictly legal understanding of contemporary urban practices. I will do this by examining the cassette revolution that took place in India in the 1980s, and the sphere of illegality in which it emerged. Building on some significant attempts to provide entry points into understanding this aspect of the city, I would also like to posit the idea that porous legalities are often the only modes through which people can access and create avenues of participation in the new economy.

The information era props up a master plan, similar to that of modernist planning. The institutional imagination of the era relies on the WTO as chief architect and planner, and copyright lawyers as the executive managers of this new plan; the only people who retain their jobs from the old city are the executors of the old plan, the police force and the demolition squad. Just as one cannot understand land tenure through the prism of liberal legality alone, any attempt to understand the complex networks of economic and social relations that underlie the phenomenon of piracy will have to engage with the conflict over control of means of technological and cultural production in the contemporary moment of globalisation. The ways in which the illegal media city emerges and co-exists alongside the vibrant, innovative and productive debris of the older city, the schizoid relationship between legality and illegality in postcolonial cities, suggest that the crisis may not lie in these relations, and we may need to turn the gaze of the law from the usual suspects of legality to legality itself, and the relations that underlie its existence.



Cassette Culture and the Creation of the New Media City

Before we indicate the different entry points through which we can understand this new illegal city, it would be useful for us to take a trip to the 1980s to understand the developments that preceded the formation of this new city in India. I believe that it is critical for us to understand this period to get a sense of why non-state, non-elite electronic cultures have always had a problematic relationship with law and legality.

Peter Manuel provides us with an excellent history of the emergence of new media in India, tracing the cassette revolution that took place from the mid-'80s. This revolution, he claims, created a new aesthetic of media production and consumption that escapes the totalising imagination of old media in the form of national television, radio and cinema. According to him, new media challenges the one-way, monopolistic, homogenising tendencies of old media, as it tends to be decentralised in ownership, control and consumption patterns and hence offer greater potential for consumer input and interaction.

I shall briefly summarise Manuel's account of the emergence of cassette culture in India.⁸

In 1908, the British-owned GCI (Gramophone Company of India) had established its factory in Calcutta and through exclusive distribution agreements, it came to dominate the market in an absolute manner. This monopoly had profound cultural impact in terms of local genres and languages that it appropriated, ignored or reduced into dialects. The necessity of an all-India market to ensure great profits ensured the emergence of an all-India aesthetic form in film music. The dominance of the Hindi film music and the monopoly of GCI continued till well past the colonial period.

The development model adopted by the Nehruvian state emphasised state investment in large-scale infrastructure projects like dams, mines and factories, while discouraging luxury consumption through the deployment of high import tariffs. Policies of over-taxation and cumbersome licencing inhibited the consumer electronics and related industries. Manuel reports that by the late 1970s, however, a large number of immigrant workers to the Gulf countries had begun to bring back cassette players into India (Japanese two-in-ones) and the cassette player soon became a symbol of affluence and an object of modern desire. This is also the period that saw the emergence of a nascent market for pirate cassettes of film music, feeding off the growth of cassette players and contributing to the expansion of the grey market where such 'luxury' items could be purchased by the relatively well off.

The liberalisation policy of the state in the late 1970s, designed to stimulate growth, demand, exports and product quality, saw the lowering of many import restrictions. The burgeoning middle class stimulated the electronic industry. While a few were willing to pay high import duties on foreign electronic goods, most were happier buying them off the grey market.

Certain significant developments in this period helped to create a mature market for consumer electronics industry:

- > Reduction of duties enabled Indian manufacturers to import selected components for local manufacture of cassette players.
- > New policies encouraged foreign collaborations in the field of consumer electronics including magnetic tape production.
- > Tape coating became big in India, and from the period of 1982 to 1985, record dealers switched to cassettes; and by the mid-'80s cassettes came to account for 95% of the market.

The overall sales of cassettes went from Rs. 1.2 million in 1980 to Rs. 12 million in 1986 and Rs. 21 million in 1990. Export of Indian-made records jumped from Rs. 1.65 million in 1983 to Rs 9.75 million in 1987. By the end of the 1980s, Indian consumers were buying around 2.5 million cassette players. This is also the period that saw the swift decline of GCI-HMV as the dominant/sole player in the industry, and the emergence of a handful of large players and over 500 small music-producing companies. In a period of a few years, India had become the world's second largest manufacturers of cassettes, marketing 217 million cassettes. This period also saw the decline of film music as the dominant aesthetic form and its market dropped from 90% to 40%. A whole new range of forms, from devotional music to songs in local languages, developed; and other kinds of

markets began to emerge.

This period of tremendous growth is, however, marked clearly by its troubled relationship with legality, and with various practices that often straddled both worlds, sometimes making it difficult to distinguish one from the other. During the initial boom, most music companies were a part of the informal but well-networked sector. They often worked with illegally obtained components to ensure cost effectiveness of their product. These included smuggled goods, indigenously manufactured but unlicensed products, components and magnetic tapes.

In this context that we can evaluate the story of a maverick entrepreneur who, with a combination of dynamic business skills, ruthless tactics and an elastic idea of legality, came to shape the music industry. In 1979, Gulshan and Gopal Arora, two brothers who ran a fruit juice shop in Delhi and were also electronic buffs, began a small studio where they recorded Garhwali, Punjabi and Bhojppuri songs. On borrowed money they visited Japan, Hong Kong and Korea to study cassette technology and the industry. They returned to set up a factory to produce magnetic tapes. They also started producing cassettes and silicon paper, and finally built a complete manufacturing plant where they offered duplication services to smaller regional-cassettes producers. By the late '80s, their company T-Series emerged as the market leader. Currently their set up is worth over Rs. 120 million and they have diversified into manufacturing videotapes, television, VCD players, MP3 players, washing machines and detergents.

The elastic legality of Gulshan Kumar's world translated itself in the following manner:

- > Using a provision in the fair-use clause of the Indian Copyright Act which allows for version recording, T-Series issued thousands of cover versions of GCI's classic film songs, particularly those which HMV itself found unfeasible for release. Thus, you would have releases such as "Melodious Hits of Kishore Kumar" sung by Kumar Sanu. T-Series also changed the rules of distribution by moving into neighbourhood shops, grocery shops, *paanwalas*, and teashops to literally convert the cassette into a bazaar product.

- > T-Series was also involved in straightforward copyright infringement in the form of pirate releases of popular hits relying on the loose enforcement of copyright laws. To date T-Series remains blacklisted by the Indian Music Industry.

- > T-series illegally obtained film scores even before the release of the film to ensure that their recordings were the first to hit the market

- > T-series illegally inserted huge amounts of inferior tape into established brands to discredit well-established names.

While one could easily dismiss these practices as unscrupulous, unethical or clearly illegal, we will need to keep in mind the overall impact that T-Series had on the music industry in India and cassette culture. T-Series created a new cassette-consuming public by focusing on various genres and languages completely ignored by HMV, which had promoted Hindi at the cost of many other languages, those which it deemed unfeasible in economic terms given the scale of their operations. T-Series changed the rules of the game by introducing for the first time the idea of networked production. It would offer its duplication services to a number of the small players (and thus revived smaller traditions of music). Finally, the reduction in the price of cassettes by T-Series created a mass commodity.

Clearly, no straightforward account of legality and business ethics can capture the dynamics and the network of interests that fuelled the cassette revolution. For instance, in an interview with Peter Manuel, one of the employees of T-Series stated, “What the people say about our activities in the early years – it is mostly true. But I tell you that back then, the big *ghazal* singers would come to us and ask us to market pirate versions of their own cassettes, for their own publicity, since HMV wasn’t really able to keep up with the demand”. Similarly even some major players have in the past dealt with the pirates. Manuel states that when HMV found that it could not meet the demand for one of their biggest hits, *Maine Pyar Kiya*, they are reported to have entered into an agreement with the pirates whereby the pirates would raise their price from Rs. 11 to Rs. 13 and pay HMV half a rupee for every unit that they sold. Other producers are also known to have colluded with pirates in production and marketing so that they could minimise cost, as well as the taxes and royalties payable by hiding the extent of their sales.

The role played by piracy in the creation of a market, in the process of creating a lock-in period and also in the reduction of price and has been seen clearly in the software and film industries.⁹ The price of VCDs today has come down to Rs. 99, lower even than what the pirated copy used to be earlier. The Free School Street phenomenon¹⁰ of Calcutta created a sub-cultural consumption of large amounts of 1960s American rock music before these tapes were available in the Indian markets. Without such a niche elite public, it is highly debatable as to whether Magnasound could have emerged in the early ‘90s as the most important player in the English music industry in India.

I would like to conclude this segment with two ironic anecdotes that can lead us to the contemporary. First, after its rather chequered history with copyright law, T-Series is now one of the most aggressive enforcers of their copyright. They have a battery of professionals, usually retired police officials, who monitor copyright and trademark infringement cases. The second is an extract from the conclusion of Peter Manuel’s history of cassette cultures in India. After providing us with a fascinating look at the ad hoc world of innovation based on very porous ideas of legality, Manuel speculates on possible developments in the future of the industry; he says: “In India a pre-recorded CD costs as much as Rs. 250 or twelve times the price of a tape. CD players themselves anywhere between Rs. 5000 upwards, which would constitute a fortune for most Indians. As a result, CDs naturally remain confined to the upper class. For the music producer, the growth of the CD market is seen as a possible weapon against piracy, as the CDs cannot be duplicated (onto other CDs)”.¹¹

Entering the New City

We can now return to the contemporary urban landscape where the prevailing model of piracy is precisely through the form that was intended to guard against piracy. With the absolute collapse in the cost of CD writers and CDs, every computer owner is a potential producer and redistributor. The logical transition of the older inhabitants of the world of pirated cassette cultures, video library owners, etc. into the world of CDs, almost appears to be a natural progression. I have outlined two central histories that we need to narrate to understand the present moment. The first attempt was to problematise and contextualise

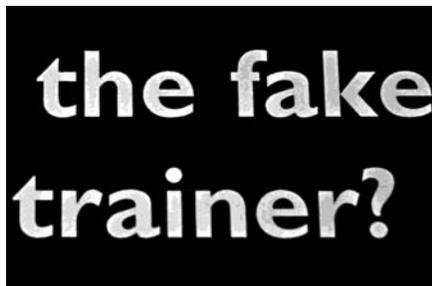
the idea of illegality vis-à-vis claiming a space in the city, and the manner in which these claims challenge the liberal premise of law, citizenship, and access to institutions of democracy. The second move was to provide a brief history to the emergence of cassette cultures, why they emerged in a context of illegality, and the central role this played in the creation of a public. This also narrates a world of innovation and discovery which treats any monopolistic claims, be it legality or economic participation, with a sense of irreverence.

I would now like to examine some of the ways in which a critical dialogue around Intellectual Property (IP) may take place. At the moment there exists a rich body of work in the US that seeks to challenge some of the developments in IP law. These are generally posited within literary theory-inspired critiques of the assumption of authorship, or they argue that copyright endangers the free flow of information within the public domain. Implicit within this critique, however, is an assumption of a vibrant public sphere where constitutionally guaranteed rights such as freedom of speech and expression should dictate IP policy.

The challenge of having an inter-continental dialogue is really to push the limits of thinking through the problem of understanding the publics which lie outside the assumptions of the liberal public sphere; also, to understand the complex spatial logic of globalisation and the unfolding of highly unequal division of labour within the sphere of cultural production (a bootleg Nike T-shirt surely has a very different tale to tell as it circulates as a fake or a copy in Los Angeles compared to its circulation in Thailand, one of the largest hosts of the various sweatshops of the world).

There is literally a world of difference between the cultural politics of content and appropriation. For most scholars in the west, their interest in a more relaxed IP regime stems from their interests in the modes through which people reappropriate the signs of global cultural hegemony such as Hollywood. The impulse behind copying in Asia and other parts of the non-Western world may not arise from such self-conscious acts of resistance, but may instead be understood in terms of ways through which people ordinarily left out of the imagination of modernity, technology and the global economy ways of inserting themselves into these networks.

Thus for instance, the social of the remix in India may have little to do with the romantic assumptions of cultural appropriation and resignification as expressed in *Campbell v. Acuff Rose*,¹² and more to do with the impact of the structural transformation of industry practices and monopolies as articulated in *Sega v. Accolade*.¹³ The avenues I suggest below offer an entry point into understanding the challenges posed by different media practices to an IP regime that insists on the creation of a global regime of ownership and control under which there is an assumed social cohesion and a containment of all social conflict, and where there is no dispute over the forms of property that emerge and expand.



a. The first and most simplistic account of the phenomenon of piracy is that of unequal access between developing countries and developed countries. The argument is that the price differential forces people in developing countries to buy pirated goods since they would not be able to buy original goods. While there is a truth in this proposition, the inherent problem of such an entry point is that it relies on a model of piety (the 'poor third world' figure) and is fundamentally dependent on the 'development', 'catching up with the West' account of global relations. The global contemporary is far more complex and one needs to provide an account of the complex logic of cultural production in the era of globalisation. The pirate in developing countries is not a figure of piety and this account divests him of any agential role as s/he navigates through the mediascapes of globalisation that frame experience.

b. The second entry point emerges from writers like Jeremy Rifkin who would argue that there is a fundamental shift in our understanding of the logic of production, distribution and consumption. Rifkin argues that we live in an age of access, and the culture of the Internet, for instance, is predicated on a culture of networked distribution and circulation. In this new era, there is a transition from the idea of the market in the older senses of the term to the idea of networks. His account of the nature of the networked economy would render futile any account of piety, as his account is not configured on differential access or privilege alone. He sees the culture of the networked economy as fundamentally shaping the way people think about production, distribution and collaboration. The older form of regulation and structuring of economic transactions will then just not work within this framework.

According to Rifkin, "The young people of the new 'protean' generation are far more comfortable conducting business and engaging in social activity in the worlds of electronic commerce and cyberspace, and they adapt easily to the many stimulated worlds that make up the cultural economy. Theirs is a world that is more theatrical than ideological and oriented more to a play ethos, than to a work ethos. For them, access is already a way of life, and while property is important, being connected is even more important. The people of the twenty-first century are likely to see themselves as nodes in embedded networks of shared interests as they are to perceive themselves as autonomous agents in a Darwinian world of competitive survival. For them, personal freedom has less to do with the right of possession and the ability to exclude others and more to do so with the right to be included in webs of mutual relationships. They are the first generation of the Age of Access".¹⁴ In such an account, copyright would emerge as a slightly archaic mode of regulation that is culturally embedded in the technology of paper. This is also a world which transforms the older worlds of legal imaginaries, using the language of exclusive rights to generate a world of access. The GNU/GPL is a classic instance of such a use.

c. Our third entry point is through an examination of the intertwined histories of postcolonial nationalist aspirations of modernity and a particular relationship to the public sphere. Ravi Sundaram, in a series of articles¹⁵ that theorise the phenomenon of piracy and illegal media cultures in the new media city, states that this world of non-legal media in a number of South Asian cities, marked by its rather *ad hoc* innovativeness and its various strategies of survival, is the world of recycled modernity. It exists in the quotidian spaces of the everyday and cannot be understood within the terms of the earlier publics (the

nationalist public and the elite public sphere). Fuelled by aspirations of upward mobility, it is an account of the claims to modernity made by a class of people, otherwise unaccounted for by the meta-narrative of the nationalist project of modernity. These cultures of recycling do not, however, exhibit any of the characteristic valour or romance of counter publics. Beginning with the audiocassette revolution and then of computers and digital entertainment, this world has been based on a dispersed logic of production and consumption, and marked by preponderant illegality. This rearticulated entry point into the modern is also contemporaneous with the emergence of the global moment, and the arrival of the global via media, new forms of labour such as call centres, the software industry, etc., replace the earlier configuration of the national modern with the global modern. As we understand this, it also becomes critically important for us to recognise the shifts in registers of imagination that the global brings upon the national modern configuration.

d. Our fourth entry point into understanding these practices comes from a metaphorically rich account of the role of networks and seepages provided by Raqs Media Collective. Looking at five figures of transgressions in the contemporary context (the migrant, the hacker, the pirate, the alien and the squatter), Raqs argues that these transgressors of law emerge as residue from within the gigantic movement of capital. "Capital transforms older forms of labour and ways of life into those that are either useful for it at present, or those that have no function and so must be made redundant. Thus you have the paradox of a new factory, which instead of creating new jobs often renders the people who live around 'unemployable'; A new dam, that instead of providing irrigation, renders a million displaced, a new highway that destroys common paths, making movement more, not less difficult for the people and the communities it cuts through".¹⁶ The question posed by Raqs is about how one begins to understand what happens to the people who fall off official maps, official plans and official histories.

The argument is that these people travel with the histories of the networks that they were part of, and are able to deploy the insistent, ubiquitous insider knowledge of today's networked world. Raqs then introduces the powerful metaphor of "seepage" and how it may help us to think through these acts of transgressions. "How does this network act, and how does it make itself known in our consciousness? We like to think about this in terms of seepage. By seepage, we mean the action of many currents of fluid material leaching on to a stable structure, entering and spreading through it by way of pores. Until, it becomes a part of the structure, both in terms of its surface, and at the same time continues to act on its core, to gradually disaggregate its solidity. To crumble it over time with moisture. In a wider sense, seepage can be conceived as those acts that ooze through the pores of the outer surfaces of structures into available pores within the structure, and result in a weakening of the structure itself. Initially the process is invisible, and then it slowly starts causing mould and settles into a disfiguration – and this produces an anxiety about the strength and durability of the structure".¹⁷

They continue: "By itself seepage is not an alternative form; it even needs the structure to become what it is – but it creates new conditions in which structures become fragile and are rendered difficult to sustain. It enables the play of an alternative imagination, and so we begin seeing faces and patterns on the wall that change as the seepage ebbs and flows"

(ibid.). In a networked world, there are many acts of seepage, some of which we have already described. They destabilise the structure, without making any claims. So the encroacher redefines the city, even as she needs the city to survive. The trespasser alters the border by crossing it, rendering it meaningless and yet making it present everywhere – even in the heart of the capital city – so that every citizen becomes a suspect alien and the compact of citizenship that sustains the state is quietly eroded. The pirate renders impossible the difference between the authorised and the unauthorised copy, spreading information and culture, and devaluing intellectual property at the same time. Seepage complicates the norm by inducing invisible structural changes that accumulate over time.

It is crucial to the concept of seepage that individual acts of insubordination not be uprooted from the original experience. They have to remain embedded in the wider context to make any sense. And this wider context is a networked context, a context in which incessant movement between nodes is critical¹⁸.

Porous Legalities and Avenues of Participation

What seems to weave the stories of the inhabitants of the older city with the denizens of the new city is the umbilical cord of illegality that defines the ways through which they create for themselves avenues of participation. Building on the seepage metaphor of Raqs, I would like to add another trope which can help us to understand what allows these seepages to take place, viz. the idea of porous legalities.¹⁹ Porous legalities are created through different forms and materials, but primarily through a profound distrust of the usual normative myths of the rule of law, such as rights, equality, access to justice, etc. The lived experience of most people, instead, points to a network of different day-to-day negotiations with power that renders vacuous any neat binary of legal/illegal. The idea of a legal system as being a porous one enables an alternative imagination which takes into account the myriad forms of legality, from state legalities to non-state legalities and from individual acts of illegality to social networks that transgress the law.

Social struggles can then be seen also as struggles for the redistribution of legalities and illegalities produced in social conflicts, and porosity serves as a metaphor to understand the continuous struggle for the appropriation of the means of production of legality and illegality.

The slum dweller with a desperate instinct for survival has little choice but to ignore the law in order to carry on with the rather difficult task of surviving a hostile city, challenging the idea that it is the natural role of law to ensure public good. At other times, you follow the pores created to benefit the elite few who know how to manipulate legal machinery in their favour, and enter these pores to access an otherwise stubborn institution. Here for instance, the idea of corruption and bribery (especially within the police force) acts like a self-fulfilling prophecy which works at different levels for different kinds of claims. The music company paying the police to conduct raids also has to deal with the policeman who will pass the information of the raid to the pirates. A few pores exist as a part of the structure and design of the legal order itself. Thus the loophole in the Copyright Act that allows the production of cover versions becomes the basis for the creation of a new set of media practices, which in turn create a new level of anxiety for regulation.

One could understand these porous legalities as inevitable reproductions of social relations of power, but social struggles, whether they constellate around power, law or knowledge, also have an internal logic of their own where they tend to be performative, as they actively produce (rather than merely reproduce) the forms of power, law or knowledge that best suit their horizons of expectations. The tragedy would be to examine a practice of illegality, especially around the media, within its own horizons of expectations. We need instead to uncover the various constellations of fantasy, mobility, and innovations that mark the realities of these social worlds. Santos, for instance, states: "For different reasons, maps, poems and laws distort social realities, traditions or territories, and all according to certain rules. Maps distort reality in order to establish orientations; poems distort reality to establish originality and laws distort reality to establish exclusivity".²⁰

The figures of illegality pose fundamental questions to our neat categories of the liberal public sphere, where citizens interact through constitutionally guaranteed rights, as the exclusive mode of understanding the world of law and legality. The status of these transgressors as the 'not quite' and yet 'not quiet' citizens creating their own avenues of participation in the multiple worlds of media, modernity and globalisation demands that we ask fundamentally different questions of the relationship between law, legality, property (tangible and intangible) and that which we call the public domain.

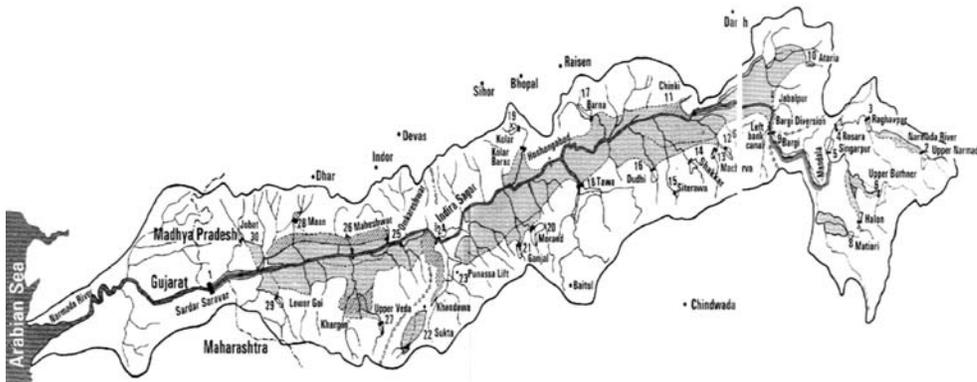
NOTES

1. This paper was first presented at the SSRC conference, "Intellectual Property, Markets, and Cultural Flows", New York, October 2003, and is a part of an ongoing conversation with colleagues at the Alternative Law Forum and Sarai-CSDS, and in particular Ravi Sundaram, Jeebesh Bagchi and Solly Benjamin.
2. See, Nitin Govil, "War in the Age of Pirate Reproduction", *Sarai Reader 04: Crisis/ Media*, p. 378 (2004).
3. Alain Durand-Lasserve and Lauren Royston. *Holding their Ground* (Earthscan, 2002, London). See also George Hardoy & David Braithwaite, *Squatter Citizen* (Earthscan, 1989, London). See also for a fascinating account of booksellers on the street, and their negotiation with the law, Mitchell Duneier, *Sidewalk* (Farrar, Straus and Giroux, 1999, New York).
4. Partha Chatterjee. *Politics of the Governed, Popular Politics in Most of the World* (Columbia University Press, 2004, New York).
5. Alternative Law Forum, "Of Master Plans and Illegalities in an Era of Transition" (www.altlawforum.org/Publications).
6. See James Holsten and Arjun Appadurai. "Cities and Citizenship" In *Public Culture*, Vol. 8, No. 2, Winter 1996.
7. Ravi Sundaram. "Uncanny Networks: Pirate and Urban in the New Globalisation in India". In *Economic and Political Weekly*, January 2004.
8. Peter Manuel. *Cassette Culture: Popular Music and Technology in North India* (Oxford University Press, 2001, New Delhi). For a similar account of the video market in Nigeria, see Brian Larkin, "Degrading Images, Distorted Sounds: Nigerian Video and the Infrastructure of Piracy". In *Public Culture* 16 (3), Fall 2004.
9. See Carlos Osorio, "A Contribution to the Understanding of the Illegal copying of Software", Working Paper, MIT Program on Internet and Telecoms Convergence. See also Shujen Wang, *Framing Piracy*:

- Globalization and Film Distribution in Greater China* (Rowman & Littlefield, 2003, Boulder).
10. Free School Street is a place in Calcutta which was a Mecca for all 1960s nostalgia rock junkies, supplying bootleg tapes, rare recordings and rare books not available in India. In recent times most of the music stores have disappeared, while the rare books stores stock Lonely Planet guides.
 11. See, Prasad, Bhagwati (2003a) "Piracy: Judte Rishte, Phaylta Bazaar". PPHP *Laghupatrika*, Sarai, Delhi, "Sangeet Udyog ka Chota Khilad", PPHP *Laghupatrika*, Sarai, Delhi. See also, PPHP CD.
 12. 510 US 569 (1994). Campbell v. Acuff Rose dealt with the reappropriation of Roy Orbison's "Pretty Woman" by 2LiveCrew. The band was sued for copyright infringement but the Supreme Court held that parody was a part of the fair use defence. *Sega v. Accolade* deals with a case in which the Supreme Court said that even if a use entailed a commercial element, as long as it added to the larger 'public good' of competition and demonopolisation, then could be considered as a fair use.
 13. 61 USLW 2254.
 14. Jeremy Rifkin. *The Age of Access: The New Culture of Hypercapitalism, Where All of Life Is a Paid-For Experience* (Penguin, 2001, New York).
 15. See generally, Ravi Sundaram, "Recycling Modernity: Pirate Electronic cultures in India", *Sarai Reader 01: The Public Domain*; Ravi Sundaram, "Beyond the Nationalist Panopticon: the Experience of Cyberpublics in India", available at <http://amsterdam.nettime.org/Lists-Archives/nettime-19611/msg00018.html>
 16. Raqs Media Collective, "X Notes on Practice: Stubborn Structures and Insistent Seepage in a Networked World" (Forthcoming, *Immaterial Labour: Work, Research & Art*, (eds.) Marina Vishmidt and Melanie Gilligan (Black Dog Publishing, 2005, London/New York). Also available at www.raqsmediacollective.net/texts1.html
 17. *Ibid.*
 18. *Ibid.*
 19. For multiple accounts of porosity, see Bonaventura de Sousa Santos, *Towards a New Common Sense* (Routledge, 1995, New York); Solly Benjamin, "Neighborhood as Factory" (Ph.d dissertation submitted to MIT). Walter Benjamin says, "Porosity is the inexhaustible law of the life of this city, reappearing everywhere...building and action interpenetrate in the courtyards, arcades and stairways...to become a theatre of new, unforeseen constellations. The stamp of the definitive is avoided". From "Naples", in *One-Way Street and Other Writings* (Verso Editions, 1985, London).
 20. Bonaventura de Sousa Santos, *Towards a New Common Sense* (Routledge, 1995, New York).

“...*Bolti Band* (SILENCED)!”

CLIFTON D' ROZARIO



Luharia Shankaria is probably one of the most articulate and even well-informed people I have met in the Narmada valley. Living in Jalsindhi village, in the forests of the Vindhyas right on the banks of the river Narmada, he can articulate the struggle and rights of the *adivasis*, provide a grounded critique of large dams, reel off herb names and where they can be found, and what ailments their potions would cure. With the same ease he can sing the *gayana*,¹ the song of creation and evolution that has been passed down orally from generation to generation of Bhilalas.²

However, like thousands of other *adivasis* in the Narmada Valley, Luharia has been in the midst of a serious crisis for some time now. He is a declared 'PAP', i.e., 'project-affected person'. From 1994 onwards, the rising waters of the Sardar Sarovar reservoir submerged his fields each year during the monsoon. Post-2000, the increasing level of the reservoir has permanently inundated his house and most of his flat and fertile lands. Though this project has been hailed for its model rehabilitation policy by policy makers and the Supreme Court of India, Luharia still awaits rehabilitation in Jalsindhi.

But this is not Luharia's entire story. Like other *adivasis* in that region, from the early 1980s onwards he was part of organisations that have tried to press for *adivasi* rights.

Initially it was the *Khedat Mazdoor Chetna Sangath* that organised *adivasis* to demand access to forest resources denied to them, to protest against and prevent exploitation of *adivasis* by the Forest Department, etc. Thereafter, the Sardar Sarovar project emerged from the dusty papers of developmental projects, and suddenly there was another adversary. *Adivasis* like Luharia and other farmers from the plains upstream organised themselves under the banner of the *Narmada Bachao Andolan* (NBA) to raise fundamental questions about the efficacy of large dams, rights of project-affected people, the state's rehabilitation policy, and so on. Also raised were the issues of *adivasis'* natural rights to their ancestral lands, and the cultural losses that would be an inevitable consequence of dam-induced displacement.

After years of *dharnas* (sit-in protests), deliberations with the state, *satyagrahas* and so on, the NBA, in a move to augment its other strategies, decided to approach the Supreme Court – the ultimate (at least officially) national arbitrator of justice – with the Writ Petition No. 319 of 1994, filed in May 1994. The court stayed the construction of the dam for almost five years. The matter was finally disposed on 18 October 2000, with the construction of the dam being permitted subject, to fulfilment rehabilitation preconditions, amongst others. Despite this – at least in the opinion of Luharia and others similarly affected due to the judgment – rehabilitation is still awaited.

Continuing to hope that the Supreme Court would provide justice, the NBA filed Writ Petition No. 328 of 2002, in which the court passed an order stating that every individual oustee was free to approach the court with their grievance after they had exhausted the other official avenues. Today, in early 2005, Luharia still awaits rehabilitation.

This essay is not an attempt to critique of the efficacy of the Sardar Sarovar dam, nor is it in any way an attempt to valorise the NBA or its strategies. There has been so much written on these that, at this point in time, one would have little to contribute. In fact, this account does not even aim to critique the court for what it did not do for people like Luharia. Indeed, much has been written on this as well. Instead, this article seeks to focus on the fact that the court in particular and the legal discourse in general did not think it necessary to hear him out, or rather, to let him speak. And yet found itself capable of talking about him, and talking on his behalf.

“...Humru Othro e Kohnu Se (That is all I have to say)!”

In spite of running the real risk of reducing the serious implications of more than two decades of organised resistance, let me try and provide a sense of what an articulation of rights and entitlements by Luharia includes. More often than not, this description would inevitably begin with the claim that *adivasis* were the original inhabitants of forests. The narrative would then focus on the nature of the *adivasi* relationship to land, forest and water from time immemorial, the struggles against the British for control of the forests during the colonial period, stories of Khajya, Chitu, Bhima Naik and others³ that are historically recorded and also are part of local legend and folklore. The account declares that India's Independence has not meant much to *adivasis* since they still face the same problems that they always did. State presence is registered only in the repressive and exploitative form of the forest department, and the overall lack of any development (no schools, roads, health

service, public distribution system or any social welfare scheme). The account then moves on to the need felt by *adivasis* to organise themselves: *dharnas*, *satyagrahas*, attempts to get themselves rehabilitated, attempts to stop dam construction, the increased apathy of the state, arrests, violent *lathi* charges, unfulfilled promises of rehabilitation, police firings, continued mobilisation and the ongoing struggle.

There appears to be a curious mix of both the traditional and the modern, in the sense that the *adivasi* understanding of entitlements stems from both customary rights of an indigenous population, and citizenship rights synonymous with the modern Indian state. The context of dam construction brought another source of legal rights to the equation, in the form of entitlements flowing from the rehabilitation policy. However, the centrality of traditional rights around which other rights accrue is clearly maintained. In this context, the *gayana* can be seen to be the epitome of these traditional rights, passing from generation to generation of *adivasis*, constantly reminding them of their history and simultaneously defining their future.

“...All Rise!”

There is a definite method of approaching the courts. First through the intermediary, in the form of the lawyer; and then the arbitrator, in the form of the judge.

In the case of NBA, it was decided that public interest litigation would be filed before the Supreme Court in New Delhi; and since one of ‘your lordships’ on the bench was the Chief Justice of India, Court No. 1 it was. What is to be said to the court must “respectfully showeth” only in a particular format, in English, substantiating “submissions” “before your lordships” by referring to the Constitution, various parliamentary laws, rehabilitation policy, international covenants and precedent judgments. The relief that is “respectfully sought” from “this Hon’ble Court” is in the form of “prayers” which the court “may be pleased to”



sanction. There are also dress codes, not only for the active participants in this floorshow, but apparently, also for those attending court proceedings. Black gowns with different modes of capes are a must, to distinguish the senior counsels from the junior advocates.

This is a far cry from the systems of dispute resolution that have evolved in *adivasi* communities. These processes are designed to deal with disputes revolving around various



issues, which, to use common legal parlance, are civil, criminal and torts. The *panch*, or group of *dais* (wise old men), whose closest parallel in the justice system is the jury, sits to arbitrate over these matters and resolve them. Disputes are settled through a complex web of negotiation and argumentation, and the sitting on a single dispute will go on till some form of a resolution is reached. There is a general consensus about the maintenance of decorum in these proceedings and the inevitability of acceptance of the decision of the *panch*. Filing complaints in the police station is also a practice, though *adivasis* are wary of this because the police see this as an opportunity to extract money from all sides.

There was no shift from prescribed judicial form and content in the writ petitions filed by the NBA. There was an attempt to produce a document that best captures the spirit and ideology of the movement within the restrictive framework of constitutional law. Needless to say it was in English, and top-notch senior advocates of the Supreme Court fought the case on behalf of the NBA. It is my belief that this is not a comment on the NBA; it is more a comment on the rigidity of the legal discourse and legal institutions that the movement chose to

approach. It is also a comment on the fact that in a democracy, there is pervasive belief that the judiciary will deliver justice when all other avenues fail.

Senior activists of the NBA who possessed the necessary knowledge of English, the writing skills and the ability to interpret the law produced the writ petition. The document was produced following intense discussions on what should go into it; activists and village representatives participated. It was then approved by the advocates for the NBA. The petition was then filed. The respondents (in this case the Union of India, the state

governments of Maharashtra, Madhya Pradesh, Gujarat and Rajasthan, and the authorities placed with the responsibility of completing the project and rehabilitating the project-affected people) then filed their responses to the writ. The petitioners, i.e., the NBA, then responded to these through affidavits and counter-affidavits. Thus the cycle of written submissions was set in motion. During hearings, the advocates decided which sections of the legal documents needed to be emphasised and read out to the “lordships”, on the assumption that the “lordships” would read the rest.

In such a process, the appropriation of the voice takes place at multiple levels to ensure the effective silencing of the individual: from Luharia, to the person who represented the case in the letter of the court documents, to what the advocates accepted as valid arguments, and then, finally, to what the judges chose to listen to. The activists wrote the legal documents, more often than not, raising crucial issues about the efficacy of the dam, environmental impacts and rehabilitation, but also in reaction to the respondents’ legal documents. The “lordships” of the Supreme Court heard the arguments of the senior advocates appearing on behalf of people like Luharia, and read “writ petitions”, “affidavits” and “written submissions” by the NBA activists.

The *adivasi* is thus effectively silenced not just through established institutional methods but also through institutional discourse and form. The legal platform on which rehabilitation issues were being contested was not the *panch* that he is accustomed to, where he could argue his own case in his own language while articulating his rights using a familiar framework. This is merely one example of the way in which law constitutes its own authority in the most indiscriminate fashion, with language operating on behalf of power; it reinforces hierarchy and subjugates litigants, who become spectators in their own drama.

In order for the court to even begin to understand why the *adivasis* do not want to leave their lands, many other stories will have to be narrated and heard. One such is that the word ‘Jalsindhi’ actually means a ‘well of water’, and that the personified Narmada, on her journey to the Arabian Sea from Amarkant, halted at villages during the night and listened to what people had to say. However, to enable herself to stay still while she heard them, she flowed into the earth, creating a well. Jalsindhi was one such village associated with the river. The *adivasi*’s relationship with his village and the Narmada is sacred, and central to his existence. Other stories relate to sacred spots that are central to *adivasi* spiritual beliefs, and whose relevance lies precisely in their location. For instance, the mountain of Rani Kajal is the most important goddess of the Bhilalas.

There is a sacredness in the immediate geography that interweaves the *adivasi* past with the present and the future, their spirituality and everyday life with their politics. This is best communicated by the *adivasi* song of resistance that goes: “*Rani Kajala suroo amu inu kaha beeje humu juwanya/e to hamari paala kootri inu kaha beeje humu juwanya/baaji kaye mota hoye inu kaha beeje humu juwanya* (We are the children of Rani Kajal, why must we fear these people [police, governments, etc.]/they are the dogs that we look after, why must we fear these people/we have eaten what we cultivate, why must we fear these people)”.

These and similar articulations were denied entry into the official legal discourse. The denial was at the level of representation on the official documents, i.e., petition, written

submissions and affidavits; and at the level of oral testimony before the judges. Thus people like Luharia have been denied opportunity to speak with their own voice.

However, the denial was not just of voice but also of presence. The sheer physical distance between the *adivasi* areas and Delhi, the insurmountable financial implications of the journey to the capital and the complications of city lodging curtailed the presence of *adivasis* at the hearings of their petition. The *adivasis* in general do not move far from their villages. Prior to getting involved in NBA activity and its *dharnas* in political centres such as Bhopal, Bombay and Delhi, people like Luharia found no reason to travel to these places.

The censorship of *adivasi* presence continued on other levels. In one instance, certain *adivasis* were told to take off their *pagdis* (turbans) before entering the hall of the court hall, since such headgear would be disrespectful to the “lordships”. (Apparently, only Gandhi *topis* and Sikh turbans are allowed into the rooms of the Supreme Court). After much heated discussion, the *adivasis* were led off to the room of the head of court security, who finally relented to their wearing their turbans in court after they convinced him that their *pagdis* were as integral to them as a Gandhi cap to a Gandhian and a turban to a Sikh.

Once inside, the mechanisms of silencing were most evident. It was immediately assumed that *adivasis* were vague spectators without the intelligence to understand the arguments being presented. To the NBA’s credit, it ensured that in all dam-related hearings there were people like Luharia present, with activists or supporters constantly translating the proceedings of the court. However, participation and inclusion was limited to this gesture. The *adivasis* present were aware that a drama was unfolding before them, aware of its repercussions, aware that they had little power to intercede on their own behalf. Ranya *dai*, a senior *adivasi* activist from a village called Mukhadi in Maharashtra, once remarked on this, and was appalled that the “lordships” chose to listen to “men in black coats” instead of to him, considering that he could narrate his woes best.

Courtspeak...

To quote from the judgment: “The majority of the project affected families are involved in rain-fed agricultural activities for their own sustenance. There is partial employment in forestry sector. Since the area is hilly with difficult terrain, they are wholly dependent on vagaries of monsoon and normally only a single crop is raised by them”.

Contrast this with one of *gayana* verses: “Now God had a garden with all kinds of plants in it. Part of his garden was for us humans – this was the garden of *jowar*. Then God gave breasts to the *jowar*. Men fed from the breasts and blood flowed into their veins. That is why if we do not eat *jowar* our blood dries up. For livestock there was a garden of *jinjvi* grass and God gave it breasts. Livestock also came to have blood”.

Clearly, the relationship shared with land, food produce, livestock and fodder is more than just a functional one. In *adivasi* lore, there are gods and goddesses for trees, grass, mountains and animals, thus providing a concrete frame to understand the relationship between nature and humans. To understand the *adivasi* relationship to land, one must first comprehend this. One must also take note of the societal changes that have taken place in *adivasi* communities, affecting prior harmonious and symbiotic relationships. Market economy has clearly entered the lives of the *adivasis*, and their once-subsistence farming

has now taken a commercial turn. As it happens, some semblance of their earlier philosophy has been preserved through the tradition of the *gayana*. The courts, however, were not interested in this. Their resistance is symptomatic of legal discourse's inability to accommodate any worldview other than its own; the skewed and arrogant power relations at work enable it to dismiss alternative conceptualisations of life, dismiss the possibility of 'other' modes of interlocution, dismiss the potential for consensus within hierarchical parameters.

The court judgement went on to add that displacement was actually to the benefit of the illiterate *adivasis* since they would be rehabilitated to new locations where they would definitely be better off than they were at present; at their new locations they would have more, and better, amenities than those available in their villages.

"...the tribals who are affected are in indigent circumstances and who have been deprived of modern fruits of development such as tap water, education, road, electricity, convenient medical facilities, etc..." This, the court believes, would lead to their "gradual assimilation in the mainstream of the society" and "will lead to (their) betterment and progress".

The court did however note that "displacement of these people would undoubtedly disconnect them from their past, culture, custom and traditions", but added that this becomes necessary for the greater common good. The court most emphatically states that "a nature river is not only meant for the people close by but it should be for the benefit of those who can make use of it, being away from it or near by". Further, "realizing the fact that displacement of these people would disconnect them from their past, culture, custom and traditions, the moment any village is earmarked for take over for dam or any other developmental activity, the project implementing authorities have to implement R&R programmes".

And here is the most audacious part of the judgment: "It is not fair that tribals and the people in un-developed villages should continue in the same condition without ever enjoying the fruits of science and technology for better health and have a higher quality of life style. Should they not be encouraged to seek greener pastures elsewhere, if they can have access to it..."

What is forgotten here is that people like Luharia want development but not through displacement. In fact, the struggles that he embarked on from the beginning were for other vital issues such as schools, roads and health services, along with the issue of control over forests, etc.

"...kan closeion"⁴

The tenor of legal discourse in general gives the impression that it is not a direct method of keeping people out, which would appear unjust and brutal. Rather, it is a sophisticated exclusionary process, an oblique way of deciding who has something worthwhile to offer, and who is qualified enough to speak.

Legal discourse as moderated by the Supreme Court does not provide a site for self-representation by the *adivasis* of the Narmada valley; nor is there any accommodation of their language or their claims to entitlement and justice. Further, this mode of legal rhetoric

is also marked by an entrenched denial of the *adivasi* cultural knowledge base. There is a physical, social and ideological impenetrability of the legal system; a continual regulation of those who are compelled to negotiate this maze; a pompous assertion of omniscience, from the approved dress code to the inflexibility of discursive strategies; an unshakeable belief that it is logical and rational to the extent of accommodating all people; an arrogant lack of any self-doubt regarding its capacities: such characteristics can only be attached to the narrative of legal reason.

With regard to what he terms 'legal deafness', Peter Goodrich writes that "it exemplifies an habitual logic of law, one which throughout its history has systematically obliterated difference in all its manifestations...the logic of the common law has been one of a comparable lack of alternatives, of a refusal to recognise that vast host of the other: the outsider, the stranger, the vagrant, the marginal...What is their place in the law, what is their voice, whose language do they use?"⁵

Bolti Band?

Yet this silencing does not go unchallenged; and at the forefront of this challenge are people like Luharia. After the judgement, thousands of protesting *adivasis* and farmers from the Narmada valley descended on the Supreme Court. For an entire day they blockaded the gates, shouting slogans and giving fiery speeches critiquing the fallacy of legal reasoning. Reportedly, never has such a picketing taken place in the history of the Supreme Court.

NOTES

1. The *gayana* is a narrative of the creation of the world and its living beings and is sung by the village *baduvas* during the *Indaldev pooja*. The manner in which *adivasis* understand their natural rights over the natural resources can be clearly understood from the *gayana*.
2. The *Bhilalas* are an *adivasi* community in Central India.
3. *Khajya Naik*, *Bhima Naik* and *Chitu*, known as *thuggees* in official records, fought against the British in attempting to retain the sovereignty of *adivasis* and their control over the forests. Local *adivasi* songs and folklore contain renditions of their heroic deeds.
4. *Kan* in Tamil means 'eyes'. This phrase means the conscious closing of eyes. Few of us play around mixing two languages. This is one such example.
5. Goodrich, Peter. *Languages of Law: From Logics of Memory to Nomadic Masks* (Weidenfeld & Nicholson, 1990, London).

Lepers, Witches and Infidels & It's a Bug's Life

FRANCESCA DA RIMINI



An eyewitness account of a court case regarding the lawfulness of children in Australian immigration detention.

Lepers, Witches and Infidels – Or Shall We Just Call Them Refugees?

In the space of four hours on 28 July 2003 the blue Adelaide winter morning turned to bleak rain and wind. In the climate-controlled windowless Room R, on Level 5 of the Family Court, the elements didn't have any impact upon the crowd of 60 human rights observers, indigenous elders, refugee activists, lawyers, spooks in ill-fitting suits, journalists, translators, detention centre drones and burly Federal Police. Just like the five Afghani children¹ whose futures were at stake were unable to move us directly by their actual presence. Like the weather, the infamous five existed outside of this impersonal room, imprisoned for two-and-a-half years in the liminal space of immigration detention, between the floor and the sky.

Their appearance in the courtroom could have provoked a very different atmosphere, an interruption of the theatre of justice in the British colony² with its high church signs of gowns, deep bows, and learned friends. The children's absence mirrored the way the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) consistently referred to them as "unlawful non-citizens"³ who, since the failure of their appeal to the High Court in February 2003, "have no rights of protection" under Australian law.

In recent years the government has waged a crushing, highly racialised propaganda campaign⁴ against a few thousand asylum seekers, 'boat people' who arrive after arduous

and dangerous journeys⁵ from mainly Middle-Eastern countries – Iran, Iraq and Afghanistan. Mandatory detention of asylum seekers in often remote secure facilities was brought in by the Labor government in 1992, replacing the community-centred system of open migrant hostels, and has been vigorously pursued by the conservative Liberal government. A strong body of existing evidence points towards direct government involvement with the sabotage and sinking of the SIEV X, causing the deaths of 353 refugees, mainly women and children.⁶

Options for those seeking shelter from persecution have worsened: years of detention in prison camps, legal challenges followed by forced deportation, or a begrudging recognition that the original claim for asylum status was valid. Or release on a Temporary Protection Visa (TPV) valid for three years, after which the onus is on refugees to prove that it is unsafe to return home. Thus, applicants are kept in a continual state of uncertainty.⁷ These kinds of grossly unjust, immoral and illegal acts have provoked thousands of Australians, in big cities as well as small country towns, to establish connections and friendships with refugees in and out of detention, working together to change the laws.

Looking around the courtroom, I wonder if some here have been involved in illegal direct action such as assisting escapes from the infamous Woomera camp, and harbouring ‘escapees’ in safe houses.⁸ I definitely see advocates who tirelessly chip away at the mechanics of power, who form part of the net of people who engage inside and outside law, as situations require.

The children's father was present, flanked by three tagged Australasian Correctional Management (ACM)⁹ guards in civvies and another company man looming in front of the courtroom door. Mrs. X, seven months pregnant, had been rushed to hospital.

All rise for the entry of Justice Stephen Strickland.

Today is the hearing of two interim applications. The first recommends the children reside in a suburban home provided by a welfare agency, with regular parental contact. The second seeks that, pending final determination of the legality of their detention, they be released from immigration detention.

There is a lengthy preamble whose phrasing is objected to by Mr. X on the grounds that he is an Afghani national, not a Pakistani. The government has disputed his nationality since two of his children attempted to seek refuge in the British Consulate in Melbourne.¹⁰

The applicants requested that before the Final Hearing the judge visit Baxter Detention Centre,¹¹ where the father and his two sons now live (and possibly the Woomera Housing Project¹² where Mrs. X and her three young daughters have been living since June). They claimed that photographs of the centre don't represent the real circumstances in which the children are living.

Referencing the recent Full Court decision on the Palestinian refugee Al Masri,¹³ the judge clarified that the Family Court can release children on an interim basis from immigration detention.

The applicants declared, “On one side we have the best interests of the children and on the other the interests of the Minister”. Mrs. X won't cooperate with regard to leaving Australia because of a fear of what would happen on her return to Pakistan. They noted that the DIMIA affidavit admits that the security situation in Quetta, a town in Pakistan near the Afghanistan border, is dangerous to any security officer who would accompany the family

in a forced removal. So the situation of detention rolls on indefinitely: it is unclear for how long Quetta has been unsafe, or if it will ever be deemed safe. DIMIA could force the issue if they find a willing nation to accept the family, but they are getting no closer to finding this place, and therefore the detention appears to be indefinite.

Speaking on behalf of the family, David Haines, Queen's Counsel (QC), asked, "What constitutes the best interests of the children?" Although the Immigration Minister asserts that the children are in a stable situation and should not be separated from their parents, the two brothers are in Baxter and the three sisters have been in Woomera in 'home detention' with their mother – and the oppressive 24-hour presence of ACM guards. The status of 'family' has already been destroyed. The affidavit of psychologist Ms. Karen Fitzgerald recommended that the children be released to live with their parents in the community with help from a supportive network, and that restoration of the children's psychological well-being begin immediately.

The judge questioned the implications of DIMIA's High Court Appeal to overturn the recent empowerment of the Family Court.¹⁴ The Family Court has new power to give orders pertaining to the accommodation, health and education of asylum-seeker children who are deemed to be at "unacceptable risk" of "significant and/or permanent damage". The applicants noted that under the Migration Act the Minister has the power to authorise any person to act as a detention officer, and that many places can be defined as detention sites. For example, children can be placed under the charge of community workers even in their own homes.

DIMIA declared that the judge was unfairly being asked to "forcibly remove" five children from their parents and place them with two "non-professional carers". Protection visas have been refused because the family is from Pakistan, not Afghanistan. Mother and children have lost all rights. The father's visa has been cancelled. Family Court has the power to release the children if detention is found to be unlawful, but not otherwise. The detention of children will be unlawful if there is not a reasonable likelihood of removal from Australia. Indefinite detention is not the same as "not short" detention. The woman and children are from Pakistan. Obtaining the necessary travel documents for deportation can take a long or a short time. These are unlawful non-citizens who have no right to remain in Australia. The Minister is under a statutory obligation to remove them. They have no further right to stay; they will be removed. These children as a matter of law must be removed from Australia. It is important to bear in mind that immigration detention is not a punishment. Its purpose is to separate unlawful non-citizens from the Australian community.

Silence in the courtroom.

DIMIA continued...

Immigration detention is voluntary in that it can be ended by a refugee agreeing to leave the country. Mrs. X's unborn child will only be an Australian citizen if the parent is a citizen or permanent resident. Baxter is a purpose-designed centre, with improved accommodation. Medical facilities available. A balanced diet. None of the children has a need for psychological monitoring. They haven't seen a psychiatrist because they haven't needed one. The children are healthy and well-cared for. It will be a cruel psychological trick to release the children as it would give them false hope that they could stay in Australia.

The judge stressed that the applicants needed to provide more information on the proposed housing and schooling arrangements for the children, should he order their release. Because he had much new material to consider, he adjourned the handing down of his landmark decision.

The Judgment, or, It's a Bug's Life

Day 3.

Tuesday, 5 August 2003. 10.30 am

Courtroom R is crowded. Today the mother of the children is here in a hospital wheelchair. She is wearing blue, with a blue headscarf. The children, five small pockets of doomed Middle-Eastern anti-matter, five illegal non-citizens to the Australian government and its honchos, are not here. Aged between 6 and 15, each has so far been in detention for 947 days.

We are here for the handing down of Justice Stephen Strickland's decision as to whether it is in the children's best interests that they be immediately released from immigration detention. Aboriginal artefacts and paintings decorate the otherwise bland green room. Quiet conversations, greetings and bodies criss-cross this space of 'civilisation', far removed from Fortress Baxter and the rocket range 'dongas' at Woomera. The eldest two boys had sought, and gained, illicit freedom for a few days around 27 June 2002, before being shafted back to detention. Such impudence must be punished, and barring heads on pikes, detention and deportation is the state's preferred method.

Proceedings start at 11:05 am. The judge is unwigged and frocked up in a garment of Jacobean simplicity. DIMIA furnishes two affidavits – one by solicitor Katherine Bean attached to exhibits of the Case Management Plans by ACM officers for each child, the other the expert opinion of Helen Turner, an ACM contract nurse who allegedly has regular contact with the children.

Ms. Karen Fitzgerald, a psychologist and Director of Child Protection Services attached to the Department of Paediatrics and Child Health, School of Medicine, at Flinders University in South Australia is called as a witness, and swears an oath of honesty on the Bible. She is a woman of a certain age and grace who will maintain her professional resoluteness throughout the ensuing cross-examination by DIMIA barrister Charles Gunst, QC.

Ms. Fitzgerald describes the affidavits as observations of, not conversations with, the children. She states that it was difficult to comment on them, as "what is not here is probably as important as what is here".

Next is her cross-examination by Mr. Gunst, a portly being doing the devil's work, assisted by Martyn Kennedy, a well-scrubbed younger man, and the silver-streaked Ms. Bean. Gunst states that irrespective of where the children are staying, they will require ongoing expert monitoring and assessment. Ms. Fitzgerald counters that they need ongoing therapeutic help.

Mr. Gunst requests clarification of Ms. Fitzgerald's qualifications. She explains that she is a psychologist with a BA and a Masters in Criminal Psychology from Flinders University. Gunst notes that she is not a medical practitioner nor a psychiatrist nor a surgeon, and possesses no tertiary qualification in psychiatry, nor a Diploma of Psychological Medicine.

Her function is neither to diagnose mental illness nor to prescribe medicine. She is not a registered or mental health nurse. She cannot do medical examinations, nor diagnose neuroses or psychoses. Fitzgerald is unfazed.

Mr. Gunst has an existential moment. "Would you accept that psychiatry is the science of the medical treatment of diseases of the mind, and that psychology is the science of the study of the soul or the mind?"

It is curious to hear a digression on the soul in this most soulless of contexts. Fitzgerald says that psychology is more multi-faceted in its diagnosis, and that Gunst's description did not cover the range of assessments and treatment of disorders achieved by a variety of therapeutic techniques.

Mr. Gunst continues by stating that Fitzgerald had not been engaged in treating the children, her role being to interview the family and to provide a series of reports, dated 18/09/2002, 21/07/2003 and 1/08/2003, and that these reports had been prepared in knowledge of extant or potential court proceedings. His way of speaking gives a slightly dirty edge to everything. He rhetorically muses as to whether the role of an expert is to be impartial and objective. According to Fitzgerald, her role was to write a report with a view to developing a plan. Gunst asks if she was aware that Australian legislation provides for mandatory detention for visa-less non-citizens. He slides a second question in on this one's heels. "Are you a supporter of mandatory detention of unlawful non-citizens?"

You can almost see Ms. Fitzgerald suspended in the witch's chair above the icy black pond here. "Recant, and your eternal soul, if not your mortal body, shall be saved!" She replies, "I could talk about what I know, about mandatory detention in other countries, what it's for".

QC continues, "Are you a supporter of the method of mandatory detention used in this country? Dealing with children who are unlawful non-citizens, are you against the idea of their mandatory detention?"

Ms. Fitzgerald states that she believes mandatory detention is destructive for children.

QC queries, "Was that a view you held before you prepared these reports?"

Ms. Fitzgerald replies, "It is my responsibility to conduct assessments with a view to acknowledgement of my own views. [...] I am fastidious in being impartial".

QC Gunst barks, "Before you spoke to any child you had the predetermined view that their best interests would be being released from the detention that the Parliament of Australia has ordered?...You asked Mrs. X not only about herself but about her children? You've reported these comments because you accept them as true statements about the children?"

Ms. Fitzgerald replies, "I reported them because that's what she said".

Mr. Gunst declares, "You noted that Mrs. X talked about her second son who tried to hang himself. You accepted this. Putting aside the normal teenage-boy difficulties in eating and sleeping. The 12-year-old who tried to hang himself. The 12- and 14-year-old children stitched their lips together. These are dramatic assertions describing the behaviour of very disturbed children". The lawyer asserts that Ms. Fitzgerald had seen no evidence that any of the alleged events had indeed happened, and that the "comprehensive management plan" shows that no such events occurred. "If these most dramatic or florid episodes

described to you had never happened, you would have to rethink your report”.

Ms. Fitzgerald agrees.

“Florid” is a term used to describe aspects of delusions or episodes experienced by people in extreme mental states such as psychosis. Who is “florid” here – the ‘bad mother’ (bad because it is she who is responsible for her children’s situation, by seeking asylum), the gullible psychologist, or the children themselves, “illegals” who have possibly broken the law by escaping from immigration detention?¹⁵ The word ‘florid’ in its common usage could apply to Gunst himself with his rosy jowls and well-birthed girth.

Mr. Gunst complains that the witness provided no evidence of any previous trauma to which the children had been subjected. Ms. Fitzgerald says something about coming from another country.

The acoustics in the room are bad, and everyone in the gallery is leaning forward, straining to hear. This is a landmark human rights case and it is important to hear everything. But maybe the court administration has blown its budget on the safe Aboriginal art rather than efficient audio (no in-your-face Gordon Hookey artworks, no Indigenous artists making radical critique, just wooden artefacts).

QC (in an attempt at humour): “You’re not suggesting that arriving in Australia is a trauma?”

Ms. Fitzgerald didn’t laugh. “My assumption is that they did not travel easily to this country”.

QC: “Mr X. left for Australia without a word to his wife and children. Would this create trauma?”

Ms. Fitzgerald: “Yes”.

QC: “Your report suggests that the impact of the children being in Woomera has been superimposed by previous trauma”.

Ms. Fitzgerald: “My assumption is that seeking refugee status is going to involve trauma”.

Moving from the microscope to the dissecting table, Gunst polishes his scalpel, claiming that no attention had been given to existing family discord or pathology, and that there was a need to know whether it was a happy or violent relationship. Was Ms. Fitzgerald aware that Mrs. X had been assaulted by her husband recently, necessitating her transferral to Woomera?

The psychologist says she is not aware of this.

Mrs. X immediately asserts that her husband didn’t hit her. After the hearing, news circulates that Mrs. X was angry at this slander, describing her husband as “a loving husband” who had helped her transfer to Woomera so she could prepare the foods she needed during pregnancy.

Gunst, earnestly: “The release of the children is not entirely without risk [...] They are in Baxter or Woomera with their parents, people who speak the same language and have the same faith”. He goes on, “Releasing the children into an English-speaking community house which does not share the same faith poses a very great risk to their emotional well-being”.

(This is said about children who amongst them have shared 4,735 child days in a high-security immigration prison. How can they ever recuperate 4,735 days of childhood?)

Ms. Fitzgerald suggests that the experience of detention is the lens through which the children are dealing with the rest of the world. "There is not a lot of restoring capacity when the children can't see past that impediment. There is a tendency for children in general to blame themselves for their predicament, internalising responsibility, which causes a significant psychological impact. The most significant trauma is that the children think that they are responsible for being in detention. No amount of professional help administered within the detention centre environment will allay this; therefore, continuing detention for these five children is the very worst scenario".

Mr. Gunst returns to interrogation about schooling, homework, and bedtimes. Shooting his final arrow for the morning, he opines, "It is easy for children to be presented as flat and depressed, but when we look at these observations [Management Care Plans] we see 'happy carefree children'".

After lunch, the QC pulls out comments from the individual management plans on each little bug-child, creating a joyful fantasy world of magic faraway trees and Famous Five adventures.

We are told that Child A, the eldest, has a record of breaches of security, assaults and poor behaviour. At the same time he is a 'capable student', displays a 'keenness to learn', is 'increasingly approachable' and a 'polite, bright student'; all traits which DIMIA proposes are inconsistent with 'flat, depressed behaviour'. The psychologist responds that these observations are not surprising, as school can be a place where children present like this.

(In 2002 I attended two days of the Human Rights and Equal Opportunity Commission's [HREOC] public national hearings on Children in Immigration Detention.¹⁶ Amongst the witnesses were teachers who had been sub-contracted. They were not provided adequate books or materials, only offered six-week contracts lest they form meaningful relationships, were required to wear the regulation ACM guard overalls, and forbidden to act in a natural, warm manner. Conditions were so bad that even contract employees suffered stress-related illnesses.)¹⁷

Mr. Gunst continues with his fable of Child A, mentioning soccer and a trip to the cinema, literally saying, "A good time was had by all!"

Ms. Fitzgerald replies that it was difficult for her to comment on disconnected observations, often unsigned case notes offering no clue as to their authors, their expertise, or the context in which they were made. She states, "Depressed children don't necessarily always present in the same way. 'A' is passionate about learning. He has been in detention for some time. He's learnt how to respond, in an institution. These are things he adores".

Of the second eldest child, DIMIA claims that he is "pushing boundaries in terms of asserting independence". The psychologist reminds us that because "the children are living in a restricted and impoverished environment, to extrapolate from normal children is risky".

Ms. Fitzgerald says that she had worked for 15 years in child protection and has seen many situations of poverty. "It was still a shock for me to visit Woomera and see the conditions. When I saw Baxter Detention Centre, again I was shocked. If you look at these children out of detention, you would expect to see that children would move around the neighbourhood and home without going through security. All meals wouldn't necessarily be

at a set time. Think about a normal environment and look at how the children live; not even in a minimal way does detention come close. We are talking about psychological safety, where children grow up with parents in charge of their lives, not an institution”.

Gunst returns to his romper-stompering. “You came to your task with a predetermined view that no children should be in detention”. Ms. Fitzgerald disagrees, saying that assessment involves a complex mix of a number of aspects of a child’s life. Mr. Gunst, QC, retorts, “Gym, gardening, soccer, basketball – you don’t seriously call that impoverished?”

Ms. Fitzgerald replies, “The notes capture moments of activity. Children have a psychological life as well”. She claims that the case management notes were not diametrically opposed to what she had reported but formed part of a bigger picture.

Gunst contends, “These observations are of a happy boy having fun”. He moves on to Child C, the eldest of the family’s three daughters. He chooses observations from the ACM notes which generate a spooky Lucien Freud superrealist painting of “a well-behaved young girl”, “generally happy, polite, cheerful”, “doing well at school”.

The psychologist states, “This is a child who internalises her feelings. She is overly accommodating. I would be concerned. This list appears to describe a child who is compliant. I would ask questions about what that compliance means”.

DIMIA’s lawyer says that the notes show the children are coping well, and are happy and well looked after. Not having any new “evidence” to support this dogma, Mr. Gunst dredges up his pre-lunch shock-and-awe tactic, designed to intimidate a cautious judge into toeing the line. He asks reprovingly, “If the children are taken out of detention, put into a new school, then after one day, or a month, are uprooted again and taken back to immigration detention, isn’t there a very grave risk to their mental well-being?”

Ms. Fitzgerald repudiates this, saying the children needed ongoing therapeutic intervention away from detention.

Mr. Gunst declares very little benefit would accrue in a month of therapy. Here is the anomaly of DIMIA’s position – these are “happy and carefree children” and yet there is concern about the length of restorative therapy they need. Mr. Gunst suggests that Ms. Fitzgerald had a false view of the children and that there is no evidence of an attempted hanging. She replies that Family and Youth Services (FAYS) have documented the suicide attempt.

“Wouldn’t it be a cruel trick to release these children for a short period of time, only to be re-detained?” Gunst asks. Ms. Fitzgerald opines that this would not be the case if the children understood the context.

Mr. Gunst insists, “Do the children understand that they have no prospect of getting a visa? It poses quite a considerable risk letting a child – a fifteen-year-old young man – into the community. Isn’t he much safer being observed, rather than being out, unsupervised? A High Risk Assessment Team exists at Baxter”.

Thus ends the cross-examination.

David Haines, QC, the barrister for the children and their parents, asks Ms. Fitzgerald if any of Mr. Gunst’s questions gave her reason to change the opinions in her reports. She replies that the thought of the children being released for just a day or a week would give her pause.

Accusing DIMIA of being selective and only reading the happy parts of the Management Notes, Mr. Haines says that the documents in their entirety showed a different perspective on each of the children. He notes that at the end of each entry there was generally a name and a title; EO, Case Manager, Teacher, Detention Officer, etc. “How much weight should we give to Detention Officers employed by ACM to detain people? Their jobs depend on how they detain people”.

Mr. Haines raises a pertinent observation. “A plan is something that looks to the future. This is not the case of these individual Management Plans”.

Doggish Gunst refers to the nurse’s affidavit, saying ambiguously, “She is there to watch for symptoms of mental health and take steps to remedy. [...] These reports show normal ordinary teenagers who aren’t happy all the time, nothing more than that”.

He reiterates that this case was an Interim Application and that the judge has to be satisfied that, firstly, there is a *prima facie* case that the detention of children is unlawful; and secondly, that it is in the children’s best interests that they be released into the community. “Your Honour has been asked to take a leap in the dark. They are settled and in a known situation at Baxter and Woomera. If you release them, where will they be tomorrow? These children are far better off with their parents”.

The judge adjourns to prepare his judgment.

Crime and Punishment

We returned a few hours later and the judge summarised the evidence. Mrs. X’s affidavit declared she has made the children aware that if they are released they may be returned to detention, and possibly deported to Pakistan. The judge complained peevishly that her statement didn’t describe the children’s reaction, and therefore “it goes nowhere near to answering the concerns” that had been raised.

“I have far more information before me now. As a result I cannot take the same position as I did last Friday on my reasons for judgment regarding the preferred environment, because of the deleterious effects of detention on children. Because of the cross-examination I can’t simply say I take Ms. Fitzgerald’s report at face value. There is still not sufficient information to make a definitive decision”.

During this declaration, a visibly inconsolable Mrs. X was wheeled out of the courtroom. Before she left, a family friend approached to hug her goodbye and the ACM harpies swooped in, forming a human shield. But tenderness won, and a kiss slipped through.

Justice Strickland droned on, impervious to the oppressive atmosphere that had descended. “The cross-examination raised concerns about the soundness and justification of Ms. Fitzgerald’s opinion”. He said he wasn’t convinced by DIMIA’s argument that she held a pre-concerned notion about mandatory detention. “However, Ms. Fitzgerald has accepted what the mother has said about her children, and this has formed the basis of her conclusions”. The judge said that he doubted if the boy had attempted suicide, and had sewn his lips together, whilst acknowledging that



the written report by FAYS on “the most florid example of self-harm” had added to the psychologist’s acceptance of the mother’s words. Justice Strickland said that with regard to previous trauma experienced by the children, Ms. Fitzgerald had made various unsupported assumptions regarding their arrival in Australia.

Perhaps her reluctance to delve into the family’s past was deliberate. During the HREOC hearings, health professionals noted that asylum seekers have come from highly traumatic situations. Each time people must reiterate the circumstances that led them to flee they can become traumatised again, as to re-narrate a trauma is to relive that trauma.

The judge continued, saying he wasn’t satisfied about the children’s knowledge of their impending removal to Pakistan. He raised the issue of “pre-existing family violence”, asking whether the children’s psychological health could be attributed to this phenomenon.

Justice Strickland summarised the psychologist’s position – the children blamed themselves for their predicament. Detention has had a significant impact on how they view themselves, their parents and the world. Their mental health cannot be addressed whilst the children remain in continuing detention. He parroted DIMIA’s professed concerns about Centacare’s fostering arrangements, asking who would accompany the children to the mosque and school, how would their health needs be met? He painted a bizarre picture of five little ragamuffins and truants, abandoned by their foster carers, and presumably left to eat grass and twigs by the side of the road.

He reiterated that there was no evidence regarding the children’s views on the possibility of a re-detention, which would be inevitable if the family were to be removed from Australia. He pointed out the inconsistencies between the mother’s account of her children’s well-being and account presented in the Individual Management Plans, and refuted the inference by the applicants’ lawyers that observations written by ACM employees could be self-serving. The judge declared that he couldn’t assess the facilities at Baxter. He wanted more details on the proposed therapeutic intervention.

“These children are vulnerable. They will be separated from their parents in a strange environment. The family are being separated in this proposal”.

(This seems to suggest that detention itself is a normative environment, in which the children are not vulnerable. How dangerous is it for us as a society to normalise the material and human architectures of detention to the point where it becomes the favoured environment, on the basis that it is a known entity, whereas a life lived in freedom always involves choice and uncertainty and their consequences?)

The judge said that he was now even more concerned as to where the best interests of these children lay, and complained that there had been a “headlong rush to the interim proceedings. Not enough thought has been given to the children”.

His final words were, “On the evidence I have now, I am not satisfied that it is in the best interests of the children to release them. These children remain the innocent victims in this whole scenario. I dismiss the application”.

Postscript, 19 December 2004

Deeply unhappy with this result for the children, a legal team took the matter to the Full Family Court which ruled for the children’s release into a home under the care of the

Catholic welfare agency Centacare and Iranian foster parents.¹⁸ The children's beloved uncle was forcibly deported in 2003 and arrested upon arrival at Karachi; he had to bribe his way back to Afghanistan. Mrs. X remained in detention in a motel in Adelaide with three ACM guards until the birth of her baby. Family friends were prevented from visiting Mrs. X and her newborn in hospital, and flowers and cards were not delivered, implicating the government-run Women and Children's Hospital in the continuing cruel treatment of the family. Mrs. X and the baby were kept under guard in the motel for a further eight months. Mother and infant were then reunited with the elder five children. Mr. X remains in Baxter Detention Centre. On 29 April 2004, the High Court ruled that the Family Court did not have the power to release the children from detention.¹⁹ In November 2004, the Minister denied another application for refugee status and told the family they would be sent "home" (to Pakistan). And yet another legal failure:²⁰ In an act of the greatest cowardice ever seen in an Australian suburb, 20 prison guards and immigration officials stormed the suburban home of the family on 18 December at 7 am, dragged them out of bed and sent them back to Baxter.²⁰ The family was forcibly deported to Rawalpindi on 30 December.²¹ After their arrival, they were refused accommodation in a Rawalpindi hotel as they had not been issued with passports, or appropriate travel or identity documents. The family has been presented with a bill for \$1 million by the Australian government, which is one-third of the estimated cost of their detention, according to DIMIA.²²

(Original text written in August 2003 and published under a pseudonym on Adelaide Indymedia, various mailing lists and as an illustrated text on Refugee Media Space (<http://refugee.autonomous.org>). This shorter version was edited for the *Sarai Reader 05: Bare Acts* in December 2004)

NOTES

1. The family requests that their name not be published.
2. As Indigenous activist and historian Gary Foley explains in *Assimilating the Natives in the U.S. and Australia*: "In 1788 the imposition of British sovereignty on Australia was justified by the notion of *terra nullius*, which was a convenient means to avoid the problem of just reparations for the indigenous inhabitants who, in the process of being dispossessed, were thereby deemed sub-human. Ironically, at the same time these sub-humans were instantly transformed into 'British subjects' who were now 'protected' by, and expected to conform to, British law. Thus the Aboriginal and Islander people of Australia were denied the opportunity to establish treaties and have some measure of control over both their land and future destinies". Source: http://www.kooriweb.org/foley/essays/essay_15.html
3. Legal definition "unlawful non-citizen" under the Migration Act 1958: http://www.austlii.edu.au/au/legis/cth/consol_act/ma1958118/s14.html
4. See for example the election-winning "children overboard" saga at <http://truthoverboard.com>.
5. The Tampa narrative is a striking example, with the Australian government doing its utmost to prevent Arne Rinnan, the captain of the Norwegian vessel MV Tampa, from rescuing 438 people from their sinking boat, Palpa. See for example <http://www.wsws.org/articles/2001/sep2001/refu-s01.shtml>; and rescue account by refugee Juma Khan Nazari at <http://www.safecom.org.au/tampa.htm>. In 2002 the United Nations High Commissioner for Refugees awarded the Tampa crew and owner the Nansen Refugee Prize.

See Marr, David and Marian Wilkinson, *Dark Victory* (Allen & Unwin, 2002, Sydney). Along with “children overboard”, the Tampa incident played a major role in the government’s re-election in 2001. The asylum seekers, mainly from Afghanistan, were eventually dumped on the impoverished island of Nauru, as part of Australia’s “Pacific Solution”.

See http://www.adelaide.indymedia.org.au/newswire/display_any/6442/index.php

and an Amnesty report at <http://www.scoop.co.nz/mason/stories/W00401/S00029.htm>

6. Meticulous documentation at <http://sievx.com>, and continuing research at <http://tonykevin.com>. See also Kevin, Tony, *A Certain Maritime Incident: The Sinking of SIEVX* (Scribe Publications, 2004, Melbourne). The name of the boat has never been stated – it carried no name markings. Tony Kevin called it SIEV X – ‘Suspected Illegal Entry Vessel, Unknown’ – in March 2002, very early in the Senate enquiry. That name quickly became generally accepted as the identifying name of the boat in the enquiry, by the authorities as well.
7. Immigration Minister (now Attorney-General) Philip Ruddock introduced the Temporary Protection Visa (TPV) in October 1999.
See <http://www.immi.gov.au/facts/64protection.htm>; and critique by Peter Mares, “It’s Time to Clean Up the Mess of Temporary Protection Visas” at <http://www.apo.org.au/webboard/items/2004/06/00711.shtml>
8. On 1 December 2004, the Federal Police raided homes of activists suspected of arranging false passports for refugees. The following day the government introduced a new parliamentary bill increasing the penalties for passport fraud from \$5,000 and two years jail, to \$110,000 and a maximum of 10 years jail.
9. Australasian Correctional Management (ACM), a subsidiary of the US Wackenhut, ran all of Australia’s Detention Centres. The tender was awarded in August 2003 to the security giant Group 4 Falck Global Solutions. See <http://www.group4securicor.com/>
10. British Foreign Minister Jack Straw refused protection and threw the kids back. Straw was exonerated of charges of violating the boys’ human rights in a recent case to the British Court of Appeal. The court ruled that British authorities wouldn’t expect children to be exposed to inhumane and degrading treatment in Australia.
See <http://www.abc.net.au/news/newsitems/200410/s1223562.htm>
See <http://www.adelaide.indymedia.org.au/newswire/display/7636/index.php>
regarding possible government involvement in identity fraud to discredit Family X.
11. Baxter, a purpose-built immigration prison facility opened in July 2002, is situated near Pt. Augusta, four hours due north of Adelaide, on the edge of the desert. On 1 December 2004, 252 people were imprisoned there.
12. The now decommissioned detention camp at Woomera is a seven-hour drive north of Adelaide in the Great Victorian Desert. It is close to Maralinga where the British tested atomic bombs between 1953-56, causing the deaths and radiation sickness of hundreds of nomadic Aboriginal people. Situated close to the closed US Narrungar military base/listening post, the town now services a rocket testing range.
See <http://www.iratiwanti.org>
13. A landmark ruling of *habeas corpus*, as the detention of this stateless Palestinian from the Gaza Strip, imprisoned as a refugee for five years in Australia, was deemed to be indefinite and therefore unconstitutional. See <http://www.austlii.edu.au/au/cases/cth/FCAFC/2003/70.html>
14. See the original judgment at

http://www.austlii.edu.au/au/cases/cth/family_ct/2003/451.html

See also <http://www.aph.gov.au/library/intguide/SP/Childrendetention.htm>

15. There have been a number of challenges concerning whether escape from detention is in itself a crime. On 6 August 2004 the High Court of Australia ruled 6 to 1 that a refugee had no right to escape from Woomera even if he could show that conditions of detention were harsh. The one dissenting judge, Justice Michael Kirby, argued that a substantial body of disturbing evidence exists to indicate detention centre conditions were inhumane and intolerable. "We should not give a legal answer that future generations will condemn and that we ourselves will be ashamed of", Kirby said. The judgment is online at <http://www.austlii.edu.au/au/cases/cth/HCA/2004/36.html>.
See media report at <http://www.smh.com.au/articles/2004/08/06/1091732062324.html?from=storylhs>
16. See *A Last Resort?*: the extensive final report resulting from the HREOC enquiry at http://www.humanrights.gov.au/human_rights/children_detention_report/index.html
17. See *Four Corners*, TV documentary transcripts online at http://www.abc.net.au/4corners/content/2003/20030519_woomera/default.htm
18. See media report at <http://www.theage.com.au/articles/2003/08/25/1061663734924.html?from=storyrhs>
19. The High Court ruled that laws relating to mandatory detention of "illegal non-citizens" included children. See the judgment at <http://refugee.autonomous.org/docs/bakkids-judgment-250803.pdf>
Media report at <http://www.smh.com.au/articles/2004/04/29/1083103589964.html> 29 April ruling at http://www.austlii.edu.au/au/cases/cth/high_ct/2004/20.html
This has been unsuccessfully challenged, and recently in a ruling of October 2004. http://www.austlii.edu.au/au/cases/cth/high_ct/2004/49.html
20. See media report at http://www.theaustralian.news.com.au/common/story_page/0,5744,11704639%255E2702,00.html
21. <http://www.smh.com.au/news/National/Bakhtiari-family-deported-under-cover-of-darkness/2004/12/30/1104344932116.html>
22. <http://www.theage.com.au/news/Immigration/Bakhtiyaris-head-for-Afghan-home-report/2005/01/04/1104601331085.html>

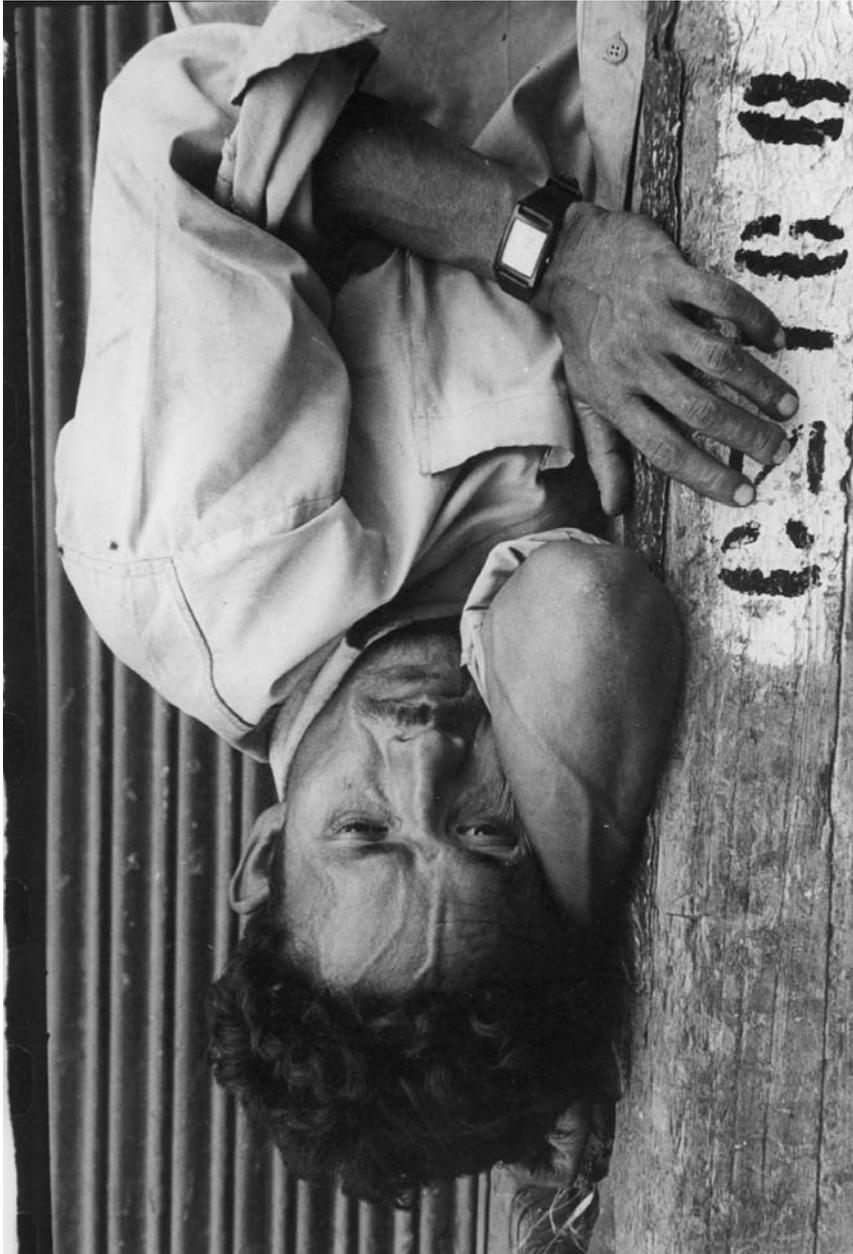
Rested

COLETTE MAZABRARD















DISPUTATIONS

Of Butchers and Policemen

Law, Justice and Economies of Anxiety

GUNALAN NADARAJAN

Deconstruction as Justice

The common criticism of deconstruction's 'lack of an ethics', or charges of its anti-ethical stance, could be understood in the light of an anxiety that Derrida has constantly sought to (re)introduce into and often retain in the structure of decision, into the realm of the ethical. The deconstructive enterprise, critics claim, destabilises any and every ethical stance through subjecting it to what seems like an infinite critical interrogation that makes ethical action/decision (almost) impossible.

Derrida's "The Force of Law: The Mystical Foundation of Authority",¹ (henceforth referred to in this essay as FL) is said to have offered "his most strenuous response to date to the charge that deconstruction is unethical or anti-ethical" (Kearney, 1993:35). He argues here that the incompatibility between deconstruction and the ethical question of justice is more apparent than real, insofar as his previous "discourses on double affirmation, the gift beyond exchange and distribution, the undecidable, the incommensurable or the incalculable or on singularity, difference and heterogeneity are also through and through, at least, *obliquely* discourses on justice" (FL, p.7). This essay seeks to explicate Derrida's notion of justice as that which *perpetually* deconstructs law insofar as it highlights the jurisprudential process as an urgent coming to decision *even and especially* without precedence, rather than as a mere calculated exercise of legal precedence.

Origins Problematised

Rosenfeld notes that a serious engagement with deconstruction does not allow one the comforts of an "easy solution to the crisis affecting legal interpretation" (Rosenfeld, 1993:153). In fact, as Derrida shows in the "multiple protocols and detours" that characterise his own address, one cannot even *begin* to *speak about* justice without a betrayal of the very precepts of that justice, insofar as the *definitive* moment, that is, the moment that *defines*, is always one of violence (and force). Derrida finds this exemplified in Montaigne's notion of the "*mystical foundation of authority*".² The deconstructive critique of jurisprudence could be conceived thus, as centred on a problematisation and demystification of this notion of the origin/foundation (especially that of *original intent*) in legal interpretation. Deconstruction presents a two-pronged critique of this jurisprudential

reliance on the foundational/original. First, it reveals the *contamination* of the inaugural mo(ve)ment by a law-founding violence that is antithetical to the very notions of legitimacy subsequently instituted. Second, deconstruction points to “the multiple writings, erasures and intersubjective collaborations” (Rosenfeld, 1993:153), the *traces of the other*, that infuse the original law-founding moment; thus frustrating a naive jurisprudential identification of/with *original intent*.

The call to justice or the demand on one to make a legal decision marks the inaugural instance of a particular law. The beginning, the point at which something is defined as law (legal), is an inauguration instituted by a violence on its own precepts; what Benjamin characterised as law-founding violence. The sources that “justify” a particular law, however, are always extrinsic to itself in its founding moment.³ As Kearney notes, “(t)he foundation of a law is always outside the law thus founded. The principle of foundation cannot found itself” (Kearney, 1993:35). The inaugural is here, as in Heidegger, a necessarily violent mo(ve)ment.⁴

This inaugural mo(ve)ment, for Derrida, is also a performative (*à la* Austin) mo(ve)ment: “The very emergence of justice and law, the founding and justifying moment that institutes law implies a performative force, which is also an interpretative force...of a performative and interpretative violence that in itself is neither just nor unjust and that no justice or previous law with its founding anterior moment could guarantee or contradict or invalidate” (FL, p. 13). This ‘original’ point, at which Derrida posits a limit to (justifying) discourse, is filled with (“emptied out” as) a space of silence and as the mystical (in fact, mystical because silent) – as a “violence without ground” (FL, p. 14).⁵ A silence constituted by a silencing; a space that coheres because of its refusal to ‘hear’ what Derrida calls, the “call of the other”. A discursive coherence constituted by the muted voices of some other.⁶

Slavoj Žižek provides an excellent discussion of this originary complicity between violence and law in his *They Know Not What They Do: Enjoyment as Political Factor* (1991), where he arrives at insights similar to (though independent of) Derrida’s “The Force of Law” essay. Žižek notes that “any given field of symbolically structured meaning in a way always presupposes and precedes itself. Once we are within a field of meaning it is by definition impossible to adopt an external attitude towards it”, so much so that “(t)he hidden chasm of this vicious circle appears only at its purest under the guise of *tautology*: ‘law is law’, ‘God is God’” (p. 203). In a way that critically echoes Pascal, Žižek invokes this tautology as the very basis of the mystical authority of law.⁷ He employs Pascal’s discussions of how the law functions through a careful deception of those it subjects. For Pascal, “(a)t the beginning’ of the law, there is a certain ‘outlaw’, a certain Real of violence which coincides with the act itself of the establishment of the reign of law”. However, it is “the disavowal of this violent act of foundation”, of this originary usurpation, that sustains the legitimate appeal of the law. “The illegitimate violence by which law sustains itself must be concealed at any price, because *this concealment is the positive condition of the functioning of law*: it functions insofar as its subjects are deceived, in so far as they experience the authority of law as ‘authentic and eternal’ and overlook ‘the truth about the usurpation’” (Žižek, 1991:204; emphases mine).⁸

It is from a sensitivity to the problematic origins of/at the institution of law that deconstruction advises caution toward the more “narrowly circumscribed and simpler jurisprudence of original intent, where the meaning of the legal texts can be precisely framed by reference to some transparent, self-present intent of the framer of a constitution, a legislator or a party to a private contract” (Rosenfeld, 1993:153). The conception of an “original intent” institutes a discursive economy of the actual historical contingencies that may have infused and informed the interpretative context at its “original” instance (instantiation). “From the standpoint of deconstruction, every writing (including the writing of laws) embodies a failed attempt at reconciling identity and difference, unity and diversity and self and other”; thus, any pretensions, as those made by much legal discourse given its “universalist aspirations”, to have achieved such a reconciliation, “can only be the product of ideological distortion, suppression of difference or subordination of the other” (ibid., 1993: 153).

For Derrida, this economy of/in law, providing calculability, constitutes its critical difference from justice. He says, “(l)aw (*droit*) is not justice. Law is the element of calculation, and it is just that there be law; but justice is incalculable, it requires us to calculate with the incalculable”. Such contention with incalculability constitutes the “aporetic experiences” which are “improbable as they are necessary, of justice” (FL, p. 16). Thus, resorting to the economizing gestures of “original intent”, legal interpretation/decision would inevitably circumvent the responsibilities and (according to Derrida) “healthy” anxieties entailed by/in the call of justice.⁹

The fact that law’s “ultimate foundations are by definition unfounded”, however, is for Derrida “not bad news”, as long as it does not “serve as an alibi for staying out of juridico-political battles”. He claims that “it is this deconstructible structure of law (*droit*)...that also insure(s) the possibility of deconstruction. Justice in itself, if such a thing exists, outside or beyond law, is not deconstructible”. From this fact of the essential impossibility of deconstruction with reference to justice, Derrida moves on to claim that “Deconstruction is justice” (FL, pp. 14-15).¹⁰ Thus, while the programmatic structure of law makes it amenable to deconstruction, the unprogrammatic structure of justice makes it inseparable from deconstruction. This means that “deconstruction takes place in the interval that separates the undeconstructibility of justice from the deconstructibility of *droit* (authority, legitimacy, and so on)” (FL, p. 15).

For Derrida, deconstruction, which is “already engaged” in the “demand for infinite justice” (FL, p. 19), must be “*juste* with justice, and the first way to do it is to hear, read, interpret it, to try to understand where it comes from, what it wants of us, knowing that it does so through singular idioms...and also knowing that this justice always addresses itself to singularity, the singularity of the other, despite or even because it pretends to universality” (FL, p. 20). Hence, deconstruction confronts issues of justice not as programme but as vigilance;¹¹ “a responsibility before the very concept of responsibility that regulates the justice and appropriateness (*justesse*) of our behaviour, of our theoretical, practical, ethico-political decisions” (ibid.). He claims that this responsibility holds one in “a moment of suspense, this period of *epoche*, without which, in fact, deconstruction is not possible”.

He also suggests that this moment is “always full of anxiety” but consoles somewhat with the rhetorical remark, “but who will claim to be just by *economizing on anxiety?*” (FL, p. 20; emphasis mine). Derrida seems to have identified such anxiety as/with the very force that moves and maintains the deconstructive enterprise with reference to the question of justice. “For in the end, where will deconstruction find its force, its movement or its motivation if not in this always unsatisfied appeal, beyond the given determinations of the what we call, in determined contexts, justice, the possibility of justice?” (ibid., pp. 20-21). Thus, Derrida conceives justice as that which lodges itself into the legal machine as an “unsurpassable aporia” (Cornell, 1992:133) that constantly de-constructs it. A careful analysis of this notion of justice as aporia is necessary before one can “judge” the ethics of responsibility (and structure of decision) Derrida derives from it.

Aporetic Justice

It has been shown thus far that, for Derrida, illegitimacy lurks at the origins of every law, insofar as nothing that precedes it could lend it legitimacy. “The foundation of any and every law is marked by an originary contamination” (Kearney, 1993:35).¹² His deconstructive stance as justice demands a recognition of this originary contamination; a recognition that helps prevent the justification of and reverential adherence to some present norm as justice. Derrida attempts to effect this deconstructive attitude as justice by identifying aporia as fundamental to the constitution and operation of justice. For Derrida, a proper contention with the call of justice should be based upon a “working through” of these aporias “between law and justice” with reference to which “deconstruction finds its privileged site – or rather its privileged instability” (FL, p. 21).¹³

Derrida identifies “three examples of the operational force of Justice as aporia” (Cornell, 1992:133). First, he introduces the aporia between *epoche* and rule. The one who is called to judge always confronts an aporetic between the law/rule, which unambiguously prescribes what the decision ought to be and the demands of justice that advise/necessitate a “fresh” interpretation of the prescribed law vis-à-vis the specificities of the case at hand. Derrida claims that “(t)o be just, the decision of a judge, for example, must not only follow a rule of law but must also assume it, approve it, confirm its value, by a reinstating act of interpretation, as if ultimately nothing previously existed of the law, as if the judge himself invented the law in every case”. This “reinstating act of interpretation” is one that coheres with the pre-scribed rule without conforming to it insofar as it “suspends” it “enough to reinvent it in each case, rejustify it, at least reinvent it in the reaffirmation and the new and free confirmation of its principle” (FL, p. 23).

The second aporia issues from what Derrida calls the “ghost of the undecidable”. The “undecidable” is “not merely the oscillation or the tension between two decisions; it is the experience of that which, though heterogeneous, foreign to the order of the calculable and the rule, is still obliged...to give itself up to the impossible decision while taking account of law and rules” (FL, p. 24). Here, the similarities and affinities with the first aporia seem obvious. Legal prescription/decision is always problematised and even defined by some reference or other to issues of justice that defy calculability and/or universalisability. Similarly, these very notions of justice operate as, and are articulated through, some form

of rule determination or legal system. Derrida claims that "(a) decision that didn't go through the ordeal of the undecidable would not be a free decision, it would only be the programmable application or unfolding of a calculable process. It might be legal; it is not just" (FL, p. 24). However, Derrida should not be mistaken, as he has been by many of his critics, to be pointing to the impossibility of decisions/judgements. It is useful to see the "undecidable" as the space/spacing of justice that punctuates legal interpretation/decisions with an "other" that is otherwise suppressed. It is an "acknowledgement of otherness in sameness, of the extralegal in the legal" (Kearney, 1993:38). For Derrida, in fact, justice is this spacing that allows for the "other".

Thus, "(t)here is apparently no moment in which a decision can be called presently and fully just; either it has not yet been made according to a rule, and nothing allows us to call it just, or it has already followed a rule – whether received, confirmed, conserved or reinvented – which in its turn is not absolutely guaranteed by anything; and moreover, if it were guaranteed, the decision would be reduced to calculation and we couldn't call it just". This nudges Derrida to claim that "the ordeal of the undecidable...is never past or passed, it is not a surmounted or sublated (*aufgehoben*) moment in the decision. The undecidable remains caught, lodged, at least as a ghost...in every decision, in every event of decision. Its ghostliness deconstructs from within any assurance of presence, any certitude or any supposed criteriology that would assure us of the justice of the decision" (Derrida, 1993:24-25). However, Derrida notes that this "infinite call to justice" is caught in constant conflict with the urgency demanded of just/ethical action. While the infinite call to justice involves one in some (necessary?) period of 'waiting', justice itself "cannot wait" insofar as "a just decision is always required immediately, right away" (FL, p. 26).

The third aporia is the urgency that always frustrates and interrupts the cognitive/ethical deliberations entailed in matters of justice. Since the decision makes immediate demands for justice, Derrida claims, it "cannot furnish itself with infinite information and the unlimited knowledge of conditions, rules or hypothetical imperatives that could justify it". In fact, even if all the necessary information could be gathered and be at one's disposal, "the moment of decision, as such, always remains a finite moment of urgency and precipitation, since it must not be the consequence or the effect of this theoretical or historical knowledge, of this reflection or this deliberation, since it always marks the interruption of the juridico-or-ethico-or-politico-cognitive deliberation that precedes it, that must precede it...a decision of urgency and precipitation, acting in the night of non-knowledge and non-rule" (FL, p. 26).¹⁴

Borrowing from Kierkegaard, Derrida asserts that the "instant of decision is a madness" (FL, p. 26), where the "madness" suggests not the lack but the impossibility of cognitive reference in the decision.¹⁵ The moment of decision thus infused by this "overflowing of the performative" (*ibid.*, p. 27) advances urgently and where its relationship to knowledge is heterogenous, toward "a future which is not known, which cannot be anticipated" (Derrida, 1994:38). Thus "(j)ustice remains, is yet to come, it is a *venir*, the very dimension of events irreducibly to come" (*ibid.*). For Derrida, it is excess and/or heterogeneity that characterises the horizons of one's knowledge with reference to some decision that ensures justice as a *venir*, as always-yet-to-come.

Anxious Justice

For Derrida, thus, an aporetic sensibility toward justice demands a responsibility that is incalculable, heterogeneous and infinite, and which frustrates closure and stability. It is an ethics of responsibility that is constituted by twin responsibilities to history and to alterity.¹⁶ Justice as *aporia* allows the space within which the historical transformation and reinstatement of law can be carried out. He characterises this responsibility toward history as one “without limits, and so necessarily excessive, incalculable, before memory” which involves “the task of recalling the history, the origin and subsequent directions, thus the limits, of concepts of justice, the law and right, of values, norms, and prescriptions that have been imposed and sedimented there, from then on remaining more or less readable or presupposed”. Thus for him, “the task of a historical and interpretative memory is at the heart of deconstruction, not only as philologico-etymological task or the historian’s task but as responsibility in face of a heritage that is at the same time a heritage of an imperative or of a sheaf of injunctions” (FL, p. 19).¹⁷

This stance, Derrida asserts, is not only one toward what is given as one’s heritage but also with reference to what is yet to come as one’s future. As Beardsworth notes, the aporetic experience “allows the future to arrive as a future (and not as a future present), and so it allows for the future of decision (a future in which decisions can ‘take place’ and decisions in which the future is not anticipated)” (Beardsworth, in Derrida, 1994:40).

Derrida has also asserted elsewhere that deconstruction is an “openness towards the other” (Derrida, 1984:125), and insofar as this is true, the deconstructive stance that is justice is equally an openness and responsibility towards the other. In “The Politics of Friendship”, Derrida examines the nature of responsibility through the notion of “response” which it derives from. “Responding always supposes the other in the relation to oneself...” (Derrida, 1988:639), and as such contains within itself the trace of the other, which discursively frames every response as a response to and/or from the other. Kearney argues that Derrida’s ethics of responsibility is “decidedly Levinasian”, especially drawing from Levinas’ notion of “*difficile liberté*”, which conceives the subject as hostage, constantly “beholden to the summons of the other” (Kearney, 1993a:8). Derrida claims that “(w)e are already caught surprised in a certain responsibility...(which) assigns us our freedom without leaving it with us...It is assigned to us by the other, from the other, before any hope of reappropriation permits us to assume this responsibility in the space of what could be called autonomy” (Derrida, 1988:634). It is thus a responsibility that forever defies one’s assumption of an autonomous realm of subjective freedom.¹⁸

This “primordial indebtedness to the other” (Kearney, 1993:38) is justice that “operates on the basis of an ‘infinite idea of justice’, infinite because it is irreducible, irreducible because owed to the other, owed to the other, before any contract, because it has come, the other’s coming as the singularity that is always other” (FL, p. 25). The stress on “infinity”, obviously deriving from Levinas, is posited as an antithesis to “totality”, whereby the (metaphysical) closure entailed (effected) by the latter is subverted by the “openness” of the former. It is this infinity that constitutes the aporetic that is justice, that is deconstruction, which thus allows for transformation and movement within/of the legal machine.

He claims that such constant interrogation of the “origins, grounds and limits of our conceptual, theoretical or normative apparatus surrounding justice is on deconstruction’s part anything but a neutralization of interest in justice, an insensitivity toward injustice”; for “on the contrary, it hyperbolically raises the stakes of exacting justice”.¹⁹ Deconstruction thus assumes a (re)new(ed) sensitivity to an “essential disproportion that must inscribe excess and inadequation in itself” and “strives to denounce not only theoretical limits but also concrete injustices...in the good conscience that dogmatically stops before any inherited determination of justice” (FL, p. 20). This “stopping before” some (any?) “inherited” notion of justice, before that which otherwise (in fact, being not wise to/of “the other”) threatens to reduce decision to “nothing but the mechanical application of a rule” (Derrida, 1994:38), forces one to pass through an experience of the aporetic, of the undecidable in the coming to a decision. For Derrida, the responsibilities of just action and decision are necessarily antithetical to an economising on this anxiety, since decision derives from a passage through and constant contention with the singularity of those anxiety-ridden moments always co-implicated in/by it.

Butchers and Policemen

While recounting his encounter with Kurtz, an errant agent of the Belgian colonial regime in the Congo (who had in his dealings with the natives moved “beyond the bounds of permitted aspirations”), in utter frustration with the empty stares of his audience, Marlow, the narrator in Joseph Conrad’s *Heart of Darkness* (p. 85) cries:

“You can’t understand. How could you? With solid pavement under your feet, surrounded by kind neighbours ready to cheer you or to fall on you, stepping delicately between the butcher and policeman, in the holy terror of scandal, gallows and lunatic asylums...These little things make all the great difference. When they are gone you must fall back on your own innate strength, upon your own capacity for faithfulness”.

Marlow’s is a frustration born not only from his own incapacity to adequately articulate his extraordinary experiences, but also from a realisation that the life situations and experiences of his audience made his own experiences almost incommensurable. The comfort, coherence and happy complacency of his audience’s (as of our) ‘civilised’ lives, where the daily anxieties and responsibilities of killing what was to become food at one’s table, and of handling social relationships not always free from conflict, had been ‘handed over’ to the butcher and the policeman respectively, were for Marlow the very things that made his experiences inscrutable to them. In fact, ‘civilisation’ and ‘culture’ are, it seems, nothing but the *institutionalised circumvention and/or deferral of responsibilities*; an economising on the anxieties that constantly problematise life’s many decisions/actions. A deferral and displacement of responsibilities to the other; *other occasions and other vocations*. The challenges of an aporetic justice are to be ever vigilant to the comforts afforded by the economy of anxiety that *is* law; that defers justice.

NOTES

1. Note that I have chosen here to critically engage only the first part of this essay which Derrida conceived for and presented at the colloquium “Deconstruction and the Possibility of Justice” in October 1989. The second part, where Derrida engages Benjamin’s “Critique of Violence” essay, will not be discussed here. Though the substantive relevance of Derrida’s arguments there for my discussion here is acknowledged, the thematic focus I choose to adopt here places any lengthy critical engagement with this second part well beyond the scope of the present essay.
2. Derrida notes that for Montaigne, “...laws keep up their good standing, not because they are just, but because they are laws; that is the mystical foundation of their authority, they have no other...Anyone who obeys them because they are just is not obeying them the way he ought to” (Montaigne, cited in FL, p. 12).
3. Hamacher, in his critically acclaimed review of Benjamin’s “Critique of Violence”, notes that “(w)hile all that is law rest on a law-making, law-positing, law-imposing violence, and such law-imposing violence is represented in all law-preserving or administrative violence, the idea of justice cannot depend on the law’s powers of imposition. Justice must therefore belong to a sphere equally distant from the law on the one hand and from the violence of its imposition and enforcement on the other”. (Hamacher, 1994:110) Hamacher presents the extrinsic nature of justice as some ‘logical’ necessity, as is exemplified in his use of the words “cannot” and “must”, when in fact, it is more accurate to perceive this ‘necessity’ as one that has been historically constructed.
4. It is noteworthy also that for both Heidegger and Derrida, the inaugural is retrospectively reinforced by/in its repetition; in fact, it is this repetition that inaugurates the inaugural as inaugural, and thus as violent. The question remains, however, about how one actually (re)cognises something as violent as and when it happens if it is its repetition (only?) that marks it as inaugural/violent. Derrida seems to recognise this difficulty of recognition at various points of his essay, but fails to adequately address the ethical issues that it entails.
5. A worthwhile interjection here would be to ask if this silence that is co-implicated in the inaugural is one of muffled voices and/or gagged mouths, i.e., deriving from an inaugural violence, which is not merely discursive? Even the silence of the audience that listens to, even allows the displacement of its silence by, the voice (and accompanying presence) of the speaker, Derrida, is based on a significant violence.
6. Derrida’s analysis of the force of/in law had been anticipated in Hegel’s *Phenomenology of Spirit*. There Hegel argues that force “posits a difference that is not only not a difference for us, but one that the movement itself cancels as a *differance*...What is present here is not merely bare unity in which no difference would be posited, but rather a movement in which a distinction is certainly made but because it is no distinction, is again cancelled” (Hegel, 1977:95). In Hegel’s dialectics, difference is an “ever-to-be-subsumed”. Taylor succinctly presents this place of difference as “a second moment in a three-part dialectic that begins and ends in unity” (Taylor, 1993:85). However, unlike Hegel who sublates difference, Derrida presents difference as a *differance* that constantly eludes and even defies the forceful dialectical reappropriation. While for Hegel “(l)aw relates opposites that appear to be different in a dialectic of mutual constitution in which each is posited through the other”, Derrida questions whether the Hegelian dialectic truly engages difference as difference (Taylor, 1993:86).
7. Pascal provides in his *Pensées*, a discussion of how the tautologous structure of the law helps perpetuate what his predecessor, Montaigne, had described as “the mystical foundation of authority”. Pascal notes that, “(m)erely according to reason, nothing is just in itself, everything shifts with time. Custom is the whole

of equity for the sole reason that it is accepted. That is the mystical basis of its authority. Anyone who tries to bring it back to its first principle destroys it...Anyone obeying them because they are just is obeying an imaginary justice, not the essence of law, which is completely self-contained: it is law and nothing more" (Pascal, 1966:46). From this fact that the basis of law is mystical, Pascal goes on to say that legitimacy relies on the continual deception of those subjected to the law, which is "why the wisest of legislators used to say that men must often be deceived for their own good, and another sound politician: 'When he asks about the truth that is to bring him freedom, it is a good thing that he should be deceived'". Pascal warns that the originary usurpation, which "came about without reason and has become reasonable", should not be "made apparent" to ensure that "it is regarded as authentic and eternal" for "its origins must be hidden if we do not want it soon to end" (Pascal, 1966:47).

8. It is noteworthy here that Zizek merely notes Pascal's claim about the deception that sustains the law, and, in fact, does not espouse to it. Zizek's discussion about what constitutes the 'force' of law will be discussed later in this essay.
9. "(B)y isolating a particular writing and by elevating it above all other writings in such a way as to sever the intertextual links that constitute an indispensable precondition to the generation of meaning, the jurisprudence of original intent both promotes blind worship of the arbitrary and the unintelligible and blocks the discovery of the intertextual connections necessary to endow legal acts with meaning" (Rosenfeld, 1993:153).
10. As he says elsewhere, "...that in the name of which one deconstructs is not in the last instance deconstructible. I call this irreducibility, 'justice'" (Derrida, 1994:35).
11. This notion of vigilance would be examined at greater length later, but suffice it now to note that an 'ethic of vigilance', almost, seems to have been operative in the Continental philosophical tradition since the time of Kierkegaard. The recent postmodernist temperament also reflects a similar 'vigilance'.
12. The notion or law of contamination, as he referred to it in a recent interview, plays a central role in Derrida's conception of responsibility. He says in a recent interview with Beardsworth, "I defy anyone to show a political discourse or posture today which escapes (this) law of contamination". Conceiving contamination as "inevitable", Derrida claims, "one cannot side-step its law whatever one attempts to do" since "responsibility cannot consist in denying or (de)negating contamination, in trying to 'save' a line of thought or action from it. On the contrary, it must consist in assuming this law, in recognising its necessity, in working from within the machine, by formalising how contamination works and by attempting to act accordingly. Our very first responsibility is to recognise that this terrifying programme is at work everywhere and to confront the problem head-on; not to flee it by denying its complexity, but to think it as such" (Derrida, 1994:42).
13. There is a certain validation of the aporetic that is characteristic not only of Derrida's work, but of the postmodernist temperament as a whole. The aporetic especially is a continuing theme and concern of Derrida's work. For example, even in the more recent "The Other Heading", he defends the need to maintain the aporetic in any responsible political action through a tolerance toward/of the antinomies that characterise ethical-political decisions. He says that, "(t)o have at one's disposal, already in advance, the generality of the rule as a solution to the antinomy...would be the surest, the most reassuring definition of responsibility as irresponsibility, of ethics confused with juridical calculation..." (Derrida, 1992:72). He goes even further when he says, "I will even venture to say that ethics, politics and responsibility, if there are any, will only ever begin with the experience and the experiment of aporia. When the path is clear and given, when a certain knowledge opens up the way in advance, the decision is already made, it might as

well be said that there is none to make..." (ibid., p. 41).

14. Here, while it is true that the moment of decision is in its urgent execution separate(d) from the cognitive/ethical deliberations that precede it, Derrida's claim that the decision "must not be the consequence...or effect" of these deliberations is problematic. The structural finitude of the decision and the suspension of the deliberations that precede it during the decisive moment do not provide enough justification for Derrida to render peripheral the role of deliberation in decision-making.
15. Derrida has not elaborated on or clarified this notion of "madness" of/in decision, in this essay. However, his explanation of the relationship between knowledge and decision found in his recent interview with Beardsworth sheds some light of/on the nature of this "madness". He says, "...if I know, for example, what the causes and effects of what I'm doing are, what the programme is for what I'm doing, then there is no decision; it's a question, at the moment of judgment, of applying a particular causality...For there to be a decision, the decision must be heterogeneous to knowledge as such" (Derrida, 1994:37). Seeming to read "madness" as indicating its operation at some "prereflective level", Kearney (1993:38) is mistaken in that Derrida does not posit the decision to be prior to reflection but only devoid of reflection at the moment of decision.
16. In fact, it is useful to consider this twin responsibility as really a single responsibility to "history-as-alterity" or "alterity-as-history", insofar as one is necessarily co-implicated in the operations of the other. Derrida himself, in a way that seems to acknowledge this co-implication, says, "(t)here is an *venir* for justice, and there is no justice except to the degree that some event is possible which, as event, exceeds calculation, rules, programs, anticipations and so forth. Justice as the experience of absolute alterity, but it is the chance of the event and the condition of history" (FL, p. 27).
17. Here, it is noteworthy that the spirit of this stance is opposed to that espoused by Kant in his "Metaphysics of Morals". Kant "formally prohibits the exploration of the origins of the legitimate order" since it "cancels its own validity by making it dependent on historico-empirical circumstances" for "...we cannot at one and the same time assume the historical origins of the law in some lawless violence and remain its subjects. As soon as the law is reduced to its lawless origins, its full validity is suspended" (See Zizek, 1991:205). In fact, Derrida's "responsibility in the face of a heritage" invites parallels not only with Heidegger's stance toward history as tradition (as presented, especially, in Section 5 of his *Being and Time*; in his "The Concept of Time in the Science of History" (1916); and in his "The Origin of the Work of Art" (1935); but also with Nietzsche's/ Foucault's genealogy.
18. This paradoxical "trace of the other" that seems to both precede and exceed the "subject" in a way that frustrates autonomy is what Levinas has elsewhere referred to as "posterior anteriority".
19. Here, the reference to the idea of "raising the stakes" is particularly noteworthy insofar as it invokes the issue of "risk", an issue which necessarily implies and entails a certain amount of anxiety. I will discuss this issue of risk with reference to anxiety later in this essay.

REFERENCES

- Beardsworth, Richard. "Nietzsche and the Machine: Interview with Jacques Derrida". In *Journal of Nietzsche Studies*, Issue 7, pp. 7-66; 1994.
- Conrad, Joseph. *Heart of Darkness* (Penguin, 1985).
- Cornell, Drucilla. "The Violence of Masquerade: Law Dressed Up as Justice". In Gary B. Madison (ed.), *Working through Derrida* (Northwestern University Press, 1993).
- Derrida, Jacques. "Deconstruction and the Other". In Richard Kearney (ed.), *Dialogues with Contemporary*

Continental Philosophers (Manchester University Press, 1984) pp. 105-126.

Derrida, Jacques. "The Politics of Friendship". In *Journal of Philosophy*, Vol. 75, No. 11; pp. 632-645.

Derrida, Jacques. "Before the Law". Tr. Ronell, Avital, and Christine Roulston. In Derek Atridge (ed.), *Acts of Literature* (Routledge, 1992) pp. 181-220.

Derrida, Jacques. "The Force of Law: The Mystical Foundation of Authority". Tr. Mary Quaintance. In Cornell, Drucilla, Michael Rosenfeld and David Gray Carlson (eds.), *Deconstruction and the Possibility of Justice* (Routledge, 1993) pp. 3-67.

Kearney, Richard. "Derrida's Critical Re-Turn". In Gary B. Madison (ed), *Working through Derrida* (Northwestern University Press, 1993).

Kearney, Richard. "Derrida and the Ethics of Dialogue". In *Philosophy and Social Criticism*, Vol. 19, No. 1, pp. 1-14 (1993).

Rosenfeld, Michael. "Deconstruction and Legal Interpretation: Conflict, Indeterminacy and the Temptation of the New Legal Formalism". In Cornell, Drucilla, Michael Rosenfeld and David Gray Carlson (eds.), *Deconstruction and the Possibility of Justice* (Routledge, 1992).

Zizek, Slavoj. *For They Know Not What They Do: Enjoyment as a Political Factor* (Verso, 1991).

Down by Law

A Critique for the 21st Century

ALEXANDER KARSCHNIA



Prologue

Actually, Hamlet's famous question "To be or not to be..." (*Hamlet*, III: I, 56) is misleading. To act or not to act – *that* is the question. Ordered by his father's ghost to take revenge against his uncle, Hamlet hesitates for five long acts, until he finally rushes to action to fulfil the command – to kill. But even the bloody end is not planned by him, but by his enemies. His uncle King Claudius, and Laertes, the son of Hamlet's first victim Polonius (a counsellor and also father of Laertes and Hamlet's forgotten love Ophelia) set up a trap and challenge Hamlet to a duel. But before Hamlet finally slays his uncle, others have to die. Laertes is killed in the duel by the poison-tipped rapier that was prepared by King Claudius; Hamlet's mother, Queen Gertrude, dies after drinking poisoned wine. From this cast of characters, finally only Horatio, Hamlet's friend from Wittenberg, survives to tell the story: to us, the audience, but also to Fortinbras (lit. 'strong arm': the young king of Norway, who arrives as a *deus ex machina* sort of resolution following the play's climax) who now will take over

power in Denmark, the “rotten” state.

The critical issue of the ‘bare act’ is raised by Hamlet in his famous soliloquy. He asks why one should bear the hardships of life such as “the law’s delay” (III, I, 72), while he could easily end it with a “bare bodkin” (76). The bodkin – a stiletto or pocket-dagger – could end it all if put into his flesh or into the flesh of his uncle. *That* is the question, finally: suicide or regicide? Kill oneself or kill the king? Or follow Slayer and KILL ‘em ALL? (Slayer is a heavy metal band and *Kill ‘em All* is the name of an album by them).

Act I

In discussions with Gustav Janouch, Franz Kafka compared the tragedy of Prince Hamlet to a crime story, almost like a modern murder mystery, but maybe it was closer to his own thoughts than he knew. We could read Hamlet’s soliloquy as a form of prayer, a plea and an appeal for something to come, to finally arrive: justice. Justice should strike. Would it be a ‘bare act’ on Hamlet’s part to, without “the law’s delay”, overthrow the usurper, avenge his father and clear his mother of the guilt of having married her husband’s murderer?

In his “Critique of Violence” (the only surviving text of a series of three he wrote in the early 1920s about “true politics”, the crisis of democracy and the perspective of revolution), Walter Benjamin has added the concept of *göttliche Gewalt*: a “godly force”, maybe even a holy form of violence. The German word *Gewalt* has such a variety of meanings that it is very difficult to translate. Even the translation of the essay’s title “*Zur Kritik der Gewalt*” as “To the Critique of Violence” is reductive, because *Gewalt* means not only violence, brute force, in the sense of ‘violation’, but on the contrary, it also means the maintenance of rule, governance, power, control. A government has the governing *Gewalt*; the authority of office is the *Staatsgewalt*, the process of checks and balances in a parliamentary system is called *Gewaltenteilung* (division of powers), legislature is called *gesetzgebende Gewalt*, the church is a *geistliche Gewalt*, and the media is sometimes called the 4th *Gewalt*. A person who loses control over him- or herself is said not to have him or herself in his or her own *Gewalt*, while at the same time one speaks of kidnappers having hostages in their *Gewalt*.

In the line of the famous German ‘Ge-’ words that Martin Ge-stell Heidegger was so fond of, *Gewalt* is the most ambivalent: *ambi-violence* is its nature.

Just like speech acts, any act of violence can be both performative as well as declarative at the same time, since *-walt* comes from the old and odd verb *walten*, which actually means to be at work. It is a form of acting, doing, making, mostly connected to an official position, meaning to rule or preside, to do one’s duty (*seines Amtes walten*). Also, you can let reason prevail (*Vernunft walten lassen*) or show mercy (*Gnade walten lassen*). The proverbial saying *schalten und walten* (*schalten* technically means to shift, for example a gear, but also implies to be quick in understanding and reacting) means to give somebody a free hand, a rule uninhibited by constraints, to be able to do things as one pleases. It is used in a rather anonymous sense, mostly as a verb turned into a subject: *das Walten*, for example, of the gods or of fate. It is rather uncanny, or Kafkaesque, that this word also appears in the German word for administration, *Verwaltung*, while *Vergewaltigung* means rape. While *gewaltsam* means violent, *gewaltig* means mighty, enormous, colossal. Maybe

the English 'whelm' can help out here, since being overwhelmed, for example by the sight of sublime beauty, translates as *überwältigt sein*, but at the same time one can be overwhelmed, *überwältigt werden*, by force, for example by the police.

'Force' v. 'Force': Benjamin plays with all of these meanings. They include his own first name – *Walter* – to walk or work on the line of distinction between a force that keeps the law – a *rechtserhaltende* – and a *rechtsetzende Gewalt* – a force that sets or settles the Law, that makes a *Setzung*: the Law (*Gesetz*) is what is settled, it is the settled (*das Gesetzte*).

The collapsing of this distinction indicates a deep crisis: *Geschichte* – history – seems but a cycle of *Gewalt*, from a force that brings forth rights to a force that keeps those rights in effect. But by keeping the order it once brought into existence, force now has to hold down with force those forces that it once was carried by. Force has to repress force, it has to repress itself, and that is the vicious circle of violence. There is an inevitable decline, decay or even 'degeneration' of power that stems from this self-consuming structure – dissolving it by trying to conserve it. Law-keeping force is a representation of law-setting force; at the same time, it is also its repression. The failure to keep these spheres separated also marks the deep crisis of representation in modern democracies. The German word *Gewalt*, in which two meanings, 'ruling power' and 'use of force', are coalesced, helps to clarify what is at stake: state order is always state violence. While the modern legal state has monopolised violence in order to guarantee peaceful modes of solving conflicts, to gain one's rights (*Rechte*) without the use of violent means, to find justice (*Gerechtigkeit*) without personal revenge, violence prevails.

Benjamin unmasks the illusion that the system of contracts – a contract between two private persons or the social contract of a society, a *Gesellschaft* with itself – works without violence. It is the essence of contracts to threaten both parties with violence in case the contract is broken. The law-keeping force is by its nature a threatening force, it puts the members of a society – the subjects of law – under a threat as under a spell. That's why Benjamin describes both forms of force as *mythical*.

Act II

What Benjamin has to offer as radical critique of *Gewalt* is a new distinction: instead of law-making vs. law-keeping forces, he sets mythical force vs. godly force: *göttliche Gewalt*. It is not keeping the rule of law, but destroying it; it is immediate; not imposing guilt, but liberating from it; not threatening, but striking; not bloody, but lethal. Benjamin uses the example of God's wrath against the gang of Korah (a privileged group who, after challenging the leadership of Moses and Aaron were swallowed alive by the earth; described in the Book of Moses 4:16). Instead of making a *Setzung*, this force makes an *Ent-Setzung*: it is 'un-settling', but also terrifying. *Ent-setzen* used as a verb means literally to 'un-set' something, but normally it is used as a noun and means 'horror'.

In a postscript after a careful reading, Jacques Derrida shows himself horrified by the possible use of such a concept.¹ For him this includes the worst as possibility: the justification of mass murder, the industrial extermination of millions of people that started in Europe (shortly after Benjamin's suicide in 1940) that has been called the 'Final Solution'

by its Nazi perpetrators.² While Benjamin was far from anticipating anything like that, he did fear and foresee something else: a war with gas against the civilian population. The *Entsetzen* about the atrocity of Auschwitz – this singular crime against humanity – will haunt the reading of all texts, especially texts from this time, as well as texts from before and after this time. Moreover, all explicitly political texts have to be read against the fact of the Holocaust, since – as per Adorno’s formulation — the Shoah (the Holocaust) imposes a new kind of categorical imperative upon humanity: “To ensure that nothing like this can ever happen again”.

Today, when reading of *göttliche Gewalt*, another picture of destruction immediately comes to mind: 9/11. The attack on the Twin Towers in New York and on the Pentagon in Washington DC can be seen and interpreted by fundamentalists of all sorts as the wrath of God. The event can be read as an instance of a striking violence that, uncannily enough was lethal, but not bloody (as it appeared on TV screens worldwide, there was no blood to be seen: only explosions, smoke, falling bodies, ash, collapsing buildings). For some people it might seem like the punishment imposed upon a privileged group: a group of world bankers, part of the ruling elite of global capitalism. Some people might even think it did have an effect of liberation from guilt.³ The twofold reactions towards this event can be described by two German words that have entered the world’s vocabulary: *Angst* and *Schadenfreude*. It seems that many people in the world felt what Benjamin described as the ‘folk’ respect for the figure of the ‘Great Gangster’. Despite the atrocities, they admire the fact that he challenges the Law, destabilises the rule of order.

All of this is terribly wrong and dangerous: Osama bin Laden is no Robin Hood, not even some mighty mafia chief. To describe what bin Laden is, we have to turn to Bertolt Brecht’s comments in his play *The Resistible Rise of Arturo Ui*, a parodic parable on the rise of Adolf Hitler in Nazi Germany in the mafia milieu of the USA. After his return to (East) Germany, Brecht was terrified by the respect with which some simple people talk about Nazi mass murderers: “They were criminals – but they killed so many people!” This respect for murderers has to be taken away from the people, Brecht commented in relation to this play. Instead of “great gangsters” (*große Verbrecher*), for him the Nazi war criminals were just “doers of great crimes” (*Verüber großer Verbrechen*), of heinous, monstrous crimes.

It is obvious that the 9/11 attacks had by no means the effect of “unsettling” the rule of Law, but provoked a reaction of law-keeping forces that was devastating: a permanent military-cum-police operation. The mechanism triggered by the religious terrorists is best described by a term Derrida developed in the context of a ‘critique of religion’: “auto-immunisation”.⁴ It is the same self-destructive conflict of forces pointed at by Benjamin. The ‘war against terror’ is the moment when the forces of law-keeping and of law-setting become indistinguishable. And worse, those of war and terror, and in the long run, of war and peace.



War is peace, peace is war

(Orwell, 1984).

Act III

So instead of godly force, we've so far only seen ghostly forces. The uncanny figure that best represents this crisis is that of the police. The police is its 'shape without shape', shapeless form, its abstract spectre, its *Gestalt*. In the institution of the police, Benjamin writes, we can see a ghostly mixture of both kinds of *Gewalt*: to be a law enforcement agent, but at the same time to make the law, to 'be the law'. It's uncanny, *unheimlich*. A ghost, *Gespenst*, is haunting the text (*Heimsuchung*). The police (*Polizei*) is a force which ruins the division of powers, crosses the borders of checks and balances and contaminates one force with the other. While in absolute monarchies both forces – power and violence – were one, in modern democracies the separation tends to have dreadful consequences because secretly (*geheim* or *heimlich*), violence spreads: at all times and wherever, and everywhere, where 'security' is invoked, these police-ghosts appear. The historical *polis* is governed by the police, policy-making has turned into a police science, in the manner propagated by German Idealists like Fichte two centuries ago. On the other hand, has the *Geist* (spirit) of German Idealism given birth to a ghost (*Gespenst*) that since 1848 has haunted Europe: "A spectre is haunting Europe – the spectre of Communism...", as the first sentence of the Communist Manifesto says? It is, as Derrida pointed out in *Spectres of Marx*, a ghost hunted as well as haunted by ghosts. But maybe it is also the ghost of Europe that haunts the world of today:



Re-enter Europa.⁵

"The time is out of joint. O cursed spite,
That ever I was born to set it right".
(*Hamlet*, I: V, 196f.)

Capital punishment (*Todesstrafe*) is "out of joint", "rotten" or "unsettled" within the order of law, according to Benjamin. Those who oppose the death penalty know that they are not only fighting a specific severe and absolute kind of punishment, but the rule of Law. Here it becomes obvious that the Law stems from the sphere of fate and that it emerges to govern the sphere of life. As long as state power exists on the basis of state violence, executed by a task force of ghost-cops, society remains in the dark realm of myth. It has not yet seen the light of enlightenment (*Aufklärung*), but is trapped in a world of imposed guilt (*Verschuldung*), just like Josef K. in Kafka's *The Trial*, who has only the choice between the endless delay of processes of Law or the rush to judgment with a deadly outcome. According to Derrida, Hamlet dreams of a world liberated from the Law (*Recht*), in which the individual no longer needs to seek revenge (*Rache*) for perceived injustice. But maybe Derrida is also caught in the 200-year-old romantic misperception of Goethe who pictured Hamlet as the soft prince, a poet, too delicate for such a task. Instead, Börne and Brecht have portrayed Hamlet as a murderer, his deed

(*Tat*), the final massacre, as atrocity (*Untat*). So maybe his longing for a 'bare act' to end it all also is an "auto-immunisation": a *sui-homicide*.

Never has the German word for suicide, *Selbstmord* (self-murder) – instead of *Freitod* (free death) – had more meaning as in the age of 'martyrs' who have developed a new kind of weapon: the *Selbst-Mörder* really is the suicide-murderer. It is the highest, or better described, the lowest, form of mythical force.

As an antidote we should once more turn to the moment when *göttliche Gewalt* strikes; and indeed, Benjamin describes it as the moment when a (partial, political) *Streik* turns into the (proletarian) general **Strike!** It is no longer a means for an end, a means to use a sanctioned form of violence, even if it is the violence of non-acting, maybe even a non-violent violence, in order to achieve a purpose, goal or end – be it an improvement of working conditions or the seizure of state power. Instead, it is a means in itself, a pure immediate force that eventually leads to nothing less than the destruction of the entire state apparatus: Revolution!

For Benjamin, the revolution is not, as Marx has described it, the locomotive of world history, but its emergency brake: a caesura. That's where Derrida draws the line of distinction: 'revolution' for him always is progressive *and* regressive, even reactionary, because it *re-sets* as goal the return to a prior, purer state, an origin, 'archeo-teleology'. In this respect, for Derrida every reference to 'revolution' is conservative, every revolution a 'conservative revolution'. He is concerned about this possible bridge to the historical discourse of the extreme political right of the Weimar Republic operating under this label. He is also concerned about the possible and real correspondences of his own thinking with the ideas of Carl Schmitt and Martin Heidegger; consonances which are extremely striking in this text.

The 'undecidability' that Benjamin locates in the heart of *Gerechtigkeit*, between *Recht* and *Gewalt*, also *Recht* and *Rache*, touches the point around which Derrida's thinking also revolves. From where does his reaction towards Benjamin's originate? It is directed against the idea of a force of destruction of rights – it seems to Derrida that, after Auschwitz, every abandonment of 'human rights' has become irresponsible. He is repelled by Schmittian 'decisionism' as well as Heideggerian 'destruction'. Deconstruction on the other side is simultaneously 'de-' and 'constructive'. So for Derrida, the experience of *aporia*, of impossibility (of Justice) is the supposition of possibility (of Justice). This is the point Derrida wanted to make in his reading of Benjamin's text, which took place in part before law scholars in a 1989 conference on the (ir)representability of the Shoah. While we strongly agree with Derrida's insisting on the absolute relevance of the memory of Auschwitz for every kind of contemporary political thinking, we want to question his reading of Benjamin by reconsidering the perspective of a revolution. But we will return to Derrida's warning when we look at interpretations of Benjamin today.

Act IV

What message does Benjamin's 1921 text give us for the 21st century? It is a call to destroy the fatal regime of the Law and to begin a 'new historical era'. Everything that has happened since 09.11.1989, especially since 9/11/2001,⁶ points in the other direction: the

enforcement of the Law has become the dominant ideology and legitimised every military/police action since then. There are many ghosts that haunt the world nowadays: globo-cops and terrorists. Instead of reading Benjamin as a 'destructive decisionist', it is well to realise that his texts open with a renunciation of terrorism. For Benjamin the school of 'natural rights' (*Naturrecht*) provided the base for the *terreur*, the 'terrorism of the French Revolution' (as he calls it), by viewing violence as a means that is justified by its ends. The use of violence to achieve a political aim was seen to be as natural as a body walking its way to its goal.

This is exactly what Benjamin puts in question – and this is where Derrida's reading of his 'revolutionary' passages does injustice to the text. The realm of these 'means without ends' is language, or more precisely, mediality. Language is not a neutral medium through which, but within which, we speak. Benjamin's early thoughts on the philosophy of language give us the direction. There we find a series of words that end with -ability (*-barkeit*): translatability, communicability, representability, etc. The *-bar-* of *-barkeit* corresponds with the English 'bare': it is not only missing it only by one single letter '-e-', but matches its meaning. One can say that somebody is *bar jeglicher Vernunft*, meaning he or she is free, empty or bare of any reason. Also, *Bargeld* is 'bare money', meaning coins and bills instead of virtual finances. The adjective *bar* is a more or less outdated word for *bloß* such as *bloßes Leben*: 'bare life'. This term appears at the end of Benjamin's essay when he explains why he opposes naïve pacifism and activism. It seems like a tragic irony of reception that this term has become so fashionable in current political debate through the writing of his Italian editor Giorgio Agamben that it has turned into "bare money" of a neo-humanist argumentation – and in this process a coin has become unreadable. Just as Benjamin turned against the so-called 'spiritual opposition' of the Weimar Republic, it is necessary today to criticise those activists who loosely use words with strong connotations to describe the status of refugees: I mean especially the usage in this connection of the expression 'bare life' to mean 'naked man' or 'pure human'.

The term 'bare life' in Benjamin's argument marks the carrier of the *Verschuldung* (indebtedness). It extradites human life to the rule of fate, the mythical rule of Law. To refer to stateless people in inhumane conditions – like the situation of most refugees in the world today – as 'bare life' is dangerous because of its undiscovered religious connotations. "Blood", Benjamin writes, "is the symbol of bare life". One could assume that this alludes to the blood-bond of Christ that was based – quite in violation to the Mosaic Laws – on the (self-) sacrifice of the (divine) human. The discourse of 'bare life' is accompanied by this discourse of sacrifice. Now – once more – the German ambivalence of this term may be alarming: *Opfer* means 'sacrifice' as well as 'victim'. To refer to refugees as 'bare life' does not only mean to victimise suppressed people, but even worse, to treat them literally as 'sacrifice'. This discourse runs into the same trap that Benjamin and especially Brecht have warned against: empathy, or as Brecht called it, *Einfühlung* (emotional identification). This, as Benjamin writes, is not the method for historical materialists: it is the perspective of the perpetrator. The tradition of the suppressed teaches us something different.

The mis-reception of the notion of 'bare life' does not only stem from a superficial reading of Agamben's texts. Following Benjamin, Agamben searched for the origin of the

figure of 'bare life' and found it in ancient Roman law: *Homo Sacer* is exposed to sovereign power, it is life under the immediate threat of death, destined to die. In connecting Benjamin's insight on *Gewalt* with Foucault's analysis of the productive quality of 'Power', Agamben could apply the principle of bio-politics to a realm that Foucault has left out – the structure of the Nazi-KZ (concentration camp) in the process of the so-called 'Final Solution'. While Agamben grants useful insights into the genocidal Nazi policy, the construction of a continuum between the first camps after World War I, Nazi concentration camps and detention centres for refugees today has established a link between the inmate of the camps and the modern detainee which is disturbing. It does injustice to the singularity of Auschwitz, as well as to the singularity of every atrocity in the world. Methodically it is problematic, because it is based in the terms of the perpetrators. It was Carl Schmitt who applied his theories of sovereignty and dictatorship to legitimise the Nazi-state: "*Der Führer schützt das Recht*" ('The leader protects the Law!').

The references that have disturbed Derrida have attracted Agamben, whose work exploits the correspondence between Benjamin and Schmitt, an exchange of letters that had remained unknown for quite some time. To stress its significance is highly suggestive – and deceptive. It is worth remembering that Benjamin and his friend Bertolt Brecht were cracking jokes about this man whose name sounds like that of a slightly dim secret agent who checks into a hotel and chooses a name, 'Charles Smith', so common that it fails to be anything but inconspicuous. Incidentally, a 'Mr. Schmitt from Berlin' appears in different places in Brecht's plays, and especially in the short 'learning' play titled, most appropriately, *The Exception and the Rule*. Just as Kierkegaard used the concept of 'wonder' to talk about God, Schmitt used the 'exception' to talk about a mortal God: the state. With the concept of exception, Schmitt tried to explain the rule, the rules of the game, that is: the rule of Law, the functioning of state order. For the principle of state power, sovereignty, the rule of ruling, Schmitt's *Political Theology* (1922) came up with a decisive seven-word definition: "*Souverän ist wer über den Ausnahmezustand entscheidet* (Sovereign is the one who decides over the state of exception)".⁷

The English language gives room here to play with the double-meaning of 'state' in order to cast some light on the consequences of Schmitt's thought: the order of a state depends on an instance that can decide about the 'state of exception' (*Ausnahmezustand*). This might be a revolution, but maybe also a restoration, a counter-revolution. For example, the state of exception that the Nazi government decided on 28 February 1933 (one day after the Reichstag fire gave the Nazi-state the chance to impose the state of emergency and to get rid of their internal enemies, mostly Communists and Socialists) lasted for over 12 years. In this respect the state, *der Staat*, state order, depends on a state – a *Zustand* – but an extraordinary *Zustand*, a state of disorder – a state out of order. This is the paradox of (state) power. The sovereign, the power that reigns, stands outside *and* inside the order that it rules, on behalf of which it makes decisions. But the decision – as we know since Kierkegaard, another crazy Danish thinker like Hamlet – is a moment of madness.

While a lot of so-called 'deconstructionists' respond to this figure of political paradox, it would be well to remember Derrida's revocation. Instead of reading Benjamin as a pupil of Schmitt we should turn to his philosophical-historical thesis, "The Tradition of the

Suppressed". In Thesis VIII (of the *Theses on the Philosophy of History*) Benjamin asserts that "the state of exception in which we live is the rule. We have to get to a concept of history that is in accordance with it. Then it is the task to bring about the true state of exception". Maybe this *true* exception really recalls the theological concept of 'wonder'. It would be the moment in which the messiah all of a sudden sneaks in (as Benjamin writes in the last sentence of his thesis): a moment that cannot be determined by oracles or prophecies, but can only be anticipated. With Prince Hamlet we can only say, "The readiness is all!" (V, II, 218).

Act V

Maybe. But maybe we also run into a trap, just like Hamlet. Maybe Agamben's embracing of Benjamin's so-called 'Marxian messianism' is another case in which we should pay attention to Derrida. He renounced his affinity to Benjamin in *Marx & Sons*, a résumé of the discussion about *Spectres of Marx*. Some critics have called Derrida's para-Heideggerian crypto-Marxism, his concept of 'messianicity', of openness for the other, the alien, the ghost, the event, or advent, a 'Jewish messianism' à la Benjamin. Derrida insisted strongly that this concept was 'messianism without messiahs', a religious concept, perhaps with good reason. Maybe this reception of Benjamin's theological ideas, its re-territorialisation within a religious context, is "out of joint" with Agamben's work. The advent of 'messianic time' – the end of time, the beginning of 'eternal peace' – too easily gets confused with the final arrival of the messiah as 'martyr'. Today 'martyr' implies murder. No other word has been more misused by theocratic politics of terror. It relates to the apocalypse rather than to 'heavenly peace': Christ as messiah *militans et triumphans* taking revenge, drowning the world in blood to bring forth the reign of God. Every fundamentalist theology is an 'archeo-teleology'.

Against this, Benjamin's strong renunciation of any form of theocracy is to be upheld. Then we might arrive at a truly Benjaminian-Derridian concept which, anti- or an-archeo-teleologically, signifies a mode of waiting without (a)waiting anything: Politics without program or project, because radically, politically, it consists only of the interruption of the Political: **Break - Strike!**

Instead, Agamben awaits the worst. His 'catastrophism' can only be labelled with German words like *Angst* or *Untergangslust*: 'joy of fear or of fall'. Agamben sees humanity on its way to annihilation and extermination camps opening in Europe again. Since 9/11 he has been read as the political prophet of the global *Ausnahmezustand*. But in the application of his analysis of the KZ-system to the current situation, a strange displacement occurs. He draws a parallel between Hitler and Bush, and extends the concept of 'bare life' from the 'Muselmann'⁸ of the KZ (those inmates who were like living dead) to the detainees at Guantanamo Bay.

Something is rotten in the United States, that's for sure, but how is it that a philosopher of the Shoah fails to address the vicious anti-Semitism of the 9/11 terrorists? Why is the resemblance of religious fundamentalism to political fascism overlooked? What is to be done if the enemy really is an enemy, which means somebody who wants to kill you? What is the alternative to the neo-Schmittian politics, à la Bush, in times of terror? *That is a*

question neither Agamben nor Derrida, neither European appeasement politics (Schröder, Chirac) nor the global peace movement has answered yet:⁹ how to interrupt the cycle of violence, of force vs. force?

To avoid the bloody end of Act V, let's return to Benjamin and the *göttliche Gewalt*. For Benjamin, the command not to murder prevails – but only as command prior to a deed, not as judgement after the act has been committed. It doesn't mean a surrender to violence, as was the case of Jewish communities that didn't defend themselves against pogroms. "Killing of a criminal can be moral (*sittlich*)—never its legitimation", Benjamin writes in *Einbahnstrasse (One-Way Street)*. His argument is that while the deed (to kill a criminal) can on occasion be justified, the justification is always exigent on the situation; it is impossible to formulate a rule. He also suggests that the divine injunction to refrain from killing does not imply foregoing the necessity of resistance.

In the final three sentences of his "Critique of Violence", Benjamin calls reprehensible all law-making forces as *schaltend* (shifting), law-keeping force as *verwaltet* (administered); only divine force is called *waltend*. This may appear in 'true war', or in the godly trial of the multitude against the villain. It sounds like a final political tribunal: **WALTER BENJAMIN**, the youngest force.

"About the concept of 'multitude' and the relationship of 'crowd' (*menge*) and 'mass' (*masse*)".

- Walter Benjamin, "Central Park" (*Gesammelte Schriften* 1.2, p. 686)

Encore

It's irritating that while Agamben bases his whole work on his interpretation of the Shoah, the other contemporary Italian philosopher who influences contemporary global political discourse, Antonio Negri, seems not to pay any attention to it at all. While Agamben draws on the dreadful consequences of bio-politics, Negri bases all his hopes on them. Both thinkers form a Janus-like head, a manic-depressive philosophy of liberation that Derrida would have referred to as different phases of political *Trauerarbeit* ('labour of mourning'). While Negri/Hardt set the constitutive forces prior to the constituted forces, Agamben insists on the Schmittian paradox of power. Now, after having argued pro-Benjamin contra-Derrida and pro-Derrida contra-Agamben, let's not continue pro-Agamben contra-Negri, but instead look for a common ground. This ground has been prepared by Benjamin. The Italian language provides us with an understanding of his politics: *potenza*. It translates as 'power', but also encompasses 'potentiality', the possible.

The strongest argument against any politics of 'bare acts' that tend to end in barbarian acts could be condensed to an affirmation of 'means without ends', as constituting moments of a state of being located *vis-à-vis* (in)decisiveness, poised between action and mere potentiality; a gesture, a remaining rest which does not realise itself in any act.

This is our only hope. The only hope that 'another world is possible' is based on our recognition of the fact that peace is possible, because peace embodies possibility. Peace is Possible = Peace as the Possible = the Possible as Peace. What is common to all these fragments of *potenza* is the possible: the –ability, communicability: the *Mittelbarkeit*. It is

possible only within a multitude.

We are also ghosts – millions of them. Our struggle shouldn't be based on life or death, but on Benjamin's idea of *Glück*, meaning 'luck' and also implying the pursuit of happiness. This shall be the direction for a new world politics, Benjamin said at the end of his last text, his testament, whose method might be called 'nihilism'. The force that brings about change works in two ways: it never goes directly towards salvation – towards 'God's Empire' – but like recoil also works the other way – towards profane joy. This might be the direction for a radical secular *jihad*, the oldest hedonist imperative and most trite advertisement: 'Enjoy your Life!' Against any politics of sacrifice, situate a politics of joy: **Lucky strike!**

Remember that peace is a twofold word, pointing not only to the opposite of war, but also to an idea of eternity: 'eternal peace'. Get ready, it can happen any second – but by *pure means only*.

NOTES

1. Derrida, Jacques. "Force de Loi : Le 'Fondement Mystique de l'Autorite' (Deconstruction and the Possibility of Justice)". In *The Cardozo Law Review* 11 (1990).
2. Werner Hamacher, "Affirmativ, Strike", in *Cardozo Law Review* 13, p. 1133-1158 (1991); Sam Weber, "In the Name of Law", in *Cardozo Law Review* 11, pp. 1515-1535 (1990); and Burkhardt Lindner, "Derrida. Benjamin. Holocaust: Zur Dekonstruktion der 'Kritik der Gewalt'", in (eds.) Garber, Klaus, and Ludger Rehm: *Global Benjamin* 3, pp. 1691-1723 (1999). These scholars have argued this rash conclusion supplementing Derrida's reading of Benjamin's text.
3. Just compare the picture of the collapsing Twin Towers with the last shot of the film *Fight Club*: in one immense blow all the skyscrapers fall, to end global debt. Indeed, in a fragment Benjamin also paid attention to the demonic double meaning of the German word *Schuld* (guilt) and *Schulden* (debts) to interpret the *Verschuldung* (indebtedness) as the ground of capitalism as religion which waits for God's wrath to destroy it.
4. At a meeting with Gianni Vattimo and others in Capri in 1994. In a lengthy interview that Derrida gave to Giovanna Borradori in New York shortly after the attacks, he uses the term "auto-immunisations, real and symbolical suicides" to describe the event. In *Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida* (University of Chicago Press, 2003, Chicago).
5. German and French newspapers titled the initiative of the former arch-enemies Jürgen Habermas and Jacques Derrida for a united foreign policy shortly before the attack on Iraq: "Our Renewal. After the War: The Rebirth of Europa" (*Liberation* and *Frankfurter Allgemeine Zeitung*, 30 May/1 June 2003). It's the rebirth as 'peace-power': EUROPAX. The philosophers have only anticipated what the politicians are preparing: A united representation and a united army. Anyone who asked what a Habermasian 'constitutional patriotism' would look like on a European scale knows the simple answer by now: the commitment to a new arms race. Taking this into account, Benjamin's resolve against militarism in his "critique of violence" acquires a new sense of urgency.
6. The 9th of November is a date with many resonances in the history of Germany in the twentieth century. 9/11/1918 (written as per European convention) was the day that Kaiser Wilhelm II abdicated, signaling the end of World War I, 9/11/1938 is remembered as 'Kristallnacht', when a wave of pogroms and attacks against Jewish people was carried out all over Germany, and 9/11/1989 is the day the Berlin wall came down. The 11th of September (written in the American style as 9/11/2001) refers to the attacks on the

World Trade Center in New York.

7. See, Weber, Sam. "Von der Ausnahme zur Entscheidung, Walter Benjamin und Carl Schmitt". In Weber, Elisabeth and Georg Christoph Tholen (eds.), *Das Vergessene. Anamnese des Undarstellbaren* (Turia & Kant, 1997, Vienna); Muller-Scholl, Nikolaus, "Der Eingriff ins Politische"; and Brecht, Bert, "Carl Schmitt und die Diktatur auf der Bühne". In Silberman, Marc (ed.), *drive b. Theater der Zeit/Brecht Yearbook 1988* (Berlin 1988), pp.113-117.
8. The term 'Muselmann' refers to a word in concentration camp slang for the inmates who had 'submitted' to the regime of the camp, had lost all will, and were the most likely to accept death or whatever fate was meted out to them. The term 'Muselmann' here is seen as the Arabic gloss of the word *Muslim* (from *aslama/islam*), as denoting 'one who submits'. Primo Levi in *If This Be a Man: Survival in Auschwitz* (Abacus, 1991) and Robert J. Lifton in *Nazi Doctors: Medical Killing and the Psychology of Genocide* (Basic Books, 2000) refer to the usage of 'Muselmann' in camp slang.
9. This text is an intervention in the political discourse of global activism. The first such text of this sort ("Stopping the Fourth World War within the Next Five Minutes") was written as a critical commentary to the film *The Fourth World War*, (see <http://www.makeworlds.org/node/8>) shown during the Next5Minute4-Conference on tactical media. See also "Zum Zeitvertreib zwischen Krieg und Frieden". In A.K. et al; *Zum Zeitvertreib*, Bielefeld, 2005.

REFERENCES

- Adorno, Theodore W. "Mediation about Metaphysics". From *Gesammelte Schriften*, Bd 6. In Tiedemann, Rolf, Gretel Adorno, Susan Buck-Morss and Klaus Schultz (eds.), *Negative Dialectics* (Suhrkamp, 1997, Frankfurt) p. 358.
- Agamben, Giorgio. *Home Sacer* IV. Guilio Einaudi editore s.p.a, Torino.
- Agamben, Giorgio. *Mezzi Senza Fine - Note Sulla Politica* (1996, Torino).
- Austin, J. L. *How to Do Things with Words* (Harvard University Press, 1975, Cambridge).
- Benjamin, Walter. "Einbahnstrasse (One-Way Street)". In *Gesammelte Werke*, Bd. IV.1, p. 138.
- Benjamin, Walter. "Zur Kritik der Gewalt (To the Critique of Violence)". In *Gesammelte Schriften*, Bd. II. 1, pp. 179-203. See also "Das Recht auf Gewaltanwendung (The Right to Apply Violence/Force)", Bd. VI, p.138.
- Benjamin, Walter. "Zentralpark", Bd. 1. 2, pp. 655-690.
- Benjamin, Walter. "Über den Begriff der Geschichte (About the Concept of History)", Bd. IV. 1, pp. 691-704.
- Benjamin, Walter. "Die Aufgabe des Übersetzers (The Task of the Translator)", Bd. IV. 1, pp. 9-21.
- Benjamin, Walter. "Kapitalismus als Religion (Capitalism as Religion)", Bd. VI, pp. 100-103.
- Derrida, Jacques. *De l'Esprit: Heidegger et la Question* (Galilée, 1987, Paris).
- Derrida, Jacques. *Politiques de l'Amitié* (Galilée, 1994, Paris).
- Derrida, Jacques. *Spectres de Marx* (Galilee, 1994, Paris).
- Derrida, Jacques. *Marx & Sons* (Presses Universitaires de France, 2002).
- Derrida, Jacques. "Glaube und Wissen: Die Beiden Quellen der 'Religion' an den Grenzen der bloßen Vernunft". In Derrida, Jacques, and Gianni Vattimo, *Die Religion* (Suhrkamp, 2001, Frankfurt).
- Derrida, Jacques and Jurgen Habermas. *Philosophy in a Time of Terror: Dialogues with Jurgen Habermas and Jacques Derrida* (University of Chicago Press, 2003).
- Janouch, Gustav. *Talks with Kafka* (Fischer, 1981, Frankfurt).



'New' Delhi

Fashioning an Urban Environment through Science and Law

AWADHENDRA SHARAN



"Delhi"

In December 1985, almost to a year after the tragedy at Bhopal in which about 16,000 people died on account of inhaling methyl isocyanate gas that had leaked from a plant of Union Carbide, oleum gas leaked from a unit of the Shriram Foods and Fertilisers industry located in Delhi.¹ Coincidentally, earlier the same year the lawyer-activist M. C. Mehta had filed a writ petition before the Supreme Court of India arguing that the operations of the factory were hazardous for the communities that lived in the vicinity. The court responded in an urgent fashion, allowing the concerned unit to continue to operate after due safety precautions, and congratulating the petitioner for having rendered a valuable public service. The judges also observed on the relative priority of employment and environmental harm, the various concerns of workers and management and the strategies through which specialist knowledge regarding modern urban environments could be better incorporated within law.

In the same year, Mehta had filed two other petitions regarding industrial land use and vehicular pollution in Delhi (judgments regarding these came almost a decade later), that carried forward some of the concerns of the bench in the earlier case, but also elaborated further on the nature of environmental jurisprudence in India.² In the process, they altered more than the environment and reshaped not only the physical, but also the social and institutional landscape of the city.

This essay reflects on that reshaping, in three parts. The first section discusses the emergence of the 'public' petitioner seeking environmental good on the basis of constitutional guarantees. The second section explores the complex network of committees and experts that inform the judgments of the courts. The concluding section examines the significant aspects of these judgments and their implications for the city of Delhi.

Public/Petitioner

India's penal code contains an entire chapter relating to 'Offences affecting the public health, safety, convenience, decency and morals'. These are popularly referred to as 'nuisance' laws, a legal maxim derived from the European Middle Ages based on the idea that one ought to so use one's property as not to injure another.³ This is a legal provision that affords protection to individuals and communities against pollution, but it does so not from an environmental point of view but from the perspective of property.⁴

As stated by M.R. Anderson, in the colonial context of 19th-century India, the wide definition of 'nuisance' implied that the law often operated adversely against economically marginal groups by dispossessing them of common facilities that they had hitherto enjoyed. Achieving 'environmental good' cannot, and did not, have the same outcome for those who "relied upon rivers, streets, and waste-lands as key resources in the daily conduct of production and subsistence", and for those who "did not depend immediately upon common property resources for subsistence, but tended to look upon common property as the raw material from which public order and an aesthetically-gratifying quality of life could be built".⁵ Other serious limitations included the fact that while nuisance laws could provide remedies for past harms, their capacity to address future harms was more limited. Also, while these worked well with regard to two individuals, or an individual and a 'public' who

were proximate to each other, they could not cope with diffuse harms.

Two responses developed to address these limits. The first was within the domain of urban planning, and sought to anticipate, among other things, potential environmental harms, and provide for remedies through the practice of zoning. This was again environmentalism at a remove, the major concern being appropriate land planning. The governance of the city, modernist planners suggested, required the ability to comprehensively map the flows in and out of Delhi (of people, resources and waste) and then rationally manipulate them so that optimum balance (between available land and people; between people and jobs; between jobs and housing; between housing and environment) could be obtained. The idea of a comprehensive city plan thus emerged as a mechanism for effecting “progress without friction”; and through this emerged concerns about slum habitations and industrial location.⁶

In brief, the Plan which has been operational since 1962, proposed that noxious industries be moved to the margins of the city or even outside it, based both upon their infrastructural requirements and their polluting effects.⁷ Intriguingly, it also recommended a similar transfer of ‘rural industry’, being “not suitable for a well rationalised and modern manufacturing activity” within the limits of the city.⁸ Even more damning was another inflection of the category of the rural – through the people who lived in slums being described as “plague spots in any urban setting”; “concentrated areas of insanitation, crime and vice”; ignorant of “urban ways of life” and engaging in “obnoxious trades” all of which worsened the already chronic unsanitary conditions of the city.⁹ Nuisance and pollution, in other words, were always to be located elsewhere, and the discourse of planning expressed supreme confidence in managing these separations that were simultaneously spatial, material and social.

This confidence has been much shaken over the last four decades or so. From the mid-1970s, we find a parallel set of developments that have brought the issue of (urban) environments more centrally into focus, this time through statutory laws relating to water and air pollution and through reinterpretations of the Indian Constitution, most notably by making the enjoyment of a healthy environment an aspect of fundamental rights, drawing upon Article 21 of the Constitution (Protection of Life and Personal Liberty).¹⁰ This right has further been operationalised through some other innovations, particularly those relating to the standing of the petitioner and the powers of the court to fashion new remedies. From the ‘80s onwards, the Supreme Court of India has expanded the understanding of *locus standi* to suggest that it is not necessary to have suffered a personal injury to seek remedy. The principle, as restated in the oleum gas leak case, is that in cases of violation of a fundamental or other legal right of socially and economically disadvantaged persons, “it would be open to any public spirited individual or social action group to bring an action for vindication” on their behalf. Justice P. N. Bhagwati observed that it was important to focus on the substance of law rather than the form of it. M. C. Mehta appeared as a pioneer on the scene in this context and filed close to a dozen writ petitions. The outcomes of three of these are considered here.

Committee Men and Contesting Experts

The rule of committees is almost always an aspect of the arts of governance, but paradoxically, they appear in our narrative as the second critical set of players acting in *public* interest, knowledgeable in their capacity to deal with environmental complexities and secure in their authority based on the mandate provided by the courts. Once again, the concern is justice; and the legal principle is an innovative one. The Supreme Court has observed that it is neither essential nor constitutionally mandated that the adversarial procedure be adopted in cases involving fundamental rights.¹¹ In fact, in instances where the two parties are totally unevenly matched in economic and social strength, such a stance could even lead to injustice, with the less privileged being unable to produce relevant information before the court. If fundamental rights are to be more than a 'teasing illusion' for the poor and the disadvantaged, it is necessary that the court fashion an alternative mechanism, which indeed it has through the appointing of commissions to gather facts.

This principle was restated in the various cases under review with a major new consideration that the persons being authorised to help establish the facts must bring to this task not only their integrity but also highly specialised knowledge. The Ministry of Environment and Forests of India observed in 1992 that earlier concerns with pollution that was visible and degradable are giving way to concerns about new types of pollution with very small quantities of synthetic chemicals that are not so visible and injurious to health and damage the environment because of widespread use, persistence and toxicity.¹² And law, as indeed the executive, had to respond to this new 'unknowability'. To assist the process, the Supreme Court turned to 'professionally competent and public spirited experts' who would provide 'reliable scientific and technical input'.

This is indeed a rather positivist view of science, but one which has enjoyed some respectability in many other legal contexts.¹³ In the Indian context, this implied a consistent recourse to a committee of specialists for helping to establish 'truth' in complex environmental domains. In the course of the proceedings against the Shriram unit, the Supreme Court appointed two expert committees of its own, and also relied on the testimony of the expert committees appointed by other bodies such as the Lt. Governor of Delhi, the Ministry of Labour, and the petitioner. Three basic issues were examined: the nature of the risk faced by the workers and the community around the unit; strategies for minimising these risks; and the steps that the company needed to take to effect such minimisation.

There was near-consensus between the experts on the safety measures required, as also the compliance of the Shriram group with these measures. But disagreements remained regarding the precise concentration of chlorine in the air (25 parts per million [PPM] or 40 PPM, with an exposure of around 30 minutes) that could be considered dangerous. The court temporarily papered over this disagreement, arguing that the differences notwithstanding, there was little doubt that chlorine, by its very nature, was a hazardous gas. But clearly there were always possibilities of more radical disagreements, and these came into public view about a decade later in the course of the controversy over the choice of an environmentally 'clean' fuel.

In this instance, the court was not merely reacting to an established body of knowledge. The health effects of the various categories of fuels were not evident; the knowledge regarding these had to be generated. The court relied for its judgments on the recommendations of the Environment Pollution (Prevention and Control) Authority for the National Capital Region (established in 1998), seeking its advice on a range of issues including augmentation of public transport, elimination of leaded petrol, use of pre-mix petrol for two-stroke engines, phasing out of older vehicles, etc.¹⁴ The most controversial of these recommendations was the absolute preference for Compressed Natural Gas (CNG) over diesel, the committee taking care to also list the adverse effects of critical pollutants such as sulphur dioxide, nitrogen dioxide, carbon monoxide, diesel and sulphur particulates, respirable suspended particulate matter and benzene.¹⁵

This was soon challenged by the report produced by the Mashelkar Committee, set up by the Government of India under the chairmanship of the Director General, Council of Scientific and Industrial Research (CSIR) and drawing upon the expertise of a wide range including specialists in environment, energy, vehicular technology, public finance etc., which recommended, instead, targeted vehicular emission standards for various categories of vehicles and allowed for different technologies and fuels that could meet the emission standards.¹⁶ The Supreme Court was far from satisfied. It not only suspected motives for the setting up of this committee but also observed that, notwithstanding the long list of specialists, there was no expert in public health and consequently the absence of “any serious concern with the health of the people” in the report of this committee.¹⁷ The ‘health first’ approach, in which adverse environmental effects are considered paramount, to the detriment of other repercussions, was elaborated further in other orders. What becomes interesting here is that the Court had more than a committee to reckon with in the form of science-based NGOs who put their own views on the table, and did so in a far more public setting.

In contrast to the cases that dealt with planning issues, where the courts were (sometimes) pitted against trade unions regarding job loss, at stake here was not only the moral issue – i.e., in whose interest – but also the intellectual basis of making judgments: on what evidence do we judge; who produces these evidence; how certain can we be? Amongst those who sought to provide the answer to these questions outside the committee framework, the most prominent have been the Centre for Science and Environment (CSE), whose Director, Anil Aggarwal also served as a member of the Bhure Lal Committee, and the Tata Energy Research Institute (TERI). Both have consistently involved themselves in public campaigns through which a significant set of studies pertaining to fuel choices have been brought into the public domain, even as these very studies have become grounds for contestations.

The CSE began its campaign for clean air first through the publication of its 1996 report *Slow Murder*, an in-house study that highlighted the need to simultaneously address the entire gamut of issues that affect air quality. However, the debate became more technical; and lacking in-house expertise, CSE set up an international committee of technical experts to undertake an evaluative study of CNG and diesel in order to arrive at an ‘independent evaluation’, which committee also favoured the CNG option. TERI used data

from the Expert Reference Group Study in Australia (conducted in 1998) to argue in favour of diesel, which was contested by CSE on the basis of a more recent study undertaken by the Australian Government's Council for Scientific and Industrial Research Organisation. Further on, TERI cited the approach taken by the European Programme on Emission, Fuels and Engine Technologies as providing a more comprehensive framework than that on offer by the Bhure Lal Committee and the courts; or in another context, World Bank studies on Mexico City and Santiago on the inadequacy of what it calls this 'technical fix' to reduce air pollution.

Both published Q & A booklets, issued press notes and lobbied hard at seminars and conferences. This is a public contest around evidence for environmental impact that had not been characteristic of court/government-appointed committees and added an entirely new dimension to environmental jurisprudence.

Notwithstanding, it is instructive to underline the continuity of the scientific view, endorsed as much by CSE and TERI as by the various committees before them. If there are disputes, these views suggest, these are in the nature of science itself; or of bad practice in which partial, selective, deliberately misleading or genuinely ill-informed knowledge is presented in the public to obfuscate issues. The answers must therefore lie in better science, clearer and more voluminous data.

In contrast, what we observe is far too much uncertainty on the matter, and the arena of dispute is far too wide for generating even a rough consensus as had been in the oleum gas leak case. Clearly, an entirely different basis for closure would have to be found, drawn not from scientific consensus but from other ways of thinking about how to organise the society and economy, addressing not only the immediate context but also distant futures.

Judgments and Critics

Committees may help to establish the 'truth', but justice must yet be dispensed by law. Having achieved a rough consensus on the harmful effects of chlorine, but also realising that the Shriram group had complied with the recommended safety regulations, the court had now to decide whether to let the unit continue operation. The concerns before the court were various. These units were located in densely populated parts of the city; risks to workers and the community could be minimised, but never fully eliminated; close to 4,000 workers stood to lose their job if the factory was to close; and there was the distinct possibility of the Delhi water supply losing its supply of chlorine and having to source it from a fair distance. Together, these posed a rather delicate choice before the court, which had to 'weigh and balance' and eventually ruled, rather hesitantly: "We have...reflected over the various aspects of this rather difficult and complex question with great anxiety and care and taking an overall view of the diverse considerations, we have, with considerable hesitation, bordering almost on trepidation reached the conclusion that, pending consideration of the issue whether the caustic chlorine plant should be directed to be shifted and relocated at some other place, it should be allowed to be restarted...subject to certain stringent considerations".¹⁸

In other words, despite the increasing technical nature of the issue on hand, the Supreme Court had made it clear that expert evidence was not the determining point of

view, but instead its own sense of balance between competing goals and justice, a point that is sometimes lost when the clamour for information obscures the principles of which justice is to be debated. This was a balance rather delicately poised at this moment in time, but within a decade it clearly tipped further to one side – in favour of environment – and at some cost to other constituencies.

The issue of location acquired a momentous presence in the life of the city from the mid-1990s through the judgments offered in the land use scenario where we find this shift well marked. “We are conscious”, Justice Kuldip Singh ruled in a case involving stone crushing, “that environmental changes are the inevitable consequence of industrial development in our country”. But the important consideration for him (and his fellow judges) was that “the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard for the residents of the area”.¹⁹ This view found amplification in the two sets of judgments that were passed, the first in 1996 and the second in 2000, that concerned themselves with the provisions of the second Master Plan. Implemented since 1990, the second Master Plan classified various industries in Delhi into nine categories and laid down clear guidelines with respect to those industries that needed to be relocated. First among these were the Hazardous and Noxious Industries [category H (a)] which, the Plan said, were not permitted in the city; existing units would have to shift out within a period of three years. The second major category [H (b)] was that of heavy and large industries, of which no new units would be permitted and the existing ones shifted to the Delhi Metropolitan Region and the National Capital Region. With respect to other non-conforming industries, similar recommendations were made, though with more lenient time periods for shutdown or relocation.

The question that the court framed for itself was a rather restrictive one: of legality. Who had complied and who had not, and those who hadn't (the overwhelming majority), it ruled, must shut operations. It was open to the court to have used this opportunity to debate on the wider processes of planning, such critiques being available both in the Indian and the global context. But it chose the narrower path instead. The ironic consequence is that the Supreme Court, which had been so innovative in fashioning environmental good into a Fundamental Right, has utterly failed to secure safe working conditions and habitation for the workers of the city, within the city. It could only precipitate their movement outwards, on the assumption that because they are migrants, they are also infinitely mobile. In the process, it has also created a peculiar bind where all terms of engagement for creating a better environment are seemingly exhausted through the binary of ‘safe/clean’ city and ‘dirty/necessary’ work.

The Supreme Court has not, however, been oblivious of broader critiques in other domains of intervention. In fact, with regard to the larger global debate on environment, it has kept pace with significant developments elsewhere. Therefore, in the vehicular pollution case we find the articulation of principles that allow for preventive intervention even under conditions of great uncertainty, there being little unanimity on which fuel was most environmentally appropriate. Quite clearly this posed a major problem for the executive. Those obliged to convert their fleet from diesel to CNG were conscious of the financial investment required and demonstrated displeasure in no uncertain terms, besides

considerable foot-dragging. Equally, the Chief Minister of Delhi went on record that she did not want chaos on the streets of Delhi through a proactive approach on an unproven technology. “I do not know what is the truth”, she said. Under the circumstances, it was hardly likely that she could convince others.

This argument no longer cut ice, for the court not only marshalled the weight of scientific evidence in its favour, but more significantly, it firmly established a new principle of governance, wherein doubts were allowed but could not become an impediment to action. This is the notion of sustainable development, containing within it both the ‘precautionary principle’ and the ‘polluter pays’ principle. It necessitated, in the court’s view, that the executive act even on the basis of limited knowledge, and in the specific case of fuel choice, that all efforts be made to ‘anticipate, prevent and attack’, giving priority to environment over economy.²⁰ There was no option but to act; and the court had little hesitation in saying that its order with regard to conversion of the entire city bus fleet to CNG “does not require any modification or change”.

The twists and turns that lie at the interface of science and law leave our urban futures still uncertain. In the case of land use, critics have inferred a ‘middle-class bias’, an important factor, though not the sole one.²¹ What is at stake in all these situations is a relationship to living environments that a science-based, expert-driven, data-reliant environmentalism does not necessarily promise to help cultivate. The principles for achieving consensus on ‘acceptable risks’ also urgently require further discussion. Those principles cannot be arrived at through law or science alone. In a democratic polity, they must, of necessity, be societal.²²

NOTES

1. About 15,000 people are estimated to have died in Bhopal on account of inhaling methyl isocyanate gas that leaked from a plant of Union Carbide. Inhaling oleum gas, which is largely composed of sulphuric acid, may be equally harmful, especially in the form of severe eye and skin burns, and in extreme cases, even fatal.
2. The three cases under consideration are:
M .C. Mehta v. Union of India WP 12739/ 1985 (Oleum Gas Leak Case)
M .C. Mehta v. Union of India WP 4677/ 1985 (Delhi Land Use Case)
M .C. Mehta v. Union of India WP 13029/ 1985 (Vehicular Pollution Case)
3. See Divan, Shyam, and Armin Rosencranz, *Environmental Law and Policy in India: Cases, Material and Statutes* (Oxford University Press, 2001, Delhi) p. 91.
4. In addition to possession, property is a constellation of many other rights, including occupation, use, sale and enjoyment. Just as laws of trespass protect occupation, similarly nuisance laws allow for enjoyment of property. See Hoban, Thomas and Richard Brooks, *Green Justice: The Environment and the Courts*, 2nd edn (Westview Press, 1996).
5. M. R. Anderson, “Public Nuisance and Private Purpose”, SOAS Law Department Working Paper 1, pp. 24-25 (1992).
6. This was hardly a new idea. A number of scholars have suggested that versions of it have been around since at least the late 19th century. What was distinctive about the post-World War II period was the capacity of the state to undertake this massive task of social engineering. In the case of newly independent countries such as India,

there was the desire to forge a new civilisation. So urban planning was not about physical manipulation of elements alone, but instead a triangulation linking people, habitations and production processes.

7. The Master Plan describes noxious/nuisance industries as “any industry whose by-products or manufacturing procedures are associated with undesirable features such as smoke, stench, unpleasant fumes, pollution of water and similar hazards to general health and well-being of the neighbourhood”.
8. Delhi Master Plan, 1962 (DMP-62), Ch. 8, pp. 7-8. Nuisance laws being particularly harsh against traditional industries has also been noted in other contexts. For instance, in the US, Rosen notes that courts were quite willing to act against “traditional” industries and trades such as slaughterhouses and bone melting, but the bar for the “provability” of damage was raised much higher with regard to modern, steam power driven factories, mines, smelters, etc. See Christine Rosen, “Knowing Industrial Pollution: Nuisance Law and the Power of Tradition in a Time of Rapid Economic Change, 1840-1864”, *Environmental History*, Vol. 8, No. 3, pp. 565-97
9. MPD – 62, Ch. 10, p. 3.
10. A consultation paper circulated by the National Commission to review the Working of the Constitution on the theme of “The Enlargement of Fundamental Rights” points out that as a result of judicial decisions certain rights which are not explicitly mentioned in Part III of the Constitution (dealing with Fundamental Rights) have been inferred or deduced from the specified guaranteed fundamental rights. These are what it refers to as the judicially deduced fundamental rights, which include the freedom of press; freedom of information; prohibition of torture; right to travel abroad and return; remedy for violation of Article 21; right to privacy; right to free elementary education upto the age of 14; right to a clean and healthy environment; right to have access to courts and right to legal aid. It also suggests that other than South Africa, India is the only other major developing country that has moved in this direction. The consultation paper is dated 11 May 2001. http://lawmin.nic.in/ncrwc/finalreport/v2b1-3.htm#_ftn26; accessed 27 May 2004.
11. *Bandhua Mukti Morcha vs Union of India*, AIR 1984 SC 802.
12. Government of India, MoEF, 1992. Policy Statement for Abatement of Pollution, p. 2.
13. The literature on the sociology of science is too vast to be explored in this essay, but for a good introduction to the manner in which such constructed knowledge plays itself out in the legal context, see Sheila Jasanoff, *Science at the Bar: Law, Science and Technology in America* (Harvard University Press, 1995, Cambridge).
14. For a detailed list, see the order dated 28 July 1998. This committee is popularly referred to as the Bhure Lal Committee after the name of its chairperson, and is referred to as such in the rest of this essay.
15. Environment Pollution (Prevention & Control) Authority for the National Capital Region, “Report on Clean Fuels”, July 2001.
16. Mashelkar et al., “Interim Report of the Expert Committee on Auto Fuel Policy”, Government of India, 2002.
17. Order dated 5 April 2002.
18. Among the stringent considerations were not only technical matters relating to safety but also the involvement of workers’ organisations, the need for training of workers, and detailed charts in English and Hindi explaining the effects of chlorine gas on the human body and what precautions workers should take in the case of an emergency.
19. Judgment dated 15 May 1992.
20. Order dated 5 April 2002.
21. For the middle-class environmental thesis, see for instance Dunu Roy, “From Home to Estate”, *Seminar* 533 (2004); and Amita Baviskar, “The Politics of the City”, *Seminar* 516 (2002).
22. For a critique in this vein, see Ravi Agarwal, “Questions of Standards”, *Sarai.txt* 1.2, 15 December 2004-15 February 2005, and in this volume.

Improbablevoices.net

An Improbable Monument to Witnessing and the Ethics of Trespass

SHARON DANIEL

(with Justice Now and Beatrice Smith-Dyer, Misty Rojo, Lana Porter, Beverly Henry, Zundre Johnson, Jane Dorotik, Marie Bandrup, Yvonne (Hakim) Anderson, Genea Scott and Valerie Biedler)

'Improbable' means 'unlikely' – but also 'marvellous' and 'tall', as in a 'tall tale'...A tall tale relates the story of an imagined, and, sometimes, marvellous world. Imagining can be a point of departure for building something marvellous.

'Monument' is defined as 'an important site that is marked and preserved as public property'.¹ Monuments are usually public works – structures constructed at government expense for public use. Why do societies care about these enough to invest in building, guarding and, upon occasion, destroying them? Perhaps because monuments are mirrors that reflect social values; they also serve to fix or render permanent the collective memory of significant events. Traditionally, memorials and monuments commemorate authorised histories and foster historical consciousness in conformance with narratives of power. But ideally, monuments, as a form of public architecture, have the potential to resist erasure, counter ignorance, and to act upon the world with a view to reshaping it.

The definition of 'monument' also includes 'a repository'. The general reference is to a 'burial vault', but a 'repository' is also described as 'a person to whom a secret is entrusted' and 'a facility where things can be deposited for storage or safekeeping'. The form of 'monument' might be productively re-conceptualised as 'repository', in the sense of an archive or repository of information. Thus, while 'monument' has traditionally been associated with the 'monumental', 'monolithic' and mono-vocal (or univocal) – a uniform and authoritative representation – a monument might also, equally, take the form of a repository or an archive, and provide a crucial space for collecting information, objects and memories, and compiling diverse perspectives to produce an unauthorised, multi-vocal representation of social truths.

Currently, prisons in the United States function as both monument and repository, in the very worst sense of each term. They are monuments to the criminalisation of poverty, and human repositories where the secrets of economic and political power are kept safe. The 'prison industrial complex' is the quintessential embodiment of power and authority in capitalist America – a corporate/state collaboration designed to profit from the incarceration of marginalised communities on a massive scale, and to enforce their continual political disenfranchisement by law.

The legal rights of prisoners are outlined in the US Constitution – a document that was designed to protect the rights and privileges of its authors (white, male, propertied citizens) at the expense of a host of ‘others’ (including women and people of colour). The legitimisation of the institution of slavery was at the heart of its formulation. The majority of the framers of the Constitution were slave owners who recognised the tremendous economic advantage to be gained from the long-term exploitation of black labour and the efficacy of making slavery a hereditary and lifetime condition. Slaves were property, and the rights to be protected by the Constitution were primarily the property rights of legally recognised persons. The revolution of Jefferson, Washington and Madison was never intended to liberate the black slave, who was not seen fully as a person by society or by law. The Constitution guaranteed the continuation of the slave trade, provided for the return of recaptured slaves to their owners, and for purposes of taxation and political representation, defined blacks as three-fifths human. This legislated a social order assuring white dominance and making black people into virtual non-persons without any right to family, free movement, choice or political citizenship.

Logically, the Civil War and a series of constitutional amendments up to the Civil Rights Amendment should have made a difference to this racial-legal dynamic, but they have not. Racism and economic exploitation remain essentially intact as the legal system continues to create and protect a racially segregated society, and the government manipulates the law to disenfranchise black citizens.² The fundamental premises and goals of the institution of slavery are now realised through the agency of the US criminal justice system and the prison industrial complex.

The weak protection of prisoners’ rights under federal law (provided in the Constitution) allows state law to violate them. The regulation of prisoners, their rights, and their living conditions are left to state governments who appoint governing boards to oversee prison administrations. This essentially leaves prisoner’s rights, or lack thereof, in the hands of politicians, prison administrators and guards – ‘interested parties’ who are economically dependent upon the growth of the prison industrial complex.

A market economy for prisons has led to a market demand for prisoners (a strong lobby for ever-tougher sentencing to satisfy the need for more cheap labour and maintain the corrections economy). For example, inmates in state and federal prisons are often employed by private corporations for extremely low pay, and prisons are ‘serviced’ by giant corporations, like MCI and Marriott, with monopoly contracts for catering, telephone service and medical care.

Over the past two decades, California alone has built 21 new prisons, spending roughly \$4.4 billion on infrastructure, and an estimated \$26.2 billion more to keep it functioning. California Department of Corrections spending has exploded, from just under \$300 million in 1984 to the current \$5.7 billion a year. Currently, California spends more to expand and maintain the prison system than it spends on public education. This expansion has transformed remote, rural and financially struggling towns into thriving economic hubs in the prison industrial complex. A once-small public employees union, the California Correctional Peace Officers Association, has become a political behemoth that contributes millions of dollars to both Democratic and Republican governors and legislators. While

prisoners in California are permanently stripped of their right to vote, prison guards enjoy considerable political clout. Since prison populations are disproportionately comprised of people of colour, the loss of voting rights means that millions of black and brown citizens and their communities are effectively disempowered in the political realm.

The systematic violation of the human rights of these communities, on a daily basis, is a primary cause of their encounters with regimes of enforcement, and consequent high rates of incarceration. The Universal Declaration of Human Rights (UDHR), 1948, stipulates the right to economic security, education, citizenship, privacy, adequate medical care and intellectual property. It protects the right of universal suffrage, freedom of speech and the freedom to disseminate opinions and ideas through the media. It protects against torture, inhuman or degrading treatment, racial discrimination, arbitrary detention and slavery. For poor persons of colour, the violation of these rights on the street (poor quality of education, lack of economic security, racial and sexual discrimination) leads to crimes of poverty and subsequent incarceration. Upon conviction, a prisoner is stripped of most if not all of his/her human rights.

A prisoner's right to free speech, her claim to intellectual property, personhood and citizenship are all contested. The prisoner is a 'legal subject' subordinate to the rule of the state, but denied the right to political participation that should be normatively assumed by citizens. The prisoner is de-subjectified – in every sense of the word 'subject' – political, psychological, and philosophical. She is denied agency, stripped of her individuality, receives cruel and inhumane treatment, and is literally objectified. For example, a prisoner's body is the property of the state – a legal object. In California, a prisoner who attempts suicide unsuccessfully can actually be charged with destruction of state property.³

The majority of US prisoners have a history of being raised in poverty and have struggled with addiction and mental health disorders. This is particularly true of women of colour in prison. The image of poverty and 'otherness' they evoke is a provocation to the state, challenging its complacency and contradicting its democratic self-image. A political prisoner is "anyone held in prison because their ideas or images either challenge or pose a real or potential threat to the state".⁴ Given the social conditions that the majority of prisoners experience before incarceration, conditions which restrict their right to determine their political status and to pursue their economic, social and cultural development, a substantial percentage of the prison population, both male and female, should be considered political prisoners.

One in four prisoners in the US is serving time for a non-violent drug law violation. These are prisoners of war – the US war on drugs – which, is essentially a war on race, a war on gender, a war against the socio-economic 'other'.⁵ The rights guaranteed to prisoners of war by the Geneva Convention are not extended to these prisoners (another example, along with Abu Ghraib and Guantanamo Bay, of how the US selectively adheres to international conventions and human rights law).

UDHR Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Access to prisoners and prisons by the media or human rights investigators is virtually non-existent. In direct contradiction of Article 19 of the UDHR, several states, including California, have enacted media bans, making it illegal for the media to conduct face-to-face interviews with prisoners that are not censored by prison officials. In the current political climate in the US – one that supports shutting down public access to information about government conduct, increasing repression against people of colour and immigrants, the dissolution of civil rights and disregard for international human rights law – it is necessary to find alternative means of getting information into the public sphere.

Legally authorised violations of human rights like the California prisons' media ban must, in some cases, be addressed through 'bare acts' of trespass. In this context an illicit, transgressive act, an act of witnessing and giving voice, is a necessary act of political resistance. Such 'bare acts' require a rethinking of codes of ethics and of aesthetics – codes that merge at the intersection of action and expression. I have intentionally disobeyed this media ban, and gained access to inmates in the California state prison system by posing as a legal advocate. I have broken the law in order to act as a witness and publish evidence of the contradictions and inequities of the implementation of its 'bare acts'.

For the past two years I have collaborated with Justice Now (jnow.org), a non-profit, human rights organisation that works with women in prison. Together we are documenting conversations with women prisoners and publishing their views in the public domain of the media in an attempt to bring forward alternative, more accurate representations of prisoners and the social repercussions of imprisonment. Our work has been based on interactions with 10 women incarcerated at the Central California Women's Facility (CCWF) in Chowchilla, CA. For these women, our conversations are acts of juridical and political testimony. By giving evidence, by acting as witnesses to their own experience, by publishing their statements along with their names, Beatrice Smith-Dyer,⁶ Misty Rojo,⁷ Lana Porter,⁸ Beverly Henry,⁹ Zundre Johnson,¹⁰ Jane Dorotik,¹¹ Marie Bandrup,¹² Yvonne (Hakim) Anderson,¹³ Genea Scott,¹⁴ and Valerie Biedler¹⁵ become the morally and legally recognised source of self-narration and re-subjectification, and stake a claim to dignity. It is this claim to dignity and subjectivity that enables these women to challenge the underlying principles of distributive justice and the dehumanising mechanisms of the prison industrial complex.¹⁶ These women are quite literally historians and theorists, but they speak in collective resistance and do not claim the status of individual author/owner of their images and ideas. I collaborate with them as a witness and facilitator, sharing in collective production with an activist intent.

All women convicted in California are assigned to the general prison population, regardless of the nature of their crimes. There is no minimum-to-maximum security classification for women, so all restrictions apply equally to all inmates. Those who are moved to the Segregated Housing Unit for administrative segregation in response to an internal infraction suffer greater isolation. Women incarcerated in California are allowed visits only from family members and legal representatives. Inmates are not allowed access to computers, cameras, tape recorders or media equipment of any kind. Given the ban on contact with the media, and restrictions on visits and phone calls, I would not have had

access to these women without the support of Justice Now. I visit CCWF with Justice Now in the guise of 'legal advocate'; I record my conversations with the women and solicit their stories, ideas, and opinions. Because Justice Now supports women prisoners in cases of sexual harassment, physical and administrative abuse, medical neglect, compassionate release, and assists prisoners in their own efforts to organise and campaign for their civil and human rights, our relationship with the prison administration is adversarial.

The visits require adherence to Kafkaesque regulations and acceptance of invasive search and surveillance procedures. Visitors must be 'cleared' by the prison administration, based on identification papers and lack of police record. I am registered for each visit in advance and searched on entry. I am allowed to bring in only a clear plastic baggie with a clear ink pen, my identification, a blank legal pad and my mini-disc recorder. The recorder has to be approved weeks in advance (the serial number is registered and checked) and the device is inspected on entry and exit. Only factory-sealed discs are permitted.

After our interviews, the women are subject to strip search and visual body cavity searches that may be performed by male guards.

Clearly, these women are highly politicised and seriously committed to having their voices heard. In our documented conversations, the participants articulate their experience, history, social position and political views. These recorded and written statements are extraordinary. Each participant's personal narrative is compelling, and political analysis acute and incisive. Each of the participants asked to have their full name associated with their statements online despite the possibility of retaliation by the authorities. Prisoners do not enjoy the status of autonomous individuals, hence are vulnerable to all kinds of abusive retaliation by guards and/or administrators including physical abuse, segregation, re-assignment and disciplinary charges that might constitute a second or third 'strike' under the three strikes law (see below), and thus lead to extended time or even a life sentence.

The website *ImprobableVoices.net*, which was commissioned in 2004 for the online exhibition *ImprobableMonuments* at *CameraWorkSF.org*, is the first publication resulting from our collaboration. The title of the project refers to the Improbable – as both unlikely and marvellous – and the monumental, a public symbol that reflects social values and fixes a culture's collective memory. Our Improbable Monument is meant to celebrate the impossibility of traditional representation from a single point of view in contemporary public art and politics. It functions as a repository or archive – not as an authorised, monolithic representation – but as a site of multi-vocal negotiation among individuals who are ready to take responsibility for representing themselves. As 'improbable' as it may seem, improbable in the sense of unlikely and in the sense of marvellous, we are actively imagining (and thus making the first steps toward building) a world without prisons. *The Proposal for an Improbable Monument to the End of the Prison Industrial Complex* tells a 'tall tale', an alternative to narratives of power in both content and form; an unauthorised representation; a story told from diverse perspectives. The website functions both as a proposal and a monument-cum-repository of (currently) 143 audio files. These include the inmates' compelling personal histories, descriptions of their prison experience, details of the human rights violations inflicted upon them, and their imaginative and speculative proposals for the renovation of CCWF as a monument to the end of the prison industrial complex. Given the

relentless de-personalisation that the inmates experience on a daily basis, I have been continually astonished by the creativity and sincerity of their 'proposals', the variety, breadth and depth of their voices, personalities and viewpoints.

Sentencing

In the 1980s, within the US there was a dramatic shift in attitude toward crime and punishment in the US. Lawmakers dismantled programs designed to help rehabilitate criminals, and passed tough new sentencing laws that put more people in prison for longer periods of time. For example, California's 'three strikes and you're out' law, under which a person who commits a felony and has one previous 'violent' or 'serious' felony conviction (which includes burglary of an unoccupied dwelling, possession of a controlled substance, solicitation for prostitution, cheque fraud, etc.), is sentenced to twice the term prescribed by law for each new felony. If the person has two previous violent or serious felony convictions, he or she is sentenced to life. Because 'three strikes' is applied retroactively, it is in direct violation of Article 11(2) of the UDHR.

UDHR Article 11 (2): No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

As a result of 'three strikes', mandatory sentencing laws, prosecution of minors in adult courts and 'tough on crime' legislation, inmate populations have exploded, and so has the prison industrial complex.

Beverly Henry

"I talked to a girl last night – she's 19 – she has 60 years at 80 % – and wait – life with the possibility [of parole] running bowlegged with 60 at 80 % - it doesn't run together— why didn't you just tell her you wanted to bury her – she's 19 – so, when you finish your 80% of 60, start this 'life with the possibility' – of course, its 'gang related' – anything that is 'gang related' – these kids are buried here – but they're so young...Oh, I've got one in my room – 45-to-life – she's 22 – she still had braces on her teeth when they brought her here – I go, 'What are you doing here with braces on your teeth?', little chubby kid, and she's like, 'I have braces', and I said, 'Well, when did they pick you up?' and she says, 'I had just turned 18' – she was a passenger in a car and the driver shot up another car – she knew him – she liked him – he was a gang member – he was 'cool' – they couldn't tie her into any gang but they told her that because she lived in central south Los Angeles, she's Mexican, she had four tattoos – they told her, 'You're a gang member' – and that got her 45-to-life – the shooter got away.

"They told her 'Give us the shooter', and she said, 'No. I don't know what happened'. Well they got one man dead and another man wounded. They told her, 'Well, you'll have enough time to think about it'. They found her guilty – gave her first-degree murder – there was no gun residue on her hands – nothing – this kid is my roommate – her parents didn't

have money – so poor Mexican girl – her momma works in a factory and they commute between Tijuana and here.

“And she won’t tell on him because ‘That’s the “home-boy” – that’s what she told me – and I go ‘The “home-boy” is not going to look out for you – for 45 years – do you get this?’ and she goes ‘But I can’t say nothing about him’. ‘Oh Christ’, I said, ‘OK, in about five years you tell me if you have not changed your mind – ‘cause I plan to keep in touch with you, and you need to report his ass’.

“And I thought, you know, I’m doing fine – so I have to tell you I’m doing fine – ‘cause they got some kids on that yard that will never get out if no one intervenes – they are going to fucking die here – they’re not even 25 years old – 60 at 80% and she is just as bubbly and giggly – I go, do you know what you have been sentenced to?’ And she goes, ‘Yeah’.

“Then there’s one they just brought over – even the police are discussing her – she threw a beer can – I don’t know if I told you – she threw a beer can at the squad car – there was a ruckus going on and the gang members are out there and she’s out there and one of the gang members is her boyfriend – and she starts mouthing off – and the police are telling her to shut her mouth ‘cause there’s been some gun play going down and they’ve confiscated some weapons and one guy’s been wounded – so she throws her beer can – she has ‘60-to’– 60-to-life – why does that kid have 60-to-life for throwing a beer can? She is only 23 years old...”

Sexual Discrimination and Exploitation

Women are increasingly given harsher sentences than men – especially women of colour.

UDHR Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Women often play minor roles in ‘gang-related’ and drug-related crimes, yet serve longer prison sentences than their male partners.

Valerie Biedler

“In my experience – when I was on one of my court dates – when I was sitting there, there was a female and a male charged with the same crime – the female had never been in trouble before, this was her first time in trouble – he had been in trouble before – she got more time for the same crime than he did – with the same judge in the same court at the same moment – I think he got 16 months and she got five years – and it was to teach her a lesson, he said – that kinda opened my eyes there that it seems to me that women are getting slammed with more time than men for the same crimes – and that’s what brings me to believe it is because we are easier to manage – and I do believe that – that is my opinion”.

The corrections economy is dependent upon a steady flow of prisoners to supply an economical and docile labour force for private corporations that set up shop in state and federal prisons. The economics of the Prison Industrial Complex – jobs for corrections

officers and monopoly contracts for multinationals that service prisons – are dependent upon a large population of prisoners that can be easily controlled in increasingly overcrowded conditions. Women prisoners work for slave wages (maximum 11 cents/hour) in prison sweatshops, soldering circuits and sewing flags, and are allowed only 15 minutes to consume substandard meals catered by the Marriott Corporation.

UDHR Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

MCI holds a monopoly on long-distance calls from California prisons. Prisoners' families must have MCI as their long-distance service provider to communicate with their loved ones; calls are charged at seven times the normal long-distance rates. One pay phone in prison generates \$15,000 a year for MCI, which installs the phones for free.

Since 1980, the women's prison population has grown by almost 500%; over 80% of women in prison are serving time for non-violent, property or drug-related offences ('crimes' of survival).

Social and Economic Rights

UDHR Article 25 (1): Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Zundre Johnson

"I'm saying that people do commit wrong – I know that. I know that...but the majority of the women that are in here – it was survival – just survival – you know, survival – for what ever reason they had to survive like that, they just survived like that – they haven't done anything horrific – they haven't been on TV or anything like that – they're just nobodies – that have committed a nobody's crime and ended up in a nobody's prison – ok – it's stupid, they had a 'rock' in their hand so they're doing 25-to-life – come on – you know – I mean it doesn't deter them from smoking rock 'cause people are still out there doing it – so what is the point of taking a mother, a woman, somebody's child, and putting them away because they had a nickel rock – when you really look at it and you go to everybody's cases 3% of the people here should really be — helped – not so much as locked up but helped because there is definitely something wrong – they need professional help".

UDHR Article 22: Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

This article articulates the obligation of governments to take positive steps to implement social and economic rights in order to protect political and civil rights.

Jane Dorotik

"It's well documented that the incidence of violence is significantly decreased in countries that have highly developed social support systems – welfare, health care, etc. – until we as a society give up the idea of 'judge and punish' for a more humanitarian 'support, nurture and rehabilitate' view toward all relationships, we'll continue to build prisons. I think every member of society needs to be helped to have his or her needs met so that he or she can make a contribution that will be judged worthy by society. So... I think that – that we have to clearly help people to understand that there is a big difference between keeping society safe and locking up people who might have made a mistake – and a lot of the mistakes that we lock people up for are societal mistakes – that we have not supported well enough – and that is what we have to change".

State Violence

Conditions in US prisons violate the UDHR and US constitution's guarantee against cruel and unusual punishment. Inside prison, men and women are subject to state-sanctioned violence in the form of human rights abuses including medical neglect, brutality, and sexual abuse.

UDHR Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Jane Dorotik

"Prison in general is a very violent environment. I think it is more so for women because of the unique conditions that women are subjected to while in prison. In this country, despite objections from human rights groups – Amnesty International, etc. – female prisons are mostly staffed by male guards – this increases the discrimination and the inequality of treatment for women – it has been well documented that this discrimination includes many areas – up to and including rape and other sexual abuses perpetrated by COs – I think the abuses against women in prison are very often a re-victimisation of the injustices, social, personal, cultural – that they have suffered prior to entering prison, only now that they are incarcerated the amplitude is much greater – the level of hostility is just magnified".

Health care inside California women's prisons is in a state of crisis. Women are needlessly dying from chronic and treatable diseases. There is not one full-time, licenced Ob/Gyn on the staff at CCWF, the largest women's prison in the world. This facility houses nearly 3,600 women who need annual Ob/Gyn exams, standard pre- and postnatal care, and regular check-ups. Women with HIV and cancer are being denied medications and basic care. For women prisoners with HIV, inadequate and inhumane health care put their lives at risk every day. There are dangerous and unnecessary delays in the refill of HIV medications and other prescriptions. It routinely takes 45 days to see a doctor. These women rarely receive their prescribed medications on time and have difficulty in seeing doctors regularly.

Many prisons in California are operating at over twice their original capacity.

Yvonne (Hakim) Anderson

“Number one, having to live in a very small room with seven other women...so I'm dealing with literally about maybe two-and-a-half to three feet of space in what would be considered my area – six cubic feet altogether – but as I am walking into my area about two-and-a-half to three feet of space – you see what I'm saying...you don't have that much privacy – you don't have privacy because of the way the doors are made – like when you're taking a shower or when you're using the bathroom – you know, if a male officer came to the door and he wanted to, he could very well 'see something' – maybe not your actual 'private parts' but still all in all you don't want to be exposed in that manner — you know, the filth, the lack of sufficient cleaning supplies they give us in order to properly sanitise – the chipping paint – the infestation of insects...”

At CCWF, women who live in the Security Housing Units (SHUs) endure constant verbal and physical harassment in their isolated cells, as do many women in the general population.¹⁷

Yvonne (Hakim) Anderson

“The conditions in SHU which is the security housing unit – and EOP – I'm not quite sure what E-O-P stands for but I know it is the 'mentally challenged' section of Ad-Seg [Administrative Segregation or security housing unit]. I think those conditions need to improve. Because you have – first, just like in SHU – having to be back there in a segregated type of secluded environment – you're in a two-man cell but it is only going to be you in there for years and years – five years is the most for a SHU term – and you're by yourself – one hour of recreation a day – you might as well be at Pelican Bay [Maximum Security Prison for men] and we're women here – you know what I mean? If I did something, for instance I attacked an officer and that's how I got the SHU term – whoever is working there, if they don't like me because that officer I attacked is their friend they are going to mistreat me – I'm subject to being beaten back there – who's gonna find out? I could probably even be raped – who's gonna know? You could deprive me of my state issue food and clothes – who's gonna know? You're not going to give me a 602 so I can 602 you, which is a grievance type of process, you're not going to give me that so that I can grieve you, you know that you have done me harm – you know – it's too secluded – you're away from people who may be able to help you and you're in a part of the prison that hardly anyone ever goes to – the captain periodically will go back there but if he is an asshole captain what are your chances? You're not going to have anything coming...and EOP the mentally challenged people – they're fed drugs – they're doped up – there is no psychiatrist to help them go from point A to point B – if I'm too out of it to know that I need to take a bath the COPS (corrections officers) aren't see to it that I bathe – If I'm too out of it to know that I need to take a particular medication to keep a condition from growing worse the COPS aren't going to see to it; if I'm banging my head up against the wall they aren't going to stop me...”

After years in prison, women suffer both physical and psychological deprivation.

Zundre Johnson

“The rooms – you know – the rooms – they carry spirits...for everyone that leaves out of the room they leave a part of themselves in that room...So when the next person comes they feel the same pain. You almost go through the exact same thing – you’ll hear that too, you know, ‘Oh, you know, when so-and-so was in that bed she went through the same thing’...haunting, scary, it’s like the bed you were meant for – you know what I’m saying – it’s like a slab in the morgue – here the mattress is so thin it’s like a slab in a morgue – the mattress has been bled on, urinated on, so many of us has laid on that bed and each one of us left a part there – a lot of pain – lot of pain – from health pain to family pain to disease pain to freedom pain, worries, hunger, worries, hunger – that’s all you got in these rooms. For myself, I know, when I leave out of my room – it’s a lot of pain – whoever gets my bed is going to have me there – I just hope they can handle it – ‘cause that’s what happens is some people can’t handle it – they take their lives – attempt to take their lives – they begin to hear voices, talk to themselves – chalk them up as crazy – but they’re not crazy, it’s just everything that chose them comes on in their sounds – sometimes I hear things too but there don’t be anyone talking – be my mind – it’s everything that’s around me talking – you never get rid of who was there first – they always stay with you – every room got a gang of ghosts...and then the thing about it is that when we leave we got to shake all of ‘em – that’s what brings people back – you know, you gotta shake ‘em, but sometimes they linger on your body...”

Self/Family/Community

Families and communities are impacted by prison policies designed to corrupt, weaken and eventually destroy family ties.

UDHR Article 25 (2): Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Jane Dorotik

“Women should be provided assistance in raising their young not separated from them – and I think that is the biggest cost emotionally and a cost for the future of what our society is going to look like – the future is not a place we are going to, it’s something that we are creating and these prisons are creating a mess by separating mothers from their children that is going to take generations to get over”.

Beverly Henry

“I couldn’t tell you the diaper from the pin, I mean – so I was blessed to have my mother ‘cause I couldn’t have done it – there’s no telling what would have happened to my daughter – she stayed with my mom until she was what, 19 – I mean, my God, just suppose I didn’t have parents that were responsible – I’d have been in a pickle – like some of these women in here that have nobody – and *their* parents are in jail so the cycle just keeps going, you know – and now to see all these kids here its like, ‘Boy, I really let that generation down’, because, that’s my kid’s generation – and most of us were locked up or in and out of their lives and now, they’re here – many of them are right here looking at you...”

UDHR Article 16 (3): The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

In many cases women of colour from three generations of the same family are incarcerated in at CCWF. When the state does not provide adequate opportunity for economic and domestic security, families and communities slip into a cycle of generational recidivism. An expectation of involvement with the criminal justice system and subsequent incarceration becomes a family legacy – a part of the unnatural course of life for the economically and social oppressed that is central to the construction of self as ‘outside’ or ‘other’. Beverly Henry describes Genea Scott to me as her “niece”. Beverly and Genea’s mother did drugs and did time together. Genea incorporated her mother’s addiction, her absence, and her status outside the law in the construction of her own ‘outsider’ identity that she used as a self-protective mechanism during her first prison term. When Genea was asked to imagine a monument to the end of the prison industrial complex she immediately proposed a ‘recognition’ and described both a self-recognition and a public recognition of herself as a person.

UDHR Article 6: Everyone has a right to recognition as a person before the law.

Genea Scott

“Me – I’d like for someone to say – you know, I have a nickname in here, I’m called Aries, like the zodiac sign – and I always been known as Aries – ‘She was a bad-assed actor in here [referring to her previous period of incarceration] – she got in so much trouble, she didn’t respect no one – she didn’t know how’, and now when they look at me, I tell them, you know, I found someone – when I was out there I found Genea, and I love her – you know I didn’t know her when I was here [before] I wasn’t in tune with her – I found her – I couldn’t find her in here, I had to hide behind something – I couldn’t be myself here, I was too afraid – I couldn’t let my guard down – that was definite – I didn’t know what would happen to me – but I found Genea and I love her – but in here I can’t be Genea. So I would want something to say ‘Genea’, that’s me – I’m not Aries, I’m Genea – and it would feel good to be known as her”.

The focus of many of our conversations with women at CCWF has been on imagining a world without prisons. Imagining is a step toward building. Building a world without prisons is a goal that is shared by many prison abolition activists as well as incarcerated women.

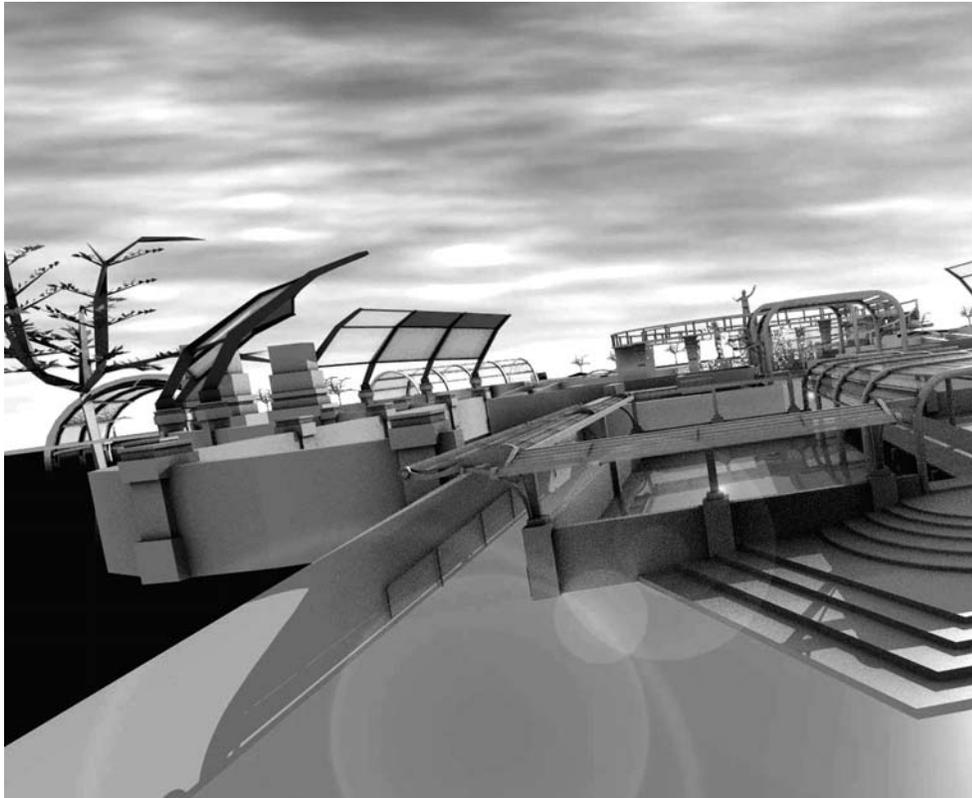
Jane Dorotik

“A world that doesn’t rely on prisons would require a culture shift and social, behaviour changes – again, our society, I believe, is pretty much choked by fear and domination – and this mindset is simply magnified in a prison setting – we need to shift toward an underlying culture of partnership and trust and away from a culture of domination – the degree to which this culture currently supports and orients toward domination underlies every single relationship – from relations between parents and children, governments and citizens, us

and nature. In contrast – a partnership-, trust-oriented model supports mutually respectful, caring relationships – there can be hierarchies as is necessary in all social structures but power would be used not to constrict and control but elicit from ourselves and others our highest potential – conflict then becomes an opportunity to learn and grow instead of an opportunity to demonstrate dominance”.

Improbablevoices.net is an exercise in the productive re-imagination of culture – from, as Jane’s analysis suggests, a culture of domination to a culture of partnership. I asked the 10 participants from CCWF to envision the end of the Prison Industrial Complex and to speculate on how it might be monumentalised or memorialised. This provided an opportunity for creative analysis – a chance to ‘reverse engineer’ the world through fantasy. The women responded to the following questions:

> At the moment of the end of the Prison Industrial Complex, what would you want to see happen to (or in) this place? Feel free to use your imagination – you can suggest anything at all.

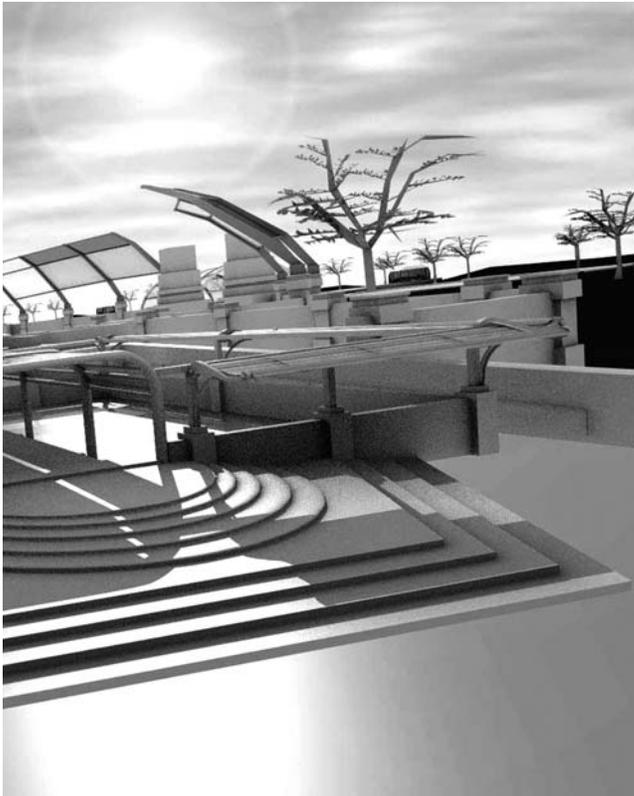


> If you were asked to help design a monument to the end of the Prison Industrial Complex, what sort of monument would you imagine? What would it represent?

> Would your monument be at this site? If not, where would you put it?

In response, the women proposed a variety of possibilities for replacing, re-inventing or creating a new purpose for the prison, including parks and gardens, children's camps and farms, housing for the homeless, schools, community centres and training facilities, sculpture and sound installations, a fund for HIV/AIDS victims, a commemorative fundraising walk, historical archives, quilts, walls and stained-glass windows inspired by the AIDS Quilt and the Vietnam War Memorial, and even a ride/attraction at Disneyland.

The work of interpreting and visualising all of the proposals will be a distributed collaboration. For example, artist Ryan Chen¹⁸ was asked to create a 3D visualisation of Beatrice Smith-Dyer's proposal for a monument park.¹⁹



Bea Smith-Dyer

"How I would see the monument is when you walk in you see these tall beautiful statues of women. And it would be all kinds of women – Muslim women and Christian women and Jewish women and gay women and young women and old women – all of them would be modestly dressed – and they would be surrounding a pond – you could look for miles and miles and just see water and the women would be holding their hands out and water would be coming out of their finger tips and it would be beautiful colours – on the side you would see other women and some might be standing and some might be kneeling and out of their outstretched hands you would see water flowing..."

"And there would be a place where you could walk around the water and you could walk all the

way around to the end where you would find different areas – one would have trees – there wouldn't be a wall or anything saying who the women were that had passed but you would know – you could find an area that you would want to sit in and there would be trees and there would be swings on the trees and there would be a panel around there – a control panel – and if it was cold you could warm up the area and if you wanted some soft music or rap or R&B you could play rap or R&B and about fifty feet away there would be another area and there would be a soft bench and a pond and there would fish in the pond and you could sit in soft grass and watch the fish and there might be flowers and trees and birds – I don't know if you could see the birds but you could hear them...

“And you go to another area and it would have beautiful flowers and you could just sit and look at the flowers and again you would have the control panel. Actually the control panel could make it where you could have covering or no covering – it could do what ever you wanted it to do – you could have soft light or no light...you could look out across at the water and all the water would have colours – everything so soft – and you could go down to another area with taller grass and deer – each area would give you enough privacy so if you wanted to sit there with your lost loved one and just talk to her you could”.

While in prison, Jane Dorotik has recruited young, computer savvy members of her family outside prison to composite pictures taken of prisoners inside into settings outside – the composited images are sent back to the prisoners in the mail, providing them with a reflection of an imaginary representational space of freedom. Bea's fabulous garden, Jane's compositing project, and all of the proposals that comprise *Improbablevoices.net* represent a small, but shared effort to struggle against dehumanising repression and achieve human dignity by envisioning and visualising the improbable. As improbable as it may seem, in the sense of unlikely and in the sense of marvellous, we (Justice Now, the women and I) are actively imagining (and thus making the first steps toward building) a world without prisons.

“If you have come here to help me, you are wasting your time. But if you have come because your liberation is bound up with mine, then let us work together”.²⁰

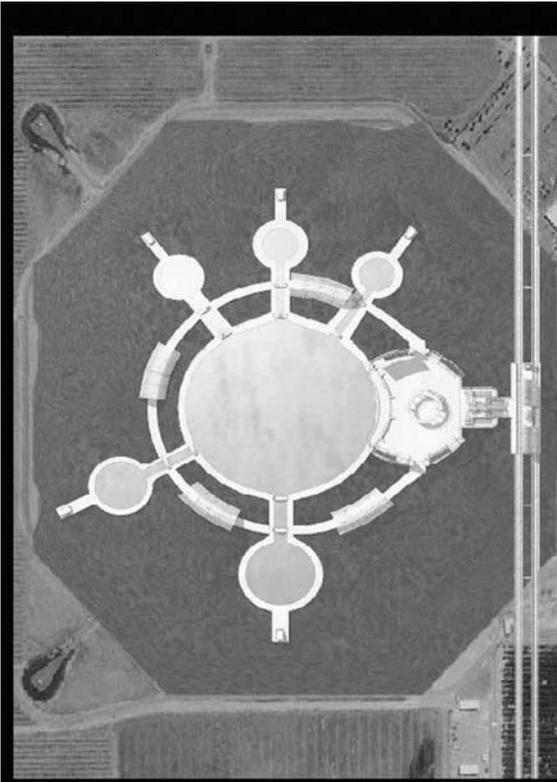
I can't be free until these women are free. I can't be safe until they are safe. I cannot enjoy my inalienable rights until they achieve access to theirs.

NOTES

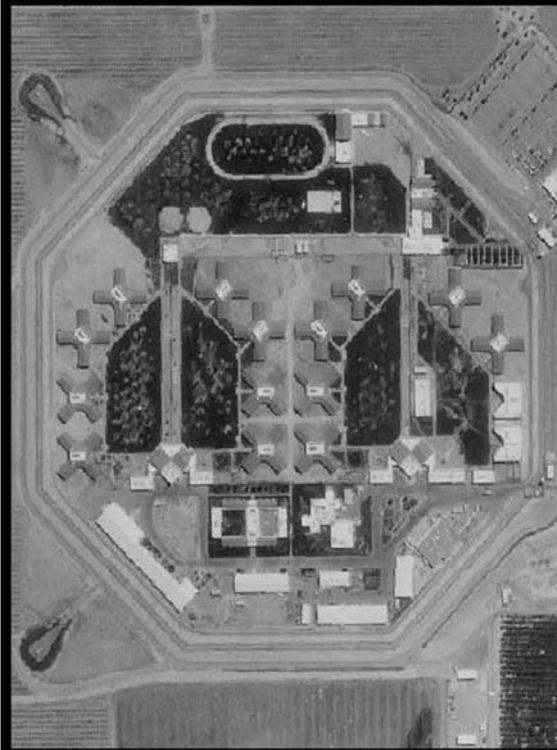
1. From the 'Publisher's Preface' in *The Monument: Art and Vulgarly in Saddam Hussein's Iraq* by Kanan Makiya (I.B. Tauris, 2004, London).
2. This argument on the history of racism in US law owes much to (and is more completely developed in) “Law and Race in Early America”, by W. Haywood Burns. In David Kairys (ed.), *The Politics of Law: A Progressive Critique*, 3rd edition (Basic Books, 1998).
3. In Title 15 of the California Code of Regulations, which governs prisons, Section 3005 (c) states with regard to “Force and Violence”: “Inmates shall not wilfully commit or assist another person in the commission of a violent injury to any person or persons, including self mutilation or attempted suicide, nor attempt or threaten the use of force and violence upon another person”. Because attempted suicide is a serious rule violation, it

can be referred out to the local DA for prosecution.

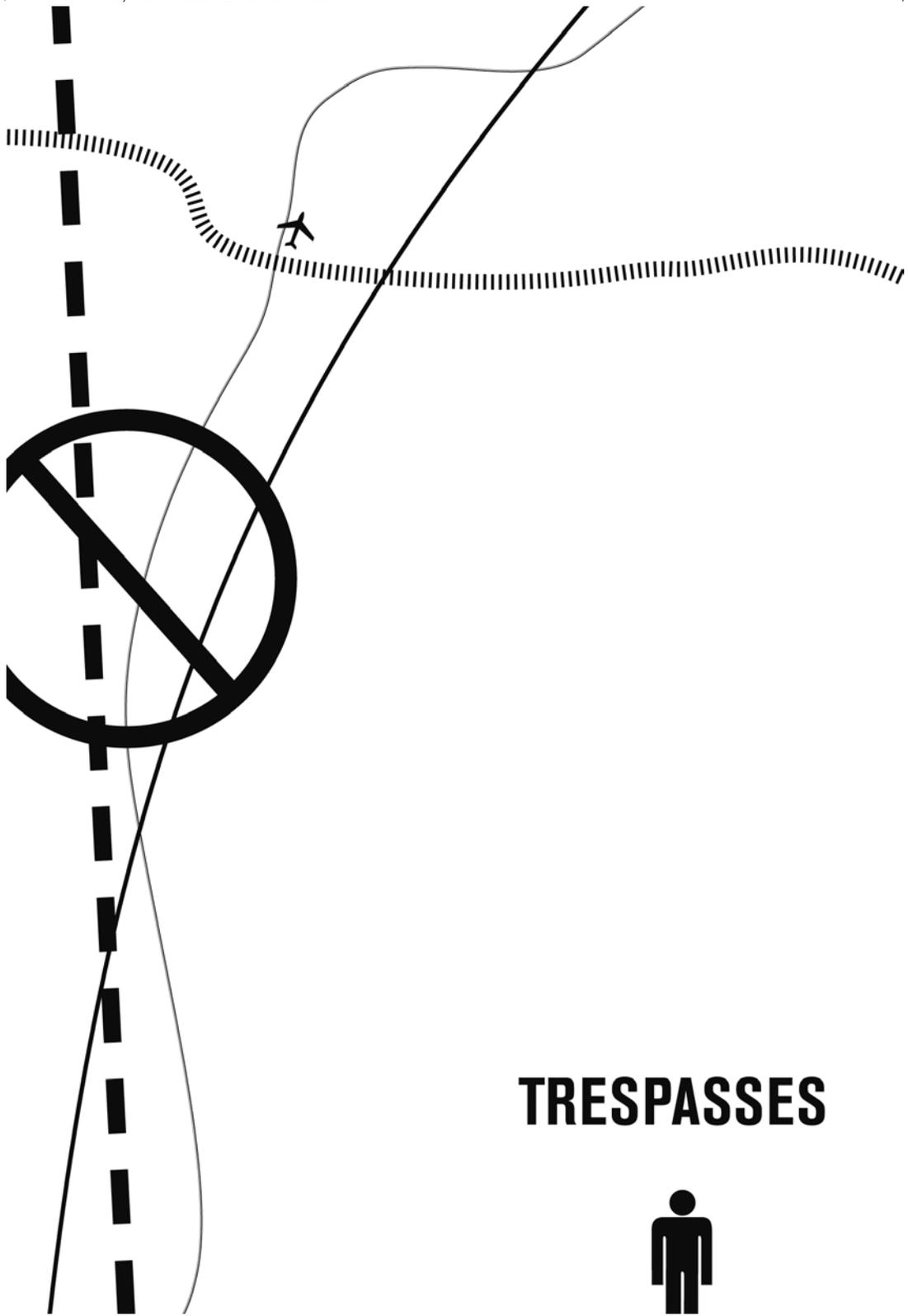
4. http://en.wikipedia.org/wiki/Political_prisoner
5. From 1986 (the year mandatory sentencing was enacted) to 1996, the number of women sentenced to federal prison for drug crimes increased from 2,400 to 24,000. The war on drugs has been the primary factor in the overall increase in the imprisonment of women.
6. Beatrice Smith-Dyer: "I recovered from addiction but I didn't learn to take care of myself, so an abusive relationship ended with life in prison. My outlook is positive. I work at well-being. I am a Muslim, mother of seven, grandmother to 17".
7. Misty Rojo, 29, is a mother of four. Misty believes you don't pity imprisoned women; instead, you question your own knowledge and belief in the society that has failed them and the system that has victimised them.
8. La'nah Porter, 45, mother and a black Muslim. She does her own legal research and hopes to go to law school. La'nah will be released in 2006.
9. Beverly Henry, 55, is a lesbian mom of a 27-year-old daughter. Serving 15 years, she is co-infected with HIV and Hepatitis C. She is involved in activism and peer health education, and believes in the empowerment of women in custody.
10. Zundre Johnson: "I am a woman. I have a name, and children who carry my name. In prison I don't have a name – they just know me by a number".
11. Jane Dorotik, 59: "I'm a nurse, an optimist, a mother and an animal lover. I have worked all my life as a senior executive in health care settings. I had no awareness at all of the abuses of the prison system before I came here".
12. Marie Bandrup, 48, is a mother of twins. Serving 17-to-life, Marie is an artist and a recovering addict who believes in reaching out to make change and to stop the drug epidemic.
13. Yvonne Anderson, a.k.a. Hakim, 22, is a strong-minded, ambitious black lesbian serving 7-to-life. She believes that knowledge is power and that everyone deserves a second chance.
14. Genea Scott is the six-foot tall, young, black mother of a beautiful five-year-old girl.
15. Valerie Biedler, 47, is half Philippina-half Irish, serving 32-to-life. She is the head of the Womens' Advisory Council at CCWF.
16. This statement owes much to Sara Warner's analysis of "The Medea Project: Theatre for Incarcerated Women" in *Mythic Proportions 2*. <http://www.culturalodyssey.org/medea.html>
17. California Coalition for Women Prisoners (CCWP) website: <http://womenprisoners.org/fire/000425.html>
18. Ryan Chen was born in San Jose, California and majored in Film and Digital Media at UC, Santa Cruz.
19. <http://subtractthesky.ucsc.edu/~ryanchen/improbablemonument/>
20. Watson, Lilla. "Untitled". In *Health for Women* 3:1 (1992). Lilla Watson is a Murri (Queensland aboriginal) artist and educator.



The Improbable Monument



Central California Women's Facility - Chowchilla, California USA



The Discovery of the Fifth World

Stealth Countries and Logo Nations

DANIEL VAN DER VELDEN, TINA CLAUSMEYER, VINCA KRUK, ADRIAAN MELLEGERS

[META HAVEN PROJECT]

The Principality of Sealand is a man-made island in the North Sea.¹ Formerly a defence fortress in World War II, this tower, standing some six miles off the British coast, is a kind of emergency building, a *favela* of the High Seas. The eye meets a nameless, joyless, rusty structure that is nevertheless inhabited. During the 1960s, this fortress and a few other ones in the area were in use as pirate radio stations. All of them were abandoned and destroyed, except one: Roughs Tower. There operated radio amateur Paddy Roy Bates, an ex-major in the British Army. He was about to embark on an endeavour that would get him what money couldn't buy: fame. In 1967 he proclaimed the abandoned war platform, located in international waters, a sovereign country, named Sealand, his own Principality, with himself and his son Michael as princes, and his wife Joan as princess. Bates claimed complete independence from the United Kingdom; UK laws did not apply to Sealand territory and a blurred photocopy allegedly from the British tax authorities (and available on the Internet)² states that while on Sealand, Bates doesn't need to pay UK taxes. The name 'Sealand' sprang from the idea that, with some imagination, the platform is to be considered 'land'. But not just any land. Land within the sea, as a result: Sea Land, I See Land, ©Land. The Principality of Sealand, freedom's last resort, is the subject of this text.

Risky Business

In almost 40 years of existence, Sealand has built on a vast amount of myth potential. A nautical gypsy camp, a legal example on the verge of sovereignty, an archaic dream image, a contemporary ruin, issuing 'identity carriers' such as coins and stamps, and attracting media attention from a variety of focal points.

What does it mean to be on the verge of sovereignty, to be almost a nation? The concept of nation cannot be taken for granted. It developed in the rise of interests of Western Europe in the 18th and 19th centuries. As such, it seems sobering to be reminded of the novelty of the nation state; nothing is fixed. According to Ernest Gellner, one of the most important scholars on nationalism, the concept of nations has been artificially constructed. Nations are "the artefacts of men's convictions and loyalties and solidarities".³

Sealand or any other artificial landmass claiming to be an entirely 'independent' country could qualify as a prime example to confirm Gellner's argument.

Being prince in a state like Sealand, one can only hope for sovereignty, knowing that it is a privilege given to some and not to others. The 'mutual recognition' of states as described by the 1933 Montevideo Convention on the Rights and Duties of States⁴ is carefully excluding those entities that have not yet achieved or have been refused sovereignty. This is why Sealand, an unrecognised nation, can simultaneously be seen as a private business island, an imaginary place, a piece of art,⁵ and a counter-nation. Different kinds of businesses, such as casinos and tax havens,⁶ were considered to gather national income for Sealand. None worked.

But meanwhile successful business was conducted without Sealand's approval: in Spain, 'fake' Sealand passports were for sale. In the 1970s one apparently could travel to various destinations carrying a Sealand passport without questions being asked. One of such counterfeit passports surfaced in 1997 after the murder of fashion designer Gianni Versace; the passport was in possession of the murderer's landlord who further claimed diplomatic immunity as a Sealand representative. There even exists a complete fake Principality of Sealand, based in Germany, which is publishing for its so-called 'business club' disclosed documents from the Third Reich and the Stasi period of the German Democratic Republic.⁷

Finally, in 2000, a deal was signed between Sealand and Internet start-up business HavenCo.⁸ The idea was to turn Sealand into a web storage facility, an offshore data centre. Out of reach of whatever authority, hosting whatever forbidden or risky information, HavenCo envisioned a 'data haven', free zone on the web, in its concrete form on Sealand. Investors were found, an agreement was made and the Sealand/HavenCo data haven was launched. At this stage, Sealand started to sympathise with the Tibetan government in exile just as the Internet community in general sympathised with the Dalai Lama. Tibet, a 'nation looking for a home', was offered free web space hosted by Sealand. A few years after, HavenCo's founding team has left the company, each of the founders now working on other projects still based on the dream of creating a 'free' space outside of jurisdiction. HavenCo is now a state-owned Sealand corporation, and Roy Bates' son Michael, also prince, is its managing director.

Freedom Prisons

As much as Sealand seeks to liberate its citizens physically, they can do only very little with that freedom. Life, habitation of the platform, is limited to a security guard named Colin, an ex-marine who has lived on the platform for over 20 years.⁹ Effectively, he emigrated to Sealand. What else is Sealand but a prison in the name of freedom? The platform is both: a free haven 'in one's own backyard' on the one hand, a remote detention camp on the other. The six nautical miles to the mainland are more than just a physical distance to the real world; they are an unbridgeable gap. Paradoxical as it may seem, the supposedly liberated and 'free' island contains even a prison cell.¹⁰

Recently, the idea of the offshore prison was made a new reality with the Bush administration's Guantanamo Bay base in Cuba. This detention centre functions outside of

America's own jurisdiction regarding citizens' rights to legal representation. A negative version, a reverse, of the offshore tax haven, Guantanamo Bay pushes itself to the forefront of contemporary imagination of the island, free from the burdens and limitations of law, Guantanamo Bay uses this so-called freedom deal with crimes that, because of the absence of legality, can no longer be called crimes.¹¹

Even though Roy Bates wished to open up new possibilities for state power, helped by traditional ideas about sovereignty and government, the actual territory of Sealand remains deserted. When juxtaposing this sovereignty to all other existing recognized states, Sealand's position remains void since there is no community, no political agenda, and no cultural value, only symbolic value. Gilles Deleuze once stated that "the essence of the deserted island is imaginary and not actual, mythological and not geographical".¹² Sealand's existence as a sovereign state is kept alive in the imagination only, and its constant reproduction of myth value uploads it with actuality and with presence in the contemporary world. To the outside world, and to the political rulers of Sealand, its continued existence turned this 'deserted island' into a model, a prototype of experimental nation, an ImagiNation. It is important to realise the impact of this word: ImagiNation. Not only does it suggest that nations are linked to the imaginary, but also that a nation could entirely consist of images.

The State of Imagination

Utopia, in its most general meaning, refers to a hypothetical perfect society. Utopia is also used in reference to actual communities trying to create a perfect society; and it is used to describe places or locations that achieve a temporary state of independence, as in Hakim Bey's 'temporary autonomous zone'.¹³ Sealand and utopias alike do not recognize the idea of reason. To reason would imply the aim for a logical explanation of utopia, for a reduction of its potential, ultimately losing imagination altogether in a boring exercise of practicalities and either/or decisions. If Sealand were a reasonable construct, it would have built its statehood altogether differently; but most likely it would not exist at all. Some utopias, however, and especially Thomas More's hypothetical 'perfect society', have what Sealand lacks: an agenda.

There is no reasonable explanation for Sealand's existence, and still, Sealand is. This status may trigger incorrect understandings or explanations: imagination does not pre-require the place to exist for real. So, images of Sealand, the ImagiNation, have become completely disconnected from their host carrier, a real place somewhere, somehow.



Imaginary places and buildings have a primordial role in our culture, being saturated with symbolic meaning. The Tower of Babel was built by a united humanity in order to reach the heavens. Another, kitschy, example is Atlantis. This former island in the Atlantic was first mentioned by Plato, who argued that the island was lost through natural causes about 9,000 years earlier. Utopias, Atlantis, imaginary buildings, invisible cities and Sealand alike, are situated at a crossroads of the territorial and the fictional; apparently there is something exciting about imagining another space, another world. A 'Fifth World', perhaps.¹⁴

Believe it or not, the self-proclaimed Fifth World exists. It has its own flag, combining UN and Greenpeace aesthetics as if it were some ecological peace force.¹⁵ The Fifth World is the world of the micro- or experimental nation¹⁶, a nation that lacks territory, population, and most of all: recognition. A world of borderline phenomena with the sovereign state as a model and the Internet as its home base.

The Montevideo Convention describes when and how nations are defined and recognized as such, in which the key issue is mutuality. A state should have a permanent population, a defined territory and a government. It should have the capacity to establish relations with other states, which requires mutual recognition: something very different from the 'territorial happy hour' that the Fifth World suggests. The limited amount of space available on earth has already been divided; conflicting views suggest we should either see the Fifth World squashed in between those defined areas, or as another layer on top of the existing political map of the world. Currently, the Fifth World creates images of its 'national identity' as if its sovereignty were territorial and absolute. Micronations issue passports, striving to count as one of the boys.

In this context, what exactly are real and fake passports? And taking this further: what is a fake fake passport? Is a falsified passport of an unrecognized, or 'fraud' nation then maybe no longer fake? Falsification here is applicable in two ways. First, as imitation of, in order to create an indistinguishable copy, which can perform or authorise the same actions as its original. The second form of falsification is quasi-scientific; falsification here means the search for evidence to prove an assertion wrong. An assertion such as: "Sealand is an experimental nation state". Or: "Sealand issues real and original passports".¹⁷

Carriers of national identity, however, can also be used to undo a state's value, credibility and recognition, as happened with the fascinating introduction of iron coins in ancient Sparta that were almost valueless. As a result, Sparta stood completely on its own, without the ability to trade, in a position of autarky, not unlike that of a contemporary micronation.¹⁸

The experimental nation's search for state-like recognition moves it in exactly the opposite direction of its desired freedom; the nation becomes imprisoned in power-based



images that have to upload it with similarities to real nations. Through their representation, experimental nations become amusing parodies of statehood, staging a symbolic play with the aid of passports, stamps, coins and networks of non-existent government bureaucracies.

Nation as Model

However, Sealand will always, or at least as long as the platform resists the weather, remain an imaginary construct, a place 'somewhere', in order to question, experiment and revolutionise the highest values and moral foundations of predominant state ideology. Here, it seems no longer relevant whether Sealand qualifies for the status of nation or not. The difference between Sealand (being an unrecognised minority) and the alliance of 'traditional' nations (being recognized majorities) does not lie in their sizes. "A minority may be bigger than a majority. What defines a majority is a model you have to conform to: the average European adult male city-dweller, for example",¹⁹ or the UN General Assembly with its 191 members with the exclusion of Taiwan, Vatican City and the Democratic Arab Republic of the Sahara (DARS). So "when a minority creates models for itself, it's because it wants to become majority, and probably has to, to survive or prosper (to have a state, be recognised, establish its rights, for example). But its power comes from what it's managed to create, which to some extent goes into the model, but doesn't depend on it".²⁰

Sealand makes visible what to a large extent 'recognised' nations can hardly represent any longer: the nation as model. Whereas Sealand exists as a man-made, but rough, 'concrete' island in mid-sea, its political rulers have seriously counterfeited every archetype of national identity that there is: be it coins, stamps, passports, even their own national anthem and flag.

Nevertheless, "sovereignty is the ideal unity of the state".²¹ "To Hegel the state is not only a part, a special province, but the essence, the very core of historical life. It is the



alpha and omega. Hegel denies that we can speak of historical life outside and before the state. If reality must be defined in terms of history rather than in terms of nature, and if the state is the prerequisite of history, it follows that we have to see in the state the supreme and most perfect reality".²²

Yet, Sealand is not perfect reality. It has always existed at the crossroads of reality and imagination. Sealand does not want to be perceived as the absolute ideal to the outside world, nor does it strive for this medal award. It rather prefers to stick to its outsider position. Even if Sealand would attempt to tackle 'world' affairs, its appearance, combined with its political non-agenda, leaves only room for symbolic representation of its own status as experimental nation. Sealand could also embark on total disinterest and desertion. Sealand's rulers therefore deny the question of the "best state", which has been so eagerly discussed since long before Plato. "But Plato is not concerned with this question. What he is asking for is not the best but the 'ideal' state. That makes a fundamental difference".²³



Sealand's status can be described as in-between "totalitarian despotism and anarchic individualism".²⁴ The lawlessness on Sealand is more than its best friend. It is a married bond. It is Sealand's free ticket to economically survive the 21st century. But if sovereignty is not present on Sealand, nothing can be actual, even if things may be assumed to have some visible presence. Even a "bad state is one which merely exists; a sick body exists, but it has no true reality. A hand which is cut off still looks like a hand, but it has no actuality".²⁵ Sealand can therefore either gain symbolic presence or slowly disappear in the international waters of the North Sea. It could also disappear metaphorically, which will be discussed later.

Even if this fortress succeeds in symbolically existing as experimental nation, "no nation does merely exist in isolation. The state is for itself, but second, it is also for others; it must therefore be recognised, and in

the modern period many collisions have arisen. Not only individuals but also states require recognition and must undergo a struggle for recognition with other states. The sovereign state, hitherto regarded as a universal in comparison with its individual members, is now considered from the international perspective as an individual among other individuals; externally sovereignty refers to the problem of the recognition of the state by other sovereign states. (...) Just as little as an individual can be an actual person without relations to other persons, a state cannot be an actual individual without relations to other states".²⁶

What then does Sealand signify to the outside world? Because of the fact that it is physically separated from other jurisdictions by water borders, Sealand has gained, as an experimental nation, the ability to function with minimal externalities. Its territory could potentially make ideal laboratories for the study of social, technological, and ecological experimentation. Its isolation also reduces the impact of any outside variables, making these experimental nations easier to establish, study and control. The probability of experimental nations being governed with the foundation of alternative philosophical premises is much greater than that of a larger country being ruled on the basis of similar grounds. If experimental nations can ever develop in a cost-efficient manner, they can serve as political laboratories or creative think tanks to effectively test principles of decision-making, conflict resolution and policy. Experimental nations have the benefit of not having any kind of previous history. They are established without pre-existing traditions, laws, or culture.

What is a citizen of Sealand called? A Sealander? And what would be the advantage of being an approved citizen of the Fifth World? In fact, this might be our opportunity to do without any labelling. It seems that citizens with some sort of relationship to Sealand are only bestowed with symbolic value. Since its own foundation in 1967 up to the present day, instead of influencing "identities by constructing mythic pasts made up of legends and literature, traditions and celebrations, customs and caricatures",²⁷ Sealand constructed its own stories of invasions, hijacks, kidnappings and forged passports in the past. This is Sealand's history, and all this we might call mythmaking.

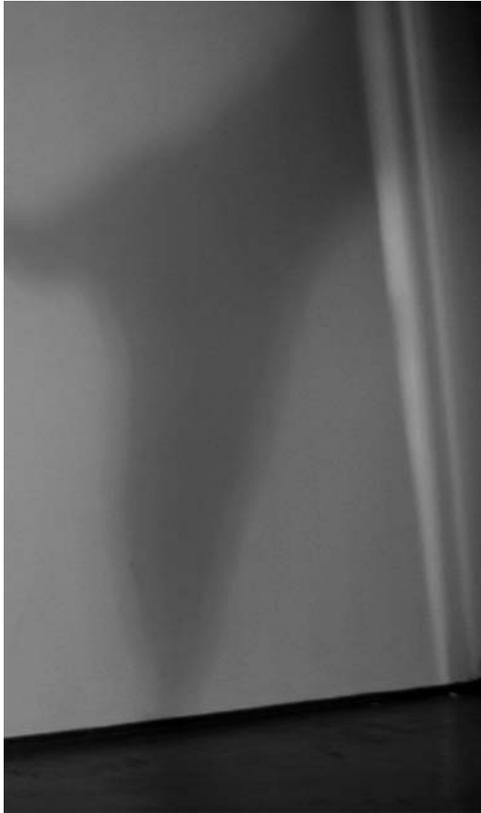
"Indeed, the more one examines national identity, the more one uncovers ill-thought-out, irrational and contradictory beliefs, which switch between vague national symbols, an imaginary past, and evocative regional".²⁸ Sealand remains an ImagiNation struggling to make up its own *de facto* national identity as an old-fashioned 20th century Principality. The



result is an even more reactionary visual identity than any 'traditional' nation could have possibly imagined: heavy-bolded heraldry, tacky but cute slogans, combined with total meaninglessness. Sealand's presence becomes totally representational (visible) or totally non-representational (invisible).

Logo Nation

Sealand, protagonist of the Fifth World, has from a design point of view really two scenarios to go. One is the symbolic scenario: despite its non-existence as a political or historical entity, Sealand fulfils a role in collective imagination, as a logo nation. Striving for real



statehood will eventually block every possibility of presenting an alternative to the nation state. By remaining a partially fake or unrecognised surrogate-country or Ersatz-nation, a counter-nation, Sealand can propose alternative ideas about statehood and the world. These ideas can be played out in the symbolic realm. The visual and symbolic references accumulate in Sealand as if it were a Christmas tree. Sealand becomes the so-called floating signifier;²⁹ the deserted island becomes the starting point for an overload of iconographic experiments and associations; from heraldry based on search engines to Sealand's web site as an information monument. Coins based on the typology of the CD-Rom. Data ruins. In non-linear historical accounts, the incomparable is merged together; from Ceaucescu's presidential palace to the ruins of Delphi in Greece, from Mastermind to Versace, from Google to the so-called 'GreyCards', credit cards for notorious offshore banks operating in their island-based tax havens. A universe of icons that emanate the aesthetics of statehood, fed by the unstable conditions of the information society. Search-based design. The advertising campaign 'Mainport to Imagination' proposes a new publicity strategy for Sealand. A series of ads seeks to develop a political ideology for Sealand when there is none. Sealand's non-

agenda in terms of its socio-political, cultural and historical values makes it very difficult to visualise what Sealand could become or represent to specific global targeted audiences. The proposals attempt to open up a new international context in which Sealand can be imagined to operate. These proposals create fictive, but often subversive models that could all equally become 'Sealand'. Rather than simply brand Sealand, the different proposals

should disrupt our day-to-day reality and transfer Sealand's existence into our own day-to-day observation of everyday politics. Here, Sealand exists beyond the binaries of good and bad, legal and illegal. The ambiguity and contradictions of the different target groups and subject matters emphasise that Sealand is in fact lacking an ideology.

P.S.: What is the opposite of signal? Silence: not being noticed.

Stealth Country

We live in a world where everything seems to be noticed. Our lives are under surveillance. Not many things can escape the combined all-seeing eyes of security satellites and tracking systems, and even if we are not under observation already, our daily routines draw a flawless map of where we are, who we are, and what we do. Our data paths of mobile phone conversations, money withdrawals, electronic payments and Internet connections makes our existence as moving targets evident; as evident as an aircraft or merchant ship blinking on a radar screen. When we finally go on holiday to enjoy ourselves (at last, privacy and disconnectedness!) we have to report to local authorities before being allowed into the mountains. In case we do not arrive at our destination in time, helicopters will start searching (in the near future, at our own cost). Where in the world is a place where we can properly disappear?

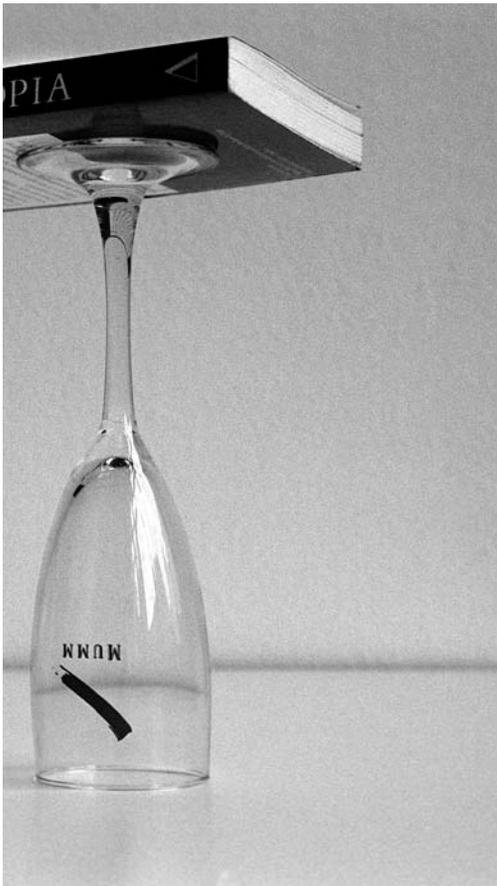
After the September 11 attacks on the World Trade Center, Osama bin Laden, the alleged terrorist mastermind, was addressing the world from inside a cave. The contrast could not have been more literal and more striking; a skyscraper is brought down and the perpetrator is hiding in a prehistoric shelter. This 'cave' immediately became subject of architectural debate. Rem Koolhaas claimed that his now-cancelled hotel project for Ian Schrader (together with Herzog and de Meuron) in New York used the typology of the cave. Bin Laden was told to have access, in his cave, to the communications facilities of a hotel, especially television, phone and the Internet. An 'infocave' was described, a place both invisible and connected. At the same time out of reach of media exposure and surveillance systems, but equipped with the tools needed to participate effectively in the information society. The contours emerge of an entity that has all the capabilities to engage in the world, but cannot be recognised as such by the world. A non-identity, a vanished identity. A stealth country.

Since "nation states are primary important to socio-economic organisation and identities alongside their



novelty and tendency to recompose", Sealand obtains instead a dynamic stealth organization: its invisible data haven. According to Anthony Giddens, "the overwhelming majority of nation states have been created in conditions of war and all are sustained by possession of credible defence. War and preparedness for war have been fundamental contributors to the nation state. Preparedness for war (i.e., a credible defence capability) is a requisite of all nation states, a principle that has repeatedly been put to the test throughout modern history".³⁰ To Sealand, any preparedness for war is not actual; it is rather a metaphor (expressed by its heraldry and its military origins) and a strategy to live up to the 21st century.

Sealand becomes a cryptographic and invisible³¹ structure. The often semi-legal affairs suggested by its semi-legal existence and lawless data haven further support the ambition to become a stealth organisation, invisibly active.³² Here, we attempt to theoretically and visually approach what cryptographic architecture can be, or is, and how it can be perceived in the context of Sealand.



Sealand embodies cryptography not only in a linguistic sense, but within spatial, informational and architectural meanings as well. In cryptography, information is converted from a comprehensible into an incomprehensible form in order to hide a message. The very essence of architectural space (Sealand's platform) could function in similar ways. Cryptography could become embedded in the whole architecture of a building, within the architectural landscape of the city, the region or a country. It can also be transformed into the virtual realm, its data haven. This could happen voluntarily, planned or accidentally.

So, "what happens when the 'Network of Terror' meets the 'Network Society'?"³³

Larger secret spaces and unofficial, undefined areas of terrain vague are becoming evident: hidden and secret locations, enclosed and unknown regions, terrains that have been (un)officially withdrawn from public use, territorial zones that exist off and between any legal jurisdiction, the infrastructure of the internet and satellite telecommunications, or simply public or privatised no man's land.

Cryptographic architecture could therefore be inscribed into the secret matrix of the

political space in which we are presently living. Examples: Sealand, North Korea and the Demilitarised Zone (DMZ) between North and South Korea, the Trans-Dniester region between the Republic of Moldova and the Republic of Ukraine, official buildings of intelligence services such as MI5, MI6 or the Pentagon, transnational terrorist networks such as Al Qaeda), military and publicly withdrawn test-sites such as Area 51, Nevada Test Site, Cheyenne Mountain Air Force Station (US), Marshall Islands, Guantanamo Bay; or the more secret detention centres such as US ships USS Bataan and USS Peleliu.

In disciplinary and controlled societies, such as the former German Democratic Republic or the Soviet Union and contemporary North Korea, we often detect an officialised information deficit, closed networks, mind control, uncertainty and suspicion. In the capitalist information societies of the late 20th century, information and data are transformed into economic values; knowledge is turned into a precious commodity exchange through ever-developing technologies that host constant symbolic exchange markets between information societies. Here, we may consider binary oppositions such as information abundance and censorship, open and controlled networks, organisation and routine surveillance, individuation and individuality, certainty and fear. Precisely these information societies have, in the development of the contemporary world, turned into control societies in which "the control of communication is on its way to becoming hegemonic".³⁴

Fade to Grey

The political meaning of Sealand (and any Fifth World nation) would increase if it worked on its own vanishing off the world map, its 'invisibility'. What we need are grey areas and unknown terrains. If these territories want to constitute an alternative (mind) space to existing global state powers as their *raison d'être* suggests, they need to become invisible entities, stealth countries, that disappear from the map like the stealth bomber disappears from a radar screen.³⁵ The infodynamics of the stealth bomber were designed to avoid radar detection; the form of the plane is more related to the information it produces than to its aerodynamics. The idea that the appearance of things in today's information society is at a certain point no longer primarily visual, but informational, could become a key notion in a more contemporary view of identity. Sealand could be a model, without logo or identity, constructed from trash, books and everyday objects, like the Devil's Mountain in Steven Spielberg's *Close Encounters of the Third Kind*. Sealand could be just a shadow, or a deceptive mirror, in which visual signs, and eventually Sealand itself, disappear. Sealand could claim the colour grey as its national colour. 'Data grey': the colour of information networks. It is the colour of the cloudy sky above, the colour of the surrounding North Sea, the colour of computer desk tops, the colour of business suits, the colour of the brain, the colour of concrete. Sealand's grey is more than neutrality; it puts its stealth organisation under complete secrecy; Internet service provider HavenCo is veiled under the umbrella of dark grey.

Sealand's initials become P.S.: Post Script, Principality of Sealand, and even dead-end streets will refer from now on to this stealth country, this entity that enacts an alternative to the contemporary world order from its illegal home base desert island, in complete and total secrecy.

NOTES

1. Further reference can be found on the Principality of Sealand's official web site: www.sealandgov.com
2. Alleged letter from British tax authorities can be read at www.seanhastings.com/havenco/sealand/taxletter.gif
3. Ernest Gellner, *Nations and Nationalism* (Cornell University Press, 1983) pp. 6-7.
4. The 1933 Montevideo Convention is often quoted in the recognition process to promote Taiwan's independence from the People's Republic of China. For further reference, see www.taiwandocuments.org/montevideo01.htm
5. See www.escape-artist.com
6. The tax haven is a financial paradise from where corporations, mostly banks, can offer themselves and their clientele a tax-free environment. Tax havens are often tropical islands; the Cayman Islands are the world's most prominent tax haven, where hundreds of so-called 'brass plate banks' have their seats. The tax haven offers a grim look at statehood; no taxes means no public sphere. Although Great Britain was 'not amused' with the alternative nation of the Bates family, it has always applied a *laissez-faire* policy on which Sealand has relied for decades. Great Britain would not easily allow a nearby tax haven to exist, or permit other shady businesses on Sealand, for that matter. Britain's attitude towards Sealand mirrors Margaret Thatcher's famous saying: "There is no such thing as society".
7. The fake Principality of Sealand or 'Fürstentum Sealand' is a structure operating independent from Sealand itself. Once its obvious hope was to be mistaken for the 'real' Sealand. Politically, the Fürstentum is undoubtedly a dubious entity. See its web site: www.principality-of-sealand.de
8. Further information on HavenCo's web site, see www.havenco.com
9. See Marten Minkema's radio report on Sealand for VPRO (Dutch radio), www.vpro.nl
10. Sealand's isolated fortress (and second safest place on earth) could become home to suspected transnational terror networks or worldwide intelligence services. As a legal deadlock, it resembles a 'state of exception' to be just always prepared. But prepared for what? A war on Sealand? In the 1970s, Sealand's on-board jail was used to imprison hijackers, or invaders, of the platform, an important part of Sealand's national mythology. See www.sealandgov.com
11. In his lecture 'The Obscurity of the States of Emergency' at the conference State of Emergency: Territorial Identity in the Post-Political Age, curated by Meta Haven and organised by the Jan van Eyck Academy at the Stedelijk Museum of Modern Art, Amsterdam, 23/09/2004, Slavoj Žižek states: "This is the reality of Rumsfeld's dismissive statement that the Geneva convention rules are "out of date" with regard to today's warfare. In a recent debate about the fate of Guantanamo prisoners on NBC, one of the arguments for the ethico-legal acceptability of their status was that "they are those who were missed by the bombs": since they were targets of US bombing and accidentally survived it, and since this bombing was part of a legitimate military operation, one cannot condemn their fate when they were taken prisoners after the combat; whatever their situation, it is better, less severe, than being dead. This reasoning tells more than it intends to say: it puts the prisoner almost literally into the position of the living dead, those who are in a way already dead (their right to live forfeited by being legitimate targets of murderous bombings), so that they are now cases of what Giorgio Agamben calls *homo sacer*, the one who can be killed with impunity since, in the eyes of the law, his life no longer counts. If the Guantanamo prisoners are located in the space "between two deaths", occupying the position of the *homo sacer*, legally dead (deprived of a determinate legal status) while biologically still alive, the US authorities that treat them in this way are also in a kind of in-between legal status that forms the counterpart to the *homo sacer*: acting as a legal power,

their acts are no longer covered and constrained by the law...they operate in an void space that is still within the domain of the law. And the recent disclosures about Abu Ghraib only display the full consequences of locating prisoners in this place "between two deaths".

In this context, Dieter Lesage argued in his conference paper "Empire's Design: on Identity, Resistance and Europe": "After all that has been said about the legal non-status of the so-called 'detainees' on Guantanamo Bay, article 6 of the Declaration makes it plain and simple: "Everyone has the right to recognition everywhere as a person before the law". (Taken from the 1948 Universal Declaration of Human Rights; further references on the United Nations website www.un.org/Overview/rights).

12. Gilles Deleuze, *Desert Islands and Other Texts 1953-1974* (Semiotext(e) Foreign Agents Series, 2004) p. 12
13. See Hakim Bey, *Temporary Autonomous Zone* (Autonomedia, 1995, New York).

14. We should consider the usage of First, Second, Third, Fourth and also Fifth World terminology more as a rough guideline than as a clear-cut definition. The terminologies 'First' to 'Fourth' World were, besides for journalistic purposes, mostly used during the World Wars. Yet, afterwards, the political and economical status of the categorised nations changed with no redefinition accordingly.

The term 'First World' was used widely to designate the economic powers of the West. The 'First World' was sometimes used also to refer to economically successful ex-colonies such as Canada, Australia and, less frequently, South Africa, all of which were linked to a network of global capitalism and Euro-American defence alliances.

The term 'Second World', during the Cold War, referred to industrialised, developed communist states aligned with the Soviet Union. Since the end of the Cold War, the term is not used as much as before. After the fall of the Berlin Wall, the former 'Second World' became independent and democratic. It is not clear how to categorise these countries after 1989 since they can neither be considered Second World, nor First World.

The Third World is usually defined as consisting of 'developing countries', but the guideline for what is 'developing' is seen according to Western standards. During the Cold War the term was used to differentiate countries that neither aligned with the US nor with the Soviet Union. 'Third World' has become synonymous to poverty, disease and war, 'emphasising the increasing radicalisation of the concept in its Western usage'. The 'Third World' was, however, also used as a general metaphor for any underdeveloped society or deprived social conditions anywhere: 'Third World conditions', 'Third World educational standards', etc.

The terminologies have mostly excluded China. Numerically, the Third World dominates the United Nations, but the group is culturally and economically very diverse and the unity is only hypothetical. Oil-rich Third World nations, such as Saudi Arabia, Kuwait, and Libya, and newly emerged industrial states, such as Taiwan, South Korea, and Singapore, have little in common with poor nations, such as Haiti, Chad, and Afghanistan.

The 'Fourth World' refers usually to ethnic and minority groups not represented by a nation state. Sometimes they have a government, a specific religion, and even the visual representation belonging to a nation state, yet no recognition as described by the Montevideo Convention.

The term 'Third World' was introduced to designate the economical low end of the world: countries like Argentina, for instance. The 'Fourth World' was an even more underdeveloped 'Third World'. Another definition of the 'Fourth World' refers to nomadic groups or 'placeless' peoples. American sociologist Manuel Castells, uses a totally different definition. In an interview he explains the Fourth World as consisting of "black holes" that are "(...) areas of social exclusion that can be marginalised and at the

same time the system doesn't suffer at all. They're not valuable as producers, consumers; in fact, if they would disappear, the logic of the overall system would improve. If you are outside the network, in other words, you don't even exist". To Castells, the 'Fourth World' is not a socio-political-geographical bloc. He includes under this category Africa, the inner city ghettos of the US, as well as drugs trade and crime. Castells doesn't believe in a Third World, nor its 'development'. (Excerpted from Ashcroft, Bill, Gareth Griffiths and Helen Tiffin (eds.), *Key Concepts in Post-Colonial Studies* (Routledge, 1998) p. 231f.

15. See website of the Fifth World: B.webring.com/hub?ring=fifthworld
16. See website on the explanation of micronations: www.angelfire.com/nv/micronations/enter and www.micronations.net
17. Forgery is the act of making an illegal copy so that it looks genuine. Genuine passports give access to foreign countries, they pinpoint the possessor's identity, and allow the possessor to be registered into a thousandfold of systems and networks. So a passport's value is not only determined by 'originality', but foremostly by mutual recognition in between countries, and by simultaneous and mutual reliance from the point of individuals and institutions. The same goes for money and stamps. Since a Sealand passport, coin or postage stamp is not recognised mutually, but unilaterally by Sealand, it is already, in a way, a fraud in its original form. Then: can scientific falsification further verify that Sealand's claims to the outside world are untrue and therefore fictitious? At this juncture, Sealand exports 'familiar'-looking visual representations of nationality to the contemporary outside world. So to what extent is what can be conceived as a Sealand identity carrier 'original' and 'authoritative'? And how are we able to read these *de facto* national identity carriers in the communal exchange market of recognised nations, as they appear to transmit familiarity among the identity carriers of approved nation states? Because this imposed and simulated visual identity is to a certain extent estranged, supposedly 'original' to both Sealand and the outside world, Sealand's identity carriers are positioned in-between their presence as 'original' or 'authoritative' and their articulation as 'repetitive' or 'different'. This thought developed from Stuart's Hall remark in *Representation: Cultural Representations and Signifying Practices* (Sage Publications, 2000, London).
18. Taken from Plutarch, "Life of Lycurgus", in *Ideal Commonwealths*, ed. Henry Morley (Routledge, 1985): "First he (Lycurgus) stopped the currency of gold and silver coin, and ordered that the Spartans should make use of iron money only. Then he assigned only a small value to a great quantity and weight of this iron money, so that to store the equivalent of ten silver coins you would need a whole room, and to move it would require a yoke of oxen. When this iron money became current, many kinds of injustice ceased in Sparta. For who would steal or take a bribe, who would defraud or rob, when he could not conceal his booty, when he could not gain any glory from the possession of it, nor even use the iron if he broke it in pieces? For we are told that when the iron being made into currency was hot, they dipped it in vinegar to make it brittle and unmalleable, and so unfit for any other use. In the next place, he took steps to eliminate unprofitable and superfluous arts. Even if he had not done so, they would mostly have died out anyway when the new iron money became current, because luxury goods could no longer find buyers. The iron coins were not accepted in the rest of Greece, but were ridiculed and despised, so that the Spartans had no means of purchasing foreign curiosities, and merchant ships no longer landed cargoes in their harbours".
19. Gilles Deleuze. "Control and Becoming". In *Negotiations 1972-1990* (Columbia University Press, 1995) p. 173.
20. Deleuze, *ibid.*, p. 173.
21. Robert R. Williams. *Hegel's Ethics of Recognition* (University of California Press, 1997) p. 334.

22. Ernst Cassirer. *The Myth of the State* (Yale University Press, 1946) p. 263.
23. Ernst Cassirer, *ibid.*, p. 69.
24. Robert R. Williams, *ibid.*, p. 334.
25. Robert R. Williams, *ibid.*, p. 338.
26. Robert R. Williams, *ibid.*, p. 349.
27. Frank Webster. "Information, The Nation State And Surveillance". In Anthony Giddens, *Theories of the Information Society* (Routledge, 1995) p. 59.
28. Frank Webster, *ibid.*, p. 60
29. See John O'Reilly. "Liechtenstein+Sealand: The Floating Signifier - Branding a Nation May Be Just a Matter of Saying Everything There Is To Say about Nothing". *Eye Magazine*, No. 53, Vol. 14 (Autumn 2004) p. 40-43.
30. Anthony Giddens, *ibid.*, p. 61.
31. In his lecture "The Obscenity of the States of Emergency" (at the Conference States of Emergency, *ibid.*), Slavoj Žižek described his concept of the invisible enemy: "In other words, the omni-present invisible threat of Terror legitimizes the all too visible protective measures of defence (which pose the only true threat to democracy and human rights, of course). The power that presents itself as being all the time under threat, living in mortal danger, and thus merely defending itself, is the most dangerous kind of power. In other words, the difference of the War on Terror with previous 20th-century world-wide struggles such as the Cold War is that while, in the preceding cases, the enemy, in spite of its spectrality, was clearly identified with the positively-existing Communist empire, the terrorist threat is inherently spectral, without a visible centre. It is somewhat like the characterization of the figure of Linda Fiorentino in *The Last Seduction*: "Most people have a dark side...she had nothing else." Most regimes have a dark oppressive spectral side...the terrorist threat has nothing else. The paradoxical result of this spectralization of the enemy is an unexpected reflexive reversal: in this world without a clearly identified Enemy, it is the US themselves, the protector against the threat, which is emerging as the main enemy..."
32. The consultant and researcher in organisational networks, Valdis E. Krebs, used the terminology of "stealth organisation" in relation to the asymmetric terror network of Al Qaeda. In his article "Uncloaking Terrorist Networks", he attempted to unveil and disrupt networks of terrorist cells and network patterns, and further described these as "amorphous, invisible, resilient and dispersed" (see www.orgnet.com).
33. This question has been put forward in J.J. King's article "'Terror is a Network, and the Network is You: Asymmetric Warfare in an Age of Full Spectrum Dominance". In *Mute Magazine*, Issue 23, March 2002, pp. 24-31.
34. Frank Webster, *ibid.*, p. 69.
35. Stealthy strike aircraft such as the F-117 are usually used against heavily defended enemy sites such as Command-and-Control centres or surface-to-air (SAM) batteries. Enemy radars will cover the entire airspace around these sites, with overlapping coverage, making undetected entry by conventional aircraft impossible. Stealthy aircraft can also be detected, but only at very short ranges on the radars, so that for a stealthy aircraft there are substantial gaps in the radar coverage.

Transcoding Sovereignty

Naked Bandit/Here, Not Here/White Sovereign

KR + CF

Global information technologies (Satellite, GPS und Data Surveillance) are producing new territorial principles of order and new logics of space, as well as constituting forms of transnational power and sovereignty.

Transnational sovereignty is emerging from permanent processes of exclusions and inclusions of territories and people on a global scale. Extraterritoriality describes a logic of space which is defined outside of the state and its systems of law, but is still controlled by the referring state power and sovereignty. Extra-territorialities are constructed as 'non-publics', external to the existing protocols which govern our civil conflicts. These imply zones in which legal status can be suspended, in which citizenship is invalidated, in which the assumption of innocence is thrown away, in which representation is denied. Each person and territory is, in the context of the "war on terror", under permanent threat of being excluded, becoming an unlawful subject or an extraterritoriality.

Knowbotic Research investigates these (non) legal frameworks of transnational sovereignty which inscribe and determine our fields of action in mostly invisible layers, beyond the surface of daily images produced by the mass media.

The political procedures of the ongoing constitution of transnational sovereign powers are always enacted as test cases, probed and executed in parallel strands: the 'virtual' and the 'real'. An artistic project like *Naked Bandit* is able to create an interface and connect to the virtual level of its constitution, making that level public and providing virtual and symbolic levels of engagement.

Virtual engagement does not mean a de-realisation, but a displacement of the centre and a change of perspective and identity.

Knowbotic Research posits an experimental spatial assemblage which enables the analysis and translation of the coded layers of these new territorial encryptions, and which provides interfaces to interfere with the spatial logic of extraterritoriality. This translation and transcoding into different and conceivable logics has the potential to include the logic of extraterritoriality, and those affected by it, in the public sphere.

Naked Bandit/Here, Not Here/White Sovereign

Our project focuses on the mechanisms of detainment of so-called 'unlawful enemy

combatants', terror suspects not entitled to the legal status of prisoners of war. The (global) sovereign defines persons as 'here' (detained) and simultaneously 'elsewhere', not here, not anymore on the territory of the nation state, and thus banned, stripped away from the legal framework which the nation state guarantees. The detainee is a 'naked bandit', 'here' and 'not here', exiled in extraterritorial spheres.

We investigate the formal mechanisms and logics of such an 'inclusive exclusion' and the inherent structures of power involved in these. Inclusive exclusion means that, on the one hand sovereign power segregates and excludes, and on the other includes and detains/occupies the excluded. Knowbotic Research translates the dilemma of the naked bandit, excluded from the legal body and included in an extraterritorial non-location, into three differently coded levels. In doing so it opens up virtual potentials and agencies to deal with (address, confront, alienate, contaminate) and transgress the *naked bandit/here, not here/white sovereign* dilemma.



Transcoding Level 1 : Autonomous Indoor Flying Control System

The interdependent processes between detainer and detainees are presented in the exhibition space via an indoor flying robot system, which is de-territorialised out of the context of scientific research (Autonomous Systems Lab, EPFL Lausanne; see below).

An autonomous robot – a helium-filled blimp (zeppelin) – controls and attacks other balloons, *the naked bandits*, without any technical control devices. The 'bandits' are detained and kept captive, floating in space. They serve as targets as well as orientation and navigation forms for the sovereign robotic logic, which is characterised by processes of zoning, scanning, filtering, profiling, detecting and targeting.

Visitors to the installation can move on the level of the control technology – in between the flight operations and navigation modes of the robotic machinery. The public thus confronts and obstructs the logics of this autonomous flight machinery by constructing obstacles in space via their physical presence (serving as additional targets), and making the sovereign space more and more non-navigable.

Transcoding Level 2 : Naked Code

Knowbotic Research transfers the legalistic codes (or, more precisely, codes which produce an exemption from legality) of the 'inclusive exclusion' of the naked bandit by the white sovereign, into two scenarios of script code, executable in a Unix shell on a personal computer.

Scenario A

```
export white_sovereign='not_here() { while [ enclosed ] ; do echo "naked bandit: here, not here"; echo $white_sovereign] sed -e "s/ ( not_here ) /(& \& ) /g"> clone.sh; done; } ; (
```



```
not_here ) & wait $! ; sh -c "$white_sovereign"
```

Scenario B

```
not_here() { echo "$! ">.key; here & wait $! ; } ; here() { while [ enclosed
];do echo "naked bandit: here, not here";done; } ; ( ( not_here ) & while true;do
echo "white sovereign: naked bandit here, not here";done )
```

The shell scripts appropriate the mechanism of the inclusive exclusion in order to overcome it by its own mechanisms. The potential escape of the bandit (child) process from the sovereign (parent) process is installed and enacted through then the execution of the two Naked Bandit/Here, Not Here/White Sovereign scenarios A and B (for the explanation of the specific processes in the Unix kernel initiated by these shell scripts, see <http://www.krcf.org/krcfhome/Banditweb/scripts/>).

Transcoding Level 3 : Public Voice

By means of two computer units and a sound system, the audience is given an additional 'voice' to address the naked bandit-white sovereign dependency. The installation offers manipulated *reboot* buttons of personal computers. Pressing these effects a restart of the white sovereign/naked bandit script codes, and thus a change in the white sovereign/naked bandit script process interdependencies.

The Naked Bandit/Here, Not Here/White Sovereign shell script processes print out the following dialogue in a loop, which is displayed on the two computer monitors:

```
White Sovereign: Naked bandit here, not here!
Naked Bandit: Here, not here!
```

The printouts also become present as audio samples in the installation. Two male voices are looped:

```
Sovereign voice: Naked bandit here, not here!
Bandit voice: Here, not here!
```

After reaching a certain threshold level of audience engagement, the audio sample of a female voice is be triggered by the computer:

```
Public voice: Naked bandit here and now!
```

Indefinite Spheres of Sovereignty

(by Timothy Druckrey)

Spheres of sovereignty are legitimated in forms that rely on control of the legal and judicial systems, on the sustenance of political hierarchies, on the application of military, police and investigative systems, on the regulation of communication systems, on the management of

information systems. In other words, spheres of sovereignty are legitimated in forms that rely on the total control of culture.

In the authoritarian political climate after 9/11, sovereignty has taken a leap from management to domination, and has extended its reach into the extra-territorial, extra-legal, extra-national, extra-governmental spheres by claiming absolute authority to act unilaterally, unhindered by localisations or local imperatives of any sort. This suspension of the old territorial sovereignties has been evolving alongside globalisation for many decades, and is exemplified by the trans-national and, in our understanding, non-legitimated power of world organisations.

Transferred into the floating sovereignty of the post-9/11 era, authority has mutated into militarised ideologies which claim the entire planet as a potential crime scene, and operate on the central principle of 'state policing'. This too is a paradox in which a government disclaims territoriality but enforces localised ideology.

This merging of imperial codes and the logic of empire is both reactionary and developmental. It passionately roots the imperium as an entitlement of the good and the just, and it founds an empire on a renovated sovereignty. By mobilising itself as exempt from civil examination, it depletes the principle it proposes to defend. By creating an overwhelming security apparatus (or better still, a security ecosystem), it legitimates the state of emergency, the condition of political crisis based on the sense of ongoing threat (from subversive 'bandits', from the realm of the 'extraterritorial'); ironically, this condition can never be reduced or alleviated without the undermining of its *raison d'être*. Unable to sustain human rights, it substitutes itself in their place. Instead of mandating human rights, it mandates sovereign rights.

This astonishing reversal liberates ideology from the principles and protocols of consensus. Veiled behind secret rationalisations and self-validations, it detaches itself from accountability. Not just a conspiracy, it is a *coup d'état*, an act of uprising in reverse, an insurgency against representative government itself.

Floating above accusations, it nevertheless maintains a hold on the public sphere, either by legislated restrictions or by extra-legal means. Cowering below this looming territorial authority, rights are no longer implicit – or inalienable – but either granted or denied; they are ostensible, not definite, subject to conditions and circumstance.

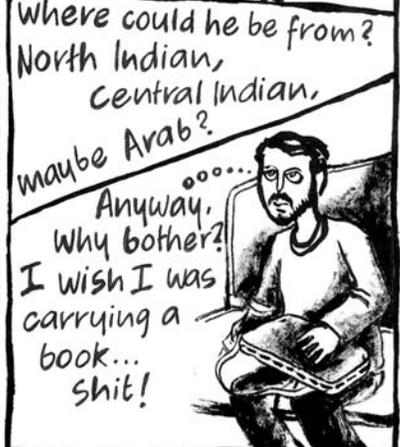
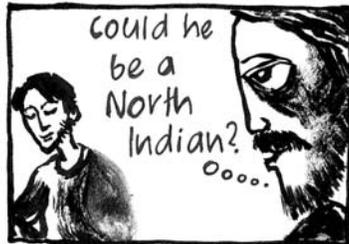
In order to provide cover for lingering and inconvenient territorial legalities, the new sovereignty invents indefinite spheres, zones in which legal status can be suspended, in which citizenship is invalidated, in which the assumption of innocence is thrown away, in which representation is denied.

These civil black holes are holding-pens in which anyone can be a inmate. Bound to a tightening state security apparatus, the social sphere is increasingly becoming one of confinement and risk. What used to be in the political sphere the 'illegal immigrant', the 'refugee', the 'exile', the 'other', has become, in an all-too-real sense, the world as a political asylum divided into combatants and non-combatants, each existing under the reign of an irreproachable authority acting on a unsanctioned mandate.

SMS to PASSPORT

by VISHWAJYOTI GHOSH





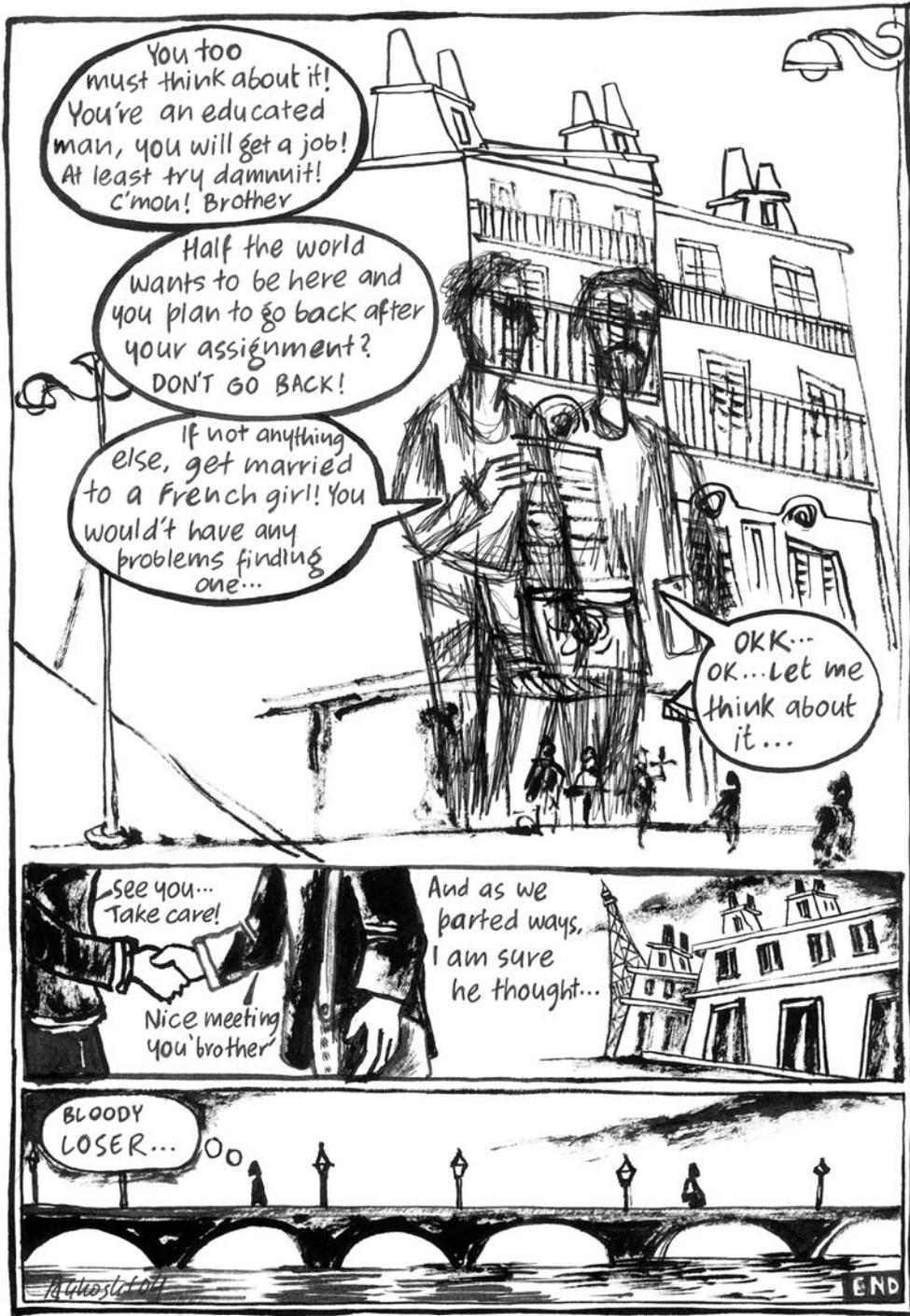
Agghosh '04











The Strange Case of Qays Al Kareem

TRIPTA WAHI

Qays A.M. Abd Al Kareem was a research student at the University of Delhi, which he had joined in December 1997 to do his doctoral degree in astrophysics. A few months later he got accommodation in the Jubilee Hall hostel, which is a postgraduate hostel for men in the University. Qays expected to stay there till the completion of his degree, which was likely to take nearly five years. However, Qays, an Arab Muslim of Jordanian nationality, was to become the target of constant abuse and harassment by some other students resident in Jubilee Hall hostel who were associated with religious fundamentalist Hindu groups. This led to his being expelled from Jubilee Hall. During this period he continuously approached the hostel and the university authorities and brought the incessant harassment to their notice. The concerned authorities did not discharge their responsibility by intervening in the matter. Qays then approached democratic sections of the university community for help against his continual harassment.

Mr. S.A.R. Geelani,¹ lecturer in Arabic at Zakir Hussain College, Delhi, and a civil liberties activist, whom Qays had met on the research floor of the Central Reference Library, and who used to help Qays and could speak to him in Arabic, took him to the People's Union for Civil Liberties (PUCL). The PUCL General Secretary Ms. Gopa Joshi of Ramjas College, Delhi University, intervened to seek alternative accommodation for Mr. Qays so that he could complete his thesis in peace. The university gave him accommodation in the Teachers' Transit Hostel (TTH) for three months from October to December 2001, with the understanding that his stay would be extended since the Transit Hostel always remained half-empty. The students who had made his life so difficult in the Jubilee Hall made a public issue, however, of Qays having been given accommodation in the Transit Hostel which is primarily for teachers.

Unfortunately for Qays, following the infamous attack on the Parliament on 13 December 2001, S.A.R. Geelani was arrested the next day in connection with that attack (according to the prosecution, he was arrested on 15 December). Those black days saw the media, both print and electronic, abdicate its role of acting as the fourth estate.²

Instead, Geelani was publicly tried by the media on the basis of police statements. Even before his trial began, the media had pronounced Geelani guilty. Within three days, the Jubilee Hall students also came up with 'information' which amounted to insinuations about

S.A.R. Geelani's 'international connections' and their 'relevance' to the Parliament attack case. These students suggested this by talking of Geelani's friendship with Qays and their long phone calls to destinations in West Asia.³

These insinuations – a friendship between a Jordanian student, an educated Kashmiri Muslim man, a lecturer facing a show trial on a charge of 'terrorism', together with allegations about international 'connections' in the Arab world – all fell in place to create a 'spin' made potent by the prevailing national and international climate of paranoia related to the 'global war against terror'.

Qays was forced to leave the TTH without any further notice or without even having been given time to look for alternative accommodation. In fact, he was locked out of his room with his baggage in the room. All this was happening when he was in the submission stage of his thesis. He was detained by the Central Investigating Department (CID) and was called several times by the Special Cell of the Delhi Police, which was handling the Parliament attack case.

This was not all. The university officials held back the appointment of examiners for examination of his thesis for very long. Qays approached a large number of teachers to help him get examiners appointed for examination of his thesis since his visa had been extended for only six months, and time was running out. Fearing for his safety, Qays's family wanted him to return immediately (they had in the previous year called back his younger brother who was studying mathematics at Delhi University), but Qays did not want to return without a degree since he had already invested more than four years in his studies. Qays was resolute that he would return only after getting his degree.

Finally, his *viva voce* was held in October 2002. He did extremely well in his *viva* and his examiners unambiguously appreciated his thesis for its contribution to its area of study. He finally got his degree in the last week of October 2002, which he immediately sent for attestation/authentication to the Embassy of Jordan. He booked his return air ticket to Jordan for 14 November 2002. This ticket was confirmed. But all was not over for Qays; the worst was yet to come.

On 7 November 2002, Qays went to the Foreigners' Registration Regional Office (FRRO) with all his documents to inform the office of his date of departure and to obtain permission for the same. He handed over all his documents, including passport and ticket, for due procedure. He was asked to wait, but his documents were not returned to him nor was he given any information. After waiting for nearly three, Qays rang up Mr. N.D. Pancholi, his lawyer and a civil rights activist, to inform him of all that had happened at FRRO. Mr. Pancholi advised him to wait as per official advice. Qays again rang Mr. Pancholi at 4 pm and informed him that he had not been given any information by the office, nor were his papers being returned. Mr. Pancholi asked Qays to ring him up at 5 pm. Not receiving any call from Qays, Mr. Pancholi went to the FRRO where with some difficulty he learnt that Qays had been sent to the Lampur Detention Centre. Mr. Pancholi was unable to ascertain the reason for his detention but he was informed that there were some instructions 'from above'. Mr. Pancholi acted immediately and sent telegrams to the Home Minister, Police Commissioner and the FRRO about Qays' illegal detention.

The following day (8 November 2002) *The Hindustan Times*, *Indian Express* and *The Times of India* carried reports about Qays' detention. According to these reports, the

reason given by the FRRO for his detention was that Qays' air ticket was "not confirmed". The reports went on to state that Qays would be deported by the FRRO on the ticket bought by Qays himself, in order to "ensure his departure". The reason given by the FRRO was clearly spurious, since Qays' ticket was confirmed. In any event, no reason was given by the FRRO to Qays as to why he was being detained, and why he would be deported.

Fearing for his safety and life, two teachers of the university, namely, Nandita Narain and Tripta Wahli, immediately moved a *habeas corpus* petition on 8 November 2002 in the High Court of Delhi (No. CRLW 1287/2002).⁴ The division bench comprising Justice D. Bhandari and Justice H.R. Malhotra asked the centre and the Delhi Police to produce Mr. Qays in court on Monday (11 November 2002) at 10.30 am. In view of the anxiety expressed by the petitioners about the safety of Qays, the Court asked the Union of India and others to ensure that Qays was brought to the court in good condition.

On Monday, 11 November 2002, the petitioners and Mr. Pancholi were shocked to see the physical state of Qays; his spectacles and wristwatch were broken, his shirt was torn and there were scratches all over his forearms. His physical condition was there for all to see in the court. He told the court that the previous evening (i.e., Sunday evening), four policemen had come to the detention centre to take him away. The policemen had told him that they had come to take him to court. Aware that this was not possible on a Sunday evening, Qays resisted going with them. In this physical resistance his spectacles and wristwatch had got broken, his shirt torn and he had received scratches all over his body. He stated that he could prevent the policemen from physically dragging him out only when he shouted for help and other inmates of the detention centre came to his rescue. The police flatly denied this altogether, but the physical condition of Qays left no doubt in the minds of all present in the courtroom that Qays was telling the truth. The Hon'ble judges were visibly angry and they reprimanded the Union of India and others, stating that they had given special instructions for his physical well-being and that their instructions had not been obeyed. They were so disturbed by this incident that they asked the Union of India and the Delhi Police to appear in the forenoon. Ms. Mukta, Public Prosecutor for the Delhi Government, was pleading with the Hon'ble judges that the Additional Solicitor-General was to appear for the Union of India and that he could come only in the afternoon. However, he was ordered to come no later than noon. This reflected the anger of the Hon'ble judges at Qays' physical condition.

Mr. Sud, the Additional Solicitor-General of India, argued that Qays was to be deported on grounds that could not be revealed publicly, and there were confidential reports/documents which warranted his departure. He mentioned Qays' connection with S.A.R. Geelani and stated that Qays had been taken and questioned by the CID and the Special Cell of the Delhi Police several times in connection with the attack on the Parliament on 13 December 2001. He went on to state that Qays was to be deported for reasons of security. On this being contested by Mr. Pancholi, the Hon'ble judges asked for and examined the Home Ministry's files with confidential reports. Their observations about the contents of the files are very significant. They commented that although Qays had been taken and questioned by the CID and the special cell several times in connection with the Parliament attack case, there was yet no evidence against him, and he had been released

each time. They further added that they saw no apparent reason for him to be deported when he himself was leaving the country.

During the course of the argument Mr. Sud referred to the petitioners as 'leftist activists' who were always trying to create trouble for the state. Finally, he argued that the government wanted to deport him so that he is not able to go as a free man and that it should become a part of his record. He insisted that the government would deport him and send his luggage later. It is quite tragic that the Hon'ble bench succumbed to the government pressure to deport him although it found no evidence in the confidential files to warrant the deportation of Qays. Even on the issue of Qays' baggage, the state was adamant that it would pack and send Qays' luggage. However, the petitioners passionately argued that his research material collected over so many years ran the risk of getting lost/scattered if Qays was not allowed to sort out his own baggage. The court permitted Qays to collect his luggage at Parmanand Colony in the presence of a lawyer designated by the court. The court also sought assurance from the Union of India and the Delhi Police about Qays' safety till his departure on 14 November 2002, which assurance was given by the state. The petitioners got permission from the court to be present at the time when Qays was to collect his baggage from his residence. The same was done on the evening of the following day, i.e., 12 November 2002.

Qays left on the air ticket he himself had booked and paid for (on 14 November 2002), but with the following observations (made by the FRRO on the day Mr. Qays had gone to the FRRO office for permission to leave) inscribed on to his passport:

The holder of this passport is being deported from India due to his undesirable activities by FRRO Delhi vide order No. 1408/ For (I.M. Cell) dated 7/11/02.

Qays has had to face a lot of trouble in Jordan arising out of his deportation.

...Could it be that the decision to hold Qays at the Lampur detention centre, the attack on him the evening of the day before he was due to appear in court, the attempt to impound his luggage, and the decision to deport him, were all part of a pattern dictated by the necessity to obtain a forced confession implicating Gilani, and/or, to 'plant' incriminating evidence in his belongings, and to ensure that Qays would never be able to return to India to testify before a court of law? Like many other aspects of the '13 December' case, the deportation of Qays Abd Al Kareem too, is a fact that leaves many questions un-answered...

This text is edited and excerpted from Tripta Wahi, "The Qays Deportation Case", published in *Revolutionary Democracy*, Vol. X, No. 2, September 2004, Delhi. An online version of the complete text of this article was accessed on 15 February 2005 at <http://www.revolutionarydemocracy.org/rdv10n2/qays.htm>

NOTES

1. S.A.R Geelani, a lecturer in Arabic at Delhi University, was an accused in the '13 December 2001 – Attack on Parliament Case'. Geelani, along with two others of his co-accused, was sentenced to death by a special anti-terrorism court under the Prevention of Terrorism Act (POTA; repealed in 2004). Geelani was arrested, shortly after 13 December 2001 by the 'Special Cell' of the Delhi Police and detained without trial under POTA (then an ordinance). The evidence produced by the Special Cell on the basis of which he was convicted by the POTA court, consisted of a mistranslation of the transcript of a mobile phone conversation between Geelani and his stepbrother in Kashmir, that was recorded through an unauthorised act of telephone surveillance. The verdict was challenged in the Delhi High Court. A protracted campaign by Geelani's friends, colleagues and human rights activists, together with his legal defence by a team of advocates, was able to reverse the POTA court's verdict. The 'evidence' was found inadmissible, and Geelani was acquitted on 29 October 2003, after spending nearly two years on death row in Delhi's Tihar Jail. Subsequently, the Delhi Police appealed against the acquittal in the Supreme Court, and the case is still being heard. On the 8 February 2005, Geelani was shot by unidentified assailants outside the house of Nandita Haksar, one of his lawyers. Haksar and her husband rushed Geelani to the All India Institute of Medical Sciences, where he was operated upon for three bullet injuries. Geelani survived this attack and is currently recovering. On 14 February 2005, Geelani issued a statement saying that he suspected the involvement of the Special Cell in this attack on his life. For more details of the 'Geelani Case', see the website of the All India Defence Committee for S.A.R. Geelani at www20.brinkster.com/sargeelani. For a comprehensive timeline of the 'Parliament Attack' see - <http://in.rediff.com/news/pat2001.htm>
2. For more on the 'Media Trial' of SAR Geelani, see Nandita Haksar, "Tried by The Media: The S. A. R. Geelani Trial". In *Crisis/Media: Sarai Reader 04* (Center for the Study of Developing Societies, 2004, Delhi) pp. 158-164; also at www.sarai.net/reader/reader_04.html. See also Nirmalangshu Mukherji, "The Media and December 13: Who Attacked the Indian Parliament and Why Don't Indians Have the Full Story". In *Zmag*, 30 September 2005. <http://www.zmag.org/content/showarticle.cfm?SectionID=32&ItemID=6332>
3. "Hunt for Teachers' Pet in Jubilee Hall", *The Hindustan Times*, 17 December 2001.
4. "Produce Jordanian on Monday, HC tells Police", *Indian Express*, 9 November 2002.



Marginalia

KAI FRIESE

A strange justice that is bounded by a river! Can anything be more ridiculous than that a man should have a right to kill me because he lives on the other side?

– Blaise Pascal, *Pensées*

Whoever by words written or spoken, or by signs, or by visible representations or otherwise, questions the territorial integrity of India in a manner which is, or is likely to be, prejudicial to the interests or safety or security of India, shall be punishable with imprisonment for a term which may extend to three years, or with a fine, or both.

– Indian Criminal Law Amendment Act (1961), Section 2

“There is nothing to see”, said the Police Superintendent. “*Pahaar hi pahaar hai* (Just mountains upon mountains)”. I was trying to persuade the man behind the unnecessary Ray-Bans to give me a ‘restricted area permit’: a passport to the border zone. “There are nothing but mountains in Sikkim”, I protested. “And I’ve already been to the Eastern District and the West. You don’t have a Southern District. I want to go north”.

It had been ten years since another uniformed man had refused me the same permit, but the Superintendent had no reason to deny my application. Or to grant it. Except that he could if he felt like it. “The road is broken. You should stay in Gangtok”. He savoured the moment. And then, fixing me with his impassive reflectors, he signed the permit. “You can visit Chungthang, and perhaps you will get to Lachung. But you cannot see Lachen or Yumthang”. It was an incantation to my ears. He scribbled a warning on my permit for good measure and handed it to me: ‘Photography is strictly prohibited beyond Toong Bridge’. A buzzer sounded. “Anyway, there’s nothing up there”, he said.

I was glad to leave Gangtok. Bus journeys had become the best tonic for the disappointments of hill stations and the purposelessness that overtakes summer holidays. There were the agreeable adversities of punctures and landslides and the easy companionship of snacks, cigarettes and minor incidents. On the road from the Southern District the entire bus had collapsed with mirth when a gangly Australian who had been

demanding his seat was silenced by a local woman who grabbed him by the balls. “You are a very naughty lady”, he had gasped when he regained his composure. But there were no foreigners on this bus. And, as we meandered through the dark foliage of cardamom plantations, a couple of soldiers whined about their posting in this “third-class place”.

Chungthang, when we got there, was a thoroughly third-class hamlet – a gash in the wilderness, a sandpit in the forest. Set in a triangular hollow at the confluence of the Lachen and Lachung streams, it was a loitering place, fattened on the attentions of the armed forces. Untidy soldiers roamed around in their brown plimsolls, Bihari labourers toyed with piles of sand and gravel and every local seemed to have a government sinecure or a small establishment, or both. Tourists were still accidental here, but after a few enquiries I rented a room from a Tibetan matriarch who eyed me apprehensively and warned that I could expect only *sada khana* (plain food). “So what’s there to see in Chungthang?” I asked, making small talk with her daughter. “Video”, she replied, giggling.

Later that night I swayed out of the kitchen and into the darkened town with a belly full of cabbage and warm millet beer. The roar of two rivers filled the street. And looking up I saw that I was under a different sky, a boundless reach of trespassing border stars.

Borderlands are the most imaginary of all territories; but then, people are imaginative. India as we know it shares borders with six other states. Or seven, if you believe in Tibet. Ten, if you count the Eight Degree Channel, the Palk Straits and the Great Channel that separate Indian archipelagos from the Maldives, Sri Lanka and Sumatra respectively. And eleven, if you accept India’s wishful image of an undivided Kashmir that stretches up to the Pamir Panhandle, an Afghan territory created to avert the spectre of a Russo-British frontier in Asia.

That’s another story. This one begins with an inaccurate map, an image of India gleaned from the Encyclopaedia Britannica. It was 1972, and the Britannica, which by now was really American, was still using a map of South Asia depicting an India flanked by ‘W. PAKISTAN’ and ‘E. PAKISTAN’. But the map had passed through Indian border controls, it had passed through customs, and it bore their stamps. E. Pakistan had been obliterated by three hysterical impressions of red ink and rubber, and they said BANGLADESH BANGLADESH BANGLADESH. They had a point.

This map had been lovingly mutilated. Slammed, with some precision, between the Indo-Gangetic plain and its mountainous circumflex was the bureaucracy’s damning conclusion: “The external boundaries of India as depicted in the map are neither correct nor authentic”. The red stamp had then bounced its way across the title pages of 23 volumes. All the way from A-Anstey to Vietnam-Zworykin. On the map itself there was a swathe of black ink that leapt from the Arabian Sea to the crest of Kashmir. It resumed its course in Volume 12 where six paragraphs of text, the introduction to ‘India’, had been similarly inked out, line by line.

I always hoped that the ink would gradually fade or flake off. And I returned to my parents’ bookshelf over the years to check on time’s progress. The shelves began to sag, the Encyclopaedia lost its luxurious aroma and the spine of the atlas had to be taped down. But the black ink still gleams like a scab on the onionskin.

Looking at the typographic profusion of the old map today, I notice a minor detail. Up there between NEPAL and BHUTAN is the abbreviated but bold-faced, capitalised and sovereign **SIK**. This is neither correct nor authentic. Not any more. The Kingdom of Sikkim was erased from the international map in 1974 in a momentary fibrillation of the Indian border.

The tiny Himalayan kingdom never had a chance. It had been living quite literally on the edge, between Tibet, India, Nepal and Bhutan. The British had already swallowed half of it when, requiring a summer resort for their administrators, they annexed Darjeeling in 1836. In 1949, independent India enforced an agreement declaring the territory a 'Protectorate' – always an oxymoron in international relations. Meanwhile, Nepali settlers had been transforming the ethnic demography of this sparsely populated nation, and by the mid-20th century had established themselves as the majority community. The endgame was a classic drama between two men who despised each other: the King, Chogyal Palden Thondup Namgyal, and his Vizier, the Kazi, Lhendup Dorji; their wives, the American Gyalmo, Hope Cooke and the Belgian Kazini, Elise, who detested each other; and that still-teething megalomaniac, Indira Gandhi, who had the measure of them all. In the end it was a simple act of the pen. The 36th Amendment of the Indian Constitution: "After Article 2 of the Constitution, the following shall be inserted, namely: 2A Sikkim..."

I still remember the *anschluss* with Sikkim as an extra-curricular lesson in local geography. My school lay in the heart of Chanakyapuri, Delhi's embassy district and a Disneyland of architectural follies. The blue onion domes of Pakistan, the council housing of the British High Commission, the stucco wedding cake of the Holy See, the vast forbidden city of the People's Republic of China and the affected modernism of vassal states like Poland and Canada. The story was that most of them had been designed by the same architect, but I knew that each compound was sovereign soil. "You're in Germany now", my father would tell me when I visited the building where he worked. In the summer of 1974 I watched the pretty red pagoda of the new Sikkimese embassy take shape, and I waited for the flag to be hoisted. But when the day came, it was too late. It was the familiar tricolour that went up.

I was 17 when I went to Sikkim for the first time. It was an unofficial rite of passage, a Walkabout of sorts. Before I left Delhi, my anxious mother had thrust a list of addresses on me: friends, relatives, friends of relatives, relatives of friends. It was a network that spanned the country and it became my primary objective to slip through it unseen. But when I got to Gangtok I was so depressed by the squalor of my green hotel room and its view of a sewage shaft, that I turned myself in. The address said 'Swastik Camp'. This was an enormous cantonment that covered a hillside on the outskirts of the town. They took me in immediately of course, and I passed a pleasant week in strangely familiar circumstances. It was a township of Quonset huts filled with North Indian army families nostalgic for the cities of the plains. Every inch of the hill had been covered with cement and stripes of paint in primary colours. There was sweet tea in steel glasses, *paranthas* and *anda bhujia* for breakfast. There were shrill dogs and sullen servants. Card parties, and conversation: "Do you know any new dances?" "Can you do Boston Bus Stop?" "Do you like Kraftwerk?" There was bemusement at my desire to travel. "What's to see there?" But at the end of the week

I was given an introduction to a senior officer who had the discretionary power to issue me an Inner Line Permit to travel north. He was avuncular and friendly, the familiar whisker-flexing type. But then, gazing at my passport, he asked the dread question: “‘Freeze’, eh? Where are you from?” I told him: “I’m from Delhi, my mother’s from Hyderabad, the surname is from my father, he’s German”. I had been through this set-piece countless times and this extended answer was calculated to limit the number of ancillary questions. Instead, the moustache contracted like a frightened caterpillar. “I’m sorry”, he said, “I can’t help you. You see, son, your loyalties might be suspect”.

I got the point. Black Ink. Red Stamp. Wham! Wham! Wham! And he was right. I became suspicious of loyalties. I acquired this dubious fascination with borders, with frontiers, with stepping on the cracks where *das betreten* is *verboten*. Well, the fatherland has always been fidgety at the edges. Maybe it is a German trait.

Deutschland! Deutschland! I can’t tell you how little it means to me. But I’m stuck with it, I guess. The name Friese, by the way, is geographically specific. Friesland being a well-worn national joke, the idiotic archipelago. We all make our own geographies, but not on maps of our own choosing.

There is a map I would choose. It’s called an Egocentric Map. This expressive term describes an antique but enduring cartographic technique known as the Azimuthal Equidistant Projection. It was developed by the Arab mathematician and traveller Al-biruni who visited India about a thousand years ago. And it’s still in use in aeronautical navigation. In an egocentric map one’s own location is represented as a point surrounded by the rest of the world. Imagine holding down your location on a globe and then unpeeling and stretching it out in a circle around that point. Distances from any point on the globe to the centre are accurately represented to scale but the map also has its own peculiar distortions. The antipode of your location, i.e., the point halfway round the earth from you, becomes the outer perimeter, the boundary of the map. On my egocentric map New Delhi would be surrounded by a circle representing its antipode, a point off the coast of Chile. Such a map has many virtues. It is useful; its distortions are obvious; it acknowledges other people’s maps, since every location demands its own egocentric projection. It’s a traveller’s map; it changes as you move. And it does give Delhi a pleasant maritime horizon.

But the city that surrounds me has a life of its own. It has risen and fallen more often than I can count. It expands and contracts “...and sometimes the Empire of Delhi was confined within the proper limits of the province of that name”, wrote James Rennell in his 1782 *Memoir of a Map of Hindoostan*. But like a hardy spore, like some monstrous microorganism, the city retains the code of its empires and their furthest boundaries.

The ‘Memoir of a Map’. I love that title, but it’s not quite what you might imagine. Rennel was the first Surveyor General of the East India Company’s possessions, and his crowning achievement was his ‘Map of Hindoostan’, covering four separate sheets, representing, it was said, an area one-and-a-half times the size of Europe. The accompanying *Memoir* was a convention of the time, an encyclopaedic treatise, not unlike the later Gazetteers of India, dealing with every possible aspect of colonial interest in the country. But Rennel was also given to idiosyncratic digressions, some of which do live up to the promise of the title. And

so the *Memoir* is something special, something between autocartography and cartobiography. His work records the superimposed selves of the cartographer, the city, the country, and the border.

Rennel was a geometrician in the original sense of the word. He measured his world – literally – personally supervising the use of a cumbersome chain-measure along a tract 900 miles long and 300 miles broad. And then he began to draw a country upon it. Not the enervated country of the Mughals. “I shall not attempt to trace the various fluctuations of boundary that took place in this empire”, he wrote in disgust. Instead he set out to “improve the geography” of the subcontinent with a sharp and unambiguous circumference of his own. In the process he gave a virtuoso demonstration of territorial expansion by cartographic sleight-of-hand. He begins with three powers: namely, the British, the Nabob of Arcot, and the Rajah of Travancore. Then with a flourish, he describes how these three powers are rendered as one on the map:

“Since the state of mutual protection and dependency subsisting between them, blend their respective territories into one mass, in the view of foreign politics...the common frontier of these confederated powers, should be considered as belonging to one state, and of course be distinguished by one common colour; if properly considered, they are a part of the great mass of territory, united under the description THE BRITISH POSSESSIONS AND ALLIANCES. Therefore, this mass of territory has its exterior frontier...marked by a continuous RED line...By this method the whole frontier appears in a geographical view, like that of a single state; which as we have said before, is virtually the case”.

The red line would describe many fluctuations of its own over the next 2000 years, most of them outwards, all of them bloody. When it reached Afghanistan in 1893 it became the Durand Line; where it lapped at Tibet it was the McMahon Line of 1914. Retreating through East and West Pakistan in 1947, it became the Radcliffe Line. To this day, desiccated stretches writhe redly through the snows of Kashmir, Ladakh and Arunachal Pradesh. The ‘Cease Fire Line’, the ‘Line of Control’, the ‘Line of Actual Control’, the ‘Zero Line’. About 10,000 crooked miles surrounding the Empire of Delhi.

The Egocentric map is for me an almost archetypal idea. But it has a necessary antipode of its own, which also has a somewhat archetypal appeal. I found such a map described in a book by the psychoanalyst Anthony Storr: “A patient of mine used to represent himself by drawing a circle expanding until it included the whole world, so that he and the whole world would finally be indistinguishable. He was a schizophrenic who was quite incompetent to deal with the world in fact”.¹

I recognise this impulse. I know this man. The schizophrenic lives in Delhi. And Berlin. He lives in Washington and Baghdad and all the great capitals of the world. A universal neighbour.

There was once a mad poet of territory, called Karl Haushofer. The ‘Father of Geopolitics’. A German, of course. In 1927 he wrote a book called *Grenzen (Borders)* in

which he speaks of the 'Organic State' born of a spiritual interaction between human beings and territory. It has 'Organic Frontiers' which are not mere lines but living, breathing bodies which have a dynamic of their own. For the Organic State must keep expanding its frontiers until they include the whole world. There's a whole typology of the frontier; and depending on the state of the State, it fluctuates between six types: the Frontier of Balance, Attack, Manoeuvre, Defence, Decay and (my personal favourite) Apathy.

Haushofer also developed the concept of *Lebensraum*, the 'Living Space' that a dynamic nation requires – in other words territory, a term originally coined in 1901 by his mentor, the Darwinist geographer Friedrich Ratzel. In 1924, Haushofer's student Rudolf Hess introduced him to a friend serving a term in Landsberg Prison, who was occupying himself by writing an autobiography. Understandably perhaps, he was interested in *Lebensraum* and he gratefully received a book by Ratzel. Perhaps it was then that the Führer crawled out of that prisoner's psychic carapace. Karl Haushofer didn't recognise him until it was too late. Haushofer had a Jewish wife – his loyalties were suspect – and he would finally wind up in Dachau. Maybe confinement was an ironic penalty for his vision of organic expansionism.

But the father of geo-politics also had a son, Albrecht, also a geographer. Albrecht Haushofer began to chart a slow spiral into the circles of opposition and resistance. In 1944, in the wake of the attempt on Hitler's life on 20 July, he was arrested and imprisoned in Berlin's Moabit Jail, charged with treason. His ultimate fate would be as absurd as it was tragic. But while he waited for death, shackled hand and foot, he began to write a cycle of poems. The *Moabiter Sonnetten* are terse but expansive meditations on the acceptance of fate and the joys of a life well-spent. Of travel, music, and a classical education. Of loyalty and guilt. One of them is about his father. It ends:

<i>Mein Vater hat das Siegel aufgebrochen.</i>	My father broke the seal.
<i>Den Hauch des Bösen hat er nicht gesehen.</i>	He did not see the rising breath of evil.
<i>Der Dämon ließ er in die Welt entwehn.</i>	He released the demon into the world.

Prisons are signs of civilisation. I should have guessed that there was a prison in Chungthang.

There's a well-turned piece of academese that can bounce through my brain as insistently as a bad song. It goes like this: "The phenomenological body of the traveller can sometimes be rather precisely located".² This often happens in picturesque moments of travel, but this one time it came on while I was perched on a Sikkimese commode. Which is to say I was squinting through the flaps of a stilted tent, trying to keep my focus on a flower in someone's window-box, and so keep my balance. Through the generous cut-away beneath, a pig peered up and grunted encouragement.

Having cast my link in the food chain, I stepped out into the backyard of my boarding house in Chungthang. It was a morning of chill sunlight, wood smoke and the slightly iridescent sky of the high Himalayas. A morning like glass. A breakfast of Nescafé and omelettes was promised. My phenomenological body was precisely where it wanted to be.

Havaladar Kartar Singh was in charge of the TCP or Transport Control Point at the junction of the roads from Lachen and Lachung. He plied me with tea; he complained about army life and boasted about how well he did out of it. His pillbox was emblazoned with the slogan "We Respect Those Who Respect the Law" but he did a tidy business in diverted rum rations and *chini* (sugar). He had some elaborate fiddle involving soldiers' allowances for tin trunks. I tried to steer the conversation to the topic that interested me: transport. Kartar Singh's eyes brightened, and he began recounting tales of 'one-tonners' and 'three-tonners', the army trucks that enlivened his routine by launching themselves off various mountainsides. But sure, he could get me a ride on one of the surviving vehicles to Lachen or Yumthang. He never asked about a permit.

My theory was that I was about to penetrate an Organic Frontier. I had already crossed the border of the border – the check post at Toong Bridge where a sentry had written 'Chhket' on my pass. But now I was in the belly of the border, and it was like another country. I could travel where I liked and no one would question my permit again. It was a Frontier of Apathy.

It had its own hazards, though. I was a prisoner of the *Havaladar's* torpor. It was getting towards noon and dozens of army transports had belched their way through the TCP, scuffing the day as they passed. But none that Kartar Singh deemed appropriate for me. Releasing myself, I wandered off and hired a sky-blue civilian jeep. "Yumthang", I told the driver confidently. He was nervous about this and said that he could go as far as Lachung. We would need to check with the *pradhan* there if I wanted to go further. "Fine", I said. A village headman was not a daunting obstacle.

Unfortunately the *pradhan* in question was drunk and belligerent. I had to track him down in the local shebeen, and he seemed so offended by this that he refused to address me directly. Averting his face he muttered imprecations I could not understand, to the considerable mirth of his drinking buddies. Returning to the jeep, my Bihari driver said it was hopeless. The locals were a high-handed lot and no one would help us now. But the situation was too absurd to surrender to, and I asked him to drive on till we were stopped.

Just outside Lachung we approached a barrier guarded by a pleasant-looking Gurkha. He came up to my window as we halted. "Hello", I said, explaining that I was a tourist all the way from Delhi, and that I wanted to see the hot springs in Yumthang. Yes, there was a permit – he studied it with solemn illiteracy. I glanced at the nameplate on his chest, 'Lance Naik Prem Bahadur'. Like a thousand *chowkidars* (watchmen) on the streets of Delhi. Raising the barrier, he saluted smartly, and we were off.

Of course I was exhilarated and a little smug as we swerved along the hairpin bends climbing to Yumthang. We drove along in silence and, I presumed, mutual admiration of my perseverance and cool deception. The scenery changed dramatically to thick forest, dappled with an unfamiliar autumnal blaze of reds and yellows. We zigzagged in and out of pockets of mist that seemed to be inching up the same route, but there wasn't another vehicle in sight. Here I was finally a trespasser, and I really had no idea what Yumthang was.

In the end, it turned out to be a big fat cloud hugging the road. The scenery had disappeared and the terrain levelled out when I asked the driver how much further Yumthang would be. He waved at the fog around us. I wanted to turn back, but he had a more

fastidious sense of destination and said we should at least visit the *garam pani*. We found it in a grimy building in the wilderness, where a family of herdsmen were enjoying a hot tub together. I saw a door marked 'VIP ROOM' and barged in, only to be knocked back by the sight and stench of great slabs of yak meat marinating in the steaming mineral water. So much for Yumthang.

We freewheeled much of the way back to Chungthang, which seemed somehow appropriate. The determined growl of the diesel gave way to the meditative song of the tyres. I was coasting too, still happy, but beginning to wonder why I'd made such a big deal of getting to Yumthang. The jeep had been an extravagance. Maybe the border was best left to the likes of Kartar Singh. Somewhere along the way I began to unravel a puzzling fragment of the *Havaladar's* chatter. He had been rambling on about illegal *chini*, and I wasn't really listening, presuming it was another one of his scams, pilfered sugar that sweetened Chungthang's tea. But he had said something about jail and he seemed to be talking about people, not commodities. "*Yahaan Chungthang mein koi Chini log jail mein hain kya?*" I asked the driver. Yes, he said matter-of-factly, there were Chinese prisoners in Chungthang Jail, they had been there for months.

I hopped off at the TCP where Kartar Singh still sat, and chatted for a while about the day's events. Then, at my casual best, I asked him about the Chinese prisoners. "They're right here, just down the road", he said. "You can meet them if you want. The Superintendent is a good friend of mine".

I did well to conceal my enthusiasm, but as we set off for the Jail I stopped to buy an extra pack of cigarettes, the universal currency of prisons, or so I thought. "You're not a journalist, are you?" asked Kartar Singh.

When we reached the signboard of Chungthang Central Gaol I was a little disconcerted to see the pleasant bungalow ahead. But the doors had thick metal bars, and in the courtyard I saw the silhouette of a guard cradling a sub-machine gun. He was watching over a group of young people on a garden bench. "Here they are", said the hearty *Havaladar*. "The Chinese prisoners!"

There were six of them. Four men and two women, all in their late twenties or early thirties. Their clothes were trendy, the men in bomber jackets and jeans and one of the women in black ski-pants. But her face was a mask of tragedy.

"Our Jat Regiment found them", said Kartar, patting one of the men proprietorially. The prisoner flinched. Eight of them had walked into a minefield. They didn't know it until two of the devices went off. "Her husband died and she wouldn't leave his side", he nodded at the sad one. "That's how they were caught. Anyway you can talk to them, I'll go see my friend". He took a couple of my cigarettes and wandered off.

I was at a loss. It was one of the worst introductions I'd ever endured, and my mind was reeling a little at the strange gentility of the scene. There were clothes flapping quietly on a line and the two women were clasping hands. It was a pleasant evening. In a garden. In jail. But there was an invisible line separating my fate from theirs. I wasn't in jail, not really. And someone had drawn a tight circle around each of them.

After a number of hesitant attempts we began a conversation, or at least an exchange of information. We had fragments of language in common; one of the men, their hapless

guide as it turned out, was a Tibetan who spoke a bizarre pidgin Hindi. He said he had lived in Darjeeling as a boy and then gone back to Tibet. He had agreed to lead the others, who were Han Chinese, to Calcutta where he had a contact, a lama who lived in Jagu Bazaar. I told them I was a journalist, and that perhaps I could help. By this time the men had relaxed enough to accept the cigarettes they had initially declined. I offered the packet to the women, who shrank away.

The guard looked thoroughly uncomfortable, fidgeting awkwardly with his gun. I offered him a cigarette, which he stiffly refused. The other men puffed away, still tense but now eager to talk in whispered snatches of English. It wasn't easy to follow. They were from a town I had never heard of, or perhaps never heard correctly pronounced. I tried taking down their names, but I couldn't even repeat them, and scribbled in a hopeless mixture of what was neither Pin Yin nor Wade-Giles. Giving up, I asked the Tibetan to try. He had just finished printing his name "Pempa Tsi Ring" when I heard someone address me angrily in English. "Why are you concerned with these people? They have violated the territorial integrity of India". I turned around to see a man in a safari suit and goggles. "They are spies", he hissed.

"And who are you?" I asked the spook. He was "just a citizen", but he ordered the guard to stop the prisoners from writing in my book. I snatched it back and started taking down the names again myself. They were calling out urgently now. "Chiang Yung Mei!" "Chu Shu Phan!" "Chu Yong Mei!" The guard began to protest, the safari suit tried to grab my notebook, and in the middle of this tumult, Kartar Singh rushed out along with the Jail Superintendent. "What are you doing?" he asked, looking around in panic. "We must leave now!" The guard began to lead the prisoners to the cells. As they passed, one of them grabbed my sleeve. "Please help us. If China, we die".

Kartar Singh was not a happy man as he rushed me away from the jail. "Why did you give them cigarettes?" he complained. "They could claim you poisoned them. Or you could be caught for passing them messages. Anything can happen. Didn't you see there was a CID man around?" It was getting dark now and he pointed me towards my boarding house. "You should leave Chungthang tomorrow", he warned, and marched off into the night.

I was not a happy man that night either. I was a stranger in a strange place where my loyalties would certainly be questioned by goggled spooks in safari suits. My triumph at Lachung, all the little deceptions of uniformed men that I had been savouring, now seemed like foolish liabilities. The recreational abstractions of my border hobby suddenly snapped back in concrete and paranoid terms. I could see the schizophrenic rearing up over Chungthang, poised as a pickaxe.

So early the next morning I left on the first jeep I could find. I scrambled over the landslide where the road was broken, caught another jeep, and finally boarded a Gangtok bus somewhere along the way. A couple of days later I was in Calcutta. I searched for a lama in Jagu Bazaar but found only puzzled faces. Back in Delhi, I took my story to a human rights organisation. They were earnest and patient. They heard me out with the slightly supercilious indulgence of professionals. These things happened, they said. The Tibetan would probably make it to Dharamsala, where the Dalai Lama's government in exile had an understanding with the Indian authorities. But Han Chinese were generally 'pushed back'. Still, they were familiar with the inner workings of the state and the mysterious organs into

Roman Catholics form the largest single Christian group, especially on the western coast and in southern India. The many divisions among Protestants have been substantially reduced since independence as a result of mergers creating the Church of North India and the Church of South India. Many small fundamentalist sects, however, have maintained their independence. Converts to Christianity, especially since the mid-19th century, have come largely from the lower castes and tribal groups.

Buddhists living near the Tibetan border generally follow Tibetan Buddhism, sometimes designated as Vajrayana (Sanskrit: "Vehicle of the Thunderbolt"), while those living near the border with Myanmar adhere to the Theravada (Pali: "Way of the Elders"), also called Hinayana (Sanskrit: "Lesser Vehicle"). Neo-Buddhists in Maharashtra do not have a clear sectarian affiliation.

CASTE

In South Asia the caste system has been a dominating aspect of social organization for thousands of years. A caste, generally designated by the term *jati* ("birth"), refers to a strictly regulated social community into which one is born. Some *jitns* have occupational names, but the connection between caste and occupational specialization is limited. In general, a person is expected to marry someone within the same *jati*, follow a particular set of rules for proper behavior (in such matters as kinship, occupation, and diet), and interact with other *jitns* according to the group's position in the social hierarchy.

In India virtually all nontribal Hindus and many adherents to other faiths (even Muslims, for whom caste is the-

oretically anathema) recognize their membership in one of these hereditary social communities. Among Hindus, *jitns* are usually assigned to one of four large caste clusters, called *varnas*, each of which has a traditional social function: Brahmins (priests), at the top of the social hierarchy; and, in descending prestige, Kshatriyas (Kshatriyas; warriors), Vaishyas (Vaishyas; originally peasants, but later merchants), and Sudras (Sudras; serfs). The particular *varna* in which a *jati* is ranked depends in part on its relative level of "impurity," determined by the group's traditional contact with any of a number of "pollutants," including blood, menstrual flow, saliva, dung, leather, dirt, and hair. Intercaste restrictions were established to prevent the relative "purity" of a particular *jati* from being corrupted by the "pollution" of a lower caste.

A fifth group, the Panchamas (from Sanskrit, *panca*, "five"), theoretically were excluded from the system because their occupations and ways of life typically brought them in contact with such impurities. Formerly called the untouchables (because their touch, transmitting pollution, was avoided), they are now designated as Harijans ("Children of God," a term popularized by Mahatma Gandhi) and, officially, Scheduled Castes. Those in Scheduled Castes, collectively accounting for nearly one-sixth of India's total population, are generally landless and perform most of the agricultural labour, as well as a number of ritually polluting caste occupations (e.g., leatherwork, among the Chamars, the largest Scheduled Caste).

While inherently nonegalitarian, *jitns* provide Indians with social support and, at least in theory, a sense of having a secure and well-defined social and economic role. In

The four Hindu varnas



Population density of India

which such people disappeared. They would see what could be done. Discreet enquiries were made through various foreign missions – those far pavilions of Chanakyapuri. Finally, a few weeks later, a discreet assurance returned. The Chinese were all right. They could not be contacted, but they had ‘made it’. The Organic State had coughed them up. Or so it said.

One August morning last year I was flapping my way through the *Indian Express* backwards, as usual, when I noticed a story with the headline, “Centre asks Bihar about 2 Chinese POWs after drawing a blank in Delhi”. The details were tantalising: “The Union Ministry for Home Affairs has asked the Bihar Government for details about the two Chinese prisoners of war (POWs) – Jiang Chen and M. A. Siblong – who are languishing at the Central Institute of Psychiatry, a mental asylum, in Ranchi since the 1962 war”. After the *Indian Express* brought this to light this week, the ministry moved quickly so that “the matter can be taken up at a higher level”.

It was a follow-up story, and it had the tired air of a scoop foundering on the shoals of concerned officialdom. “A reply from the Bihar government is expected within a fortnight”, the correspondent warned. “And after that the Chinese Embassy is likely to take at least two months to respond to the Indian Government, it is pointed out”. End of story.

Two-and-a-half months of bureaucracy is a long time. Six months and more slipped away on my calendar and many things happened in my life, most which are of no interest to you. Except that I have been to the Kraepelin Ward of the Ranchi *pagalkhana* (madhouse) and I met a Chinese man there whose days have passed without event for a very long time.

After I read the story I called a friend at the *Express* who faxed me the original report. The headline read, “38 years after war, two Chinese prisoners wait for freedom”. The article was by one Manoj Prasad:

“Fifty-nine-year-old Jiang Chen sits in the portico of the library of Central Institute of Psychiatry, Asia’s oldest mental asylum. Memories of a war and forty years of silence are mirrored in his eyes. It has been a long wait, perhaps an endless one for him, a Chinese Prisoner of War (POW) of 1962. Jiang is one of the two Chinese prisoners of the 1962 war lodged in the mental asylum, considered hell even by Bihar standards, ignored by Beijing and New Delhi. Almost four decades and several summits and discussions after the war, these two remain prisoners of solitude and negligence.”

“Jiang Chen” had apparently recovered from a “mild attack of schizophrenia” in 1963. The year I was born. “M. A. Siblong”, the other prisoner, was 62 years old. An unnamed nurse was quoted, “Both of them behave gentlemanly and like rice, milk and biscuits... Since they don’t understand Hindi or English, we converse with them with symbols and gestures”. Siblong, the report added, “knows two Hindi words: *chai* and *biskoot*”. There was a photograph of a smiling man in a torn *kurta*, captioned, “Jiang in the asylum”.

I telephoned Manoj Prasad in Ranchi and he gave me the story behind the story. He had first heard of the Chinese POWs five or six years earlier in a local newspaper report. “It was

somewhere on the third page”, he said. “I asked Dr. Raju, the director of the asylum, about it. I said I had to meet them and take a photograph. He refused”.

Dr. Raju shot himself in 1997. Manoj waited. Nothing much was happening in Ranchi, and his editors in Delhi were after him to come up with one of those seasonal human interest/horror stories that flourish in Bihar. Then he remembered the Chinamen. “*Saala!* I have a story, I have to follow it up”. Fortunately he now had a new police contact – an SSP (Senior Superintendent of Police). He called him up: “Sir, I am a bona fide citizen of India, and I am accredited by the Government of Bihar as a bona fide journalist. I want to see this asylum where millions of rupees are being spent. Why can’t I see it?” The SSP said, “*Kaun bolta, hujoor? Jaiye na! Hum aapko le jayenge* (Who says you can’t, sir? I’ll take you)”.

And so, one fine morning, Manoj entered the Kraepelin Ward, where he quickly found the two *videshi* (foreign) gentlemen. But he was almost immediately set upon by a pair of doctors: “Who are you? How did you get in? Massive *hungama* (anarchy)...I was basically driven out!” Luckily, just before he reached the gate he spotted one of the Chinese men standing by the driveway. He got one picture and made his escape.

“He’s with me”, said the madhouse clerk to the madhouse guard as the sheet-metal gates whanged shut. Then he turned to me. “You’d better stick with me if you want to get out!” He wasn’t joking. If some doctor in the inner recesses of the asylum diagnosed me as delusional...well, he wasn’t joking.

The clerk was a friend of a friend of someone I had only spoken to on the phone. I had told him that I was a cousin of that someone. My name was Rana Guha, and I had come to see whether the Ranchi Mental Asylum – formerly the Central Institute of Psychiatry, and even more formerly the European Mental Asylum – would be a suitable home for my uncle, an elderly schizophrenic. I had lied. When the clerk said I should bring my uncle to ‘Outpatients’ for assessment, I made a scene. He quickly backed down and agreed to show me around.

Journalism is most enjoyable under false pretences. One of my first assignments, many years ago, was to find out whether kids were having sex in the juvenile ward of Delhi’s Tihar Jail. The Prison Superintendent, Kiran Bedi, was in the news again for refusing to allow the prisoners access to condoms. I got in by feigning wide-eyed admiration for her vision of the prison as an ‘ashram’ where the inmates’ favourite diversions were yoga and meditation. Satisfied, she sent me in for the guided tour. Inside, in the courtyard of the Kambli Ward, (next door to the Sachin Ward) the wardens swung their *lathis* and bashed the thronging delinquents back into their cells until I was left alone with a fifteen-year-old “model prisoner”. When I suggested to him that Madam should be handing out condoms, he was appalled. “*Yahaan koi bura kaam nahin karte hain* (No one does bad things here)”. He was inside for “Double Murder”, having stabbed his *bhabhi* (sister-in-law) and strangled his girlfriend. But he was not mad. He had killed those two women on a point of honour (*bhabhi* had insulted his mother, the girlfriend was untrustworthy).

Ranchi was different. As I set out for the asylum, a local journalist had told me to ask for ‘The Andamanese Prisoner’. “He killed 30 people!” Yet there was nothing threatening about the madmen. There were mostly grown men here, but little machismo. The wards

were named after dead psychiatrists rather than young cricketers. Ranchi was not as bleak as Tihar, but the place was much gloomier. Luxuriant trees darkened the main plaza. Beyond them I could just make out the veranda of the building I wanted to visit: the Kraepelin Ward. Emil Kraepelin was a German psychiatrist, a contemporary of Freud who played a major role in defining the categories of psychopathology. He had described the affliction 'dementia praecox' which was later refined and redesignated as schizophrenia. He had also described paramnesia, a condition that I found strangely appealing: artificial memories.

Staring at the Kraepelin Ward through the shady trees reminded me of something I had never seen. It had the menace of a plantation mansion in the American south. Or maybe it was just boarding school. I had felt that familiar thickening of atmosphere the moment I was inside the gates. Maybe that's the way it is with institutions of confinement. People here are immersed in consequences. They live in Effect. But Cause is sometimes forgotten. Some of them had been here so long that no one remembered why they were there anymore.

As the clerk led me through the grounds of the asylum, I realized that my cover was becoming a liability. I could see the Kraepelin Ward ahead of us, but my guide insisted on taking me to the Maudsley Ward instead. "They're all the same", he said. We walked down a corridor past a series of dormitories crammed with metal beds. Halfway down there was a cell with metal bars. "*Agar koi jyada shaitani karta hai* (If someone is very difficult)..." On our way out we passed through a cluster of inmates who seemed oblivious of my tour. My guide cheerfully pointed out the local characters. "This old man – he used to be the accountant for the institute. He worked here for 30 years and now he's an inmate!" No sign of the Andamanese serial killer, though.

I finally succeeded in steering our course towards the front of the Kraepelin Ward, and was almost immediately rewarded by the sight of the man I recognized from photographs as Jiang Chen. The patient looked to be in his sixties, and he was shuffling slowly along the veranda with a pronounced limp. He looked sad, which seemed sane enough, in the circumstances. Just as I was about to approach him, a doctor rushed over and the introductions began again. I trotted out the whole sad story of my debilitated uncle while the doctor shook his head. He suggested a private clinic outside Delhi. "Don't bring him here", he said, suddenly conspiratorial. "This place is...well, after all, it's just a government hospital".

By the time I stopped emoting about my imaginary uncle, my Chinaman had disappeared and my clerk was anxious to get me out again. As we strolled back to the gate, a madman overtook us, circled us twice in a tight orbit, and then spun off on his own trajectory. Somewhere past the gates, I came back to earth with the realisation that I hadn't accomplished a damn thing.

But I wasn't ready to admit it just yet. After all, I had travelled hundreds of miles to go sightseeing at an asylum, and I was feeling a bit defensive. When I got back to town I called my wife and related the day's events. "I saw him!" I concluded triumphantly. "You mean your trip is a disaster", she replied. After some sharp words, I hung up and decided it was time for more fibbing. I had a number for Dr. S. Haq Nizami, the director of the asylum, but all the local correspondents had told me I wouldn't get anything out of him. I called him up and said I was a journalist from Delhi working on an in-depth feature on the state of mental health

care. I had been to Agra, I had been to Shahadra, I would be going to Vellore – but Ranchi was, of course, the country's premier psychiatric institution. Could I have a look around? "I don't know", he replied. "We have had some bad experiences with the press recently".

"You mean that silly story about the Chinese!" I laughed. "I'm really not interested in that!"

He asked me to come see him the next morning.

So I did. We spent an hour chatting, and I played my part well. So did he. He seemed like a nice man who cared about his work. I listened with interest as he plied me with statistics. "In this country of a billion, in any given week, 10% of the population has depression. Syndromable, diagnosable, clinical depression. The lifetime incidence of depression is 55%".

I reminisced about my days as a health reporter. For good measure, I confided that I had a personal angle: You see, my uncle is a schizophrenic...

I waited for him to bring up the Chinese prisoners and feigned scepticism about the wild reports. He smiled.

"They are Chinese".

"Do they talk to anyone?" I asked. "Do they have friends?"

"They are burnt-out cases. Chronic schizophrenics. Friendship has no meaning for them. The only people who visit them are interpreters from the Intelligence Bureau".

"I'm surprised. I've heard so many crazy stories about this place that I don't believe any of them".

"What have you heard?"

I told him about 'The Andamanese Prisoner'. Dr. Haq was shocked. "There's no one like that here", he said.

"And then I heard that your predecessor shot himself".

"Oh, that's true", he said, mildly.

"Why?"

"Depression".

Dr. Nizami asked Dr. Akhtar, one of his colleagues, to show me around. This time I demanded the full tour. I saw the ECG labs, the lecture halls, corridors stacked with pathologists' specimens. Pale brains lurking in formalin. I asked to see the library where I'd heard the second Chinese prisoner (variously known as "Sam Long", "M. A. Siblong", and "Shih Lian") liked to spend the day. As we walked, a patient ran up to the doctor and started discussing his treatment. We were introduced. "He is a college lecturer in Calcutta", said Dr. Akhtar. "He is schizophrenic. He comes here whenever he has a relapse". The patient smiled and nodded vigorously.

"He has published a book in English – *kya naam hai?* (what's it titled)?"

"*Ché: Toward the Fount of Humanism*", said the patient. "*Do aur bhi hain* (There are two more)..." He smacked his forehead a few times. "Aaah! My symptom, my symptom...*kya bolte hain, Doctor sahib?* What's it called?"

"Amnesia", said Dr. Akhtar.

"*Haan* (Yes)! Amnesia!" Smack. "You are my friend, philosopher, and guide".

We went to the canteen in the overgrown plaza and I was introduced to an old Anglo-Indian woman. Her name was Maggie, and she had come here in 1946 when it was still the European Mental Asylum. She saw me taking notes and told me that her real name was Phyllis Teresa McNair. She spelled it out laboriously.

We went to the women's wards, but it was lunchtime and they were deserted. I saw a sign painted in English and it made me wince. "A Patient Who Works Recovers Fast". The old Dachau slogan: *Arbeit Macht Frei*. Rancho was no concentration camp, but the madness of institutions is universal. And so is the fragility of their victims.

We finally reached the Kraepelin Ward, and I was delighted to see Jiang Chen again at exactly the same spot. "This must be one of those Chinese prisoners", I said. "Yes, he is", said the doctor nervously. I asked if I could just say hello, and marched over. He was looking as melancholy as the day before, and I noticed that he had a bad rash over his face (seborrheic dermatitis, a doctor told me later).

I reached into my shirt pocket and pulled out a piece of paper. I was going to reveal my hand. "What's that?" asked Dr. Akhtar. It was a printout from a Chinese phrasebook website.

"Ni Hao!" I said shaking hands with the prisoner. He looked at me and nodded.

"I see you have come well prepared", said the doctor.

"Ni Gui Xing?" I continued.

"Jiang Chen", said Jiang Chen.

"Ni Sh Na Li Ren?" I asked. That one had taken a lot of practice.

"Chungking", he said.

"Chungking?"

"Chungking". He nodded.

And that was it. The doctor took my arm. "I think you should go", he said, as he led me away.

"It's very sad", said Mr. Lu Bing, the press officer at the Chinese embassy back in Delhi. "Very sad. After all, they are human beings. But we have no information. We have not been given access". He said he could only deal with the ministry of external affairs, but the matter was in the hands of the home ministry. So I said I would speak to the relevant joint secretary and get back to him. But Mr. Bing was feeling emotional. Before I could hang up, he made his entreaty: "You should write!"

"I will!" I promised.

"You should write: Indian restriction on Chinese goods is unfair! Is very wrong!"

I called the joint secretary at the home ministry many times, and one day, miraculously, I got through. "We are keen to resolve the matter", he told me. "If they are Chinese citizens, we will send them back. We have given every access".

"I've just spoken to the Chinese Embassy, and they say they have not yet had access. It's four months since the story broke".

"Yes, there have been procedural delays. As soon as we have information we will let you know".

"They've been in government institutions for nearly 40 years, so you must have information. I've just been there once and I know that one of them is from Chungking".

“Yes, well, according to our information they came to this country of their own free will”.
“Free will”.
I guess he meant they were seeking asylum.

On 23 April 1945, when the Russians were already within the perimeter of Berlin, Albrecht Haushofer was released by the prison authorities. He made it as far as the gates, where a band of Gestapo men seized him, marched him to an empty lot, and shot him through the nape of the neck. Three weeks later his body was found by his younger brother, his hand clutching the breast pocket which contained five sheets of paper inscribed with the 82 poems for which he is best remembered. Karl Haushofer survived Dachau and then took a walk in the woods and killed himself. Borders do strange things to bodies.

Sitting by my window in Delhi, I do what we all do. I watch my neighbours. The madman who rotates slowly on his spot by the roundabout. The arthritic Punjabi ladies doing their lurch. A parrot follows its path across the sky, trailing a cotton candy man on a cycle. The bird’s cries and the candy man’s bell syncopate as they vanish. The telephone rings. It’s a friend from Calcutta who went to Yumthang for the weekend recently. He tells me there are some nice hotels there. You can even find flush toilets in Chungthang. And my friend, the pig, has presumably been consumed by some other traveller’s phenomenological body.

I took a look at the current edition of the Britannica. It doesn’t have an atlas anymore, but the entry on India opens with a large map. And the censor got to it first. It’s black. A huge square of delicately textured brushstrokes. Strangely beautiful, entirely opaque. Borderline psychotic.

Postscript

In 2002 I learned from the Chinese embassy’s Press department that Jiang Chen and Shih Lian had been repatriated. Jiang Chen, I was told, was with relatives in Chongqing (Chungking).

A version of this essay was published in *Transition* 90, Duke University Press.

NOTES

1. Anthony Storr. *The Integrity of the Personality* (Pelican, 1960).
2. Victor Segalen. “A Poetics of Displacement”. In *The Predicament of Culture: Twentieth-Century Ethnography, Literature and Art* (Harvard University Press, 1988, Cambridge).

On Smugglers, Pirates and Aroma Makers

URSULA BIEMANN

Capsized boats and clandestine immigrants washing up on European shores: these are the dramatic images by which the European Southern border gets into the news again and again. The media seems to say that these images communicate the essence of the border in its most compressed and climactic form. But there is no defining image of drama that can narrate the endless story of inclusion and exclusion. There can be no violent icon to which the event of crossing can be reduced: there is only the plurality of passages, their diverse embodiments, their motivations and articulations. Turning the focus away from the simple trespassing of a line, and redirecting it towards exposing the transnational, diffuse and semi-legal economic transactions behind the multiple movements at the borderlands, might bring us closer to understanding the nature of the border as a site, and how perfectly the clandestine boat passages fit into the whole picture.

This text relates to the video *Europlex* (made in collaboration with visual anthropologist Angela Sanders) that looks at the Spanish Moroccan borderland on both sides of the Strait of Gibraltar. This area is given its cultural meaning only by being crossed: by the routes of container ships from West Africa on their way to the Mediterranean; the perilous nocturnal boat voyages undertaken by clandestine migrants; the helicopter patrols keeping watch; the frames of the radar pictures; the itinerant plantation workers who pick vegetables for the EU market; the commuting housemaids, the *domesticas*, who go to work for the



señoras in Andalusia; the seasonal movement of the Spanish teachers in the enclaves; the patrols of the border guards along the mountain paths; the bus trips of the Moroccan women who peel imported shrimps for Dutch companies in Tangier; the pirates who buy articles imported from China in Spain, and the women smugglers who tie them up under their skirts and carry them into the *medina*. This is the movement that we are concerned with, the everyday mobility lived out on a local level. It produces micro-geographies that are deeply intermeshed with one another and at the same time reflect global dimensions.

In a series of border recordings, *Europlex* examines the circular movement of people around the checkpoint between the Spanish enclave of Ceuta and the surrounding Moroccan territory. This checkpoint controls the coastal road that ends at the most northern point in Ceuta. Directly across the Strait is Gibraltar and the Spanish mainland. At this extreme geographic location the flourishing city of Ceuta has always been assigned the role of a well-guarded bridgehead. The Moroccan port of Tangier, located on the Atlantic side of the Strait, has a history marked by various European manoeuvres and is thus considered a more cosmopolitan city with great potential to become a crucial zone of transnational trade.

Logging the Border

The videographic recordings, which we call 'border logs', relate to the two distinct sites of Ceuta (*Border log I + II*) and Tangier (*Border log III*). We use the term 'log' to link the travel logs and the ethnographic recordings with the practice of video editing, whereby the log, i.e., the chronological list of the filmed material, is considered an indispensable preparation for the montage. *Europlex*, particularly in the first border journal, visualises the observation process by describing just what it does, namely, an accurate registration of the spatial-temporal process. It introduces a time, which allows an unhurried interpretation of the event, a temporal mode beyond the spectacular. Video becomes a cognitive tool. While this pragmatic procedure could be experienced elsewhere as utterly boring, it is almost a prerequisite for grasping the diffuse bustle in this location. At first sight it is rather difficult to make sense of the exhilarating, confusing course of affairs occurring here, and it requires more than one visit to the border to understand the logic of the busy multidirectional stream of people carrying a multitude of plastic bags and parcels.

Border log I is first of all a meticulous observation of the extensive smuggling activities that circumscribe the *frontera de tarajal*, the border to Ceuta. Filming is strictly prohibited, so images can be made only under constant interruptions, with a hidden camera or from a distance. The activity, which continues through the day, begins at 6 am when the gates open to the crowd of impatiently waiting Moroccans. Smuggling takes place in broad daylight in front of the eyes of the officials, and is part of the everyday culture. Many of the



smugglers come from the town of Tétuan nearby, others from villages of the Rif Mountains further away. The aim of those who cross the border is not to get into the city of Ceuta but to pursue their semi-legal businesses in the expanded border complex. Wholesale warehouses and street markets are just around the corner from the checkpoint. Here, smugglers rummage around for good deals and buy as much as they can carry. Some articles, such as woollen blankets, are of better quality and still cheaper than in Morocco, even though they are not necessarily made in Spain but imported from China or procured from pirates and other questionable sources. Still, these goods will be marketable in Tétuan. On their way back, the heavily loaded smugglers pass the same officials who get compensated for their forbearance. Circumscribing the architecture of the authorities up to 11 times a day, smugglers inhabit the border in a circular way, carving out an existence for themselves. Working out an ingenious mode, female smugglers strap shirts and cloths onto themselves, layer by layer, until they have doubled their body volume. This seems to be a technique only women use. Each piece will increase the profit margin of the passage. The economic logic inscribes itself onto every layer of the transformed, mobile female body.

Border Log II follows the daily journey of the Moroccan maids who live in the Moroccan town of Tétuan and work in the enclave. Since Spanish women increasingly seek paid work outside their homes, the need for cheap domestic personnel in the enclave city has grown. Most of the service personnel are recruited from the neighbouring Moroccan region; only very few will be given a work contract that would guarantee a minimum wage and facilitate easier entrance into the enclave. So, for many the day begins by being shoved through the crowded gated passage on the border, hoping to be let in. The state officials use every pretext to slow down or choke the flow completely. Yet *Europlex* doesn't focus on the difficult conditions young Moroccan women are facing when they enter the European labour market. Rather, it takes a detailed look at



the casual but unusual fact that the workers' daily commute is actually a journey between the Moroccan and the European time zones. Due to the fact that the two adjacent territories are located in distinct time zones with a two-hour time lapse, the domestic worker turns into a permanent time-traveller within the border economy. The rhythm of her life is thus performed through an alternating delay and acceleration with respect to her social context. Deferred time becomes the signifier of a cultural position. In the video, the time-travelling maid is represented in front of an electronically generated, organically moving pop striped background, her gesture and her smile appear unnaturally repetitive, they are interrupted by drop-outs, i.e., missing images which stop and restart in a choppy fashion. The animated portrait of the Muslim woman takes on likeable robotic features, asserting that she is to be calibrated according to different chronological parameters.

Border log III enters the transnational zone near Tangier where Moroccan women manufacture biological and technological products for European subcontractors: shrimp peelers, aroma makers, toy moulders. As in so many other sites on the edge of developed nations, we recognize here the typical mechanism of globalisation, i.e., the outsourcing of labour-intensive processes under more advantageous conditions regarding wage, labour rights and taxes. Tangier wants to position itself as the most important transnational trade centre in the Southern Mediterranean basin at the beginning of the 21st century. As I have argued elsewhere with regards to the US-Mexican border, transnational zones are comparable to heterotopian places, which distinguish themselves by not being embedded in the cultural context but operating according to another, remote-controlled set of rules and rationales.¹ As in the case of Mexico, in Tangier too there is a mainly female work force being taken into consideration for jobs in the disenfranchised zone. The border crossed by these women on a daily basis is a lot less visible than the fortified one around Ceuta that is negotiated by smugglers and domestic workers. Still, upon entering the transnational zone the worker experiences a distinctive split from her cultural environment. In *Europlex*, this is imaged through a series of portraits of female workers captured at a factory exit in Tangier harbour. Technically, the split is performed by means of a brusque freeze of the worker; her face and her gaze remain in sharp focus while the background dissolves slowly into a granular field beyond recognition. Accompanied by electronic rhythms, the sequence is overlaid by fast-accumulating figures suggesting labour hours and performance statistics. The woman's presence is decontextualised, her body entirely technologised, in this fragmented composition.

These log journals describe three diverse practices which transform the border space into a translocal reality. What the border recordings aim at, and attempt to influence, is not the consolidation of national unity, but on the contrary, the permeability and constant subversion of it. Television reports on clandestine boat passengers achieve this to some extent, but it also seems crucial to acknowledge that the shadowy and partially transgressive circumstances of these land border passages are not assimilated all too quickly into a disciplined national order, where intervening state officials play the leading part. Instead, they are allowed to cultivate an alternative imaginary based on translocal existences and transformative cultural practices.

The control tower of Algeciras, the second largest container harbour in the Mediterranean, oversees all navigation activities across the Strait. Visual contact with the vessels is provided by surveillance cameras located in the harbour areas and through radar signals rendered on monitors, whereas vocal contact is established via radio with ship





captains. *Europlex* coalesces these two separate modes of communication. The clean technological representation of radar lines, which trace the projected path of each ship through the waters of Gibraltar, is juxtaposed with the crackling radio announcements of heavily accented captains from all over the world, occasionally interrupted by snatches of Moroccan music blasting from one of the ship cabins. These rough, live sounds introduce a different register of cultural meanings, and disrupt the mechanical organisation of the disembodied electronic maps.

Southern Spain and Northern Morocco form a space that may be driven and ruled by the European economy, but which is ultimately produced and energised by the people who are moving across and between the territorial imperatives of national borders. The focus is not on the global players, nor on the apparatus of state power, but on the accurate observation of counter-geographies and dissident practices, mostly semi-legal, often invisible. It is necessary to visually track the course and meaning of these border circuits, how they inscribe themselves discursively and semiotically, and how the travellers documented in the border logs perform their crossings and leave a daily imprint on claimed terrain.

We are not speaking about traditional, well-discerned urban formations but about new constructs, enclaves and informal free trade areas, sites which are not embedded in the surrounding context but are in fact artificially created zones of alienation that operate according to the unruly logic of the translocal.

The translocal zone is dramatically marked in terms of the contrasting economies it accommodates. Its hub consists of massive, highly mechanised Western-style production units, plants and assembly lines, while at the periphery and beyond stretch belts of sustained rural poverty and unemployment. This difference is strategically created and reinforced by state policy, enabling companies and investors to profit from the large pool of cheap local labour always accessible, always available and always in need. While there are obvious postcolonial and transnational motivations behind these emplacements, local inhabitants usually don't take long to recognise the possibilities of setting up alternative economic circuits that will benefit the whole region. The problem arises from the fact that these improvised translocal activities are excluded from legal regulations, which are designed to primarily address the needs of corporate trade. Thus, micro-economies drift too easily into semi-legal fields of action where the goodwill of officials, feudal work conditions and piracy make the rules.

NOTES

1. Biemann, Ursula (ed.). "The Transnational Video". In *Stuff It: The Video Essay in the Digital Age* (Voldemeer/Springer, 2003, Wien/New York).

Sponge Borders

GUIDO CIMADOMO + PILAR MARTÍNEZ PONCE

Preface

The latest expansion of the European Union (EU) towards the East has once more modified its borders, demonstrating yet again the intangibility and flexibility of the latter.

The very definition of 'border' acquires different meanings depending on which theme is being discussed: an impenetrable barrier – once against migratory flows and the introduction of goods – transforming itself into a strainer for the exporting of national products. The new proposed Internal Affairs Commissioner for the EU, Rocco Buttiglione (destituted before his official nomination), affirms on the one hand that migratory flows cannot be blocked *manu militari*, although he also paradoxically believes that Europe decides who can enter and who cannot.

Even within Europe, and despite the Schengen Agreements, borders are taking shape in concrete situations, reminding us that their disappearance is not definitive. The militarisation of borders is becoming stronger, making it increasingly difficult to defend



▲ started: sig. V a.c.ended: 1368
6.500 Km

▲ started: 13 august 1961

107 Km

ended: 9 november 1989 ▲

↑↑ more than 100

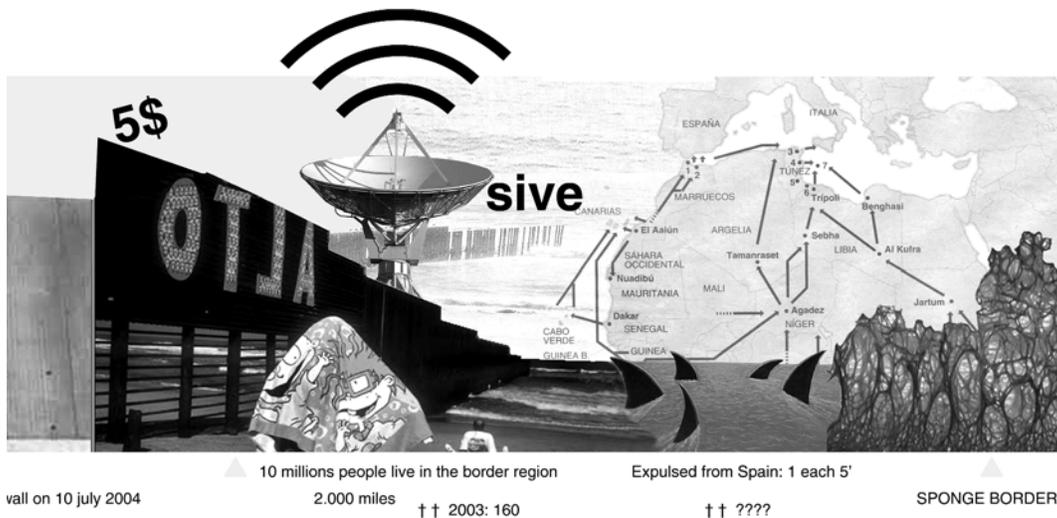
ICJ declared illegal Israel's v

people *sans papiers* in conditions of legality. Examples that come to mind include the strong development of the Integrated Vigilance System (SIVE)¹ in Spain, the conversations between Italy and Libya on establishing a system of integrated vigilance of Libyan territory, and the even stronger militarisation of US borders. These remind us that that if in the future we forget about of internal borders, exterior ones will acquire more importance; these mechanisms of discrimination can only end in violence.²

A Short Reflection on Borders

We should differentiate between natural borders and those erected by man. In the context of the latter we will focus on walls, such as the one no longer standing in Berlin or the boundary illegally erected by Israel in the Occupied Territories, scoffing at the international bodies dedicated to the defence of human rights and freedoms. Referring to natural borders, in direct contrast to those made by man, and due to the dramatic events that are taking place, we should not forget the oceans, true black holes in which the dreams of immigrants come to a tragic end. The absence of man-made elements can be more powerful than the presence of constructed barriers.

The interesting thing about the Berlin Wall is its slow but deliberate transformation from Cold War symbol to souvenir, and finally its disappearance altogether in favour of urban exploitation. The best analysis of this changeable condition resides in its situational consideration as a permanent evolution in space and time, rather than considering it as an element (architectural, symbolic, etc.). As R. Koolhaas³ stated, it is paradoxically the free West sector that is encircled (by the wall) to be liberated, leaving the enclosed city (the east side) outside; the importance of the wall as an object is marginal, and its dematerialisation is not affected by its power.



It seems unfathomable that after the disappearance of one wall someone could construct another, especially under considerations as oppressive as those carved out by Israel.⁴

Epilogue, or a Proposition for Borders of the Future

In agreement with J. Derrida⁵, although arbitrarily applying his thinking to our reflections, we propose that there is constant questioning of the relevance of the limit/boundary, rendering equal the pressure between interior and exterior, as if the border were a permeable membrane. That way we recognise that marginality and discrimination is not on one side, but rather on both, inside and out. The objective is to expand boundaries from mere vertical objects into permeable strips that would be enriched by their own state of attractors of multicultural flows: no longer a militarised soil of anyone, but rather a place in constant state of redefinition, in agreement with existing pressures. In essence, a sponge that absorbs and repels human demands depending on its capacity (unlimited), and becoming a meeting place instead of a limit to be crossed.

NOTES

1. Tomás Bárbulo. "Interior Invertirá 130 Millones en Cuatro Años para 'Blindar' las Costas de Andalucía y Canarias". In *El País*, 11 October 2004, sec. España, p. 30.
2. José Vidal-Beneyto. "Un Mundo con-sin Fronteras". In *El País*, 24 July 2004, sec. International, p. 8.
3. Rem L. Koolhaas. "Field Trip". In *S,M,L,XL* (Monacelli Press) pp. 215-231.
4. PLO Negotiations Affairs Department. "Frequently Asked Questions: Israel's 'Security' Wall: Bad Fences Make Bad Neighbours", 12 September 2004 (accessed 9 December 2004). See <http://www.jmcc.org/new/03/aug/unilateral.pdf>
5. Jaques Derrida. *Margini della Filosofia* (Biblioteca Einaudi, 1997, Torino).



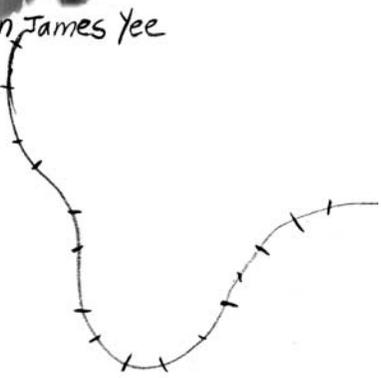
Notes on the Disappeared

Towards a Visual Language of Resistance

CHITRA GANESH + MARIAM GHANI



Dreaming, that might he disappeared?



HOW DO YOU SEE THE DISAPPEARED?

WHERE ARE YOU?

*The digest is delivered to me every day.
I read it with my morning coffee.
Reading my way with purpose
Out of the fog of sleep.*



In every email I look for clues.

*The weightless adjectives and nouns
that are meant
somehow to contain the arcs of lives.*

To Christine Shahab, a frezzled young woman with long hair and a baby face, no such reprieve seems in sight. Between runs to jail to see her husband and long days at the car audio shop they opened together, she finds herself thinking of what life would be like if he was deported to Afghanistan and she followed.

For someone who has spent her life on Long Island, in a pretty town with bungalows and backyards and American flags on the lawns, it is unimaginable. "I would follow him there," she said. Then, in the next instant, she wondered, "How could I live there with my daughter?"

She has known Mr. Shahab since she was 16.

"They were a perfect match," said her mother.

"He's the hardest-working kid I've ever seen," said her father.

After marrying, the family says, the couple went to the immigration service to apply for Mr. Shahab's permanent residency. Two years later, they were called for an interview. Mrs. Shahab says she told the officer about the deportation order. The officer, she says, told her she could still sponsor her husband for citizenship, and told her how to apply.

"Never for a day did we think there was a problem," Mrs. Shahab said. "We did everything they told us to do."

Just about every day now, their daughter, Savannah, pulls down their wedding album from the bedroom dresser. Mrs. Shahab says the little girl speaks to the photographs: "I miss you, Daddy. Where are you?"

<http://www.nytimes.com/2002/06/04/national/04DFP0.html?ex=-06bceb01c331648e>

I read between the lines as if

runs to jail to see her husband and long days at the car
audio shop they opened together, she finds herself thinking
of what life would be like if he was deported to
Afghanistan and she followed.

somewhere to be seen

pretty town with bungalows and backyards and American flags

are the traces of the disappeared

the hardest-working kid I've ever seen

the warm and buzzing outlines of vanished years

*trembling like phantom limbs
in the vast blanks of the unsaid.*

THE QUESTIONS

*The worst of it:
How random this
unmaking comes to feel,
How casual the knife that slips
between the stitches.*

*As if you were nothing more than
the number, nationality, religion
scrawled across a case file.*



*The double disappearances:
first your days as you lived them,
and the nights you slept becalmed,
Then all the rich and varied language
that once described them
Your many names
and sayings, words savored
on the tongue,
Reduced to this:*

Ms. Ali's father, a bookseller, was required to register dutifully reported to immigration authorities, she said, and deported last year. His family stayed behind.

law applies. In 2000, Garibaldy Mejia, a 54-year-old grandfather and livery cab driver, was stopped by immigration agents in the airport upon

he was in New York on a tourist visa when he fell in love

Anser Mehmood, 42, a Pakistani immigrant,

A former Boston cab driver

Chinese woman, detained

Where does it start?

With the lists

	POB	Charge	Date of Charge
1	Pakistan	212(a)(1)(C)(i) POB	2/29/00
2	Pakistan	212(a)(1)(A)(i) No Visa	2/22/00
3	Jordan	212(a)(1)(A)(i) WVRZ KIB-REP of 2 yrs	4/14/00
4	Pakistan	212(a)(1)(C)(i) & (7)(A)(X)(i) WVRZ Ambassador of 10 yrs	3/28/00
5	Pakistan	237(a)(1)(C)(i) NON-IMM status VSO	2/28/01
6	Jordan	212(a)(1)(A)(i) & 212(a)(1)(A)(ii) Non/Imm Visa	7/20/01
7	Pakistan	237(a)(1)(C)(i) Non/Imm Status	7/20/01
8	Pakistan	212 (a)(1)(B)(X)(i)-present who being admitted	8/24/01
9	Pakistan	212(a)(1)(B)(X)(i) POB	8/30/01
10	Pakistan	212(a)(1)(A)(i) & (1)(A)(ii) C&MF	8/30/01
11	Pakistan	148 USC (1)(a)(1)	8/7/01
12	Jordan	237(a)(1)(B)(i) Overstay	8/17/01
13	Algeria	237(a)(1)(B)(i)	8/17/01
14	Morocco	237(a)(1)(B)(i) Present in US in Viol/Law - Overstay	8/17/01
15	India	212(a)(1)(C)(i)	8/17/01
16	Egypt	237(a)(1)(C)(i) NON-IMM status VSO	8/17/01
17	India	237(a)(1)(B)(i) Overstay	8/17/01
18	Pakistan	237(a)(1)(A)(i) Present in US in VIOL/LAW	8/17/01
19	Saudi Arabia	237(a)(1)(B)(X)(i)-1 Out of Status	8/17/01
20	Jordan	14-2 overstay	8/17/01
21	Egypt	212(a)(1)(A)(i) Chairman	8/17/01
22	Egypt	212 (a)(1)(A)(i) POB	8/17/01
23	Egypt	212(a)(1)(A)(i) POB	8/17/01
24	Morocco	237(a)(1)(B)(i) C	8/17/01
25	Egypt	237(a)(1)(B)(i)-1 Overstay	8/17/01
26	Saudi Arabia	237(a)(1)(B)(i)-2 Overstay	8/17/01
27	Jordan	237(a)(1)(B)(i) Overstay	8/17/01
28	Saudi Arabia	237(a)(1)(B)(i)-2 Overstay	8/17/01
29	Pakistan	212(a)(1)(A)(i) Overstay	8/17/01
30	Egypt	212(a)(1)(A)(i) POB	8/17/01
31	Saudi Arabia	237(a)(1)(B)(i)-2 Overstay	8/17/01
32	Iran	237(a)(1)(B)(i) overstay	8/17/01
33	Egypt	237(a)(1)(B)(i) overstay	8/17/01
34	Pakistan	212(a)(1)(A)(i) Non/Imm not in Poss/PP/Visa	8/17/01

Immigration officials in investigations perform the enforcement function—they are the people who will ask additional questions, initiate deportation proceedings, and raid people's homes. Of respondents who were questioned in investigations, 47% were asked about their criminal history, 37% were asked about their marital relationship, and 37% were asked about the immigration status of family members. Only 11% were asked questions about connections to terrorism. Again, these are disturbing signs that catching people on immigration violations was a focus of Special Registration. In investigations, 26%

INS Special Interest List
Joint Terrorism Task Force Working Group
IMMIGRATION OFFICIALS—LAW ENFORCEMENT IDENTITIES

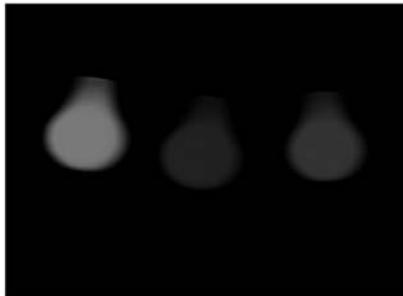
(b)(7)(F) (b)(7)(C)

A Number	Name	POB	Agency	Agency Location	Employment Dates	Investigation Dates	Investigation Office	Investigation Type	SSN	DOB	POB	Agency
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Or the questions?

- SPECIAL REGISTRATION INTERVIEW QUESTIONS**
- What is your last (family) name?
 - What is your first (given) name?
 - What is your middle name?
 - What is your Nationality (list both if dual national and list first the nationality that the alien is using to apply for admission)?
 - What is your place of birth (country & city/province)?
 - What is your sex?
 - What is your birth date?
 - What is your height?
 - What is your weight?
 - What is your hair color?
 - What is your eye color?
 - What is the purpose of your visit?
 - What are the names of your Father and your Mother?
 - What is your father's address?
 - What is your father's telephone number?
 - What is your mother's telephone number?
 - What is your mother's address?
 - List at least one point of contact (example: friend or relative) for you in your country of origin:
 - What is the address of each point of contact in your country of origin?
 - List at least one point of contact here in the United States (example: friend or relative).
 - What is the address of the point of contact in the United States?
 - What will your address be while you are in the United States?
 - What is the phone number?
 - What miscellaneous numbers can you supply (I-94#, SSN, A-file, perforated document #, overseas Driver's License number)?

Somewhere between the cold, hard facts approved for entry into your secret file and the stark, anonymous light that shines on the story of your dealings with the system lies the unprovable truth of who you were Perhaps who you still are

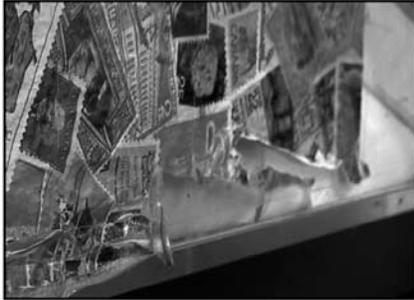


The one truth you have not testified

*What would be the questions to ask?
To give that phantom form
To crowd the lines with words
adjectives and nouns and adverbs
and verbs even
beyond the power of reporters to reduce?
To translate image, sound, music, touch
from the speech passed through the wires?*

Describe a place you see
when you close your eyes at night:
Name a piece of music that is
always running through your head:
Describe your favorite piece of clothing
you've ever owned:
If all the sights, sounds, sensations, and activities
that have disappeared from your life
since you entered the system,
which do you miss the most?
How long do you think it will be

*I want to trade in your everyday
The forgotten banalities of forgotten days
Memories that seep from beneath the corners
of peeling picture-postcards.*



*How else to understand, I think,
how much alike we were?
You smiling, a little tired,
as you handed me
the smiling coffee
Me smiling, a little tired,
as I handed you
the stern dollar bill.*



Mariam Ghani - Brooklyn, NY - 2004

By proposing new terms through which stories can be told and issues framed, our collaborative visual project – drawing from an ongoing collaborative inquiry into the human cost of US immigration policy – aims to make critical interventions in how narratives of disappearance are produced on all sides of the US immigration debate. We explore two key features of disappearance: the mass immigrant detentions and deportations sweeping the US since 9/11/01, and the radical limitation of representation, by both law and mass media, of the immigrants who are caught in the system.

Over the past few years, immigrants and their advocates have come to understand how gag orders, media stereotypes and convenient abstractions hang like a veil between people directly impacted by detention and deportation, and the majority whose silence consents to the disappearances. The struggle to generate a collective history of individual disappearances has therefore been at the core of activist initiatives addressing this crisis.

However, much of the advocacy work around detention and deportation is mobilised through the law or mass media itself. Thus, narratives of resistance assembled by that advocacy risk being subjected to the very codes and language they seek to contest. For example, the recurring use of directed testimony, statistics and expert witnesses in activist documentaries about detention and deportation both recall courtroom dynamics, and reiterate the pundit-driven rhythms of network news. Our work departs from this understanding of the situation of post-9/11 disappearance, where individuals are 'disappeared' for a second time in the scarce and troubling visual representation offered as their history in mass-mediated and legal domains. Our artistic inquiry thus exists in continual tension between collaboration with the activist movement towards a collective history, and an effort to reconceptualise the terms through which that history is now addressed.

We seek to mine the rich possibilities of the visual as a site where audiences come face to face with the specific details of lives that are impacted by post-9/11 disappearance, but must also engage with the core cultural and systemic breakdowns that lie beneath current events. Our common belief is that this deeper awareness can be activated by a commitment to form as content, and a profound engagement with the medium and materials through which the ideas of political art are communicated. Through transmutations and deconstructions that re-orient viewers' perspectives, we hope to produce unexpected visual experiences that trigger a reconsideration of social codes and histories.

In this project, we collect from the everyday past lives of the disappeared the unquantifiable data which otherwise goes unnoticed. We create a space for this information to be read and considered without being reduced; we do so by framing it within intersecting nonlinear narratives where meaning is produced in both the convergence and disjuncture between text and image. This project shares concerns that are at the heart of our practices: an interest in exploring how memories and their repression shape moments of personal and social crisis, and the mapping of contrapuntal narratives that emerge in the border zones between cultures in conflict.

Through this active translation of 'raw data' and formal choices that disrupt conventional modes of seeing, the *Disappeared* project aims to elaborate a visual language that truly resists the descriptive and narrative conventions and one-to-one relationships accumulated in the legal and media treatment of detention and deportation cases. Our belief is that only through a visual language of resistance can a more nuanced representation and sharper analysis be articulated.

Dreams and Disguises, As Usual

RAQS MEDIA COLLECTIVE

"Fantômas".
"What did you say?"
"I said: Fantômas".
"And what does that mean?"
"Nothing...Everything."
"But what is it?"
"No one...And yet, yes, it is someone!"
"And what does this someone do?"
"Spread terror!"

(Opening lines of *Fantômas*, the first novel in the *Fantômas* series by Pierre Souvestre and Marcel Allain, popular in early 20th-century Paris)

In a painting titled *Le Barbare* (The Barbarian) (1928), René Magritte showed what seemed to be the shadow of a masked man in a hat. The shadow is seen against a brick wall, and it is unclear whether it is appearing or fading away. Magritte, always particular about the eccentric rhetoric of his practice of representation, was careful enough to have a photograph of himself (in a hat) taken next to this image. His face, quizzical, makes us wonder if he is keeping secrets from us.

There are two particularly interesting things about this image: first, that it should be called *Le Barbare*, and second, that it is not in fact the first or even the last appearance of a hat, or a man in a hat, in the work of Magritte. Men in hats, and hats, crowd the images made by Magritte. They refuse to go away.¹

Perhaps one of the secrets that Magritte keeps in this image – paraphrasing the title of another of his paintings – could be that just as the image of a pipe is not a pipe, so too, the image that suggests a suave, urbane man in a hat is actually of someone else.

The shadowy visage in a hat in *Le Barbare* belongs to the figure of Fantômas,² the archetypal and perhaps primal urban delinquent, the 'lord of terror', the master of disguises who appears and disappears, takes on many personae, and refuses ever to be identified. In this text we seek to continue the dialogue that Magritte began with the shadow of

Fantômas, and to investigate what it means to conduct a dalliance with the imperative of identification.

The imperative of identification, and its counterpoint, the dream of disguise, are impulses we find as central to the story of our times as a threatened assassin, or a murderous corpse, or a missing person who leaves no trace, are to an obstinately intractable pulp fiction potboiler.

In *L'Assassin Menacé* (The Threatened Assassin), another of his paintings from the same period, Magritte shows Fantômas attentively listening to a gramophone beside the corpse of his female victim, unaware that two detectives in bowler hats are hovering outside the door with a net and cudgel, even as similarly attired voyeurs peer through the window. It takes a while to figure out that that all of them, murderer, corpse, police and spectators, are the same person. The question as to which one is the 'real' Fantômas refuses, like a recalcitrant cadaver, to lie low. Magritte's fascination with a tableau in Louis Feuillade's third Fantômas film *Le Mort qui Tue* (The Murderous Corpse) is evident in the composition of this picture.

This dialogue with the figure of Fantômas that Magritte initiated was a thread that ran through much of his work. In one of his occasional fragments of writing, titled *A Theatrical Event*, Magritte outlines the following arresting scenario: Fantômas the quarry, and Juve, the detective in pursuit, mesh into each other as disguises, reveries, pursuit, the loss of identity, and the impossibility of capture (except through self-disclosure) are woven together.

"...Juve has been on the trail of Fantômas for quite some time. He crawls along the broken cobblestones of a mysterious passage. To guide himself he gropes along the walls with his fingers. Suddenly, a whiff of hot air hits him in the face. He comes nearer...His eyes adjust to the darkness. Juve distinguishes a door with loose boards a few feet in front of him. He undoes his overcoat in order to wrap it around his left arm, and gets his revolver ready. As soon as he has cleared the door, Juve realizes that his precautions were unnecessary: Fantômas is close by, sleeping deeply. In a matter of seconds Juve has tied up the sleeper. Fantômas continues to dream – of his disguises, perhaps, as usual. Juve, in the highest of spirits, pronounces some regrettable words. They cause the prisoner to start. He wakes up, and once awake, Fantômas is no longer Juve's captive. Juve has failed again this time. One means remains for him to achieve his end: Juve will have to get into one of Fantômas's dreams – he will try to take part as one of its characters".³

Fantômas continues to dream of his disguises, perhaps as usual, and the pursuer will have to get into the dreams of the pursued, he will have to participate as one of its characters...the disguise may blur the line between Fantômas and Juve.

In the original *Fantômas* novels, Fantômas was at the very centre of a gang of 'barbarians' who lurked in Paris, called 'The Apaches'. It is as if his wearing the accoutrements of bourgeois civility, the hat, the coat, the occasional umbrella or walking stick, was a careful disguise, a combat camouflage cloaking a raging, rampant otherness.

While it throbbed closer than the jugular vein of the modern metropolis of advanced capitalism, it was at the same time at its farthest remove. Fantômas is a barbarian in a hat, or an impostor waiting to be recognised.

Looked at in another way, the disguise of the man in the hat and the overcoat is the only effective passport that the 'barbarian' can have into the world enclosed by the modern citadel. The disguise is a means to travel from a world apparently in shadow, to a world where the sharp glare that brings visibility in its iridescent wake is not without the threat of capture and confinement.

The liminal zone where roles can be rehearsed, different patois perfected, the various grades of personhood that lead up to the man in the hat and the coat tried on for size, the turban or the loincloth discarded, is a waiting room. One awaits one's turn to go into the arc lights.

The figure of a person biding time in a waiting room helps us to imagine the predicament of people living in societies often considered to be inhabiting an antechamber to modernity. In such spaces, one waits to be called upon to step onto the stage of history. Most of the world lives in spaces that could be designated as 'waiting rooms', biding its time. These 'waiting rooms' exist in transmetropolitan cities, and in the small enclaves that subsist in the shadow of the edifices of legality. There are waiting rooms in New York just as there are waiting rooms in New Delhi, and there are trapdoors and hidden passages connecting a waiting room in one space with a waiting room in another.

Fantômas is a denizen of these spaces. Which is why he appears in Mexico City, in Calcutta, in Caracas, and why he, before Superman or Batman, found his way into short stories, comics, novellas and films in languages spoken in places as far away from Paris as possible. If the 'Apaches' brought Fantômas with them to Paris from some forsaken wilderness, then Fantômas travelled right back to the places where he came from to the urban nether lands of places that had not yet made it in the map of arc-lights.

The passage from 'waiting rooms' to the 'stage' often requires a person to go through intense scrutiny. This happens at airports and borders. It also happens in streets, homes and workplaces. The art of the impostor becomes a guide to survival for people negotiating this rough passage. Waiting Rooms everywhere are full of Impostors waiting to be auditioned, waiting to be verified, waiting to know and to see whether or not their 'act' passes muster.

The Impostor is an exemplar for a kind of performative agency that renders a person capable of expressing more than one kind of truth of the self to the scrutiny of power. The figure of the impostor offers a method of survival that meets the growing intensification of scrutiny with a strategy based on the multiplication of guises and the amplification of guile. At the same time, the term Impostor is also an accusation. One that power can fling at anyone it chooses to place under scrutiny. It is this double edged-ness, of being a way out as well as a trap, that lends it the capacity it has to be a heuristic device uniquely suited for a nuanced understanding of a time in which criteria such as authenticity, veracity and appropriateness take on intense, almost paranoiac dimensions in the conduct and governance of life's most basic functions. As a concept, the 'impostor', like the 'waiting room', can signify both thresholds meant for quick, sportive and easy crossing, portals into

unpredictable futures, that come laden with the thrill that only unintended consequences can bring, and, for some, a bleak and eternal purgatory tinged with its own peculiar anxiety, distrust and fear.

The Impostor figure also comes to us by way of another lineage, one closer to home than the bleak sky of Magritte's Brussels and its drizzle of bowler-hatted men. We speak here of the tradition in northern and eastern India known as *'bahurupiya'*. A *'bahurupi'* is a person of many forms and guises, a polymorph, a shape-shifter, a fantastic masquerader and pantomime, a primal *'Fantômas'*. The *'bahurupi'* make their living by masquerade, by the performance of different roles by itinerant practitioners, for the entertainment, edification and occasionally, defrauding of the general public. They might dress up one day as a god, another day in drag; one day as a holy mendicant, another day as a monkey, and a third day as a somewhat comical police constable – and expect to earn money by merely turning up at doorsteps, or hanging around in public spaces, and being offered money or food or shelter in exchange for nothing more than a glance, or a brief stare. Here, disguise, and a degree of necessary ambiguity about the self is a way of life, a calling, a means of subsistence and ordering in a world otherwise deeply invested in certitude.



What lies at the origin of the distinction between the 'citizen' (and here we mean also the 'world citizen' who feels at ease and has a sense of entitlement everywhere) and the person who neither belongs nor feels entitled to belong to a city, or state, or the world at large, a person who is in the wrong place at the wrong time for the wrong reasons, everywhere? When does a class of people begin to think about the distinction between themselves and others in terms that require barriers to the circulation of presences? What makes them arrogate to themselves the status of being the exclusive subjects of history?

What is it about the spaces of vanguard capitalism that produces the peculiar anxiety of the contamination of its sanity, or its sanitarianess, by the uncomfortable proximity of that which lies outside it or perforates it with an insisting presence? Why is that which itself is so invasive so afraid of contagion?

Or, as Magritte might have it: Why is Juve so afraid, and of what? Of *Fantômas* – his quarry – or of his own reflection or shadow?

This inchoate fear is underpinned by a furiously-held telos of manifest historical development, which both demands, and provides the wherewithal for, the construction and enforcement of hierarchical taxonomies of people, space and ways of living and being – of those who have 'arrived' onto a notional centre stage of human achievement, and others that have been made to leave the stage, or are yet to make an appearance.

Those who have left the stage, or who are yet to make an appearance, are consigned to the waiting room of history, a notional antechamber in relation to the notional centre stage. And as the figure of the 'citizen' tests his paces, he also becomes confident that he cannot be upstaged so long as the motley restless crew in the waiting room is deemed 'alien'. As long as the denizens of the waiting room are seen as unconvincing in their claim to a place in the arc lights, the figure of the citizen can stay on stage.⁴

But citizenship too is a template and a score, much more than it is an actual human



condition. And an exacting template at that; the successful performance of which is always a matter of an ongoing test. One achieves citizenship, one loses it, one's performance is either applauded or it fails to live up to the demands, requirements and standards that accrue to it. To live with these conditions is to be always on trial, to know that in the eyes of the examining authority one is always, and necessarily, an impostor, unless proved otherwise. It is to know that one has to carry one's credentials at all times and that identities must be produced when they are asked for.

The bargain that is struck at the very heart of our times is the understanding that for the citizen, for the legal, for the authorised version and the eloquent oxymoron of the 'true copy' to be understood as such, the apparatus of authentication requires the lengthening shadow of the implied 'offstage' presence, or menace, of the 'alien' being, the unlawful act, the fake item, the impostor, as someone or something that anyone or anything can be shown up to be. This is why the chase never comes to an end. The eye of the state always stays open lest the impostor slip by and disappear into the night and fog of the city and its shadows.⁵

Juve must enter the dream of Fantômas to learn to distinguish himself and the part that he has to play.



A girl and her brother enter a deserted military airstrip – an overgrown concrete and tarmac ruin of a recent but already forgotten war, where rusting fighter planes lie scattered and waiting as if for the return of their dead pilots. The girl traces a path that the cracks in the tarmac make with her steps, into the wind that suddenly blows in a terrifying vision of Kali, the goddess of destruction, who towers over the small child on the desolate airstrip. The girl stands frozen, struck dumb with fear. Her brother rushes in, discovers that the goddess is only a *bahurupi*, a thin itinerant impostor with a scowl, a set of wooden goddess arms, tinsel weapons and a garland of *papier mâché* skulls. He asks the impostor angrily who he is and why he must scare children so. The *bahurupi*-impostor-goddess replies, "I did nothing; she came in the way".

This fragment of film, the '*bahurupi* in the airstrip' sequence in Ritwik Ghatak's Bengali film *Subarnarekha* (The Golden Thread, 1965), is laden with strange encounters. A terrifying yet banal masquerade interrupts a child's exploration, a girl crosses the path of a goddess, a military airstrip built in World War II invades a remote corner of Bengal, rust, time and the obstinate fertility of vegetal undergrowth encroach upon and encircle the abandoned airstrip and its forgotten fighter aircraft. Everything comes in the way of everything else. Collisions bring collisions in their wake. The girl, her brother, the goddess, the impostor, the airfield, the aircraft, the undergrowth – all seem to be saying, at once, "I did nothing, she came in the way".⁶

When two worlds collide, one asks the other, "Who are you and what are you doing in my space?" Usually, the question brings with it an assumption that the questioner has the authority to ask it in the first place, and the confidence or the knowledge that space, and the means of circulation, can also be property. That the 'space' is his to enable the asking of the question to the person immediately categorised as the interloper, the encroacher,

the not-quite-the-right-thing or right-person-in-the-right-place. Usually, what is being asked for is an explanation for what is seen as a trespass. When two worlds, or spaces, or beings or things collide in the course of their trajectories, and one is cast as the trespasser, there is a clear understanding that only one of them can have the right of way.

The itinerant *bahurupi*-goddess-impostor, and the military airstrip. Which is the trespasser? Why is the sudden apparition of the goddess of destruction in an abandoned theatre of war so strange and so natural at the same time? Is she encroaching, or is she staking out her own territory? Is she in the way, or is everything else in her way?

Who must give way?

The building of a military airstrip or a highway or a dam or a resort or a housing estate sanctioned by a masterplan can suddenly turn people into trespassers, and their way of life into a culture of trespassing. The masterplan has the right of way, as well as the means, to translate that fact into real control over space and circulation.

Sometimes this means that the inhabitants-turned-trespassers make themselves invisible, that they disappear into the cracks and folds of the plan; that they pretend that they are not there. They become impostors of absence, actors of vanishing acts. Sometimes it may mean that the trespassers may be present and visible and pretend to be what they are not, and that it is they who have the right of way. This makes them impostors of presence, pretenders in place.



Many contemporary methods of spatial intervention necessitate the hollowing out of ways of life, ecologies and habitation practices from a space, and then filling it in with a one-size-fits-all imagination. Architectural plans, interior design catalogues and real estate brochures determine the 'value' of a location. To have a design on space is half the battle won in terms of the possession and control over that space.

Everything that is in the way – people, settled practices, older inner cities, nomadic routes, and the commons of land and water – disappears into the emptiness of the un-inked portions between the rectilinear inscriptions on the surface of the masterplan. As masterplans cordon off greater and yet greater swathes of space, they begin to come up against each other, leading to meta-masterplans that stitch different masterplans together, until more and more stretches of territory end up looking and feeling like clones of each other. The suburb, the gas station, the condominium, the supermarket, the highway, the underpass, the airport, the parking lot, the leisure centre, the school, the factory, the mall, the barbed wire fencing that protects and controls a plot of land from trespass, are the alphabets of a urban language that end up making the same statement everywhere, as the masterplan considers what it sees as waste land, or that which in its view is an urban *terra nullis* – "It was in the way".

What is it that disappears when the ink on the plans has dried?

Millions of people fade from history, and often the memory of their disappearance also fades with time. With the disappearance of ways of life, entire practices and the lived experiences and memories that constituted them vanish, or are forced to become something other than what they were accustomed to have been. When they make the effort

to embrace this transformation, typically what stands questioned is their credibility. They are never what they seem to be, or what they try to say they are. The annals of every nation are full of adjectives that accrue to displaced communities and individuals that begin to be seen as cheats, forgers, tricksters, frauds, thieves, liars and impostors, as members of 'criminal castes, tribes and clans' or as deviant anomalies who habitually attempt to erode stable foundations with their 'treacherous' ambiguities and their evasive refusal to be confined, enumerated, or identified.

These 'missing persons' who disappear, or appear with great reluctance, with their names, provenances, identities and histories deliberately or accidentally obscured in the narratives of 'progress' and the histories of nation states, are to the processes of governance what the figure of the 'unknown soldier' is to the reality of war. The only difference is that there are no memorials to those who fade from view in the ordinary course of 'progress'. The missing person is a blur against a wall, a throw-away scrap of newspaper with a fading, out-of-focus image of a face, a peeling poster announcing rewards for wanted or lost people in a police post or railway station waiting room, a decimal point in a statistic, an announcement that some people have been disowned or abandoned or evicted or deported or otherwise cast away, as residues of history. No flags flutter, no trumpets sound, nothing burns eternal in the memory of a blur.

The blur is not even an image that can lay a claim to original veracity, but a hand-me-down version of a reality that is so injured by attempts at effacement that only a copy can have the energy necessary to enable its contents to circulate. The patchwork of faded fakes, interrupted signals, and unrealised possibilities, which does not read well and which does not offer substantive and meaningfully rounded off conclusions, is sometimes the only kind of manuscript available to us.

Our engagement with the Impostor is an attempt at coming face-to-face with this world. We would like to do so in a manner that makes anxieties about 'who comes in the way of the reading' appear, at the very least, superfluous, and at best, attenuated, by a desire to listen to stories (and histories) that some might consider incomplete. We are beginning to recognize that we ourselves might appear, occasionally in them, occasionally against them.



The collision of worlds (that happens, for instance, when an empire-building sensibility suddenly stumbles upon its grand object, the colony-to-be) is fraught with the trauma of the dispersal of the assumed monadic unity of the self, even of the one we presume to be the victor. The impostor always lurks in the shadow of the unknown to claim the territory of the unsuspecting self, even if that self comes attired as a world conqueror. Sometimes, it is the notion of the unitary, monadic self, with its unique unassailable identity (its 'it-ness', which it witnesses solemnly to itself), that constitutes the biggest obstacle: the fundamental scotoma that makes the image in the mirror so opaque and so elusive at the same time.

The early epoch of the ascendancy of the English East India Company (when it was still a minor 'Indian' power jostling with the Marathas, the Sikhs, the Hyderabad Nizamate and Mysore Sultanate, and the French and Dutch East India Company for slices of the crumbling Mughal imperial cake) in the late 18th- and early 19th-century India, is full of English, Scottish

and Irish adventurers turning their backs on Albion and embracing, to the horror of their superior officers, what were called 'native ways': converting to Islam, renouncing the world and becoming itinerant holy men, or thugs, cohabiting with Indian women (and on occasion with Indian men), siring 'half-caste' children, endowing temples and mosques, wearing turbans and tunics after the prevailing Mughal fashion. Sometimes they even forget the English language.

Their counterparts within the 'native' populations of the presidency towns of Calcutta, Bombay and Madras make moves in the other direction. Young men full with the heady intoxication of strangeness learn to wear hats and clothes that make little sense in humid weather, break dietary taboos, cross the seas, become fervent Christians, learn to write sonnets, fall in love with English women (and occasionally men), becoming in every way possible, '*sahibs*'. The word '*sahib*' in Persian, Urdu, Hindi, Bengali and Marathi, meant 'master', or 'lord', but also began shading off at about this time into standing for the white man. In the long torrid summer that stretched over decades while the Mughal Empire dissolved under its own weight, until the conflict of 1857 finished the careers of both the last Mughal emperor and the East India Company, white Mughals met brown *sahibs*, while xenophobic Englishmen and new, nervously nationalist elites denounced them both as impostors.⁷

The edifice of Empire, which relied so heavily on the adventures of impostors to lay its foundations, also required their marginalisation. The normalisation of the state of power requires new garbs, even a new dress code; a new script and new persona that can help better distinguish the rulers from the ruled. It required new impostors, broken from a different mould. George Orwell speaks of "well-meaning, over-civilised men, in dark suits and black felt hats, with neatly rolled umbrellas crooked over the left forearm" who, sitting in Whitehall, could rule the world with their mastery of the global network created by the telegraph. They had made the earlier phase of empire building, the adventurous career of going east of Suez to discover a new self, redundant, ridding the world forever of the confusing 'White Mughals', and situating in their place, clones of themselves whenever it became necessary to impose "their constipated view of life on Malaya and Nigeria, Mombasa and Mandalay".⁸

With the ascent of the man in the hat, the Empire may have lost something by way of its shine, its élan and its energy, but it gained a great deal in staying power. And the apparatus of mature Empire stayed intact far beyond the accidents of changes in the pigmentation of those who grew to rule. Over time, the shape of headgear may have changed to that of a white cap that looks like a lopsided, upended boat. The cut and the cloth of the coat may have undergone transformations, Colonial cuts may have given way to Nationalist styles, even as the dull khaki of the blunt edge of power retained the hue of the dust of hot places. What remains constant is that something is marked as the costume of rule, the dress suit or uniform of the master, the leader, the office, the '*sahib*', the '*neta*' (leader). This too is an imposture. But it is a guise marked by the verifying authority of power. An attested true copy.

In modern, republican nation states, power is a function of representation. This is as true of states normally thought of as democratic as it is in states where a single centre of

power (an individual, a family, a party, a military elite) holds power, metaphorically, 'in the name of the people'. The legislator, the tribune, the one who makes law, represents the populace.

We can think of this as an aesthetic problem. More specifically, as a visual, even an ocular problem. Whenever the question of representation appears, we know we are speaking of a likeness, a 'fit' between an object and its image, its referent. The representative of the people is also a likeness of the abstract generality of the people. This likeness between the citizenry and its representatives is always a question plagued by provisionality. Features alter: power gains adipose, loses hair; the citizen sometimes grows pale and thin.

How then does the figure of the citizen acquire a semblance of stability? How do the various ambiguities and inconsistencies, the combination of historical and biographical accidents that make up a life, cohere to form a uniform, monovalent image and narrative? How does the person moult into the citizen? How do the various performative stances and experiential realities that add shades and depth to personhood lose rough edges and find points of equilibria that can yield the regularity and predictability necessary to the figure of the citizen? How does a person become a political entity capable of being represented?

What garb, which guise, which face, is required for the ruled?



The production of the citizen is, among other things, an exercise in the making of a face. Just as the skilful operation of a forensic identikit system can help reconstruct the face of an unidentified, missing or wanted person that can then be printed on 'Hue and Cry' notices and stuck on all the messy surfaces of a city, so too, the apparatus of identification that is necessary for the maintenance of governmentality must register, record and reconstruct the figure of the citizen from a mass of inconsistencies.

The tension, however, between the image and its shadowy referent, between the identikit photo and the missing person, remains. This tension between citizens and denizens, subjects and aliens, is historically resolved through the approximation of a person's visage to an administrable image of the citizen. The passport, the identification card, the police record, the census datum and the portraits that these instruments build of personhood, are key to this. The frontal portrait makes a claim to be the distillate of truth. This reduction is all that is necessary for him or her to be known as a person with a valid claim to be in a place; all else is superfluous. The man in a bowler hat is a man in a bowler hat. Correspondingly, the barbarian, the alien, the pretender, must be unmasked.⁹

This necessarily involves an operation on and with images. These images may be photographic likenesses or biometric codes or iris scans or fingerprints, but in essence they are the condensations of personhood in a manner that lends them to being distilled by the apparatus of power.

Consider the formal compositional and aesthetic requirements of portraiture as laid down by a United States passport or visa application form.

A passport photograph, in duplicate, must be as follows:¹⁰

- 2x2 inches in size
- Identical
- Taken within the past 6 months and showing current appearance
- Full face, frontal view with a plain white or off-white background showing all facial features
- Brightness and contrast should be adjusted to present the subject and background accurately
- Photos without proper contrast or color may obscure unique facial features
- Color should reproduce natural skin tones
- Fluorescent or other lighting with unbalanced color may cause unwanted color cast in the photo
- Appropriate filters can eliminate improper color balance
- Between 1 inch and 1 3/8 inches from the bottom of the chin to the top of the head
- Taken in normal street attire

The rigour of this aesthetic stems from the subjective methods that uninformed citizens would generally employ in the earlier half of the 20th century while sending in photographs of themselves for passports and other identification documents. Cut-outs from family albums or reframed tourist snapshots, in which people smiled or otherwise expressed emotion, made it difficult to affix the face in the stable configuration of features so critical for quick and easy identification. The formal style of the 'passport photo', which then becomes a generic template for all images made for the purposes of identification, emerges from the dissatisfaction that identification apparatuses had with thousands of instances of incidental and unintentionally ambiguous self-portraiture.

In a statement to the London *Times* in the year 1957, Miss Frances G. Knight, Director of the United States Passport Office, said that "people looked thug-like and abnormal when sitting for their passport photographs".¹¹

Ironically, this 'thug-like and abnormal appearance' stemmed from the effort to stabilise the visage in passport photographs. The very subject produced through a system geared towards the generation of greater credibility appeared, at best, suspect. Fantômas rears his head again. The man in a hat is actually a barbarian, and the more he tries to hold on to his hat, the more savage he appears.

More recently, another newspaper report on the introduction of new biometric passports in the UK says:

"Under new security measures all mugshots must in future 'show the full face, with a neutral expression and the mouth closed'. The advice is being sent to all applicants before the introduction next year of 'ePassports', which make it harder for terrorists and criminals to get hold of fake passports. The facial image on the photograph will be incorporated in a chip, which will be read by border control equipment. But the high-tech machines need to match key points on the face – a biometric – and this only works if the lips are closed...An open-mouthed smile will throw the scanner off'.

Eyes must be open and clearly visible, with no sunglasses or heavily-tinted glasses and no hair flopping down the face. There should be no reflection on spectacles and the frames should not cover the eyes. Head coverings will only be allowed for religious reasons. Photo booth companies, which supply most of the pictures for passports, have been required to update their equipment to ensure they are acceptable. Existing passports are not affected but the new rules will have to be followed when they are renewed...

Most people already think they look miserable enough on their passports. There is an old joke that if you look anything like your photograph, then you need the holiday. A survey of 5,000 Europeans last year suggested the British were among the most embarrassed by passport photos. It found that a fifth of Britons were so uncomfortable with their images that they hid them from their families".¹²

The passport, the ID document, is a script, the border is an audition, a screen test, an identification parade, a drill that you practice and never quite get right. Like the random slippage between a North Indian and a North American accent in the voice of a call centre worker in New Delhi talking to New York, the slippage reveals more about a person than the desperate attempts to maintain a flawless performance.

That slip, between who you are and 'more' of who you are, accompanies you as a possibility in all your waking and dreaming moments. Fantômas too inhabits Juve's worst nightmares. That slip in the accent, that gust of wind that blows the hat away, that blows your cover, is the give-away that won't let you go through. The spectator who is the policeman who is the assassin who is the corpse who is the god who is the prisoner who is the animal who is the man in a hat with a stick and an overcoat and the transposed head of a donkey... You move between one and the other. Your moves takes you back into the waiting room. Where can you, and your terror, of being everyone and no one, of being everywhere and nowhere, of being the *bahurupi* and the mug shot, Fantômas and Juve, belong?

René Magritte keeps his secrets. So must we.

This essay was earlier published in the catalogue to the installation "The Impostor in the Waiting Room" by Raqs Media Collective, shown at Bose Pacia Gallery, New York, Nov-Dec 2004. Catalogue Series: BP Contemporary Art of India Series, Volume 21. www.bosepacia.com.

The images accompanying this text are taken from the installation. Installation Credits - Performance: Arjun Raina; Design: Mrityunjay Chatterjee, Pradeep Saha, Rana Dasgupta; Video/audio editing: Iram Ghufuran; Masks: Nataraj Sharma; Production: Ashish Mahajan. Produced at the Sarai Media Lab, Delhi.

NOTES

1. The figure of a man in a hat first appears in an image called *The Menaced Assassin* in 1926, and re-appears several times, including in *The Usage of Speech* (1928), where two men in bowler hats speak the words 'violet' and 'piano', in *Les Chasseurs de la Nuit* (1928) where a man in a hat with a rifle slung across him is seen as if leaning against a wall with his companion, another gunman, both with their backs turned towards the viewer, in *The Therapist* (1939) and *The Liberator* (1947) where he appears with a cloak and a walking stick, in *The Return of the Flame* (1943) where

the man in a hat looms across a burning city, in *The Man in a Bowler Hat* (1964), with a dove flying across his face, in *The Time of Harvest* (1950), and its variant *The Month of the Grape Harvest* (1959) where the man in a bowler hat is an assembly line prototype, an edition made in multiples, in *The Song of the Violet* (1951) where two men in hats, one with his back to us, and the other profiled, stand petrified, in *Golconda* (1953), where it rains bowler-hatted men from the sky, and in *The Schoolmaster*, and its triune variant *Les Chef d'Oeuvres* (1954-55) where the man/three men appears with his/their back(s) to us against a sea, under a crescent moon, in *The Presence of Mind* (1960), framed between a falcon and a fish, and finally, in *The Son of Man* (1964), which Magritte did tag as a self portrait, where the hat-wearing man's face is obscured by a green apple.

The hat appears independently in *The Reckless Sleeper* (1927) and *The Interpretation of Dreams* (1930), along with motley other objects, and it appears as if the man has momentarily lost his hat while looking at a mirror (where he sees himself as an frontally inverted reflection) in *Reproduction Prohibited: Portrait of Edward James* (1937).

2. For more information on Fantômas, his career as a character, and his remarkable influence on 20th-century *avant garde* literature, art and cinema, see the website dedicated to the Fantômas phenomenon <http://www.fantomas-lives.com>
3. From *Magritte*, tr. Suzi Gablik (New York Graphic Society, 1976, Boston).
4. The 'waiting room' of history is a metaphor used most eloquently by Dipesh Chakrabarty, who in *Provincializing Europe* discusses the importance for people outside Europe, and the metropolitan West, of stepping outside the trap of considering themselves forever to be 'waiting' for the arrival of the contemporary moment, even of modernity itself. See Dipesh Chakravarty, *Provincializing Europe: Post Colonial Thought and Historical Difference* (Princeton University Press, 2000); also, "Alternative Histories: A View from India", Shahid Amin, SEPHIS - CSSSC Occasional Papers (2002).
5. The 'Impostor' figure, particularly the notion of the state treating its subjects as impostors unless proved otherwise, was suggested to us by a reading of Partha Chatterjee's usage of the trope in his recent book *The Princely Impostor: The Strange and Universal History of the Kumar of Bhowal* (Princeton University Press, 2002).
6. *Subarnarekha*, dir. Ritwik Ghatak, produced by J. J. Films Corporation, 1965. For more about *Subarnarekha*, see <http://www.upperstall.com/films/subarnarekha.html>
7. In *White Mughals: Love and Betrayal in Eighteenth Century India*, William Dalrymple looks at the phenomenon of cultural and physical miscegenation during this period (Harper Collins, 2003).
8. To read the full text of "The Lion and the Unicorn: Socialism and the English Genius", see <http://www.george-orwell.org/>
9. For an exhaustive history of the Bowler Hat, see Fred Miller Robinson, *The Man in a Bowler Hat: His History and Iconography* (University of North Carolina Press, 1993). For an interesting online profile of the Bowler Hat, and a very arresting image of a crowd of bowler-hatted men, see <http://www.villagehatshop.com/product1687.html>
10. For guidelines on the specifications for correct composition, lighting, exposure and printing of photographs of US passport and visa applications, see the website of the US State Department Passport and Visa Photography Guide <http://travel.state.gov/visa/pptphotos/index.html>
11. Quoted in Martin Lloyd, *The Passport: A History of Man's Best Travelled Document* (Stroud, Sutton, 2003).
12. Philip Johnston, "Look Miserable to Help the War on Terrorism". In *The Telegraph*, London, 06/08/2004.

Trespasses of the State

Ministering to Theological Dilemmas through the Copyright/Trademark

NAVEEDA KHAN

This is part of my ongoing work on Pakistan. Let me briefly locate it so you may see that I approach Pakistan neither through cynicism nor nostalgia, which are the usual scholarly modes, but through disappointment. This inclination is not mine alone, but shared by many amongst whom I worked in Lahore. It is necessary to state this at the outset because I see disappointment as an important mode by which dissent is expressed; I see it as a mode of turning away from the Pakistan that exists, towards the Pakistan that can be. It is precisely by engaging with variegated expressions of disappointment that my work excavates the pedagogical project to forge modern Muslims with which Pakistan came into being in 1947.

This project simultaneously exalted and feared the capaciousness of the Muslim to 'become'. Yet, at the same time, it appeared to accept limits of knowledge on who is a Muslim. I see the subsequent exclusion of the Ahmadiya (a Muslim sect of 19th century origin) from the fold of Islam through a constitutional amendment in 1974 as an attempt to transcend the limits of this knowledge. [Who the Ahmadis are will become clearer over the essay, but to briefly introduce them: it was anti-Ahmadi sentiments that incited the public to riot in the early 1950s in Pakistan, leading to the imposition of martial law in Lahore in 1954. This was the first, perhaps the most portentous, intrusion of the army into civilian life. This event marks the significance of the Ahmadis to the history and the pedagogical project of becoming Muslim in Pakistan.]

That the state attempts to transcend the limits of its knowledge regarding who is a Muslim should not come as a surprise. But the modalities by which the state tries to do so are of some interest. Emergent legal genres, notably the copyright and the trademark,¹ are made to reach beyond themselves, to poach upon their futures, to minister to doubts over who is a Muslim. Here I will track several movements of the copyright/trademark in late-20th century Pakistan: (1) their prefiguring within a culture of pious imitation specific to Islam; (2) their emergence within Pakistani courts struggling to give expression to the 'Ahmadi problem' within the limits of positive law; and (3) the imagination of the Muslim as both a rights-bearing subject and as an object of licensing and verification that the copyright/trademark enables. I hope these movements will elucidate the seduction of transcendence, particular to Islamic modernity, in Pakistan. At the same time, this

invocation of the copyright/trademark is not without some innovation on part of the Pakistani state. It is a sign of its restless trespasses to actualise its pedagogical project of becoming Muslim, even if this is done by curtailing the fold. I conclude by returning briefly to how disappointment as a mode of being may allow a recuperation of these trespasses by the state, even at the register of the potential, that is, the not yet/yet to come.

Prefiguring

To say that the copy is central to the Islamic tradition is in some ways to state the obvious. The importance Muslims give to the Quran makes its faithful textual copy through the work of scribes and of *hafiz-e-Quran* (inscribing the Quran upon their minds and bodies) commensurate in sacredness to the original Ur-text. However, we have to be careful not to read 'copy', understood in its modern sense as a mass-produced object co-emergent with, yet marking a break from, the original aura-saturated object (*pace* Benjamin, 1968), into a tradition that values pious imitation. The Prophet Muhammad is the model for emulation, and not copying, for all Muslims. The *insa'an-e-kamil* (the perfect person) strives to embody the Prophet in appearance and behaviour, the proper alignment of interiority and exteriority being key to this pious imitation.

Yet, modern discourses of the copy, i.e., the play of values between the original and the copy, do intrude upon this culture of pious imitation. In each of the three legal judgments I will discuss, from 1978, 1985 and 1993 respectively, there is a moment in which the judges, having exhausted all theological and legal arguments as to why Ahmadi claims upon the title of 'Prophet' and of 'Muslim' are misguided, ask whether the Ahmadi attempt to 'pass off' as Muslims can be considered a bad copy of the original. Can this constitute (further) grounds for their enforced separation from Islam?

In this mode of questioning I see a prefiguring of the copyright/the trademark. But before we plot the actual emergence of the legal genres and how they are made to apply to the accretions of a religious tradition with a vast following, let me briefly locate the Ahmadiya within the field of Islam and its culture of emulation, with a vocabulary finely attuned towards determining degrees of belongingness within this community.

Islamic history, as related by its interlocutors (Friedmann, 1987), is a story of decline, of the degeneration of a perfectly realised community around the Prophet to an atomised one in which the individual Muslim is reliant upon his/her own capacities to lead a correct life within a largely corrupt world. With little recourse to divine guidance, the prayer and the dream are the few authorised ways one may feel the presence of divinity. However, even extreme absorption into these modes of being augurs madness. The mystical tradition has perhaps the most developed pathways to the divine. The initiate can tune himself/herself to receive divine guidance and, as the veils fall away through rigorous spiritual exercises, can move closer to the force of divine will. Yet, throughout Islamic history the initiate who claimed to have merged with the divine or have moved into the position of the beloved of the divine (in the manner of the prophets) has been dealt with severely. The Ahmadiya may be seen as an expression of this messianic strain within the Islamic tradition, an attempt to re-birth and re-experience revelation in the contemporary world. Mirza Ghulam Ahmed, the founder of the movement, claimed himself to be a

prophet in the Islamic and Christian senses and, on occasion, an avatar of Krishna in the Hindu sense.

Yet what nature of prophet was he? Each of the judgments I discuss goes into great detail in evaluating Mirza Ghulam Ahmad's claims to be a prophet. This detail is worth laying out for delineating the shadow lands around the accepted picture of pious imitation. We are told that the *Mirza sahib* initially accepted the claim that the Prophet Muhammad was not only the best, but also the absolutely last prophet to be sent to this world. This has, after all, come to be the authoritative understanding of the phrase, Finality of Prophethood (*Khatam al-Nabuwat*). In his early writings, *Mirza sahib* claimed to be a *mujaddid* (renewer) of the faith. Slowly he started to introduce the term *muhadith* in place of *mujaddid*, which implied that he was in conversation with angels, if not yet with the Prophet and with God. Later, he claimed himself to be *Zilli-e-Muhammadi* and *Buruz-e-Muhammadi*. In other words, if the Prophet Muhammad was the shadow (*zil*) of God upon the universe, *Mirza sahib* claimed to be the shadow of the Prophet upon the world. If the Prophet was so perfectly constituted as to be a reflecting surface for God's personality, *Mirza Sahib* claimed himself to be a reflecting surface for the Prophet's virtues, his manifestation (*buruz*) upon the world. In either case, *Mirza Ghulam Ahmad* considered himself to be only a 'partial Prophet', a *mursal* (a messenger sent by the Prophet). This claim alone is quite controversial, for it suggests that the Prophet operates independently of God in sending messengers of his own. But *Mirza sahib* then went on to claim himself a prophet in his own right. He said that he had so abjectly merged himself with the Prophet that he transmitted the Prophet's being through himself. He was in effect the Prophet. In his own words:

"A man should sink himself to such an extent in the obedience of the Holy Prophet (PBUH) that he may reach a stage 'I have become you and you have become I'" (PLD 1985: 58).

Drawing upon the thought of the 12th-century Sufi saint Ibn-Arabi, *Mirza sahib* claimed the status of a non-legislative prophet whose coming did not undo the law brought by the legislative prophet, the Prophet Muhammad, but only enhanced it.

It would appear from the judgments that the copy of the Prophet was self-vaunting in competing with and finally subsuming the original. The average Ahmadi was similarly a pesky copy of the Muslim. Let us now lay out the Ahmadi location within the culture of pious imitation by asking, what nature of Muslim was the Ahmadi? While Ahmadis were Muslims prior to the 1974 constitutional amendment, they were never uncontroversial as Muslims (as we sense from the anti-Ahmadiya riots of 1953). They were labelled *kafirs* (infidels) and *murtadd* (apostates) by the more orthodox *ulema* from the moment of their public emergence in colonial India of the mid-19th century, with *Mirza Ghulam Ahmad's* wholehearted participation in the arena of religious disputations. In other words, they were viewed as Muslims who had placed themselves beyond the pale of Islam through their support of a *taghut* (the antonym of Allah, a devil, a sorcerer). Even if this were not the case, that is, even if they were minimally acceptable as Muslims, their continued support of *Mirza Ghulam* made them suspect as *munafiqun* (hypocrites), those who cultivated the appearance of Muslims while plotting their overthrow in the early years of the Prophetic community.

This argument, though traditionally provided by the *ulema*, is carefully reproduced by several of the judges under consideration. These categorisations of the Ahmadis as *kafir*,

taghut, *murtadd*, *munafiqun* had an internal hierarchy, each implying a relative pariah status, moral disapprobation and, possibly, punitive charge. At the same time, *tauba* (repentance) was also always a possibility, with differential availability, to allow one to shake off these characterisations and to return to the fold of the community.

However, this theological vocabulary was overlaid by the category of the 'non-Muslim minority', roughly similar to the Islamic understanding of *dhimmi*, by which Ahmadis came to be known after the 1974 constitutional amendment. This category was already in use within the constitution to designate Hindus, Buddhists, Christians and others living in Pakistan. It seemed to allow for a seamless transition of the Ahmadis from the status of Muslim to non-Muslim without the manifold differentiations, movements and durations enfolded into the pariah status within the theological register. Despite this amendment, the Ahmadis persisted in calling themselves Muslims and undertaking Muslim modes of ritual behaviour.

These judgments are a few significant ones from a teeming pool of cases that arise out of a perception of Ahmadi transgression of standing law, and out of Ahmadi challenges to these laws. But for now let me just note that in each of these judgments the judges exclaim that Ahmadis are not only bad, but also dangerous copies, of Muslims. What they are remarking upon is a certain ontological challenge offered by the copy to the original. If Ahmadis consider themselves rightfully guided Muslims and everybody else *kafir* in keeping with a 19th-century *fatwa* (legal opinion) pronounced by Mirza Ghulam Ahmed, then Muslims accepting the Ahmadi assertion of being Muslim, even if that acceptance was only deduced from their paying no attention to it, would in effect be like an original accepting annihilation in the hands of its copy.

"It is thus clear that according to Ahmadis themselves...Ahmadis and the main body cannot be Muslims at the same time. If one is Muslim, the other is not (SCMR, 1993: 1768)".

Thus, the modern discourse of the copy may be seen as one, among other ways, of giving specific expression to a generalised fear about the improper emulation of the Prophet and his followers, by suggesting an agonistic and antagonistic landscape in which originals and copies vie for supremacy.

Emergence

Let us now turn to the aforementioned legal judgments to understand exactly how the copyright/trademark emerges in response to this particular framing of the Ahmadis, that is, as bad and dangerous copies. The first of the judgments appears only a few short years after the 1974 constitutional amendment. In 1978, in *Mobashir v. Syed Amir Ali Shah Bokhari* (henceforth to be referred to as PLD 1978), judges of the High Court of Lahore are called upon to deliberate whether the plaintiffs have sufficient cause to file an injunction preventing Ahmadis from praying in their own mosques. The judges, however, will not accept Ahmadi arguments that the constitutional amendment only makes them non-Muslims in matters relating to the constitution, and that they are Muslims for all other purposes.

“The learned counsel would have us believe that a person can be non-Muslim for the purpose of the Constitution and the law and a Muslim for the other purposes. Neither the law or Constitution or Islamic Shariah allows a person to remain Kafir for certain purposes and to be converted to Islam for other purposes (1978: 154)”.

Moreover, the judges are also not convinced that the amendment gives authority to Muslims to police Ahmadi practices. The Specific Relief Act of 1887, one of the laws referenced by the plaintiffs, only provides relief in the event of an infringement upon one’s own property and office, and not on that of another’s. Similarly, neither does the concern for law and order in Section 91 in the Civil Procedure Code, the second law cited by the plaintiffs, cover the hurt to religious sentiment and any possible excess that may or may not result from it. Moreover, the High Court judges see no precedence for bringing in Islamic law within the gambit of the law of the nation, restricting their judgment to the law in place at the time.

In spite of all this, they do appear to understand that the plaintiffs are in search of a law that will prevent Ahmadis from continuing as before the amendment. They even go so far as to suggest that the plaintiffs are giving inchoate expression to something akin to copyright/trademark law that would disable non-Muslims from encroaching upon Muslim rights over their tradition:

“The suit appears to be based on some supposed right analogous to a right in the nature of trade mark or copyright or infringement of analogous rights by passing off (139)”.

The Judges Will Not Have Any of This

“Rights in trademarks or copyrights are matters which are the concern of statutory law. There is no positive law investing the plaintiffs with any such rights to debar the defendants from freedom of conscience, worship, or from calling their place of worship by any name they like (139)”.

Instead, they call upon a certain neighbourliness, which, in their view, made *qadi* justice work at the peak of Muslim power in India and which they see in the enjoinder to justice, equity and good conscience in British and Anglo-Indian Law. Within this approach one simply assumes that what the Ahmadis do is their own business and that they mean no harm, having inflicted no harm upon the neighbourhoods of their residence and places of worship thus far. In effect, the judges advocate a staged ignorance of Ahmadi mores.

By 1985, such plaintiffs have in place a law to target the Ahmadis. President Zia-ul Haq of Pakistan promulgates a notorious ordinance, titled Ordinance XX, in which Ahmadis are debarred from the use of any honorific titles and modes of address specific to the Prophetic community, from building mosques and calling the *azan*, from undertaking Muslim modes of worship, and from making any citations from the Quran and the Prophet’s *ahadith*. The Penal Code is adjusted to provide two years of imprisonment to anyone caught doing any of the above. In effect, this ordinance criminalises the everyday life of Ahmadis.

Before they go on to fight the constitutionality of the ordinance in the Supreme Court of Pakistan, Ahmadis first dispute the Islamic basis of this ordinance at the Federal Shariat Court. This court was established by Zia-ul Haq in the 1980s to evaluate the repugnance with which Islam viewed existing laws. In the 1985 case *Mubibur Rehman v. The Federal Government of Pakistan* (henceforth to be referred to as FSC 1985), the Shariat Court judges write a lengthy judgment in which they first put on trial the Ahmadi claim to be Muslim, before they go on to endorse the Islamic basis of the ordinance. One of the most significant moves the Shariat court judges make, from the perspective of the emergence of the copyright/trademark within the context of the Ahmadis, is to explore the meaning of the word *khatam* in *Khatam al-Nabuwwat* (The Finality of Prophethood). The judges write:

“*Khatam*...means to prevent. It usually means the protection of a thing from mixing with other things. *Khatam* means seal too which means to prevent another thing from mixing with the sealed thing (FSC 1985:19)”.

While these statements enunciate a clear concern that an object be unmixed/unadulterated, what is nascent in this etymological exercise is the idea that an object bears a seal of authentication in the nature of a trademark, such that both the object and the seal are in need of constant protection. Or is it that the seal is more acutely vulnerable (see Coombe, 1991, 1996). Be that as it may, this discussion of the meaning of *khatam* in *Khatam al-Nabuwwat* opens up the possibility of speaking of aspects of Islam as being sealed off and exclusive to Muslims, but only to those who have been authenticated.

Even though the Shariat court judges endorse the ordinance, they struggle to give a positive spin to it so that it does not appear to place value upon aspects of Islam only after their improper use by Ahmadis. They do this by making those things now forbidden to the Ahmadis – the mosque form, the mode of prayer, the call to prayer, the honorific titles and the revered texts – *shia’ir* or distinctive markers of the Muslim *ummah* (moral community), and delineate how each has come to be so. By the end of their discussion it appears, however, that most things have come to be exclusive to Muslims only through customary practice, which does not preclude the possibility of their use by non-Muslims. Here again recourse to the idea of the copyright/trademark allows for a certain first-ness of possession:

“This strategy [of Ahmadis passing of as Muslims]...bears strong resemblance to the passing of by a trader of his inferior goods as the superior well known goods of a reputed firm (100)”.

As “superior well known goods”, these markers are to be accorded the highest respect by all and protection by the state. Here, the Federal Shariat Court, a merely consultative body whose judgment bears no binding force, issues a warning to the state:

“If an Islamic state in spite of its being in power allows a non-Muslim to adopt the *Shia’ir* of Islam which affects the distinguishing characteristics of Muslim Ummah, it will be the failure of that state in discharge of its duties (111)”.

Cases filed against the Ahmadis and Ahmadi cases against extant laws and acts of persecution crowd the dockets of the Supreme Court of Pakistan. In 1993, as martial law lifts, the Supreme Court seizes the opportunity to exercise its independence of the executive by swooping up a number of such cases, criminal and civil, to provide a definitive statement on the Ahmadi situation in *Zaheeruddin v. The State* (henceforth to be referred to as SCMR 1993). Along the way this bench of judges also deals with a whole host of issues long nagging the legal courts, such as whether the 1974 constitutional amendment and the 1985 ordinance are indeed legal; that they do not contradict the constitutional rights of minorities as these rights have to take second place to the protection and proper transmission of Islam in Pakistan; and, that standing law in Pakistan has to be qualified by Islamic law. This judgment is widely read as a serious curtailment of the fundamental rights of minorities in Pakistan (see Lau, n.d.).

Be that as it may, I am more interested in the way the copyright/trademark are invoked to render a judgment against Ahmadi encroachments upon Islam that is almost entirely expunged of theological vocabulary, linking it instead to an affective-legal feedback loop. While the judgment re-treads old territory of the ontological challenges posed by the Ahmadi Prophet to the Prophet Muhammad and Ahmadis to Muslims, the judges are not concerned with providing yet another disputation of these challenges. Instead, all, except one dissenting judge, decry that Pakistan lacks the legal wherewithal to protect *shia'ir-e-Allah* in the way that it has law, which it shares in common with the world community of nations, to protect national insignias, original works, and markers of distinction of consumer goods.

“It is to be noted that it is not only in Pakistan but throughout the World, that laws protect the use of words and phrases which have special connotations or meaning and which if used for other may amount to deception or misleading the people (SCMR, 1993: 1751)”.

“A law for protection of trade and merchandise marks exists practically in every legal system of the world to protect the trade names and marks etc. with the result that no registered trade name or mark of one firm or company can be used by any other concern and violation thereof, not only entitles the owners of the trade name or mark to receive damages from the violator but it is a criminal offence (1751)”.

It may appear that in calling for a legal structure analogous to copyright or trademark laws for the protection of *shia'ir-e-Allah*, the Supreme Court is simply actualising a potential for the use of the copyright/trademark against Ahmadis long simmering in earlier judgments. However, this Court does something slightly but significantly different. In harnessing the language of copyright/trademark to the Ahmadi question, the Court is making much more apparent that the intent of these transgressions, that is, the unlicensed use of titles, texts, modes and spaces of worship, is that of wilful deception. ‘Passing off’ as Muslim is transmuted to ‘posing as’ Muslims. The taken-for-granted deception of a trickster trader passing-off his inferior goods as those of a reputed firm is now both transposed upon the Ahmadi and transmuted such that Ahmadi actions constitute a deliberate and shocking deception of the Muslim:

“The appellant, on the other hand, insist not only for a licence to pass off their faith as Islam but they also want to attach the exclusive epithets and descriptions etc., of the very revered Muslim personages to those heretic non-Muslims, who are not even a patch on them. In fact the Muslims treat it as defiling and desecration of those personages. Thus the insistence on the part of the appellants and their community, to use the prohibited epithets and the ‘Shaa’ire Islam’ leave no manner of doubt even to the common man, that the appellants want to do so intentionally and it may, in that case amount to not only defiling those pious personages but deceiving others. And, if a religious community insists upon deception as its fundamental right and wants assistance of Courts in doing the same, then God help it (1754)”.

The Supreme Court understands that company/copyright/trademark law has an affective dimension that spontaneously calls forth a particular reception and response to its transgression. Ahmadi encroach upon Islam because they can. Neither Muslims nor the Islamic state is affectively constituted and legally armed to provide the necessary aura of protection around such objects, such that non-Muslims may recoil from using them. The judgment, in effect, calls for a feedback loop similar to copyright/trademark law, for only then will Muslims, in general, and the Islamic state, in particular, treat *shia’ir-e-Allah* in the appropriate manner so as to make unthinkable its improper appropriation and use.

More pragmatically, such a legal set-up provides a positive spin to Muslim claims upon the accretions of their tradition as distinctive markers of their community, their vague sense of exclusive rights re-constituted as a proprietary right whose transgression can be easily and quickly demonstrated, judged and penalised in the court of law.

Yet this affective-legal feedback loop, as I have been terming the particular relation between affect and law, makes deception out to be endemic, insists upon its continual unmasking and its shocked reception, and demands a collusion between shock and punitive law. Thus, in trying to raise not just the state but also the ordinary Muslim to the bird’s-eye view of God, this judgment performs a transcendence particular to Islamic modernity in Pakistan.

However, the judge in the minority within the Supreme Court breaks with this blanket reading of deception onto Ahmadi practices. He treats each case embedded within this judgment on its own terms, making particularly interesting pronouncements in relation to two specific instances that are suggestive of how transcendence is continually undermined. In one case he makes an argument for dissimulation (pretence under fire) as opposed to deliberate deception:

“As regards the allegation that on being questioned and interrogated they [defendants] gave the reply that they were Muslims while in fact they were Qadiani or Ahmadi that too will not be an offense under the law. Posing involves voluntary representation. In giving reply to a question one does not respond voluntarily but as would appear from the circumstances of these cases under threat or duress. One may hide his religion in public to protect himself...(1747)”.

In another case where some Ahmadi men are being prosecuted for wearing badges with the Muslim article of faith upon them:

“The exhibition or use of ‘*Kalma Tayyabba*’ correctly reproduced, properly and respectfully exhibited cannot be made a ground per se for action against those who use ‘*Kalma Tayyabba*’ in such a manner. If for ascertaining its peculiar meaning and effect one has to reach the inner recesses of the mind of the man wearing or using it and to his belief for making it an offence then the exercise with regard to belief and the meaning of it for that person and the purpose of using and exhibiting the ‘*kalma tayyabba*’ would be beyond the scope of the law...(1748-49)”.

In some ways this judgment poaches upon the future of copyrights/trademarks. Proprietary law certainly was not so advanced in Pakistan, or anywhere else, at that time or even now for that matter, that it could recommend a legal set-up to parallel to it but within a differently constituted domain – that of religious beliefs and practices. However, I think this affective-legal feedback loop does indeed tap into the potential power of this legal genre, in that copyright/trademark appears to overreach itself in attempting to provide various ministrations to a long-standing theological dilemma.

Conclusion

There is a way in which the innovations of the Supreme Court bring the state back to the original pedagogical project with which Pakistan began. The judges call for the legal-affective reconstitution of the Muslim, that is, the re-education of the Muslim in line with the emergent possibilities of the copyright/trademark. This can be viewed as an opening into the future of an otherwise stalled education. Yet how does one acknowledge this innovation within the state, its trespasses upon the future, without supporting its leap to transcendence? I propose listening in on the minority voice of various judges that runs through these judgments. More in the nature of white noise in a communication channel, they augur a much more chaotic landscape of copies than any copyright/trademark can suppress.

Copy/Simulacra:

In the case of Mirza Ghulam Ahmad in particular and of the Ahmadis in general, I see almost all the judges suggest that the so-called Prophet and so-called Muslims constitute a category of copies by themselves, one that acts like no other in trying to subsume its original. This seems to me to come closest to Gilles Deleuze’s discussion on the simulacrum as distinguished from copies in “Simulacrum and Ancient Philosophy”, in which he writes: “Copies are secondary possessors. They are well-founded pretenders, guaranteed by resemblance; *simulacra* are like false pretenders, built upon a dissimilarity, implying an essential perversion or deviation”.

Further on he writes: “...the simulacrum implies huge dimensions, depths, and distances that the observer cannot master. It is precisely because he cannot master them that he experiences an impression of resemblance. The simulacrum includes the differential point of view; and the observer becomes a part of the simulacrum itself, which is transformed and deformed by his point of view. In short, there is in the simulacrum a becoming-mad, or a becoming unlimited...”

Let me briefly say that I take distance from Jean Baudrillard's understanding of the simulacra as the effect of postmodernity, as representations drained of life and reality. Instead, along with Deleuze, I insist upon an understanding of simulacra as internal to the copy, grounded and ungrounded by it, as it grounds and ungrounds the copy. The simulacra may be taken to be the Ahmadis, but I would argue that the simulacra, implying "huge dimensions, depths, and distances that the observer cannot master", is only in its final form the Ahmadis. What it implies is a space between Ahmadis and Muslims, a massive space of movements in which Muslims are always becoming minority even as they render Ahmadis a minority for attempting to become Muslim. We would then need to understand how to treat the threats and possibilities of 'becoming minority' alongside the treatment I have attempted of the processes of 'becoming Muslim'.

Deception/Dissimulation

If we follow this line of thought and think of the space between Muslims and Ahmadis as akin to simulacra, we are then able to better understand a little of what the judge in the minority in the Supreme Court case was speaking about. He was, in fact, drawing our attention to the play of simulacra through the place of dissimulation in everyday life. Let us think of dissimulation as the necessary art of surviving in a hostile milieu, as a life-giving force in that it enables patching over rough spots, and as productive of the temporary evanescence of peace. We see how it would require a different affective-legal edifice to accept and enable this mode, one in which one could stage ignorance, as called for by earlier judges in PLD 1978, rather than the one called for by Supreme Court in SCMR 1993 through its assumption of widespread and proliferating deception.

Disappointment

The question that hovers but will remain unanswered is how one is to acknowledge innovation within practices, be they of the state, courts, judges, or lay Muslims, in such a way as to move this innovation, and hence the pedagogical project, forward, or rather backwards, into an acceptance of the limits of knowledge. In the 11th century, Imam Al-Ghazali came out of a period of radical doubt about the existence of the divine through recourse not to knowledge but to *zauq* (literally, through developing a sensory taste for the divine, through 'tasting' the divine). Might not we sense the divine in each other through this mode?

NOTES

1. I am mindful that the two are not one and the same in keeping with the cautionary remarks of Richard Stallman in "Did You Say 'Intellectual Property?' It's a Seductive Image". Although the two terms are used interchangeably within the judgments I discuss, I try to maintain the distinction between copyright as the legal right to control the use and reproduction of original works, and trademark as the distinctive seal of a corporate entity upon its products.

CASES CITED

Abdur Rahman Mobashir and Three Others v. Syed Amir Ali Shah Bokhari and Four Others, PLD 1978, Lahore 113.

Mujibur Rehman v. The Federal Government of Pakistan, PLD 1985, FSC 8.
Zaheeruddin and Others v. The State and Others, SCMR 1993, 1718.

REFERENCES

- Benjamin, Walter. "The Work of Art in the Age of Mechanical Reproduction". In *Illuminations* (Schocken Books, 1968, New York).
- Coombe, Rosemary J. "Objects of Property and Subjects of Politics: Intellectual Property Laws and Democratic Dialogue". In *Texas Law Review*, Vol. 69, pp. 1853-80 (1991).
- Coombe, Rosemary J. "Embodied Trademarks: Mimesis and Alterity on American Commercial Frontiers". In *Cultural Anthropology*, Vol. 11, No. 2, May, 202-224 (May 1996).
- Deleuze, Gilles. *Logic of Sense*. Trans. Lester, Mark with Charles Stivale; ed. Constantin V. Boundas (Columbia University Press, 1990, New York).
- Friedmann, Yohanan. *Prophecy Continuous: Aspects of Ahmadi Religious Thought and Its Medieval Background* (University of California Press, 1989, Berkeley).
- Frost, Samantha. "Faking it: Hobbes's Thinking-Bodies and the Ethics of Dissimulation". In *Political Theory*, Vol. 29, No. 1, pp. 30-57 (February 2001).
- Lau, Martin n.d. "Islam and Fundamental Rights in Pakistan: The Case of Zaheer-ud din v. The State and Its Impact on the Fundamental Right to Freedom of Religion".
In CIMEL Yearbook Vol. 1. <http://www.soas.ac.uk/Centres/IslamicLaw/YB1Zaheer-ud-din.html>
- Liang, Lawrence, Atrayee Mazmdar and Mayur Suresh. "Copyright/Copyleft: Myths about Copyright". In *Infochange India* (May 2004). http://www.infochangeindia.org/Intellectual_Pro_Rts_04.jsp

Harmony or Discord?

TRIPS, China, and Overlapping Sovereignties

SHUJEN WANG



A Chinese policeman destroying hundreds of thousands of pirated CDs. 10 February 1996

“Government officials in Asia always complain to me that we keep changing the goalposts in our copyright legislation and law enforcement demands. But it is the pirates who are constantly setting and shifting the goalposts. We are mainly responding”.

- Leong May-Seey, IFPI Regional Counsel, Asia; Regional Deputy Director, South East Asia (personal interview, 4 June 2004, Beijing)

“The spread of theft of America's creative works *flows like a swiftly running river in every nook and cranny of this planet*. Today I'd like to focus on China and Russia, where...the piracy problems are spilling out beyond their borders to infect markets all around the world”.

- Jack Valenti (Capitol Hill Hearing Testimony, 9 June 2004, emphasis added)¹

“Now to non-Americans there's something very familiar about this cycle. It is the cycle of prohibition: The policy dance where as regulation increases, deviation increases, inspiring more regulation, inducing more deviation, until the costs of the system of regulation far exceed any possible benefit”.

- Lawrence Lessig (2002:617)²

Random as they may seem, these recent quotes are connected and they point to a highly contested and fast shifting terrain of piracy and global copyright governance that requires the rethinking of law and legality and the changing concept of state sovereignty. They attest to the dynamic and opposing relations between what Lessig describes as the two great trends that define our time: the technological and the legal.³ The former pushes towards the increasing range of the possible, while the latter pushes towards more law and more control.

These trends are highly dynamic, shaping and changing the courses of each other's developments. A product of the intersecting and colliding forces of technology, capitalism, and the state, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, see later discussion) is a good example of a tool that was created to recode (indeed, overcode) the deterritorialised flows of technology and to uphold the idea of a *rule-based* economy that the World Trade Organization (WTO) subscribes to.

This paper intends to reframe the highly complex, uneven, and paradoxical developments of global copyright governance and processes of the reterritorialisation of international treaties and agreements in national spaces. It also intends to raise important questions about the intersecting developments of technology, law, and state sovereignty. More specifically this paper reflects on the “in between spaces” in global copyright governance: between copyright legislation and law enforcement, between global copyright governance and national/local compliance, between global actors and national networks, and among different levels of juridical spaces and overlapping sovereignties. It focuses on the fluid gap in which translation takes place and clandestine actors and networks operate.⁴ It is also the bifurcated and relative regulatory realm in which the role of the state in a global economy is both questioned and underscored.⁵

Using China as a case study, this article seeks to move the discussion of global copyright governance beyond the global-national dualism. By rethinking law and legality at the juncture in which exclusive territorialities are becoming unbundled, I also hope to examine some of these moments of transformation that call for a more complex way of approaching law and legality.

TRIPS - Harmony or Discord?

“As time goes on...the world will realize that at least for intellectual property the days of the nation-state are over and truly international courts will be created”.

- Robin Jacob (2000:516)⁶

“Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice”.

- TRIPS Article 1(1)⁷

“There are many holes to plug, and when one leak is stopped, others flow stronger while new ones spring. Unless progress is made to slow the overall drain, real progress will remain elusive”.

- Rama John Ruppenthal (2001:169)⁸

Harmony?

The transnational nature of piracy has led to changes in global intellectual property (IP) rights⁹ legislation and enforcement.¹⁰ The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is Annex 1C of the Marrakesh Agreement establishing the World Trade Organization, signed in Marrakesh, Morocco, on 15 April 1994. It means the expansion of global copyright governance into the arena of global *trade*. It also signals the “further intersection of legal, technological and knowledge structural streams”.¹¹

Initiated by American transnational corporations and policy makers,¹² TRIPS’ deep integration program and supranational harmonisation requirements – harmonising the IP laws and policies of the developing countries with those of the developed countries – have challenged the concept of exclusive territoriality associated with the nation state.¹³ TRIPS’ National Treatment, for example, requires that “each Member shall accord to the nationals of other Members treatment no less favorable than that it accords to its own nationals with regard to the protection of intellectual property” (Article 3),¹⁴ while the Most-Favored-Nation Treatment dictates that “any advantage, favor, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members” (Article 4). The national treatment, most-favored nation treatment, and reciprocity constitute the keystone of TRIPS.¹⁵ The establishment of TRIPS thus signals a trend toward the upward harmonisation agenda in the international law of intellectual property.¹⁶ Furthermore, with its dual foci on both the substance of the intellectual property rights (i.e., the “*substantive standards*”, Articles 9 through 40 of the TRIPS Agreement) and the enforcement of these rights (i.e., the “*performance standards*”, Articles 41 through 61), TRIPS also has the *enforcement* power that the World Intellectual Property Organization (WIPO) does not have.¹⁷ Consequently, TRIPS is the first broadly subscribed multilateral international intellectual property agreement that is enforceable between governments, allowing governments to resolve disputes through WTO’s dispute settlement mechanism.

There is no doubt that the universalising IP right protection approach that TRIPS establishes is a much less flexible regime than earlier IP governance regimes (e.g., the

Paris Convention), reducing the scope of state autonomy in domestic law making.¹⁸ Even TRIPS' predecessors, the Paris Convention (1883) and Berne Convention (1886), proceeded on a nation-state basis. TRIPS' requirement that member states adopt *criminal* procedures and penalties when necessary also has serious implications for state sovereignty in its control of state resources (see TRIPS Article 61, personal interviews with Xu, 2004, and Lu, 2002).¹⁹ That said, however, with its built-in flexibility (see, for example, Articles 1(1) cited above and 41(5)) and the fact that it only sets *minimum* standards with which its members must comply, TRIPS depends on state capacities to enforce copyright provisions at the local and regional levels. Furthermore, in the linkage bargain environment of the WTO and TRIPS, all negotiations go through the state, thus underlining the indispensable role of the state in global copyright governance in general and in reterritorialising global agreements at the local level in particular.

Discord!

Legal scholars such as Peter Yu²⁰ and Assafa Endeshaw²¹ have long questioned the validity of equating law with development. Having more IP laws in a nation's statute book does not mean that a nation is necessarily more advanced in intellectual property rights governance or environment, just as laws alone do not guarantee voluntary compliance. China, for example, has one of the most comprehensive and modern IP laws in the world. Without the necessary technological and economic development, legal culture, and other conditions, nevertheless, piracy level has in fact increased after China's entry into WTO in 2001 while Sino-US relations over trade and copyright issues remain tense. The non-industrialised countries, in fact, have been critical of the apparent lack of congruence between the one-size-fits-all agenda of TRIPS and the vastly different national realities.²²

Indeed, one thing that makes WTO a more invasive regime than its predecessor, the General Agreement on Tariff and Trade (GATT), has to do with the fact that the latter requires only a *shallow integration* agenda of tariff reduction, while the former a *deep integration* process that involves policy decisions previously administered completely within the domestic arena. The deep integration approach, according to Thiers (2002), constitutes a four-step process: (1) a nation-state agrees to join an international regime and harmonise its own laws and policies with the said regime; (2) formal harmonisation through the amending and changing of laws and regulations; (3) the implementation of the newly harmonised standards; and (4) ongoing monitoring and enforcement to verify the compliance with the agreement.²³ To join the WTO, most states would have had to accomplish steps (1) and (2) before gaining formal accession. It is the last two stages of implementation and monitoring that prove to be most challenging, and flexible, for states and right holders alike. They also provide an interesting and fluid space for the exploration of the changing landscape of copyright governance.

Just as the performance (i.e., enforcement) standard part of TRIPS (Part III of the TRIPS Agreement) gives right holders much needed leeway in customising their anti-piracy demands and in defining what enforcement efforts in a given territory should entail, the same performance standards also present a fluid space for the state to define its implementation methods and domestic preferences within its own legal system (Articles

1(1) cited above and 41(5)). Consequently, while state IP laws may appear to be harmonised and compliant with the TRIPS provisions on paper, in reality the implementation and enforcement of IP regulations can vary from country to country.²⁴ The one-size-fits-all approach of law making simply does not work in law enforcement, which is deeply embedded in political, legal, cultural, technological, and economic structures. A particular country's size, history, legal and cultural environments, as well as economic and technological developments have important implications for the interpretation and reterritorialising of international IP treaties and agreements. It would be much easier, for example, for right holders to deal with a small territory like Singapore than with China with its immense market and complex politico-economic realities. As a result, it is necessary for right holders to have tailored strategies for each territory, which can be both time- and personnel-consuming (personal interview, Leong, 2004). Given the said ambiguity and diversity, upholding and monitoring performance standards (articles 41-61) in different territories becomes an intensely dynamic, challenging, and ongoing process for right holders and governments. This is not to mention the complex and sometimes-contradictory legislative needs and enforcement demands of different copyright industries (consider, for example, the clashing interests of computer industries and entertainment industries).²⁵

With these changes in global copyright governance comes a fundamental shift in international diplomacy, one that emphasizes the increasingly important functions of domestic regulatory institutions and the operations of informal transgovernmental networks. To compensate for WTO's inability to adapt to today's complex political and economic realities and TRIPS' inefficiency in addressing enforcement issues, these transgovernmental networks provide domestic regulators with potential solutions in their efforts to interpret and implement international agreements. Because the independence of these institutions is maintained even when they work together toward the goal of the harmonisation of procedures or laws, it does not involve the ceding of sovereignty to a central policymaking authority (Cheek, 2001). Furthermore, the different types and levels of informal transgovernmental networks that Cheek presents – cross-fertilisation networks, coordination networks, mutual recognition networks, and harmonisation networks – also suggest fluidity in collaboration possibilities.²⁶ Thus, while international disputes may have to work through the state, the actual reterritorialising processes are thrashed out by both formal domestic regulatory and law enforcement actors and institutions and among those informal transgovernmental networks.

To move further away from a state-centric analysis, Ordell and Sell's work reframing the WTO coalition on IP and public health issues also demonstrates the overwhelming complexity and uncertainty entailed in the two-level WTO negotiation that takes place among more than 100 states.²⁷ The ultimate success of a weak-state coalition not having obvious power (while facing strong opposition from powerful transnational corporations), attests to the complex actors, networks, and their fluid alliances involved in global IP governance. These dynamic institutions become the critical link between micro- and macro- levels of IP governance. They both constitute and are constituted by structures. Indeed, as Sell (2004:6, emphasis added) has pointed out, it is the "dynamic process of *mutual constitution*" that is the main driving force behind global intellectual property rights regulation.

As the preceding analysis of TRIPS and the WTO coalition illustrates, global copyright governance involves the multiplying and overlapping of different networks and sovereignties. With the emergence of this polycentric legal order, a 'global versus national' (or 'supranational versus territorial') approach is insufficient, as the complex and contradictory processes of global copyright governance go beyond a simple micro-macro dichotomy.²⁸ Instead of thinking of sovereignty as a single monolithic concept, we need to realize that we now live in a world of multiple, overlapping, and contested sovereignties.²⁹ The emergence of the afore-mentioned informal transgovernmental networks, or the "polycentric centers of power" within the state, also suggests forms of "complex sovereignty" that break down the internal structural coherence of the state.³⁰ On the other hand, however, global copyright governance still requires the "nationalization of international law" that can be accomplished only through the "reconstitution of sovereignty".³¹ Rather than thinking about the state power in the global economy only as a zero-sum game, then, it would be more productive to look at the state's creative uses of sovereignty in the modern global political economy.

China provides one such example.

China: The Ambivalent/Fragmented Entrepreneurial Socialist State³²

"You see, we didn't gain anything by adopting the Berne Convention. We didn't gain anything in textile trading for example. Becoming a Berne signatory had nothing to do with our market needs. It didn't help us in trade negotiations. But everything is linked when one joins WTO...I don't think China's accession to WTO has done any substantial damage to our national interest".

- Xu Chao, Deputy Director General, National Copyright Administration of China (personal interview, 26 May 2004, Beijing)

"This law is enacted, in accordance with the Constitution, for the purpose of protecting the copyright of authors in their literary, artistic and scientific works and the rights and interests related to copyright, encouraging the creation and dissemination of works conducive to the building of a socialist society that is advanced ethically and materially, and promoting the progress and flourishing of socialist culture and sciences".

- Copyright Law of the People's Republic of China, Article 1³³

Three years have passed since China's WTO accession on 11 December 2001. While it is too early to gauge the impact China's WTO accession has on its economy, formal and otherwise, the 15-year saga of its quest (since July 1986) to join the WTO had already witnessed major changes in China's IP law development. In addition to becoming a WIPO signatory in 1980, joining the Paris Convention in 1985, the Madrid Convention in 1989, the Berne Convention in 1992, and the Patent Cooperation Treaty in 1994, China also passed the following laws: the Trademark Law in 1982, the Patent Law in 1984, the Copyright Law in 1990, the Software Protection Act in 1991, the Anti-Unfair Competition

Law of 1993, and the Rules on the Prohibition of Infringement of Trade Secrets in 1995.³⁴ Additionally, the amendments to the 1990 copyright law were adopted in October 2001, two months before the formal WTO accession, which brought China into compliance with TRIPS. China also added the Regulations on Computers Software Protection on 1 January 2002 and the Regulations for the Implementation of the Copyright Law of the People's Republic of China that was promulgated on 2 August 2002 and effective as of 15 September 2002.³⁵ These changes have indeed been substantial and impressive, especially given the short period of time since China's insertion into the market economy in the late 1970s. The Chinese Copyright Law, for example, grants rights that are not available in its American counterpart.³⁶ As discussed in the last section, it is not the making of law that is an issue, it is the implementation of these new laws and regulations that remains problematic to American right holders, who view copyright enforcement and the continuing market access restrictions in China as two major "WTO compliance issues".³⁷

Indeed, China's relation with the United States in trade and IP issues has been contentious. Having been designated a Special 301³⁸ "Priority Foreign Country" in 1991, 1994, and 1996 by the United States Trade Representative (USTR) and put under Section 306 Monitoring from 1997 through 2004, China has been subject to potential trade sanctions for its failure to contain copyright piracy and to provide market access to the US copyright industries (see table 1). With the continuing pressure from the United States and with the updating of its IP legislation, however, China's piracy rates are still above 90% (Table 2).³⁹ Yu, for example, describes the existing American foreign IP policy as "misguided", "self-deluding", "ineffective" and "futile", because the United States has not only lost its credibility through the constant use of unproductive coercive tactics, it has also helped China learn, from the emerged threat/counter threat pattern, how to resist these demands.⁴⁰ Each time China was named a Priority Foreign Country (in 1991, 1994, and 1996), the United States would threaten China with trade sanctions, only to find China counter the US threat with its own list of retaliatory measures. These trade wars were always avoided (after lengthy dramas of more threats, accusations, and negotiations) with the last-minute signing of the Memorandum of Understanding on the Protection of

Table 1. China's Status under Special 301 Review			
Year	Status	Year	Status
1989	PWL	1997	306
1990	PWL	1998	306
1991	PFC	1999	306
1992	WL	2000	306
1993	WL	2001	306
1994	PFC	2002	306
1995	WL	2003	306
1996	PFC*	2004	306

Source: compiled from USTR301 reports. See also Wang, 2003.
PFC: Priority Foreign Country
PFC*: Priority Foreign Country (Subject to 306 Monitoring)
306: 306 Monitoring
PWL: Priority Watch List
WL: Watch List

Table 2. People's Republic of China Estimated Trade Losses Due to Piracy (in millions of U.S. dollars) and Levels of Piracy: 1999–2003

INDUSTRY	2003		2002		2001		2000		1999	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	178.0	95%	168.0	91%	160.0	88%	120.0	90%	120.0	90%
Records & Music	286.0	90%	48.0	90%	47.0	90%	70.0	93%	70.0	90%
Business Software	NA	NA	1637.3	92%	1140.2	92%	NA	99%	1382.5	95%
Applications										
Entertainment Software	568.2	96%	NA	96%	455.0	92%	NA	99%	1382.5	95%
Books	40.0	NA	40.0	NA	130.0	NA	130.0	NA	128.0	NA
TOTAL	NA		1893.3		1932.5		1085.1		2137.7	

Source: IIPA 2004 Special 301 Report—People's Republic of China

Intellectual Property (MOU) in 1992, the IPR Agreement in 1995 and the IPR Accord in 1996 (see Wang, 2003; Yu, 2000).

Some have suggested that cultural, historical, and legal contexts have supposedly predisposed the Chinese to resist the idea of copyright (e.g., Chynoweth, 2003; Yonehara 2002; Yu, 2001). Yonehara (2002:74), for example, lists several of these “Chinese predispositions and problems toward enforcement” of copyright law that include cultural, historical, and economic factors.⁴¹ Problems of essentialism and Eurocentrism (sometimes camouflaged in rhetoric of anti-Eurocentrism) in some of these accounts aside, it is important to address the larger frameworks in which issues of copyright and piracy arise: cultural and philosophical beliefs, China's socialist system, the Chinese government's skepticism toward Western institutions, nationalism, the strict media and information policies, and the different legal and court systems are some of them (see, for example, Chynoweth, 2003; Yu, 2000, 2001, 2002; Yonehara, 2002; and Alford, 1997). In light of the preceding analysis of the dynamic relations among market, law, and the state, it is the current form of the unique political economy system in China (i.e., capitalism with socialist characteristics) that I will focus on.

Xu Chao, Deputy Director General of National Copyright Administration of China, attributes the current market economy development to two post-Cultural Revolution (1966–1976) events that he sees as imperative in shaping China's contemporary politics and economy (personal interview, 26 May 2004, Beijing). The first was Deng Xiaoping's talk in the 1978 Third Plenary Session of the Eleventh Central Committee of the Chinese Communist Party (Third Plenum), during which he called for a public admission that the Cultural Revolution was a disaster and that China could not afford to spend more time on class struggles.⁴² Instead, the nation should focus on economy and Deng became the main architect for the economic reform that the nation embarked on in 1979. The second event took place in 1992 during Deng's visit to Shengzhen. Because the 1989 Tiananmen student movement had created an atmosphere of fear and conservatism, Deng pointed out the

urgent need for bolder steps and braver moves in economic reform. Without these two events, Xu maintains, there would have been no WTO accession for China. The fact that China's quest for the WTO accession was an "*internally-driven*" process also explains the public support of the decision. The WTO accession has "helped expedited China's transformation". In fact, Xu adds, from its inception the National Copyright Administration (NCA) has been linked directly to the market.

With Deng's open door policy and economic reform came decentralisation. To facilitate China's economic reform, for example, Deng designated four Special Economic Zones (SEZs) in 1980, while giving provincial and local (including village) governments regulatory power over economic issues (see Wang, 2003; Yonehara, 2000). The original four SEZs have now grown to over 400, and even local villages retain economic governing power. This de-centering process produces a profound fissure of the state system and turns the juridical space of sovereignty into "mutually dependent relative spaces" (see, for example, Palan, 1998:10). Consequently, China's unique status as an entrepreneurial socialist state creates a situation in which both the central and provincial/local governments find themselves occupying an ambiguous space in which they operate as both regulators and entrepreneurs, with profound implications for the implementation of IP laws. Thiers (2002:414) argues that this combination of the two conflicting types of functions – the state as both regulatory authority and entrepreneurial competition – and the resulting "structural conflict of interest" have led to China's incomplete compliance with the WTO and TRIPS provisions and the blocking of effective monitoring and enforcement efforts. To many local officials who are under tremendous pressures to produce significant results in economic development, for example, copyright infringement may provide a stronger source of revenue than its licit counterpart can, thus creating resistance towards IP law implementation.⁴³

Because of the imposed nature of TRIPS requirements in many countries (especially developing countries), buying pirated goods can also work as a protest and counter movement to the "perceived illegitimacy and plain old-fashioned colonialism" that the enforced TRIPS provisions have come to symbolise (Endeshaw, 2002:75). In China, for example, pirated software becomes "patriotic software" (Yu, 2003:364) and buying pirated goods becomes nationalistic since it strengthens local industry rather than supporting foreign corporations. Indeed, piracy has been linked to the growth of domestic economy (e.g., Ruppenthal, 2001).⁴⁴

Conclusion: Collision and Collusion

"If it is true that the function of the modern State is the regulation of the decoded, deterritorialised flows, one of the principal aspects of this function consists in reterritorialising, so as to prevent the decoded flows from breaking loose at all the edges of the social axiomatic...Or the movement of deterritorialisation that goes from the center to the periphery is accompanied by a peripheral reterritorialisation, a kind of economic and political self-centering of the periphery, either in the modernistic forms of a State socialism or capitalism, or in the archaic form of local

despots. It may be all but impossible to distinguish deterritorialization from reterritorialization, since they are mutually enmeshed, or like opposite faces of one and the same process”.

- Deleuze and Guattari (1983:258)⁴⁵

“This ripening of capitalism horizontally (the assimilation of consumers on a global scale into capitalist circuits of capital) and vertically (the penetration of info-media and bio-technical areas by commodification) provides both capitalist firms and the State with an intensified necessity to construct and codify new juridical and political frameworks on an international scale”.

- Avenell and Thompson (1994:33-34)⁴⁶

With its emphasis, and rhetoric, on deep integration, harmonisation, universalising and standardisation of global intellectual property laws, the TRIPS Agreement embodies global IP industries’ desire to recode and regulate the decoded and deterritorialised flows of technology and products. Just when observers such as the Hon. Mr. Justice Jacob rush to predict the end of the nation state in IP governance (2000:516), however, the complex and diverse national realities associated with the implementation of such provisions show a state’s creative use of sovereignties in interpreting and enforcing these agreements.

The examination of China and its unique status as an entrepreneurial socialist state offers a rich case study of a state that *selectively* participates in global copyright governance according to its perceived self-interests. It also demonstrates the crucial need for case studies in understanding the complex and diverse processes of globalisation and their “embeddedness in the national”.⁴⁷

Finally, by focusing on the fluid spaces between copyright legislation and law enforcement, and on the complex actors and networks (licit and illicit, state and otherwise) that operate in them, this paper also questioned the concept of exclusivity associated with law and legality. It illustrates an emerging polycentric legal order with multiplying and overlapping sovereignties. Liang’s argument for the rethinking of law and legality as elastic, porous, and seeping, is well suited for the studying of global copyright governance in the rapidly changing technological, and state, environments.⁴⁸

NOTES

1. See Valenti, Jack. “Evaluating International Intellectual Property Piracy.” Capitol Hill Hearing Testimony, Senate Foreign Relations Committee, 9 June 2004.
<http://www.senate.gov/~foreign/hearings/2004/hrg040609a.html> (retrieved 14 November 2004).
2. See Lessig, Lawrence. “The Ninth Annual Herbert Tenzer Distinguished Lecture in Intellectual Property 2002: Innovating Copyright.” In *Cardozo Arts & Entertainment Law Journal* 20:611-623 (2002).
3. *Ibid*, p. 616.
4. See Friman, H. Richard, and Peter Andreas, “Introduction: International Relations and the Illicit Global Economy” (1999). In Friman, Richard H. and Peter Andreas (eds.), *The Illicit Global Economy and State Power*, (Rowman & Littlefield, Lanham) pp. 1-23. This discusses the gap between the state’s authority to pass prohibition laws and its ability to enforce them as the space where underground transnational actors operate.

5. See Palan, Ronen. 1998. "Trying to Have Your Cake and Eating It: How and Why the State System Has Created Offshore". In *International Studies Quarterly* 42(4):625-644. In the article he discusses relationship between offshore economy and the concept of state sovereignty.
6. Jacob, Robin. "International Intellectual Property Litigation in the Next Millennium." In *Case Western Reserve Journal of International Law* 32:507-516, (2000).
7. See the full text at the WTO website http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm (accessed 4 July 2004).
8. Ruppenthal, Rama John. "Note and Comment: TRIPS Through the Far East: High Tech Product Piracy and the Need for Alternative Regional Solutions". In *Wisconsin International Law Journal* 20:143-175 (2001).
9. There are two categories of intellectual property: industrial property, which includes inventions, patents, trademarks, trade secrets and industrial designs; and copyright. Copyright covers "original works of authorship fixed in any tangible medium of expression, which includes *inter alia* literary, musical, scientific, dramatic and artistic works and sound recordings" (17 U.S.C. §102, 1994).
10. A right holder's losses in a foreign territory, for example, would only be meaningful if some right existed according to the laws of this foreign country. See Austin, Graeme W. "The Role of National Courts: Valuing 'Domestic Self-Determination' in International Intellectual Property Jurisprudence". In *Chicago-Kent Law Review* 77:1155-1211 (2002). The developments of digital technologies and the (uneven) processes of globalisation have also rendered the previously nation-based copyright governance ineffective for transnational right holders.
11. See May, Christopher. *A Global Political Economy of Intellectual Property Rights: The New Enclosures?* (Routledge, 2000, London) p. 67.
12. The US-based twelve-member Intellectual Property Committee (IPC) successfully developed international support for the proposal that IPC and its European and Japanese counterparts drafted. In 1986 the IPC consisted of 12 Chief Executive Officers representing pharmaceutical, entertainment and software industries: Bristol-Myers; CBS; Du Pont; General Electric; General Motors; Hewlett-Packard; IBM; Johnson & Johnson; Merck; Monsanto; and Pfizer. See Sell, Susan. 2003. *Private Power, Public Law: The Globalization of Intellectual Property Rights* (Cambridge University Press, 2003, Cambridge).
13. See Austin, 2002:1157.
14. Article 3 of the TRIPS Agreement. See http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm (accessed 4 July, 2004).
15. See May, 2000.
16. See Ginsburg, Jane C. "International Copyright: From a 'Bundle' of National Copyright Law to a Supranational Code?" In *Journal of Copyright Society U.S.A.* 47:265 (2000).
17. See TRIPS; May, 2000; and interview with Leong, 2004.
18. See Sell, 2003.
19. Personal interview, Wen-Hsiang Lu, Deputy Director General, Intellectual Property Office, Ministry of Economic Affairs, Taiwan, Taipei, May 2002.
20. See Yu, Peter K. "Piracy, Prejudice, and Perspectives: An Attempt to Use Shakespeare to Reconfigure the U.S.-China Intellectual Property Debate". In *Boston University International Law Journal* 19:1-87 (2001).
21. See Endeshaw, Assafa. "The Paradox of Intellectual Property Lawmaking in the New Millennium: Universal Templates as Terms of Surrender for Non-Industrial Nations; Piracy as an Offshoot". In *Cardozo Journal of International and Comparative Law*: 47-77 (2002).
22. *Ibid.*

23. See Thiers, Paul. 2002. "Challenges for WTO Implementation: Lessons from China's Deep Integration into an International Trade Regime". In *Journal of Contemporary China* 11(32): 413-431 (2002).
24. See IFPI 2004. "Music Industry Calls for Better Enforcement of Rights on 10th anniversary of TRIPS". 23 June, IFPI Press Release, <http://www.ifpi.org/site-content/press/20040623.html> (8 July 2004).
25. Meanwhile, the fact that TRIPS enforcement solutions are state-based, targeting individual nations, points to another inherent contradiction of the TRIPS provisions. In East Asia, for example, much of the piracy flow in the area is regional (if not global), not domestic. TRIPS' country-by-country enforcement efforts are ineffective and inadequate in curbing the increasingly mobile piracy production. Regional "patchwork" solutions are thought to be a more effective strategy than one that supports a "global blanket" approach such as the TRIPS provisions (see Ruppenthal, 2001:170).
26. Cheek, Marney L. "The Limits of Informal Regulatory Cooperation in International Affairs: A Review of the Global Intellectual Property Regime." In *George Washington International Law Review* 33:277-323 (2001).
27. See Odell, John S. and Sell, Susan K. "Reframing the Issue: The WTO Coalition on Intellectual Property and Public Health, 2001". Paper presented at the Conference on Developing Countries and the Trade Negotiation Process, UNCTAD, 6-7 November 2003, Geneva.
28. See Palan, 1998.
29. See Aoki, Keith. "Considering Multiple and Overlapping Sovereignties: Liberalism, Libertarianism, National Sovereignty, 'Global' Intellectual Property, and the Internet". *Indiana Journal of Global Legal Studies* 5:443-473 (1998).
30. See Jayasuriya, Kanishka. "Globalization, Law, and the Transformation of Sovereignty: The Emergence of Global Regulatory Governance". In *Indiana Journal of Global Legal Studies* 6:425-455 (1999).
31. *Ibid*, p. 448.
32. The subject heading is inspired by Paul Thiers' article on China's deep integration into an international trade regime. See Thiers, Paul. "Challenges for WTO Implementation: Lessons from China's Deep Integration into an International Trade Regime". In *Journal of Contemporary China* 11(32): 413-431 (2002).
33. National Copyright Administration of China. *Zhong Hua Ren Min Gong He Guo Zhu Zuo Quan Fa Lu Fa Gwei* (Copyright Law of the People's Republic of China). (Shang Wu Yin Shu Guan, 2003, Beijing).
34. See Chynoweth, Graham J. "Reality Bites: How the of Piracy in China is Working to Strengthen Its Copyright Laws". In *Duke Law & Technology Review* 3 (2003).
35. See National Copyright Administration of China, 2003.
36. See Yu, Peter K. "Piracy, Prejudice, and Perspectives: An Attempt to Use Shakespeare to Reconfigure the U.S.-China Intellectual Property Debate". In *Boston University International Law Journal* 19:1-87 (2001).
37. See IIPA, 2004:3.
38. Initially, the Trade and Tariff Act of 1974 enabled the United States to take retaliatory action against any country that denied it rights granted by a trade agreement or unfairly restricted US commerce. The cooperation among the copyright industries and the resulting lobbying leverage IIPA possessed had led to the expansion and the change of language of the 1974 Trade Act. The Trade and Tariffs Act of 1984 extended the definition of unfair trade practices to include intellectual property rights violations. The 1984 Trade Act also empowered the USTR to undertake annual review of problem countries, which could result in a USTR investigation and subsequent trade sanctions. After its annual review, USTR would name TRIPS Copyright Cases, Potential Priority Foreign Countries, Priority Foreign Countries, Priority Watch List, Watch List, and Special Mention according to the severity of their offenses. See Wang, Shujen. *Framing Piracy: Globalization and Film Distribution in Greater China* (Rowman & Littlefield, 2003, Lanham) pp. 33, 39 (2003).

39. The 2004 IIPA Special 301 report names the lacking of deterrent penalties and enforcement programmes as key cause for the consistently high piracy rate in China.
At www.IIPA.com/rbc/2004/2004spec301china.pdf (accessed 9 March 2004).
40. See Yu, Peter K. "From Pirates to Partners: Protecting Intellectual Property in China in the Twenty-First Century". In *The American University Law Review* 50:131-199 (2000).
41. William Alford's oft-cited 1997 book, *To Steal a Book Is an Elegant Offense: Intellectual Property Law in Chinese Civilization*, also presents one such account.
42. See also Fan, Jennifer. "Comment: The Dilemma of China's Intellectual Property Piracy". *UCLA Journal of International Law and Foreign Affairs* 4:207-236 (1999).
43. See Pearson, Margaret M. 1999. "China's Integration into the International Trade and Investment Regime". In Economy, Elizabeth and Michael Oksenberg (eds.), *China Joins the World: Progress and Prospects* (New York: Council on Foreign Relations Press, New York) pp. 161-205. See also Tiefenbrun, Susan, "Piracy of Intellectual Property in China and the Former Soviet Union and its Effects Upon International Trade: A Comparison". In *Buffalo Law Review* 46:1-69 (1998); and Creer, Greg, "Note and Comment: The International Threat to Intellectual Property Review Rights Through Emerging Markets". In *Wisconsin International Law Journal* 22:213-243 (2004).
44. Effective intellectual property enforcement in an emerging market would inevitably make these goods unaffordable to average consumers. As Fan (1999) pointed out, the fact that the Chinese government itself is a major user of infringed software complicates things even further. By providing its workers necessary training, optical disc piracy also arguably expands a country's technological base and facilitates technology transfer (Ruppenthal, 2001).
45. See Deleuze, Gilles, and Guattari, Félix. *Anti-Oedipus: Capitalism and Schizophrenia* (University of Minnesota Press, 1983, Minneapolis).
46. See Avenell, Simon, and Herb Thompson. "Commodity Relations and the Forces of Production: The Theft and Defence of Intellectual Property". In *The Journal of Interdisciplinary Economics* 5:23-35 (1994).
47. Sassen, Saskia. "Spatialities and Temporalities of the Global: Elements for a Theorization". In *Public Culture* 12 (1):215-232 (2000).
48. See Liang, Lawrence. "Porous Legalities and Avenues of Participation". Issue paper prepared for Social Science Research Council Workshop on Intellectual Property, Markets, and Cultural Flows, 24-25 October 2003, New York. (Reprinted elsewhere in this volume).

Innovating Piracy

The Bare Act of Stealing, and Shaping the Future

MENSO HEUS

It's April 2003, and Internet news sites bring big news: Apple's iTunes music store has been launched. Containing thousands of albums from a huge selection of artists, it allows you to finally access music when you want it, regardless of times when the store is open. You don't even have to get an entire album, you can get separate songs too. Brilliant.

But it wasn't as fresh or brilliant an idea as the industry would have you believe.

The Fraunhofer institute, funded by the European Union's EUREKA programme, started working on an audio compression algorithm back in 1987. They eventually rounded up their work in 1994 and titled it the *MPEG-1/2 Audio Layer 3* format, commonly referred to as MP3.

Where it was previously unfeasible to try to exchange music online, because there were no good compression algorithms and songs that could take up hundreds of megabytes, the new MP3 format made doing this easy and quick. It was a good thing, because thanks to the Internet, people from around the globe sharing the same tastes in music came in contact with each other. They wanted to exchange the 'gems' in their music collection.

Meanwhile, way back in 1999, a young American college student by the name of Shawn Fanning ('Napster' to his friends), found that he had a problem.

Fanning's problem was that he couldn't find an easy way to do what he liked: sharing his music with others. Back in those days, such exchange was taking place in newsgroups and on chat systems, which made the transactions fairly cumbersome. Fanning, however, came up with a solution. He created a system called Napster that allowed people to share their music in an easy way. People could download an application which made it possible for them to share a directory on their local disk with other users, and they could enter names of artists or songs to search for. The application would then query all the other logged-in users' shared directories and present any matches for download. It was a giant leap forward in online file exchange.

It became huge in its user community almost immediately; it contained music of all genres, labels, record companies and periods. At its peak it was almost impossible to not find what you were looking for, from the newest hits to out-of-press vinyl record rips. It was the iTunes music store, with tenfold content, but four years earlier...and without the cash register.

In effect, Fanning acknowledged that there was a need to find an easy way to obtain music electronically when the need first arose within the Internet community which, thanks to MP3, could finally exchange music online. The iTunes music store, introduced much later and applauded mainly by the industry itself, took almost four years to satisfy that need.

The initial proprietary response to the illegal online exchange of music was to 'copy protect' CDs. Effectively, this meant crippling audio CDs, making them no longer conform to the Compact Disc standards, so that computers couldn't understand them anymore. Another result? Many regular players, car players and newer DVD players couldn't play those CDs either. Instead of recognising the huge demand for online music exchange and responding to that immediately, the industry chose to take something away from the consumer and mutate, in effect making it useless for anyone with a new DVD player or car stereo system. Meanwhile, of course, the industry continued to insist that piracy was the reason that nobody was buying CDs anymore.

As with all things in the current world, globalisation has caused consumers to be aware of what is available around the globe in the area of entertainment, and has thus also created a consumer need. While people not living in the US are fortunate in many ways, when it comes to the availability of movies, music or television shows they have to wait a while before it's available in their region.

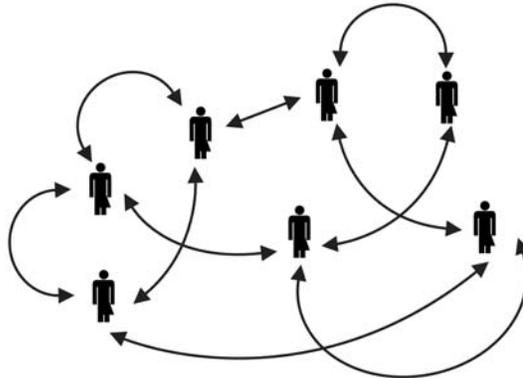
That is, until Piracy jumped the scene.

In 1999, a French hacker named Jerome Rota altered a codec that Microsoft had created for its own ASF file format and changed it into what eventually became known as the DivX format. It allowed DVD movies, around 6 gigabytes in size, to be reduced to 700 MB.

The DivX file format became hugely popular. It allowed tremendous compression while still looking good when viewed on the television screen. It was also capable of transforming movies recorded in cinema halls into the size of a CD. Thanks to piracy, fresh US releases became available to the rest of the world.

There was another problem with the chronology of releases, and it came in the form of DVD movies. Audiences around the world were pleased with the new format that replaced the old-school videotapes that suffered from many problems, including low visual quality and quality loss when making a copy. An unexpected fallout, however, was region encoding.

As was the case of restrictions on movies in cinema halls, the movie region encoding of DVDs was meant to prevent people from seeing movies on DVD prior to their being released in local cinema halls. But people didn't want to wait:



following the logic of 'illegal' music file exchange on the Internet, it was also assumed that all movies would be released for all regions simultaneously. Of course, this never happened: there is much content that is only available for Region X and not for Region Y for a variety of reasons.

For example, in order for something to be released for a certain DVD Region, there needs to be a publishing company that actually wants to publish it. Also, there should be no other company in that region that has exclusive rights to the material. If they do, and decide not to publish it, you've got a problem. If no one in Europe thinks it's feasible to release a European Region encoded DVD of an Asian movie, you've got a problem too. However, piracy again provided a solution: first in the form of a program called DeCSS which was able to strip the region encoding from a DVD if you were willing to re-encode it again yourself; and later, in the form of cheap Asian DVD players that politely ignored the region encoding all together.

Piracy enabled people to watch their DVDs they had legitimately bought on holidays in other regions, or ordered online, on their legitimately bought DVD players.

What goes for movies, of course, also goes for television series. From *The Sopranos* to *24*, *Six Feet Under* and *CSI*, the world wants to watch, and it wants to watch *now*. Unfortunately, the world will have to wait for broadcasting stations they can access to broadcast in their country. Usually, there's a big delay between the release of TV shows in the US and their release in the rest of the world, if broadcasting stations decide to show them at all. Fortunately, the piracy scene in the US captures broadcasts there, strips the commercials and puts them online for the rest of the world to see. In fact, with new technologies such as BitTorrent and RSS, it's even possible to subscribe to a certain series; the software client will automatically download the latest television series as soon as it becomes available on the Internet. Piracy enables people to watch the content they want, when they want.

The Internet has allowed us to make contact with people from all over the world without ever having met them; this is heralded as a great thing. Yet the same logic, applied to the exchange of cultural products, particularly those dealing with entertainment, is seen as large-scale theft. Lending a CD or DVD to a friend is perfectly valid; lending an electronic copy of it to someone across the globe who wants to access that material, is not.

We've all seen the entertainment industry's claims: Piracy is criminal. Piracy is theft. Piracy is illegal. Piracy is hurting the entertainment industry. As shown in the above examples, it looks a lot like it's the entertainment industry that is hurting the entertainment industry. By not recognising market demand and getting caught up in all kinds of intellectual property issues, exclusive licensing deals, things the consumer couldn't care less about, they are concurrently years behind on innovation compared to the piracy scene, which simply chooses to ignore these issues.

Creating a demanding market and then not living up to consumer demands guarantees that people will try to work the system and find solutions to their problems.

A large part of piracy's success is because you don't have to pay for what you pirate. Another part that the entertainment industry likes to ignore is the fact that piracy delivers.

The industry's promises for the future are being fulfilled by the piracy scene today.

Is Hacking Illegal?

YUWEI LIN + DAVID BEER

"Where we might expect a story of the linear impact of technology 'on' society, we actually discover a dramatically convoluted story of the usurping of establishment programmes and institutions by a diverse army of grassroots activists, hackers, cyber-terrorists and citizen-centric community builders".

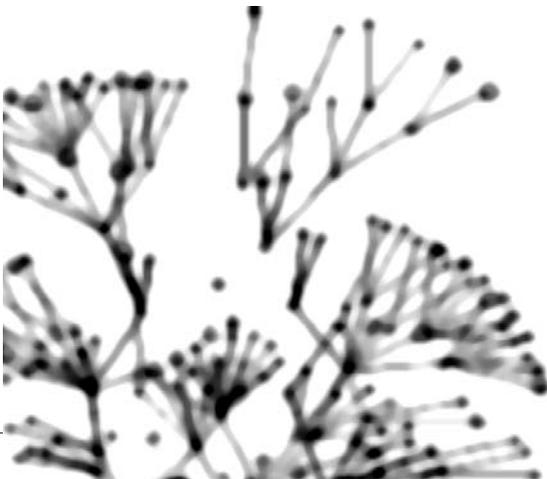
– Hand and Sandywell (2002:206)

Introduction

Hacking is dominantly understood to be the pursuit of the corrupt, the devious, and sometimes the deviant. The contemporary music file-sharing phenomenon, however, has compelled a revision of this understanding. Legal forms of hacking have emerged in response to the massive economic pressure and strategic lobbying capabilities of the music industry. Such virtual trespassing is now common practice in the pursuit of revenue streams that the emergence of the Internet thinned for existing capitalist enterprises. We explore aspects of this particular form of legal hacking, analysing the complexity of the relationship between music and the Internet from cultural, social and technical perspectives. We will also focus on the ongoing lobbying activities and legal actions against users of file-sharing technologies, by the Recording Industry Association of America (RIAA) and the Motion Picture Association of America (MPAA). The re-presentation of this complexity

requires an in-depth analysis of socio-technical transformations rapidly proliferating within the digitalised world (more on this can be found in Sandywell, 2004a & 2004b, and Beer, 2004).

We argue that in the development of P2P file-sharing technologies, users' tacit knowledge and their online habits have transformed and challenged the dominance of entrepreneurs in the selling of information goods, as also traditional ways of production, marketing, licencing and distribution of information goods. We also demonstrate how unauthorised hacking



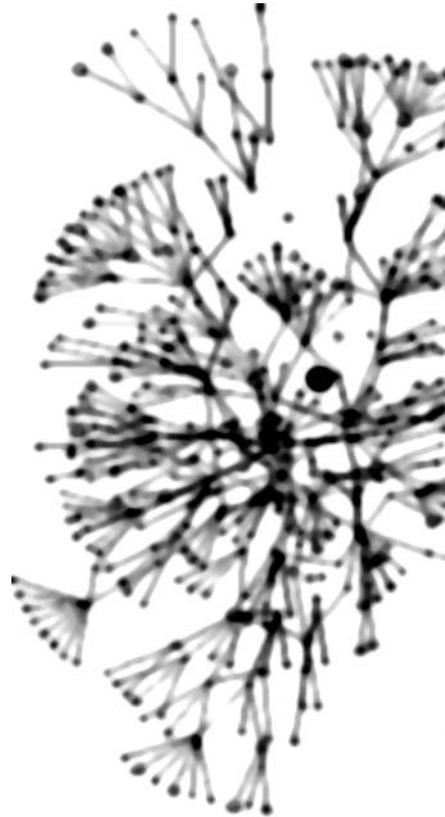
was deemed legal when employed by RIAA and MPAA, both of whom already enjoy considerable social and material capital. We take a critical view of the way in which RIAA and MPAA both tried to undermine P2P file-sharing networks as well as justify their privacy-intrusive act, investigate how hacking and P2P technologies are constructed socio-technically, and how their meanings are negotiated through the interplay of technological artefacts, business value and morality.

Music and the Internet: The Disappearance of the Scriptal Spiral¹

The emergence of the Internet has raised a number of questions concerning the ownership of art. This has had a particular effect on music. The development and escalating appropriation of forms of music that no longer require an object form have had profound implications for the ways in which music is collected, and heard. The transformation of the processes of musical appropriation is central to this issue.

Recorded music is always-already a commodity. Although it could be argued that home recording studio software packages such as those produced by Cakewalk have democratised recording and freed it from some of its capitalist restrictions, this is an argument we will temporarily ignore for purposes of clarity. Recorded music is no longer *also* a commodity – it is *only* a commodity through and through (Adorno, 2001). Once Edison captured sound on his yet-to-be-titled phonograph in 1877 (see Kittler, 1999), music was potentially transformed from the commodity-form of the purchased ‘experience’ or moment of the concert hall, to the reproducible archives of the recording, the objectified commodity: the reproduction. Once the musical form is scratched upon the disc, magnetised on tape, or digitised on CD, it becomes a commodity, and the imperatives of commodification seep into its design, construction, performance, and production. The ownership of the music then plays out in two directions: that of the original, or master recording, and that of the reproduced version. The reproduction, in its material form, can then pass through capitalist circulation to be purchased, leading to a complex and inevitable return flow of capital. The object, in this case the CD, defines ownership; the object becomes the reified or objectified form of the music. Music is transformed into an object, and ownership can be clearly defined.

As Adorno has argued, music and the object used for its reproduction become inextricably linked in terms of the relationship of the art form to the capitalist structures in



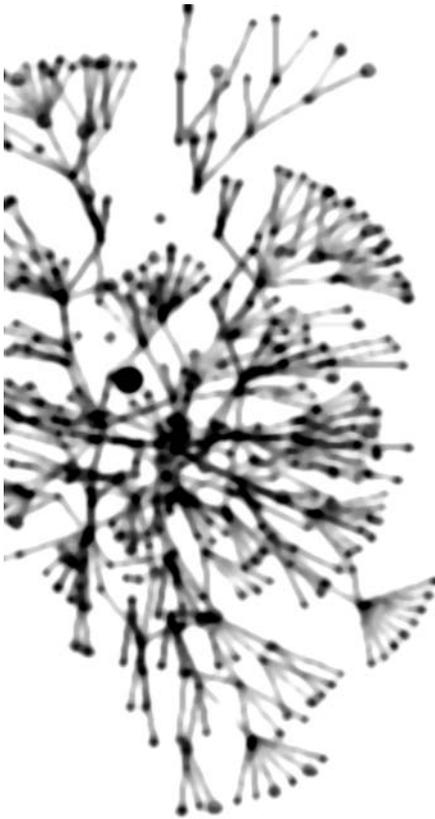
which it operates. Yet it is also important that these be examined as separate entities. The form of the record is as revealing as the art which is scratched upon it (Adorno, 2002). This objectified form of study becomes a problem when the aesthetic form shifts from the disc to the file. This, however, brings both the virtual object and the music into parallel. Both are now formless; and as such, the systems of analysis for both are reduced to the approximation of metaphor, necessitated by the movement from phonos to logos.

In this area, the spread of Internet technologies have added another question to the ownership of music (and sound in general). Music can now be exchanged without the need for an object form. The MP3 file, for example, can facilitate the transfer of music between 'owners' in an entirely virtual and unattached way. The purchase of the musical form has now been called into question. Without the restrictions of the object, music falls into the abyss between unclear ownership and ill-defined legal wrangling.

This is not to ignore the previous and ongoing presence of traditional forms of piracy and bootlegging; but with these previous forms there was always a necessity for an original object to be purchased (or stolen) in order for copies to be created. The Internet has rapidly accelerated the illegal sharing of music far beyond the possibilities of the pirate copy and the bootleg. Users' tacit knowledge and downloading and sharing habits have gradually altered the ways in which music is produced, exchanged and consumed.

This is not to say that these virtual musical 'objects' have eclipsed the previous collections based upon the disc and spool. Rather, it is to say that significant numbers of people are turning toward the virtual collection, or at least are operating a virtual collection in conjunction with their heavy and rigid spatial collection. Evidence of this shift can be found in the recent and dramatic rise in revenue from legal Internet downloads.

The Internet has now has spaces where music can be legally downloaded – legally here equating directly with the facilitation of the flow of capital. These include sites controlled by Coca-Cola and Tesco, as well as Apple and the legally morphed and re-launched Napster. So, this phenomenon cannot easily be categorised amongst the musical practices of the past: a past that has come to be defined by its dominant medium – the record. The transformation of the medium now means that new studies and conceptualisations are required in order for us to begin to understand and define the emerging digital epoch.²



In the following case study we will explore how these transformations and implications (in music (re)production and consumption) are connected to the ways in which specific hacking technologies and techniques are manipulated and labelled by different parties. We will use this case study to develop the understanding of hacking as a contextually variable umbrella concept that can be articulated, interpreted, and performed in a number of contrasting ways.

Legal Hacking

The entertainment industry, mainly the recording and movie industry, has been unsettled by peer-to-peer (P2P) file-sharing technologies such as Kazaa, eDonkey, DirectConnect, Grokster, Lime Wire and Morpheus; many users, however, consider these file-swapping technologies to be a blessing. Legal lawsuits have become these interest groups' weapon against the developers, vendors and users of file-sharing technologies (e.g., C|Net News.com, 18 November 2004; C|Net News.com, 16 November 2004). Apart from these legal actions against individuals, they also invest in lobbying the US Congress to create new bills, such as the recently infamous "Induce Act" (C|Net News.com, 23 June 2004) in favour of their interests. These proposed bills not only document the strategies and means that the groups employ to maintain or expand their interests, but also reflect these groups' moral and economic inclinations.

On 25 July 2002, US Democratic Congressman of California Howard Berman proposed a bill in Congress which would allow the recording industry to *legally hack* into systems suspected of sharing copyrighted material (C|Net News.com, 25 June 2002; C|Net News.com, 25 July 2002). It was said that the bill was supported by RIAA and MPAA to secure their privilege to *legally hack* into P2P users' computers to prevent or thwart the distribution of free MP3 files. The bill does not specify what techniques (such as viruses, worms, denial-of-service attacks and domain name hijacking) would be permissible. However, it does state that a copyright offender should not delete files. It limits the right of someone, subject to an intrusion, to sue if files are accidentally erased.

Berman argued that:

"[The Bill] does not allow copyright owners to send viruses through P2P networks, destroy files, hack into the personal files of P2P users, or indiscriminately block lawful file-trading. [But it does allow] disabling, interfering with, blocking, diverting, or otherwise impairing the unauthorised distribution display, performance, or reproduction of his or her copyrighted work on a publicly accessible peer-to-peer file trading network" (AntivirusAbout.com, 30 July 2002).

Though the bill includes a number of provisions, including a requirement to notify the Department of Justice seven days prior to engaging in an attack, it still raises immense controversy about the legitimacy of hacking technology. This proposed bill hands copyright owners substantial new control over the distribution of their works by curtailing a consumer's right to copy material under a doctrine known as 'fair use'. If this bill is passed in the Congress,³ Americans (and possibly also citizens in other countries that follows the US legal

system) will no longer be allowed to record a TV programme or radio segment – analog recording or digital file – that may be sold or otherwise distributed. The bill is crafted to level the playing field between copyright holders and so-called “file-traders”, as Berman put it:

“In other words, while P2P technology is free to innovate new and more efficient methods of distribution that further exacerbate the piracy problem, copyright owners are not equally free to craft technological responses. This is not fair...Songwriters, photographers, film producers, karaoke tape makers and other copyright owners are experiencing massive piracy of their works through P2P networks. Billions of P2P downloads every month constitute copyright infringements for which these creators and owners receive no compensation. There is no excuse or justification for this piracy. Theft is Theft, whether it is shoplifting a CD in a record store, or illegally downloading a song from Morpheus” (ibid.).

It was thought that this bill was supported by RIAA and MPAA, following their attempt to attach an “anti-piracy amendment” (ibid.) to an anti-terrorism bill in October 2001, and their lawsuit against three prominent file-swapping companies for infringing their copyright in the Los Angeles federal court: Morpheus parent StreamCast Networks, Grokster and Kazaa,⁴ the Netherlands-based company that originally created the Kazaa software. While RIAA and similar companies feel that their rights cannot be infringed, P2P users also feel that they have the freedom to share information. Some civil rights groups criticised the proposal, saying it would encourage profiling of and vigilantism against users. It is reported that unknown parties have launched a Denial of Service (DoS) attack against the RIAA following the announcement of the proposed bill, making the site virtually inaccessible to legitimate traffic (ibid.).

Those promulgating and supporting the Bill are not the only parties in favour of hacking in the name of a self-defensive strategy against file-sharing networks. It is a fact that P2P networks constantly bring security risks, in that viruses and worms are easily transferred through the networks. Network security companies also advocate a similar strategy to that of RIAA to stop viruses from spreading. At DefCon2002, the hacker conference that takes place in the US (the “largest underground hacking event in the world” – defcon.org, 10 February 2005), Timothy Mullen, chief information officer of AnchorIS and a columnist for SecurityFocus.com, suggested a technique (for machines that have been attacked but not infected with a virus) to trace the worm back to the attacking machine and prevent it from spreading the worm to other computers. Using this technique, the computer that launches an attack is paralysed and requires an administrator to restart it, but it stays online and is not otherwise harmed. The rationale for this approach is that the current way of dealing with virus attacks – contacting the administrators of infected and attacking computers – is not effective. Mullen claims, “This after-the-fact stuff clearly doesn't work. I'm still getting Nimda⁵ attacks, often from the same person” (SiliconValley.com, 3 August 2002). But he is also aware of the illegitimacy of this technique: “What we're doing, [according] to the letter of the law, is illegal. I would like to see the law changed...We've illustrated not just a reasonable recourse, but a minimal responsibility” (ibid.). Nonetheless, Mullen's idea has not

gained much momentum elsewhere; and surprisingly, it is US officials who have questioned the ethics of the idea. Mark Eckenwiler, a senior counsel at the US Justice Department's computer crime division says, "You have trespassed on their system. There are more legally acceptable ways to deal with the problem than what is essentially hacking into their system" (ibid.). Another commentator from the Command, Control, Communications & Intelligence office of the US Department of Defense (DoD) says, "There also is the possibility of hacking back at the wrong computer. It is the DoD's policy not to take active measures against anybody because of the lack of certainty of getting the right person" (ibid.). Jennifer Stisa Grannick, litigation director at the Centre for Internet and Society at Stanford Law School, claims that this type of hacking is defensible: "Mullen's idea may be protected under a self-defence provision. This is a type of defence of property. There is a lot of sympathy for that [kind of action] from law enforcement and vendors because we do have such a big problem with viruses" (ibid.).

While hacking is considered to be an offensive and aggressive appropriation of technology, it can be argued that RIAA and MPAA, the two illustrative figures, cynically utilise their dominant relationship with the media and their powerful lobbying force to reframe hacking and ultimately secure their profits. It is also ironic to see that hacking, the practices of which have been adopted and developed by those who come from the file-sharing community (that adores the freedom of information), are being used by RIAA and MPAA to fight against those who constructed it. We enter a state of open, ambivalent, and unstructured play that is comparable with Bakhtin's notion of 'carnival' (Bakhtin, 2003). It is paradoxical that the mediated social world, where information is considered both commodity and property, shares the same practice – of 'break-ins' – with *the hacker social world*, where the freedom of information is the dominant schema (Lin, 2004).

Thus, the same practice evokes different meanings when used by different parties. It is definitely illegal for an individual or a group hacking into any system of a media agency to see what they are doing, but oddly it is claimed to be legitimate for RIAA and MPAA to hack into a user's system to see whether or not there is a file-swapping programme installed in his/her machine. The identity of the technology has transformed dramatically from a marginalised and criminalised position to a crucial and influential one. Practically speaking, the practice of break-ins, for organisations both in the hacker social world and the mainstream, functions to gain unauthorised access to the counterparts' systems. But the socio-technical consequences vary with context.

Hacking technologies and break-in practices, on the one hand, serve as boundary objects and boundary practices (see Star, 1988; Star & Griesemer, 1989; Fujimura, 1992) that provide a platform for the two social worlds to interact. On the other hand, hacking technologies (as boundary objects) and break-in practices (as boundary practices) are open to the attachment of multiple meanings and contextually determined social identities. The narrative of (or re-narrativisation of hacking by) the RIAA and MPAA illustrates how hacking technologies are contextualised and socially constructed. It is clear that hacking is always-already socially constructed; conversely, hacking is constrained and restricted by the appropriation of technological objects in the moment of praxis. Hacking does not exist outside of this virtual-social network or fractured community, and neither does it exist

outside of the material constructions – the plastic, glass, wires, and solder – that are a necessity of its operational practices. Moreover, considering the diversity of actors and the proliferation of hacking narratives resulting from increased media coverage, it is possible to argue that each actor has his/her own multiple interpretations of hacking and hackers. As a result, it is sociologically inappropriate to prescribe a definite meaning to hacking or hackers (Lin, 2002). Particularly as the instability of hacking leaves it open to rapid and relatively unconstrained reconstructions of its form. The emergence of legal hacking is one example of the possibilities of the reflexive reworking of hacking's fluid conceptual boundaries. The virtual nature of the structures/landscapes in which hacking exists leaves its re-framing and re-presentation open to increasingly radical and multidimensional reformulation.

Freedom/Democracy or Control

It can be argued that the Internet has created a greater level of access to music by liberating it from the restrictions of the disc. It can also be argued that the Internet has increased access to music through the types of file-sharing technologies earlier discussed. This however does not mean that music has been democratised, nor that the hierarchy between constructor and consumer has been further eroded (see Breen & Forde, 2004). The Internet has become a site of conflict, particularly concerning art and ownership. This has created a situation in which the music industry has reacted powerfully, but relatively slowly, against illegal music file-sharers. While a number of court cases have ensued against individuals and Internet-based companies, the result is a field of extreme fragmentation and complexity that can be said to neither control, nor free, music. Instead, the analyst must look closely at the practices of both file-sharers and the music industry. These can only be uncovered through close-up analysis in the form of small-scale empirical research projects. Perhaps a form of Internet or cyber-ethnography would be suited to the construction of detailed empirical research. These may be able to overcome the increased problems of access that the Internet creates. It is possible that blogging, chatrooms, instant messaging and mailing lists may offer ways of communicating with the hacker, the file-sharer, and even the music industry.

Music's relationship with the Internet, or in this instance, the ways in which music is appropriated through the fragmented and loosely defined technologies that represent the Internet, must not be restricted to the polarised study of democracy or control. Instead, there should be increased focus on the complexity of this relationship, and the ways in which these technologies are constructing a *natural world*, where cultural consumption is far more rapid and the cultural artefact and its owners are less easily defined. As Ann Galloway (2004) observes, the designer and the sociologist are in direct competition. It is the designer's role to conceal technology within the practices of everyday life; it is the role of the sociologist or cultural theorist to illuminate these practices.

It is also necessary to take into account the question of the fluidity and blurring of boundaries and the need for the analyst to avoid making or seeking clearly defined categories of actor/behaviour in trying to understand the social world. Rather, we might be better adopting the notion of hybridity. As Latour puts it,

“The dual mistake of the materialists and of the sociologists is to start with essences, either those of subjects or those of objects...Neither the subject, nor the object, nor their goals are fixed for ever. We have to shift our attention to this unknown X, this hybrid which can truly be said to act” (1993:6).

In light of Latour’s methodological insight, we propose that the analysis of technological innovation systems requires some sense of technological determinism – or at least, technological causality – yet it must also embrace the notion of the socio-technical construction of technology and technological practices (such as hacking and file-sharing). Technological determinism leads the analyst to consider the affordability of a technology in the context that would provide solutions for problems and determine users’ behaviours (Hutchby, 2001, 2003). Socio-technical constructionism suggests the need to recognise the economic, political, and social values woven within its innovation, design, and evolution. In creating this hybrid position, it is possible to locate a conceptual middle ground through the eradication of the oppositions posed between technological determinists’ focus upon technological essence, and socio-technical constructionists’ focus upon the essence of the subject.

We are then left with neutral sets of actors, objects, and practices – which can be unified under the heading of ‘phenomena’ – around which small-scale empirical studies can be performed. The emergence of fractured and concealed Internet-based virtual communities, movements and legal conflicts requires modes of analysis that reflect the fragmentation, proliferation and ambiguity of Internet-based technological (and cultural) appropriations and virtual practices.

The sub-categorisation of hacker hybrids, including legal hacking, may offer a fruitful direction for future study. This would require the analyst to be open to the fluidity and instability of the category and subcategories under examination. The development of a contextualised and mobile typology of the field of hacking may create a greater understanding of its complexity and its polyrhythmic nature, which interrogates the fixity of the legal. It also problematises the dominant definition of the hacker as the outlaw, a protean, elusive and contradictory figure; and provides an opportunity for policy makers to re-evaluate the legal regulation and control of hacking and file-sharing technologies.

NOTES

1. This term is taken from Adorno, 2002.
2. The detailing of the relationship between music and the Internet has already begun. Most notably in Steve Jones’ essay “Music and the Internet” (2000), in which Jones identifies a number of emerging Internet phenomena and suggests a number of directions for future analysis.
3. This proposal to allow copyright holders to attack computers on P2P networks used for piratical purposes, however, was not accepted in the Congress. But RIAA has won a court decision upholding its right to use the subpoenas, which take advantage of a controversial fast-track provision that allows copyright holders to obtain information about alleged infringers without first filing a lawsuit. It is written that, RIAA has filed close to 1000 subpoenas in the US District Court in Washington in a month (C|net News, 22 July 2003). Some of the subpoenas were sent to innocent users because RIAA’s automated programme apparently

confused two separate pieces of information – a legal MP3 file, and a directory named “usher” – and concluded that there was an illegal copy of a song by the musician Usher. RIAA's action is seriously criticised in that the process is hardly privacy-protective, and it allows copyright holders to learn the identity of an Internet user without filing a lawsuit or obtaining a judge's approval. RIAA's anti-piracy campaign continues (cf. “Subpoena's Sour Note”, C|net News.com, 1 August 2003).

4. In February 2002, Kazaa BV sold the Kazaa file-swapping software to Sharman Networks, a company based in Vanuatu, a small island in the South Pacific. The copyright lawsuit filed by RIAA and MPAA has been ruled to include Sharman Networks (which distributes the Kazaa software) in June 2002.
5. Nimda was one of the most destructive Internet viruses of 2001.

REFERENCES

- Adorno, T.W. “Culture Industry Reconsidered”. In J.M. Bernstein (ed.), *The Culture Industry* (Routledge, 2001, London) pp. 98-106.
- Adorno, T.W. “The Form of the Phonograph Record”. In R. Leppert (ed.), *Essays on Music* (University of California Press, 2002, London) pp. 277-282.
- AntivirusAbout.com, 30 July 2002. “KaZaA, Gnucleus, Welcome to Hackville”.
<http://antivirus.about.com/library/weekly/aa073002a.htm> (as accessed on 7 September 2003).
- Bakhtin, M.M. *The Bakhtin Reader* (Arnold, 2003, London).
- Beer, D. and N. Gane. “Back to the Future of Social Theory: An Interview with Nicholas Gane”. In *Sociological Research Online*, Vol. 9 (4); 2004.
- Beer, D. “A Review of Pop Music – Technology and Creativity by Timothy Warner”. In *Resource Centre for Cyberculture Studies*, July 2004
 (<http://www.com.washington.edu/rccs/bookinfo.asp?ReviewID=292&BookID=244>).
- Breen, M. and E. Forde. “The Music Industry, Technology and Utopia – An Exchange between Marcus Breen and Eamonn Forde”. In *Popular Music*, Vol. 23 (1), pp.79-89 (2004).
- C|Net News.com, 25 July 2002. “Hollywood Hacking Bill Hits House”. <http://news.com.com/2100-1023-946316.html> (as accessed on 25 November 2004).
- C|Net News.com, 23 June 2004. “Senate Bill Would Ban P2P Networks”.
http://news.com.com/Senate+bill+would+ban+P2P+networks/2100-1027_3-5244796.html?tag=nl (as accessed on 25 November 2004).
- C|Net News.com, 25 June 2002. “Lawmaker: Let Studios Hack P2P Nets”.
http://news.com.com/Lawmaker+Let+studios+hack+P2P+nets/2100-1023_3-939333.html (as accessed on 25 November 2004).
- C|Net News.com, 16 November 2004. “MPAA Touts Lawsuits, New P2P-fighting Software”.
http://news.com.com/MPAA+touts+lawsuits%2C+new+P2P-fighting+software/2100-1025_3-5454939.html
 (as accessed on 25 November 2004).
- C|Net News.com, 18 November 2004. “RIAA Files New Round of P2P Lawsuits”.
http://news.com.com/RIAA+files+new+round+of+P2P+lawsuits/2100-1027_3-5458594.html (as accessed on 25 November 2004).
- Fujimura, J. H. “Crafting Science: Standardized Packages, Boundary Objects, and ‘Translation’”. In Andrew Pickering (ed.), *Science as Practice and Culture* (University of Chicago Press, 1992, Chicago).
- Galloway, A. “Intimations of Everyday Life: Ubiquitous Computing and the City”. In *Cultural Studies*, Vol. 18, ((2/3), pp. 384-408 (2004).

- Gane, N. *The Future of Social Theory* (Continuum, 2004, London).
- Hand, M. and B. Sandywell. "E-Topia as Cosmopolis or Citadel: On Democratising and De-democratising Logics of the Internet, or, Toward a Critique of the New Technological Fetishism", in *Theory, Culture & Society*, Vol. 19 (1-2), pp.197-225 (2002).
- Hutchby, I. "Technologies, Texts and Affordances". In *Sociology*, Vol. 35, No. 2, pp. 441-56 (2001).
- Hutchby, I. "Affordances and the Analysis of Technologically Mediated Interaction: A response to Brian Rappert". In *Sociology*, Vol. 37, No. 3, pp. 581-89 (2003).
- Jones, S. 'Music and the Internet', *Popular Music*, Vol. 19 (2), pp. 217-230 (2000).
- Kittler, F. *Gramophone, Film, Typewriter* (Stanford University Press, 1999, California).
- Latour, B. "On Technical Mediation: The Messenger Lectures on 'The Evolution of Civilisation'. Cornell University, Institute of Economic Research: Working Papers Series, 1993.
- Lin, Y. "The Institutionalisation of Hacking Practices". In *Ubiquity* 4(4), 18-24 March 2003. http://www.acm.org/ubiquity/views/y_lin_1.html
- Lin, Y. "Hacking Practices and Software Development: A Social Worlds Analysis of ICT Innovation and the Role of Open Source Software". Thesis submitted for the doctoral degree at the Department of Sociology, University of York. (Unpublished doctoral thesis, 2004).
- Sandywell, B. "The Myth of Everyday Life: Toward a Heterology of the Ordinary". In *Cultural Studies*, Vol. 18 (2/3), pp. 160-180 (2004a).
- Sandywell, B. "Beyond Metaphysics and Nihilism. In Memoriam: Steven Crook, Sociologist and Teacher (1950-2002)". In *Cultural Studies*, Vol. 18 (2/3), pp. 483-93 (2004b).
- SiliconValley.com. 3 August 2002. "Computers under Attack Can Hack Back, Expert Says". <http://www.siliconvalley.com/mld/siliconvalley/3795332.htm> (as accessed on 24 November 2004).
- Star, Susan Leigh and James Griesemer. "Institutional Ecology, 'Translations', and Boundary Objects: Amateurs and Professionals in Berkeley's Museum of Vertebrate Zoology, 1907-1939". In *Social Studies of Science* 19, pp. 387-420 (1989). Reprinted in Mario Biagioli (ed.), *The Science Studies Reader* (Routledge, 1989, London) pp. 505-524.
- Star, Susan Leigh. "The Structure of Ill-Structured Solutions: Heterogeneous Problem-Solving, Boundary Objects and Distributed Artificial Intelligence". In Proceedings of the 8th AAAI Workshop on Distributed Artificial Intelligence, Technical Report, Department of Computer Science, University of Southern California, 1988. Reprinted in Huhns, M. and L. Gasser (eds), *Distributed Artificial Intelligence 2* (Morgan Kauffmann, 1989, Menlo Park) pp. 37-54.

Three Proposals for a Real Democracy

Information-Sharing to a Different Tune

BRIAN HOLMES

Since their invention a few years ago, peer-to-peer (P2P) file-sharing networks for the free exchange of music have been the gadfly of consumer capitalism. Puncturing the profits of the recording industry, they have brought unlimited pop to teenagers' lives, and an ironic smile to the lips of those Internet purists who always scorned the profit-seeking illusions of the 'new economy'. For the politically minded, and particularly the older set which still equates guitars with protest movements, this massive transgression of copyright law could make it seem as if a long-awaited breath of cultural revolt was in the air. But there was just one problem: who would pay the piper? How would the artists (and, some added, the recording companies) survive in a world of free music?

Recently, quite a narrow range of solutions have been proposed: either pay-per-song download sites, in a centralising scheme favoured by the music industry; or a 'flatrate' tax on Internet users, preserving file-sharing by providing a source of monetary compensation to be distributed among the copyright holders. One of the flatrate proposals, specifically addressed to the EU's Internal Market Directorate, makes this case for peer-to-peer technologies: "The digital revolution holds the potential of a semiotic democracy, the reuse and remix culture being one of its most promising innovative aspects".¹

So let's ask a question: exactly what's being promised here? And above all, how to get it? How to move from a semiotic to a real democracy?

Take another example of the digital revolution: the call for electronic publication of scientific and scholarly journals, by groups like the Public Library of Science or the Budapest Open Access Initiative.² Such publication projects have received extensive support from scholars and scientists, as they would eliminate the barriers to the exchange of knowledge represented by skyrocketing costs for peer-reviewed print journals, which have become prohibitively expensive even for many universities in the developed world. Together with guidelines for self-archiving (i.e., electronic publication without peer review), these initiatives promise the (re)creation of what certain theorists have begun to call an 'information commons',³ resulting in a major transfer of knowledge from the wealthier institutions to their poorer cousins, and ultimately, from the North to the South.

Of course, we are still talking about purely semiotic freedoms. But what might arise from the 'reuse and remix' of scientific and scholarly knowledge? Well, technological

development, for one thing. And there, the need to go beyond a semiotic democracy is obvious.

Consider the case of highly expensive AIDS drugs. The knowledge and technology required to manufacture these medicines at low cost is already widely available. But the capacity to do so is limited by patent-protection regimes established on a global scale by the World Intellectual Property Organization (WIPO) and the TRIPS agreement (Trade-Related Aspects of Intellectual Property Rights) of the WTO (World Trade Organisation). It's against international law to save poor people's lives with rich people's science. Nonetheless, the combined efforts of AIDS activists, NGOs, health ministries in the underdeveloped countries, and risk-taking manufacturers such as Cipla in India, led to the deliberate transgression of the patent regimes (in 2001, Cipla could offer its tri-therapy generics to Médecins sans Frontières for a cost of \$340 a year per patient, compared to \$10,400 for the high end of the trademarked medicines).⁴ The result of this activism was the WTO's historic Doha Declaration, which granted exceptions to the TRIPS provisions on patent law in the case of 'national emergencies', specifically including epidemics of AIDS, malaria and tuberculosis.⁵ Yet the intent of the declaration is now being blocked, by collusion between the transnational drug industry and the current US administration.⁶ Intellectual property laws make it difficult to realise the promise of free information exchange.

Why are the hidden connections between file-sharing (in everyday life), open publishing (in scientific and scholarly disciplines) and the transfer of vitally needed technologies (in North-South relations) not immediately obvious to large numbers of people? Or in other words, why is the democratic promise of the Internet (or the digital revolution) so broadly ignored?

Let's return to our entry point: solutions to the 'problem' of free music. An essayist named Rasmus Fleischer has a critique of the flatrate proposal, and specifically, of its claim to offer compensation to property-rights holders without exerting any control over users: "The record industry builds its power and its business model upon the ability to control people's musical preferences, and it's damn important for them not to loose their grip over that. It seems unsure how long they could go on motivating their existence in a situation where they do not themselves control how music is packaged and presented, what kinds of collection albums and boxes are marketed, when the different singles of an album are released in different parts of the world, etc. In fact, one could say that the music industry needs the money that current copyright laws grant them precisely in order to exercise control".⁷

Fleischer puts a finger on exactly what most advocates of free file-sharing fail to mention: what's being massively exchanged over P2P systems are not independently developed works like open source software, but commercially produced pop tunes which form a part of today's control culture. In contemporary societies, the word 'control' can serve to designate the ways that exclusive property rights are defended from effective critique, through a carefully orchestrated media modulation of attention, memory and belief.

We're no longer talking about ideology as a single, totalising worldview, and Debord's description of the spectacle society was still too general, too imprecise; what we find in reality is a competing mesh of solicitations, distractions, incitements, all reinforcing

different aspects of the basic set of social roles that shape our productivity and desire. Maurizio Lazzarato describes the ways that corporations 'create worlds' for their workers and consumers, and engage in 'aesthetic wars' to maintain their attractive power and belief-inducing consistency: "It is enough to turn on the television or the radio, go for a walk in a city, buy a weekly or daily newspaper, to know that this world is constructed through a statement-assemblage, through a sign regime, the expression of which is called advertising; and what is expressed (the meaning) is a prompt or a command, which are a valuation, a judgment, a belief about the world, about oneself and others. What is expressed (the meaning) is not an ideological valuation, but rather an incentive (it gives signs), a prompt to assume a form of living, i.e., a way of dressing, having a body, eating, communicating, residing, moving, having a gender, speaking, etc".⁸

The creation of rhythmically modulated worlds of sensation and desire is easy enough to grasp in the case of pop-music consumption, and innocuous enough, you might say. A more pointed example would be the endless streams of advertising for pharmaceutical products, offering a longer and healthier life, modulating moods and promising vitality, even ecstasy. But advertising is only one part of the control equation. Consider the complex opinion-shaping operations required to maintain the belief that the sky-high prices of pharmaceutical products are justified, even when the scientific discoveries that underlie them have most often been made at public universities, using public funds (as is particularly the case in the United States). The classic argument, repeated in the news media whenever necessary, is that it costs a total of \$500 to \$800 million to develop, test and produce a new drug, expenditures beyond the reach of any public research institution. However, those figures are provided by a lobby, the Pharmaceutical Research and Manufacturers of America, and by a research centre which receives 65% of its funding directly from the industry; real costs are probably a small fraction of the claimed amount. When pressed by a South African court to open their books and prove the research costs which justify their need for exclusive patents on AIDS drugs, 39 pharmaceutical companies preferred to withdraw their suit against the manufacture and distribution of generic medicines.⁹

Such cases threaten the industry's manipulation of our belief; yet pharmaceuticals remain a \$400 billion business worldwide, the third most profitable in 2003 (down from first in 2001 and 2002). Marcia Angell makes this remark: "The most startling fact about 2002 is that the combined profits for the ten drug companies in the Fortune 500 (\$35.9 billion) were more than the profits for all the other 490 businesses put together (\$33.7 billion)".¹⁰ The good life isn't exactly free these days.

So what are the melodies that big pharma would like us to hear? One that entices, another that deceives, and a third that motivates, like the sound of a jackpot tinkling in the till. Among the neoliberal transformations of the public sector is the way that research is conducted. In the United States (which Europharma envies, for this and one more reason),¹¹ the results of research conducted with federal grant money can be patented by the university and licenced exclusively to private start-ups, which then sell their patented technologies to major corporations; inventors receive a portion of the licencing revenues and may also have an interest in the new business.¹² Withholding publication for patent protection has therefore become increasingly frequent.¹³ In this way, the culture of

privatisation subtly controls the availability and applications of research; and also the very motivation and desire of researchers, who are encouraged to seek their own profit rather than to share knowledge as a public good.

A bit of proverbial wisdom applies here: 'He who pays the piper, calls the tune'. But when the payments have become structural, when they involve a vast, interlocking system of regulations, interests, strategies and seductions, then a change in the controlling rhythms of social experience requires the introduction of something fundamentally different, entirely outside the prevailing systems of payment (or extortion) that characterise cognitive capitalism.¹⁴ The free exchange of music files has that something: not so much in the branded tunes as in the fact of free exchange, outside a market structured overwhelmingly in the favour of exclusive right-holders and monopolistic corporations. And each file exchanged is a gift that challenges not just one industry (the recording business) but the whole institution of intellectual property.

Nonetheless, if we are to make something of this upsurge of the commons in immediate daily experience, it must be linked to a wider program for the transformation of what are now the basic rules of social interchange. This entails inventing and instituting the conditions for the production and distribution of alternative forms of journalism, scientific and scholarly knowledge, but also cultural creations such as music, literature and the visual arts. Such alternative forms, in all their diversity and intricacy, can also become war machines of a new and astonishing kind, in the aesthetic struggle to create the worlds in which we live. What we need today, on the Left, is to transform the possibilities of semiotic play, stimulated by the 'digital revolution', into a far-ranging, multi-levelled, but above all communicable and workable program for a real democracy.

To begin doing this requires a debate about the kinds of practices, struggles and goals that could effect such transformation. In other words, it's necessary to grapple with the preconditions, both semiotic and material, of alternative information exchange, which ultimately means changing the current relations between the market, the state and the public domain or the commons. Without such a debate, aiming to create a program of substantive social change, what used to be called 'the Left' will grow increasingly weaker, while the culture of privatisation heightens world tensions by deepening basic inequalities.

So let us begin right here. Starting with the promise of free information exchange, one could develop three interlinked proposals:

1. The constitution of a cultural and informational commons, whose contents are freely usable and protected from privatisation, using forms such as the General Public License for software (copyleft), the Creative Commons license for artistic and literary works, and the open-access journals for scientific and scholarly publications. This cultural and informational commons would run directly counter to WIPO/WTO treaties on intellectual property, and would represent a clear alternative to the paradigm of cognitive capitalism by conceiving human knowledge and expression as something essentially common, to be shared and made available as a virtual resource for future creation, both semiotic and embodied, material and immaterial.

2. The egalitarian transformation of existing, publicly funded cultural and scientific infrastructure (where elite interests determine the forms of mass consumption), through the

invention of new forms and protocols of access to the means of the production and distribution of journalism, culture and scientific knowledge, and to the complex resources necessary for that production/distribution (archives, libraries, studio and rehearsal spaces, laboratories, university courses, etc.). This transformation, which alone can allow us to go beyond the domination of public-opinion formation by market-driven televisual media, would serve to encourage reasoned democratic debate (the exchange of ideas), but also autonomous artistic creation and expressive politics (social movements).

3. The re-invention of former programs of collective insurance safeguarding the health and well-being of society's members, but in a new and more diversified form, integrating both the demand for equality and the right to difference: guaranteed basic income, provision of low-priced housing and basic services, health insurance and high-quality education for all. The challenge here is not to revive the bureaucratic state with its stultifying procedures of categorisation and homogenisation, but rather to invent new forms of appropriation and even of property, whose effects would be liberating but not isolating, social rather than narrowly individualistic.

Together, these proposals sketch the outlines of a far-reaching transformation. Yet each is simply essential for the concrete participation of citizens in an egalitarian democracy. For you cannot contribute to the wealth of global common goods without having access to the tools of production/distribution, and to existing informational and cultural resources; and yet this kind of engagement also requires that you have the time, time liberated from the relentless need to earn money for the basic necessities of social reproduction. The apparent audacity of ideas like the information commons or the guaranteed basic income, their apparent lack of 'realism', merely underscores the crying absence of the political in today's debates. There's more at stake here than a catchy tune, or a pill to make you dream.

Only an ambition to change the rules of the economy and, ultimately, the existing form of the state, can supply the oppositional force that is needed in the early 21st century. Yet the proposals above, inspired in part by the 'digital revolution', indicate pragmatic changes which are already underway; they do not depend on electoral victories for their realisation. Rather than a complete, finished program, they point toward an exodus from the present impasse. Semiotics with material consequences. Information-sharing to a very different tune.

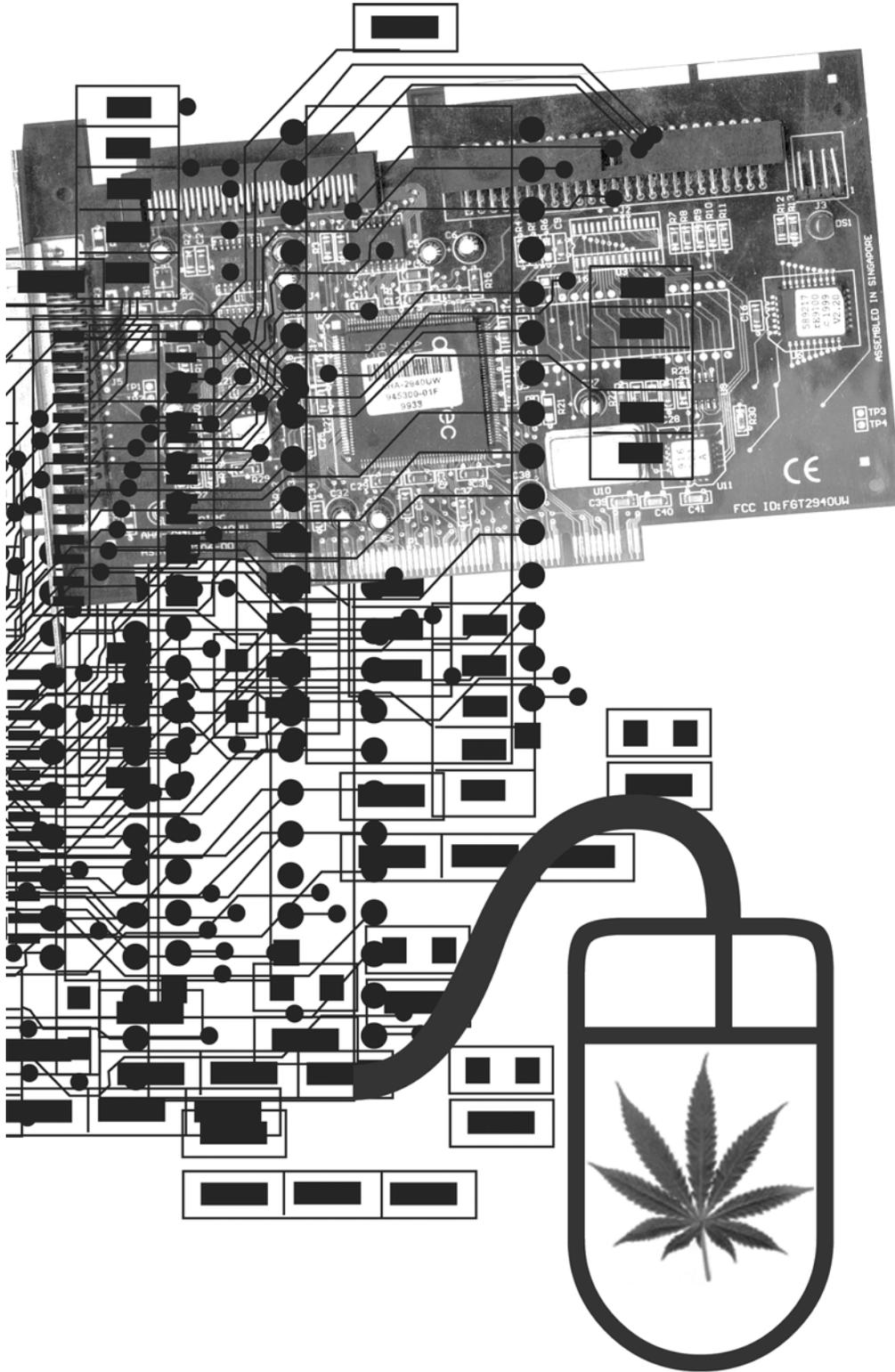
This text is licensed under the Creative Commons Attribution-NoDerivs-NonCommercial License. To view a copy of this licence, visit <http://creativecommons.org/licenses/by-nd-nc/1.0/>, or send a letter to Creative Commons, 559 Nathan Abbott Way, Stanford, California 94305, USA.

NOTES

1. "Berlin Declaration on Collectively Managed Online Rights: Compensation Without Control", at <http://wizards-of-os.org/index.php?id=1699>.
2. For a good description of the BOAI and links to corresponding initiatives, see the FAQ at <http://www.earlham.edu/~peters/fos/boaifaq.htm#impactaffordable>.
3. The information commons, a notion strongly influenced by the practice of open source software distributed

under the General Public License, is succinctly defined by Yochai Benkler in his article "The Political Economy of Commons" in *Upgrade*, June 2003, Vol. IV, No. 3, available at www.upgrade-cepis.org/issues/2003/3/up4-3Benkler.pdf.

4. Source: *Libération*, 8 July 2004, at www.liberation.fr/page.php?Article=222215.
5. Text at www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm.
6. See the Health Global Access Project article at www.healthgap.org/press_releases/03/.
7. "Content Flatrate' and the Social Democracy of the Digital Commons", posted on Nettime on 13/7/04, at <http://amsterdam.nettime.org/Lists-Archives/nettime-l-0407/msg00020.html>.
8. M. Lazzarato. "Créer des Mondes". in *Multitudes* 15 (Winter 2004), at http://multitudes.samizdat.net/article.php?id_article=1285; the passage quoted figures in "Struggle, Event, Media" at www.republicart.net/disc/representations/lazzarato01_en.htm (translation modified).
9. Source: "Yale University Shares Profits From AIDS Drugs", *Le Monde Diplomatique*, February 2002, available at www.mindfully.org/Industry/Yale-University-AIDS-ProfitsFeb02.htm.
10. "The Truth About the Drug Companies". In *The New York Review of Books*, Vol. 51, No.12 (July 2004); available at www.nybooks.com/articles/17244.
11. The other reason being the extremely high profitability of the unregulated US market. For Europharma's envy, see the references to the U.S. in the 2003 industry report of the European pharmaceutical lobby EFPIA, at www.efpia.org/6_publ/Inffigures2003.pdf.
12. The relevant legislation is known as the Bayh-Dole act, passed in 1980 at the very outset of the neoliberal turn; text at www.cctec.cornell.edu/bayh-dole.html.
13. Source of these assertions: Jennifer Washburn, "The Kept University", *The Atlantic* (March 2000), at www.theatlantic.com/cgi-bin/o/issues/2000/03/press.htm.
14. Much of the writing in the French journal *Multitudes* has been devoted to the contradictions of "cognitive capitalism", which displaces the creation of surplus value into a largely semiotic realm, but to do so, relies on the intellectual and affective cooperation of people creating their own measures of value, and working outside any direct labour discipline. See esp. *Multitudes* 2 (May 2000), or the anthology *Vers un Capitalisme Cognitif* (L'Harmattan, 2001, Paris).



Roots Culture

Free Software Vibrations “inna Babylon”

ARMIN MEDOSCH

In this article I want to focus on free software as a culture. My first reason for doing so is to make it very clear that there is a difference between open source and free software, a difference that goes beyond the important distinction made by Richard Stallman.¹ His ideas have grown legs and now the notion of free software (with ‘free’ as in ‘freedom’) has been taken further in ways he could not have imagined. Second, I want to show that at least a specific part of the free software scene shows all the traits of a culture; this is understood by protagonists of the scene and is made explicit through the way they act. With software development rooted in culture, it becomes a discipline distinct from engineering, and is invested with social and cultural values.

Rasta Roots and the ‘Root’ in Computing

The first part of the title, ‘Roots Culture’, is designed to resonate with the hacker pride of being ‘root’ on a Unix system, and with Rastafarian reggae ‘roots’ culture. In a file system, root is the uppermost directory, the one from where all other sub-directories originate. In Unix-style operating systems (including GNU/Linux), ‘root’ is also the name of the super-user account, the user who has all rights in all modes and who can set up and administrate other accounts. Roots reggae is a specific type of reggae music with heavy bass lines and African rhythmical influences.

Roots reggae originated in Jamaica, and is closely associated with Rastafari. This is sometimes described as either a sect/religion, or a subculture, but neither of these definitions can fully do justice to the diversity of this phenomenon. Therefore it is better to follow Paul Gilroy who suggests that Rastafari be understood as a popular movement whose “language and symbols have been put to a broad and diverse use”.² It originated in Jamaica in the 1930s, and took some inspiration from the black nationalism, Pan-Africanism and Ethiopianism of Marcus Garvey. Through Rastafari, the African Caribbean working class found a way of fermenting resistance to the continued legacy of colonialism, racism and capitalist exploitation. It is eclectic and culturally hybrid, drawing from a range of influences such as African drumming styles, African traditions in agriculture, food and social organisation,³ and American Black music styles such as R&B and soul. The central trope of the Rastafari narrative is that the Rastas are the 12th tribe

of Judah, living in captivity in Babylon, and longing to go back to Africa, identified as a mythical Ethiopia.

Paul Gilroy (borrowing a phrase from Edward Said) describes Rastas as an “interpretive community”. The ideas and stories of Rastafari “brought philosophical and historical meaning to individual and collective action”.⁴ Through the enormous success of reggae as a form of popular music, particularly the work of Bob Marley and the Wailers, Rastafari became popular throughout the world in the 1970s; now, many non-Jamaicans sport Rasta hairstyles and dreadlocks, and dedicate themselves to the music and the activity of *ganja* smoking. In the UK, versions of Rasta culture now span all ages and ethnicities;⁵ it is probably, by consensus, the most popular subculture in Britain today. Aspects of it have been heavily commercialised and roots reggae has therefore been unfashionable for a while. It has, however, made a strong comeback recently. The reason for this can only be that it is more than a music style or a fashion (not everybody with dreadlocks is a Rasta and not every Rasta wears ‘dreads’): it is a culture in a true and deep sense (the meaning of which I will come back to later). ‘Roots’ influences can now be found in hip-hop, jungle, drum & bass, 2Step and other forms of contemporary urban music.

Both notions, the ‘roots’ in computing and in Rastafari, are not to be understood in any literal or narrow meaning, but as points of association and affinity. Knotted together, the two narrations form a crucial potential point of departure for the radical social imaginary.⁶ Neither Rastafari nor hacker cultures are without problems of their own. Rastafari, for instance, is a very male culture, where homophobia is rife and women suffer a subordinated role in the midst of a supposed liberation struggle.⁷ I have chosen the Rastafari theme for a number of reasons. The main one is that it has developed a language of revolution which it uses to very effectively recount, judging from the massive reception it has got so far, stories about political resistance and the struggle for freedom, peace and justice. These accounts have resonated far beyond Jamaica and the urban African Caribbean communities in the US and Britain. Roots reggae, as music and as a liberatory mythmaking machine, has a huge influence in Africa and Latin America.

Rastafari lends itself to be adopted by other communities and cultures due to its eclectic and hybrid nature. The experience of diaspora, central to the Rastafari story, is shared by many people who feel displaced and uprooted. This is understood well by some of the musical protagonists of roots music, who encourage ‘togetherness’ of all people who feel alienated in the societies where they live. In the words of Humble Lion from the Aba Shanti Sound System from south London: “Ultimately, people who are like us, who hold similar attitudes, will gravitate towards us, because we are aiming for the same virtues that they are, and this creates a something a lot better than what society stands for. Right now, it’s obvious that our societies are controlled by money, polarised, xenophobic. The major world powers back their puppet leaders and the media sanitises, separates ‘spectators’ from reality. [...] I have to say that now it is not only the black youths who are suffering in this land, so to me, increasingly, the true inner meaning of Rasta is not concerned with colour”.⁸

Hackers, young and old, have their own reasons to feel alienated in society, one of which is the misrepresentation of their creed in the media. Originally ‘hacking’ meant nothing

else but feeling impassioned about writing software to the extent of pursuing this interest sometimes outside the norms, which would not necessarily imply anything illegal. The original 'hackers' such as Richard Stallman were employees of research institutions like the Massachusetts Institute of Technology (MIT) anyway, so they could hardly be seen as being outside the state system. But during the 1980s, in the course of the boom in computer science research (sponsored by the military pursuing projects such as Strategic Missile Defense and Artificial Intelligence),⁹ the mood in these research ivory towers, which had been fairly liberal in the 1970s, changed. Mavericks like Stallman left, and hackers outside the state-sanctioned system were increasingly perceived as a potential threat to national security.

From the mid-1980s onwards, secret services and other law enforcement agencies started their 'war against hacking', with a compliant mass media doing their best to stigmatise hackers as criminals, or even as terrorists.¹⁰ With the mass adoption of the Internet in the 1990s, a new breed of hacker emerged, so-called 'script kiddies', who did not have to develop deep knowledge of computers because hacking tools had become relatively easily obtainable. Script kiddies, not considered 'real' hackers but instead called 'crackers', have developed an obsession with breaking into web servers, obtaining 'root' privileges and inscribing digital graffiti on the web server's homepage. This activity served as legitimation for the strengthening of the legal regime, and allowed centrally owned mass media to continue, in full force, their denouncement of computer subcultures in general. Welcome to Babylon!

Hacker Ethics

I do not want to enter into a discussion here of what 'true' hackers are, especially since the factional infighting between hackers sometimes rages over topics such as which 'free' version of BSD is the better or 'truer' one, which seems rather pointless to the non-initiated.¹¹ Nevertheless, a common theme can be identified that transcends internal schisms in the hacker community. Most hackers share an ethical code in relation to computers and networks. Central to this ethical code is that hackers do not disrupt the flow of information and do not destroy data. It is not my intention to idealise hackers as freedom fighters of the information age, but it must be said that their ethics stand in marked contrast to the behaviour of the state and certain industries who do their best to erect barriers, disrupt communication flows and enclose data by various means, including threats of breaking into the computers of users who participate in file-sharing networks. This hacker ethic has been a shared commitment to a 'live and let live principle'. It is an ethos that is born out of love for the craft of hacking and the desire to let as many people as possible benefit from the sources of knowledge. Hackers do not represent one homogenous community; they are split and divided into many subgroups, but are united in that for them hacking is more than just writing code. It is a way of life, it has its own politics and it has many characteristics of a culture. Hacker culture has developed its own ways of speaking, certain types of 'geek' humour, and even some sort of a dress code. Hackers regularly meet at conventions (some highly publicised, some more subterranean) with an atmosphere more resembling a picnic of a large family or a tribe than any sort of formal 'meeting'. From this point of view, there are similarities between hackers and Rastafari.

The Hijacking of Free Software

As Ur-hacker Richard Stallman makes clear whenever he speaks in public, there is not much difference between 'open source' and 'free' software in the way the software is developed technically. Most free and open source software packages are also protected by the same licence, the General Public Licence (GPL) developed by Stallman with the support of Columbia University law professor Eben Moglen. Yet, according to Stallman, there is a profound difference insofar that 'free' software is linked with a political concept of freedom centred on freedom of speech. The term 'open source' was introduced by a group of pro-business computer libertarians in direct opposition to this political position. Eric Raymond and others proposed the use of the term 'open source' to make the idea of releasing source code and developing software collaboratively more appealing to American IT investors. This move by the proponents of open source was fantastically successful. It opened the way for IPOs of Linux companies at the height of the new economy boom, and drew the attention of companies like Sun and IBM to the existence of open source as a potential antidote to the market dominance of Microsoft.

It is easy to see how open source lends itself to be adopted by businesses much more easily than free software. Open source gained the support of the industry and of many software developers who mainly want to be able to make a living from their programming skills. Many open source developers make it very clear that they see themselves as engineers and engineers only; that they have no interest in politics and are glad to leave that to the politicians.

Since the launch of the open source bandwagon, Richard Stallman has been on a kind of a mission to remind the world that free software is about 'free' as in free speech "and not free as in beer". He also keeps reminding us that the Linux kernel could not have been written without the GNU tools and libraries, and therefore it should always be called GNU/Linux. However, Stallman's style of oratory and his evangelical zeal do not appeal to everyone. The promotion of the type of freedom that is implied with free software needs support. It benefits from being linked to other social concepts of freedom.

The Whitewash:

Hegemonic Computer and Internet Discourse and the Denial of Difference

"Constructions of race in the form of mental images are much more than simple indexes of biological or cultural sameness. They are the constructs of the social imagination, mapped onto geographical regions and technological sites".¹²

The predominant social imagination of computer science and the Internet is a whitewash. This whitewash is the product of an entanglement of historical developments, the creation of certain 'facts on the ground' and a hegemonic discourse led from the centres of Western power (which in my definition includes Japan). The starting point here is the development of Western rationality and science from the early Renaissance onwards, associated with heroes of the various scientific revolutions, such as Descartes, Leibnitz, Newton. Cartesianism, with its positing of an abstract space of reasoning through which

alone the divine rules of nature can be identified, must bear the brunt of the criticism.¹³ As Donna Haraway has pointed out, the rise of rationalism and the scientific worldview had, from the very beginning, negative dialectics inscribed into it:

“...I remember that anti-Semitism and misogyny intensified in the Renaissance and Scientific Revolution of early modern Europe, that racism and colonialism flourished in the travelling habits of the cosmopolitan Enlightenment, and that the intensified misery of billions of men and women seems organically rooted in the freedoms of transnational capitalism and technoscience”.¹⁴

Computer science has its roots in the military-industrial complex of the Cold War era. The dominant social imagination was one of containment, of separating the world into zones of influence by the United States and the Soviet Union, divided by electronic fences and locked into each other by the threat of mutual annihilation. Early computer projects received huge funding increments when it was recognised that computers could play an indispensable role in air defence and ‘smart’ guided ballistic missile systems.¹⁵ The cyborg discourse of Cold War think-tanks such as Rand Corporation and research centres like the MIT generated the imaginary signification of Artificial Intelligence, a brain without a body, a sentient being that is not born, but is constructed by scientists in the laboratory. It is easy to see how archaic religious ideas live on in this ‘dream’ of AI that conducts itself so rationally.¹⁶ The computer brain has a godlike omni-science. With the Internet conceived in the same laboratories of the Western scientific elite, sponsored by Defense Advanced Projects Agency (DARPA), the AI brain grows nerves that will soon stretch around the globe and, via satellite, would gain a godlike viewpoint in space, from which earth looks like a little, fragile blue ball. Omni-science plus omni-presence equals omni-potency, but only just, only maybe, and mostly in the imagination of the protagonists of this ‘vision’.

The Internet, based on Western communication protocols constructed by Western males, is imagined to be populated mostly by white and relatively affluent people. This was maybe the case in 1995, when approximately 20 million people used the Internet, but certainly does not match the true demography of the Net in 2005, with its users numbering more than 600 million, and the highest growth in numbers in countries such as China and India. The whitewashed mass media discourse continues to associate the Net with a Western and particularly American worldview and an ultra-libertarian, anti-socialist political programme. The ingrained assumption of a non-gendered, non-ethnically defined cyberspace automatically makes cyberspace ‘white’, a colour blindness that is inherently racist.

ACADEMIC TECHNO-TOPIA

“Bobby Reason was born weak from typhus fever and unable to crawl away from his body of infection. He spends his time passing voltage through the pathways of least resistance to help him amplify, copy, and replay sounds. Extending his ears to where his eyes used to be, he forms lenses to put in place of his imagination. Whilst doing so he manages to split light and holds the lower end of the spectrum

(radiation) with special tools he forged out of the Industrial Revolution to replace his hands. And after all is done, he gets out the air-freshener to replace his nose".¹⁷

From the early to mid-1990s, the Internet spawned an elaborate theoretical discourse about the Net in print form, and to a large extent, on the Net as well. The more mainstream currents of this discourse hailed the Net as a force that would bring about a more democratic and egalitarian world. Unfortunately, again the Net was imagined as a homogenous zone, free of connotations of gender, race and class divisions.¹⁸ The only distinction that was identified was the existence of a 'digital divide': the realisation that the promise of the Net could not be realised until all people had equal access to it. The debate around the digital divide was well intentioned, but catalysed the proliferation of another version of Western hegemonic thinking with its polarised rhetoric of 'access': there is the Net, based on open standards, egalitarian, global, democratic, hard to censor, and 'we' have to give 'those people' down in Africa or elsewhere access to it. This unilateral, US/Eurocentric version of Internet 'freedom' did not even attempt to imagine the possibility that the Net itself could become a more diverse cultural space, and that even its technical protocols might become 'mongrelised'. The schema of the Internet, narrated as the success story of Western rationality and the scientific worldview, did not allow such digressions.

Theoretical Internet discourse very early on embraced open standards, free software and open source. The principles embodied in the Internet Protocols and the Gnu General Public Licence (GPL) would guarantee freedom of expression and communication. The discourse produced by Internet intellectuals tended towards highlighting abstract principles enshrined in code. In doing so, the discourse, by default, prioritised its own inherited values of 500 years of book culture. American cyber-libertarians even went so far to describe the space of lived reality by the derogatory term 'meatspace'. The well-meaning left-liberal discourse about the Net found itself in the classic Cartesian trap of mind-body dualism.

The Internet-left adopted Free/Libre Open Source Software (FLOSS) as a potential saviour from the corporate world, yet by doing so they followed entrenched, existent patterns of thought. Too often, only the abstract qualities of FLOSS are highlighted: the 'viral' character of the GPL, the properties of the Net of being highly 'distributed', the 'meshed network topology' in wireless networking, the importance of 'copyleft principles'.¹⁹ What gets much less consideration is that those principles and abstract values in and of themselves don't do anything at all without human agency, without being embedded in communities who have internalised the values contained in those acronyms. The proactive making and doing by humans, in other words 'work', is once more written out of the story. The desires and passions invested in the writing of programme code get little 'air time' in FLOSS discourse. In this sense a certain type of FLOSS discourse can be understood as another prolongation of the project of modernity, with its preference for abstract reasoning and the codification of knowledge. The values and norms of society are formulated as the Bill of Rights or as the Human Rights Charter of the United Nations, so-called "inalienable" and "universal" rights and freedoms, but which *de facto* exist mainly on a piece of paper that politicians like to quote in Sunday speeches, and which are quickly forgotten overnight.

The relationship between code as programme code and as an ethical or legal code, and the importance that it is assigned by Western societies, is a very broad topic that I cannot explore in detail here. I will however assert that, generally speaking, putting one's faith in abstract²⁰ truth only, one that has cut its ties with lived reality and become transcendent to society, implies the creation of a form of absolutism. The divine power of God returns through the back door into 'rational' discourse. Abstract, transcendent truth takes away the individual and collective freedom of people to make their own decisions and subjects them to the rule of a truth that is already given, independent of history and the situated-ness of being.²¹

If FLOSS discourse cuts itself off from the roots of lived culture, it empties itself of all meaning. The 'free' and 'libre' in FLOSS is not given once and for all by being laid down in the GPL; it is a freedom that needs to be constantly worked out and given new meanings by being connected to situations, to concrete social struggles. The content of this freedom cannot be understood in the abstract, it needs to be created in the actuality of sensual and bodily existence, which is, by the way, the only thing that really makes 'sense'.²² By following the default patterns of Western rationality, academic FLOSS discourse risks generating a vacuous fiction, an idealisation that lacks body, guts, feelings, pain, joy and anything else that makes life worth living.

Culture and the Social Imaginary

The term 'culture' can subsume all those human activities that are not directly utilitarian, which do not serve, in a narrow way, the goal of material survival. Yet at the same time culture is an indispensable component of human life, without which communities or societies could not survive. Culture provides the cohesive element for social groups; it motivates the actions of individuals and groups.

I use the term motivation here not in a trivial sense, as when an athlete is asked by television sportscasters about what 'motivates' him or her. What I have in mind is closer to the German word *Leitmotif* that roughly translates as 'guiding idea'. But it would be wrong to imagine those 'motives' as something outside culture or social reality. They are at the centre of the social life of societies, anchoring it, but also giving it direction. This concept of motives is closely related to the concept of values. It would be wrong to say that something is 'based on' values, because values can be both implicit and explicit, internal and external. Here we cannot use architectural metaphors of foundation and superstructure. Culture is not the only, but clearly one of the most important forces, behind the creation of values and motivations, of 'making sense' and 'giving meaning' to our existence. Society, in a constant state of self-creation, develops social imaginary significations through cultural feedback loops. In this sense, culture is not just limited to cultural representations in various media forms, but is constantly realised in the actions and interactions of everyday life. Culture 'finds expression' in various ways, in how people dress, what they eat and how it is prepared, in social protocols and forms of behaviour. The social and cultural knowledge of a society is expressed in those forms, in both the patterns of behaviour of everyday life and in explicit cultural representations.

Unfortunately, Western society has developed a hierarchy of different forms of knowledge, with hard science at the top, social sciences somewhere in the middle and

culture *per se* at the bottom. The positivistic divide claims that what can be described in scientific language, logic, mathematics, theorems, is the only form of objective knowledge, whereas the rest is regarded as the soft underbelly, as a somehow lesser form of knowledge. Philosophers and historians of science have argued that the claims that science progresses only through rational methods and in logical steps are not true. Many other factors inform the conduct of scientific research and development: politics and the economy, cultural and sociological factors, funding and institutional structures, belief systems and tacit knowledge. Despite the well known works of authors such as Kuhn and Feyerabend, and later Latour and Haraway, and an ongoing investigation into what 'informs' science from many different viewpoints (anthropology, sociology, cultural studies, etc.), the results of techno-science are invariably presented as ideologically neutral and free of contingent forms of social knowledge.

Computer science, which is conventionally understood to be closer to engineering than to basic research, is presenting itself as a hard science. The conventional views about software development deny the link between software and culture as something that comes *before* the actual creation of the code. Yes, software is understood to facilitate the production of cultural representations and to influence culture by the tools that it makes available, but it is usually not seen to be a product of social imaginary significations.

I have tried to describe the true content of culture as a form of knowledge, as 'immaterial'. Nevertheless, culture is quite obviously also 'material' and has various economic aspects. Cultural values define which objects are desirable, what gets produced and what is left out. The production of cultural representations is of course a form of human labour and therefore always includes economic transactions, independent of the form of the exchange value, if it is based on money or other forms of exchange. The commodification of the production of culture in capitalist economies has been criticised by the Frankfurt School in the early 20th century. Now, at the beginning of the 21st century, this work, even if some of it is flawed,²³ gains heightened significance as the commodification of culture reaches unprecedented levels.

The culture industry has been re-branded as 'creative industry', and is seen by many governments of overdeveloped countries, particularly in Britain, as a central plank in government strategies for economic growth and urban development (i.e., gentrification). Problems are aggravated by the aggressive conduct of the copyright industries, and the power of media conglomerates who have become highly integrated and own production companies, distribution channels and advertising agencies. Each of these industries has become highly oligopolistic, even monopolistic, and their combined influence greatly controls what can be seen or heard, and how it is distributed. New borders have been created by various means such as copyright, patents or the gatekeeper functions of communication providers. The exchange and transmission of cultural knowledge is now in danger of being interrupted or seriously hampered by those powerful formations.²⁴ One could go even further into the darkness of these developments and predict a closure of the cultural production of social imaginary significations.

I have described two processes: one that excludes cultural knowledge from the official scientific body of knowledge; and one that encloses cultural knowledge in the products of

the military-entertainment complex, a.k.a the creative industries.²⁵ Through both, exclusion and enclosure, what could happen is a lockdown on the creation of new meanings, of new powerful significations that 'rock the world'. There are already strong signs of such a lockdown in the mass conformity that is promoted by the mass media, which could only be expected and has been going on for a long time.

It was disillusioning for many to see how the Internet has been tamed within a very short time span and risks becoming just another agent of conformity. The centralisation of Internet resources, whose content is created by its users, but whose surplus value is harvested with enormous financial gain by Google and others, plays into the hands of a further centralisation: web sites that are not ranked highly on Google appear to be peripheral; information which cannot be found easily on the symbolic battleground of the web appears to be marginal. However, I think that any lockdown can only be temporal and not total; that cultural production based on a more radical social imaginary will not cease but is currently operating at a reduced level. The combined totalities of government and large corporations, both increasingly using the same forms of bureaucratic rule and threatening to choke life out of the cities and the countryside, motivate powerful counter reactions. Many people find inspiration in the language of resistance created by African Caribbeans and African Americans and expressed in musical styles such as roots reggae, hip-hop and underground house.

Rasta Science

The Rastas have found their own way of criticising power structures, the class and knowledge systems of 'Babylon'. Rasta-inspired female dub poet Jean Breeze writes:

Four hundred years from the plantation whip
 To the IMF grip
 Aid travels with a bomb
 Watch out
 Aid travels with a bomb
 They rob and exploit you of your own
 Then send it back as a foreign loan
 Interest is on it, regulations too
 They will also
 Decide your policy
 For you.²⁶

Rejecting the language of the slavemaster, Rastas have created alternative linguistic reference systems based on Jamaican patois and Creole English. For instance, Rastas say 'overstanding' instead of 'understanding', because the latter would imply submission. The Internet, of course, becomes the 'Outernet', an interview an 'outerview'.²⁷

Consistent in this critique of the West is the critique of the murderous potential of technoscience and of industrial scientific warfare in the interest of capital. Whereas some fans of Bob Marley drifted towards a hippie-esque type of environmentalism and roots

reggae lost its hegemonic grip around 1980-81 (Gilroy, 1986), the sharp edge of this critical spirit was carried on by dub poets, disc jockeys and 'toasters' working with mobile sound systems and on pirate radio.

The 'dub' style created in the early 1970s by King Tubby and Lee 'Scratch' Perry introduced a technological element into reggae music, keeping the 'roots', but working with echo, tapes, noises, reverb and other special effects. Music making became a 'science'²⁸; in the 1980s this was reflected by the names of dub artists such as Mad Professor and The Scientist. Besides the critique of Western capitalist science as producer of weapons of mass destruction, a frequent theme during the nuclear arms race in the 1980s, dub artists created their own 'science', for instance the *African Arkology* of Lee 'Scratch' Perry:

"I am the first scientist to mix the reggae and find out what the reggae really is".
 "The recording studio was my spaceship that was polluted by the dreadlocks in the moonlight".²⁹

The culture of sound systems playing out in the open or at cultural centres (almost never in regular clubs) introduced another 'scientific' element into roots culture: the optimisation of a system of speakers, special effect boxes and amplifiers for the specific needs of roots reggae and dub. The effect of such systems can only be translated into English by a poet. Linton Kwesi Johnson wrote:

Thunder from a bass drum soundin'
 Lightnin' from a trumpet and a organ
 Bass and rhythm and trumpet double up
 Keep up with drums for a deep pound searchin'

Ridim of a tropical, electrical storm
 Cool down to de base of struggle
 Flame ridim of historical yearnin'
 Flame ridim of de time of turnin'
 Measurin' de time for bombs and for burnin'³⁰

Sound systems have allowed roots and dub reggae styles to survive in times when they were less popular. Reggae dances in the UK were stigmatised by the press as notoriously violent, so that either Thatcher's police shut down venues or the venues cancelled raves because they feared raids by the police. Sound system culture also highlights a number of other important aspects. Sound systems usually have a community that follows them wherever they play. The music played is often commercially not available, except on cheap cassettes or nowadays on home-burned CDs sold at the gigs. The DJ's play 'dub plates', specially cut vinyls that exist only in small numbers. The music can be heard best on the sound system and is not really for home consumption. By thus keeping the music rare, sound system events have aspects of cathartic rituals, an experience of love, strength and unity. Despite attempts to commercialise sound systems, this spirit is still very much alive

at the annual Notting Hill Carnival in London and other carnivals around the country, the flame kept burning by sound systems such as Aba Shanti. At this year's Carnival, a carnival of anniversaries (40 years of Notting Hill Carnival, 170 years of abolition of slavery), Aba Shanti showed that they have lost nothing of their political edge, rocking a crowd of thousands with thunderous bass rhythms, and lyrics about the war in Iraq.

The collective identification with roots culture leads also to another interesting phenomenon, the importance of the 'Riddim'. The riddim is the instrumental track of a record, stripped off the vocals. It is still normal today in Jamaica that certain riddims are especially popular at a certain time, so that often hundreds of interpreters record versions with their own lyrics on top of one of the popular riddims. This shows a direct relationship with the 'copyleft' principle in free software.

SOFTWARE AS CULTURE

"This software is about resistance inna Babylon world which tries to control more and more the way we communicate and share information and knowledge. This software is for all those who cannot afford to have the latest expensive hardware to speak out their words of consciousness and good will".³¹

A number of artists/engineers have started to bring software development back into the cultural realm, and they are infusing culture into software. But 'they' are a very diverse collection of people and it would be wrong to categorise them as a movement or a group. I will focus on a few specific individuals and projects. As tempting as it always is for writers to extract abstract common properties from a social phenomenon, I will also try to control this impulse because I think it is much too early for any kind of a more systematic approach.

One of the earliest works in this area, to my knowledge, was carried out by a group called Mongrel, which was founded in 1996 in London. The group consists of Graham Harwood, Matsuko Yokokij, Matthew Fuller, Richard Pierre Davis and Mervin Jarman. Coming from different ethnic and cultural backgrounds (Irish-English, Japanese, West Indian), they choose to call themselves 'mongrel', a term that is highly loaded with resonances towards a more open racism when it is applied not to dogs but to humans. Their inquiry started with the realisation that software tools are not neutral but charged with social significations.

In their earlier work they focused on laying bare those significations. A re-engineered version of Photoshop would become a construction kit for ethnic identities; a spoof of a popular search engine would react very sensitively to certain search terms. If somebody was searching for "sex", they would be directed to a website which at first appeared like a genuine porn website but subsequently revealed itself as a work about the construction of gendered identities. Racist search terms such as 'Aryan' would lead to similar results, bringing up aggressive, but in a certain way also subtle, anti-racist web pages.

Mongrel never went the easy way of reproducing the clichés of Western educated liberalism. Their work attacked the 'tolerance' of the middle classes as much as anything else. The name is the programme. By calling themselves 'mongrels', they claim a distance

from the norms of polite society. The aggressive 'mongrelisation' of popular software programmes and search engines made race an issue at a time when the Internet hype was getting into full swing and everybody was meant to forget that such problems still existed, or made to believe that the Internet would somehow, magically, make them disappear. One particular work, mainly created by Mervin Jarman, put the spotlight on the death of Joy Gardner, a Jamaican woman, in police custody at Heathrow airport. The free flow of information was contrasted with border technologies, i.e., the techniques designed to control the influx of people. The investigation into the social content of software was carried further by group member Matthew Fuller who wrote a seminal essay about MS Word in which he showed how the software contains a flurry of social significations: assumptions about the usage people would make, what they would try to do, what kinds of people would want to use the software, etc. He revealed a deep universe of meanings inscribed into what was originally a 'text processing' software.

The Art of Listening

Mongrel later moved on from the applied critique of the social content of software to a more constructive approach: they started to write software from scratch. The social orientation of their work had led them to carry out workshops during which they tried to help young people from disadvantaged backgrounds to create their own digital representations. Doing this, they found out that no existing software provided a useful platform. The programmes were either too difficult to use, or they imposed a certain way of thinking that alienated the user. They first produced a software called 'Linker' that would allow people to put together a website full of multimedia content without having to go into the deep end of multimedia programming, or even learning HTML. But Linker, written in Macromedia Director, a proprietary software, turned out not to be the solution, merely a step towards it. Mongrel tried a radically new approach: listening to users in order to ascertain their needs. They used workshops to find out what people would want to do with and expect from such a software platform – people who had previously had relatively little exposure to digital technology and who came from a variety of backgrounds and age groups. At the same time, Mongrel taught themselves the skill of mastering the LAMP package (an acronym composed of the initials of various free softwares: the operating system Linux, the webserver Apache, the database MySQL and the scripting languages Perls, Python and HP). In a long, painstaking process they developed Nine9, an application sitting on a web server that provides a user-friendly interface for the creation of digital representations online.

Nine9 elegantly solves one of the core issues that plague many such projects: the issue of categorisation. With any server-side web application, there is always a database in the background. Computers are completely ignorant to the type of content that is stored on them. From texts, keywords can be extracted by some algorithms that can be used as meta-tags to indicate the nature of the text. But images, audio, video, don't offer this possibility. Generally the user, who uploads 'content' to the Net, is asked to categorise the content. This can be completely open, i.e., it is left up to the individual user to describe or categorise the content as he or she thinks fit; this often makes it difficult later to create a coherent and searchable database. The other option is that the creator of the database may

have already predefined the categories, and the content is to be uploaded within these. Mongrel had discovered that predefined categories usually don't work with their user group. Any system of categorisation, any taxonomy, contains so many cultural assumptions that people who don't share the same background find it hard to relate. Mongrel's solution was to leave the system completely open at the start, without any categorisation, and let the relations between different chunks of content on the server emerge slowly, through the usage. Graphically and conceptually, the system is an open and potentially (almost) infinite plane of nine-by-nine squares which can be squatted by individuals or groups and filled with content, linked beneath the surface by a sophisticated software that compares textual 'natural language' descriptions by users and tracks how people navigate this world.

SPECULATIVE SOFTWARE

"I'm in a constant state of trying to find wings that last after the experience of transportation while being firmly rooted to the ground. I want to see people fly from present situations to other states of pleasure and pain. Out of the gutters and into the stratosphere of the imaginary".³²

After launching Nine9 in 2002, and using it in many workshops, Graham Harwood moved on to write what he calls 'speculative software', programmes that are highly political from the very point of their conception. Each programme is like a thesis, a rendering visible of relations or truths that are normally hidden. One such software, Net Monster, sends out software search robots, a.k.a. 'spiders' or 'bots', that search the net for related combinations of two search terms (like 'Osama bin Laden' and 'George W. Bush'), download pictures and texts found through the search, and auto-assemble a picture collage out of this material. The results are aesthetically stunning, which is probably due to the fact that Harwood has always been a very good graphic artist and has now acquired considerable programming skills.

Rastaman Programmer

The art of listening has also been cultivated by Jaromil, a.k.a. Denis Rojo, a young Italian programmer with long dreadlocks, and the creator of the bootable Linux distribution Dyne:bolic. For a long time GNU/Linux was said to be very difficult to install, and this was a serious deterrent to its adoption by less technologically accomplished users. For quite a while now, there have existed graphical user interfaces (GUIs) for GNU/Linux or other Unix-style operating systems. Once the operating system is installed on a machine, the GUI enables users who had previously only worked with Macs or Microsoft Windows systems to use a machine running GNU/Linux intuitively, without encountering many problems or having to learn how to use the command shell. The concept of the bootable Linux distribution was created to allow non-programmers to use GNU/Linux, get a taste of it and maybe discover that it really is something for them. A boot CD is a complete operating system plus applications on a CD ROM. If the computer is started or restarted with the CD inside, it boots into Linux, automatically detecting the hardware configuration and initialising the right

drivers for sound and video card, and other components.

Jaromil gave the bootable Linux system a specific twist. His version, called Dyne:bolic, contains a lot of software he has written himself, that allow people to publish their own content on the Net. His applications, the most important ones being MuSe, FreeJ and Hascicam, put special emphasis on live multimedia content, live mixing and streaming of audio and video.

While the promise of the Internet revolution, that everybody can launch their own radio or TV station on the Net, might in principle be true, it is seriously impaired by the fact that most programmes that allow you to do so are proprietary. Here the standard litany about the perils of proprietary software could be spelled out again, but I will try to sum it up briefly. To obtain a licence to use proprietary software costs money. To enable live streaming, the source material of the software has to be encoded in the proprietary format. The codecs are proprietary, so the dissemination of material relies on the company strategy for future developments. It is almost as if the content is 'owned' by the software company, or at least is in danger of being enclosed by it. Because the source code is not released to the public, it might contain backdoors and Trojan functions. In short, multiple dependencies are created. Once a self-styled Net radio maker decides on a particular software, archives will be created in the associated format, which makes it harder to switch later. Also, because commercial software companies usually pay little tribute to the needs of users who are financially less privileged, they optimise their programmes for high-bandwidth connections and follow the rapid update cycles of the high-tech industries.

Jaromil's Dyne:bolic boot CD and the applications on it respond to these problems in various ways. Dyne:bolic is free software in the Stallman sense; everything on it is in accordance with the GPL. It runs on basically anything that has a CPU, doing particularly well on older computers. The source code is made available. MuSe, the main audio streaming tool, recognises the quality of a net connection and throttles the bit rate of data transmissions accordingly. Thus, on a high-bandwidth connection, it streams out top quality audio, while on a dodgy dial-up phone line connection, something, at least, is guaranteed to come out at the other end.

All these decisions did not come overnight and were not made automatically. Like Mongrel, Jaromil spends a lot of time listening to users or potential users. In 2002, he travelled to Palestine to find out what the people there might need or want. One of the results of this journey was that he implemented non-Latin font sets so that Dyne:bolic can be run using Arab, Chinese, Thai and many other character sets in the menus. His journey to Palestine was not out of character. Jaromil almost constantly travels. He takes his laptop with him, but he does not lead a life normally associated with software development. Sometimes he is offline for weeks, hanging out in Eastern Europe or southern Italy, socialising with squatters or music-making gipsies, sleeping on floors or outdoors. This maybe viewed as romantic, and it probably is, but the point is that it informs his practice. Jaromil writes:

"The roots of Rasta culture can be found in resistance to slavery. This software is not a business. This software is free as of speech and is one step in the struggle for Redemption and Freedom. This software is dedicated to the memory of Patrice Lumumba,

Marcus Garvey, Martin Luther King, Walter Rodney, Malcom X, Mumia Abu Jamal, Shaka Zulu, Steve Biko and all those who still resist to slavery, racism and oppression, who still fight imperialism and seek an alternative to the hegemony of capitalism in our world".³³

Digital Culture Making Good on Its Promise

The vibrations of reggae music and a culture of resistance slowly begin to infiltrate the clean white space of hegemonic computer and Net discourse. The work that is done by free software developers such as Harwood/Mongrel, Jaromil and many others is in re-establishing the cultural roots of knowledge. This work is carried forward by a rebellious spirit, but in a very kind and civic way. No grand gestures, no big words, no sensationalism, no false promises, no shouting around, and therefore, by implication, not really having 'a career' and money to spend. This softly spoken rebellion is carried by value systems that are non-traditional, not imposed from above, non-ideological. As Raqs Media Collective put it quite beautifully, one of the major aspects of free software culture is that people 'take care', they nurse code collectively, bring software development projects to fruition by tending towards shared code that is almost like a poem, a writing of an *Odyssey* in software.³⁴ People involved in large free software projects don't share code because the GPL forces them to do so, but because they want to do it. This investment, however it might be motivated, mongrelises technologies and connects emotion and passion with the 'cold' logic of computers.

The developments that are being made are not coming out of some mysterious, anonymous techno-scientific progress but are based on conscious choices made by users. They develop something that they might want to use themselves, or that they see as an enriching addition to what exists. The decision what to do, in which area to make an investment, is a crucial one.

"I'm not sure I choose a project to code/maintain - it rather chooses me - I talk to the bloke who's fixing my boiler who's life is run by computer timings or I talk to my mum who's worried by too many phone calls trying to sell her things - I see stuff - gaps in my imagination or ability to think articulately about the experience of information and guess other people feel that as well..."³⁵

There are other significant projects under way in many places. One of them is the digital signal processing platform Pure Data, a software with a graphical programming interface used by many artists. Each programme can be stored as a 'batch' and reused by others. Real communities of users institute themselves around such projects. Their choices are expressions of cultural values. But those values are not really abstract or immaterial. They are embedded in the lived reality of the people who are involved. And so is the technology that they create. The cultural vibe of the group gives the development its meaning, its significance. Similar things could be said about individuals and groups developing free networks. For instance, at a place called c-base in Berlin, dozens of people meet each Wednesday to build antennas, optimise routing protocols or discuss strategies for connecting housing blocks and city boroughs. The place is alive with activity because it provides a sense of belonging, of identity, of direction. Work is mixed with pleasure and fun.

Digital culture is full of promises of revolutions, but usually the content of these revolutions is not specified. Discovering the roots of their cultures can help free software developers discover new meanings in the 'free' of free software, and engage with society through their work, and not just with the abstract reality of code. The language of revolution, of roots reggae and dub science, is surely not the only possible inspiration but can serve as an example for many other 'roots' still to be discovered.

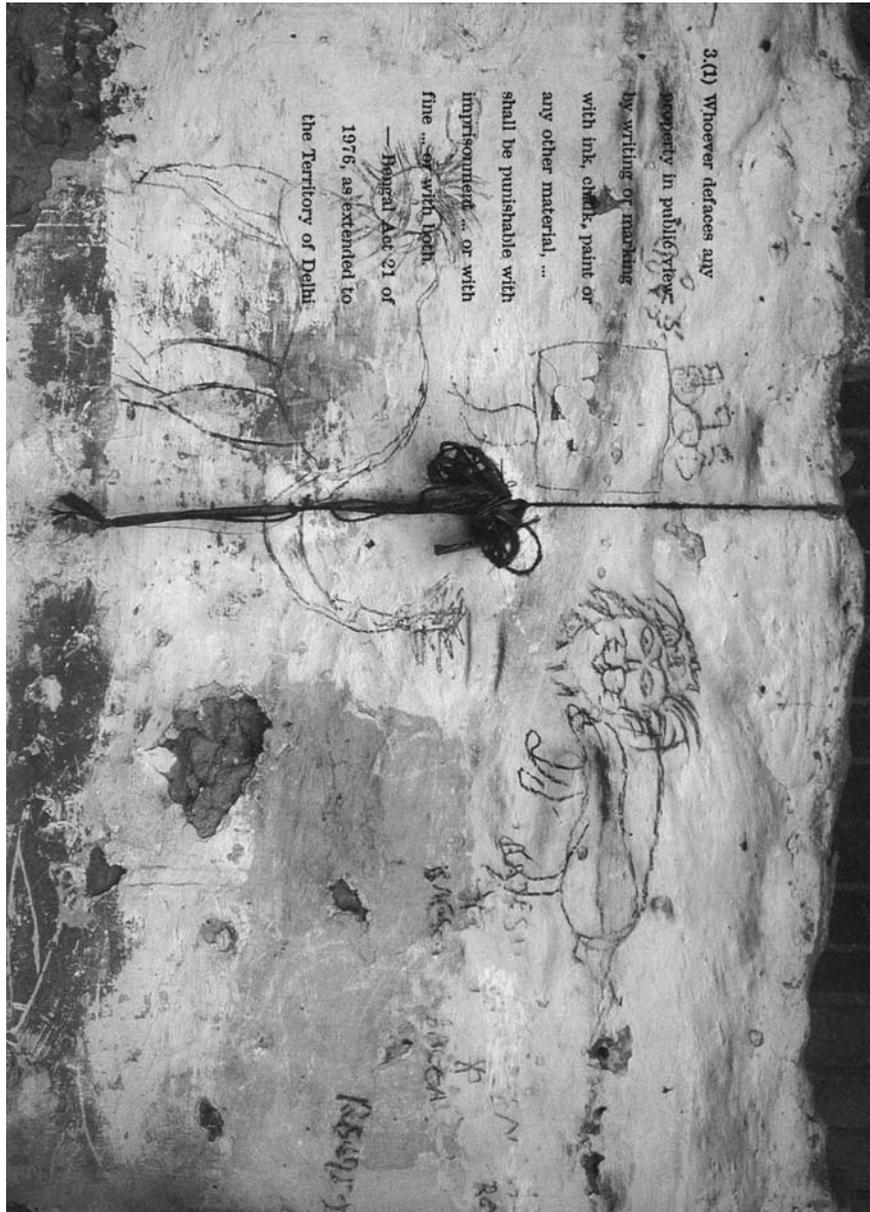
NOTES

1. "Free software' is a matter of liberty, not price".
<http://www.gnu.org/philosophy/free-sw.html>
2. Gilroy, Paul. *There Ain't No Black in the Union Jack* (Routledge, 1997, London) p. 251.
3. African ways of living were kept alive in Jamaica by the Maroons, people who escaped from the slave plantations and survived under harsh conditions in the hills in an agricultural subsistence economy based on collective land ownership. Like the Maroons, religious Rastas are vegetarians and cultivate the smoking of *ganja* – or the herb of God – as a religious practice.
4. Gilroy, p. 251.
5. For instance, a few years ago a Raggastani movement emerged, young Asians identifying themselves as Rastas.
6. I use the term radical social imaginary in the sense of Cornelius Castoriadis. The term is quite central to his philosophy. It can be defined as the source of thoughts and ideas that society has of certain things. Used in this sense, the 'imaginary' is more than what we conventionally associate with 'imagination'. It overlaps to some degree with the collective subconscious but is not identical with it. The understanding of the term also depends heavily on Castoriadis' understanding of the 'social' and of history. He writes: "History is creation: the creation of total forms of human life. Social-historical forms are not 'determined' by natural or historical 'laws'. Society is self-creation. 'That which' creates society and history is the instituting society, as opposed to the instituted society. The instituting society is the social imaginary in the radical sense. The self-institution of society is the creation of a human world: of 'things', 'reality', language, norms, values, ways of life and death, objects for which we live and objects for which we die..." In other words, the social imaginary significations are what hold a society together. The social imaginary is the source, or as Castoriadis would say, the magma of the creation of meaning/significations/objectives. A 'radical social imaginary' is then, (and this is my interpretation) a source of new significations which overturn the already existing 'instituted' society. Cornelius Castoriadis, "The Greek Polis and the Creation of Democracy". In *Castoriadis Reader*, (ed.) David Ames Curtis (London, 1997) p. 269.
7. See for instance, *Rastafari Women: Subordination in the Midst of Liberation Theology* by Obiagele Lake (Carolina Academic Press, 1998, Durham).
8. Humble Lion in an interview with the Get Underground online magazine http://www.getunderground.com/underground/features/article.cfm?Article_ID=785
9. I am not claiming here that all AI research in the 1980s was sponsored by the military but that AI-related research in the US was given a second boost, after its original heyday in the 1950s and 1960s, through Reagan's Star Wars programme. See Paul N. Edwards, *The Closed World: Computers And The Politics Of Discourse in Cold-War America* (MIT Press, 1996, Cambridge).
10. See the book *Underground* about the 'war against hacking' in its early stages; *Underground* is published

online: <http://www.underground-book.com/>

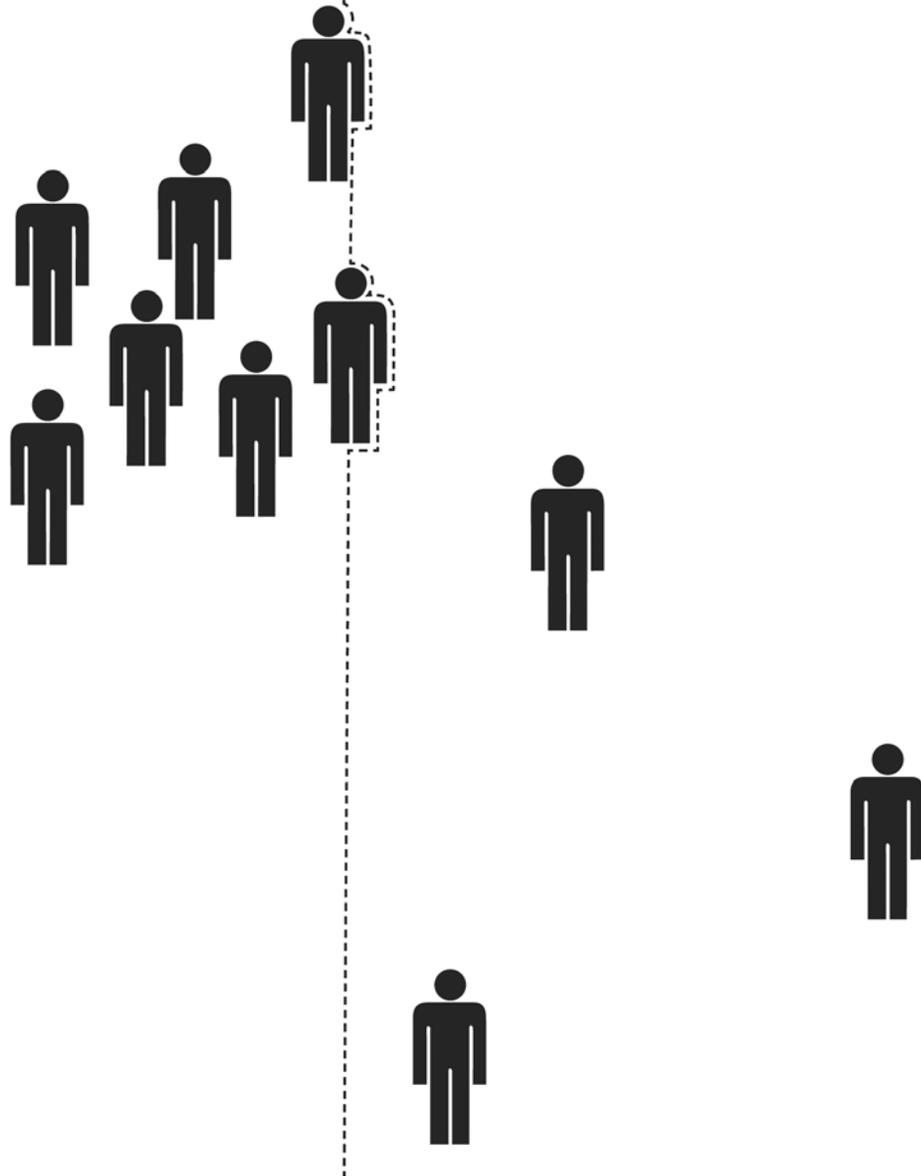
11. A more in-depth account of the differences between 'ethical' or 'real' hackers, crackers and 'script kiddies' can be found in Medosch, Armin and Janko Röttgers (eds.), *Netzpiraten, Die Kultur des Elektronischen Verbrechens* (Heise, 2001, Hanover).
12. Graham Harwood, "Ethnic Bleaching". See <http://www.scotoma.org/notes/index.cgi?EthnicBleaching>, last accessed 24/09/2004.
13. I would be careful not to blame Descartes for Cartesianism, just as Marx cannot be blamed for Marxism. His writing is more original and entertaining than the school of thought he has initiated. See for instance Descartes' tract on light in *Le Monde ou Traité de la Lumière* (Akademie Verlag, 1989, Berlin).
14. Donna Haraway. *Modest-Witness, Second-Millennium: FemaleMan Meets OncoMouse: Feminism and Technoscience* (Routledge, 1997, London) pp. 2-3.
15. Edwards, Paul N. *Closed Worlds* (MIT Press, 1996, Boston/London).
16. See for instance Richard Barbrook's polemical "The Sacred Cyborg", in *Telepolis* (1996); <http://www.heise.de/tp/english/special/vag/6063/1.html>; downloaded 24/09/2004. For a proper critique of the claims of 'strong' AI, see Roger Penrose's *The Emperor's New Mind* (Oxford University Press, 1989).
17. Graham Harwood, email to the author, 31/08/2004.
18. It must be noted that there exist serious pockets of resistance to this mainstream version of Internet discourse, from the Marxist discourse of Arthur and Marie-Louise Kroker in their online magazine CTheory, to the publications of the Sarai group from Delhi, the Sarai Readers, and some of the writings published on mailing lists like Nettime. Afro-Futurism, Cyberfeminism and a whole school of writers inspired by Donna Haraway create a growing body of work that corrects the colour-blind Western-centric vision of the Net.
19. Admittedly I have sometimes said things that sounded pretty similar to mainstream FLOSS discourse. See for instance the article "Piratology" in DIVE, edited by <Kingdom of Piracy> and produced by FACT, London/Liverpool, 2004; or the article "The Construction of the Network Commons", *Ars Electronica Catalogue*, Linz, 2004.
20. I am not against abstractions *per se*; abstractions can be meaningful, useful and beautiful, like some abstract art or minimalistic electronic music. I am only speaking against an abstract absolutism.
21. See in this regard the remarks made by Cornelius Castoriadis in "Culture in a Democratic Society", *Castoriadis Reader*, pp. 338-48.
22. See for instance Maurice Merleau-Ponty's *The Phenomenology of Perception* (1945), which asserts that perception cannot be separated into a merely mechanical receptive organ (e.g., the eye), a transmitter (nerves), and an information processing unit (the brain). Artificial Intelligence had to learn this the hard way through 50 years of research conducted after the publication of Merleau-Ponty's book..
23. I am referring particularly to Adorno's wholesale dismissal of all products of the culture industry, based on his preference for high culture. The significance or quality of a cultural representation is not necessarily determined by the economic circumstances of its production.
24. I am keeping the critique of this process short because I assume that in the year 2004 the various frontlines of this struggle, e.g., the music industry v. file-sharing, proprietary v. free software and the role of patents etc., are highly publicised and now common knowledge.
25. The absurd dimensions of this effort to enclose popular cultural knowledge is best illustrated by the attempt of some US lawmakers to apply patent laws to fairy tales, so that grandmothers could not narrate these stories to children without obtaining a licence from Disney.

26. "Aid", by Jean Breeze. See
<http://www.nald.ca/fulltext/caribb/page63.htm>.
<http://www.nald.ca/fulltext/caribb/page63.htm>; downloaded 28/08/2004.
27. There is a growing body of work on the Rasta use of language in cultural studies and English literature studies.
28. Erik Davis compared the experience of aural 'dub space' to William Gibson's 'cyberspace', and referred to acoustical space as especially relevant for the "organization of subjectivity and hence for the organization of collectives", in his lecture "Acoustic Cyberspace" (1997); <http://www.techgnosis.com/acoustic.html>
29. Lee 'Scratch' Perry; on <http://www.upsetter.net/scratch/words/index.html>
30. From "Reggae Sound" by Linton Kwesi Johnson. See
http://hjem.get2net.dk/sbn/lkj/reggae_sound.txt
31. Jaromil, a.k.a Denis Rojo, Dyne:bolic software documentation. See
<http://dyne.org/~jaromil/dynebolic-new-man/html/dynebolic-x44.en.html>
32. Graham Harwood, email to the author, 31/08/2004.
33. Jaromil, Dyne:bolic manual, <http://dynebolic.org/manual>; downloaded 24/09/2004.
34. "Value and Its Other in Electronic Culture: Slave Ships and Pirate Galleons" by Raqs Media Collective (2003). In "DIVE", a Kingdom of Piracy project, produced by FACT (Liverpool), supported by virtualmediacentre.net and Culture 2000.
35. Graham Harwood, email to the author, 31/08/2004.



Homestead interior converted into a public wall in the aftermath of a demolition. Faiz Road, Delhi, January 2002

ENCROACHMENTS



Touts, Pirates and Ghosts

SOLOMON BENJAMIN

Unplanned, slums, non-conforming, illegal, unauthorised, and sub-standard: These are labels that planners, administrators driven with the need for orderly modern cities, term 90% of the city areas where people live and work. Hardly new, this disjuncture – between Master Plans and what evolves on the ground – has plagued the planners of new towns like Chandigarh, and national capital complexes, besides smaller territories under Master Planning. In Delhi, like other metros, only 8-12% of residential space comes from Master Planning. In 1995, 250,000 small and large trade and manufacturing firms underpinned the capital's economy for possibly more than two-thirds of its habitants. Only 11,500 of these, mostly manufacturing, firms were located in planned areas. One realises the wider implication of this when one considers that unplanned and non-conforming trade and manufacturing are interlinked economies of every single town in North India.

The accompanying figures show a map of cities and towns in India that locate major concentrations of networked economies and their particular specialisations. Another is of Delhi, its own particular specialised clusters and their location in non-Master Planned areas. A closer look at Vishwas Nagar in East Delhi provides a vivid illustration of one 'slum'. In 1991-1995, this settlement emerged as India's largest centre for the manufacture of electrical power and control cables and conductors.

With a voting population of 21,000, it provided work to 25,000 in direct manufacturing and another 35,000 in trade and ancillary activities. This does not include the extensive jobs in the construction industry spurred by this emerging economy. Why should this be important for those with an interest in law?

Here are two more photographs. One, a



1. "Neighbourhoods as Factory"

WEST AND SOUTH DELHI

URBAN VILLAGES:

1) Basai Darapur	Electrical fans/motors
2) Basti Shalimar	Paints/Plastics
3) Haderpur	Electrical Fans & Motors
4) Garhi Peeran	Plastics
5) Dhairpur	Wood & Sanitary Goods
6) Wazirpur	Metal/Auto Parts
7) Khayala	Wood/Plastics
8) Ram Pura	Plastics
9) Chirag Delhi	Garments
10) Samaypur	Plastics
11) Badli	Plastics/Metal
12) Naraina	Plastics/PVC
13) Shaizadabad	Garments
14) Zamrudpur	Garments

PRIVATE SUB-DIVISIONS (Un-Authorized Colonies)

15) Shakur Basti	Metal/Plastics
16) Raja Park	Auto parts/ Plastics/ Metal
17) Rani Bagh	Auto Parts/ Plastics/ Metal
18) Tulsi Nagar	Tin work & Metal
19) Inderlok	Tin work/Metal
20) Vishnu Garden & Ext.	Wood/ Metal
21) Ravi Nagar & Ext.	Wood & Metal
22) Hari Nagar	Lights & Auto parts
23) Narsingh Garden	Metal Castings
24) Sant Nagar	Metal Castings

25) Jawala Puri	Plastics Recycling
26) Tri Nagar	PVC/Plastics
27) Shastri Nagar	Wood/ Paper/ Plastics
28) Manohar Park	Plastics
29) Daya Basti	Metal/ Plastics
30) Subash Nagar	Metal/Plastics
31) Ram Garh	Metal/ Plastics
32) Sudarshan Park	Incandecent Lamps & Rubber
33) Kriti Nagar	Plastics/ Wood/ General

Other (Industrial Estates, Refugee Re-habilitation, Re-settlement Colonies, EWS Housing)

34) Mayapuri	Plastics/Metal/Building
Materials 35) Kirti Nagar	Plastics/Metal
36) G. T. Karnal Rd.	General
37) Wazirpur Inds. Area	Stainless Steel & Plastics
38) Lawrence Rd. Ind. Area	Plastics, Metal
39) Anand Parbat	Auto. Parts, Metal Castings, Plastics.
40) Okhala Ind. Area	General
41) Naraina Ind. Area	General
42) Tilak Nagar	General
43) D.L.F	General
44) Udyog Nagar (I & II)	General
45) Moti Nagar	General
46) Transport Nagar	Transport & General

URBAN VILLAGE

1) Patparganj	Packaging/ Plastics/Metal
2) Jheel	Auto-Scooter Parts
3) Babarpur	Cable/conductor, castings
4) Khuriji	Printing, Wood, Plastics

PRIVATE SUB-DIVISIONS

(Un-authorized Colonies)

5) Viswas Nagar	Cable & Conductors, PVC Pipes
6) Ram Nagar	Cable & Electrical Parts, Plastic
7) Gandhi Nagar	Readymade garments
8) Jheel	Scooter Parts
9) Krishna Nagar	Printing, Paper, Garments
10) Navin Shahdara	Electrical, mechanical, plastics.
11) Friends Colony	Cable, Conductors, Castings
12) G.T. Road	General, Rolling Mills, castings
13) Chandar Nagar	Plastics, Printing
14) Shiv-Puri	Laminate
15) Dilshad Garden	Cables & Conductors, Electrical, Plastics
16) Babar-pur	Cables, Conductors, Plastics
17) Loni Rd.	Cables, Castings, conductors.

OTHER (Resettlement, Refugee, Industrial Estates etc.)

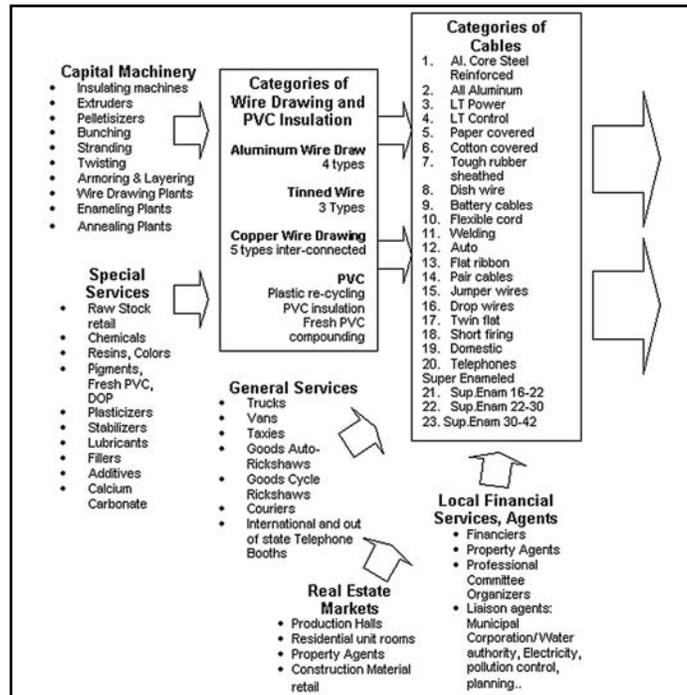
18) Seelampur	Cable stripping & Recycling
19) Nandnagri	Plastics & General
20) Jhilmil Ind. Est.	General, Rolling Mills
21) Patpargunj Ind. Est.	General.



Land Subsystems Conducive to clustering economies:

- Private sub-divisions
- Urban Villages
- Walled City

2. A map of Delhi showing its specialised manufacturing and trade clusters and their correlation to land settings evolved under 'Regularisation'



3. The Hydra of Viswas Nager's multitudes of inter-connected firms: workers, marketing agents, factory managers, owners, land promoters, liaison agents... artisans, pirates and touts..



4. notice board, shows an excerpt of the Master Plan proposal for Vishwas Nagar as “district centre and CBD”. Another shows a group of people gambling under the board, and in the background, a group of squatters who take their chances against demolition. Their illegal status, and consequently low rentals, allows them to stay close to work. The point of this



5.

essay is to reflect on the quiet and subversive political processes that underpin such disjunctures.

Approaches to the non-Master Planned areas have been varied. One set of actions, made famous by Jagmohan (Vice-Chairman of the Delhi Development Authority) during the Emergency (1975-1977), and again more recently, is to use violent eviction as a way to make way for Planned development. Another view, resulting in designed housing complexes, is mostly by architects supported by bureaucrat benefactors. They seek an Indian identity, and view planning norms as 'Western'. This group feels the need to introduce the *mohalla* (crowded neighbourhood), the courtyards, and the 'Indian bazaar look' as a way to make cities 'more human'. A third approach is how things actually get done for unauthorised colonies: "Regularisation".

This is conventionally seen to be 'legalisation' set in motion by inhabitants in the non-Master Planned area, seeking public improvements of basic infrastructure and services. This is much to the dismay of planners, architects, and senior administrators. For them, regularisation reflects the corruption of the bureaucracy by vote-bank politics. This approach seems to legitimise illegality, is 'boring' and 'un-imaginative', and certainly not the way to build modern cities. In exploring the question of quiet politics, I am not concerned with the morality of Master Planning and of the various approaches, including that of regularisation. For sure, the Jagmohan approach of eviction has terrible human consequences. Perhaps the alternatives of being 'Indian' may be important, but I suspect, just as Gandhi commented when asked about 'Western civilisation': "It may be a good idea..." What seems more interesting to me is to consider more closely the political consequences: the congregations of interests that underpin disjunctures in the way cities get built.

Regularisation – A Political Project of Substance

Regularisation, as it turns out, is the dominant way cities are built. It is not new, nor specific to Indian cities. On the contrary, unauthorised colonies or private subdivisions are common to all metro cities and towns in India, to most urban areas in the South, as also large parts of South and Central America. In Pakistan, unauthorised colonies are termed '*katchi aabaadi* (raw settlements)', and in Colombian cities these are called '*pirata*'. Different forms of 'regularisation' have been a central issue of city management and politics. In this section, I will show the variety of factors that reinforce the political substance of regularisation.

It is important to underline the substance of regularisation as linked to the immediacy of daily life, (and) via land and economy to its deeply emotive sense. Inhabitants strive for better infrastructure and services that impact daily life: children being able to cross drains safely on the way to school; having reliable and cleaner water supply, reducing chances of malaria by getting low-lying areas drained of stagnant water; electricity supply lines so that children can complete homework, allow for street lighting to ensure safe return at night, and congregate after dinner around street corners. When land, bought cheaply due to its poor infrastructure (access) and delicate legal status, is upgraded, people can hope for their children to have something better than what confronted them (when they first moved in). Increasing land values, spurred by upgrading, mean that relatively larger plots can be

sub-divided and rented to new entrants in the neighbourhood. Part of these proceeds can help a new business, or are useful if required for medical expenses of a serious nature. Such immediacy, then, relates to demands by a large political constituency that faces difficult living and work conditions sharpened by crises of malaria, water shortages, water logging, and attacks by stray dogs on unlit streets.

Regularisation is itself deeply political where the complexity of upgrading infrastructure and extension of services relates not so much to technical but to political factors. This is primarily because people demanding basic infrastructure and services find their settlements categorised by Master Planning as 'illegal – non-conforming – unplanned – unauthorised'. Such imposed illegality relates to different types of politics. One is the non-recognition of the land transaction through which people settle in. Generally, Master Planning defines property and norms for settlement in terms that exclude existing (and mostly) lower-income settlers on grounds of land use violations (aimed at small, home-based trade and manufacturing). Another is the complex institutional relationship as linked to the social dynamic of competing interests. Master Planning uses norms and procedures of allocation that identify locations where people already exist, as proposed sites for 'social housing' or 'publicly recognised' institutions. Both of these are contested. Social housing, due to a variety of exclusionary factors of application and access to higher-level administration, ends up catering to the middle- and higher-income groups. Similarly, those institutions allocated land, which has been notified and acquired under Master Planning, tend to be those of higher level of government claiming their space in the entitlement process with their basis in nation-building, or representing the 'public'. These could also be private institutions, deemed by high-level administrators and planners as being essential pre-requisites for the 'modern citizen'. Thus, besides a fire station or a police station, space under civic amenities could be allocated to a community centre (translating into a 'club' accessed by membership), a plot for a school (in reality, under high end private corporate management), entertainment and retail shops and complexes. Increasingly, such contest is sharpened with pronouncements from higher levels of judiciary ruling that 'illegal structures' cannot access public funds for permanent infrastructure. It is important to note that these pronouncements are often framed within the language of planning and of organised city development.

Such politics is reinforced by the economic underpinnings of urban terrain. Specifically, regularisation has an immediate and extensive impact on the local economies of manufacturing and trade. A better road means that a front room can be turned into a corner store or a small manufacturing unit. A new electrical transformer in the block attracts new firms without the fear of 'tripping' the electrical system. Upgrading spurred by regularisation has significant systemic impacts: reliable electricity increases productivity; roads open up access to firms locating in more interior parts. Densification opens up opportunities to customise products responding to new markets at a regional and national level. This, in turn, is made possible by the manufacture of customised capital machinery in close proximity. Such relationships form part of the logic of interconnected production where the output of one firm forms the input of another. Interconnected production improves surpluses despite falling margins, where the increasing intensity of manufacturing gives the

settlement a particular identity to attract small traders, skilled workers; thus, the space becomes a major attraction for firms to locate there. There are other systemic impacts. Traders cluster to sell raw stock in batches small enough for the small interconnected firms to feed on. These economies influence and spur real estate markets with specialised rental structures, and real estate transaction norms customized to the needs of factory operators settling in.

Since almost all locations for economy (trade and manufacturing) in a city are non-master planned and exist in various stages of regularisation, much of urban territory is, in effect, in a dynamic of legality and its politics. Connected to land and the type of infrastructure and services that this embodies, regularisation as politics connects up to a substantive economic constituency. One could also argue that as cities get larger and urbanise in both the demographic and the economic, the political substance of regularisation would assume even more prominence.

Finally, one can also view regularisation as a core feature of a larger level of urban politics. This is when we consider its location in the relationship between municipal councils and higher levels of government at the state and national level. A core issue is the institutional dynamic through which these relationships are established. Master Planning is located in 'Development Authorities' under the control of state governments (and in the case of Delhi, under the national government). These connections are both administrative and political. Development Authorities are an important way through which state and national level governments establish their print on the urbanscape. This happens via the allocation of land in central locations to institutions under their control. Development Authorities also establish political control of local bodies via their control over the regulation of land. Such controls help ensure that local councils toe the 'party line', and maintain the legitimacy of higher levels of government. If so, it is hardly surprising that implicated in Master Planning and the establishment of the "Rule of Law", the need to promote social justice and equity is also a reflection of political control. It is partly due to this contest of political terrain, further implicated in the disjuncture with Master Planning, that regularisation is not a one-off event, but extends over time. Municipal councils respond via regularisation not just to their constituents' economic and other needs, but use this to reinforce their political autonomy.

A 'Quiet Politics' Underpins the Regularisation Dynamic

If one important aspect of regularisation is the complex two-way relationship between Municipal Councils and their constituents set in a wider politics, another is its day-to-day nature. If one visits non-master planned neighbourhoods, it is not as if people have their banners up, marching along streets in protest. On the contrary, daily life moves on in parallel to a quiet politics, played out in various Associations' meetings held in the evenings, in audiences with councillors normally in the early morning, or as will be explained below, in the untidy rooms of municipal bureaucracies. This is the most accessible arena of government for groups residing and working in non-master planned areas. For any aspiring politician, initiating regularisation, making serious attempts to get infrastructure, or stopping evictions, is a secure way to consolidate a political base. Urban land, with its material and emotive register, is particularly significant as an area of intervention.

To fully appreciate the quiet politics, it is important to note the significant differences between the process and politics of intervention by municipal governments, and of Development Authorities promoting Master Planning. Master Planning focuses on physical planning, located in utopian visions justified on normative arguments that have been set up by planners and legislature. In contrast, municipalities are pressured to respond to what already exists on the ground. Second, their actions lie mostly in the realm of administrative actions – pushed by councillors responding to their political constituencies and exerting pressure. This is not to say that Master Planning is a purely technocratic exercise. On the contrary, behind its normative façade, Development Authorities promoting Master Planning respond to larger political and administrative constituencies. Actions by municipal government are usually more local. While in both cases interventions are set within an interpretation of law and administrative guidelines, I will suggest below how actions to regularise, spurred by municipal debate, needs to be necessarily ‘quiet’ as a matter of political prudence.

One level of politics is that of slums being ‘recognised/notified’. Municipal bodies are usually under intense political pressure from under-serviced but rapidly settled areas forming large political constituencies. Being ‘notified’ allows public authorities to improve infrastructure and services, drawing on ‘scheme-based’ development funds (which are available only for ‘recognised/notified slums’). However, notification involves concurrence by higher levels of government who become interested in this only at the time of elections. Thus, quite often, more than half the settlements remain in a non-notified status for a long time – five, ten years, sometimes even longer. Municipal bodies, under pressure from their constituents to act, therefore draw on their general municipal funds. Interventions are set in motion via ‘administrative orders’, and councils justify such actions on ‘humanitarian’ grounds.

Such interventions strengthen *de facto* tenures – even if absolute titles have not been conferred. Here, again, there is an important political logic to maintaining a ‘quiet’ approach. This relates to the complex power relationships between those who ‘own’ land and the others located in various forms of tenancies. Assuming that a municipal body were to initiate a titling program – as is normally pushed through by the World Bank (titling, here as a way to define ‘property’, is the process of marking out exact physical boundaries) – many would see this idea as a ‘progressive’ ideal, the giving of ‘rights’. However, actual ground level experiences point to quite different consequences. The moment there is some information on a proposed ‘titling’ program, those with a greater degree of land claims ensure that poorer tenants are moved out, or settled with close relatives. This allows them to benefit from the increased real estate values.

Thus, re-shuffling property claims can lead to serious political crises and consequences. for the councillors and the municipal council. There are other threats to municipal councils. A program of establishing absolute titles, as I shall discuss later, jeopardises a neighbourhood economy as much as to seriously underpin the political clout of municipal bodies. It is hardly surprising, then, that municipal bodies usually intervene with regularisation and incremental upgrading that improves *de facto* tenure over time. This approach strengthens the claims of settlers on an ‘As is Where Is’ basis in order to

strengthen claims across the board among diverse groups. Residents and people working in the areas therefore maintain a close tab on municipal debates and the administrative orders framed to initiate investments in infrastructure and services. Such access to the system is partly facilitated by councillors, but also by other more bureaucratic routes to ensure that political and administrative action is being taken in the residents' favour.

Please note him quoting the reference of the enclosed office. All cases no. (See figure 5 for illustration)

(West Vihar Nagar Improvement Association) 2207476
पश्चिमी विहार नगर सुधार सभा
 27/124, गली नं० 6, विहार नगर
 काहदर, दिल्ली 110032

आंक 00164 दिनांक 19th Feb 1991

The Commissioner,
 M.C.D.
 Town Hall, Delhi 6

Dear Sir,

with ref to meet deputation under leadership of Sh. ABJIT SINGH GULATI, Ex chairman who M.C.D in regard street light in Block 28-29 Vihar Nagar station. Your kind favour has assured on that day on 12th Feb 1991 to pay estimate amount on behalf M.C.D.

For your information G.M. make provision No. A.C.A. (4) 295/87-88 and A.C.A. (4) 295/87-88 No. XEN (16) 2007/UBR (96) 73-86/653 Dt. 31-12-86 Drawing No. X.P.L.E. 27-55 (and Circle-1 are pending for Street Light in Block 28-29 Vihar Nagar station.

We request you to take an early step to provide and to revise approved plan for st. light. Arranging for an early reply and an early action.

Yours faithfully
 B. S. Narayan Aggarwal
 Gen. Secy.

6. Letter written by an association general secretary to pressure the municipal administration for street lighting.

Electrification of unclassified area of Block 28-29 Vihar Nagar unauthorized/regularized colony.

(Approved)

EX. NO. 10087-1 (1991-2)

HISTORY: Request for electrification of unclassified area of Block No. 28-29 Vihar Nagar was registered through OD II vide letter No. CO. II/144/2001/9072 dated 1.11.88. Subsequently area was surveyed and it was observed that the area unclassified falls mostly on the land encroached as community centre in the regularized layout plan of M.C.D. After perusal of the plan of Vihar Nagar Welfare Association has offered space of sub-station site measuring 35' x 20' free of cost for establishing electric sub-station as shown in the layout plan. The site has been taken over by the applicant vide his letter No. D/28/29/147/101 dated 21.11.88. The request has been reviewed vide letter No. CO. II/144/2001/9072 dated 31.12.88. In the request the transformer capacity comes to 200 KVA. To meet the load it is proposed to install a sub-station of 400 KVA capacity. The scheme of electrification has been framed at an estimated cost of Rs. 12,00,000/- including and net to CO. II vide the office letter No. CO. II/144/2001/9072/31.12.88. Copy of the request OD II vide letter No. CO. II/144/2001/9072 dated 31.12.88 it was proposed the scheme. The scheme has been approved by the M.C.D. vide letter No. CO. II/144/2001/9072 dated 31.12.88.

PROPOSAL: The total cost of the scheme works out to Rs. 12,00,000/- (Rupees twelve lakhs only) to be met from the M.C.D. funds. (Item No. A-16) estimate for R.B. & P.W.D. (No. A-16) at Page No. 0, C-754.

COST: Rs. 12,00,000/-

DEU JUDGE & ASSOCIATED ENGINEERS:

(Sd/-) (M. S. GUPTA)
 EXECUTIVE ENGINEER (P.W.D.) CENTRAL

7. An internal office notice procured by an association that shows the deal emerging from their negotiations to fund an additional electrical transformer.

Non-domestic power connections allowed one kilowatt load

By A Staff Reporter

NEW DELHI, May 4. The city government has decided to allow one kilowatt load for non-domestic power connections in residential areas. It is believed that the load to 2 KW is under consideration; the Master Plan may be changed (at present it is 1 kw in the limit). City government officials said: "If the land-use specified in the Master Plan can be changed - the same can be done about non-domestic connections in residential areas." For the moment, 1 KW has been allowed.

Only the decision to do so has been taken. Details have not been taken. Item 42D of the Delhi Electricity Control Order (DECO) 1988 is suitably amended. This shouldn't take too long considering the government's intent.

Besides, it is in line with the recommendations of the four member Vasani committee report which has stressed the need to regulate connections more controlled (light due to violations of building bylaws of the Master Plan).

A large number of small commercial establishments are operating in areas declared residential. They draw electricity much in excess of the sanctioned load. DESU routinely signs misuse charges on them and bills them for the units consumed.

But the ill-considered under-connection commercial units, taking much higher than the domestic load, and for laying and maintaining lines to carry higher power-load.

Once the decision is effected, these consumers will be charged development-claim-regulation charges with a "minor penalty". The sanction, however, will not give the consumer any right to claim commercial status for the premises concerned.

The consumer will be given an undertaking to this effect on a topological stamp paper. This will require the civic bodies, M.C.D., DDA or NDMC, can go ahead and prosecute the consumer for violating lease and building rules.

DELHI ELECTRIC SUPPLY UNDERTAKING
PUBLIC NOTICE

It is notified for the information of general public that in accordance with the decision taken by the Govt. of NCT of Delhi, non-domestic connections shall be permitted in all residential areas subject to fulfilling the following conditions:

1. Load upto 2KW in a part of residential premises in all areas on single phase system of supply without applicability of any documents / clearance from the civic body.
2. The area for which the commercial (non-domestic) supply is allowed shall be confined to the ground floor of the premises concerned and shall not exceed 50 sq. mts.
3. Recovery of development claim-regulation charges are leviable from time to time. The current rate of such charges are Rs 11000/- per KW or part there of.
4. Completion of commercial formalities and payment of charges are required for providing non domestic connections.
5. The provision of non-domestic connection will not confer any right to the consumer for demanding declaration of the premises as commercial and written permission in the prescribed format on a non-judicial stamp paper of Rs 2/- will be obtained from the consumer at the time of accepting the application.
6. In case of excessive consumption of electricity than normative to 2KW, surcharge shall be levied as per provisions in the tariff schedule.

Chief Engrs. (Commercial)

8. Press reports and a releases by the Electricity Authority as part of a 'regularisation' policy. This act also helps the authority to raise revenues that would otherwise be lost in a situation of forced 'illegality'. The rules may seem as contradictory, but it is precisely this overlap that allows a 'flexible' interpretation shaped by the Porous Bureaucracy. Richer groups usually oppose such developments, stating issues like pollution, breakdown of 'law and order'. However, the threat is mainly one of resources being diverted to poorer areas, and the increasing clout of 'slum residents'.

CAP 11

MCD factory licences only a tout away

By **Yashwant Raj**
NEW DELHI, September 29

He sneaked up as if on a cue flashed from behind the counter. "Kann se area ka har (which area)?" asked Krishan Pal Sharma, one of the many alleged touts swarming the MCD's factory licensing office at Kashmir Gate.

Sharma knows everybody and for him nothing is difficult. He can easily procure a licence in the local commercial category, — of permitted-local household units, — even in prohibited areas such as Akshar, Saket DDA flats and Vasant Kunj.

He merely wanted to know if the proposed commercial unit is on the ground floor. "Otherwise," he said sagely, "they will not grant the licence." Except this one "impossible," he can swing anything. Sources in the factory licensing department agreed licences could be obtained in the local commercial category for any area,

despite an official policy clearly segregating "allowed areas" from "prohibited areas". This policy exists only for those using the tedious and prohibitive official channel. But it can be easily circumvented, — just wait for that tap-on-the-shoulder from a tout, who will use the use of the officials to cut the red-tape short.

"Touts pull a lot of clout here," and "the more resourceful of them can get the licence made and issued to the applicant the same day," sources said. The site is not inspected, it was alleged, but a report is made out, anyway. Sharma indicated as much. "Come tomorrow," he said, "and I will introduce you to the area inspector." But will he inspect the proposed site? "You don't worry," "I'll pay him," he stated grandly.

Though, the MCD's vigilance branch has not yet stumbled upon this network, it is aware of other irregularities. During a scheme of ad hoc registration of illegal com-

mercial units last year, "four-five licensing officials were suspended". The vigilance branch director M. P. Sharma said over 200 files (each of an applicant) were investigated on receipt of specific complaints. For the on-going ad hoc registrations, the vigilance wing is keeping a close watch.

The DC factory licensing, Mr S. Harit, admitted the involvement of his office staff with the touts. In fact, Sharma advised this reporter to ask Mr Harit's peons "for his whereabouts". "They all know me," he added. Mr Harit was both surprised and disgusted that the touts were operating in the main hall. He said, "I have tried hard to keep them out of the premises." But every time they were chased out by the police, they returned.

For their evasion, he has also written to MCD's additional deputy commissioner for local quarters, in charge of the building housing the licensing department, education department offices and

the municipal election commission. In fact, Mr Harit said, the most recent letter was sent last week. "Even if the entry to the premises was regulated," he complained, "the touts will get in on some excuse." These middle-men look keen and resourceful enough.

"Aa ban jayegi," Sharma assured this reporter. A "file" has a filled-up MCD application form, copies of the three operative pages of the ration card, a copy of the lease-deed and the building plan of the flat/house. He posed a vexing problem over the proposed "photostat shop" which was to be housed in a DDA-built flat. Though Mr Harit was not very sure, he said "as for policy it was not permitted in planned colonies with designated shopping areas." But touts, Sharma said, and his friends. They can swing even this, for a price. Rs 500 is his flat rate for every licence. And Rs 3,500, he said, was the processing charge.

Chapter 6: The politics of Neighbourhood as Factory

9. A journalistic (and largely elite) view of the parallel regulatory system at work.
 - > This captures the extensiveness and organised structures at play ("A").
 - > Although seen as 'illegal', note that there are limits within which this operate ("B").
 - > There is a close link to the Office / municipal orders procedures evolved out of the Porous Bureaucracy ("C1") and gets incorporated into this ("C2").
 - > Finally, the issue is also linked to the regulations framed by the Delhi Development Authority, a body that seeks to not only control such activities but to maintain their exclusivity in capturing the commercial potential for "their planned commercial centers" ("D"). It is popularly known that the Planned area too is situated in a similar circuit of bribes and agents or "touts".

10.

License for electrical power connections within "un-planned" / "mixed land use" categories incorporated into office orders from the 'Porous Bureaucracy' process				
(Parallel to, if not over riding Master Plan regulations) (From Benjamin 1996, compiled from various MCD documents)				
LOCAL COMMERCIAL AREA	URBAN VILLAGE	HOUSEHOLD INDUSTRY	HEATING & COOLING LOADS	AD-HOC REGISTRATION
<ul style="list-style-type: none"> • Local Commercial areas are identified by the Delhi Development Authority \Municipal Corporation Delhi and the Ministry of Re-habilitation periodically — usually main roads or declared 'Light Industrial Areas' • Power load restriction is upto 7.5 HP. • License is expandable and promotional • Location not allowed adjacent to any medical clinic • Includes light industry, light mechanical workshop, repair shops, cooling and refrigeration plants and service trades. 	<ul style="list-style-type: none"> • Village to be in urban areas. • Typical trades allowed are: Dal (lentil), rice, wheat flour, mill, kutti cutting, cotton carding • Power load is upto 20 HP and nos. of workers upto 10 • Expandable license • No license needed inside the 'Lal dora' (village settled area) if power consumption is upto 20HP 	<ul style="list-style-type: none"> • Entrepreneur operating from dwelling unit. • Power load allowed up to 1KW (3KV), raised to 15-20 HP. • Maximum nos. of workers:4 • License is granted to listed 38 trade groups of D.F.C list. • Permissible on all floors except basement. • Enterprise should not be more than 300 Sq. ft area. 	<ul style="list-style-type: none"> • For main road enterprises with loads upto 11 KV: A/c showrooms, restaurants, clinics, auto maintenance shops. 	<ul style="list-style-type: none"> • For registration purpose of units in non-confirming areas functioning in a un-authorized way without any license, the units which have come up upto 31.12.89 are eligible (proof of date to be submitted) • Polluting/ Obnoxious/ hazardous units not to be registered (listed under Annexure C in master plan) • Maximum ceiling of power is 40HP, increased to 70-80 HP in 1982-83, and 100-120 Hp under Ad-hoc certificate policy of 1990-91 • Grant of permission only on Ground Floor. • License is non-renewable or expandable • No change of trade allowed, no passing of factory to Entrepreneurs heirs. • Cases which were booked in un-authorized const. after 10.6.92 shall be kept pending until further instructions.

The municipality as a locale of such politics is important. Given the rigid forms of legality (and hence property) imposed by Development Authorities, there is a strong political imperative to keep interventions quiet and unobtrusive. Municipal councils, in addressing a constituency whose only asset is the vote, know that if an interpretation of law and administrative guidelines can suffice to initiate upgrading, there is little need to press higher levels of government to legislate for it. Also, as cities get increasingly divided along income lines, politics reflects an alliance between the elite and higher-level bureaucratic and political levels. Most councillors with a constituency in poorer areas realise fully well that seeking to legislate is likely to attract the attentions of the elite, who would use their alliances to pressure government and the judiciary to restrict municipal government from spending public resources in what are, technically, illegal areas. Once such judicial or administrative orders are passed, they do harm by closing up space for any future actions. In a sense, then, we can also see how economic contest between different groups relates to quiet subversion to dilute larger 'vision' based Master Planning.

To understand such quiet processes in a more concrete way, I present in the next set of illustrations, the subversion of the day-to-day by the 'ordinary': a news article on 'touts infesting' the factory licencing office, routine newspaper notices from an agency responsible for electricity supply, a seemingly poorly drafted scrawl of a 75-year old threatening a middle level official, and photos from the semi-covered parking lot of a government office that houses the street level legal 'experts'. For the Master Planners, these are the 'illegal' operatives catering to the Ghost that haunts the image of the planned and orderly city; for the elite, these are touts, the land encroachers and builders, and land mafia of unauthorised construction, the slums staining the imaginary of the grand plan and thus to be cleared away; for big business, these are the pirates, the violators of copyright, the tax evaders.

Multiple Fluidity in Fixity

I now probe deeper into the nature of this 'Quiet Politics' as a way to understand the relationship between the legality of land and economy. Besides the arena of local government as one form of politicisation, another is that of forms of tenure. In this, we see an interplay of two issues. First, that legality is not absolute, but is fluid and shaped by a variety of actions. Academics and practitioners focusing on issues of regularisation (in a vast number of settlements in cities in Asia, parts of Africa, and Latin America) are well conversant with the importance of *de facto* tenure.¹ What turns out to be important is not *de jure* tenure, but rather the *de facto* status of land as impacted by the process of regularisation which influences the 'perception of legality'.² Here, upgrading and introduction of better infrastructure and services also means that land is generally more secure against evictions. Second, of critical importance and linked to the concept of *de facto* tenure, is the concept of property itself. Land as an economic terrain, as well as a place for residence and urban relationships, has a fluid materiality. Land is highly material – as seen in the close connections to real estate. Yet, in this very connection to real estate and its supposed 'fixity', lies a powerful fluidity – in the varied forms of tenure. Another material basis to the logic of interconnected tenure is that this underpins the clustering of firms, which in turn

leads to increasing productivity and economic advantage (that, as I argued earlier, underpins municipal autonomy). When first viewed, the uneven distribution of infrastructure in a non-Master Planned settlement seems chaotic, 'slum-like' creating the rationale for 'Planned intervention'. A closer examination of clustering shows, however, that the varied firms that constitute a network of interlinked firms operate their manufacturing and trading activities in direct connection to the varied infrastructure of the particular land parcels they are located on.³ To put it simply, a firm drawing copper wire from a thicker gauge to a thinner one does not require as high a level of infrastructure, say, as one coating those wires with PVC, or a firm that enamels the finished copper wire for motor winding. Similarly, a small trading outlet selling raw stock of PVC pellets compound (to the insulating firms) requires not high infrastructure but 'market access' on a street corner. Since access to the level of infrastructure impacts land prices, firms locating differently need to sink varied capital investments. It is the ability of a neighbourhood to have expensive and cheap areas in close physical proximity, that allows for the networking of firms to take place.

Multiple Fluidities

'Entrepreneur/Artisan/Worker/Trader/Financier/Political Strategist'

There are other types of fluidities. A closer look at the human face of an economy constituted by clustering small firms shows that we can hardly use the conventional binary of 'entrepreneurs and workers'. Tracing life histories shows that these labels are interchangeable. Workers move on in three to five years to become foremen, and after that, link to a variety of trajectories to start off their own firms in the main line of production, or into capital machinery. Some move to be trading agents. At times, these identities switch. Entrepreneurs and factory owners, even those from the financially astute group of the *marwari* and *bania* (trading castes), need to operate the machines on the shop floor to keep in close contact with the technological options that open up, and to respond to complex and dynamic market demands. Much of small firm finance is driven by complex local mechanisms such as pooled funds linked to real estate markets. These financial systems draw in all – workers, factory owners, renters and land 'owners' – even if in varied degrees. This intimate knowledge of financier circuits, even if power within these is unequally distributed, is critically important to make possible transitions between factory owners/workers/traders/innovators/artisans. Finally, the politics of regularisation implies yet another fluidity of multiple identities. The link between varied land tenure and economy means that those participating in it have a direct stake in the politics of establishing location, of regularisation, and of access to infrastructure. Thus, meetings to decide on political strategy during election time include not only 'landlords' but a variety of other groups, including workers. These last are included not as 'labour', but have chosen to be present due to their direct implication in the form and process of production, as well as in their connection to property via multiple tenure regimes.

In considering the concept of fluidity, I return to consider more closely the issue of 'landlords' and 'tenants'. I suggest that this line is very thin, with a process of switching from one to another. Here, it is important to return to land tenure as a bundle of rights or claims, rather than set in absolute or singular relationships. Often missed out, this view of land

tenure as being a heterogeneous entity needs to also be linked to the concept of 'land controller', to draw from Dharma Kumar.⁴ Viewing landlords and tenants as 'controllers' opens up a conceptual space to appreciate the wider distribution of surplus from incrementally developing land markets. This can also help us to view the concept of 'property' in the context of a local society,⁵ rather than be boxed in a narrow conception of a homogenous market. The spectrum of land controllers includes property agents, as well as ex-tenants who partake in the increased surplus when land is subdivided, via the division of the security deposit in locally negotiated ratios.

An important point here is that land tenure is usually viewed in narrow terms of residence, separate from its other uses. Also, land is seen as static, deriving from a sense of its fixity. When we open up the land dynamic to include non-residential use intermixed in a fluid way with residence, we can then appreciate that tenure can signify a much broader range of actions linked to forms of regulation that shape its use by a set of actors or agents. Thus, settings like that of Vishwas Nagar, and inherent in figures 9 and 10, are reflections of both forms of tenure (what form of regulations allows you to put the parcel of land to a particular use) and agents (the range of touts, but also other 'fixers', consultants to help an 'entrepreneur' or a land 'owner' adjust that land parcel's characteristics to allow production to happen). I have elsewhere shown how, in the case of Bangalore, poor groups had at least 12 forms of tenure systems to latch on to urban space.⁶ If we consider the case of economic settings like that of Vishwas Nagar, each of the categories mentioned in the table of figure 10 can be construed to be forms of tenure settings.

To fully understand the multiplicity of tenure, it is important to connect it back to the politics of daily reality. If regularisation is the way most urban terrain gets access to basic infrastructure, suggests that its politics is not one-off, but extensive across a vast urban terrain. Moreover, in being centred on the actions of the day-to-day, the fluidity of legality implies that such politics is not 'led' by a singular person but rather congregates multiple actors, with a strong though not necessarily leading role played by councillors. Finally, in dealing with the fluidity of legality, its accumulative politics within municipal government has evolved conventions and practices, rather than 'Law'.⁷ By this I refer to the administrative procedures that put in motion investment, and the implementation of public works. Since these interventions impact tenure, they in effect also represent a form of law-in-process.

In my descriptions of neighbourhood life, economy and politics, I have posed that the fixity of land is embedded in the fluidity of tenure, which underpins a networked economy, and also has in parallel an intensely material basis. The economy, despite its fixity in space and identity as a location of specialised skills, is constituted by fluidity of identities. This is also paralleled in an intense politics incredibly intertwined with daily life. Residents here take on multiple identities of being residents, political strategists, and activists. These themes of multiple identities mirror the multiple identities of the economy of 'entrepreneurs/artisan/workers/traders'.

Moving beyond the *Dirigisme* of State and Market

Political, social, economic theory, and especially that of planning, has usually framed the urban question from a *dirigisme* of state and market. Fitting into this binary is the location

of 'civil society'. We are led to believe that the local is to be subsumed within a larger structure of the Nation State, or be homogenised, responding passively to the market's vibrating price signals travelling magically through space and location. The politics of the local within this binary is reduced to a 'civil society'. Here, passive locals are led via a progressive and visionary leadership pressing for a 'rights framework', or for 'transparency, accountability, and Good Governance'.

If city building is reflected in such streetscapes, it is useful to reject such binaries, as well as reflect on a mirrored question: What forms of politics of society and city building are envisaged when a larger political project is posed centred around the *dirigisme* of the state and market? Specifically, what does this tell us about the political economy of the constituent groups, including academics who choose to pose issues this way? We know that such political projects are afloat, well-funded, backed by state power at the highest level, and paralleled today with significant corporate might. All this is to contest space occupied by a 'quieter politics'. If so, what does this contest tell us about cities as a political arena constituted by the quiet but subversive economy and society?

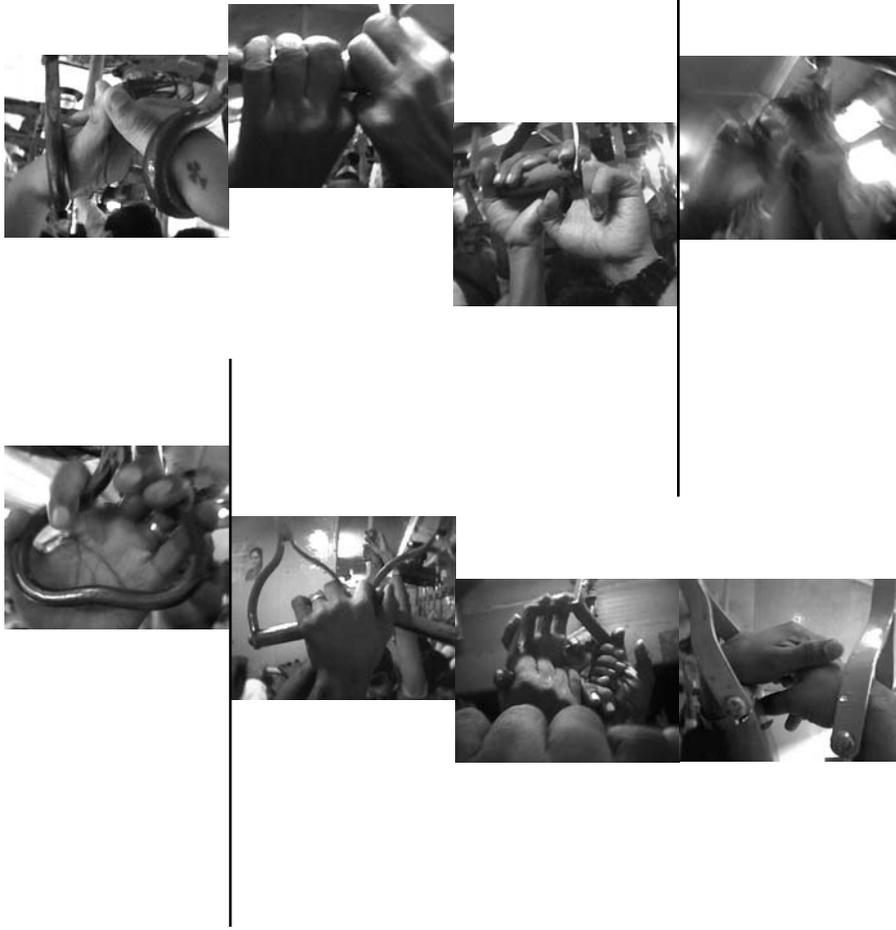
NOTES

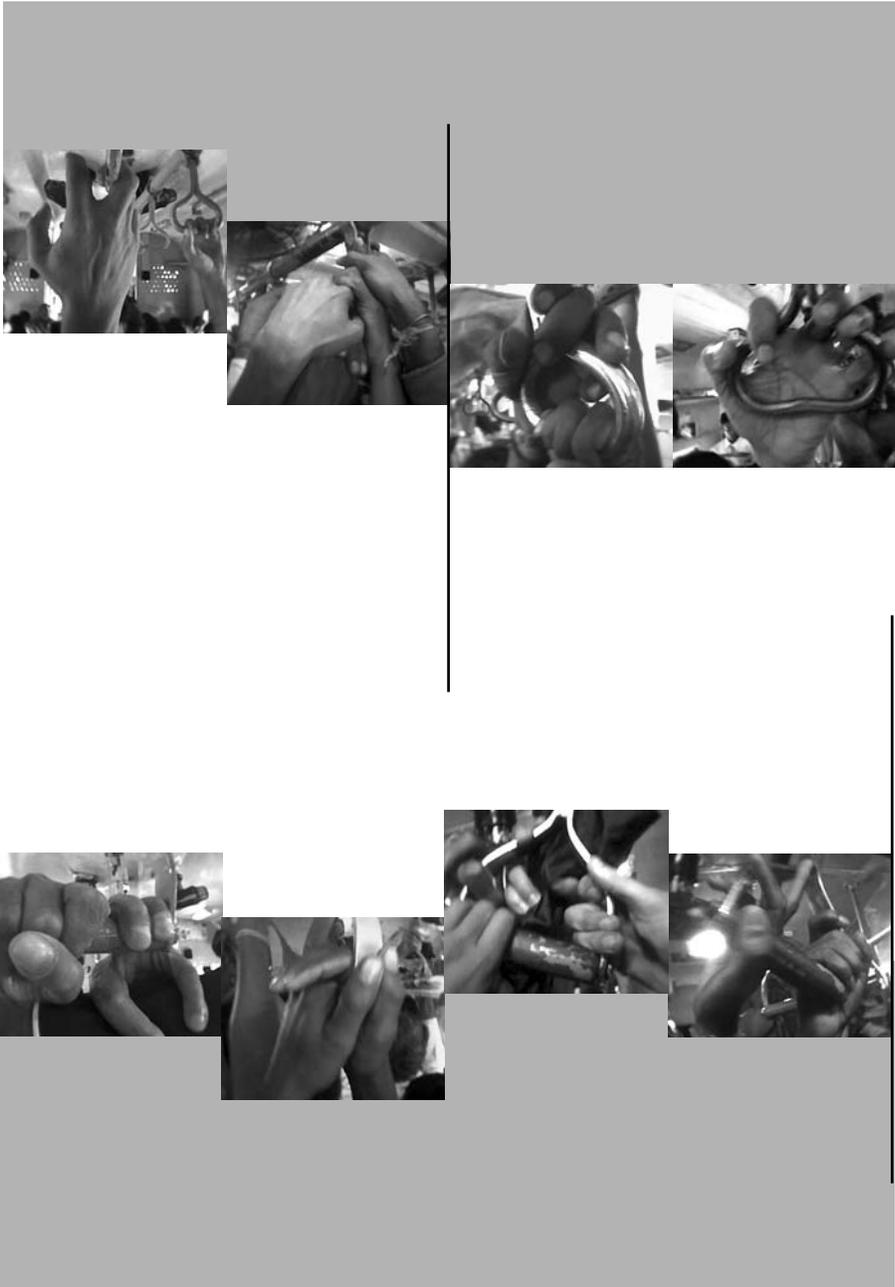
1. See Fernandes E. and A. Varley, *Illegal Cities: Law and Urban Change in Developing Countries* (Zed Books 1998); and Durand Lasserre A., and L. Royston, "Holding their Ground: Secure Land Tenure for the Urban Poor in Developing Countries" (*Earthscan*, 2002).
2. Doebele, W. "Concepts of Land Tenure". In *Urban Land Policy: Issues and Opportunities* (Oxford University Press, 1983).
3. Benjamin S. "Urban Land Transformation for Pro-Poor Economies". In *Geoforum*, Volume 35, Issue 2, March 2004, pp. 177-197.
4. Dharma Kumar, *Colonialism, Property and the State* (Oxford University Press, 2001).
5. See Abramson A., and D. Theodossopoulos (eds.), *Land, Law and Environment: Mythical Land, Legal Boundaries* (Pluto Press, 2000); and Sousa Bonaventura Santos, *Towards a New Common Sense: Law, Science and Politics in The Paradigmatic Transition* (Routledge, 1995).
6. Benjamin (2004), *op cit*.
7. Here the work of Karst et al, and Razzaz is critically useful to consider in understanding the process and social implication of law. See Karst, K., M. Schwartz and A. Schwartz, "The Evolution of Law in the Barrios of Caracas", *Latin American Studies*, Vol. 20 (Latin American Centre, 1973, University of California); and Razzaz, O, "Land Disputes in the Absence of Ownership Rights: Insights from Jordan". In Fernandes et al, *op cit* (1998).

Daily Journey

SATYAJIT PANDE







Complicating the City

Media Itineraries

MEDIA RESEARCHERS @ SARAI

The new globalisation has transformed media networks in Delhi.

At the level of the everyday, the old prohibition and regulation on the social life of commodities have proved ineffective. Urban residents are now assaulted with a deluge of cultural products, cassettes, CDs, MP3s, VCDs, cable television, grey market computers, cheap 'Chinese' audio and video players, thousands of cheap print flyers, and signage everywhere.

Remarkably, the majority of these products come from the grey or informal sector, outside the effective regulation of the state or large capital. India today has the world's second largest music market, a large film industry with global dreams, a majority grey computer market, hundreds of thousands of tiny phone and word processing shops, and cyber cafés. As if from the ruins of urban planning, the new media bazaars that supply these networks have emerged, proliferating in the cusp of legality and illegality. Everyday a guerrilla war is raging, between new intellectual property raiders, the police/enforcement regimes and unceasing neighbourhood demand for grey ware.

Journeys in the History of the Present

As researchers of the Publics and Practices in the History of the Present (PPHP) programme at Sarai, we constantly traverse zones of legality and illegality, passing through markets, cinemas, corporate offices, music companies, film distribution offices, detective agencies, law courts, police stations, government archives and factories. We meet shopkeepers, software pirates, porn merchants, architects, singers, accountants, labourers, lawyers, officials and policemen – all of whom constitute the fraught fabric of the Media City, the intertwining networks of circulation and curtailment.

In enforcement, there is an increasing link between property and propriety. The Economic Offences Wing conducts raids for 'Obscene Material' and 'Copyright Violations', and these are invariably reported together. Locally made video satires on religious themes, a new variation on a long-existing tradition, have to go underground to prevent the 'spread of communalism'. A plethora of laws are being used, or sought to be used, to discipline

pirate networks and their free, untrammelled, circulation. Copyright, obscenity, communalism, the Cinematograph Act...

At the same time, laws and regulations are being changed to privilege large capital, and a sanitised, globalised imagination of the city. The boom in malls has been fuelled by the repeal of the Urban Land Ceiling Act in 1999. Multiplexes act as drivers for malls, and have become possible because of changes in MCD (Municipal Corporation of Delhi) regulations on land use.

Forms of Sharing Research

In the PPHP program, as we bear witness to the rapidly transforming city, we try to knit our diverse experiences into a picture of larger processes and transformations by posting field notes (largely experiential) on a common list and archive, a space for sharing information, for collaborative research, for creative interventions. Newspaper clippings and other print and audiovisual material are also collected and digitised. There is a commitment to making the research public, and in this endeavour, we engage with a variety of forms of presenting research – staccato field notes, news clippings, more ‘poetic’ evocative texts, archival resources, other ‘intermediate’ forms of writing not yet polished into an essay or scholarly article. These modes of writing are put out into the public domain via new forms – the broadsheet, the spiral-bound volume, the hyperlinked CD.

We follow leads, and thread through the quotidian flux and constant change that characterise the Media City: a city that cannot be navigated through the cartographic grid, or the practices of mapping. Think rather of the labyrinth of legend, unmapped and unmappable. Think of Theseus navigating through the labyrinth with a ball of thread, slowly unravelling. The threads we draw/follow through the city may not ‘map’ the city in any traditional sense, but following these diverse routes will give you the warp and weft, a feel, of the fabric of the everyday.

The Public

The beginnings.

And first questions.

If the public (domain) is public, what of its image?

Who owns the images of the public domain?

[PPHP] Film Production - Fieldwork (2)
 Debashree Mukherjee <debbie_m@mail.com>
 28 May 2004

Churchgate, Mumbai.

...Permissions. The very word strikes terror in the hearts of independent filmmakers. Each tile, each footpath, each subway in this city falls under the jurisdiction of different sets of authorities. First the police, who have to allow the shoot to take place and control crowds. Then the RTO (Regional Transport Office), which charges a fee for shoots in public

spaces. VT and Churchgate would also bring in the Railway authorities. And the Churchgate subway is privately owned. So, often, one location might need permission from, and bribes to, four separate parties. In order to finally obtain a piece of 'official' stamped paper, one has to go through a lengthy process involving red tape, inefficiency and the inevitable palm-greasing.

The alternative is to risk shooting without permissions. This involves an inconspicuous, blink-and-you-miss-the-camera style. Shoot and run. A hand-held camera, single takes, no lighting, end claps, a getaway van and smooth-talking production guys are absolute essentials. The cops, though, will invariably land up. They seem to have an almost esoteric system of sniffing out any shoots in the neighbourhood. Shoots are perceived to be extremely lucrative opportunities. Kishore Sawant and Anand (assistant directors), however, managed to handle them with expert ease. They tried every trick in the book, from convoluted talk to hints about money having changed hands at the 'highest levels'!

An important scene had to be shot at the Oval Ground that day. It is owned by a private trust. This presented a problem because one could not assume that some ready cash would save the day. Several attempts had been made to contact Ms. Bharucha, the trustee. Finally, two hours before the scene was to be shot, Kishore got hold of her address. After reviewing Ms. Bharucha's profile, culled from various sources, it was decided that 'Aunty' might be best persuaded by a convent-educated female. Which basically meant me. I was immediately rushed to the given address and Kishore gave me a precise brief on the way. Talk in English. She's been the principal of a posh girls' school. Mention NFDC and stress that it's a 'children's film'. That'll melt most people. Try to use the word 'documentary' at some point, as she's really into NGOs and stuff. For example: "It's a documentary kind of film about the plight of homeless children in Mumbai..." Anyway, we met her and she melted. So we got to shoot for free. And that's the story of my initiation into the wily ways of the bad, bad film world.

[PPHP] *Goondagardi*
Bhrigupati Singh <bhrigupati@hotmail.com>
21 February 2002

Goondagardi refers to the strong-arm tactics by which toughs controlled the black marketing of cinema tickets, and maintained surrogate 'ownership' of cinema halls. How do cinema halls map themselves onto localities – their particular locations in urban space and time? How are they enmeshed in existing forms of social interaction, and what are the ways in which they shape and engender new forms of sociality?

One way of answering these questions is to look at the practice of selling tickets in the 'black' market, usually controlled by a local *dada* (tough) of the area. We asked O.P. Sharma and V.C. Jain, managers of Liberty Cinema (New Rohtak Road), what they felt was the single biggest change in cinema-viewing culture in the last two decades. "*Goondagardi khatam ho gayi hai* (Hooliganism has ended)", they said. They described a network of surrogate 'ownership' linked to various cinema halls. Here are some names they, and people from other cinema halls, remember from the 1970s:

बोल कौदड़िय
साईन ए
1. चलत चलत च
CHAL CHALA CH
2. तुझको चलत
TUJHKO CHALNA
3. बोली बजत च
BOLO BUM BUM
4. चलते रे ओले
CHALO RE BHOLI
साईन बी
1. मेरे बाबा ड
MERE BABA DAM
2. ओ मेरे अंदा
O MERE BHANDA
3. चढ़ाने काँच
CHADHANE KACH
4. काँचे काँचर
KAANDHE KAAV
नए नुन
MOLEE ME
नील नुन नुनकाँच
नील नुन नुन
नील नुन नुन





Liberty Cinema: Shaadi Lal
 Majestic Cinema: Puran Tunta (subsequently murdered)
 Moti Cinema: Shanti
 Kumar Talkies: Om Prakash *urf* (a.k.a) 'Kala'
 Novelty Cinema: Madhi
 Jubilee Cinema: Kinnu (subsequently murdered)
 Ambar Cinema: Banarsi and Ranjit
 Golcha Cinema: Kauri
 Jagat Cinema: Munna and Saleem

Each time a new cinema hall was built there was intense contest within the area for the 'ownership' of the hall. A number of dramatic stories are attached to each of these *goondas*. Interestingly, the narration of these stories and the way people remember them is deeply invested with elements of 1970s early action Hindi cinema. Puran Tunta, for instance, famously beat up a *dhobi* (washerman), who had been rude to him without knowing 'who he really was'. According to Mr. Jain, he was the local leader of about 200 coolies. He had lost one hand in a fight but continued his reign over the area nevertheless, because he carried a lethal knife in his other hand at all times of day and night. Puran was killed one fateful evening on the one day that he was not carrying a knife. Ironically, this happened because he was taking his wife to watch a film.

A number of interesting questions arise if we begin to trace these stories and the history of cinema hall related *goondagardi* as a social practice.

What kinds of loyalties were working in the formation of these local *dadas*? Were their networks composed of new immigrants to the city? What are the ways in which these *dadas*' identities were created and circulated, apart from the more obvious aspect of their articulation with the cinema hall? What kinds of conflicts arose between these *dadas* and the police-cinema owner nexus? How did these *dadas* negotiate the local police presence? What contexts have shaped the present juncture where cinema-halls are spaces not important enough to require a local 'owner'? (According to several accounts, this practice continues in varying degrees, though on a much smaller scale. For example according to 'Pawwa' ('quarter')/250 ml. bottle of country liquor) Pehelwan who runs a chicken shop adjacent to Jagat Cinema, the present *dada*, Chikki, simply cannot match the stature of his predecessors).

Are the stories around these various people themselves a kind of film-related culture – drawing from (and perhaps giving rise to) films of the time? How did this practice 'end', as Jain and Sharma put it?



Dreams

[PPHP] Film Production - Fieldwork (5)
 Debashree Mukherjee <debashree_m@mail.com>
 28 June 2004

Mumbai: Ravi Dada

He makes a curious figure standing there. Always present, for every shot, except you don't quite notice him. "Ravi *dada*!" "Make-up *dada*!" everyone shouts, and Ravi Rajput quietly appears from behind a reflector.

He carries his make-up kit everywhere, all the time. The two are inseparable. He's bent with the constant weight but won't let go of it. It's a big, brown, mundane-looking bag but seems to be heavy with mystery and magic. (And I wanted so badly to believe the magic...)

Like most people I've spoken to these past few months, Ravi *dada* wanted to talk. Some of the stories are old favourites, told over many an evening with friends. Some I'd heard before, on the way to the locations, and in different forms...

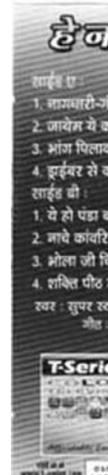
Born and brought up at Marine Lines in Mumbai, Ravi *dada* left school after Class 6 and started working in a printing press. In a few years he quit and got a peon's position at an AC plant in Tardeo. It was a small manufacturing unit that basically made spare parts for air compressors. His job was to give the staff water and tea. Occasionally he would have to take files from one desk to the other. This was in 1972, when he was 15 years old.

Ravi soon became friendly with the other peons at the office. One of them doubled as a make-up man for the theatre after office hours. He would regale his pals with stories about the Gujarati theatre scene. One day he asked Ravi if he wanted to make some extra cash. This was during the Navratri period when *ras garbas* (Gujarat folk dances) were being performed all over the city.

His troupe was putting up several stage shows and each show had around 40 dancers. They desperately needed extra help with the make-up. Was he interested? Ravi was reluctant initially because he had no idea about make-up; and besides, he was just not interested in this kind of thing. Eventually, though, it seemed like a good idea and he took the job. He got Rs. 5 per show. Soon he was making Rs. 30-40 every month from stage shows and plays in Gujarati and Marwari. He worked at the office from 9 am to 6 pm, and then worked at the 'other' job till midnight. His first big play was a Gujarati play called *Marichhe ta Marinehi* (Mine and Yet Not Mine) which was performed at the famous Birla Matushree theatre in Marine Lines.

By this time he had been promoted at his office job and was now doing the filing and delivering parcels. Soon, however, he had an altercation with his boss and was sacked. Ironically, a month later, his boss was arrested for stealing spare parts from the Kirloskar AC plant. This is how the alternative spare parts industry worked/ (works): storekeepers at plants like Kirloskar were bribed and original goods were smuggled out. Then hundreds of duplicate parts were manufactured based on this copy.

After a couple of short-lived stints at other day jobs, Ravi was left with no option but to follow make-up as a full-time vocation. "It was completely accidental; and that's the story of





my life”, he says. The money wasn't good and he was completely disillusioned with the glamour industry. The atmosphere of licentiousness, the illicit messy affairs, the alcoholism and drugs – it was all true and very frightening for a young boy.

In 1980 the Doordarshan centre in Bombay had an opening for four-five make-up men. Ravi got a temporary job there, and the plays continued side-by-side. During his association with a dance troupe, he fell in love with one of the dancers. Their romance was nipped in the bud when the girl got an offer from a rich patron that she couldn't refuse. This led to a phase of severe depression in Ravi *dada's* life, and he took to drinking...

...Then he worked with Mani Kaul. At that time, Mani was involved with the casting for *The Idiot/Ahmaq*. They were stuck with regard to finding someone for the role of Pawan Raghujan. Ravi *dada* suggested Shahrukh Khan. After much coaxing and convincing, Shahrukh agreed to meet Mani, and the rest is history. Ravi *dada* maintains that had he cashed in on his friendship with Shahrukh, he could have made it big in the make-up world. But that would have meant joining a coterie of yes-men. So he didn't attempt it.

Since then he's worked on several films, his most recent being *Raghu Romeo*. He's also worked on plays like *Evita* with Alyque Padamsee.

When asked if he is satisfied with the way his career has materialised, he shakes his head vigorously. He is vehement about the fact that this was not a career of his choosing, and that it has not been particularly fulfilling. There were some good times, but make-up men are way down in any crew's hierarchy and they don't get much respect or creative freedom. “Even the spot boys throw attitude and won't get us tea!” On most big budget films, the stars get their own make-up persons. On the independent film circuit, actors generally don't have personal stylists, and then he is responsible for the entire cast. “This kind of a situation is more challenging and more fun.” As far as creative authority is concerned, “It's only in Hollywood or in the case of a Mickey Contractor that the make-up artiste has complete freedom. Here, if the actor feels that he/she needs more pancake or a clean-shaven look, it's their call”.

Ravi *dada* now wants to direct his own film. He has a few ideas and is looking for a financier. It's his only dream in life...

[PPHP] Interview with B. K. Malhotra, Jagat Cinema
 Bhrigupati Singh <bhrigupati@hotmail.com>
 12 April 2002



“I played the lead role in a play once, in Srinagar in 1961, at the 5th All India Police Function. Balraj Sahni and Mohammed Rafi were there. Sheikh Abdullah was the chief guest. I was born in 1945, so I was 16 years old at the time. After the climax of the show, Balraj Sahni came up on stage. He hugged me and told me that I would be as big a star as him. Fortunately, or unfortunately, that was the turning point in my life. Some years later, in 1967, I was doing another play, *Naya Zamana*, which I directed. We performed at the Delhi Public Library. J.C. Sharma, the noted film producer, was in the audience. After the play was over he invited me to Bombay to join his team. Like me, he was a native of Shahdara in Delhi. He had just announced a new picture called *Surag*. Many letters came, and he called

people for auditions in batches and collected money from them. This was a hoax; he was actually collecting money for the release of *Maharani Padmini* that turned out to be his last film. After this I did some freelancing through contacts I had made while working with him. Unfortunately, I didn't find a godfather, and in Bombay that is absolutely necessary.

"Then in 1968, a tragedy took place in my life. My mother, who worked in the police, died in an accident. At this point of time my father worked here in Jagat Cinema. My *mamaji* (maternal uncle) got me a permanent job in the Railways, but I didn't take it because I met another man who invited me to Bombay. Today the fellow who took up the Railways job earns Rs. 24,000 a month. I was even offered a job in the police in place of my mother; but I didn't take it because I pictured myself in a police uniform, and I am short, so I thought I would look comic. Instead I went to Bombay. *Filmi bhoot savaar tha na* (I was obsessed with films). This time I spent two years there. After a while I wasn't even being able to scrape together enough money for a decent meal, so I came back to Delhi. I met Seth Jagat Narain's son *aur unke aage peeche ghoomne laga* (and began to hang around him), hoping he would give me a job. Then, in June 1970, I was appointed at Ritz Cinema as a gatekeeper..."



[PPHP] Censor Scriptwriter
Ankur Khanna <ankurva@gmail.com>
20 September 2004

This week, a profile of a different sort of scriptwriter.

On one of my frequent visits to the Naaz cinema compound on Lamington Road I ran into an old friend of mine, Ali Abbas, who now works as an Assistant Director in Mumbai. Over lunch, he explained that for the past week or so he had been meeting a particular censor 'agent' regarding a feature's clearance at the Central Board of Film Certification (CBFC) office in Valkeshwar. Since I had just rudimentary notions of the procedures involved in actually obtaining a censor certificate for a film, I asked Ali to elaborate. He said that he could do better than that – he could introduce me to the agent, who would then clarify everything for me. Ali made the necessary phone calls and arranged a meeting with Mr. Shripati Mishra. I was surprised that he was so eager to meet me. I had anticipated reluctance, if not an outright refusal on his part. When I met him, I joked about this almost immediately. Mr. Mishra himself was surprised that I would think so. "Why shouldn't I tell you my story? I have almost nothing to be ashamed of. The only thing I won't talk about is my script idea which I want to make with Amitabh and his son".

Shripati came to Bombay in 1993 from Champaran in Bihar. "Everyone who comes to Bombay has a hero from his part of the world who made it big in the movies. These stories are very important in our village. For example, everyone in my circle of friends knows the story behind Manoj Bajpai and Prakash Jha. They are from our village, and their lives are chronicled in the greatest detail and passed from generation to generation".

When he arrived in Bombay, Shripati knew no one except a distant cousin who worked at a childcare utilities service. He worked there as a delivery boy for close to 16 months. At this point he felt that he needed to work within the industry if he had to get anywhere in





life. A friend had mentioned certain vacancies within the trade journal *Complete Cinema*. Soon he was a delivery boy with the magazine. “Yet, this was a very different job from the previous one”, Shripati clarified. “Trade magazines are not sold in magazine or newspaper outlets. They are only made available to subscribers within the industry. *Complete Cinema* also claimed to have the second-largest circulation within Bombay. Initially, Mr. Mahindra, the secretary, offered me a desk job as a clerk: organising papers, serving *chai-pani* (tea, water) etc. But I insisted that I wanted to be a delivery boy even though it was not as prestigious as being a clerk. I kept saying, ‘I only want the delivery boy job’. That way I would know where everyone lived – producers, distributors, actors, directors. I would know all the important offices within the industry. With a little luck, I would meet someone important while I was delivering the magazine; and who knows, anything could happen.

“I had no place to stay, so I lived within the office premises and read the back issues of the magazine at night. That’s why my English is so good; and this helped me to get my next job as a censor scriptwriter.

“At this stage, let me clarify: I’m not an agent, I am a censor scriptwriter”.

In 1997, delivering trade magazines, he ran into Mr. Vijay Kumar, a censor scriptwriter, in his office behind the Naaz cinema compound. Mr. Kumar was looking for an assistant and offered Shripati a job. It seemed enticing: the pay was almost three times what he was making at *Complete Cinema*, and he would get to watch and re-script films. However, Shripati was reluctant to tell his bosses at *Complete Cinema*. He felt indebted to them. They had let him stay in the office, on many occasions bought him dinner and breakfast, and twice even paid for medical emergencies. He felt they would be very angry if he told them that he was quitting for another job.

“Finally I decided to use emotional blackmail. I told Mr. Mahindra that I was needed back at my village in Bihar to look after my farm because my brother was dying. My plan was to disappear in the city. There was no way they would know if I was in my village or not. I would quietly work for Mr. Vijay Kumar in Valkeshwar and Lamington Road, and never go near Bandra-Khar where the *Complete Cinema* office was located. Years later I was caught by the delivery boy who worked under me there, but by then it didn’t matter”.

Shripati worked under Mr. Vijay Kumar for almost three years. He learned to draft the various letters of authority to the Regional Officer, write declarations and prepare cheques depending on the length of the script: at a rate of Rs. 100 for every 300 feet of film, and an honorary cheque of Rs. 20,000 made out to the Chairman of the Board.

After that, other payments need to be made depending on the content of the film. This is a slightly complicated procedure because these are unofficial payments. You must know the various rates for people within the CBFC bureaucracy. It is crucial because many of them are responsible, in small ways, for selecting the Examining Committee (EC). The Examining Committee usually consists of five members: one officer (an employee of the CBFC Regional Office) and four selected Board members (two women and two men). The censor scriptwriter must be able to anticipate how the film will fare with the Committee and negotiate all the payments, how and when they need to be made, before the Committee sits for the first screening. Very little damage control can be done after the Examining Committee has seen the film and decided on cuts/modifications etc. At that stage the filmmaker can do nothing

**OPT
SOLUTIONS**

FIBER RANGE FIBER OPTIC

- Die Cast Body
- 200 Meters Length
- Double Ended and
- Precision Path Light
- Cabinet Power Unit

FIBRE CABLE

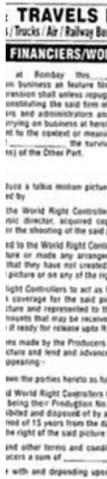
- 4 Fibre (3/8" Tube & Multi T)
- Made
- Standard
- 100' length

ACCESSORIES

- Termination Box
- Joint Enclosure
- Mechanical Splice

SERVICE & SUPPLY

- Splicing Machine



the film's final cut. The official rate to be paid for dubbed versions as well as trailers and music promos is Rs. 10,000. Above this rate the Officer might need to be 'convinced' (*thanda rakhna/baraf daalna* (keeping cool/putting ice)) or 'hurried' (*pankha chalna* (fanning)) to meet a certain deadline.

Our discussion finally turned to the censor scriptwriting. Shripati stressed that at the heart of the entire censorship procedure lies the script prepared by the censor scriptwriter. "It should be detailed and complicated and not very easy to read. That is crucial".

He showed me the censor script of *Cold Sweat*, a movie that he was currently working on. It resembled a shooting script and was structured in a tabular form, with each shot marked and described in the greatest detail. This was according to the rules of the Central Board of Film Certification. The shot description was divided according to action, dialogue, setting and background score. The duration of each shot had to be marked according to its reel length, its location within a specific reel and its time duration. Shripati stresses that detailed time code references need to be made for digital films and for video copies of celluloid prints. The CBFC insists that each shot, however brief, must be documented in the script. "But of course, the ground realities are slightly different", smiles Shripati. Careful omissions, glossed-over segments, unnecessary detail, emphases on portions that are likely to go down well with the Committee, are staples of a censor script. Only one copy is handed to the five members. The officer in charge of the Committee usually reads through it and marks the recommended cuts/modifications on to the script itself while the movie itself is being screened. This marked script is returned to the filmmaker, who then assesses the situation and decides on a particular strategy. The other four members are handed booklets prepared by the censor scriptwriter that contain a detailed synopsis and crew/cast details. Of course, there can be no obvious discrepancies between the script prepared and the film screened.

Since he started out on his own in 1999, Shripati Mishra has handled Guddu Dhanoa and Sunny Deol films, along with ad films for EFX and Prime Focus. "In fact, I have a Limca Record", he claims. "It is for the fastest-censored film in Bombay. It was *Karz - The Burden of Truth*, a Sunny Deol action film. The application was filed in the morning, the script was prepared in two hours by my three assistants, the screening for the jury was in the afternoon and the certificate was issued in the evening. It is still talked about in censorship circles. Ask anyone".

However, Shripati himself states that his specialty is C grade/'sexy' films; and up to now he has had an impeccable record. Not one of his films has been stalled by the Board. In fact, his last assignment was the latest C-circuit hit in the Mumbai region, *Hottest Mail. Com*, touted as India's first film on cyber crime. It was passed with one cut, and the entire procedure from beginning to end took only five days. The other C-circuit films that he will be censoring in the next two weeks are *Jail Queens*, *Maut ke Peeche Maut*, and *Kaam Ki Bhookh*. He has also ventured into distribution with two friends, and will be distributing these three films along with some others in the next two months.

Apart from these 'sexy' films, he is currently responsible for *Amu*, a film about the 1984 riots, which could possibly run into trouble with the Board. "It's not often that I get *dangey-*





time. The court has posted them for the 28 July 2003. This is in favour of the plaintiffs, because the order stands and if there is any contempt of it, they can take further action.

[PPHP] "Lamhe" Case - Some Comments
 Jeebesh Bagchi <jeebesh@sarai.net>
 16 April 2003

These are some preliminary comments on reading the documents submitted to the Delhi High Court:

- 1) The case is between an incredibly gigantic grouping of entertainment industry players (Time Warner Entertainment Company, Columbia Pictures Industries, Inc., Disney Enterprises, Inc., Metro-Goldwyn-Mayer Studios, Inc., Paramount Pictures Corporation, Tristar Pictures, Inc., Twentieth Century Fox Film Corporation, Universal City Studios) versus Arun Kumar Gupta, Proprietor of Lamhe: The Music Shop, New Delhi.
- 2) The economic value of these big players put together is more than the GDP of India and some other countries put together! The economic value of Mr. Gupta's violation is much less than the local office rent of any one of these players.
- 3) It seems Arun Gupta has claimed that he is 'running a library'. So the offence against him is not one of copying or selling (here software cases will take a different route – you cannot run a software library!).
- 4) The infringements are of three kinds:
 - i) A violation of the Export Policy of India – i.e., Mr Gupta has brought in media goods that are only meant to be sold in the US, Europe or other regions.
 - ii) A violation of the Copyright Act (1957) because things sold in one region cannot be relayed in another region without the permission of the copyright holder. Mr Gupta has circulated licenced products, but those licences do not cover all regions. And since he is earning money from this transaction, he is 'renting' or 'hiring' without permission and thus violating copyright.
 - iii) A violation of the Cinematograph Act as Mr Gupta possesses films without the Censor certificate. Public distribution is not permitted without this certificate.

S UNITED F
 a Nagar, Delhi - 110

Mobile No. :
 Fax No. :
 E-mail :
 President :

विज्ञापित

अपने ही ने आज सारा
 अपना विश्व दर्ज कर
 कर रहा ।

अपने अपने-कोला
 हरणन सारन पुनर्विक्रम
 । दिल्ली में सारनन ।
 अतिथि आसन पर सारन ।
 दू एका केरनन की दर अ
 बट के असाव हीनन हीन
 ई ही ही असाव ही ही ही
 । और कर्तु ही ही हीन ।
 ही ही हीनन सारन न
 सारन ही हीनन हीनन ही
 सारन ही हीनन हीनन ही
 सारन ही हीनन हीनन ही

अपने हीनन हीनन हीनन
 हीनन हीनन हीनन हीनन

अपने ही हीनन हीनन हीनन
 हीनन हीनन हीनन हीनन

[Points (i) and (iii) may not apply in terms of books and software. We have to check other cases to see how the legal framework is evolving]

The Plaintiff faces a critical problem with regard to the 'graveness of this offence'. I.e., how threatening is a small business of running a DVD library to these big players, in terms of 'costs' or 'effective costs'? And herein lies the 'critical care' part of this case. I quote Point No. 28 of the plaintiff's plea, which makes for brilliant reading:

"Even a single sale or rental of a film by the Defendant is capable of causing irreparable injury and damage to the Plaintiffs. The single film can act as a plate from which several thousands of other pirate prints can be prepared. If the print reaches the hand of a cable network, even a single telecast on a network is capable of reaching several million homes all over India. The potential for damage is immeasurable and irreparable".

The fecund copy, and rhizomic circulation...
Such a conjuring up of layered social and technological junctions is rare!

[PPHP] Re: Sarai Posting #1
Jeebesh Bagchi <jeebesh@sarai.net>
30 August 2004

Distribution is a term used by the industry and understood to imply a set of functions. It has a clear mandate and now involves lots of players and protocols. But, what is troubling the industry is the concept of 'circulation'. Circulation seems to suggest VCDs and cheap copies that flood the market on the day of the release. Since the time-window between the release of the film and of copies is very small, this allegedly affects the film's theatre revenues. The connection between the two seems to be 'forced', however, as telecast rights are negotiated after the release and a good cheap copies market should get more for the producer (telecast rights are based on advertisement catching power).

[PPHP] Interview with P. Samraj
Mayur Suresh <mayur@sarai.net>
19 November 2004

Over the past two days I had two sessions with Mr. Purushotam Samraj, managing director of Showtime Advertisement (Pvt.) Ltd., and Showtime Vigilance and Media Protection (Pvt.) Ltd.

Mr. Samraj has three businesses. He owns and leases out cable rights for Hindi movies. He has been appointed by the Central Board of Film Certification to raid theatres in Bihar and Bengal for violations of the Copyright and Cinematograph Acts. He has also started distributing VCDs for Bambino.

Mr. Samraj, while working with Columbia electronics, made a number of contacts among film producers, and in 1990 started his Showtime advertising company that sold cable television rights in movies. Now he owns the cable rights to 80% of movies in Delhi.

Mr Samraj proudly claimed that he introduced cable to Delhi. He says that he went around neighbourhoods to tell people about cable. He "guided" people who wanted to set up cable networks. After the cable network was set up, he "sold areas". By this he means that he sold the cable rights in movies to the cable network owners in particular localities. In the early 1990s he used to sell the rights for a year, and for a sum of around Rs. 12,000. Now it depends on the number of connections that the cable fellow has. He charges Rs. 6 per connection. The lowest that he gets paid from one cable operator is Rs. 16,000 and the highest is Rs. 5 lakhs per year. He says that he's got written contracts with only a few cable operators. But he only does "Number 1" deals and no "Number 2" deals (no underhand deals). He also said that he gives receipts for all his transactions.

However, he adds that cable fellows often screen films without his permission, and hence he has some 25 chaps who go and spy on the cable fellows. They go to a house in a locality, and if they find that any movie is being screened without permission, they report it to the police, and then they raid the cable fellow.



On 14th July 2003
Air Channels will
30 Channels or ab
Tax and Service T

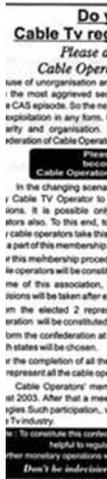
Some Free to Ai

Sahara Manoranj
Sahara Samay
SABe TV
Aaj Tak
Headlines Today
NDTV 24 x 7 (H)
NDTV 24 x 7 (E)
DD-1
DD Regional Ch

Some Pay Chan

1. Zee TV (M)
2. Star Plus (C)
3. Sony TV (S)
4. ESPN Star

Do you want Pa
Which scheme y



The entire operation has to take place within three hours (before the movie ends) so that the cable operator can be caught red-handed.

First the movie is “detected”. Then the cops have to be arranged. They have to be goaded and bribed before the raid a cable fellow. When they raid, they seize everything. All the equipment is taken by the police. Often, the police will refuse to raid. The cops will say, “One small fellow is playing *Amar Akbar Anthony*, why give him trouble”. But if the cops know that copies of the movie are being made, they will readily raid the place. The cops know that if they raid pirates, they get good media publicity.

Mr Samraj said that the cops don't want to register complaints because then their area will look crime-prone. Cable operators also pay *hafta* (weekly bribe) to the cops and hence fend off being raided by them.

At the back of his office is a large white board, on which he has a list of the cases that he's raided, and the court dates for these cases. There are about 15, from all around Delhi.

He also said that the cops don't know anything about the Copyright Act. He buys the Act in bulk and gives it to them. The other big problem was that the courts system doesn't take copyright any more seriously than the cops and film industry. The courts took too long, and kept giving dates. One day some witness won't come, the next time the cop won't come, and so like this, the courts just delay matters.

At present he's got a case that dates back four years.

In 2001, Mr Samraj was reading the paper when he saw an advertisement from the Censor Board asking for private investigators to 'detect' theatres that were screening pornographic and anti-national films. He applied for the post because he had experience in 'detecting' cable fellows. So the Board started Mr Samraj off on an experimental basis in the four metros. It was apparently so successful that they extended it to all over the country. Mr, Samraj is in charge of Bihar, West Bengal and Jharkhand. On that white board in his office, there's a list of the districts in these three states and the number of theatres in each of them. Mr. Samraj says that theatres often insert 15 minutes of pornographic clips in the middle of a censored film. In Bihar and West Bengal, people break theatre chairs if pornographic clips aren't shown. He has agents who go to watch movies in these states. Each agent watches about 100 movies a month. So when these films are “detected”, the agents report them to the local SP (Superintendent of Police), and then go with the cops to raid the cinema.

SURV
e available on Set Ti
and will not require
nets will be availabl

CHANNEL
D Metro
D Bharti
D Sport
TV
endz
CR Channels
TC Punjabi
TC
mskar
re:-

Piracy: Popular Practices

[Commons-Law] Culture of Copy: Publics and Music
Bhagwati Prasad <bhagwati@sarai.net>
12 February 2004

CHANNEL
ce Cinema, Zee Nev
es, Star World, Nati
very, HBO, Animal
:SPN, Ten Sports)

Pirated CD: Hit or Flop?

Talking of a 'hit' or a 'flop' creates an impression that we are making a countdown of such films. We are, however, speaking of the profits and losses of those in the business.

If it is a hit, the director is happy; if it is a flop, the director is unhappy. It is loudly

Yes
ve Set Top Box

propagated that the happiness or otherwise of the director is connected to the relationship between the film industry and piracy. If the film is a hit, then credit goes to the calibre and labour of the director. If it is a flop, then piracy is held responsible. But this is far from reality. The films which are a hit or likely to be a hit, are pirated. It is on the basis of these estimates that the number of copies are made, and repeated according to need. So, if the film is a flop, then the piracy will also be a 'flop'. The pirates are unhappy or happy to the same extent as the director or producer of the film. The argument that a film is a flop due to it having been pirated really carries no weight. If we study the countdown in the piracy market, the film *Kabhi Khushi Kabhi Gham* was a great hit, and therefore was pirated five or six times.

New Aspects of Copy Culture

For the last few years, there is an atmosphere of depression in the film world, which is due perhaps to a series of flops. Those connected with the film world think that for the last several years, the film industry has incurred huge losses mainly because of piracy. What is this 'piracy', affecting films so deeply? The concept of piracy means to copy any creation, such as a book, software, film, music, etc., and to sell copies in the market. But piracy cannot be understood only in this way. 'Piracy' is not a word but a process. A lot of things are interconnected within this. One can say that piracy is like a tree with roots, stems, leaves, branches, fruits, etc. Every part has a job, and discharges a function.

Until the last few years, the method of pirating was quite simple: a CD used to be distributed among small producers, who would then prepare a large number of copies. Then the copied CDs were taken by their makers or salesman to be sold to shopkeepers. These were then sold by shopkeepers to customers. The customers could acquire them easily because they knew where to get them. Everybody was satisfied because everybody got a portion of profit.

During 2001-02, the production, distribution, sale and purchase of copied music/film were locality-centric. The customer could get the goods from different nodes within the locality. This has been observed through fieldwork in a few localities in North Delhi. These reports did not suggest much difference in the modes of operation in different localities.

But the situation has changed now. Activities over the past few months show that the 'piracy' market is no more of the old type. Now everything happens in a more organised manner. The main reason for this greater efficiency is the widespread network of the 'pirates'. Now producers do not have to look for a new market; they simply fulfil the demand of the already established network. The locality is now moving towards becoming a node in a larger network. The sites of production are no longer locality-specific. They have become specialised, and distribution is dispersed.

Earlier, the films in the cinema halls used to be 'covered' by video camera, and CDs used to be prepared from the footage. This was called the 'master'. This work used to be full of risks. Now there is a slight change. In addition to this footage, the 'masters' of the films are also coming in from outside the country. These master copies carry advertisements for video albums, candy and music companies, etc. The method of their distribution is as before, but now only those people who are able to invest heavily can survive. Their entry into

DEPARTMENT
OF POSTMASTERS

FORM NO.

Rule - 5)

CERTIFICATION CERTIFICATE

SUNIL V

VS. K.A.K.A.S

PROBATIONER

Cable Operat

Persons or body

in Network at

-54.....

if Delhi for

2-3.....

on Number is

te is only v

ion certifi

Month
 April
~~May~~
 June
 July
 August
 September
 Oct
 Nov
 Dec
 2001
 11/11

OF POSTS
 ER, DELHI G.
 .3.
 IFFICATE NUM
 RE VWA
 R. CADE.
 .ood. Tin
 ator (Indiv.
 / of Indivio
 t the follow

 a period of
 9.2.19/c
 alid for the
 ste is not

the field has put out of business the smaller producers who used to prepare 100 CDs on computers. Bigger investments have made use of better techniques.

This has directly affected the quality and nature of CDs. Earlier, thin paper was used for CD covers and the names of the films were written by hand. Now the covers are made of cardboard and the printing is superior. Not only this: even screen-printing is possible. The quality and artistic form make it nearly impossible to tell whether the CD is real or fake.

We started to understand, during our investigations, that the sphere of piracy is limited. People used to acquire CDs from the neighbourhood and nearby shops, because the items used to be made in nearby homes, shops or factories. But now it is not necessary that the thing you buy will have been made in your neighbourhood. Wherever you buy it, the CD will be of a uniform type. It is clear that the pirated items are made at some select centralised places and then distributed to various shops and sale centres.

Actually, the shopkeepers, petty dealers and small distributors prefer to buy readymade items, rather than making these themselves. They don't have to take any risks. The interesting fact is that despite the changes in production and distribution methods, the makers and customers of pirated CDs have increased enormously. If there is a raid at one place, the work of piracy goes on unabated in other places. Thus, the piracy market has expanded and grown.

[PPHP] POP IN
 Khadeeja Arif <khadeeja@sarai.net>
 1 December 2004

It was the spring of 1999. Sheikhu was quite out of work. He could not survive as a property agent. A plot he owned in Zakir Nagar was valuable. In addition, two shops were also lying vacant. What was the best business to set up within the premises of the house? A general store or a phone booth?

Customer
 Signature
 Sahar
 Rupal
 Rupal
 Sahar
 Rupal
 Nch
 Rupal
 Rupal
 Nch

A music shop sounded a good idea! Audiocassettes are there for the selling. But customers want '10-on-10', meaning they prefer to have all the songs of their choice recorded on one cassette, rather than buying a cassette of film music that hardly has more than three good songs. Well, in that case, there should be a recording facility as well, along with the business of selling of film music. There was no scope for audio CDs, as these cost too much. Or perhaps Sheikhu knew his customers too well!

The fact that there were hardly any such shops in the neighbourhood would work in his favour.

Recording charges at Sheikhu's shop, named POP IN:
 Hindi Song – Rs. 2 per song
 Album/Pop Song – Rs. 3 per song
 English Song – Rs. 4 per song
 Blank Cassette – Rs. 25

POP IN was still in its early stages and had not even been properly noticed by its customers, when MP3 made its presence felt, providing the option of 120-130 film songs recorded on a single CD. Customers were obviously mesmerised. Thus, the sale of audiocassettes did not prove to be a feasible option. But the recording business sustained itself. It took Sheikhu very little time to understand his customers' demands. Soon he started providing them MP3s more than cassettes.

The blue jazzy board boldly invites you to the land of music, *masti* (fun) and a lot of cinema (both Hindi and English). On the jet-black glass door, a huge poster of Shahrukh and Preity, in the best of their romantic gestures, invites everyone to pick up *Veer-Zaara*. As I walked into the shop, a group of guys were going berserk – *Hulchul* was on! From somewhere in the crowd emerged Sheikhu's nephew Naeem, who looks after the shop. He thought I was another customer who had come to pick up either *Veer-Zaara* or *Mughal-e-Azam*.

"*Bahut achchi business kar rahi hai Hulchul. Comedy hai na! Sab ko hi pasand aati hai aisi filmein to...*(*Hulchul* is doing very good business, because it's a comedy. Such films always do well...)", he says.

POP IN was one of its kind in the entire neighbourhood. There were other music shops like the one in the nearby Mirza Market, but nobody had such a good collection of audiocassettes as the one offered by POP IN.

In 2000, the local agent from Palika Bazaar started supplying VCDs of the latest films (both Hindi and English). Within no time POP IN was converted from a music shop into a VCD parlour. A small collection of audiocassettes and the recording business remain intact, though marginal.

POP IN caters mostly to local factory workers, students and women. "Our shop is in the interior of the locality, so women feel comfortable; they come and pick up the CDs of their choice during the day, when they have free time".

VCD charges at POP IN:

One VCD for Rs. 20, for 12 hours

VCD player with a TV set and four VCDs for Rs. 180, for 12 hours.

Saturday is a busy day for Naeem and his two brothers. All the factory workers watch the latest films of their choice on Saturday night. Naeem's duty is not only to rent out the VCD players and the VCDs but also to make sure that the player does not malfunction. If there is any problem with the player or the VCDs, it is POP IN's responsibility. If any damage happens to the set/VCDs during the show, the borrower has to compensate.

Soon the BCX multiplex will come up in the area. I asked Naeem if he thought it would have any impact on POP IN's business

"*Arre nahi, aap ko kiya lagta hai ki workers aur family ke log itne mehngi rates par film dekhenge? Aur cinema jaane wale log to ab bhi jaate hai aur tab bhi jayenge* (Not at all, do you think that workers and family people will watch films at such exorbitant rates? And those who prefer to watch in the theatre will continue to go to the halls, just as they do now)", Naeem replied.

The Chief
G.P.O. Del

APPLICATION
A. CABLE OP

a) Name of
(Indiv
Associ
Body/I

a) Address
b) Teleph

a) Nation
b) By BI

a) Regis
b) ACG-6
.....

Area in wh
Network is

Number of
proposed t

a) Whett
b) If va

कंप्यूटर
साफ्टवे
मालिक

नई दिल्ली,
संस्थानों में भं
हो रहा है। ए
शाखा ने ऐसे
छपा मारकर
करोड़ मूल्य दे
संस्थान के मा
खिलाफ माम
शाखा वे
बताया कि रा
के बारे में रा

Postmaster
lhi -110006
[PPHP] Madipur Village/Colony
Bhagwati Prasad <bhagwati@sarai.net>
29 June 2004

ON FOR REGI
PERATION ...
of the appl
vidual/Firm
iction of P
Individuals
ss (Office)
hone No. if
nality
irth/Domicil
stration fe
57 No.
.....
hich cable
s working/p
Chennells
to be provi
hez using I
es, Number

The village of Madipur lies adjacent to the Madipur colony in west Delhi. Of course, it doesn't look like a village at all. There are tall buildings, broad tarred roads, and several factories. Perhaps it can be said that the existence of factories is the sole logic for the construction of buildings. The factories produce hosiery, shirts, trousers, etc.

Factory workers live in this village. Some have taken houses on rent, and others live in the factories. Sundays are off, and is the day for relaxing, roaming around. But Saturday nights have a different importance altogether. That's the time for watching films.

The cassette shops here rent out some videocassettes, but mostly VCDs. Every shopkeeper/owner possesses five to six video CD players. And business is best on Saturday evenings. A set-up comprising a VCD player, a colour television and four movies is rented out at rates from Rs. 120-150.

There was a police raid here a few days ago. All the shopkeepers were apprehended and asked to pay up Rs. 5,000. At first, the shopkeepers refused. But there was little they could do. The police simply told them, "Not only do you not have licenses to run video parlours, but moreover, you rent out pirated VCDs. If you don't pay up, we'll confiscate all your material".

What could the shopkeepers do? They all handed over the Rs. 5,000 without another moment's hesitation.

Among the shopkeepers is Mohammad Faizal. He said, "At least this will get the policemen to leave us in peace". According to him, the maximum earning is from the blue film VCDs, because those are usually carried home along with one or two other VCDs. And blue film CDs also get sold. "That's why we don't want to close shop", he says. "Four to five rentals every night means an earning of Rs. 600. And all the material returns to the shop by morning. Why would we want to close a business such as this?"

It is clear that the police are aware of the weak links in this business, and use them to earn money. But the shopkeepers also know that if they have to continue their business, they will have to bear with these small 'injuries'.

में फर्जी
योग
र

नी के कंप्यूटर
नेयर का प्रयोग
र्थिक अपराध
ूटर संस्थान में
यर युक्त एक
जब्त किए हैं
स्तार कर उसके
नया गया है।
दिनेश भट्ट ने
टवेयर पायरेसी
शिकायत दर्ज

[PPHP] My Friendly Neighbourhood Video Pirate
Anand V. Taneja <anand@sarai.net>
28 August 2004

Yesterday I went to a highly recommended shop to get a pirated copy of *Fahrenheit 9/11*. An interesting set of exchanges with Sandeep Gujral, the man who runs the show, followed.

One of his men came into the shop with CDs hidden under his shirt. I asked him, "Aisa kyon (Why like this)?"

He says, "Well, it's illegal; these are pirated copies. But people want to see them so I stock them. I know how completely illegal it is because I'm supposed to fight this".

"You're part of some anti-piracy cell?"

"I'm part of the MPA (Motion Pictures Association)..."

Sandeep Gujral has a collection of over 11,000 titles, many of them pirated "from Singapore" (a passion reminiscent of Tarantino and Verma). He started this business 19 years ago, at the age of 14, selling/renting videocassettes from home. Now he supplies to all of south Delhi.

"Aap to Ram Gopal Verma ban ne se reh gaye (You just missed becoming Ram Gopal Verma)", I tell him.

To which he says, "Haan, par ab mein apna theatre kholna chahta hoon. Ek theatre banaa ke janaa chahta hoon. Yehi mera sapna hai (Yes, but now I want to open a theatre. I want to go after constructing a cinema. This is my dream)".

He's been studying the business, he says, and now he's looking for funding.

I ask him why he doesn't just take over Eros cinema, lying empty next to my house.

He says, "Arre, Sood is planning to turn it into a multiplex...Ajay Sood is one of my customers. All these people from Aurangzeb Road and Prithviraj Road are my customers". These are some of the most exclusive residential areas in central Delhi.

I ask him whether he wants to open a multiplex or a single theatre. He says, "Definitely a single theatre. The multiplex divides a theatre into four small halls. Where will you get the opening a film really deserves in one small hall? You need a big one..."

By the way, *Fahrenheit 9/11* was a bad camera print...

[PPHP] Nehru Place: Field Notes 02
Tripta Chandola <tripta@sarai.net>
10 February 20031

A lull. Nehru Place has never seemed this expansive or clean ever before. All the stalls on the pavements and the courtyards have been removed. And predictably, my landmark, Karim's corner, was also not there. (His bookstall is not in the corner, it is right in the centre of the main courtyard, but thinking of it as a corner makes it more comforting.) Some urgent inquiries where made.

"Kahaan chale gaye hain Karim bhai sahib (Where has Karim bhai gone)?"

"Raid hua tha tho nikaal diya (There was a raid, he was thrown out)".

"Par woh tho pichle hafthe hua tha (But that took place last week)".

"Nahin, phir dobara hua. Chinta na karein, Monday tak sab theek ho jaayega (No, it happened again. But don't worry, everything will be all right by Monday)".

I moved on, thinking about Karim and his books. What happened to them? What is he doing today? Is the shift going to be permanent? I should have taken the phone number last time! When will he come back? What happens if his house is also demolished?

Harinder, the 'pirate', the man with a blue file, greeted me with a warm grin as if I was early for a scheduled appointment. Today he was sitting slightly further away from his usual place next to the garment shop. More stools were pulled out, *chai* ordered, "teabag wali". Introductions were exchanged with his partner Sonu and the boy, Chotu.

"Aur...kaise hain aap? Suna phir se raid ho gaye (And...how are you? I heard there have been raids)".

Hundreds of pirated VCDs found in Palika shop
Police have recovered hundreds of pirated VCDs and DVDs following a raid at a shop in Palika Bazaar. Police and a representative of the Indian music industry

हैरू प्ले
जागरण संवाद
31
पुलिस को अपराध
छपा मारकर 12 ब
ली सॉफ्टवेयर उ
नसिले में पुलिस ने
भ्रतार किया है। इ
त, विजय कुमार उ
ह उर्फ टीटू हैं।
अपराध शाखा ने
र अहमद के अनु
स स्थित शिवे
डी.एस.एस पर इ
नाका बजाज हाऊस

rice and a representative of the Indian music industry seized 784 pirated VCDs and 360 DVDs of Hindi and English movies. Narendra Singh was arrested on charges of storing and selling screen printed films in violation of the Copyright Act.

“Aisa hi hai, is baar tho hamara ladka bhi padka gaya tha (That’s how it is, and this time our boy also got caught)”.

The nature of raids and the agencies conducting them in Nehru Place is a complicated affair. The raids are conducted by DDA (Delhi Development Authority), NASSCOM (National Association of Software and Service Companies) (for software piracy) and T-Series (for music piracy). In Nehru Place, the drive against software piracy is dreaded the most. And, in recent years, the most frequent as well. Last week two raids were conducted in the area, back to back, by the crime branch of the Delhi Police. Earlier, the patterns of the raids could be predicted, inside information sought. But it has become very difficult now as the companies’ interests and stakes have gone up.

In the first raid, Harinder’s boy Chotu was also arrested. Chotu is an agile boy of about 14-15 years. He moves around in fast, rhythmic motions as if dancing to a tune playing in his head. And abruptly stops to smile bemusedly, as if the song had changed. ‘Kisi se jyada baat-cheet nahin karta, apne mein mast rahta hai (He doesn’t talk too much to anybody, remains happy with(in) himself)”.

He is smart, courteous, eager to learn, and has a ‘thing’ about taking risks. Usually he is very careful, but that day when a customer wanted a CD, instead of just getting the one asked for, he got the entire stack. This put him in trouble. Interestingly, the CD in question was Mandrake 8.0 (a Linux/free software distribution package). We discussed the implications of free/open software and its licence policy – which should safeguard them from prosecution – it came forth that during the raid it really didn’t matter to the officials.

Chotu was released after a bribe of Rs. 25,000 to the crime branch officials. It takes about a month-and-a-half to recover this amount from sales, according to Harinder.

Every stall selling pirated software is manned by these ‘boys’ while the actual owners sit at a distance and supervise the proceedings. The age group of the boys is between 12-18 years; 15 is ideal, and these are the ones who actually carry on the transactions. This is a clever strategy, as in case of arrest during a raid these ‘boys’ cannot be charged under a criminal case, and are tried in juvenile court. The relationship between them and the stall owners is based on mutual trust and need.

“Why do they take so on much risk for you?” I asked.

“We treat them quite nicely. And they are also assured that if they are caught, we will get them out. Moreover, compared to the work boys of their age do, this is very relaxed, there is no running around, no manual labour. Chotu has now developed a taste for such work and will not shift to any other, given a chance”.

“Sab kuch bahut filmi tha (Everything was very dramatic)”, Chotu remarked. He was caught, hit by the policemen and threatened with dire consequences if he did not tell them the name of his ‘owner’. But Chotu did not reveal anything and proudly claimed, “Agar poori raat bhi maarte rahte tho kuch nahin batata (If they had beaten me up the whole night, I still wouldn’t have told them anything)”. He got a pat on the back from Harinder at that moment.

Chotu packed up the stall as some policemen started doing rounds. “Don’t worry. Today there is one of our men in that lot. Go set up the stall”, Harinder told Chotu. The stall owners have to pay a monthly bribe to the local constable and the owner outside whose shop they set up their stall. However, during raids the shop owners get away by pleading ignorance

बरामद
या कि गिरफ्तार
उर्फ मामा पहले
बुका है। छपे को
आर्थिक अपराध
जड़ से सफल हो
इयो, आडियो व
त्पादकों पर नजर
ने बताया कि इस
शाखा ने नकली
डी., कंप्यूटर भारी
। अभी तक 28
हैं और 51 लोग
हैं।

of any activities that take place outside their shops.

All the stall owners involved in the trade are bound by the safe distance they keep from each other. There is no organised set-up of these owners. Or a union. Or rules for newcomers. Harinder informed me that no one revealed any information about each other. Partners in crime.

The software is made available by 'suppliers' who come twice or thrice a week in the evening to give the latest CDs on receiving half the payment in cash. Stall owners do not usually involve themselves in the 'production process' as it is risky, though in times of need, a CD or two is copied. Most of these suppliers work in close conjunction with professionals from the 'mainstream'. In this context it is interesting to go through the following news item that reports Microsoft punishing its staff for illegal software resale: http://www.ciol.com/content/news/repts/103020604.asp?nl=ctt2_6

Along with the issues of 'piracy' and the aura of illegality around the term and the phenomenon, it is interesting to note that the distinction between 'mainstream' and 'pirate' economies is highly blurred. In everyday practice, the two continually intersect at vital junctions.

I visited the hardware guy, 'Sachin'. He greeted me with sense of familiarity but no surprise; and as I approached him, he asked for a cigarette and ordered tea and did not bother about me. I sat at his shop for about 20 minutes. "Engineer nahin aaya hai aaj. Sab kuch mujhe karna hai (The engineer has not come today. I have to do everything)". The customers at the shop ranged from individuals who were buying for personal use to people involved in wholesale distribution. From what I observed, the 'second' (second hand) hardware market is in a bit of a flux because of the prices of the 'originals' being slashed by a remarkable percentage. The prices of the components are circulated every day (photocopies of the rates are available with regulars), on an hourly basis.

Recycling and circulation are the key words in this market. Sachin is often asked for things he does not have: 10 GB hard drives, USB ports, etc. All he does is dial a number on the intercom (most of the 'permanent' shops are connected thus) and place an order.

"Aapka storehouse hai (Do you have a storehouse)?"

"Nahin. Lekin bhaichara hai. Ek doosre ke bina kya kareng (No. But we have brotherhood. What would we do without one another?)?"

I take my leave, as Sachin finds it slightly difficult to divide his attention between his clientele and the interest I have aroused. "Agley hafte (Next week)..."

Before leaving, I visited Harinder and handed over the CDs I had got for him.

"Itne der tak kahan thi aap (Where were you for so long)?"

"Yunhi...Nehru Place dekh rahe the (Just like that...I was looking around Nehru Place)".

"Aap bhi...dekhne layak kya hai yahaan (You, really...what is worth looking at here)?"

[PPHP] A Brief Biography of a Cable Operator

Lokesh <lokesh@sarai.net>

5 June 2003

"In our city, activities not regulated by the law have a perpetual fear of being branded illegal. It is possible that the whole cable industry could be declared illegal

नकली
पकड़ी
नई दिल्ली,
अपराध शाखा
फैक्टरी का भंडा
गिरफ्तार कर रि
भारी मात्रा में नई
की गई है। बरा
सीडी में वह फि
भी है जो सीरी प
आडिटोरियम
आईएफएफआई
दौरान दिखाई गई
अपराध शा
दीपेन्द्र पाठक ने
पी. सिंह की टी

नकली सीडी व वीसीडी बेचने वाले सात पकड़
01/06/2003 Dame Jagan
नई दिल्ली, जॉस! कानून प्रवर्धन ने पोलिका वाजार में छापामार कर नकली
वीसीडी और कंप्यूटर गेम सीडी बेचने वाले सात दुकानदारों को गिरफ्तार किया है। इनके

नकली सीडी व कैसेट
 Dangal Jayram ११/११/१३

tomorrow since there has been no legislation in this field. In a similar way our *jhuggis* (slum dwellings) were also declared illegal; my *kabari* (scrap) shop is functioning, but on the basis of a secret deal with the law. The law needs to be bribed to allow illegal dealings”.

– Shrikant *cablewala*, alias Shrikant *kabariwala*, alias Shrikant Lala.

Shrikant's testimony not only reflects the reality of the cable industry today, but also makes one acutely aware of the insecurity endemic to urban legal regulations. His career indicates something of the dynamic of trades in Delhi. At present Shrikant lives in Sangam Vihar, but when he arrived in Delhi in 1980 he used to stay in Shiv Basti near Khyber Pass. He started a *kabari* business and then started a grocery shop outside his own *jhuggi*.

In 1994, Shrikant got a cable connection for his house. Due to a lack of laws and government intervention, the field offered a lot of opportunities to an enterprising newcomer. But in 1994 Zee TV and Star TV started a company called Siti Cable to ensure that their channels reach the maximum number of houses. Siti Cable started wiring localities. With the coming of pay channels, customers had to pay the broadcasters a certain amount. Thus, 1994 initiated a new phase for the cable industry.

During 1995-96, the cable operator in Shrikant's *basti* (settlement) started shutting down cable connections because he had suffered losses. Shrikant gathered some courage and bought the business off him, despite the fact that his own trade was doing well and he did not know much about cable operations. When asked for a reason he said, “Thinking of the future and planning for it prompted me into this business. Death is a reality, and so is the removal of *jhuggis*”. Shrikant ran his cable business only part time, up till when the *jhuggis* were demolished.

In mid-1990s, many people got into the business of cable operation. By 1996, every block had a cable operator. Siti Cable had become a major player in the market. The network now runs about 70% of the cable industry in the city. On the other hand, local cable operators also started asserting their control. The field became competitive, and both fair and unfair means, including force, were used in this struggle amongst operators. Operators like Major Yadav emerged, whose market was spread over more than one area. A game of poaching on others' territories started, and with it increased *goondagardi* (thuggish behaviour), money and mind games. Operators vied to show new releases first, or, if an operator charged Rs. 100 for a connection, another would offer it at Rs. 75.

They also started some special schemes. For instance, when Major Yadav gave his business over to Shrikant, he told him to use it for free for a couple of months, and then pay him Rs. 3,000 a month. In the Jahangirpuri area, the operators showed sent cable to households for free for a month, then charged Rs. 50, and then Rs. 100 a little later. All this led to a brouhaha amongst the operators. Cable wires were snapped in the middle of the night, and there were violent encounters amongst rival parties.

In the meantime, IN company, owned by the Hinduja, came up. In 1999, Star TV dissociated itself from Siti Cable and invested in the shares of Hathway Company. By 2000 another company called Win came in. While companies like IN, Win, Siti and other small companies entered the field, people like the Major kept challenging their monopoly. The

सा बरस पहल शुरु हुइ दश
 में संगीत की रिकॉर्डिंग

cable industry saw competition on a cutthroat scale.

By 2000, when local *bastis* were demolished to make way for the construction of the Metro Rail, Shrikant started working full time and moved his cable work from the *jhuggis* to the nearby B. D. Estate, Timarpur, and other places. The area of Timarpur in north Delhi is a middle- and lower-middle-class area, inhabited by government employees for the most part. At a short distance is the B. D. Estate, an upper-class area. There were four big cable operators in the area, before Shrikant. He could not match their resources in terms of man and money power.

However, he ignored the threats of the bigger players. His amicable behaviour, coupled with the lower prices he offered, won him clients in these areas. And soon Shrikant's connections shot from zero to over 200; he became a major irritant to his competitors. According to Shrikant there were many confrontations, some of which ended in the *thana* (police station). The final showdown took place in the Win cable office. Shrikant, who at the time was operating for Win, was asked to sell his territory to his competitor. He refused; and one night his connection wires were snapped. He switched to IN.

By 2001, the number of pay channels increased and so did the rates and competition. You needed more capital now. Shrikant's competitors were all well off, so they could bear the costs, and increase rates minimally. Shrikant says that the other operators also troubled him a lot. They would either put a pin in his wire or superimpose their amplifiers over his to make reception unclear in his territory.

During this period, many factors altered the internal functions of the industry. A major truce was negotiated between the three big distribution companies and the head-end operators in the month of April-May 2002. The companies divided territories amongst themselves and agreed not to put up any new operators. No operator could now abandon an old connection, and there were to be no new private head-ends.

This led to a major change in business stratagems. The companies now exercise a monopoly over their respective territories, and have effectively prevented the entry of newcomers. Consumers too have been constrained, as they have no alternative but to sign up with the designated operator for the area.

Since Shrikant was in the way of the cable monopolists, they tried to remove him. He has ultimately compromised with the companies, withdrawing his operations on the assurance that he would receive a guaranteed monthly sum. He was confident that the companies would not cheat him. When asked why he came to a compromise, he said, rather allusively, "The deal took place at the distributors' office, you see".

According to Shrikant, if he keeps getting that promised sum he would at least be saved the regular tensions and hazards of the cable operations business. But the matter was not that simple. In Shrikant's own words, "They said to me, 'Do not kill the hen that lays the golden eggs, just take the egg and use it'". The hen was Shrikant's rival who could go on making a profit if he got a monopoly over the area, and this would only be possible if Shrikant was removed. Also, the distributors' commission would increase and the company would also get a bigger collection. It was the cable users who suffered, as they would have to pay more. And Shrikant himself only gets a fixed sum per month, rather than a share in a burgeoning trade.

Now one needs to wait and see as to whether Shrikant sacrifices the hen that lays the golden eggs, or is sacrificed by it in turn. Does Shrikant get the gold, or get an *anda* (egg; also, zero)?

भूल-बिसर सगात क
संजो रहा है तरतर्जन

अश्लील

नई दिल्ली (सिनेमाघरों पर गांव जाकाश और जगत सिनेमा के मामले में जबकि यतरा सिनेमा अन्य आवश्यक उपाय दिया गया है। दिग्गज श्याम ने सिनेमाघरों के क्यों न उनका ला

सुरक्षा उपाय करने पर बात के खिलाफ भी कार्रवाई

गत 14 सितम्बर और केंद्रीय फिल्म 14 एंजेंसी नाइट वॉर के अधिकारी जाभा शुरुवा और शाम चार को लैला फिल्म देख फिल्म के बीच-बीच दिखाए जा रहे हैं।

गैल रिकार्डिंग के शतक वर्ष को सुरक्षित बनाई गई है जिसे वर्ष 1939 में सबसे पहले मुस्लिम दिखाने के 1954 के बीच रिकार्ड किया गया है नवंबर 1902 को कलकत्ता में हुई अली अकबर खा और टाइपराइटर कंपनी की पहली नन्दलाल चौध का संग्रह तथा अबादास

The Raid

[PPHP] Field Notes 01
Parvati Sharma <itsorap@yahoo.co.uk>
15 November 2001

The Pirates

"Raid to hona hi hai. Abhi kuch din pehle Lajpat Rai Market mein hua, phir Bhagirath Place. Ab Nehru Place ka number aayega (The raid is unavoidable. Just a few days ago it took place in Lajpat Rai Market, then Bhagirath Place. Nehru Place is next)..."

"Policewale aate hain kya (Do the cops come)?"

"Woh dekhiye, madam: policewala baitha hua hai (Look over there, madam: that's a cop sitting there). People come, looking just like you. We think they are students. Then, as soon as we sell them something, they give a signal, and a bunch of policemen appears. The police themselves just take money, but sometimes the company people come on the raids: then we can't give money".

"Then...?"

"Then what? We go in".

"Then...?"

"Get bail in a month. And come back".

"Companywale raid karwate hain (Do the company people get you raided)?"

"Haan, madam! Wohi to hain... Aur khud phir aa ke hamse software kharidte hain... Woh dekh rahin hain aap – Microsoft ka office naya bana hai. Wahin se aate hain, wahan service karnewale, aur hamse copy lete hain. Original to wahan bhi ek-do computer pe laga hota hai, na (Yes, madam! They are the ones... And then they themselves come and buy software from us... You can see that Microsoft office building there, newly built. They come from there, the people who work there, and buy copies from us. The original must be loaded only on one or two computers there)".

Ding Dong Chai Shop near the Microsoft office does desultory business, Nehru Place dark and satanic only in the eyes of the beholder. For those who work it, pulling down shutters, coughing, smoking the last cigarette, waiting, discussing the day, everything is innocent; confusion is clarity.

आकार खाते थे फिल्में

सं.)। राजधानी रोजी मुक हो गई फिर को अस्लीस में लिल कर दिया गया भी आग से बचा करने के लिए बंद पुलिस के लाइसेंस नोटिस भेजकर पूरे हमेशा के लिए रखा दिया जाए। फि के अधिकारियों अनुसार राजधानी के अन्य सिनेमाघर भी कार्रवाई जानी है। पुलिस को विशेष न बोर्ड द्वारा नियुक्त क्वोरिटी लिमिटेड ब खबर स्थित जगत में

[PPHP] Palika Raid Report 19/10/02
Rakesh K. Singh <rakesh@sarai.net>
23 October 2002

I had an appointment with Mr. Rakesh Kaul, JE [Junior Engineer] (Civil) to get some facts and figures on Palika Bazaar. But I didn't find him in his office, and his assistant told me to come back at noon. Moving out, I was wondering what to do. With this dilemma, I reached in the central hall, took a seat and started observing the surroundings.

Around 11:20, suddenly there was hue and cry all around the mezzanine floor. A lot of shops were pulling down their shutters. Plainclothes personnel from the Crime Branch, wielding *dandas* (sticks), had already seized some shops. Some were chasing the

shopkeepers and sales boys who were trying to run away. Meanwhile, a boy jumped down from the upper floor. Many of the shopkeepers and sales boys managed to escape the clutches of *dandadharis* (stick-wielders) and gathered in the central hall. Now it completely became the affair of Shops No. M-9, M-12, M-13 and the raiding party. Within few minutes it was completely 'house full' in the central hall. Barring a few outsiders like me, the rest of the audience consisted of shopkeepers and their respective staff. Suddenly some one from the hall whistled, which was followed by voices hurling profanities such as "*Maro saale ko, iski bahan****...*(Hit the bastard, sister-f****...)". And with this, people started moving towards the stairs, which had been taken over by the *dandadharis*. The crowd started pushing the police, which resulted in a minor *lathi* charge. Since the police had already blocked off both exits, it was difficult for the crowd to disperse.

Now it was time for the raiding party to leave the Bazaar with the seized materials (pirated/pornographic CDs). Here again the crowd, about 300 people, started shouting against the raiding party. It became difficult for them to push through. Finally they got out their revolvers. The crowd scattered, but within a few seconds it started abusing the raiding party and pelting them with glasses and bottles. However, they managed to move out of the Bazaar with four or five big jute bags of seized materials. And of course they took two or three guys away with them.

I returned to the central hall after watching the entire episode, and looked around for someone with whom I could discuss it. Suddenly I noticed Mahesh (name changed), who sold cheap men's wear in Shop No. 45. I asked him about the incident. He said, "*Bhai sahib, dekh liya aapne kaise raid padta hai yahan. Arre aaj to police wale bach ke nikal gaye yahan se, warna to yahan par hamesha raid karne wale pit kar jate hain. Pichli bar to teen policewale ghayal kar diye the market walon ne, aur ek ko adhmara kar diya tha. Yeh to koi badi taiyyari hogi, nahin to yahan pahle hi pata chal jata hai ki aaj raid padne wali hai. Aapko pata hai, Shop No. M-9 se local beat wale ko do lakh rupye monthly diya jata hai, behenchod...dhokha de gaya* (Brother, you have seen how raids are carried out here. Today the police escaped, but usually whoever is trying to raid this place gets beaten up. Last time three policemen were injured and the market people left another one half-dead. This raid must have had some big planning, otherwise we get to know in advance that a raid is about to happen. Do you know that from Shop No. M-9 the cop on the local beat gets Rs. 2 lakhs?...yet the sisterfucker betrayed us)".

After listening to Mahesh, I went towards a small group of youths. Sanjay (the owner of Shop No. M-1) was giving his sales boys tips in Punjabi about how to close shop during raids. "*Sanu pahle counter ander karan di koshish karni chahidi ae, fir shutter girana chahida ae. Hunn main agge to ik danda lyawanga, ode nal tussi counter ander kar dena...*(First of all we should try to push the goods-counter inside and then think of pulling down the shutter. Now I will bring a long stick to push the counter inside)..."

I went again to the central hall and observed the surroundings. The mezzanine floor had a completely deserted look. Sales boys were sitting in small groups. The goods-counters are the prevailing sales structures in Palika Bazaar today. Almost every shop has three or four counters. Generally, counter attendants, vendors and salesmen are worst affected by such raids. True to form, today's raid was yet another nightmare for these people.

फिल्मों के अंत में
राष्ट्रगान अनिवार्य

चार करोड़ को सोडो
व साफ्टवेयर जब्त

पुणे, 27 नवंबर (एजेसी)। महाराष्ट्र के गवर्णर ने अगले साल 26 जनवरी से मोहम्मद फजल को राष्ट्रीय गान के सभी सिनेमाघरों में फिल्में के प्रस्तुतीकरण से संबद्ध प्रस्ताव को अतिरिक्त रूप से रद्द किया जाना चाहिए। राज्यपाल ने अगले साल गान

'Insider' Piracy

[PPHP] Four Encounters, *Musafir* and Other Black Markets

Anand V. Taneja <anand@sarai.net>

16 December 2004

This evening I was in Palika buying DVDs. The shop was Electronics Zone, where under a glass counter are arranged the visiting cards of regular customers. Mostly media professionals from production houses and news channels. Electronics Zone has the best, pirated, international DVD collection in Palika.

Sumit, behind the DVD counter, told me that Sanjay Gupta, director of the big Bollywood movie *Musafir*, 'now playing', had come into his shop a couple of days ago, and bought Rs. 40,000 worth of pirate DVDs...(at Electronic Zone rates, Rs. 200 a copy, that's 200 DVDs)...

He has, in return, promised Sanjay Gupta he will not sell copies of *Musafir* at his shop. So, how much of a difference does piracy make?

"Well", says Sumit, "*farak to padta hai, 5-10% ka* (it does make a difference of 5-10%)..."

But then, he gives me the details.

Sumit's logic is that the sale of pirate DVDs cannot happen without the connivance of the film producers who sell the rights. He says that most piracy happens only after the US video/DVD rights are sold, which often happens before the film is released in theatres in India. He said that if the producers so decide, there would be no piracy...He gave me the examples of *Veer-Zaara* and *Aitraaz*, for which apparently there are no pirated DVDs on the market yet, a month after the release of both films.

Camera Prints, shot in theatres where the film is showing, which are of course available, do not matter, according to Sumit. Nobody likes watching them...people return films to him if they think they're camera prints...

ई दिल्ली, 15 जुलाई (जास) : पुलिस की आर्थिक अपराध शाखा ने पालिका बाजार में छपा मारकर चार करोड़ रुपये

[PPHP] 'Self-Piracy'

Ankur Khanna <ankurva@gmail.com>

30 August 2004

For the past week I have been visiting the IMPPA (Indian Motion Pictures Producers' Association) House in Bandra and have had regular discussions with an administrative officer, Mr. Jayanta Dhar. He is a Bengali from Delhi who in the early 1990s worked for the MPA (Motion Pictures Association, an organisation primarily for distributors and exhibitors based in and around Delhi), and who moved to Bombay to "work with producers for a change". Initially wary of my project because, by his own admission, he found it ridiculous that someone would actually fund research on such areas, he gradually warmed to me and we have had extended discussions/arguments about Bombay cinema. He warned me, affectionately, that the only 'juice' I could possibly get out of him was about the sexual infidelities of stars because that was frequently discussed and quite harmless...Though the

producers, distributors and exhibitors are constantly engaged in games of one-upmanship, they maintain an unwritten yet negotiated code of silence (an *omerta*, in Mr. Dhar's words).

The whole system had shifted to a model of advanced commission, where the producer promises the distributor that his film will do well and quotes an approximate box-office return for a specified period of time. The distributor then pays him an advance commission for the film. If the film does not do well, the producer, according to the agreement reached, will return a portion of the advanced commission to the distributor, the percentage of which will be governed by the difference between the promised approximate and the actual collections at the box-office. This new system, through its brief history of implementation, has led to a fair share of disputes. Producers frequently accuse distributors of conspiring with exhibitors and resorting to inaccurate revenue declaration (similar to the TV broadcaster-cable operator dispute). Distributors, in turn, accused producers of secretly supporting piracy.

This statement intrigued me because this was the second time I had heard this. One of my first interviews in Bombay had been with Mr. Natarajan, Secretary, IMPDA (Indian Motion Picture Distributors' Association). It had been brief, but one fact he mentioned that stood out from the standard officialese he fed me was that producers didn't care about piracy because distributors and exhibitors suffered much more than they did. Also, since copyright rested with the producers, no legal procedure against a copyright violator could be initiated without their consent. He even hinted that producers support pirates because piracy creates circuits of circulation and promotion that the producer/distributor budgets couldn't afford.

Now Mr. Dhar too had mentioned this. His personal opinion was that both producers and distributors indulged in 'self-piracy', depending on the film's run at the box-office. This happens far more frequently with producer-distributors who handle the overseas rights of Bombay films. Almost no one will pay for a pirated 'camera print' disc nowadays, as people have higher expectations of picture-sound quality. So when a film has a weak theatrical opening, prints are rushed to 'centres' outside the country where the master discs are prepared. Jayantada (by now he insists I call him that) assures me that none of the masters are prepared within the country, as the teleciné process and digitisation need to be of a high quality, and at the same time not attract too much attention. There were some 'centres' in Bangalore but he feels they might have been shut down. Most of the master discs are prepared from the overseas prints, preferably before subtitles are added, but some can only be accessed after the subtitling is complete. Sometimes the masters are mass-replicated outside and then smuggled into the country, but this can be cumbersome as well as risky. The alternative is to create the copies within the country, but it all depends on the logistics/networks at the pirates' disposal.

[PPHP] Film Distribution - Posting 2
Ankur Khanna <ankurva@gmail.com>
10 September 2004

In the afternoon I met Rahul Puri, Vice President, Finance and Strategy, Mukta Arts Limited. He is married to Meghna Ghai, Subhash Ghai's daughter, who is currently overseeing the

केबल
कोई
प्रे
देश के
निडीशनल एर
नागू होने से पु
मात्र 72 रुपये
ही देख पाएंगे
सि कार्यान्व
गलवार को न
प्रसारणकर्ता
कारण 'ह
स्ताव क
वारिज क

कैस
कोल
प्रे
राजधानी
चुनावों के मद्दे
के फैसले को
मुंबई और क
स्थगित करने
रहा है, जहां
करने का प्रस्ता
मुंबई में ज
भाजपा के स
ओर से उठा
वाममोर्चा सर

श्रीक
' अत
चैनलों के
पेशकश व
उन्ही शूल्
जिनकी फे
एवं प्रसार
के साथ हु
सभी
के शूल्क र
शुरू होनी
साथ प्रसा
म अत

Whistling Woods International Initiative (India's first private film school) in Goregaon. Meghna lunches everyday at the writers' office, just above hers. Over copious amounts of fruit salad, we discussed her brief stint as head of overseas distribution for Mukta Arts films. She seemed fairly forthcoming and talked freely about what is generally perceived as *andar ki baat* (insider dope).

She said that after *Pardes*, Mukta had severed ties with Eros International Ltd., the largest distributors of Bombay cinema in the US, and had decided to manage their own overseas distribution because they felt Eros did not handle their publicity well. She told me that Eros frequently pirated their own prints and sold the pirated DVDs because they didn't want to invest in making too many prints. They quickly realised the limitations of theatrical releases within the nascent yet growing US market, especially given the rising costs for shipping of subtitled prints, etc. However, overseas rights till today remain undifferentiated, which means that they handle theatrical release as well as home entertainment rights. So Eros releases limited copies of the official DVD (as per the contract) as well as larger numbers of the pirated version, which are priced at one-fourth the cost of the official DVD.

Special care is taken to ensure that the pirated DVD possesses all the characteristics of what is perceived to be the prototypical pirated disc. In other words, an attempt is made to deliberately downgrade the packaging of the disc so that it subscribes to a certain notion of a pirated disc cover: soft cellophane sleeves (as opposed to a hard case) containing high-grade colour printouts of original disc covers. The disc itself is of exactly the same quality as that of the original. Eros makes huge profits selling these self-pirated discs: primarily because they don't pay tax on it, and because they can muscle out other competitors in the piracy market through the superior quality of the disc and by the sheer velocity and range of their distribution network.

[PPHP] Film Distribution - Posting 2

Ankur Khanna <ankurva@gmail.com>

10 September 2004

म अत
लकाता
प्रेट, नई दि
धानी दिल्ली में
के महेनजर कैर
ले को टाले ज
गिर कोलकाता
करने के लिए
जहाँ एक सित
प्रस्ताव है।
में जहाँ कैस वे
के सहयोगी द
उठा है, चर्ह
सरकार ने इ

"Pirates of the Cyber Cafés", *Bombay Times*, 10 August 2004

When a series of raids happened on city cyber cafés in the past one-and-a-half months, café owners thought it was the latest anti-piracy drive of the IMPPA. But authorities have recently revealed that these raids were not conducted by the association at all.

IMPPA closed down its anti-piracy cell over one-and-a-half months ago. The people accompanying the cops were misrepresenting themselves, according to the association's senior vice president, K. D. Shorey.

If so, IMPPA's 'ghost employees' managed to maintain their cover for a long time, 'raiding' cyber cafés in places ranging from Thane to Vashi to Vile Parle and Powai. There have been at least ten such bogus raids in the last one-and-a-half months, says Ashish Saboo of the APIAP (Association of Public Internet Access Providers).

According to Saboo, the crooks seem to have extracted hefty sums of money ranging from Rs. 30,000 to Rs. 60,000 under the table, besides helping the accompanying cops take *panchnamas* (inventories). But Saboo says that he has heard of only one case made

by the police. Otherwise, he says, the matter is usually 'settled'.

The cops accompanying the bogus IMPPA agents were given no orders to raid by the Social Service branch, which handles copyright infringement matters. According to Deputy Commissioner of Police (Enforcement) Pradnya Sarvade, "We aren't carrying out the raids".

A cyber café owner who was raided says the police come from local police stations. Though his café at Churchgate was raided before the period mentioned in this article, he says no police complaint was filed against him. "We settled the matter".

So who are these bogus vigilantes? Shorey of IMPPA thinks they were formerly part of the association's anti-piracy cell. "They are basically frauds", he says.

Pahlaj Nihalani, President of the AMPTPP (Association of Motion Pictures and Television Programme Producers), thinks that the frauds are people working for the movie producers. "Producers have appointed private organisations to investigate piracy. But (many of) these organisations misuse their authority and are indulging in extortion", he says.

ब्रॉडकास्ट

संतोष ठाकुर,

फील गुड के इस ब्रॉडकास्टर्स के लिए प बन कर आया है। पे- प्रतिबंधित करने के उ ही टुई अब ब्रॉडकास्ट गवर्नमन्त को प्रतिबंधित र भी विचार कर ब्रॉडकास्टर कुछ बड़े को अपने प्रसारण के र् देकर छोटे व अंतिम पं को उनसे व्यापार व करता है।

टुई कैसे पर लग् घोषित होने वाली अ ही इस आशय की घो विचार कर रहा है।

■ कैसे ब्रॉडक कता है फील

टुई सूत्रों के ग्लोबल रिपोर्ट में ऑपरेटर्स ने यह ब्रॉडकास्टर कुछ सर्विसेस ऑपरेटर्स अनुबंध कर उन्हें दे देते हैं। जिसके तो अपने नीचे बना देते हैं। या अंतिम पंक्ति के की सुविधा उपलब्ध है। ऐसे में जब सुविधा होती है। चैनल के लिए ज छोटे ऑपरेटर्स से है। दूसरा ऑपरेट

Begum Samru and the Security Guard

ANAND VIVEK TANEJA

Prelude: The *Haveli* of Begum Samru

What does Begum Samru have to do with a cinema in Delhi?

Begum Samru's palace was the site of many a *nautch* (dance performance) where the Indian and British elite of late Mughal Delhi would gather to watch the skilled singing and dancing of professional *tawaifs* (courtesans) in the heart of the Old City.

The Mughal ruler Shah Alam (1759-1806) acknowledged Begum Samru as his esteemed protector, and the military strategists of the East India Company considered her crucial to their territorial ambitions. Her acquisition of tremendous political, military and economic clout has been documented. Her talent at diplomacy and her political wiles have been noticed, as have her instincts for survival and success. Yet, none of these accounts acknowledge the fact that she began her professional life as a young *tawaif* (courtesan) in Delhi.¹

But in the elite enclaves where the *nautch* played out, there was always an awareness of the presence of a non-elite element in this play of pleasure and desire, the commodification of sexuality as/and spectacle: "No *nautchni* is expected to wear longer than three or four years, after which she exercises her art among the lowest of the low".²

Two centuries later, the grounds of her palace have become the crowded, bustling Bhagirath Place, the centre for the film distribution trade in Delhi, where over 100 film distribution companies operate.

Brian Larkin, who has worked extensively on visual culture in colonial and postcolonial Nigeria, while writing on cinema viewing in Northern Nigeria follows the historian and philosopher of modernity, Walter Benjamin, in viewing fantasy as the energy stored in the concreteness of objects. My essay, drawing upon earlier work done by researchers of the Publics and Practices in the History of the Present (PPHP) project at Sarai, and my own fieldwork, attempts to look at the fantasy shaping the cinema viewing spaces of contemporary Delhi, a fantasy which has more in common with the Indo-British 'gentry' attending the *nautch* at Begum Samru's palace than mere coincidence. My attempt is to

establish parallels between these two phenomena, in terms of the 'desirable' audience for the display of sexuality and experience of pleasure, and to map a history of the imagination of the 'gentry', a widely prevalent term in the Delhi cinema trade for an upper-class audience. This essay will map a rough and not-quite-ready historical trajectory of the city's cinemas. The focus is on practices within and outside the law; of changing laws and shifting transgressions; of changing land use patterns, and of dispossessions that define the cinema today; a map of cinema that mirrors the larger transformations of the city. A map that increasingly represents "objects that were once new and symbolized modern life but whose historical moment has passed [and have] become inadvertent but dense signifiers in social structure".³

Imperial Cinema

When Imperial Cinema in Paharganj started showing films in 1933, the audience took its time to come in for the (then silent) shows. Screenings didn't start at fixed times, but had to wait for enough people to come in. Those waiting for the hall to fill up were entertained by dancing girls, performing in front of the screen. Early in its history in Delhi, cinema was accorded the same moral censure as the *tawaif*. This is reflected, for instance, in a particular letter to the editor of an unknown Urdu paper, in the archival collection of Mr. V.B. Soni, the grandson of the cinema hall's founder.

"Janaab Editor Sahib,

"For empathising with us on the matter of the Paharganj Cinema, and for supporting us by writing regular articles, we are very greatly indebted to you. The Cinema Hall has ceased its activities, but when we reached the cinema and came to know why it has closed, then we got to know that in actuality all the hard work of Guru Ghantal has come to naught; they are repairing the roof, from which one gathers that from now on the cinema will show mostly talkie films. We also came to know that the owner of the cinema has gone to Bombay to get a new talking machine. If what appears to be is actually true, then all our hard work, and Guru Ghantal's, has gone waste.

We beseech God to help us".

Despite the protests in the first years, the Cinema Paharganj, situated in the liminal space between the Walled City and the new British city, flourished. The Soni family who constructed and ran it were influential builders; they had come to Delhi from Rajasthan as stone suppliers for the Imperial Works which had built the great edifices of Lutyens' new city. The eldest son of the family, according to V.B. Soni, was greatly attracted to the 'glamour' of the British and the parties he was invited to. He also wanted to live the *zamindar* (feudal landlord) lifestyle. And it was his decision, after his father's death, to convert a space in Paharganj planned for a 'Soni Hall', into Imperial Cinema. This became the first cinema to operate outside the Walled City (where the moneyed elite of the city still lived), and before the theatres of Connaught Place in the new city started showing films. Even in the 1930s, claims Mr Soni, Paharganj was a bit volatile, with a communally mixed,

working-class population. Paharganj saw the worst of the local Hindu-Muslim riots in September 1947.

After Partition, both the profits and contests around Imperial Cinema increased. The Soni family left the construction business to concentrate on cinema. Meanwhile, in Paharganj, there was the increasing threat of *goondagardi* (hooliganism). This was a widespread phenomenon in the cinema viewing experience of the post-Partition city. With the sudden demographic spike in the city's population due to the influx of refugees from Pakistan, the cinema as a site of leisure boomed. The *goondas* (local toughs) 'owned' halls, in the sense of being well-known in the area and having exclusive rights to 'black market' the tickets of that hall (cornering tickets in bulk and selling them at inflated prices). This was, of course, contested by the management of the halls; and each time a new cinema hall was built there was intense contest within the area for the 'ownership' of the hall. In the case of Imperial, Mr Soni links it directly to the state of dispossession of the new migrants coming into the city after Partition. The *goondas* who 'owned' Imperial were all from Lahore and Amritsar: Man Singh, Naddi, Malkhan. To counter them, Imperial employed its own toughs, who were also Partition migrants.

The claims of sharing in the profit of the film trade were made through what seems like highly performative violence – battles with the police, soda bottles hurled as projectiles, the ripping of seats. K.C. Soni, a relative of V.B. Soni who has been active in the running of the hall since 1954, remembers that there were pitched battles fought every evening. Shops outside the hall used to down their shutters at 6 pm. The police used to camp outside the hall for six months at a time. This went on till about 1971. Vijay Kumar, who runs a pavement bookstall outside Imperial, and whose family earlier had a tailoring business which made the curtains used to cover the screen at Imperial, remembers the employees of the cinema showering soda bottles on the *goondas* from the roof of the cinema. These contests, with the cinema management and the police on one side, and the *goondas* on the other, were, paradoxically, carried out while the hall was functioning at its peak, attracting families to watch religious films, Punjabi films, and *naach* (dance-filled) films like *Nagin*, which ran for 25 weeks in 1956, earning the cinema such handsome profits that the owners went in for a major renovation and installed air-cooling and a Westek sound system. In this renovation, the separate 'Ladies Gallery' running along the right hand side of the hall was removed to make way for a much more spacious balcony – perhaps a reflection of the increase in the 'family' audience.

The lumpen figure of the *goonda* was a contrast to the image of the bourgeois 'gentry'/family man upon whom the presence of 'ladies' bestowed respectability. They co-existed for three decades in the various accounts of Imperial Cinema. The *goonda* menace, according to K.C. Soni, finally subsided in 1971. The 'gentry' deserted the hall only by 1977. People in the trade also link much of the perceived 'decline' of the cinemas in Old Delhi and in Central Delhi to the movement of the 'gentry' away from living in the Old City towards the new expansion of the city southwards. Another crucial factor is the coming of television and video in the early 1990s. The business of Amarnath Thakkar, who specialised in distributing films for the Sunday morning shows, was nearly wiped out by the telecast, from the mid-'80s onwards, of the mythological serials *Ramayana* and *Mahabharata* on national television.

In the case of the Imperial, as with other cinemas, the 'decline' in viewership has nothing to do with the occupancy rates of the hall. It is a remembered decline of the 'class' of visitors that comes to the hall.

"Yahaan to ab sirf muth maarnewaale aate hain (Only masturbators/wankers come here now)", says Prem Singh, the older gatekeeper at the cinema. He laments that there is no gentry today. "Jab main gate par ticket check karta hoon, boo aati hai (When I check tickets at the gate, it stinks)".

I was there on a Tuesday afternoon, a working day. Of the 381 seats downstairs, 238 were occupied; as were 112 of the 189 in the balcony. Nearly 60% occupancy. The manager, Mr Choudhary, told me that on Sundays and other holidays, the hall was nearly always house-full. There are regulars who come in everyday. "Yahaan ki 'Top Class Gentry', jhalliwaale, rehriwaale, rickshawaale (The best of the gentry from the neighbourhood: load carriers, cart pushers, rickshaw pullers)". The average occupancy is between 65-75% per week. "When it rains in Delhi, all other cinema halls are empty, this one is full. At Rs. 10 per ticket, even coolies can come here to take shelter".

The spectacular *goondagardi* of the 1950s and 1960s was linked to claims of profit from the leisure time of the 'gentry', the desired/desirable audience of the cinema. Would it be too presumptuous to surmise a certain Nehruvian hangover in this image of this desirable audience, this gentry? A salaried man, presumably with an English-medium education, bringing his family to the cinema for an evening out, and having to confront the lumpen figure that the Nehruvian state, despite all its socialist efforts, could not accommodate – the refugee as profiteer.

Today, post 'liberalisation', the contest that *goondagardi* once represented is still spectacular – but the networks involved are, if not more intricate, certainly much more organised. The image of the gentry, the fantasy embodied in the concrete and glass of the new cinema spaces, has itself undergone tremendous change.

One of the most articulate representatives of this new fantasy/vision is Sonali Rastogi of the Morphogenesis Architecture Studio, a firm that designs corporate headquarters, malls and multiplexes, and sees itself as committed to the project of 'urban renewal'. They have designed most of the multiplex spaces of the PVR (Priya Village Roadshow) group of cinemas in the city.

"Global Indians. We need to ensure that our newly built environment corresponds, and the paradigm shift in Indian culture be addressed," she remarks. "Our aspirations as Indians have changed. Earlier, when our mothers went shopping to South Extension or GK I (elite markets in south Delhi), we were left to play in the park with the drivers of our cars. Now, who do you see in the park but the drivers? That Indian doesn't exist anymore (who could sit and wait in the park). Today we are as time-crunched and as networked as anyone in the world" (*First City* magazine, October 2004).

PVR Anupam, Priya, Naraina and Vikaspuri are the four Delhi cinemas that pay the highest entertainment tax, in that respective order. PVR alone accounts for almost 50% of the total entertainment tax collections in the city of Delhi (based on 2002-03 data).

When in 1997 PVR Anupam 4 opened in the Saket Community Centre in South Delhi (in collaboration with Village Roadshow Pictures, Australia), it articulated a vision of quality

cinema that had much to do with the variety of films on offer, and the promise of exclusivity. Ticket prices were Rs. 100, to begin with (current prices are Rs. 150). But there was a problem. To this space (of the “global”, “time-crunched”, cash-rich Indian) the driver sitting in the park, the impecunious student, the small-time *goonda* and his small-time ‘black’ marketeering, still had access: thanks to the Municipal Corporation of Delhi stipulating that 20% of the seats in a hall be kept at a minimum price. This translated into the front row of tickets being sold for Rs. 7 only.

“It is utterly ridiculous. Cinema is not an essential commodity. It is like asking Pizza Hut to control the price of 20% of their pizzas. I’m running a theatre for a certain clientele. A cheaper cinema is doing it for another clientele. Why confuse the two?” commented Ajay Bijli, owner, Priya Entertainment (*The Hindustan Times*, 11 January 2000).

“There are times when anti-social elements enter the cinema with low priced tickets and create problems for women”, Bijli had earlier remarked (*Indian Express*, 20 March 1998).

The minutes of a meeting regarding the admission rates of cinema halls, held on 24 May 1999 under the chairmanship of the Chief Secretary (CS) of Delhi, report that the CS observed:

“...Delhi being the Capital of the Country, there is a greater need for small halls/mini theatres with 100 to 200 seats and such new cinema halls should equip themselves with the best possible modern amenities in the matter of comfort and equip with latest cinematographic technology...today, there is control on rate of tickets only in respect of 20% of the seats but such control can be considered for being relaxed in case facilities in the existing cinema halls are upgraded...Mini theatres and cinema halls should be set up at central places to avoid cost of transportation for the cine-goers. Cinema plots should not be auctioned by the DDA but should be given on reserve price keeping in view that the cinema is one of the important means of entertainment for the common man and deserves to be encouraged by providing land at cheaper rates...The removal of restrictions on rates of cinema tickets should be supported with the condition of upgradation of facilities as in the past it was found that removal of restriction on 80% of the seats have not resulted in any tangible improvement in the facilities”.

This logic invokes the upper-class educated ‘public’ that film scholar S.V. Srinivas, who has done extensive work on film viewing cultures in South India, speaks of as making the public sphere, an authority to which appeals could be made in matters of ‘common interest’. Hence the common man is invoked to make land cheaper for cinemas, and yet it is stipulated that all ticket prices can be deregulated with improvement of facilities – effectively restricting class access to the multiplexes solely to the “time-crunched” “global” Indian.

One of the most ironic demonstrations of laws changing in the ‘public interest’ was when the New Delhi Municipal Corporation (NDMC) refused to renew the lease of Chanakya, one of Delhi’s more successful single screen theatres. Despite the success of Chanakya, the NDMC wanted to convert it into a multiplex. The corporation argued that the potential

revenues from the multiplex would be far greater than the yearly Rs. 15 lakhs they received from Chanakya.

On the same day as the *Indian Express* reported the impending closure of Chanakya, it also carried a report on Delhi's parking woes:

"New Delhi, August 8: MCD (Municipal Corporation of Delhi) Commissioner Rakesh Mehta today filed an affidavit before the Delhi High Court, detailing a coordinated policy to improve parking facilities in the city.

"The court had, on August 4, asked the Corporation, the NDMC, DDA (Delhi Development Authority) and the Transport Department to work together and draft a policy on parking. Mehta told the court today that the growing vehicular population was one of the major problems. All the agencies have observed that multi-level parking is needed in view of the shortage of space, he said".

How does this link to the emergence of multiplex culture? Mr R.K. Saxena, the proprietor-manager of the Delhi Commercial Press, Chandni Chowk, which once printed tickets for over 40 Delhi cinemas, told me how, in his business, the cinema ticket printing is increasingly being replaced by tickets for parking (multiplex cinemas have computerised ticketing, and don't outsource). The manager of Moti Cinema told me that the gentry will not come to the hall because there is no parking space. Eros Cinema in Jangpura, currently closed, is slated to open as a multiplex in two years. The manager claims that they will wipe out the nearest competition, 3Cs, because they have parking space for 150 cars.

"The parking space in cinema, theatres, places of public assembly shall be provided as under:
Cars: 10% of the seats".⁴

Cinemas are required by law to provide parking space for 80-90 cars. Contrast this to the reality around PVR Anupam 4 in Saket, the first of Delhi's multiplexes, and the one that pays the Delhi government the highest entertainment tax figures in the country. There are over 300-400 cars parked there at any given time. Parking has spilled onto the access roads that ring the Saket Community Centre, where the cinema is located, on two sides.

The gentry drives cars. Delhi has more cars than the other three metros put together. The gentry has seceded from the city's chaotic public transport network. The gentry is seceding from the older model of the cinema hall, which with all its class differentiation, was still a space where all social groups sat under the same roof.

In PVR's expansion plans, there is the further development of the 'Cinema Europa', first seen in the Metropolitan Mall, Gurgaon. With plush red leather seats, direct access to exclusive restaurants and bars, and ticket prices starting from Rs. 500.

"In a landmark move in March 2003, PVR Limited (operating as PVR Cinemas) has successfully raised private equity from ICICI Venture as part of funding to support its Rs. 100 crore expansion plan. ICICI Venture has invested Rs. 38 crore in PVR

Limited, the balance coming by way of Rs. 40 crore debt funding, and the rest in accruals. This represents the most significant investment in the Indian cinema industry in recent times and bears testimony to the immense faith ICICI has reposed in the business model, promoters and management team of PVR".⁵

Thus, government as well as institutional funding is backing an imagination of the city in which cinema, the institutionalised space for pleasure and desire, is restricted to the elite, and all other spaces become illicit.

June 1997 was a significant month in the history of cinema in Delhi. It was the month that PVR Anupam 4 started operations. It was also the month of the Uphaar cinema conflagration. Uphaar was owned by the Ansals, a family in the construction business. Anupam, before it became PVR Anupam 4, was also owned by them.

Uphaar Cinema in Green Park was built in 1973. On 13 June 1997, during the screening of the Hindi film *Border*, a generator caught fire immediately after the intermission. The audience noticed smoke coming from the side of the screen, but most people thought it was a 'special effect' device that was part of the movie. By the time they realised that a fire had broken out, it was too late. The majority of those trapped inside the hall died in a stampede or as a result of asphyxiation. The final tally was 59 dead, including children, and 103 injured.

The smoke reached the balcony due to the Ansals' flouting of building by-laws. They had raised to ceiling level what should have been a three-foot wall surrounding the generator. The ground floor parking area was enclosed, with no provision to ventilate the smoke from the adjoining generator room. When the generator caught fire, burning oil being spewed by it came in contact with parked cars. This led to the burning of at least 27 cars in the jam-packed parking area, which should not have admitted more than 15 vehicles. Smoke from this area passed inevitably through the stairway into the hall and onto the balcony, as there was no opening on the ground floor through which it could escape.

The case against the Ansals went on in court for six years, at the end of which the courts gave a landmark judgement. The judgement followed a petition by the Association of Victims of Uphaar Tragedy (AVUT), consisting of family members of the victims who moved the Delhi High Court on 28 July 1997. Significantly, the victims of the Uphaar tragedy were predominantly from the upper-middle-class, English-educated elite families of South Delhi, the 'gentry' which had migrated away from Imperial and Moti.

On 25 April 2003, delivering its 192-page judgment, the Delhi High Court awarded a compensation of about Rs. 18 crores to the families of the dead and to the injured. Emphasising that the tragedy was an avoidable one, the Division Bench comprising Justices S.K. Mahajan and Mukul Mudgal held the owners of the building, Gopal and Sushil Ansal, the Deputy Commissioner of Police (Licencing), the Municipal Corporation of Delhi (MCD) and the Delhi Vidyut Board (DVB) guilty of giving short shrift to safety norms at the cinema. The court said that the Ansals would bear 55% of the total compensation amount while the remaining 45% would be shared equally by the DVB, the MCD and the DCP (Licencing). The court concluded: "It is our experience that the authorities including the licencing authority, the Delhi Vidyut Board, the health authorities and the municipal authorities, adopt a casual approach in inspecting the cinemas and other places visited by large numbers of people".

However, in the criminal case going on concurrently, the AVUT's plea to cancel the bail of the Ansals, on charges of destruction of evidence, was dismissed by the court. The Ansals, not yet convicted for criminal negligence in the Uphaar Case, have recently built a mall in Faridabad, Haryana, in which PVR is running a two-screen multiplex. They have plans for expansion in Delhi, Gurgaon, Faridabad, Ludhiana, and Lucknow.

Uphaar Cinema, meanwhile, remains closed. While the government agencies paid up promptly, the Ansals said that they needed to dispose of the Uphaar property to be able to pay. A contempt of court notice was slapped on them by AVUT, following which the Delhi High Court allowed them access to the property a month after the defence counsel had finished giving evidence in the criminal case.

Meanwhile, it would not be a leap of the imagination to see the connection between the MCD and the licencing department being penalised for the Uphaar tragedy, and the alacrity with which they conducted raids on errant cinema halls this year, and over the past few years. "The Delhi Police on Saturday sealed three cinema halls in the city, two for exhibiting pornographic films and a third for flouting fire safety norms. According to the police, nearly half a dozen other cinema halls are under the scanner for similar violations".⁶

To comply with the regulations meant losing the marginal profits that cinema exhibition still brought in. Many owners of cinema halls who had other businesses preferred to shut the halls down. Hall owners such as the Ansals, the Soods (Eros Cinema) and, formerly, the Sonis, are builders and real estate developers.

In the past few years there has been a paradigm shift. Laws and regulations have been rapidly changed to allow the development of the mall-multiplex combine. Many state governments repealed the Urban Land Ceiling and Regulation Act (ULCRA). Property that was locked, so to speak, for a long time has now been released for development.

The ULCRA had been passed in 1976, during the Emergency, with the rhetoric of 'ensuring equitable distribution and avoiding speculative transactions relating to land in urban agglomerations'.

It was repealed in 1999, effective immediately in Haryana, Punjab and all Union Territories. Immediately afterwards, the boom in malls started along the Mehrauli-Gurgaon Road in Gurgaon, Delhi's satellite town in Haryana. The Haryana government is, in fact, cashing on the boom. It amended rules to remove all technical bottlenecks that hindered setting up of malls on a stretch of the Mehrauli-Gurgaon Road. Not just that, the government's decisions made one believe that just about any available land in the city could have only a single use: commercial. That was clearly evident when Haryana Development Authority (HUDA) planned a huge commercial area, including an eight-storied mall, at a site where Gurgaon's Central Jail stood for years. Morphogenesis designed one of the largest malls in Gurgaon, the Metropolitan Mall, with a 7-theatre PVR multiplex.

"Designing a mall that is not just a stack of shops fitted into a building, but more like an enclosed Indian street system. It was seen as a space where, in a climate of retail strategy, the hangout space must be created", comments Sonali Rastogi of Morphogenesis. In conversation, she revealed that the "Indian street system" had a specific name: Chandni Chowk. So while Chandni Chowk as a site of leisure for the "time-crunched" "global" Indian was being recreated, redesigned and air-conditioned in Gurgaon, what about the actual Chandni Chowk?

Kumar Talkies in Chandni Chowk has closed down as a cinema hall. Nine shops opened in the outer walls, taking advantage of the MCD relaxation of rules: 20% of the land use of a space given to cinema could be used commercially. The hall was supposed to start functioning in two years, after the MCD sanctioned a plan for commercial and cinematic use. However, as the cinema hall hasn't started functioning, the status of the shops has been deemed illegal as the usage is 'commercial'. Much noise was made about Kumar Cinema's 'heritage' status (it became operational in 1935). MCD building officials, meanwhile, say that taking into account "the special nature of the walled city", the norms and guidelines that applied to the cinema halls in the rest of the capital did not apply here. This is why none of the other cinema halls in Chandni Chowk have been sanctioned in this mixed land use.

It goes without saying that being in the middle of what is the biggest wholesale market for many goods and commodities in North India, Kumar Talkies is unlikely to attract the 'gentry'.

What Does Begum Samru Have to Do with Any of This?

The audience at Begum Samru's *nautch* was a restricted, elite audience, consuming 'liberated' female sexuality as spectacle. The non-elite participation in this play of pleasure and desire, though acknowledged, was supposed to be second-hand. It was a 'globalised' audience, British and Indian, at the dawn of Empire, and in one capacity or the other, serving it. The land on which the *haveli* was built was a gift for services rendered to the Emperor. After all, early 19th-century Delhi wasn't a democracy, but a dotard court trying to come to terms with, and be accommodated within, the expanding, ruthlessly capitalistic logic of Empire.

The similarity with 2004 is obvious. The representation of a particular brand of 'liberated', uninhibited female sexuality begins in mainstream cinema only after the economic reforms that heralded in 'liberalisation'. There is a globalised aesthetic to the display of the female body (as a fetishised object), which is synchronous with the investment of institutional, global capital in the Bombay film industry and television. It is not the 'masses' that these images are meant for, but the consumers who flock to the multiplexes, and malls, and 'world class' theatres, where private security frisks you before letting you in. All cinemas in Delhi with any pretensions to having a gentry audience have a security check at the gate. Contrast this to the Imperial, Ritz or the stalls of Regal, where the audience is herded in like cattle, even if the numbers aren't exactly reflective of the simile.

Affordable cinema halls where the non-elite can watch films are declining, often by being found illegal, whereas rules are changing to accommodate malls and multiplexes. The avenues for non-elite entertainment, the circulation of digital copies via VCD and cable TV, are deemed pirate. It is, in more senses than one, a 'recycled', second-hand modernity, constantly under threat; but it thrives nonetheless.⁷

Palika Bazaar is one of the sites where this pirate modernity thrives. It is an underground market in the centre of the city, where the trade in pirated and pornographic digital video flourishes. Pornographic VCDs sell for as little as Rs. 20-25 if you bargain hard enough, and buy in quantity. There are many varieties available, but the main divide is

between foreign (read white) and *desi* (Indian). White women are considered to be beyond the purview of morality. The *desi* pornography shows anonymous women, often south Indian, to whose often forcible degradation and humiliation the state turns a blind eye.

But over the last couple of months, various agencies of the state took a stand regarding the circulation of pirate CDs in two cases. One depicted a state-level beauty contest winner (Miss Jammu); and the other a female student from an elite private school in Delhi, captured on a cellphone while performing explicit sexual acts. The police went so far as to arrest the chairman of the web portal Baze.com, for not taking 'appropriate action' against the sexually explicit MMS clip being sold on the website. Palika Bazaar temporarily suspended the more illicit of its operations.

The hysteria generated tells its own story of state and media anxieties about circulation and the 'honour' of the elite woman. The sexuality of the elite woman, as seen in the ads for Satyam Cineplexes ("The sudden surge of hormones isn't due to special effects", "...there's enough temptation to send the mercury soaring", "Your date won't need another hint") is meant to be displayed only in the multiplex, the mall, and the MMS-enabled phones of the elite – in the new Chandni Chowk re-imagined in Gurgaon. All other desire for visual pleasure is either illegal and/or despicable, or on its way to being so. Only wankers come here now.

I don't know about Begum Samru, but Sir David Ochterlony surely would have approved.⁸

NOTES

1. Salim Kidwai. "The Singing Ladies Find a Voice". In *Seminar* 540, August 2004.
2. Thomas Bacon. "The Nautch in Tents (c. 1831-36)", quoted in *Historic Delhi: An Anthology*, ed. H. K. Kaul (Oxford University Press, 1985).
3. Brian Larkin. "Colonialism and the Built Space of Cinema in Nigeria". From *City Flicks: Indian Cinema and the Urban Experience*, ed. Preben Kaarsholm (Seagull Books, 2004).
4. Delhi Cinematograph Rules, 1981, Schedule 1, 17(3)(A).
5. Ipan are the PR consultants for PVR Cinema and PVR FACTORY Distribution Network..
6. "Crackdown on cinema halls, three sealed". *The Hindustan Times*, New Delhi, 21 September 2004.
7. Ravi Sundaram. "Recycling Modernity: Pirate Electronic Cultures in India". In *Sarai Reader 01: The Public Domain* (Centre for the Study of Developing Societies, 2001, Delhi).
8. David Ochterlony was the first British Resident at Delhi, winner of many battles that expanded the territories held by the East India Company. He was a regular at the Begum's entertainments.

My Driving Master

A Story of Everyday Trespasses

ZAINAB BAWA

Driving Master

“Lal, Suhail Lal”, he said, when I asked him his name at the end of my first driving lesson. It almost seemed like the classic ‘Bond, James Bond’!

Frankly, I wasn't impressed with him. In fact, I was going to wait for a couple of sessions before I would complain to the manager of the driving school and ask him to change my driving master.

Lal hails from a village in Uttar Pradesh. As a Bombayite (now Mumbaiite), I have my suspicions and scepticisms about UPites, *bhaiyyas*, as they are commonly known. People from Mumbai despise the *bhaiyyas*, even though all of ‘us’ travel together with ‘them’ in the luggage compartments of Mumbai’s local trains and discuss BSP (Bahujan Samaj Party) politics, and the price of milk and vegetables. Yes, we tolerate all kinds of people in Mumbai (though we have started to become intolerant and are now confused about who is actually a Mumbaiite and who is not); we accept outsiders in our fold. But we are generally intolerant of the *bhaiyyas* and (more so) the Biharis, even though it is the *bhaiyyas* who have given us our *bhel puri* and *pani puri* culture! However, as my favourite author Theodore Zeldin says in his book *An Intimate History of Humanity*, “Toleration is never enough. You have to get inside people’s minds to understand them”.

Lal seems an offensive guy. But gradually I begin to know him, and laugh and talk with him everyday; he appears less offensive, and more like a cunning rat who has his strategies very clearly in place. He knows how to dodge the manager, how to deal with his students. He is clearly able to assess which student is hopeless, and which one is more likely to grasp the ropes and carry on driving. And he has very carefully examined and rationalised in his mind the fluid boundaries between legality and illegality, and he knows which of these he can trespass, and when.

Learning to Drive a Car (and in the Process, Learning about Trespassing, Lane Cutting and Getting by Laws and Lawlessness Everyday)

A few days after I have grasped the basics, I am very eager to drive over one of the city’s famous flyovers. This is the ultimate dream of all driving novices!

“*Nahin* (No), you are not allowed to drive there as a learner with this driving school”, Lal

tells me decisively, adding, "As a learner from this branch of the school, you cannot drive beyond a certain geographical limit because thereafter there are severe traffic jams, and in case you get nervous and are unable to start the car in time during the jam, you will cause hazard to the public. Traffic cops get irritated with this and have issued strict instructions telling us not to allow students from this branch of the school to drive beyond a certain point".

I have no choice but to comply. When you don't know what to do, simply follow the rules.

A few days later, Lal and I were driving in familiar by-lanes. He started talking to me. "Yesterday, the boss instructed me to take this car and go over to the other branch of the school for some delivery and pick-up. I told the boss that the *havaladar* (chief constable) would take my licence if he sees me in this car going past the area which we are not allowed to trespass. Boss told me, '*Beta, tu jaa* (Son, you go)'. So I went, taking the route of that famous flyover. There was no problem. But when I was coming back, just at the start of the flyover, the cop caught me and asked me to hand over my licence to him. I smiled. He said, '*Kya hua?* (What happened)?' I laughed and said, '*Aaj tum yeh licence mere paas se le rahe ho. Kal tumhi isko wapas doge* (Today you are taking this licence away from me. Tomorrow you will be the one to return it back to me)'. The cop was furious. I didn't care. I just drove off. The next day, the same cop came and gave my licence back to me, apologising to my boss".

Later, Lal explained the process to me. The driving school and the traffic police have a "good relationship and understanding" between them. Each new officer gets acquainted with the school and knows how the relationship works (or 'operates, you can say). "The boss is adept at maintaining this level of public relations with the Traffic Police Department because, after all, it is a matter of his business. I have no details of how far their relations go, but at least I am certain that these relations have been there for long. After all, this is a very reputed school and even the children of police officers come to this school to take driving lessons".

Driving and Conversations Continue...

Days passed, and I made progress. Lal had many stories to tell me from years of accumulated experiences. One day he regaled me with a choice account. "I never lose my temper with the *havaldars*. In fact, I rarely lose my temper. But there was one occasion when I could not hold myself back. A senior inspector's daughter enrolled for lessons. I was to train her. We would go in areas forbidden by jurisdiction for the school and drive there (obviously, because she was the senior man's daughter). One day, a cop from the department stopped the car as we were driving in the forbidden area. He warned us not to come in there, and then let us go off. I did not pay heed to his words. Again we ventured into that same area on that very day. This time he not only stopped the car, but asked me to step out. Then he held me by my collar and said, '*Ek baar bola to samajh mein nahi aata hai tumko? Licence le loon kya* (Don't you understand when I have already warned you once? Should I take away your licence)?"

"I got angry because he had held me by my collar. I shouted back at him, '*Tumko malum nahi hai yeh kaun hai warna tum is tarah se bartaav nahi karta. Yeh tumhare baap ki beti hai!* (You don't know who she is and hence you are behaving like this with me. She is your father's daughter)!" In the meanwhile, the *beti* (daughter) had already phoned her father on her mobile. Her father asked her to stay right there with me, assuring her that he was coming to the site immediately. In no time, he was there, and as soon as the cop saw his senior, he went wet in

his trousers. The senior inspector told the cop, 'She is my daughter and he is her teacher'. Then he turned towards both of us and said, 'You continue driving in this area for as long as you want. In fact, you should be around in this area for the rest of the tutorials. Let me see who attempts to stop you!'"

One day, I was telling Lal about my visits to Delhi and how I had not liked that city much. He responded that no city was bad in itself. Rather, one's 'good' or 'bad' experience depends on one's ability to adjust with people there. Gradually, Lal started talking about the Mumbai locals (mainly the Maharashtrians) and how these people are puny and cannot perform physical labour. I began to understand a little bit about a *bhaiyya's* contempt and prejudice against the Marathi *manus* (man).

The next day we continued with the same discussion. Lal started talking about *havalgars*. I know he hates them and considers them to be leeches. He said calmly, with a sense of detachment, "Look at these *havalgars*. *Haraam ki khate hain* (they survive on illegal gains)! They go to the market places and start ransacking the stalls of the hawkers, showing off their authority. The poor stall owner will keep pleading, '*Sahib, sahib* (Sir, sir)', but they won't care two hoots. The *havalgars* will then round up the hawkers and put them all in a van, saying that higher authorities have called for them. At one point, they will stop the van and start asking the poor hawkers and vendors, 'Give us whatever you have, hundred rupees, twenty-five bucks, anything, and we will let you go!' The poor hawker gives everything he has earned in the day. These leeches will die for the ten bucks from the hawker. *Haraam ki khate hain, saale!* (Rascals, they earn illegally)!"

Lal stopped for a while and took out a packet of *paan masala*, tucked a wad of it into his lower jaw. I was thinking over his words. He continued, "Have you ever seen the way these cops evict the hawkers? They will come and beat these poor guys up. They will throw the goods around and completely destroy the stalls".

Porous Authorities and Legalities: Lal's Tricks and Tactics!

During my last few driving sessions, Lal spoke of how he deals with the authorities in the driving school. "Too many students these days. But the school is constantly taking in more and more students. *Aaj subah, maine manager se baat ki* (This morning, I spoke with the manager). I told him that I want to quit this job. The manager asked me, '*Beta*, what will you do if you leave?' I told the manager that I was interested in acquiring a job as a driver for a company or an executive".

I was a trifle surprised and said to Lal, "Sir, will you really leave this job and drive for a private company?" "No", he replied coolly, continuing, "Do you think I am going to leave this job? I am illiterate. What more can I do? The idea is to give a *hool* (scary threat) to the manager. He will feel intimidated and will ease your duties for some days. He will not assign any more students to me. In this way, every once in a while, you must issue a *hool* to the manager. *Is tarah, woh shaant ho jata hai, thanda ho jata hai* (In this way, he quiets down and cools off). Sometimes it is good to give *hool* to the manager, and sometimes it helps to go directly to the *seth* (boss). You have to know who to approach and when".

So, while the boss has the higher authority, like the senior police officer who has the beat constables and the *havalgars* at his command, he is at times helpless before his very employees!

On the last day of my driving session, Lal asked me to drive into the by-lanes of Nagpada, amidst the congested slums and the crowded streets. At one point, he asked me to halt the car and trotted off to a *paan* shop. After a while, he came back and instructed me to drive past. "Did you want to have tea?" he asked me. "No, I am fine. But why do you ask? Are you treating me?" I replied. He laughed and said, "You know, that *paan* shop belongs to my wife's brother. He was asking about our having tea, but I refused for both of us. He has been wanting a driving licence for sometime. Now you know what happens when the favours are for the wife's brother...I dodged him for some days. He kept pestering me. But you know how I like to dodge people, don't you? So I kept him waiting. Finally, I decided to settle matters with him today".

"So", I asked curiously, "Will you ask him to enrol in school and have him take driving lessons?"

"No, no!" he replied, disgusted at my naiveté. "You think he will leave his *dhanda* (business) and take lessons? I have asked him to pay me Rs. 1,000, and then I will get him a licence. Now you see, I know the guys in the licence office. I will pay them Rs. 500 and have a licence made for him. But the problem in my brother-in-law's case is that he needs to show a legal electricity bill so that the license can be made. Now, he lives in the squatter settlements and they have illegal electric connections. So I will have to have a false electricity bill made. No problem! Only Rs. 200! In five days' time, I shall have a driving licence ready for him. Had it been someone else, I would have asked for Rs. 2,000...What do you think young motorbike owners do? Do they start taking lessons? No way! They will just bribe the cops and have a learner's licence made for a month, and then get a *pukka* (proper) licence made".

We drove on for a while and then, when the time was up, I went to the manager of the school to sign papers for the driving test the next day.

A few days later, I got my driving licence. I did not have any driving exam. I simply went to the relevant office with several other learners. All of us signed some papers and that was it! No driving exam, just the predictable anxieties which let us experience some tension. Some people were happy to be let off so easily. Some of us were unhappy. We were expecting to be tested. But Lal had already told me, "It all depends on the officer's mood. You may be let off without an exam, or he may just ask you to drive around the compound. At the end of it, you are just concerned with getting your licence, isn't it?" He had already advised me on how to keep practicing after the training was over. "If you continue in this manner, you will soon become confident!"

Everyday Trespasses: Questions about Law and Force

The 'Everyday' is of utmost interest to me, and its diversity is ceaselessly exciting. And it is people like Lal who make up the diversity of the Everyday. As I narrate Lal in these words, I am mulling over the very notion, concept and practice of 'law'. So, what is a law? I don't know! What does enforcement of law mean? I am not sure about this either. I don't even know what constitutes the legal, and what becomes illegal. All I understood from my driving master was the use of 'force', which itself is blind to the illegal and the legal alike, and in equal measure.

And people like Lal have a great deal to teach: how to detect the porosity of legalities and how the domain of the authorities can be trespassed.

Naye Qanoon (New Laws)



I travel to work everyday by bus – the infamous *teevra mudrika*. The conductors on this route recognise me and usually manage to get me a seat. For which I am eternally grateful.

I recognise a lot of my co-travellers by now. Distinct faces and characters, sometimes troubled, sometimes troubling. Occasionally, if the weather is good, and no international, national or personal calamity has taken place that day, we exchange gossip about politicians, film stars and cricketers.

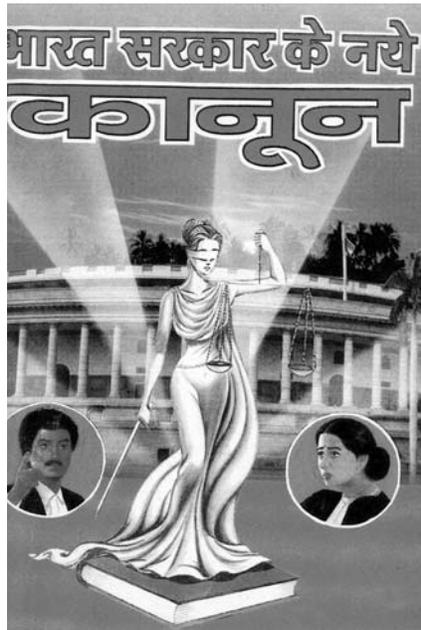
The bus is crowded, and usually everyone travels alone with just bus tickets – stamped 'Billu', 'Jai Bhole', 'Krishna', 'Aakash', 'Maya' – for company, tucked into finger rings, tucked away safely in wallets. Fragile testimonies to our lawful behaviour as responsible citizens.

Another category of commuters travels with us, but without buying tickets. They come bearing gifts, everyday objects, to our bus seats. Everything, and all of it cheap, from sewing needles, torches, pens, manual juicers, to dated magazines, plastic wallets. The vendors get on the bus at one stop and get off at another.

"Each item for only Rs. 5, madam! Introductory offer from the company! *Makaan-maalikon ke liye qanoon* (Laws for landlords)...!"

A pesky character in faded blue denims buys a cheaply printed booklet. A middle-aged man in polyester pants and a blue check shirt buys it. A lady in a yellow printed *salwar-kameez* buys one. Curious to know more about tenancy legislation, I too hand him a crisp five-rupee note and get my copy of *Bharat Sarkar ke Naye Qanoon* (New Laws of the Indian Government).

- Iram Ghufan



For the common person: Some brief and concise knowledge about new laws made by the Indian Law Ministry:

Have you committed a crime?

If the answer is 'yes', then you should be aware under which section [of the Indian Penal Code] your crime falls.

1. If you are a government employee caught taking a bribe, you are a criminal under Section 161.
2. If you have been rowdy, you are a criminal under Section 147.
3. If you print counterfeit currency of any kind, you are a criminal under Section 232.
4. If you have sheltered a thief or a robber in your house, you are a criminal under Section 216.
5. If you have given false testimony as a witness in a court case, you are a criminal under Section 191.
6. If you weigh or measure incorrectly, or use faulty measures, you are a criminal under Section 267.
7. If you adulterate food items and sell them, you are a criminal under Section 272.
8. If you adulterate medicines, or make fake medicines, you are a criminal under Section 274.
9. If you sell fake or adulterated medicines, you are a criminal under Section 275.

10. If you sell pornographic images or pornographic books, you are a criminal under Section 292.
11. If you kill a person, you are a criminal under Section 302.
12. If you attempt to commit suicide, you are a criminal under Section 309.
13. If you attack someone with the intent to kill or to injure that person, you are a criminal under Section 323.
14. If you make a woman run away with you and forcefully marry her, you are a criminal under Section 363.
15. If you make an underage girl run away with you, you are a criminal under Section 366.
16. If you rape any woman, you are a criminal under Section 376.
17. If you commit an unnatural offence (that is, a crime against the laws of nature), you are a criminal under Section 377.
18. If you steal, or rob, you are a criminal under Section 371.
19. If you break into someone's house at night, you are a criminal under Section 446.
20. If you prepare false account documents, you are a criminal under Section 467.
21. If you print counterfeit notes, you are a criminal under Section 489.
22. If you introduce counterfeit currency in the market, you are a criminal under Section 499.
23. If you cheat with a pre-meditated plan, you are a criminal under Section 463.

नये-नये कानून

3

नये-नये कानून

क्या अपने कोई अपराध किया है ?

यदि हां तो फिर यह भी देख लें कि उस अपराध की धारा क्या है !

1. यदि आप सरकारी कर्मचारी होकर घूस लेते पकड़े गए हैं तो आप धारा 161 के अपराधी हैं।
2. यदि आपने बलवा किया है तो आप धारा 147 के अपराधी हैं।
3. यदि आप किसी प्रकार की जाली करेंसी छापते हैं तो आप धारा 232 के अपराधी हैं।
4. यदि आपने किसी चोर डाकू को घर में शरण दी है तो आप धारा 216 के अपराधी हैं।
5. यदि आप किसी केस में झूठी गवाही देंगे तो आप धारा 191 के अपराधी हैं।
6. गलत तोलते हैं, गलत नापकर देते हैं, गलत बाटों का प्रयोग करते हैं तो आप धारा 267 के अपराधी हैं।
7. यदि आप खाने-पीने की चीजों में मिलावट करते हैं और उन्हें बेचते हैं तो आप धारा 272 के अपराधी हैं।
8. यदि आप दवाओं में मिलावट तथा जाली दवाएं बनाते हैं तो आप धारा 274 के अपराधी हैं।
9. यदि आप जाली और मिलावटी दवाएं बेचते हैं तो आप धारा 275 के अपराधी हैं।
10. यदि आप अश्लील पुस्तकें तथा अश्लील चित्र बेचते हैं तो आप धारा 292 के अपराधी हैं।
11. यदि आप किसी भी इंसान की हत्या करते हैं तो आप धारा 302 के अपराधी हैं।
12. यदि आप आत्महत्या करने का प्रयत्न करते हैं तो आप धारा

Bharat Sarkar ke
Naye Qanoon (New
Laws of the Indian
Government) p. 3
(year of publication
not given)
Compiled by
Harvinder Singh
Mohan Publishers,
Delhi
Price: Rs. 10





* ANNOTATIONS

Vis-à-Visage

I. HELEN JILAVU





Cybermohalla Logs/Acts/Texts

CM LABS @ LNJP-DP-NM



The Tree

We are surrounded by those who search for spaces where they can narrate without being blocked, without being judged, figures in the city with notes in their throats, in search of friendship. How can we create environments where such restlessness finds a location, stories find a flow, and utterances a listening ear?

There is a tree outside our locality, with sheltering branches. It is a junction where people meet, embark on different journeys and sometimes find shelter from the scorching sun or pouring rain. Shops surround it, bustling with everyday transactions, abuzz with footfalls of the residents and the daily routines of passers-by. Maybe this can be a listening tree, with stories swaying in its enormous branches, and storytellers inscribing on leaf-like cards under its cooling shade...

21 January 2005
Dakshinpuri

1:00 PM

Innumerable white index cards have been hung from the branches of the tree, with colourful satin ribbons. Some words are scribbled on them: Desire, Masquerade, Path, Fear, Incomplete, Neighbour...

Some people are standing at the intersection, or passing by. They are reading the words, unarticulated questions are written across their faces.

1:05 PM

A young boy, dark, is inviting people to come and write on the cards. He pushes a sketch pen into someone's hand, encouragingly, invitingly. The young man stands in front of a card and looks at the word very carefully, for a long time. Then he lifts his pen and writes: "Impetuosity: I am impetuous when I feel I am alone..."

1:10 PM

Seeing the first inscription, many more people around him feel bolder. They come nearer to the tree, looking at the words, and then look around for coloured pens to write with...

Ashoki

LAKHMI CHAND KOHLI

This is the story of a man whose name is Ashoki. He is thin and dark. Sometimes clean, sometimes dirty. He enters sewers to clean them. He is around 35 years old. I first met him when I had gone to file a complaint about a blocked sewer in my colony, Dakshinpuri. Ashoki had registered my complaint, so I had assumed he was the officer in-charge. My next encounter with him was when he saw me among the crowd that had gathered when he came to my colony to clean the sewer. This figure captivated me, and lingered in my mind. These two texts, written over a period of eight months, are my attempts at drawing him close to me, and thinking about him.

I, Ashoki

I am Ashoki. On Thursday, in response to a complaint that had been filed with us, we went to clean sewers in Dakshinpuri. We had gone to clean the main line. As soon as I entered the lane where we had to clean the sewers, I stood to one side quietly. I had to go inside the sewer. So I had come wearing dirty clothes, and was a little drunk. People who live in the lane had come out of their houses and were telling us that the third sewer was blocked. They said this was probably because a new house had been constructed near it and when cement was being mixed for it, it was flowing onto the drain. Maybe it flowed inside.

My colleagues were opening the lids of the sewers and checking them. I was just standing, quietly. People were looking at me as if I were mad. And some were disgusted by me. I know because when children would come towards me, their parents would scold them and call them back.

The boy who had come to file the complaint was also there. He was looking at me with surprised eyes. Maybe he was thinking that when he had come to the office, I was wearing clean clothes and talking to him like an officer. But today he was surprised at seeing me in dirty clothes. I was laughing within. In his eyes, I was first an officer, a *sahib*. He had called me 'sir'. But what would he call me now? Maybe he was also thinking of the same thing.

Then my colleagues told me to get inside a sewer. Hearing this, his surprise probably only increased. In his mind, he must have been thinking, "This is no *sahib*, but a small employee who enters sewers and cleans them".

When I was going inside the sewer, people were looking at me as if I wasn't a human being like them. Don't know how dirty I am. This, when it is their filth that I clean. I wonder why people think this way. And when I cleaned the sewer and came out, the happiness on the same faces had to be seen! But some people were still disgusted by me. Because now I was even dirtier – wet clothes, covered with filth. Then I washed my hands in front of a house and started towards my office.

But I was thinking, I clean their filth. Then why am I treated like an animal? Why? Am I not a human being like them? Then after some moments, my heart would say, "Forget it, it doesn't matter. This is how things are".

Then we reached the office. And that thought got left behind in the same lane.

Ashoki, again

I had just returned home after a day of work when I heard someone calling me, "Hey Ashoki, we need to attend to a complaint". I hadn't yet changed out of my work clothes, so I didn't need any preparation time. I put all my implements onto my cycle, and wheeling it along, set off. The effect of the alcohol I had drunk was wearing off. I think I was stinking, because my colleague accompanying me had covered his nose with a handkerchief. His eyes would turn towards me from time to time, and then he would look away. There was no sun, but I was feeling hot. Perhaps this was the heat of weariness.

We reached a lane. It was very crowded. Was everyone on vacation? It looked like an event. As my colleague asked everyone to make way, everyone started speaking to him at the same time. My feet ached, so I sat down on a porch of a house. My body was dry, but my trousers were wet. When I sat down, many houseflies came and settled on me. Around me, people watched me and seemed to be thinking about something. Just then a woman came to me and said, "Could you go and stand there. I have to clean this place". I paused for half a second, and then stood up. I was waiting for my colleague to call me to the spot to work. Around me, people were looking at me, and drawing each other's attention towards me.

The whole lane was wet. It had rained the previous night and the sewers were overflowing. A man walked up to me and asked me to come with him. His eyes roved over my entire body.

I went near the sewer in question, and saw that it was jammed with clothes. As I entered the sewer, its stench hit me. The effect of the alcohol had completely worn off now. Someone in the lane was playing loud music on a music system. I liked that. One by one, I pulled the clothes out of the sewer. Each time I would put them out on the street, everyone would recoil as if these weren't clothes any more. People's chatter seemed incessant. Everyone seemed to have so much to say. Someone cursed another, others instructed me on what to do.

After I pulled all the clothes out, I saw there was a small boulder in the sewer that was blocking the flow of the water. I tried for some time, but couldn't move it. My colleague was asking me what I was doing, but I was too busy with my work to respond to his questions.

A slight drizzle began. People started to scatter, hide. My colleague also looked as if he wanted to move out of the rain. And then, the drizzle turned into a downpour. The muck in the sewer now splashed on to my face, my mouth. All the onlookers had hidden in their shelters by now. But the stubborn boulder had not budged an inch. The street began to get flooded. Everyone started yelling that the water was entering their homes. They were looking at me imploringly from their safe places. I climbed out of the sewer to fetch a long iron rod from amongst my things. Back inside, I struck the boulder again and again with the rod. I was the only one out in the rain. I struck the boulder with increasing force. Suddenly, the water started to recede. The boulder had given way. Everyone yelled with joy, as if they had all won a lottery.

I got out of the sewer and covered it with its lid. I stood there for a while, in the rain. Then I walked up to a house which had a tap outside, and washed my hands and feet. People were looking at me, pleased with what I had done. I too felt happy about my work.

Instead of growing more tired with the exertion, I felt relaxed. I climbed onto my cycle, and started back for the office, to rest a while.

Faces

Figures surround us. Through these different figures, we bring different emotions, different subjectivities, different life-worlds and realities closer to ourselves; we can encounter new questions, new ways of thinking, possibilities, relations; tussle with different anxieties, excitements, restlessness.

There are 70 practitioners in the Cybermohalla network. Every morning, each one of us comes to the lab having met at least ten people, wandering through five places, seeing six things, with thoughts and questions. These are the different things all of us bring to the lab. And these are all laden and layered with time; they also contain time.

These are things that flow into the lab. But the lab not only inhales, it also exhales. This is through different media forms like wall magazines, stickers, booklets, broadsheets. These are forms that our texts take, and roam the city, in

search of friendship. They seek out spaces, constellations, groups and contexts where they can get into circulation, be retold, and invite more stories to accrete around them.

For the first broadsheet, the theme that was selected was 'Faces'. People's faces give them away, reveal things about them and hide others. Faces reflect our moods; they also hide our realities. Faces of strangers sometimes evoke hostility, sometimes curiosity; sometimes they remind us of something in our own past. Some faces affect the faces of others—students often try to gauge what a teacher is going to do from his or her face. Through faces, we try to understand how to engage with another human being.

When we decided to draw upon faces from around us, these are some of the texts that were written and shared at the lab.

A Cart with Four Wheels

SHAMMI

A little while ago, as I was returning home from school, I saw a man selling T-shirts on a cart with four wheels. He sat by the cart on a stool, shaded by a red umbrella, surrounded by hopping, chirping birds. He wore a pair of red trousers and a T-shirt with the word 'Freedom' written across it. On the cart—which-was-his-shop lay T-shirts of every conceivable colour – red, blue, green, yellow, white, black, and more. Every T-shirt had an inscription on it, a design. For instance, one had a knife drawn on it.

There was a tree near the cart; and in front of it, across the road there was a small restaurant, a small flourmill, a shop selling small gas cylinders. There was heavy traffic on the road. And I was walking along this road, on the side where the cart was parked.

The man who was selling the T-shirts had narrow eyes and full lips set on a dark skin. His forehead was furrowed, and there were beads of perspiration on it. He looked as if he hadn't sold any T-shirts this morning. From time to time, he would produce a handkerchief

from his pocket and wipe his sweating forehead.

I stopped by him and asked, "How much is one T-shirt for?" He said, "Rs. 65."

"Oh, you must reduce the cost."

"And then how will I save anything!"

I walked on with my bag. And I kept thinking to myself, "If I had bought just one T-shirt, maybe he would have earned something and been able to buy food". I had walked quite a distance, and now I turned around, and started walking back towards him. Soon his shop was in sight again, and I saw that many people – potential customers – had surrounded the cart. They were rickshaw-pullers, passing pedestrians, and others. Now I thought, "Maybe by evening he will sell all the T-shirts and be able to retire happily for the day".

And so, I started back towards my house. Just then I heard a familiar voice call out my name. A friend's voice. I turned around, but my attention was diverted from the voice which called me, by a passing Municipal Corporation vehicle. This is the vehicle that removes shops from pavements and footpaths. The man with the T-shirts had covered them up, securing them on the cart, and he was speeding away into a by-lane, away from the approaching MCD vehicle. The muscles on his face were taut with tension. He must have been thinking, "First I didn't manage to sell any T-shirts, and now this vehicle is here to ruin my business".

My friend had caught up with me by now. I greeted him, and we began walking home, together.

A Conversation with a *Kabari* Shopkeeper

SUNEETA

This *kabari* (scrap dealer's) shop has been here for almost ten years now. There are all kinds of things in this shop, most of which look like junk to me. When I went to the shop the other day to take some photographs, I first said *namaste* to the shopkeeper. But *bhaiyaji* was kind of ill tempered. I mean he was the moody, angry type. I thought, I've just said hello, and he's responded with such scorn. There's no way of knowing how he will respond to my request to let me take photographs of things kept in his shop. But then I thought I have to do what I have to do, and at the first opportunity I clicked some snaps. I had taken just two, when the shopkeeper got really angry and said, "What do you think you are doing? What do you want to take these photographs for?" I responded, "I'm not from the Press and so don't mean to pass your photographs on as reports to anyone about stolen material having reached here".

"Then why do you want these photographs?" he asked. I said I needed them for something. "Then why don't you take photos of this shop selling milk? It's right next door". I went on taking photographs as he spoke with me, while also answering his questions. He didn't really try to stop me by blocking my view. I didn't have to ask him to move out of the way even once. But he looked nervous. It seemed as if his shop had been raided. I have to admit I was a little amused by the look on his face. But I didn't laugh. He stepped out and went and sat in a neighbouring shop. He said, "My shop's been set up recently, and here you are getting ready to have it removed". At this I started laughing. I said, "*Bhaiya*, why are

you so frightened? I want to write a book about your shop".

I finished taking my photographs and turned to him and said, "I'm done. Now can you tell me your name?" He looked at me quietly. Then he said, "Now why do you want my name? I'm not telling you my name". I said, "Never mind. I have the photographs and the address of the shop". As I started to leave, I said to him, "We'll see each other again, soon". At this he got really nervous. I said, "I'm a representative of the government".

The neighbouring milk shop's keeper knew me, about me and where I live. He started laughing, and said to the *kabari* shopkeeper, "Your shop is finished now".

But the game had gone on too long, so I said, "There's nothing to be scared of. I live here, in this colony. I needed some photographs, so I came here". The milk shopkeeper chipped in, "She was just kidding you". I assured him again, and saying goodbye, left.

A Newspaper Advertisement

BABLI RAI

It was ten in the morning. I stood in my house, by a window, looking out into the street. My friend Leena was on my mind. I hadn't met her for a long time. There is a narrow lane in front of this window. A young boy, of about five, whose name is Salman, was standing there, at the door of his house. He was holding a stick and threateningly raising it to frighten a young girl who was trying to move through the lane. Just as she would take a step, he would raise the stick. And when she looked frightened and retracted her steps, he would laugh out with joy. This little boy thinks of himself as the boss of the lane. He behaves like this with every child who passes by. But his grandmother never admonishes him.

Finally the girl stopped trying and went off in the opposite direction. I turned away as well, and walked towards the door. My mother asked me, "Where are you off to?" I said, "I'm going to Lajwanti's house". "Why?" "I have some work". Ammi said, "Be sure you return soon".

So I set off to meet my friend Lajwanti, or Leena. Leena lives a short way from my house, at Turkman Gate. I first met her at school during the maths class. We became friends and graduated from school together. Now I was curious about what she was doing. Having just got married, I have different worries; but she has to get a job and move ahead in life.

Stepping out of the house, I crossed the road. There wasn't much traffic, so this wasn't such a task. I summoned to a rickshaw puller to take me Turkman Gate. Sitting in the rickshaw, seeing and leaving behind different sights, I reached Turkman Gate. Now I was at the place with the Haj Manzil on one side and a bus stand on the other.

The rickshaw puller asked me, "Where to now?" I said, "The lane with the church. I have to go a little ahead of the church". He promptly turned the rickshaw. Passing the church, I asked the rickshaw to be stopped in front of the public toilet, which has white walls. I got off and paid the *rickshawala* ten rupees. Taking my balance of two rupees from him, I walked into the lane. Then a small turn, another narrow lane, and I was in front of house number 786 on the corner of the lane, with a small workshop by its side, and a strong iron gate in front of it.

I knocked on the door, *khut-khut*. Leena's mother called out from inside, "Just a moment". I recognise her voice. Her tone is lyrical, and it is her habit to say, "child" before beginning every sentence. She opened the door. As soon as you step in, you're in the kitchen. It's a neatly kept, well-organised kitchen. I said *namaste* to her and asked, "Where is Leena?" On being directed, I went to the room where Leena was. She didn't even realise I was in her room.

Leena was sitting on her bed, engrossed in a newspaper. Her legs were crossed beneath her; she was leaning over the newspaper, resting her elbows on it. Her two plaits spilled over the white spread of the newspaper. She was holding a red-coloured sketch pen. Scanning through the contents of the paper, she would mark something from time to time. Another paper lay beside her, and a third was half on the bed, and half hung over the edge.

I stood there, quietly watching this young girl in the maroon *kurta*. This girl, who used to rely completely on rote-memory, was puzzling over something complex. I stepped near the bed, to try and read the name of the newspaper. But when I didn't manage to see the name, I glanced at the columns she had marked out and caged in red colour. It read: "Wanted! Telecaller, Receptionist and hard-working young men and women. Earn according to your work. Fund, bonus, rent-free. Interested, call us at...Our address is..." I stood there, looking at Leena, at the quiet seriousness on her face. I was certain Leena would get any job she wanted. I have always seen that strength and ability in her. Standing there, looking at my friend, I tried to imagine what things would be like were I to meet Leena three months later. What will I hear on knocking at the door of her house? What time of the day will it be? What will this room look like? What expressions will adorn Leena's face? Sitting together, what will we chat about? Which new facets of life will she introduce me to?

Beauty Parlour

YASHODA SINGH

I have seen a shape, a form, change over time. The form of my sister. My tempestuous sister Lakshmi, who is sharp as a stinging chili, whose anger is like the boiling over of milk - sudden, hot, and just as easily quelled. Till about 11 months ago, she was a thin, slight frame who had no time for dressing herself up. She would be so busy in her household chores that the thought of making herself presentable to the outside world never crossed her mind. Throughout the day, she would immerse herself in work. While she worked, she would keep the television switched on, and dance to the beat of different songs. Singing and dancing have always delighted her. She would spend day after day like this. And each day, when I would return home in the evening, she would greet me with a glass of water. Handing the glass to me, she would immediately light up the stove and start preparing tea for me. In the time the water would boil, we would chat about this and that. I was her confidante. Outside of these moments, her day was always spent in silence.

People made her uneasy. A guest in the house was enough to send her into complete disarray. She would run into the kitchen, disoriented, and so make some mistake or the other. She would either put too much sugar in the tea, or forget to put in any sugar at all! Seeing her like this, I would ask her, "What happens to you Lakshmi! Why do you start

shivering when someone comes home?" Biting her lip, she would say, "I don't know, Nanhee. I get really nervous with people". This always made me laugh. I would ask her, "What are you going to do when you have to walk on the road?" She would smile, and remain quiet.

Time passed. And with it, her quietness started to turn into silence. She withdrew more and more, hiding herself in the folds of the house, losing herself in its seams and stitches, its drapes and falls. She was growing darker and becoming weaker. I couldn't bear to see her this way. After all, I was her elder sister. I started provoking her to enrol herself in some course. It took her a long time to agree. She decided to join a beautician's course. Her decision, when she arrived at it, made all of us – my mother, father, younger brother Rahul and me – very happy. But today I am really sad, because when I return home in the evenings, the door mocks me. The quiet house is not welcoming. There is no one to greet me with a glass of water. In her absence, I see Lakshmi all around me – standing with a glass of water in one hand and a cup of tea in the other. Somehow the pleasure has gone out of drinking water and tea.

She was so nervous at the thought of stepping out of home. It was a huge challenge for her, because since leaving school many years ago, she had caged herself in the house. And now she was about to step back into the hustle-bustle of the world. A world where you never know when a passing glance could wound you and slide quietly by.

But since she had taken a decision now, there was no option but to step out. She was scared when she was on the road. When she would hear boys pass comments on her, her heart would contract. There were many girls in her class, who happily chatted with her. This also troubled her, because she was completely unused to meeting people. But before too long, she made friends with a girl called Shalu. Shalu had very recently fallen in love, and she was restless to narrate her love story to someone. And not just to anyone, but someone who would listen to her patiently and not repeat it to anyone. She saw this innocence in Lakshmi, a girl who didn't even know how to braid her hair properly, who was always quiet and listened to everyone.

It was Lakshmi's habit to tell me every single detail of her day. Sometimes I would get very irritated and say, "Lakshmi, stop chewing my brain!" Her response would be prompt, "Really! And what about the time when you spent hours jabbering to me about your day?" How could I say anything to her after this! So, she would re-start her tales. She would say, "You have no idea how much girls in my class can chat and talk!" But she never considered how much she herself talked in detailing out the lives and loves of all the girls in her class.

Slowly, her personality also began to change. The neighbourhood was abuzz with discussion about this new Lakshmi. That quiet girl, who had now begun to mingle her colours with the colours of the world. Everyone would look at her and talk. "Hey! Have you seen how she steps out in style?" "Have you seen how she dresses herself up? She wears black trousers and short tops!" "Have you seen her slippers? The brown ones have such high heels". "Have you seen how she colours her hair? She never as much as wore a ring in her fingers before, and look how she matches her bangles and earrings with the colour of her dresses!" "Oh, she really thinks too much of herself!"

People would talk, but we knew what a simple girl Lakshmi was.

And in this way, amid the chattering tongues and the fast-transforming Lakshmi, six months passed. She finished her course. And she didn't want to waste what she had learnt

by sitting in the house. So she joined a beauty parlour in Sitaram Bazaar. Now she would leave home by ten in the morning, and return in the evening. This became her routine; just as getting ready every morning became a routine. She began to dilly-dally over getting made-up. Every morning, she would sit in front of the mirror, holding her head in her hands for very long. This would really astonish me. After all, this girl who had started enjoying getting dressed up had now begun to get bored of it.

Seeing her this way, I would ask her, "Why don't you go just the way you are?" Darkening her eyes with a liner, she would say, "I can't". I would ask her, "Why?" Outlining her lips with a lip liner she would say, "Don't be silly! We change how women look. We make them look pretty. If we were to look ugly and unkempt, won't they wonder how this spoilt machine will work wonders on them".

Well, she was right in her own way. But it still puzzled me that what had been an interest, a source of pleasure for Lakshmi, had begun to be seen by her through the lens of work. I had seen interest turn into work from very close. When she began working in the beauty parlour, her manner of speaking also began to change. Earlier she would smile and say *namaste* to everyone. But now she would smile broadly, say "Hello!" and swing her purse across the room onto a seat with such abandon that it made me stare. A girl who couldn't utter a syllable earlier now exuded waves of energy. I didn't know how to understand this change in so short a duration. Today she orders me to make tea for her as if that is the sole purpose of my being around the house. But I don't really mind. How does it matter if the services we performed have been exchange; at least we can sit and drink tea together. This is all that I want. Our two minutes, shared over a cup of tea, have returned.

Together

When someone first comes to a CyberMohalla lab, he or she is asked to write a text and bring it the next day. This is how it was with Aarish as well. Neelofar asked him to "write on anything". He came back the next day with a text about his grandmother. A few months later, this is what he told us about his first encounter with the lab:

"There were twelve people in the room that day, people who were strangers to me then but who I have got to know very well now. We all sat down in a circle, and Rabiya began to read her text. She had written about a word she and other colleagues at the CM Media Lab found intriguing. She was reading out from her notebook, and her text was about why they were intrigued by that word. She said it was because it was a light word, lightly used, used by everyone. Since used in

almost every other sentence, the word became hidden, and so multiple in its meanings. This word was *hum* (we). It could be easily found, and found everywhere in the city. She said they were seeing the city through this word. They were looking around them, at newspapers, TV, songs, cinema, conversations in groups, graffiti from walls, snippets from the radio. She said when they looked at the city through this word, the city looked dispersed, meant to be gathered from all these disparate places.

At this point, I lost track. I was distracted: by the computers around me, by a problem at home, by many other things. When Rabiya finished reading her text, Neelofar turned to everyone and said, "What do you think?" Everyone spoke. Then she asked me, and I said, "I liked the text". She

wasn't satisfied, "What did you like, Aarish?" I said I wasn't listening; I was distracted. I thought everyone would ignore me, and just move on. Neelofar said simply, "It's all right, Aarish. But it's important to listen. Otherwise, how will we understand what someone is trying to say? And if we don't listen, then how will we find newer things to think about?" It was the biggest challenge I faced when I came to the lab, to listen, and to layer my thoughts onto others' thoughts, and to do this every day".

A Conversation between Three People

DAKSHINPURI LAB

> Let's suppose you are going somewhere.
 >> Is it a road?
 >> Yes!
 >>> Then it must be crowded.
 >> Yes, a crowd has gathered.
 > Gathered? Why? What's happened?
 >> There's been an accident.
 >>> Maybe a speeding motorcyclist skid over a speed breaker, hurting himself badly.
 > On going closer, you realise the motorcyclist is known to you. What would your relationship with the crowd be now?
 >> I would try to get some bystanders to help out.
 >>> How would you try?
 >> I would search for a pair of eyes that looks friendly.
 > Try? Search? The two are such different order of things! "Rakesh is trying" and "Rakesh is searching".
 >>> Yes, words carry the shadow of the unuttered with them.
 > "He is hungry" and "He has so much hunger in him".
 >> "He hungers" and "He searches".
 >>> Some people don't have the freedom to be in search of things.
 >> Like a doctor? If my doctor were to say he is searching for the cause of my fever, I would surely never go back to him! But a child can search for a chocolate that has been hidden from him.
 > Yes, that which has a predetermined place can be searched.
 >>> Hmm...But time is also important, isn't it. If someone were to say, "I'm searching for a job", it's all right. But what if he were to say this for ten years... Well, then it's his destiny, I guess.
 > But some people can never attempt to seek that which is not destined for them. They do not have that freedom...
 >> In the crowd I can search for that pair which I feel will respond.
 > But would Sangeeta or Manju have that freedom as well? If it were a completely male crowd?

- >> Maybe. Maybe they could find a face...
- > But how do you read that face?
- >> Why? Do you think it's that difficult to catch someone's eye?
- >>> What draws the eye: the accident or the crowd that gathers round it?

Unlikely Encounters

The labs invite different kinds of dialogues. This is not only from the practitioners who live in the locality, but also from the extended network from Sarai and Ankur, and visitors from the rest of the city and the world as well. These encounters bring in different provocations and questions, as

different people come to the labs with different curiosities, practices and ways of living. But apart from the interlocutors who come to the labs, we also dialogue and debate with other spaces through events and encounters.

A Dialogue (with Doctors)

12 December 2004. Sunday.

SHVETA

Last week my mother, who is a doctor, asked me if someone from the Cybermohalla labs could make a two-minute presentation in a seminar with a one-hour interactive session between doctors and health workers, and lay people. The Indian Medical Association had organised a two-day National Convention of Women Doctors. Not so sure about the nature and dynamics of such encounters, I tentatively posed this invitation to Azra at the LNJP CM lab. Her response was prompt. "It is not everyday that doctors open themselves up to listening to people talk about health, without presenting themselves as patients. I'm ready for dialogue!" She agreed to prepare a text.

On the morning of the scheduled day, the two of us reached the main auditorium in LNJP. Close to 300 people sat as audience, and a panel of four doctors sat on the stage, listening to women who made two-minute presentations even as the doctor chairing the proceedings asked them to be brief, and to the point.

We had arrived a few minutes late, and so I had to locate one of my mother's friends to pass on Azra's name to the panel on the stage. As Azra took her place in the wings, I settled down among the audience.

As I translated the text from Hindi into English before the day of the seminar (to make bilingual copies available for circulation among the audience), I was challenged by the difficult terrain of imagination she was so gently alluding to, and realised that in circulation, it could open a fresh way of thinking about bodies and social spaces. I was very curious what the response of the doctors during the seminar would be. Here is the text:

"What Is That which We Are Ready to Look at, But Not to Speak about?"

AZRA TABASSUM

"There are some spaces in our lives which are brought into discussion only by emptying them of the social relations which they are built around. They should always be something different from what they are! And therefore, when we think, it is only by removing these spaces from our imagination.

"Let me describe one such space for you. I live in LNJP colony, an informal settlement. In this colony is a yellow building. On the first floor of this building is the Ankur Centre, and in it the Compughar, a room where we, a group of 15 young people, imagine, talk, explore ideas.

"Below it, on the ground floor, is a room where residents and interns from the neighbouring Lok Nayak Hospital come on a weekly basis. Among them there is usually a senior doctor, who oversees how her students are performing. This dispensary has become an important support for the residents of the colony. People come here with the smallest to the most complicated of ailments. They know medicines will be provided for free, and will not be spurious. And most importantly, this saves them the time it would take to travel to another place, away from the colony.

"Just outside the Health Centre, as you enter the building, is a foyer. This is where the bodies of people who die in the colony, are brought. The bodies are bathed here, and then wrapped in a white shroud, and prepared for burial. The body is carried out of this building, through the long street that leads out of the colony. This is the street where goats sit, chew and brood about life! And then, it is this same place which is used as a venue for the weddings of the girls of this colony. Parents approach the people who live around this building a few days before they need the place. And on the day of the wedding, this small place takes on a festive look.

"Right above it, the corridor outside the Compughar also becomes a convivial, friendly meeting space for everyone, every once in a while, when different people from the locality come in to spend a day talking and sharing stories. Different kinds of people come here, the elderly, young children, teachers, and more.

"Indeed, is this not a strange place? People come here in search of health, after death to get readied, in old age to share stories, in adolescence to experiment and to try out new things.

"I was invited here to pose some questions about health that arise from the place where I live. And now that I have described the place, here is my question: Is it possible to have an imagination of health in this space, without emptying the space of its relations? Where life and death, relationships and health, humans and animals are not separated from each other? If yes, then what is this imagination?

"And I was also invited to pose this question here because there would be doctors to respond to the questions, and to address them. I understand that doctors have a place in society where they are never allowed to say, 'I didn't understand', or 'I will try to understand'. After all, which patient will want to go to a doctor who shows ambivalence! But now that you

have expressed this desire to listen, to be vulnerable to questions, all of which you may not have answers to, I am glad to be leaving you with this question, an answer to which may not be immediately available. Thank you."

Halfway through her presentation, Azra was politely, but firmly, asked by one of the doctors if there was, in fact, anything specific she wanted to ask about health. Before and after Azra, for around 40 minutes, a number of people had made presentations. They had more specific queries for the doctors.

Following all the presentations, the doctors responded. They spoke about the need for sex education in schools and health education in slums, and how the principle of 'each one teach one' could make these spaces free of ignorance and disease. Azra, who was sitting next to me by now, turned to me and asked if I thought they would have said anything different if they had spoken 40 minutes before everyone else did! Then she added, "They would probably have had very little to say if they didn't have schools and slums to direct their thoughts and concerns to".

On the way out of the auditorium I asked her if she was disappointed her question was not addressed. She smiled and tried to cheer me up, "I have a feeling the 'building' will remain in everyone's imaginations as a space that can neither be explained, nor be wished away. It will keep stubbornly reappearing in their minds at the most unexpected moments. Maybe after the activity surrounding the seminar is over, and all the organisers and participants lie on their beds for rest at night, they will remember a young girl who tried to piece together the description of an unfamiliar space. Maybe, then, when they hear something similar another time, they will try and recall what the 'building' was all about. Don't you think?"

It was a fascinating morning, well worth the rickshaw ride halfway across the city in the early winter morning, a morning that would make me think about what could happen to a context when one presents oneself in it, not with grievances, but with questions.

Doors, Walls and Words

January 2005, Gujarat

YASHODA, PRABHAT, LAKHMI



Lambariya and Karawara are two villages in Gujarat. There is a lab in each, where young people meet to discuss and write about their locality. They are just setting up, and have invited us to share our practices and questions with them. When we went to the labs in these villages a third time, we encountered a question, “We meet everyday at the lab and write. But what we write tends to remain within the four walls of the lab. How can we bring it into circulation? How can we leave an imprint in the locality?”

And so, we walked through both the localities, searching for surfaces. We were a motley group – young people from the labs, the three of us, and a local painter.

Our first surface was the door of a long-abandoned house, where an old woman once lived. It's a door that people used to pass by, without pausing. We painted, “What is the daily routine of a woman? I know someone who wakes up at 4:30 in the morning. At 5:00 she fills water from the well and washes the utensils...” Next morning, many young women gathered around the door, reading the words on the bright pink door. The door knocked, and called them to itself.

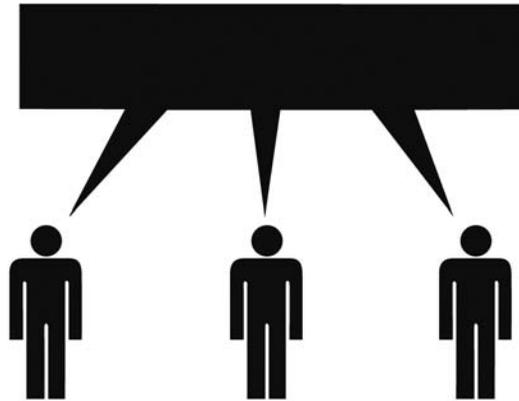
We next found a wall beside the raised platform where village elders meet to discuss different concerns of the village. Many people congregate here, sometimes to discuss grave matters, and at other times to share a celebration. We wrote, “Sometimes time is light, like a feather, and sometimes it is heavy. What is the significance of two minutes in your life? Of 15 minutes? Of an hour? Of a day? Of a month? Of a year? Of 10 years? 25 years? 50 years? 80 years?”

On a third wall we sent out another invitation: “Tell us, is your face one of these? A face, bent in concentration, sipping tea from a glass in a tea stall. A face sleeping under the shade of a wall away from the scorching sun. A face calling out to children to buy sweets from him, roaming the streets in the evening. A face looking at a phone, in some confusion, at the STD booth. A face...”

Dear reader of this short note, where are you sitting and what are you thinking as you read along?



NEGOTIATIONS





The Act of Leisure

IRAM GHUFRAN + TAHA MEHMOOD

ACT I

[By a cemented bench and a crooked tree in an MCD (Municipal Corporation of Delhi) park in Kilokri Village. A few days ago.]

IRAM: It all began in 2003, with a fountain on a winter evening.

TAHA: The fountain is a good place to sit. Especially when you're broke. It dominates the main square in New Friends Colony Community Centre. Surrounded by shops, restaurants, cafés and pubs, there is enough room in the square 'to move through and not be in'.¹

A typical circular structure with four cemented swans rising from its centre, the fountain has become a landmark to indicate direction; a meeting place before one goes somewhere else. No one comes to the fountain to look at the water, the grass, the flowers or the swans. It is enclosed by an iron grille with a few gaps, large enough to allow a child in.

Small, semi-circular, cemented seats outside the iron grille are used by people to sit, chat, smoke. One evening last winter we sat there, as we had on many earlier occasions. Bikas, Gaurav and I were having one of our usual mind-numbing conversations on life, 'forelife' and afterlife, and looking at what was formerly Ramlal's *chai* shop – one of its kind in the entire Community Centre, a perpetual embarrassment to its more stylish neighbour, Bon Bon the pastry shop.

IRAM: However Bon Bon's prestige is now redeemed. With Ramlal's death, the teashop has changed hands. It now sells *momos*, *kathi kababs*, chicken rolls etc., and is so much neater. Ramlal was no urban legend. Still, quite a few people in community centre remember him as the obstinate guy who ran an old *dhaba*-style shop in the 'posh' market. Some say that he even went to America but came back and opened this *chai* shop where you could have tea even if you were broke.

TAHA: As we sat, sipping cold tea from plastic cups, reminiscing about Ramlal, Gaurav saw a man in khaki filming us with what looked like a semi-professional camera. We stopped

talking. There we were – three very average specimens of the human race with no glorious/ignominious past nor any such hopes or plans for the future, and this man, this police constable, was filming us.

What had we done?

This was the first thought that sprung to my mind. We had been learning about cameras, filming perspectives and points-of-view as part of our college curriculum, but here was a man of law, with a revolver in his holster and a camera in his hand, face partially hidden, shooting us!

He made routine enquiries; and after we confirmed that it was not us in particular that he was shooting, and that such photography was routine, we proceeded to him ask a few questions of our own – albeit tentatively at first. As law-abiding students of Jamia Millia Islamia University, we thought it wiser not to aggravate the Delhi Police (DP).

Pandu (not his real name) proudly told us that the Delhi Police had initiated this unique programme for citizens' safety and in the interest of national security. The programme entailed shooting video of 'suspicious characters' (like us!) thronging the New Friends Colony Community Centre market, and generating profiles from the material.

A few days ago, DP had caught an alleged terrorist; he had apparently had dinner at this location prior to his arrest. Since prevention is better than cure, therefore the police drive to film 'suspicious'-looking people, and keep a tab on them. Who knows what they might do, and when?

We saw the footage, appreciated the reality TV-like material and went on our way.

I don't know how far this exercise would go in curbing crime, but I, a regular visitor to the Community Centre, avoided the place for a long time.

IRAM: Something changed...

TAHA: Yes, I am always a little conscious...

IRAM: Why? What happened?

TAHA: A uniformed Delhi police constable shoots you...it's not a good feeling...you immediately think, what have I done? Was there a notice that I haven't read, a law I'm unaware of?

IRAM: When you realise that it's not you in particular that Pandu was filming, then why this 'not a good feeling'?

TAHA: It's not me particularly, but imagine that footage in some databank just lying...waiting to be used...for what?

IRAM: So, what did you do when you saw that Pandu was filming you?

TAHA: We all became very conscious of his presence. We immediately lowered our

voices...in fact I just didn't know where to look...should I look into the camera? The three of us stared into the lens as if to say, "Look, we are clean. We haven't done anything illegal". I was wondering, though, if it was me that he was after. He knows...he's seen me buying grass from the *paanwala* in Taimur Nagar...At the same time, we were trying to make sure that our gestures of 'non-hiding' would act as proof of our law-abiding nature. Exams were around the corner and I didn't want any involvement with the police.

IRAM: Why didn't you question him?

TAHA: That is precisely the reason why, no one thought of questioning the guy too much...

IRAM: Why?

TAHA: Because I was afraid. I can say it now...

IRAM: Why fear?

TAHA: It was a genuine belief in the irrationality of the system – as if it were a school principal, snooping on students in the playground. Is an act of sitting by an innocuous fountain in a very public place and a belief in the virtues of idleness, a transgression of a law?

IRAM: Why do you think he filmed you? Was he filming everyone?

TAHA: I don't know. Maybe it was my appearance – a big shawl that hid my face, three days of overgrown stubble, height...I can only guess. What was uncanny was that I went there almost every day, as did most of my class. I'm sure a regular constable would recognise regular visitors to CC. I sometimes think he knew we were students of Jamia... maybe we did trigger a sort of 'categorical suspicion'.²

[Soon after this conversation we posted the episode on the Sarai Reader-List and Urban Study Group list, in an effort to understand the overlapping trajectories of surveillance and leisure as they manifest in our lives. Some responses follow.]

From: Bikas Ranjan <bikasranjan@rediffmail.com>
Date: 10/ 01/ 05
Subject: [Reader-list] The Act of Leisure

This was not an isolated incident; Taha would remember how we were asked to vacate the same area during Diwali and on Republic Day. Once a loudspeaker was put there announcing of the menace of the (seemingly so likely) terrorist threat. This made conversation impossible. I remember Pandu mincing no words to reveal the truth about the

cam to us – it's meant to discourage the people who habitually come here and hang around without any purpose (though, still it leaves me wondering how he can interpret purposefulness, and lack of it; perhaps, and in all probability, he was talking about the people who don't come there to spend).

It was not only a surveillance cam put at a public place covering the crowd. It's a deadly combination of technology and human bias. This cam had the advantage of mobility. It can zoom into faces, go closer to them, spend more time on one particular face rather than another. Who decides if the faces are suspicious? Who decides to zoom into some one and not on the other? Who decides what is worth shooting and what is not?

Surveillance cams are now a part of our everyday existence. We might object to their intrusion in our lives, but a cop with a movie camera is a different proposition altogether. When we as a society hand over a cam to a cop we also validate his subjectivity (or his bias). This is not only the question of what happens to the footage this Pandu shoots; rather, what I find more compelling is the question of who authorises him to do it.

Whenever we step out of our private spaces, we come under the scanner – subjected to public gaze. We're being watched. In a public space one cannot stop anyone subjecting you to his/her staring eyes. However, when one of these staring eyes becomes a tool in the hands of the state, it is justified on the grounds of some perceived threats. And when this gaze can be technologically reproduced, it sounds an alarm bell.

There is another aspect of the encounter. We were sitting at a seemingly public space (as the name justifies – Community Centre). Despite this, the cop wanted us to leave. He informed us that this was a place to shop. If we want to hang around, there are cafés and bars. Is this the agenda of the state (it reminds me of Huxley) – that time should be spent in spending/consuming? We work to earn, and leisure is meant for spending, there is no third possibility.

ACT II, Scene 1

[A sunny October morning. New Delhi. Taha is walking past Jantar Mantar towards the Connaught Place police station. Reference letters for police permission to shoot in the area in one hand, and a soggy samosa wrapped in old newspaper in the other. Through the oil and remains of a half-eaten snack, he can see the newspaper advertisement on how to identify a terrorist.

- By clothes unsuited for the time of the year; e.g., wearing a coat or jacket in summer.

- A person trying to blend with his surroundings by his dress and behaviour, though he doesn't belong to the group.]

TAHA: No wonder Baburam, a security guard, six feet tall, stockily built and with a moustache and beard, says when asked to describe a terrorist, "I know one when I see one".

I walk past a camera.

It looks beautiful.

It is mounted on a 15-foot pole. A semi-spherical glass cover protects the camera; a

pre-arranged mass of plastic, glass and some silicon.

An automated Cyclops.

It looks almost benign. I feel like paying obeisance but I carry on. I eat my *samosa* as I walk by, conscious of the camera's presence but ignoring it. I cross the road and I am confronted by another camera, then another, then another.

I reach the police station.

A camera atop a window welcomes me. I go near the door on the left. The camera pans to its right. I look up at the camera. The camera tilts down to respond to my gaze.

I am inside the station now. Three cameras watch me. I walk through the corridor. There is a flight of stairs on the right. On the first floor I walk past a room. The sign there tells me it's some kind of a control room. Through an open window I see a man sitting in front of a panel. There are four monitors on the panel. Each monitor is divided into four screens. The man is working with buttons and switches. Each time he presses one, the image on the panel changes. I am still standing there, riveted.

The man senses something. He looks up at me. A faint glint of recognition comes to his eyes. I smile at him and move on. Validated subjectivity.



ACT II, Scene 2

[A November afternoon. Inside the Nicholson cemetery, near Kashmere Gate. A crew of four aspiring filmmakers pleading/cajoling/bribing the son of the chowkidar (watchman) to allow them to shoot a few graves. Near by, a bereaved family is submitting papers that would allow them to bury their departed one. Iram breaks away from the group and sits by a grave...]

IRAM: 'Leisure', derived from Old French *leisir*, 'be permitted', from Latin *licere*, 'be permitted', the -u- making its appearance only in the 16th century, means, among other things, "be permitted".³ Therefore, leisure might mean permission to: go to parks/have fun/entertain one self and others /enjoy/ have pleasure/indulge/recreate/do things at one's convenience/buy, wear, touch, feel...The embedding of authority in the imagining of the word 'leisure' adds a dimension to our understanding of the phenomenon.

To be permitted.

Entry by permission only.

Reserved.

Preserved.

Is it this obsession for privacy, which 'produces surveillance'?⁴

TAHA: And then surveillance produces its own 'assemblage'⁵ of apparatuses, the security guard at the gate of the club, the cameras inside it, the metal detectors at the cinema houses, the body searches at the auditoriums, the police checks on the roads, the attendants at the malls and bouncers at the pubs.

It redefines power and changes the way we approach spaces.

We constantly enact dramas of acquiescence/defiance at being surveilled.

We lower our voices.
We holler, shout, whisper.
We exhibit; we cover ourselves.

We open our bags, empty our pockets and show our pens, mobiles, lighters and key chains, become shifty-eyed when the red light atop a metal detector goes up producing a sharp beep... we smile, mutter, "Oh! Sorry!"

We display our small toy penknives, our loose coins. We unbuckle our belts to reveal the culprit metal studs.

At other times, with much annoyance, we produce our licence, with irritation we let the guard scrutinise our cars; with a little embarrassment we let him do a physical check of us, hands sweeping down our body as if it were an object, a container to be checked/a packet to be scanned/a thing to be examined/an item to be appraised.

What makes us comply with being examined, checked, identified? The sheer boring/mundane/trite/commonplace existence of this constantly mutating and multiplying 'assemblage' is making it an unalienable leitmotif of our times.



Act III, Scene 1

[Lying on the grass at India Gate. Soaking up the warm December sun. A pretence of reading Foucault's Pendulum, with eyes closed. A cricket ball rudely shakes the loafers awake. Children playing some distance away as ice cream vendors and balloon sellers roam through the lawns hawking their goods.]

TAHA: I read somewhere that the consolidation of the idea of nation after the First World War led to an embedding of the notion of surveillance in governance. Anonymity led to visibility as a marker of a 'legible people'.⁶

To be marked, identified, registered, enumerated, accounted for, stamped, measured, classified, audited, patented, licenced and surveilled, all that meant, in a way, to be governed.

Passport regimes restricted the movement of peoples across international 'borders', while intense legislative practices made sure that perennially shifting mobile populations are grounded, marked, identified, controlled and regulated.⁷

From: Anand V. Taneja <radiofreealtair@gmail.com>
Date: 01/12/04
Subject: Re: [Reader-list] The Act of Leisure

Here is a brief history of the death of a professional loiterer at the Humayun's Tomb Complex, or, The Grass Belongs to the Aga Khan...

1998 – I jump an old, crumbling medieval wall and land up in the walled garden surrounding Isa Khan's Tomb, an enclosure just off Humayun's Tomb; and so far, 'free entry', whether you jump the wall or enter through the gate.

2000 – A hot summer. I have to see off a friend at Nizamuddin Station, but am a bit

early. So I go to Isa Khan's Tomb, still free entry, climb onto the roof, and lie down in a small window cut into the eight-foot-thick drum supporting the dome for light and ventilation. Atop cool thick stone, I have a beautiful, undisturbed hour of sleep, waking up to see the names of many lovers carved into the plaster, evidence of other loiterers who lounged around here at peace. Many families loll around on the green lawns of Humayun's tomb, in the evening. It is a popular picnic spot.

2000 – Winter. People from the Narmada Valley have arrived at Nizamuddin Station in the morning, to protest against the Supreme Court's recent decision to raise the height of the Sardar Sarovar Dam. Volunteers from Delhi have been told that there is police surveillance on, and in order for the proposed *dharna* at the Supreme Court to be successful, we have to disperse all over the city. We tell the inquiring guard we're here for Deve Gowda's *Kisan* (Farmers) Rally, and thus are left in peace.

2001 – Railings go up around the Humayun's Tomb Complex. The entry to Isa Khan's Tomb is now also ticketed. I get used to being asked the potentially profound question, "Kahaan se aaye hain? (Where are you from)?" The Jahaan-e-Khusrau Festival starts; the cheapest ticket is priced at Rs. 100.

Sometime in 2001 – There is a shootout in the parking lot at Humayun's tomb. The police kill an alleged terrorist.

2004 – Much money has come in to the Humayun's tomb complex from the Aga Khan trust over the past few years. Part of the money has presumably been spent on the hi-tech entry turnstiles with magnetic strip cards, operated manually, by the security guards. And on the computerised ticketing. Inside, there are notices that warn you not to sit on the grass, and there are many guards patrolling to ensure that you do not. And last Sunday, I noticed that men, in plain clothes, were noting down the number of each and every vehicle parked at the complex.

From: Zainab Bawa <coolzanny@hotmail.com>
 Date: 30/11/04
 Subject: Re: [Reader-list] The Act of Leisure

An experience, which I very clearly remember, had taken place with my sister, a friend and me. This was three years ago.

After watching a movie in the Excelsior Theatre near Victoria Terminus (VT), the three of us proceeded towards VT station. We stood by a corner of a shop in the subway and were chatting. The private security guard came up to us and said, "This is not a place to hang around, get away from here". My friend, who was male, was irritated and replied that since we were not creating any trouble and were neither in the way of the people or the shop, he had no right to shoo us off. We stood there for some more time and I think the guard kept watching over us. Normally, in Mumbai, I cannot imagine hanging around in a street that has private residences and is quiet. I think this is how New Friends Colony is, having been there once. It is not surprising that you would get shooed off just for hanging around there. If I have to wait for somebody outside Regal Cinema at Colaba, the guard of the cinema will keep a watch over me, wondering what I am doing – am I soliciting clients,

i.e., am I a prostitute? If I am dressed like a South Mumbai yuppie, then I am okay because it means that I am waiting for my bunch of friends to join me for a movie.

ACT III, Scene 2

[Christmas Eve. Late evening. Taha buying cigarettes from the paanwala near the Ego Thai restaurant in the Community Centre. He deliberately sits at the fountain. The restaurant security guard in a khaki uniform walks by.]

IRAM: Leisure also means, “opportunity to do something”.⁸ Which means that not doing anything even when there is ‘opportunity’ might constitute ‘non-leisure’. So, what happens when you engage actively in ‘non-leisure’ – if you loiter, dally, dawdle, hang around, linger, loaf, skulk, straggle, or wander? Should I expect to undergo an experience similar to Zainab’s?

TAHA: Spaces like community centres, malls, cinema halls, theme parks etc., are workspaces for some but leisure spaces for most of the people who throng them. Here, there is an active intertwining of surveillance and leisure, of inclusion and exclusion, of access and regulation, of denial and entry.

At one end, there is Manisha, our mutual friend. Well, since she is a ragpicker/street kid/beggar here, she can’t go inside Ego Thai or Italia or any restaurant, even if she produces enough money to avail of exotic delicacies. At the other end, those who can afford these are looked upon by the gaze of close-circuit cameras.

Many sites of leisure with nodal attachments to surveillance are also spaces of ‘reproduction and reinforcing of social divisions’.⁹ Societal apportioning is experienced at other places too. A simple act of walking through a gated colony like Maharani Bagh at night, for instance, would require you to be situated within the narrow parenthesis of a particular socio-economic profile.

I read in a newspaper that public parks falling within the premises of these areas will be handed over by the authorities to be managed by private residents. Many Resident Welfare Associations like the one in Vasant Vihar have asked the MCD to hand over the colony park, and sought permission for displaying advertisements there to earn revenue.¹⁰ Maps and metal plaques at these sites signify a quasi-legal sort of “ownership and establish rights of access”.¹¹ Like the park maintained by residents of Maharani Bagh.

IRAM: Then, does ‘access’ becomes the keyword with which the script of governance is written? Is this latest initiative by the Delhi state government part of the schema to set terms of entry to places?

TAHA: I also wonder at the purpose of initiating actions to aerially map the city, of which the newspaper informs me.¹² Imagine, small drones fitted with a dozen cameras deployed to click thousands of photographs of every piece of property: houses, buildings, hotels, office complexes, colleges, religious structures, *jhuggi* (squatter) clusters, lanes, colonies,

housing societies, malls, schools, cinema halls, stadiums, ramshackle edifices, ruins, shops, streets, by-lanes, universities or bus stands.

Such technology could have multi-purpose uses, such as enforcing building by-laws or keeping in check any unauthorised construction. But an act like this would account to a blatant violation of the amendments to the Delhi Municipal Corporation Act, which prohibits the MCD inspectors from entering any building to calculate the covered area!

A curious change is shaping the city's landscape. Unobtrusively. Creeping into our lives, our selves.

The Janus-faced state subverting its own law.

Bhagidari (partnership)¹³ with its own divided self!

IRAM: Mapping acquires significance in diverse terrains. When a land is mapped, it becomes territory. A land possessed. Imaginings of that space change and acquire divergent dimensions.

It becomes a marked domain.

It gets an identity that is sanctioned by power.

It becomes visible to the agency of the state.

Conversely, if a land is not mapped it remains a non-space. Something that exists, but is not seen. An imagination of it, then, becomes difficult. It lies beyond the logic of principles, of duties, of the Constitution, of expectations, of acts, of plans, of laws, of regulation, and of 'legitimacy'. People may inhabit it, but one wonders in what form the state would delineate them when it fails to visualise the land they live on. The Delhi Road Map, 2003,¹⁴ is a case in point. It does not have any markings of Kilokri, an area where we reside.

TAHA: Kilokri is home. A small village, or what I call an urban village, on the edges of Yamuna just off the Outer Ring Road. It is inhabited primarily by upper-caste Hindus, who have been living here for ages; the Sikhs who came here after the 1984 anti-Sikh pogroms; and some Muslim families. There is a sizeable Tamilian and Keralite population here too, besides a substantial shifting population of migrants: students, call centre workers, professionals, and skilled, semi-skilled and unskilled labourers from all over India. We have a police station, which maintains a check on all the tenants by maintaining databases acquired through tenant verification forms. All of us had to fill out that form and give proof of permanent residence, office address, phone numbers, family details, etc.

IRAM: Kilokri has a huge *gurdwara*, a small mosque and a temple. But none find mention in this map, even though places of religious worship are listed on the map in other areas. This not to say that Kilokri is not mapped at all, it does find a mention in the more detailed cadastral or estate maps, the Delhi master plan or the Delhi Police maps. But the conspicuous absence of an older place like Kilokri in a map of Delhi, where all recently developed enclosures, such as Jeevan Nagar, Bhagwan Nagar or Siddharth Extension are named, seems intriguing. Here, the conjecturing of a piece of land swings between the

obtuse terrains of cartographic invisibility and an extremely policed and surveilled reality.

Situations where one is not legitimately mapped but 'legitimately' controlled, lead to an intensely fought, almost daily, routine low-intensity conflict with the authorities. The Delhi Police, in the case of Manisha. She might not have a PAN card, a voter's ID card, a driving licence, an arms licence, a passport, a birth certificate or even a ration card. The police constable feels no compulsion to restrain himself from hurling abuse and at times using physical force to hurt a seven-year-old girl, because she dares to ask for alms from passers-by. The space accorded to Manisha becomes a space like Kilokri; something that is looked at, but not marked.

The unavailability of the souvenirs of legitimacy is tantamount to a person being deemed illegitimate/invisible in the eyes of the state. This absence leaves these persons/spaces unguarded, making them vulnerable to experimentations of master plans, policies, policing and regulation, even while "reinforcing the status quo and freezing social interactions within charted lines".¹⁵ These 'conditions' influence the interiority of those who wish to avail of a space. Thus, going to cinema hall/mall/theme park/colony park would call for a certain type of behaviour. Failure to comply will result in rejection. Usually a language of non-legality/high morality is used to oust the non-conformer.

TAHA: I remember, almost a month after the Pandu incident, I'd gone to the Community Centre to get some photocopying done; but this time I had taken care to shave, comb my hair properly and wear 'presentable' clothes. I took great care over my appearance. The motto was: "Taha Mehmood, you can't afford to look threatening/not normal/out of place". Bikas, I remember, would not sit on the footpath, the way we used to in our first year. He would always say, "Cops will bug us..." When I was called to the local police station for tenant verification, I was at my affable best. Low-voiced, sweet, ever-smiling, obliging, articulate and well behaved. Even though I was fuming! I hadn't done anything wrong/illegal, etc. Yet I was careful to not to incite the anger of the constable.

Moreover, I feel that putting in place zones of influence expands the notion of territory. At the community centre at New Friends Colony, security guards not only act as gatekeepers but also as policing agents to ward off even a temporary acquisition of space by 'non-actors' like street children. So an upmarket restaurant like Ego Thai will place a security guard to prevent any loitering around its premises; and will appropriate public spaces by putting flower pots on seats.

ACT IV, Scene 1

[A cold January morning. Travelling on a bus to Sarai. Trying to read the newspaper as a hawker tries to sell Taha Bharat Sarkar ke Naye Qanoon (New Laws of the Indian Government) for Rs. 5. A headline says, "Shiela for mapping vulnerable areas: Steps towards disaster management".]

IRAM: Shiela Dikshit, the Chief Minister of Delhi, plans to map 'vulnerable' areas of the city.¹⁶ The discourse invoked is one of disaster management and of demarcating the landscape into categories of 'vulnerable' and 'non-vulnerable' areas.

TAHA: I have a feeling that her concerns might be followed by, first, an identification of 'undesirable'/'dangerous' spaces, and then by the reordering and restructuring of space along socio-economic lines. Where 'pollutants' are pushed to the margins of the map while 'non-pollutants' acquire the recently vacated space.

But experience shows us that there is a spin to this phenomenon, when the 'pollutant' negotiates its way through the system and refuses to disappear.

An average Delhi Street might be an example of this. Extremely contested and regulated space, filled with all sorts of people who come under the 'category' of 'illegal': migrant workers, vendors, *chaiwalas*, barbers, *bootpolishwalas*, beggars, etc. People who come from everywhere – mostly poor, acutely vulnerable people – who live precariously on the thin outer margins of society, make streets their home and get involved in daily, intensely fought and protracted battles with the powers of the land.

From: Solomon Benjamin <sollybenj@yahoo.co.in>
 Date: 28/12/04
 Subject: [urbanstudygroup] Surveillance in the Cities of the South

A few years ago in Delhi, on the way from the airport to Connaught Place, the driver of our taxi explained in great detail how giving a beggar money would get him fined via the interlinking of driver's licences with an electronic addressing system. There is also a Bombay NGO, part of 'Good Governance', where on seeing 'misplaced' hawkers, you can zoom onto coordinates and lodge a complaint (inspired by the Iraqi bombings?); in zips a special squad from the Bombay Municipal Corporation to evict them and seize their belongings. In Bangalore we also now have, as part of e-governance, a foundation funded by the country's foremost IT company honcho, to redo the land titling and to get it to American standards in 52 towns in the state. Words from the head of the organisation: "I can then, sitting in New Jersey, click and check out my property status, or identify which one to buy or trade in".

ACT IV, Scene 2

[Republic Day, 2005. At home. Watching children play cricket in the park below.]

IRAM: An alternate etymological meaning of leisure is 'time at one's disposal', from the Old French *leisir*, French *loisir*.¹⁷ For me, leisure would constitute a walk through the market looking at things that I would never buy, having a fabulous meal at a really stylish restaurant, a drive on the toll bridge to NOIDA, drinking a cup of hot coffee specially when it makes me late for work, gossiping with friends...

Or sometimes listening for a sound of silence amidst the din of crowds at the railway station, looking at the squirrel that alternatively lives in a banyan tree and on my neighbour's wall, cleaning my old book rack, dusting the books I would never read...

TAHA: I was once talking to a friend who works in a prestigious call centre in Gurgaon. Let's call her Hazel. For her, free time at the office was a performance. Often she would know that she was being watched in the canteen by a CCTV camera or her superiors. She was always conscious of her language, action and behaviour. She says that her job changed the map of the city for her. Hazel and I live in different Delhis. Night is a workday and the day is sleep-time for her. Even having a cup of coffee together is a luxury.

Earlier she would hop on the bus and was off to Central Market, Lajpat Nagar, every week. Now it's usually NOIDA or Gurgaon. Gift vouchers to shopping malls, discount slips for branded goods, free tickets to multiplexes, parties organised by the company, rule her life. Very much like Aniruddha, who, even though he celebrated New Year's Eve with me, remarked that, "It required balls to miss the office New Year bash". Hazel, for instance, will never carry the kind of mobile that you and I use. She would taunt me jokingly, "You can't even MMS...no fun".

From: Aniruddha Basu <abose25@hotmail.com>
Date: 28/11/04
Subject: Re: [Reader-list] The Act of Leisure

Leisure to my mind is entirely contextual. Leisure in the private sector is often a part of official policy. They are recreations formulated by the HR in an organisation to help employees de-stress and unwind. So that they can perform better and increase productivity. My friend who is working in American Express was asked to go to a resort in Rajasthan for a few days, for a 'change of scene'. Any refusal to go would be met with frowns and disapproval. Another friend in *The Times of India* has a compulsory yoga session in the mornings on weekdays, due to which he has to reach office one hour earlier. Ad agencies are hosting an interoffice cricket tournament, with match practice on weekends. Most schools have their own extracurricular activities after school hours. The list is endless.

From: Avinash Kumar <avinash@sarai.net>
Date: 08/12/04
Subject: Re: [Reader-list] The Act of Leisure

From my personal memory of school days, I recall certain teachers who would always ask us to 'read' during our 'leisure period' (that was when a teacher was out of station or indisposed, etc.). These readings could be anything, from a novel to something for mathematics homework (for which I was always tracked skilfully by a certain teacher who had taken a liking to me and who thought I should devote more time to practising sums). It was here that I tended to agree more with the idea of 'leisure' expounded by a certain geography teacher who talked about Bimal Mitra's novels, and a certain Hindi teacher who kept egging me on by asking what novel I was reading those days. And sure to earn brownie points, I would always oblige him with a certain exotic-sounding name. Actually, all my free periods would be spent in reading some novel or the other.



ACT V, Scene 1

[One evening, last week. Sitting in the Café Coffee Day veranda at the NFC Community Centre. Going through the recent purchase of CDs and books from South Extension.]

TAHA: This CD probably has an RFID tag...¹⁸

IRAM: Yes...Maybe...Probably your Metro card and passport also have it... you could have one in your jacket too. But...do you care?

Let us look for Manisha. The last time I came she was not to be found, and I spoke to her aunt instead. I heard the story again. Of Faizabad, of snooty relatives, of selling all the land...

But she looked worried. We spoke for quiet a while and she told me of the time when a security guard here had kicked her. She was pregnant at the time, and lost the baby.

Maybe it was an accident.

Maybe it didn't matter.

TAHA: You will not find Manisha today. She has gone with an NGO for some camp.

NOTES

1. Sennet, Richard. "The Public Domain" in *The Fall of Public Man* (Cambridge University Press, 1976, Cambridge).
2. Lyon, David. *Everyday Surveillance, Surveillance and Society* (online surveillance studies journal; ISSN 1477-7487).
<http://www-surveillance-and-society.org/journal.htm> (as accessed on 15 December 2004).
3. <http://www.etymonline.com/index.php?search=leisure&searchmode=none>
(as accessed on 5 October 2004).
4. Lyon, David. "Understanding Visibility, Mobility and the Phonetic Fix".
<http://www-surveillance-and-society.org/journalv1i1.htm> (as accessed on 15 December 2004).
5. Lyon, David. *Everyday Surveillance, Surveillance and Society* (online surveillance studies journal; ISSN 1477-7487).
<http://www-surveillance-and-society.org/journal.htm> (as accessed on 15 December 2004).
6. Scott, James. In Caplan, Jane, and John Torpey (eds.), *Documenting Individual Identity* (Princeton University Press, 2001, Princeton) p.1.
7. For more on this, see Caplan and Torpey (eds.), *op cit*.
<http://www.etymonline.com/index.php?search=leisure&searchmode=none>
as accessed on 5 October 2004.
9. Lyon, David. *Everyday Surveillance, Surveillance and Society* (online surveillance studies journal; ISSN 1477-7487)
<http://www-surveillance-and-society.org/journal.htm> (as accessed on 15 December 2004).
10. Barrow, Ian J. "Territory, History, and Legitimacy". In *Making History, Drawing Territory* (Oxford University Press, 2003, New Delhi) p. 14.

11. <http://delhigovt.nic.in/bhagi.asp#8> (as accessed on 17 December 2004).
12. *The Hindu*, 8 September 2004.
13. The Citizen's Partnership in Governance
 - * is a means for facilitating citywide changes in Delhi
 - * utilises processes and principles of multi-stakeholders (citizen groups, NGOs, the Government) collaboration
 - * applies the method of Large Group Interactive Events
 - * aims to develop 'joint ownership' by the citizens and government of the change process
 - * facilitates people's participation in governance <http://delhigovt.nic.in/bhagi.asp> (as accessed on 9 December 2004).
14. Delhi Road Map, Tourist Publication, 2003, New Delhi.
15. Harley, J.B. *The New Nature Of Maps: Essays in the History of Cartography* (The Johns Hopkins University Press, 2001, Baltimore/London) p. 79.
16. *The Hindu*, 14 December 2004.
17. <http://www.etymonline.com/index.php?search=leisure&searchmode=none> (as accessed on 5 October 2004).
18. Radio Frequency Identification.

Surveillance, Performance, Self-Surveillance

Interview with Jill Magid

GEERT LOVINK

The Amsterdam-based American artist Jill Magid was a 'must-see' at the 2004 Liverpool Biennial. Her work fitted in with the Biennial's theme of the city and the 'engagement with place'. The installation, "Evidence Locker", shown at the Tate Gallery and the Foundation for Art and Creative Technology (FACT) Centre for new media and screen culture, is a seductive play with Liverpool's CCTV infrastructure. Instead of portraying citizens as victims of Big Brother, Magid's work opens up a new field of art and activism in which predictable forms of protest against the almighty eyes of power are turned into a dandy-like performance.

Early in 2004 Jill Magid spent 31 days in Liverpool – the length of time CCTV footage is stored, unless it is used as evidence of a crime. Wearing a red coat, she was followed by the CCTV cameras, and an intimate relationship between her and 'the Observer' developed. The installation consists of a variety of formats: from a printed daily exchange with the Observer, to audio files of Citywatch employees describing 'suspect' behaviour of individuals they follow, to Jill strolling through the inner city shopping zone.

There are two outstanding sections. In one, the Observer is guiding Jill, who has kept her eyes closed, through mobile phone contact, while she moves through parts of the city and from one camera to another. The second is a short piece, with Jill on the back of the Observer's motorbike: blurred images, switching quickly, until they drive outside CCTV reach. In the following interview, which was done via email, and in person at FACT in October 2004, we talked about the Liverpool Biennial project in relation to Magid's earlier work, and about the public response to this remarkable piece of urban techno-poetry.

"(...) I will fill in the gaps, the parts of my diary you are missing.
Since you can't follow me inside, I will record the inside for you.
I will mark the time carefully so you will never lose me.

Don't worry about finding me. I will help you. I will tell you
what I was wearing, where I was, the time of day...If there was anything
distinguishing about my look that day, I will make sure you know (...)"

- "Evidence Locker", Prologue

City of L. City Watch CCTV and the Data Protection Act 1998

SECTION 1

About Yourself

The information requested below is to help the Scheme

- (a) satisfy itself as to your identity and
- (b) find any data held about you.

PLEASE USE BLOCK LETTERS

Title (tick box as appropriate) Mr Mrs Miss Ms

Other title (e.g. Dr., Rev., etc.)

Surname/family name MAGID

First names JILL STEPHANIE

Maiden name/former names

Sex: Male Female

Height: 5' 3 1/2"

Date of Birth: 25/02/73

Place of Birth: BRIDGEPORT, CONNECTICUT, USA

Current Home Address (to which we will reply): *IF REPLY BEFORE MARCH 7TH:

JILL MAGID, EGELANHERSTRAAT 46-I, 1015 PN AMSTERDAM, NL.

* IF AFTER: c/o CHERI MAGID, [REDACTED] BROADWAY #3F, NEW YORK, NY, 10024

Postcode: (IN [REDACTED] JAN 01 - FEB 01 @ [REDACTED] RODNEY STREET 19AR L [REDACTED] USA.

A telephone number will be helpful in case you need to be contacted. Tel. No: in HOLLAND = +31(0) [REDACTED] IN NYC: 212 741 [REDACTED] (rainy collection)

If you have lived at the above address for less than 10 years, please give your previous addresses for the period:

Previous address(es)

Dates of occupancy From:

AUG 94 - AUG 95
?# COLLEGE AVE, ITHACA, NY 14850 USA.

- JAN 03 → DEC 04
Egelanherstraat 46-I, 1015 PN Amsterdam, NL
- JAN 02 → DEC 03
Louis Ventstraat 83, Amsterdam, NL
- JAN 01 → DEC 02
Valkenierstraat 31 Amsterdam, NL
- AUG 00 → DEC 01
142 WEST 87th ST, #C 2
NEW YORK, NY, 10024 USA
- SEPT 99 → JULY '99
752 TREMONT STREET #8
BOSTON, MASS. 02118 USA
- SEPT 98 → AUG 99
222 R HAMILTON ST, CAMBRIDGE, MASS. 02139 USA
- AUG 95 → JULY '98
432 W. 47th St # 5W NY, NY 10036 USA

GL: The dominant presumption about surveillance is that it turns all civilians into victims. Instead of creating a feeling of security, CCTV systems treat each of us as potential suspects. At least, that's the common belief. How do you look at this widely shared set of ideas? It's funny that political activists, and also artists, I must add, have not yet transcended the surveillance ideology.

JM: I have never looked at surveillance technology from the position of a civilian under its gaze. Or rather, I should say that when I have done so, it has been in response to a question such as this. I was drawn to surveillance technology for its potential as a tool that offered specific qualities and capabilities; CCTV systems enabled me to see and capture myself (and my body) in a form that I could not experience without it being employed. Surveillance cameras create stages, or fixed, monitored platforms. Under their gaze, there is a potential for me to act, and a potential to save this act as a recorded event. By watching an area rather than an individual, the camera in its static position seems to favour its context over the pedestrians passing through it. It seems to say: the city is permanent, the civilian ephemeral.

In a positive sense, this technology offers me a way to place myself, to become visible (and potentially permanent) within the city, through a medium bigger than myself. It is thus a creative field in which I choose to play. In terms of its political position (as maintaining security or, conversely, invading privacy) I see these positions as qualities of the technology itself: criteria of the tool that simply makes its use, in my way, more loaded. I have also looked at CCTV cameras as objects, or visual signs.

In my past project, "System Azure Security Ornamentation", I played with the camera's political ambivalence: between its position as a tool that protects public space as 'watched space', or as a *sign* of watched space. As a sign, the camera stands more as a reference to the body or institution that is watching rather than as a tool with the function of generating security. I wondered, are the cameras ornamental? If so, do they signify authority?

I approached Police Headquarters in Amsterdam and asked if I could cover the surveillance cameras on the building's façade with fake jewels, as an art project. They rejected my request and the idea of working with an artist. I remade myself into a company, System Azure, and again approached them with the same question, this time for a fee. After months of negotiations, I succeeded in officially covering four of the Headquarters' cameras in jewels, in colours with police-assigned meanings (see www.systemazure.com). Even here I do not feel I was taking sides politically, I was more interested in the camera as an image that triggered questions of meaning, even from those who controlled them.

GL: In your writings for the Liverpool "Evidence Locker" project, you talk about the city of "L". Everyone will understand that you mean Liverpool. Why have you chosen to use an abbreviation? Liverpool is not an average city. It's quite an extreme and exceptional case, in terms of its history, decline and attempts to revitalise urban life. What's special about the Liverpool surveillance culture?

JM: Using "L" was not really meant to mask the city's identity; it was rather a way to place this identity as secondary, or less important. This question reminds me of the first: in that both CCTV and Liverpool have their own histories and connotations so loaded with

preconceived images and critiques that those suppositions come before the story I want to put forth. When I speak of CCTV or surveillance in relation to this piece, or those previous, I try to use analogous terms that are slightly less recognisable: such as spelling it out as ‘closed circuit video’, or, as in the book that accompanied “Evidence Locker”, “the camera” or “you” to replace those watching through them.

I want to get beyond presumptions of the system, or the city, so that the qualities or details that get less attention – that, for me, truly make them up – can be foregrounded. What is special about Liverpool’s system is the criteria it is run by: the 31-day period of holding footage, the laws of the Data Protection Act 1998 (a British act), and the fact of it being so new (the system on this scale is one year old). Some activists based in Liverpool remark that the cameras are symbols of hygienic space, in which “unwanted” are targeted and removed; or as marketing signs to businesses and consumers that the city is now watched and thus safer. While I may agree with these ideas, the debates around them run parallel to my own questions and desires. I was more concerned with the size of the system and how the presence of so many cameras turned the city into a movie set with 242 cameramen.

GL: For “Evidence Locker”, you have chosen to take up the role as the red-dressed heroine, the seductive female dandy who strolls through anonymous metropolitan areas. In this way the story of urban surveillance systems, so to speak, steps back and becomes an instrument in YOUR story. What does this reversal of functions mean to you, compared to what it might mean to the viewers of the installation?

JM: The desire to bring abstract concepts or technologies toward myself in order to understand them intimately is a constant within my work. Liverpool’s CCTV system is extensive, based on complicated legal structures and anonymous as *public* video surveillance. To come to know it, I needed to use it, to add myself into its equation. I recognised the system’s potential to extend beyond its prescribed intentions. For me, this potential was romantic: I could be embedded into the city’s memory for seven years; the city could be my stage; I could perform and be watched. If what I created was not my story, but someone else’s or that of an invented character, I would not have been able to feel it in the same way. Only by being watched, and influencing how I was watched, could I touch the system and become vulnerable to it.

I designed the two installations, “Evidence Locker” at the Tate and “Retrieval Room” at FACT, in a way to bring the viewer along my journey, along a loose narrative path. At Tate you enter a controlled space, like that of the secret CCTV station; and at FACT you ‘remember’ the experience through retrieved footage and my letters.

The viewer approaches the work as a ‘third party witness’: he or she watches me being watched. I imagine some viewers identify with the controller and some identify with me. I am *an individual* of the public under view, one who has been singled out. Some people find this position scary and others find it desirable. I found it to be the latter.

GL: Late in 2002, during the WorldInformation.org festival in Amsterdam, you had created a work that involved police security cameras. Was it really different working with the Amsterdam police department?

JM: It was very different, but this difference reflects my approach. With System Azure, I transformed myself from an artist to a businessperson in order to be seen by the police.

SECTION 5

DECLARATION. (to be signed by the applicant)

The information that I have supplied in this application is correct and I am the person to whom it relates.

Signed by: *Will Magist* Date: *February 24, 2007*

Warning – a person who impersonates or attempts to impersonate another may be guilty of an offence.

Before returning this form

- Have you completed ALL Sections in this form?
- Have you enclosed TWO identification documents?
- Have you signed and dated the form?
- Have you enclosed the £10.00 (ten pound) fee?

Further Information:

These notes are only a guide. The law is set out in the Data Protection Act, 1998.

Further information and advice may be obtained from:

The Information Commissioner,
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 Td. [REDACTED]

Please note that this application for access to information must be made direct to City of L. City Watch CCTV (address on Page 1) and NOT to the Data Protection Commissioner.

My intention in either case remained the same; this transformation was necessary for them to hear me. I was curious to explore how those in authority related to their cameras – as ornaments or as serious tools of security. Once we established the cameras' ability to act as architectural ornaments for the police building, the negotiating space and the project itself became more theatrical.

The deeper we got into the patterns and colours of the fake jewels, the farther we moved from the camera's so-called intended function. It was this slippage that intrigued me; I questioned the representation of power versus the activity of power.

Working with the Liverpool police was more collaborative. I did not clearly state my position in terms of career, but rather my interest in using the system. The work was not about representation, but about function. I wanted to expand the function of the system – a function that was latent within it – and I needed them to work with me.

GL: In Amsterdam your artistic strategy consisted of the 'beautification' of public security cameras: ornamentation of something that is essentially ugly and suspect. Did you try to make the cameras visible? Was the idea as simple as that? I found it interesting that you did this in the red light district.

JM: While the final product, the bejewelled camera, is simple, the story behind it is layered. This is true for a surveillance camera even before it is ornamented. Surveillance cameras are painted beige so as to not stand out too much; yet, as with the police cameras I used, they are often large and prominently placed. The police themselves, remarking on the tools' inherent contradiction, explained how the perception of the cameras depended on who was looking: invisible to the innocent civilian, yet a deterrent to the criminal. To be hidden and to simultaneously act as a signifier is quite an ambiguous position!

Attached to the police headquarters, the cameras announce their power: the power to look down on those walking by, from nine different positions. In this way the camera is both an ornament and a tool of power. A security camera on a police station is like a gargoyle on a castle.

It was the police who offered the colours, and the meaning attached to them. According to the authorities, the colour red, meaning *liefdevol*, 'full of love', represents 'police love'. What is that, and what does it mean? Love for whom and in what form? My proposal to ornament police cameras in the red light district in red jewels simply put that question out there. In this area of Amsterdam, red is the sign for prostitution; the colour signifies the place of consumption and the kind of services rendered. To use red on the police cameras adds this meaning of the colour with that of the police. What happens to their meaning then? Asking the police to cover their cameras in red jewels (and red hearts) is also a way of asking them to claim responsibility for their cameras.

GL: You mentioned that there are those who are exhibitionists, and those who are not.

JM: Some viewers who saw my work reacted to me in a kind of horrified way, saying how scary they found my 'watched' position to be. Others told me they wished it had been them. One man said that he wanted to be "the girl in the red coat on the back of the motorcycle", in reference to my video entitled *Final Tour*. I have also been told that there seems to be a large group of young women who are drawn to the work as a kind of escapist fantasy. I did experience this to be true when I returned for our talk at FACT. I am not surprised by the two opposing reactions, as many of my projects in which I have placed myself before the camera have elicited similar contradictory responses.

I did a project called "Lobby 7" at MIT, in which I hijacked the lobby's informational monitor to broadcast my own transmission. This transmission was a real-time exploration of my body beneath my clothes via a pinhole surveillance camera that I held in my hand. While the experience of exposing myself in this lobby was terrifying, it was also exhilarating. I created a new relationship with my body, as well as to the lobby and the people in it, via this technology. It left me stronger and yet more vulnerable. I don't assume that everyone wants to feel this, or would feel this way from the same performance. We all choose the kind of relationships we like, and the roles we like to play.

GL: How would you describe the audience responses to the piece? It certainly raises a lot of questions, in particular about your role as a performer and artist.

JM: During the performance I was not aware of the audience response; I did not take my eyes from the monitor. I watched myself while the audience appeared and aggregated in the lobby behind me. You might call them witnesses. I could hear comments of those people who watched closely behind me, and others as they passed.

I could hear one couple close by for at least half the piece; they discussed the

composition of my body on the monitor and how my skin related to the surrounding architecture. Two men, looking like professors, passed and one asked the other, "What is on the monitor?" His response was, "I think it's one of those videos about a baby being born". I was told seven police officers came in and asked people if they knew who had put the "sex tape" into the system. These reactions say a lot about how images of the (female) body, in general as well as in the academic environment of MIT, can be perceived, and also the assumptions that come with those perceptions.

In the days after the performance, at least five women came to me; each one said she wished it had been her on the tape. Other women I did not recognise gave me nods, smiles, or angry looks around campus. Both men and women seemed to look at me longer.

In the documentation video (I had people hiding in the balconies above, filming) it was clear that the image was not readily legible; the viewer would look at the monitor in confusion, and then his/her face would betray recognition. Some looked around to try and find out who was doing the self-surveillance, but many just stared at the screen. Viewers often changed the way they stood: pulling baseball caps lower, or crossing their arms before their chests. Others put their hands in their pockets.

The best reaction I got was from a professor of mine named Ed Levine. He told me that after he had seen the performance, he could never look at the lobby monitor again without seeing the image of my body on the screen.

GL: At MIT you studied with Krzysztof Wodiczko. Is it through him that you got involved in this type of performance?

JM: Not directly. Krzysztof was part of a team of professors, along with Dennis Adams, Julia Escher, Ed Levine and, later, Joan Jonas. I chose to go to MIT because I was no longer satisfied with my studio-based work. I lived in New York and felt a need to engage with the city directly. I was making architectural models that I wanted to build within the city, which would exist as pockets of silent or intimate space. The professors asked me if I had experienced these spaces I imagined, and suggested that until I was offered the millions of dollars it would take to build them, I should find a way to test my designs. I scaled the models down to wearable objects and clothing. The only way to test them was to use them in the urban environment. I guess you could call this the beginning of my performances.

GL: You have been trying to extract a film script out of the rich Liverpool material. Are you really thinking about a feature film? Would you use the original footage from the security cameras? Would it be fiction or something in-between, like a hyper-real fictionalised documentary?

JM: The original idea was to use the police footage I have, and to adapt the Subject Access Request forms (the letters) I wrote into a script. I hoped to make it a feature length film with a narrative structure closer to fiction than to documentary. From the beginning of the project I had wanted to treat the system as a film crew making cinema. Beginning this process of adapting the footage into a feature in Los Angeles this summer taught me a lot; the approach I used to make the videos for the art installation did not easily translate to a cinema space, and I am still considering how this can be done. There is surely a Hollywood story here; the question is how to do it. I am also curious to see if someone within the film industry takes this challenge on. I love the idea of police surveillance footage inspiring a

SECTION 2

Proof of Identity.

To help establish your identity your application must be accompanied by TWO official documents that clearly show your name, date of birth and current address.

For example: a birth/adoption certificate, driving licence, medical card, passport or other official document that shows your name and address.

A recent, full face photograph of yourself.

Failure to provide proof of identity may delay your application.

Document One : BIRTH CERTIFICATE

Document Two : PASSPORT

Photograph attached Yes No

SECTION 3

Supply of Information.

You have a right, subject to certain exceptions, to receive a copy of the information in a permanent form. Do you wish to:

- (a) View the information and receive a permanent copy?
- (b) Only view the information?

Hollywood film; of the project coming full circle. Surprisingly, I found that what I was faced with, adapting the footage for a feature, was closer to the process faced by reality TV editors, rather than the one faced by film directors.

GL: Why do you create narratives? They seem to drive your artwork.

JM: I don't often feel in control of the narratives that happen in my work. When a narrative does happen, I am usually riding along with it, to a place I am unsure of until I am there. I also would not say that narrative is consistent within my work. The work I do with mirrors is more of an action. With the mirror tools and videos, I cut small mirrors to fit the shape of my hand or to fit the object I want to catch or hold within them. For example, if I want to hold a skyscraper, I cut a small mirror the size of a pen. In this, I catch the Empire State Building. Through the video lens, I drag it across the skyline.

The narrative of "Evidence Locker" grew from a process, or a series of actions. My intention upon arriving to Liverpool was to use the CCTV system as a film crew, to act as the protagonist, and to be saved to the evidence locker forever; or at least for seven years. I planned to use the Subject Access Request forms as my diary in the city. I don't think most

of us imagine our diaries as a story, but of course it reads as a kind of narrative. The (love) story grew from the relationship that the controllers and I formed through the camera, especially with one of them.

As for the general occurrence of narrative, I would refer again to my desire to bring abstract concepts closer to me. A way to do this is to re-write or reconstruct myself into them. This process is a kind of storytelling to myself. It is this story I present.

GL: Could you tell us more about the difference you make between private and public spaces?

JM: To describe private space, I often speak of bubbles. Inside the bubble is private, outside is public. The boundaries are subtle, possibly invisible. The inside is softer, quieter, and time runs more slowly. Like Foucault's notion of heterotopias, this bubble is a mirror of its surroundings. *In the mirror I see where I am not.* A bubble can appear inside of other spaces, while everything outside its boundaries continues on as it was. In my example above, I use a small mirror to hold the Empire State Building in my hand. By using the mirror, I have managed to create a bubble for the tower and myself. Inside the bubble, I can hold the tower.

GL: What is self-surveillance, in your opinion? Is it self-examination, or rather an urge to control your own image and reach a stage of super self-awareness? Do you think that the presence of so many cameras means that we are 'internalising' technology? Is it really 'invading' our bodies and minds, or do you see ways to ignore it?

JM: Self-surveillance is a way of seeing myself, via technology, in a way I could not otherwise. In self-surveillance, I use a system or a technology as my mirror. The type of reflection I face is specific to the tool I am using.

Who I appear to be in that reflection is unfamiliar. The process of coming to recognise myself as I appear there is what I call my work.

Jill Magid is an Amsterdam-based artist who works with surveillance technologies. Her recent work was exhibited at WorldInformation.Org (Amsterdam, 2002), the Liverpool Biennale (2004) and Gallery de Appel (Amsterdam, 2005).

LINKS

Liverpool Biennial: www.biennial.com

Liverpool Biennial project: www.evidencelocker.net

Security Ornamentation website: www.systemazure.com

Living Between Laws

NINAD PANDIT

What is the true nature of laws? Are they intended to include more and more people or do they want to actually simplify the lives of the lawmakers by excluding as many people as possible? The term 'lawmakers' here is used in a broad definition which includes not just the various systems of the state, but also each individual seeking to control some aspects of the space around him/her.

Let us assume that all laws are based on certain pre-ordained understandings of what act/activity is 'right' in a space for a particular person. In this case, if the range of people and activities covered by laws is considered, it is perhaps possible to identify certain interstices between these spaces where the law does not exert control, merely because these spaces do not exist in the imagination (and therefore in control) of the Law. It is also possible that these spaces between laws are not controlled because it is inconceivable for the lawmakers that people could exist within them. This could be because the position of these interstitial dwellers is either 'illegal' according to some *other* laws, or because it is theoretically impossible to occupy those spaces physically due to anthropometric limitations, or there is some (legal or extra-legal) encouragement/persuasion to disregard the existence of these spaces.

What do these spaces offer us? They represent the very sites within the fabric that provide resistance to the narrative of the mainstream. By retaining their position as *almost legal*, the activities engendered by and contained within these spaces have the potential to expose chinks within the armour of the structures of authority.

This issue then brings up some peculiar problems that the act of lawmaking and enforcing confronts and creates. First, the idea of control over all things and acts that can be defined, and a denial (almost) of everything else; and second, the absence of any legal structure capable of dealing with the undefined/indefinable.

The essay will try to examine the act of lawmaking as a concept removed from these problems and placed rather in the 'realm of the publics', a (virtual) space that is informed by the existence of these several legal and spatial interstices rather than restricted by them. It will try to look at some ways in which:

- a) Limits to the imaginations of control mechanisms create these interstices in a city.

b) How these limits extract responses from the occupiers of these interstices.

The domain selected is Public Space in Mumbai. This is because 'Public Space' becomes the one domain where both the lawmaking authority and the people who subvert its authority are manifested most explicitly. It is interesting to see how these interstitial spaces between laws are occupied in various ways, since by remaining on the margins of lawmaking and implementation processes, they become micro-narratives of resistance to the power structures seeking to control them.

'Public Sphere' vs. Public Spheres

If the 'limitations' in our ways of imagining controls stem from the (social) space where the law is imagined, then it is this space that needs to be challenged. The idea of the 'realms of the publics' could prove very useful in this regard. I would like to stress that this seemingly all-encompassing term is in fact just a tool temporarily adopted to distance this argument from any notion of 'One Public' that may try to apply itself to Mumbai. Habermas' conceptualisation of the Public Sphere¹ often becomes the sole means of understanding public space in any context, in the absence of another clear and comprehensive theory that is more appropriate to the Indian context. However, Habermas' descriptions are deeply rooted in schemes of democracy specific to Europe. As Sudipta Kaviraj² writes,

"Habermas' work shows precisely how a specific configuration of the idea of the public emerged in the modern West. Paradoxically, this quality of historical specificity of his work has been widely ignored, with scholars striving to show the existence of a "public space" in widely dissimilar cultures. It seems to contribute to the great popularity of Habermas' argument at the cost of a serious misunderstanding...The other problem that one could have with Habermas' theory is its discursive nature, one that is rooted in a systematic but rigid application of reason and a denial of intuition. This could tend to neglect the representational aspects of the idea of the Public Sphere, such as connections of city space to collective memories made by simple acts such as the naming and renaming of roads".

The notion of the 'realms of the publics' therefore gives us an opportunity to distance ourselves from any aspirations that we may possess of imagining a uniform (and perhaps even happy) civil society. It gives us an opportunity to create systems of control or restraint informed by a knowledge of 'publics' that is based on studies and understandings, both researched and intuitive, of the way people live, rather than the way people should be living. And it simultaneously allows for varied interest groups to come together under a common cause.

Resisting Control in Space

What needs to be seen, of course, is whether such seemingly democratic understandings of the spaces where the lawmakers could position themselves lead us any closer to informing and influencing the way behaviours of bodies in spaces can be

controlled/monitored. The overarching influence of the global media has been instrumental in escalating concern over terrorism, and it seems that it may be a while before any decentralised/destabilised power structures are allowed to grow. There is already ample documentation of how security concerns are exploited for complete control over our public spaces. It is further compounded when architects trade possibilities of politicising public spaces with mere rhetoric. The World Trade Center redevelopment in New York City by star architect Daniel Libeskind presents us with an extreme example of such rhetoric in action. As Michael Sorkin³ writes,

“...The Freedom Tower is simply an office building, doubtless one in which free access will be heavily circumscribed by security demands and sky-high rents. It imply signifies liberty via a vague asymmetry meant to evoke the Statue of Liberty, a devoluted icon for an icon, abstracted beyond recognition...What has happened downtown is the creation of a plan that is essentially about business as usual, validated as appropriate by a laying on of sacral iconography. Everything receives its label – Freedom Tower, Wedge of Light, Park of Heroes, and so on – in order to create an aura of rhetorical piety to redeem activities that are anything but”.

The ‘people living between laws’ point us to the possibility of subverting these meta-narratives of control in public space. By their acts of resistance to the system, they enrich the way we envision and intervene in such spaces.

Some Case Studies of BMC Interventions

The Brihanmumbai Municipal Corporation (BMC) has on several occasions experimented with ‘schemes’ to try to control some aspect of public life, sometimes with noble intentions and almost always with hilarious propositions. November 2004 has been one such month of ceaseless entertainment, thanks to the Corporation’s Public Health Committee. These examples are representative of a kind of authority that completely misunderstands its task due to an almost self-imposed ignorance of the realities of life in Mumbai. The problem lies in one direction, but is addressed in an entirely different one. The power to both establish and enforce control rests in a few centres, which end up holding the others responsible for any mismanagement. The irony of the situation is however, lost on them. Reproduced from the city newspaper *MID-DAY*:

“Call us if you see a dengue mosquito! (10 November 2004)”⁴

The Brihanmumbai Municipal Corporation (BMC) wants to check the spread of dengue, which has already affected 70 people in the city this year. So what does it do? It does the most convenient thing possible: it asks Mumbaikars to inform the local ward office if they see the mosquito that causes dengue. And how are Mumbaikars supposed to know how the mosquito looks? Well, the BMC has worked hard enough to give them the right description! The mosquito, called the *Aedes Egyptii* or the dengue mosquito, is just over a centimetre in size, has vivid black and white stripes on its body and legs, and is seen during the day, the BMC says.

This idea of tackling dengue is the brainchild of civic health committee chairman Ramesh Naik. Naik in fact feels the problem of dengue has arisen because most people are not aware how these mosquitoes look or how they breed. If an 'identification' is made, the BMC says, people should inform the local ward office and get in touch with the Medical Officer Health (MOH) at the ward. The MOH will then send his staff to check the person's residence and surroundings for the probable breeding ground. If the squad suspects the dengue mosquito is present, the area will be sprayed with chemicals that will kill the pest".

"Bhaag, kuttay! (varna BMC earring degi) (24 November 2004)"⁵

If your local stray is wearing an earring the next time you see him, don't rub your eyes too hard – it's just the batty BMC at work. Ramesh Naik, chairman of the Public Health Committee, has proposed to make it mandatory for NGOs to put rings on the ears of every dog they sterilise. There is, he says, no other way for the BMC to tell if a particular stray has been sterilised. 'In fact, it is doubtful whether dogs are being sterilised at all. If they are, how come there are so many strays in the city?' Naik asks. At present, sterilised dogs sport a mark on the thigh, which Naik claims is not visible. 'They mark the inside of the thigh but it is not easy to lift a dog's leg to check. If we put rings on sterilised dogs' ears, they'll be easier to identify', he says. Atulkumar Shah, convener of the committee for the management and supervision of street dogs, flayed Naik's proposal. 'Putting rings on dogs' ears would cause a lot of problems. The rings could end up hurting them during fights', he says. And what is Naik's reply to this criticism? 'An earring is no big deal. It's not going to cause much pain. Don't we humans pierce our ears?' Shah, meanwhile, claims the proposal is being made to sweep the real issue under the carpet. 'They are not catching enough dogs for sterilisation, and now the BMC says it doubts if we are actually sterilising them. This is surprising, as their staff is involved in the process', he says".

These examples indicate situations of public life in Mumbai where power structures create certain controls which themselves produce interstices where people may exist. They contain within them the code to generate their critiques and resistances. As in the case of defining a body, where the focus shifts from the body to the means of its classification and identification for purposes of establishing control over it, the debate over sterilisation of strays is shifted to putting earrings on the dogs, and speculating as to whether it will hurt the animals.

Between Laws: The Case of the Virar Electrocutions

The problem of death by accidents caused while crossing the railway tracks in Mumbai is an old one. Poor surveillance, inadequate infrastructure on the platforms and a lack of public will has ensured that almost 4000 people die in such accidents every year, and this figure is increasing. According to official figures:

Death on the tracks:⁶

2000 3067 dead, 3478 injured

2001 3859 dead, 3411 injured

2002 3773 dead, 3297 injured

2003 3809 dead

However, since 2003 there has been an alarming rise in deaths caused by electrocution of passengers. These accidents are largely concentrated in the Churchgate-Virar fast trains on the Western line. The Vasai-Virar sub-region just outside of the Greater Mumbai city limits has experienced tremendous growth in the past few years. The volume of passengers has therefore increased significantly. While the Railways have tried to match this growth by increasing capacities on this line, it has simply been unable to solve the issue of over-congestion. These trains see some of the highest densities of people possible in any inhabited public space. To solve this problem of crowding, some enterprising passengers took to regularly travelling on the roofs of the coaches. However, this led to several such travellers being electrocuted by the 1500-volt DC overhead wires, and caused a huge uproar in the local newspapers.

The problem reached a climax in mid-2003, and the Railways finally decided to take some action. Six to eight Railway Police personnel were placed on every platform to deter and arrest offenders. August 2003 saw a greater increase in both offence and surveillance, with 160 people being booked in two days, as against a monthly average of 500 offenders. In addition, the situation kept getting worse, with people travelling on the roof of trains even during non-peak hours.

It was at this time that the Railway authorities came up with the innovative idea of using, as a deterrent, plates hammered with hard plastic nails on the mechanism that links one coach to the next. The space between two compartments is the most popular means of climbing to the roofs of the coaches. A small box-like projection becomes the first step, a small ladder forms the second and then one can clamber onto the roof. The board, a 14" x 14" square containing rows of hard plastic nails at close centres, each about 3" long, was placed right onto the first step, the box.

The simplistic rationale of this proposed solution, however, proved lethal. The problem could have been addressed in other ways: increasing the carrying capacities of the trains by increasing the number of coaches, refining the timetables, increasing the number of trains during peak hours, etc. The Railways, however, chose merely to deter people from accessing the train roofs, forcing commuters to devise other, almost suicidal, ways to get on board. Travellers in Mumbai are far more resilient than the Railways can imagine. With the hard nails in place, many people ignored Step 1 of the ascent, choosing instead to make a wild leap for the ladder, hurting or killing themselves in the process.

It would be interesting to know how the Railways classify these deaths; they were *not* due to electrocution. Over time these nails have been unable to bear the wear and tear of the daily grind, and are missing in parts. In some cases they have been eroded down to become excellent seats for people who would otherwise have none. The partially broken nails reportedly provide perfect traction for accessing the ladder, where people stand. At present, the only thing working as a deterrent is the fear of death.

Between Laws: A Strategy for Softer Cities?

If law enforcement itself is seen as a kind of a widely flung net, one can see the city immediately transforming itself into corresponding patterns of interstices so as to escape from the net and retain its 'freedoms'. Whether it is jumping fences to avoid overhead bridges, or wearing clothes with multiple pockets to transform one's body into a mobile shop, the city is quick and strong in expressing its dissent. An examination of such 'interstitial' behaviour could suggest, to local authorities, less regimented ways of (supposedly) controlling public spaces.

I would like to thank Ateya Khorakiwala and Sonal Sundararajan for suggestions which have enriched this paper. Some of the ideas explored and articulated here stem from my ongoing research at the Kamla Raheja Vidyaniidhi Institute for Architecture (KRVA), Mumbai.

NOTES

1. According to Habermas, the 'Public Sphere' is a social space where consensus emerges on matters of political morality. This public sphere presupposes freedoms of free speech and assembly, a free press and the right to freely participate in debate and decision-making. The public sphere thus mediates between the domains of the family and the workplace, where private interests prevail, and the state, which often exerts arbitrary forms of power and domination. From Habermas, Jurgen, *Structural Transformations of the Public Sphere* (MIT Press, 1989, Cambridge).
2. Kaviraj, Sudipta. "Filth and the Public Sphere: Concepts and Practices about Space in Calcutta". In *Public Culture* 10 (1): pp. 83-113 (1997).
3. Sorkin, Michael. "Critique". In *Architectural Record* (October 2004).
4. *MID-DAY*, 10 November 2004.
From <http://www.mid-day.com/news/city/2004/november/96717.htm> (accessed on 28 November 2004).
5. *MID-DAY*, 24 November 2004.
From <http://www.mid-day.com/news/city/2004/november/97727.htm> (accessed on 28 November 2004).
6. *MID-DAY*, 29 December 2004.
From <http://www.mid-day.com/news/city/2003/december/72503.htm> (accessed on 28 November 2004).

Negotiating Territory

ATEYA KHORAKIWALA

The act of naming a body is essential to its certified, documented existence, and to the deployment of rights and privileges registered to that body. The 'named' body's access to and use of public space is organised and coded by these rights, privileges, and laws. This essay is an attempt to understand how particular 'named' bodies negotiate the coded space they have been assigned, and their effort to claim public space.

The space the body inhabits is coded by the long and meticulous procedure of creating and amending the law. The categorised and compartmentalised 'self' is constructed through this process, and is the sum total of all its spatial allowances. The preamble of the Constitution of India begins in the unified voice of 'We', and then goes on to use the words 'socialist' and 'secular'. 'Socialist' attempts to deconstruct our class differences, and 'secular'¹ lifts us above our religious and therefore, in a sense, social differences. It goes on to use the words 'equality' and 'fraternity',² where fraternity implies the coming together of people who are the 'same'. It alludes to our differences in terms of belief, faith and worship, but refers to our basic sameness as human beings. It erodes our historical/embodied differences like caste, religion and sex, so what emerges is the construct of a unified person, one 'clean' body on which rules can then be imposed, applied or executed. It chooses to erase our sub-continental heterogeneity for a more colonial homogeneity.³

The idea of the basic similarity of human beings is continually used as a tool of rationalisation in the construction of the 'Indian' person. This mode of thinking colours the entire series of created laws, by allowing for a difference only in terms of belief, faith and worship, and not in terms of body or physicality.

The fissures in this methodology become evident, however, when certain laws need to be modified or applied differently for a group of people because of the body they inhabit. For example, gender or caste cannot be universally applied to all bodies.

One such law, Section 377 of the Indian Penal Code, reads: "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine".⁴

How does one interpret such ambiguous phraseology? One can never know what is meant by "against the order of nature". This bare framework imposes itself on the

homosexual body, fundamentally altering the space that the sexual body inhabits. Since one's identity and desire tend to collapse into one another, one's sexual identity becomes the foremost identity.

Although our culture has traditionally been tolerant to a range of imaginations, our Constitution was borrowed from a culture that was not so tolerant. "By equating consensual sex between adults to 'delinquent behaviour', the government reinforces the Biblical strictures disapproving of any sexual activity undertaken for pleasure and not strictly procreation".⁵ The Biblically influenced, popular scientific construction of the body and its binary construction of the 'normal' and the 'deviant' uses medical technology as a tool of correction. An easily accessible example is the body of the eunuch, which, suspended between constitutionally constructed gender poles of medical normality, either becomes the subject of continuous experimentation/medical correction or is violently pushed into the fringe.⁶

This construction of the 'clean' body parallels the Constitutional construction of the unified self. The language that the law uses exemplifies the feminist argument that the 'free rational self' masks a 'healthy, youthfully middle-aged, middleclass, heterosexual man'. This extends further: postmodern feminism claims that all attempts to provide a single explanation for women's oppression not only would fail, but also *should* fail. They should fail because there is no one entity, 'woman', upon whom a label may be fixed.⁷ This has led to re-imagining the self and fragmenting it, for what it is worth, into kaleidoscopic combinations of class, race, sexuality, gender and so on. They imagined within their territory the conflicting voices of all the individuals that through some way became the 'other'. This mapping of the other fails at the level of a mass resistance because it shatters the mass into a multitude of extremely small, often contradictory voices.

Silence is Violence⁸

How can one then create a space for the margin to speak? For any collective to speak up against the overriding homogenising voice of the law, it requires a name, a registration, a tool with which it can lay claim to the rights that a legal system bestows upon it. The problem with naming oneself is that it fixes you onto the chart of classifications like a butterfly on a pin board (e.g., the word 'homosexual' and its categories such as *panthi*, *kothi*, queen, transsexual post-op., pre-op.; or 'eunuch' and its further subdivisions like *jankha*, *suhaagan* and so on).⁹ It seems that the language with which the law is written expects to encounter such voices, and it silences them by fragmenting them into a minority.¹⁰ For a group whose name (e.g., the name 'homosexual') guarantees its illegality, it becomes essential to maintain many parallel identities. In order to have a platform to speak from, the group needs to slide between its multiple names.

My case study of The Humsafar Trust, a male sexual health agency in Mumbai, looks at the tactical tools that the margin uses to locate itself within the mainstream. This forms a base from which the margin can penetrate and continually shift within a territory coded against it.

The Trust's strength lies in the way it chooses to define itself, or rather, in its ability to slide between definitions. By defining itself spatially as opposed to verbally, i.e., as a place rather than as an ideology, Humsafar can take on whatever garb the situation requires. For the police and the Bombay Municipal Corporation (BMC), it is an organisation that deals with

the HIV epidemic; for gay men it is a safe social and cultural space; for students it becomes a resource; for activist voices it becomes a platform. For it to keep up these multiple faces, the trust needs to maintain a successful relationship with the Corporation's governing body. Over the past 10 years, the trust has built up much goodwill through its community and outreach programmes. It is the only gay organisation in South Asia that is located within a government building.¹¹

The formation of a trust for gay men is only the first step. To assign it space is to cross over from ideology into spatial territory. Issues such as where it is located, who its neighbours are, how this space presents itself, what is allowed within its boundaries, suddenly enter the frame of discussion. Located within a government building, the trust is right next to a Shiv Sena office (the same Shiv Sena whose cadres stormed theatres screening *Fire* (1996), a portrayal of two sisters-in-law trapped in failing marriages who find solace in a lesbian relationship). There is a mosque close by, and the area is dominated by the right-wing Vishwa Hindu Parishad. How was a homosexual community space created in this highly volatile territory?

The Humsafar Trust, conceptualised by a group of gay men looking to create a community, was registered in 1994. In 1995, they moved into the old BMC building at Vakola. In 1998, they received their first grant from MDACS (Mumbai District AIDS Control Society) to make a sex map that attempted to collect data on the number of practicing gay men in Mumbai and establish what percentage had HIV/AIDS. In 1999, they started their first AIDS programme. The opening sentence of their 2003 website¹² read: "The Humsafar Trust is a male sexual health agency in Mumbai metro, which started as a support system for gay men and MSM (men who have sex with men)¹³ in the city as the HIV/AIDS crisis started gathering momentum in the early '90s. The Trust now is multi-faceted organisation serving various needs of the MSM community with several activities that would help the community in battling the epidemic". The Humsafar drop-in centre has posters advocating safe sex, and literature on safe sex practices and STIs (sexually transmitted infections) is made available.

The inauguration of Humsafar as a public space on Diwali 1995 is described in *Bombay Dost* (Vol. 5, Nos. 2 & 3, Pride Publications Pvt. Ltd.): "It wasn't easy...[but] Convincing the Executive Health Officer of the Mumbai Municipal Corporation (MMC) was the least of our worries".¹⁴ The article claims that doctors were aware of the damage that AIDS could cause, if left unchecked, in high-risk groups such as commercial sex workers and gay men. The civic health service was already so burdened with the "burgeoning population" that it made possible the formation of the Trust to help deal with issues of male sexual health. The report mentions the names of all the doctors that attended the opening and all those who were "sensitive to their needs". Then it quickly slips in a paragraph about its one-year anniversary where "more than a 100 gay men turned up without invitations and without expecting booze or drugs on the premises". Because homosexuality is connected to AIDS in public discourse, Humsafar chooses to front HIV for a large part of its representation in public media.

The trust spent three years lobbying to acquire a space within a BMC building in Vakola, slotted to be a support space by the corporation. The standard resistance by the municipal officials in charge of assigning that space based itself on the "against the order of nature"¹⁵

rhetoric. But the HIV/AIDS epidemic played an important role in driving the focus towards a collaborative space between Humsafar and the BMC. The AIDS crisis creates a schism within an existing legal scenario that does not know how to address what it chooses to deny. The BMC's inability to deal with the health crisis provided Humsafar an opportunity to address crucial issues such as visibility, homophobia and community. To identify a crisis and use it as an opportunity is an astute tactical method of operating within a city. Yes, the AIDS problem is real. Yes, prevention and treatment issues are top priority within extremely high-risk groups. But there are other important truths of gay life to consider: the social and the personal, creativity, cultural production, and so much more. 'Illegal' bodies become so inscribed by mainstream culture that 'other' identities become forgotten, negated or erased, in the context of a general lack of space for safe self-expression.

In such situations like these, the complex parameters of homosexuality and the modes through which it is signified get reduced to bad cinematic experiences like Karan Razdan's *Girlfriend* (2004). In popular culture, these homophobic representations of the lesbian as an angry, possessive, abused and closeted woman are display points of a generic, voyeuristic fetishisation of so-called 'different' bodies. How then can the valid histories, real stories, and authentic emotions of 'illegal' bodies be fully rendered?

In such a situation, crisis becomes an effective tool. Once a standard and rather uninformed majority voice is silenced through paranoia, be it real or imagined, marginal voices can be heard and recorded through this artificially cleared space of a 'crisis'.

In October 2003, some drop-ins at Humsafar formed a group called the *Natale Tumchaiya Sathi* (I Have Adorned Myself for You). They perform the *laavni* (a traditional, popular Maharashtrian folk dance) in drag, for public audiences in open spaces. Such forms of cultural expression draw from the personal experience of the homosexual/transvestite body. This subverts the mainstream construction of the body by making the spectator complicit in the self-expression of the 'named', 'illegal' (non)citizen.

Humsafar's sister organisation, *Bombay Dost* magazine, works on similar principles. It uses the motto of safe sex and, within this, addresses all the issues that any gay person might encounter. It publishes gay-authored/gay-content fiction, it has the stories and paintings of gay artists, it reviews plays and films with gay themes and storylines, and of course, it includes a long list of personals as well as an agony aunt (a.k.a Papa Passion). It thus becomes a public platform for the safe expression of an 'illegal' desire.

In Mumbai, the gay rights movement has tactically entered the city through the corrective medical¹⁶ and the clean city discourses,¹⁷ with particular reference to the AIDS crisis. By subscribing to these civic discourses it becomes, ironically, a partner in municipal campaigns against 'disease' and 'deviance'. It negotiates its visibility in the public sphere through these mechanisms, which both accommodate and subvert the legal framework.

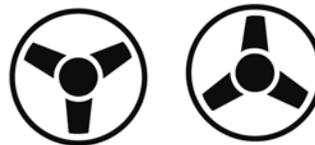
All the information in this paper is courtesy Ernest Noronha, Advocacy Officer, Humsafar Trust. Interview dated 25 November 2004. I would like to thank Rohan Shivkumar for being a continuous inspiration.

NOTES

1. sec-ular; Function: *adjective*
(a) of or relating to the worldly or temporal <secular concerns> (b) not overtly or specifically religious <secular music> source: <http://www.m-w.com>
2. fra-ter-ni-ty; Function: *noun*; Inflected Form(s): *plural –ties*
(i) a group of people associated or formally organised for a common purpose, interest, or pleasure: as (a) a fraternal order (b) guild (c) a men's student organisation formed chiefly for social purposes, having secret rites and a name consisting of Greek letters (d) a student organisation for scholastic, professional, or extracurricular activities <a debating *fraternity*>
(ii) the quality or state of being brothers: brotherliness
(iii) persons of the same class, profession, character, or tastes <the racetrack *fraternity*>
source: <http://www.m-w.com>
3. Murthy, Laxmi. "Big Brother in the Bedroom: 'Unnatural' Offences and Section 377". Sourced from <http://www.infochangeindia.org/analysis08.jsp>; last accessed 30 November 2004. The Indian Penal Code (IPC), enacted in 1860, was based on the English law prevalent at that time. While English law has moved on, enacting, in 1967, the Sexual Offences Act which decriminalised homosexual acts between consenting adults, Indian law continues in its outdated form.
4. http://www.indialawinfo.com/bareacts/ipc.html#_Toc496765260, last accessed 30 Nov 2004.
5. Refer to Note 3.
6. Surty, M. Zubair. "Eunuchs: An Encounter". Design dissertation, Sem. IX, Indian Education Society's College of Architecture. Surty discusses the process by which the body of the eunuch is analysed and classified by its exact physical specifications.
7. Michel Foucault talks about institutions like the asylum and the prison that correct or normalise deviant/illegal bodies (*Discipline And Punish: The Birth Of The Prison*, Vintage; reprinted 1995), and minds (*Madness And Civilisation*, Vintage, 1988). Possibly, medical technology wields a similar power when attempting to 'normalise' the body that is declared legally and medically deviant.
8. Meyers, Diana. "Feminist Perspectives on the Self". In Edward N. Zalta (ed.), *The Stanford Encyclopaedia of Philosophy* (2004).
9. Refer to Note 6.
10. Difranto, Ani. "My IQ". In the album *Puddle Dive* (Righteous Babe Records, 1993).
11. In *The History of Sexuality* (Vintage, 1990), Foucault claims that discourse creates categories and uses them to exert control over a system. The very act of creating names produces deviances and then attempts to correct them, but Foucault's premise is that the power lies in the act of naming.
12. All data courtesy Ernest Noronha, advocacy officer, Humsafar Trust, unless specified otherwise.
13. www.humsafar.org, last accessed 30 November 2004.
14. Men who have sex with men (MSM) is a behavioural pattern, as opposed to homosexuality, which is a particular form of identity with complex variations and gender ambiguities.
15. Kavi, Ashok Row. "Our Own Home". In *Bombay Dost*, Vol. 5, Nos. 2 & 3, Pride Publications Pvt. Ltd.
16. Refer to Note 7.
17. Sennett, Richard. *Flesh and Stone: The Body and the City in Western Civilization* (W. W. Norton & Company, 1996).



RECORDS



Tis Hazari Diaries

CHANDER NIGAM

Under the Sarai independent fellowships programme, I am researching the everyday life of the Tis Hazari complex. I am writing a diary as part of this process. Tis Hazari is the oldest district and sessions court in Delhi. My observations of Tis Hazari, the conversations I recorded there and the narratives that the space generates, follow.

Tuesday, 6 April 2004

As I finished my work in the court and entered my chambers I saw Sub-Inspector Narendra Singh seated by the table poring over some papers. My colleague Praveenji was seated smoking in the revolving chair. Praveenji and Narendraji are old friends and the latter frequently drops in. The two engage in spirited conversation. However, today I found the chamber uncharacteristically quiet. Breaking the palpable silence, I exclaimed, "Why all this hush-hush?"

Narendraji responded, "Madam, these papers have got to go before the court by 2 pm sharp and they are not as yet ready at 1.30..." I had seen him similarly engaged in investigation paper work earlier as well. I often found it rather intriguing that while presenting these papers, e.g., the sketch of the place of occurrence, the seizure memo, the statement of disclosure, the deposition, etc. in the court, it was always solemnly affirmed that these had been prepared at the scene of occurrence; but the finalisation was actually done in the chamber. Somehow beating the clock, Narendraji finished the paperwork and rose for going to the court. I called after him, "Narendraji, I have a couple of questions about your work". He was already aware of my

research project. He left, saying he would get in touch with me as soon as he got rid of the court matter.

As I had to go through a judicial file, I quickly finished my lunch and left. It was 2.30 pm. The second session had already started. In advanced the entire court, including the additional sessions judges. A Delhi Armed Police (DAP) constable brought a prisoner to the court from outside. A woman, carrying an infant hardly eight to ten months old in her arms followed them, almost running. She was probably the prisoner's wife. The constable entered the court and immediately came out. The woman standing near the prisoner tried to talk to him. But the constable on duty bade her to keep off. With his free hand the prisoner held the child and went on showering it with kisses. This thoroughly upset the constable. He severely reprimanded the prisoner, "If you wanted this, why did you go astray at all?"

This spectacle thoroughly confused me. I remembered the arrival of Romesh Sharma (charged with stealing a helicopter and having contacts with the underworld) for a hearing in this very court. He had entered stylishly, holding one end of his spotlessly clean white *dhoti* with two fingers, and gripping a maroon briefcase in the other hand. He was accompanied by a bevy of acquaintances with whom he engaged in lively conversation. Local police were marching at his front and rear as if they were from an SPG (Special Protection Group) squad. When it is the same court and the charges are also identical, whence this discrimination?

Ruminating on this, I entered the court. I secured permission for inspection of a file and approached Ahalmad. He made me wait for fifteen minutes before taking out a file from the stack before him and pushing it towards me. I inspected it. I am sure that if I had just paid him Rs. 20, he would have given the file to me immediately without even bothering to verify whether I had formal permission to see it. As I proceeded to go through the file, my mobile began to buzz. I learnt that Sub-Inspector Narendraj*i* was waiting for me in the chamber, so I disposed of the file quickly and walked back. At the very outset he told me, "Madam, I know that you know all the things inside out. However, I would request you to avoid mentioning anything about the 'inside' as far as possible".

I asked, "When a solemn affirmation is made by the police before the court that the papers were drawn up on the spot, why do the police not actually do so?"

He replied, smiling, "Rough papers are drawn up at the place

of occurrence. It is not possible to do everything on the spot. Only the depositions can be recorded there".

"Many a time I have seen you writing even the depositions here..."

"Well, at times it is not possible even to write down the depositions on the spot".

"What are the difficulties in doing so?"

"According to Section 161 of the Criminal Procedure Code the deponent is not required to sign his statement. Consequently the depositions are reduced to being written in the office or elsewhere outside".

"Why then solemnly affirm before the honourable court that the case papers were drawn up there?"

"Even the courts implicitly appreciate that all the papers cannot be finalised on the spot. However, since it is a requirement of the legal system that case papers be drawn up at the place of occurrence, a suitable declaration is made. Now tell me, when the Judge draws up the judgement he declares it as 'Announced in Open Court', but what is the percentage of cases in which the judgement is so declared? I would say that in 95% of cases the court gets the order written in the chamber where the only persons present are then the Judge and his steno".

"You came here as IO (Investigating Officer). Would you like to say something about the role of the IO and his responsibilities?"

"An IO is a witness like all other witnesses in the case, albeit a key witness. The entire edifice of the prosecution case stands on him. The IO, therefore, has to be very careful and depose honestly and with full awareness of his duties and responsibilities. A single lapse on his part can lead to the conviction of an innocent, and vice versa. Besides this, the IO is also called upon for opposing the applications for bail or anticipatory bail. It is the IO who also has to come before the court when there is a need for police custody of the accused, for purposes of further investigation. Besides these, he has to be there in multiple other capacities".

"Why does the common man see the police as a villain?"

Narendraji said querulously, "Police officers have to put in long hours of work. They cannot get leave in time. As a consequence they are unable to devote adequate time to their families. They cannot even get proper rest. To keep late hours and to rest at odd hours is almost a rule for us. All this builds up tension. Obviously this affects the public in turn. Now look

at this. There was a murder in my range a fortnight ago. We had to go to the interior rural districts of UP, Rajasthan and MP, where you cannot get even proper drinking water. We could return home only after a week. What can be the outcome of all this except rendering one irritable? The public also has to appreciate our problems. However, it keeps finding fault with us. Madam, there are no regular holidays in the police department. We have to be on duty today, tomorrow and always. We don't have weekends off. We are not independent even on days when the entire country celebrates Independence. I mean 15th August and 26th January. That is why we get paid for 13 months in a year of 12 months".

"Would you like to say something about the public relations of the police?"

"The public does not extend cooperation to the police, which sometimes results in the accused escaping on the verge of arrest. The public should cooperate with the police..."

"What, according to you, are the reasons for the lack of public cooperation?"

"The police has a fractured image in the eyes of the public, leading to this stand-off. The common public goes in dire fear of the police. It does happen that in many cases people endeavour to extend cooperation. However, this sometimes means repeated visits to the *thana* (police station). Now who would like to undertake such trips at the cost of his work? This then leads to the public holding back. The public is also afraid of bearing witness and then being forced to visit the courts time and again for the purpose..."

"So like most of us you also feel that the frequent summons to the police station is harassment?"

"Certainly! The public witness helps somebody, assists the state, and for all his pains the police and the courts treat him like an accused. Police should make it a point that a member of the public is not summoned to the police station at the drop of a hat. Courts should also make it a point to relieve public witnesses on a priority basis. The public witness comes to the court not for any lapse on his part but to bear witness for truth, and that too at the cost of his own urgent work. Unless the trial is speedy, public witnesses will not want to render any help in future cases. In addition, if any witness receives any threat, it should be incumbent on the police to extend full protection to him".

"Would you like to say anything more?"

Narendraji concluded, "A public witness should never be harassed. Police attend courts in the course of their duty, the advocates on account of their profession, and the accused for whatever he is charged with. But why should the public witness make frequent rounds of the courts? I would only add that even the police should change their attitude to the public, and the public at large should also change theirs towards the police. Only then can there be a consonance between them".

Thursday, 17 June 2004

The courts are closed for summer recess. Normally, during this time I do not go to the court unless it is necessary. However, I came just to see how things moved during the break. I found that except for the main gate, there was nowhere an atmosphere of holiday. The crowd was certainly less, but the activity on the premises was hectic as usual. Even if the main gates leading to the Civil and Criminal side chambers were closed, the incoming public had devised alternative routes for entering. It was not particularly difficult for me to get to the chambers. On reaching, I noticed that there was no electricity. It was the scorching heat of June; and to add to the woes, our chamber was on the first floor. I hardly sat for five minutes and was completely drenched in perspiration. I thought of going to find out why there was no electricity. I went to the chamber of a senior advocate next door. I observed that the curtains that always remained stretched across the door were completely drawn open. At a table where some light was falling, the advocate, bent low, was poring over some papers. Hearing the noise of my sandals on the floor, his attention was diverted.

"Oh, this is a remarkable day indeed! You walked in during the holidays. Come in, Chandraji. Welcome! Welcome!"

I reciprocated the greetings, and then asked, "What indeed are you studying in this darkness, sir?"

Came the reply, "I have filed an urgent bail application and was preparing arguments for it. The vacation judge now in chair is a good guy; he is granting bail right, left and centre. I thought of taking advantage of it. Maybe I will get the bail."

"Since when has the power gone?" I queried.

"This is the third day in succession. Don't know how long it will be off."

"Why so?"

"They say there are some differences between NDPL (North Delhi Power Limited) and the lawyers".

I felt that this was the right occasion to inspect the campus. Bidding adieu to the good man, I fished out pen and notebook from my handbag and walked out. Once outside, I understood the reasons for all the brisk activity on all sides. As there was no electricity, the advocates had gathered in the shade and were discussing matters. Some of them were standing in the sheds by the side of their chambers; others were sitting in chairs placed below small trees and were fanning themselves with the case files. Looking at the scene in the overbearing sun, I was at a loss. How should I proceed? Presently my attention was caught by a *chhole-kulchewala* standing in front. Earlier too I had seen him on my way to and from the chamber, but had never had any occasion to talk. Seeing him unoccupied, I felt that this was a good time to strike up a conversation.

After the formalities of greeting one another, I learnt that his name was Omprakash and that he hailed from Rai Bareli. He had come to Delhi in 1990 with a distant relative. Since then he had been staying here in a rented room and selling *chhole-kulche* in the court complex. He deftly attended to customers who placed orders during our conversation. Meanwhile, a woman aged around 34-35 years placed an order for *chhole-kulche* in a tone as if Omprakash was her slave. She kept the food on the *rehri* (trolley) itself and started eating. Afterwards, as she began to move off, Omprakash called after her, "Please pay the bill!"

"Am I running away?" she snapped. "You can collect it in the evening or tomorrow". Saying so, she went by the park towards the Criminal side of the courts, undulating her hips all the way.

Some people standing about had their eyes focused on her. I also felt rather curious and my gaze followed her. Omprakash perhaps guessed it and said, "Madam, the very shadow of such women is defiling. Please don't look at her!" I asked him what was wrong. I had always seen five-six similar women there loitering about without any apparent work. Omprakash said, "Many a time she takes *chhole-kulche* from me and but sometimes even does not pay for it. In fact, she and others like her are all in *dhandha* (the flesh trade)". I had heard about this being carried on in the Tis Hazari court premises.

Presently a youth came toward us. He had a tester in his shirt pocket and a pair of pliers hanging from the rear pocket of his jeans. He saluted Omprakash, got *chhole-kulche*, deposited the plate on the *rehri* itself and started eating. From what he said thereafter I could guess that he had overheard our talk from somewhere nearby. He disapproved of Omprakash telling me about

such matters. I turned towards him and told him about my research. He said, "Madam, I could tell you a lot more about Tis Hazari because you are an advocate. My only condition is that you will not give the material for printing anywhere". I agreed.

After I finished my lunch I went back. The young man was waiting for me there as promised. When I asked him his name, he said, "Electrical". "Electrical!" I exclaimed. "Surely, you must have some real name". "Madam, I do electrical work and so all the people hereabout call me Electrical. In any case, what have you to do with my name? In case you print my words somewhere I will be unnecessarily embarrassed".

We went on talking. Electrical spoke like a mature man.

I asked, "Where do you hail from? Since when are you here?"

He said, "I am from Orissa and came here with my family in 1980, when I was just three years old. I could not study after Class X on account of straightened circumstances".

"How did you happen to land in Tis Hazari?"

"I arrived here through a senior advocate. I had a smattering of knowledge of electrical work. In 1999 I got a job in the Bar here through the good man. But the Bar employees here are squeezed between the wheels of the advocates and the Bar office bearers. However diligently we discharge our duties, the advocates find some fault or the other and complain to the Bar office-bearers, who in turn warn us that unless we do our jobs well we will not get any remuneration. These are influential people and the employees cannot take the risk of talking back".

"So you have been working here since 1999?"

"No, madam. I worked till February last. Then I got disgusted with the frequent admonitions of the advocates and left".

"What are doing at present?"

"I work as a private servant in the advocates' chambers of the Tis Hazari court."

"What do you get?"

"There is no fixed income. But sometimes, if I am lucky, I even get Rs. 500-600 in a day. At other times I have to make do with just Rs. 50-60. Something is better than nothing. In addition, I also do part-time jobs if I get them. It does not matter whether it is labour or clerical".

"These are holidays and even now there is no electricity. How come you are here, then?"

"Madam, there are some advocates here who have taken electrical connection from outside".

"From outside? Where from?"

"From outside Tis Hazari. From the street, at the back".

"Well, well!"

"They sometimes call me to assist them. I get bored at home having nothing to do and so I come here. I get enough to cover the charges for coming and going".

"So the advocates pay you for the work done?"

"There are some exceptionally good ones but they are few and far between. Most of the others do not pay adequately. This morning they really crossed all limits. An advocate in one of the chambers had called me. I pulled a wire from across the road, set up three tube-lights and did some sundry work. When I asked for remuneration he enquired how much I expected for the job. I asked for Rs. 150. The market charges for this job are not less than Rs. 250; but what do you think he gave me? Just Rs. 50, saying that I had not used any of my material. The wire was there, the tubes were there, needing just some slight adjustment. And he rubbed it in with gratuitous advice to go out and enjoy spending the money. I abused him in my mind and walked out. Madam, some day I will also have a chance to get even. He normally calls me for electrical jobs. Next time I will see to it that even his good things go out of order. After all, he is simply an advocate. What does he know of electricity? I will then ask him for money to fetch what will be needed to fix the problem. He would feel too stupid to refuse to give me what I ask for. Madam, if there is anything wrong with electricity in your chamber, do call me, I will charge you reasonably and will not deliberately damage anything. Madam, when a client approaches an advocate and enquires about the fees for counselling, most of them quote nothing less than Rs. 11000..."

"Well, have you thought about your future? Will you continue...?"

"The poor have no future, madam. Our future is a big zero, totally dull. The poor have to dig their own well, and then only they can have water. We don't have a past or a future; we live only in the present. If we earn during the day, only then can we can have a meal at night. And you are asking about our future? Our future is not secure. Only those who have money can have a secure future. Do you think I would not have treated my father who cannot see because of cataract, if I had money? Madam, leave all this talk about future..."

"Well, you were going to tell me something about Tis Hazari".

"Anything can happen in Tis Hazari. When the evening approaches, bottles begin to be uncorked in the chambers. There

are gambling sessions at night. Even thefts occur then. Leave aside that, *dhandha*...do you understand? There is also *dhandha*..."

"Does no one challenge it?"

"Who will object? Even the police know what happens, but still things go on. The prostitute only sells her body; she does not pick any pockets; nor does she force herself on anybody. For these women, Tis Hazari is a safe place. They have no safety outside".

"So you don't find anything wrong in *dhandha*?"

"Madam, where does it not occur? Every place, each office, all factories: nowhere is free from it. And everybody knows what happens everywhere...I will put to you only one question. How will the Tis Hazari community benefit from this research of yours? Believe me, once this work of yours gets published people will be offended and there may be serious chaos, for even now people consider courts to be temples of justice. In the end I will only ask you to keep the results of your study to yourself. I would earnestly request you to keep away from these controversial matters. But, after all, it rests with you. You are an advocate and I am a mere electrician. While talking to you I somehow feel sure you will go in for publishing your study. So I will tell you my name. It is Manoj".

I had not been aware that over two hours had elapsed in this exchange. It was around 5.30 pm. There was some let-up in the sun and heat. The group of advocates sitting in the shed had started dispersing. However, among those standing around, the electricity failure was still a fervent issue of discussion. People had to go out of the courts for photocopying or computer typing. There was some joy on the faces of the manual typists, but our brotherhood was unhappy. When I went to the chamber, I found it was locked. I had to phone my colleague. He came after some time. "You have been busy since morning, interviewing people. How many have you done?" he enquired while opening the door. I deposited my notebook on the table, and he began turning its pages. He looked up and said, "Chandra, how can you write like this about the court and the advocates when you are one among them?"

I replied, "Nothing of this is mine. These are the thoughts of the people I talked to".

Hearing this, his facial expressions changed. He said, "It does not matter if those in Tis Hazari become aware of this but it would not do if outsiders come to know about it. Will it not

defame the advocates?" He said many other things, taking different positions. I looked at the wall clock opposite. It was nearing 6 pm. I said, "Don't worry, we can talk about it some other time. Now it is getting late". I picked up my bag and walked out.

Thursday, 8 July 2004

The electricity supply has been regularly irregular since the last vacation. This is the single focus point for the demonstration by the advocates. The notice of this strike has been affixed on every notice board by the Bar. Also, the employees of the Bar have announced it throughout the court. The suffering advocates appear a little relaxed today. Except for some junior advocates sporting neither band nor gown, nobody has bothered to appear in a matter of bail or stay. Judges are also postponing hearings without any questions. In the main court building, a holiday atmosphere prevails. Advocates' clerks, and even clients, are bringing intimations of postponement of hearings. However, the rest of the area is full of activity. Since the DBA (Delhi Bar Association) elections are round the corner, the candidates are participating in the strike with great fanfare. From place to place, there is repeated friction between the NDPL and the advocates. On the whole, the spectacle is one of alert advocates' clerks and litigants, and lax advocates.

I had fixed an appointment with a senior advocate, Rakesh Chaudhary, for that day. It was scheduled for 1.30 pm in his chamber. I accordingly presented myself there on the dot. Chaudhary *sahib* was busy with case files. After exchanging greetings he said, "Chandra *bhaiyya* (he calls me by this name), you could have come in the morning as well". After the hot afternoon sun outside, the cold AC air inside was very soothing. Suddenly I remembered that the strike that day was to protest against the absence of electricity. We did not have electricity throughout our vacation. And there was an AC running here! In the meantime he had asked his clerk to fetch soft drinks. After disposing of the files within five minutes, Chaudhary *sahib* said, "Let us talk now. Oh, the soft drinks have also arrived. Drink, and then fire off your questions. You have been taking great pains in your research. Don't you hold back any of your queries. One more thing: write what all you want to write and publish what all you want to. Go on, mention my name also. Let me see who will harm me".

I said, "Electricity is off almost in the entire Tis Hazari complex. How come it is there in your chamber?"

He replied, "When the 'Aboves' are in one's favour, nothing is impossible".

"Pardon, I did not understand you".

"What I mean by 'Aboves' is 'fixing'. If one can 'fix', anything is possible for him. Electricity is just a minor matter".

"Do you know why there are no lights in the other chambers?"

"There is some tension between the NDPL and the lawyers. That is why".

"What is the dispute?"

"I mean, more than half the advocates have not installed meters in their chambers; they are going on using power on the sly. Only some advocates in the western wing have meters. I heard that to discourage electricity theft NDPL had even attempted to install a high-voltage distribution system. However, the advocates have not desisted from their mischief of using electricity gratis. But how long can this go on? Consequently, on 25 June, during the vacation, the system got overloaded and failed. Since then there has been no power supply here".

"But why is there no electric supply to those who have installed meters?"

"This is the precise question on which the unity of the advocates is floundering. Advocates who have meters installed and who pay electricity bills regularly have a justifiable grouse against the non-supply. Why should they get cooked in the heat and their work suffer because of the thieves? Consequently, there are two groups in today's demonstration: one of *meterwalas* and the other of non-*meterwalas*".

"How will this demonstration help?"

"Chandra, 99% of demonstrations lead to some benefit or the other. Why would this demonstration also not do so? The evening is far away. Even now pressure is building up on the NDPL; it has agreed to restore supply by tomorrow to those who have meters. It is also heard that for those chambers that have no meters, a special camp will be set up in the Tis Hazari complex and they would be given a week's time to apply for meters".

"What has the Bar to say about this electricity imbroglio?"

"It is the Bar which has spoilt the entire show. There was hardly any electrical problem in Tis Hazari some five-six years ago. The money the Bar was collecting also included electricity charges. The new governing body of the Bar asked individual

members to have their own meters".

"Well, what do you feel about those who have meters installed but are using electricity on the sly?"

"I will only say that they should not stoop so low. When you are using power, why not pay the NDPL like a gentleman? But my saying so is *infructus*. One thing is certain: the NDPL has cut the supply with great circumspection. Had they cut the supply at non-vacation times, they would have had to pay heavily for such a prolonged blackout".

"Meaning...?"

"Meaning? Tis Hazari advocates are notorious all over India. On the question of electricity they would have harassed the NDPL so much that it would have given up its ghost...Now enough of the NDPL. Let us talk of something else".

"Well, you are always on the scene when there is some dispute or demonstration. Any special reason for this?"

"Nothing special. Only that I cannot stand any wrongdoing. Consequently, whenever I come to know that somebody is being wronged I am immediately by his side. What of others, many a time I get entangled even with the magistrate. Only yesterday there was an application for bail before a magistrate. The matter was under Section 498 A (IPC). The court rejected my application without even bothering to hear me out. I told the magistrate that there had been a reconciliation between husband and wife, and if he so desired he could record the statement of the wife who was present in the court. But the magistrate refused to listen...I was damned sure that I was right and should get relief. Consequently, in the open court I showered choicest abuses on the magistrate, only sparing his parentage. What could the magistrate do? He merely said, 'You will never get a bail from my court'. I countered, 'Well, if you won't give it, I will get it from the ASJ (Additional Sessions Judge)'. The long and short of it is that I cannot remain silent if somebody is being wronged".

"Tell me something about your profession".

"Ours is a profession loaded with responsibilities. The advocate should discharge his responsibilities with honesty towards his client, because the clients believe their advocates more than anybody else. However, there is a breed of advocates nowadays which adopts various stratagems to dupe their clients. This was not so some three-four years ago. There has been a sweeping change in the atmosphere. Today we have some professionals who plant themselves right at the court gate. Once

the client gets out of the lockup, the advocates start pulling at his shirt for Rs. 50-100...They even stoop to attacking him. They have rendered Tis Hazari into a fish market. There are even some who strut about in black gowns but do not have a law degree. To speak for myself: I do ask for fees but I discharge my duties with due diligence, honesty and responsibility. I had a murder case. I did not know whether my client had indeed committed murder or not. I accepted the case. It had three accused persons from the same family. The court sentenced all three to life imprisonment. I was worried. Where did I go wrong? I could not even eat for two-three days. Well, I got them released in the High Court. What I mean to say is that our profession is such that we take on the clients as our responsibility; we desire to relieve them of their pains".

"Would you like to throw some light on the relations between senior and junior advocates?"

"I am sure you are aware of the relations between these two types. The seniors give a dole to the juniors, which is not even adequate for their pocket expenses. In any case it takes at least four to five years in this profession to pick up work. In addition, some time is required to create goodwill. I sincerely feel that only those boys whose families can afford to foot bills for three to four years should aspire to see their ward in an advocate's black gown".

"Well, it appears that there are differences between people and people on this count. Let us leave it aside. Speak about anything that is an integral part of the daily life of Tis Hazari courts."

"I am not sure whether I should tell you this or not, but prostitution is also a problem here. Yes, prostitution is carried on here! I am dead against it and I have also warned some of these women. Consequently, many of them bear an animus towards me. If any among them happens to see me, she slips into a side lane. However, some of our brothers here procure women from outside for themselves, as also for their clients. Outside is not the only source...There are women here who carry on this profession under cover of being employed as clerks in some chambers".

"Your opinion about prevalence of corruption in the judiciary...?"

"Corruption! Oh dear, everyone in our country, from leaders to actors, is up to their necks in corruption. The judiciary too consists of fallible humans. No wonder there is corruption here.

What better example than that of Shamit Mukherjee (a Kolkata High Court justice implicated in a sex scandal as well as bribery and corruption) can be given...Even then I must say that our judicial system is highly regarded in the world. Our people also have implicit faith in it".

Friday, 23 July 2004

Generally one finds very few women advocates dealing with the criminal side of the courts. I had decided at the time of taking up the research project to interview at least one female lawyer in the criminal wing. The reason was that my own experience on that side had not been very good. With this specific resolution I went to the chamber of Urmila Gupta. I had not taken any previous appointment beyond casually remarking to her once in the Ladies' Bar Room about it. On seeing me, she said with a greeting, "So after all you did come. Please give me a couple of minutes". She completed the draft she was dictating to her steno and then turned towards me. "Come on now, ask me what you want to know about Tis Hazari".

I took out the notebook from my handbag, saying, "I would like to know something about your experiences here. Please begin by telling me something about yourself".

Urmila Gupta paused and then said, "When I started my practice here, there were only two women advocates on the Criminal side of Tis Hazari. My father was a businessman and consequently he had no special ambitions about my educational career. I got admitted in college to study Sanskrit, on my brother's suggestion. I also got first division in it. The question of my studies thereafter confronted me. My brother felt that I should seek admission in B.Ed. But I was least interested in it. I had a predilection for law from my childhood. I resolved not to give in to any compromise. Of course I had to put in great efforts but I was allowed to take up my dream. I took admission in the Campus Law Centre of Delhi University. In those days there was no entrance test for first divisioners. However, we students were quite sincere then. After three years I cleared LLB. You have come to interview me because I am an advocate. Isn't it?"

"How many women advocates were there when you joined the Bar?"

"Even in the faculty in LLB there were just enough women to be counted on the fingers of one hand. Miss Mahendra Chowdhary was the exception. She preceded me".

"Now tell me something about your initial experiences".

"There was the well-renowned senior advocate Mr. B.B. Sood.

He was a civil lawyer who had a chamber on the Civil side, as well as a seat outside the Treasury building. He had a roaring practice and his chamber was always overflowing with case files. I began my advocacy as his junior but my interest was on the criminal side. Somehow Mr. Sood got wind of it and he offered his seat near the Treasury building to me. I started operating from there, dealing with the occasional cases that came my way. After sitting there for three-four days I had an uncomfortable feeling about the attitude of the men around me. They would loiter about my table without any apparent business. Sometimes this went overboard. A couple of them began sitting for hours by my table. Not only this but they would stare at me as if I was there for their pleasure.

"I will not be able to convey to you the anguish of my heart during the half-a-week I spent there sitting alone. I felt like the tongue which is situated among thirty-two teeth."

"What did you do then?"

"What could I do? I remembered my law faculty friend Kamna Prasad. After doing her LLB she was sitting at home. I shared my problem with her. During our talk that day she offered to practice along with me. And after a couple of days she started sitting with me at the table. But in the patriarchal world of the advocates we two did not get any relief worth mentioning. Besides being women, we were novices and hardly any cases came our way. One day a bail matter under Section 307 IPC (Attempt to Murder) came to us and we succeeded in obtaining bail. This increased our confidence. It is quite possible that the good magistrate had given bail in the case just to bolster the confidence of these two forlorn young women. May I share a secret with you? This relief did add to our enthusiasm in the male-dominated court..."

"And after that...?"

"After that? Male advocates started whispering about us behind our backs. An occasional advocate started approaching us for discussion of cases. There was also a palpable change in the attitude of the advocates who sat by our side. Slowly clients also started coming in. It happened that we got bail even in some cases that were rather weak. Seeing our success, some male advocates would ask us to appear on their behalf in bail matters. This further enhanced our confidence. The magistrates might have favoured us as women. However, it takes something more than mere magisterial solicitude to get a practice. Actually, I used to study throughout the night and spent hours

in the libraries to find out suitable citations".

"Which means that your practice started getting better?"

"Not necessarily so. We slogged over the cases. Besides regular hours we started attending court even on holidays. As advocates' attendance during holidays was minimal, we occasionally got good cases. Occasionally we got even Rs. 500-600 in a day. Just imagine! What with the value of the rupee in the 1970s, with that money we would consider ourselves nothing less than princesses. Except for the initial bitter experiences with men in the court, the advocacy on the criminal side has been a fantastic experience for me".

"When did Kamna Prasad separate from you?"

"In fact, Kamna did not do much of practice. From 1980 onwards our contacts also went on dwindling. The truth was that her in-laws did not want her to do practice. Even her husband did not approve of it. She had no option but to fall in line with them. May I tell you this was not the problem of one Kamna of the '80s but of hundreds of Kamnas of today who have to sacrifice their careers on the whims and caprices of their husbands and families. Firstly, girls are not allowed to take up legal study. Where somehow the girls do qualify they are prohibited from becoming professional lawyers. If somehow some girls do manage to come into the legal career they are required to leave it and become mere housewives after their marriage".

"Did you also have to face this dilemma?"

"I have just told you how I came into this profession after fighting it out with my brother. But if I am indeed successful in this profession the major credit goes to my husband. He supported me because ours is a love marriage. Generally in such a marriage the spouses understand each other's aspirations and also mutually support each other to the maximum extent. Well, Chandra, why don't you go and study the matrimonial lives of the female lawyers at Tis Hazari? If you feel that the scope is rather wide, you can restrict it to lives of women lawyers who are regular attendants on the criminal side in the Bar room. I have seen you a number of times in the Bar room. I feel you may be acquainted with many of them. Do take up this work. It will be good especially for women like us".

"This is indeed a good suggestion...Now can you tell me about the earlier Tis Hazari as compared to the present one?"

"In those days the professionals were predominantly from Delhi. The profession also enjoyed a good reputation. The advocates could get good fees. However, now degradation has set

in. Of late, advocates from Bihar have brought the profession into disrepute. As in other professions there is a rush of Biharis in this one too. If you go about the court you will find that every other advocate is from Bihar. Cases we would charge Rs. 11,000 for, the Bihar man would be ready to take up for Rs 1000 or even Rs. 500. Some are there who would charge even less, Rs. 200-300!"

"Madam, I don't believe that the number of advocates from Bihar is so overwhelming. Another matter is that if somebody is ready to work for less, would it not be good for a poor litigant..."

"I do not mean to say that all advocates are from Bihar or that all of them work for marginal fees. This is not so. However, there are a good number of Biharis. And if you feel that a modest fee of Rs. 500-600 is helpful to poor litigants, you are mistaken. The really poor litigants go to the Legal Aid Cell. And when lawyers take marginal amounts, they often cheat the poor litigants. In point of fact, they are defaming the profession. That's why I say that on account of them the profession as a whole has come into disrepute".

"Well, how does the matter of your chamber stand? Was this chamber allotted to you or purchased by you?"

"Well, Chandra, the Tale of the Chamber is quite romantic. The chambers you see pertain to the post-Emergency period. Their condition in the pre-Emergency period was quite good. The campus was indeed very beautiful. In 1975, the advocates were also targeted by the state. All places where the Emergency was being discussed were the targets of Sanjay Gandhi. Now the lawyers' community is such that it will fall into argument over everything under the sun. One day without any prior notice all the legally allotted chambers were bulldozed. Tables, chairs, files almost everything turned to dust while we watched helplessly. I do not remember the precise date but there was such confusion in the courts! A number of lawyers went behind bars. The chambers you see now have come up during the regime which succeeded Indira Gandhi. There was a fresh allotment of plinths in 1977; 500 plinths each were allotted for the Civil and the Criminal sides. From 1977 to 1984 the advocates pursued their practice from these plinths. The orders for construction of chambers were issued only in 1984 and work started briskly. Now there are so many chambers that it is difficult to count them. Actually, people slowly started encroaching on open land and constructed chambers. All the chambers so constructed after

the regular ones were illegal. However, by and by DBA has regularised them and now all of them are regular. I was also allotted a plinth in 1977, whereupon I built this chamber in 1984".

"Well, do you feel that there is an undue increase in some special categories of cases or some special types of cases are now coming in?"

"That is very pertinent question. During the last few years, matrimonial cases have increased. During the last four-five years many cases of this type have come in".

"For any special reason...?"

"Upon the introduction of Section 498-A to IPC in 1983 (relating to dowry harassment by husband and in-laws), cases of this type have increased. In fact, women did not have any enabling provision for fighting the atrocities against them before this. They had to quietly put up with it or sort it out within the family. The insertion of Section 498 has given women a voice to raise against these. However, it is also true that of late this section has been misused on a large scale, which is undesirable".

"What has been your experience of the functioning of the court?"

"Everybody knows about the functioning of courts. Corruption, fraud, treachery, dishonesty are all parts of this functioning. No work in the court gets done without recourse to this. You have been practicing in Tis Hazari and should know how things stand. If you go on bribing each and every table in the court, there will be no hindrance in your work".

"How do you feel as a woman about continuing in this profession?"

"As a lawyer I would say that I am happy. I have a good practice. But as a woman I would say that this profession is beset with problems. You cannot keep late hours in the court because you are a woman. You cannot go to parties like men, nor anywhere else. You have to reach home in time, look after the children and also the husband, not to mention the in-laws. If you are a junior in the court you have to obey the order and dictates of the seniors".

"Can you speak about your family?"

"I have already mentioned that ours is a love marriage. We married in 1975. It was not so easy to do so then. My husband is a Muslim and I am a Hindu *bani a*. Can you imagine a *bani a* girl marrying a Muslim boy in 1975? But we did it. My husband is a

businessman. We have two children. My daughter is married and my son has given the entrance test to study law".

I bade adieu to Urmilaji, thanking her and acknowledging that I could learn a lot of things about Tis Hazari through her. I came out and walked towards the Ladies' Bar Room in a happy mood.

Wednesday, 25 August 2004

I have applied for anticipatory bail in a case today. There will be arguments tomorrow. Obviously, I should have all the facts of the case. When I asked the client for them, he told me that he had learnt only a couple of days ago that there was a criminal case against him. After disposing of my court work I reached my chamber by 1.30 pm. I remembered that I had entrusted my lunch box to Jyoti, the Bar Room attendant. I went back there, had a wash and asked Jyoti to fetch the lunch box.

After lunch I went towards the concerned court to take out a xerox copy of the FIR (First Information Report). I had already instructed the client to meet me outside the courtroom. I saw him waiting there. There was a big crowd at the entrance. Prisoners, their palms entwined with those of the police escorting them, sureties, interviewees et al, were standing there. The plastic chairs were all occupied by men. There was a big crowd of black-gown *walas* inside the courtroom. Normally one does not come across such a scene in court. Inside that space sat the Naib Court (a police employee who provides information regarding prosecution), his cabin behind a partition improvised by almirahs. I went in and enquired about my matter and asked for a copy of the FIR. "Yes, yes. You can have a copy. After all, why do you think I am sitting here? Only to serve you. If only I could have something to spend...", he said, pulling out a bunch of FIRs. After extracting a paper from the stack he entrusted it to a boy sitting by his side, asking him to go and photocopy it. Waiting for the boy to return, I sat on a chair in the last row, watching the workings of the court.

A hearing in an anticipatory bail petition of a woman was going on. The woman was present. After listening to the advocate the Court granted the bail and summoned the surety. A senior citizen of 70-75 years, wearing a white *dhoti-kurta* and turban came forward. The magistrate asked, "What is your relation with the petitioner?" "My daughter-in-law", came the answer. On hearing this, the magistrate repeated the question. The senior, expanding his reply a little, repeated, "I said she is my daughter-in-law". The magistrate got angry. "You don't know how

to address the court!" he yelled, and pushed the bail application to the right. He asked the police to 'take the woman into custody'. On hearing the magistrate's order, the police asked the woman to sit in a corner and wait. The senior citizen could not follow what was happening and innocently asked, "What happened?"

By this time the magistrate had already taken up another matter. The woman sitting in the corner started crying. Her advocate started to intercede on behalf of his client. "Your Honour, they are rural folks from Haryana. This is their way of speaking. The old man is also rather deaf". But all to no purpose. The next advocate waiting for his turn was already before the magistrate. In the meantime the boy who had gone for photocopying returned and whispered in my ear, "Madam, the Naib Court is calling you." I rushed to him. He handed over a two-page FIR to me. Then I fished in my pockets for paying his 'expenses'. I could not find any 20- or 50-rupee bills. Giving him a 100-rupee note, I asked him to refund Rs. 50; he thanked me, pretending he had not heard me. "This job is not worth more than Rs. 20-30", I said, and waited, hoping for some reaction from him. He said, "Madam, next time I will not charge you anything. Satisfied?"

Taking the two xeroxed pages I came out of the courtroom. My eyes fell on the woman sitting in the corner and the senior citizen who was her surety. Seeing his face, I could not help feeling that he was still trying to figure out to himself where he had gone wrong. Finally I controlled my emotions and came outside the court. My client waiting there said, "Indeed, it took a lot of time of yours, madam!" He followed me to the chamber, sat for some time and then rose to go. He signalled from outside for me to come. I went out and descended a few steps, when he said, "Madam, do you happen to have some money on you? I shall return it tomorrow". I had only Rs. 100 in my pocket. I took it out and held it out to him. He saluted me and went away.

I returned to the chamber. Two friends were waiting there. I discussed the following day's bail matter with them. Then taking out my black advocate's coat, I proceeded towards the library, for finding some citations relating to the bail matter. I spent about 40-45 minutes, got two-three citations and returned to my chamber. It was 4.15 pm by this time. I thought of going home and reading/writing up something for tomorrow's work. I picked up my bag and left. Even at this hour it was quite hot near the lock-up room I was passing. Small groups of people who had come

for interviews were still loitering about. Some two-three groups were sitting in the shed. Suddenly my eyes fell on the woman I had seen while I was on my way to the court. I walked up to her. I broached the idea of a conversation, but she wavered. She asked me about myself, and my intentions with regard to talking to her. On hearing my answer, she assumed I was some kind of correspondent. I again explained to her that I was not one, and that I only intended to write something about the daily life in court. This time she understood my identity but it appeared that she had not yet got out of the doubts about my role.

Her name was Rajjo. She gave her age as 30, but she did not seem a day younger than 35. It appeared that she had come with her younger brother four months ago to see her brother-in-law who was in police custody in the Tihar Jail. When I asked her about the nature of his crime, she countered, "I can tell you only if he had committed any. If the police are to be believed, there are 17 cases against him". This brother-in-law had been doing scooter-repairing work along with his brother. Somebody ascertained on the mobile whether he was at home. Within 15 minutes a dozen police constables descended, picked him up and went away. When family members and neighbours wanted to know the reasons for his arrest, the police said that for an answer they would have to come down to the *thana* (police station). When they went to the Patel Nagar *thana* they were threatened and ordered to leave. The family dialled 100 (Police Control Room crisis number); constables from the local police station came down and threatened Rajjo's husband. They bade him not to be too smart, failing which they would send him also to join his brother. The police also abused Rajjo.

According to the police, Naveen had been arrested red-handed while committing theft. He had also shot at the police. "Is it possible, madam, that a man shoots at ten people and not one gets hurt? For the last four months proceedings were being filed under 17 charges of theft, robbery, stabbing and unlicensed possession of arms. Suppose he was caught while stealing. Why so many different cases against him? They say the police do this to please their superiors. For promotions... Sureties for a couple of cases could be managed but not so many for all the different charges levelled against him. With so many cases against him the sureties are also quite likely to think that he must surely be guilty... I had to sell off my ornaments and even household utensils for attending the court on the various dates. Visits to jail, arranging sureties, advocate's fees, everything

costs money. Even if we were somehow able to get Naveen out, there will be nothing left to educate our children with, or repay loans". In spite of waiting from 9 am to 4.30 pm, there was no guarantee of meeting him. "Giving him anything is impossible. The police drove us away. They said that we might poison him". Under no circumstances were people without identification papers such as ration cards etc., allowed to visit detainees. One woman from Allahabad had come to see her husband but had no papers. She was refused an interview. She sat there crying for three days but the jail authorities did not allow her to see him.

"Madam, supposing there is only one breadwinner in a family and he is picked up and incarcerated for two-three years, what can his wife do? Poor women are sometimes not even literate. Who will give them work? Consequently, the women have many a time deflected from the straight and narrow path". Returning to her brother-in-law's case, Rajjo said, "The police allegation is that Naveen and his friends looted people in cars at gunpoint and also made away with the cars. I say, what were the police doing? What are they paid for? They picked them up from home and branded them with the charge of looting...What is the benefit of such laws? Law should be for deliverance, not for damnation like this. Anybody who has been put inside, even if he is innocent, will be tempted to do some mischief once he is out..."

"The magistrate does not use his head but simply led by the statements of the police and the advocates. He should think independently. He is a veritable god for the accused. He should give an opportunity for improvement to those who are misguided. There certainly are some judges who are good but most of them are out to destroy the careers of people. The staff at the courts is good; it is happy with just Rs. 20; there are some good policemen as well. Well, a tip of just Rs. 50-100 satisfies them. There are even some good advocates. But those who are established are not ready to listen without a large fee. Madam, why don't you give me your visiting card? One does not know when one may need help..."

Presently her brother standing just outside the shed called out, "*Di di*, look, Naveen is coming. Come quickly..."

Rajjo picked up a plastic bag lying by her side and started walking towards him. Suddenly she remembered something and said. "Madam, I will see you again and tell you many, many more things". Now she had almost broken into a run, her brother was running just ahead. The police were walking in front, holding Naveen by the hand.

Thursday, 14 October 2004

Elections to the Bar Association are scheduled for tomorrow. There is a big crowd of advocates in the court campus, and brisk activity. The advocate-candidates have not been attending hearings of their cases for the last fortnight. This occasion has provided a good opportunity for their supporters also to absent themselves from court for canvassing work. Even the judges are a little nervous about the candidates and are postponing the hearing for a mere asking. Even if the canvassing has officially come to an end, internally it is going on unabated. The outgoing members of the bar who are staking their claims again are telling everyone that they have created additional seats, got books for the library, have improved the shops and the canteens, etc. There has been a chain of parties thrown by the candidates in different hotels in Delhi. There is a generous distribution of gifts as well. The candidates may or may not personally be acquainted with the voters but they make it a point to send messages on the mobile, extending invitations for them to attend the parties. Since such parties start in the evening, women advocates cannot attend them. Only those whose husbands are in the same profession can do so. Looking at the impressive number of women advocates, no candidate is overlooking them but arranging parties during lunch hours in the Ladies' Bars both on the Civil side and the Criminal side of Tis Hazari. There are frequent occasions when there is more than one party on a given day. Some candidates are making do with tea and cold drinks in place of lunch or dinner parties.

Around 1 pm, when I reached the Bar Room on the Criminal side, I learnt that the candidate for the secretaryship is arranging a lunch party at 1.30 pm, followed by a tea and cold-drinks party by the candidate for treasurer. I returned to my chamber, planning to come back around the time of the party. As I was walking towards the Bar Room around 1.30 pm, I met Manju on the way. We fell into a conversation and reached the Bar Room talking. We found that unlike other days, the Bar was overflowing with women advocates. Two advocates got up from the sofa and we immediately claimed the seats. There was such a cacophony of voices that nothing could clearly be heard. Most of the advocates were busy eating. Jyoti and two other boys were providing plates for others who had still not got an opening to mount an attack. A *halwai* was busy taking out hot *puris* at the rear of the Bar. Presently Jyoti brought two plates for me and

Manju and we got down to the business of eating. Now our meandering talk was centred on eating and coming back to it again and again. Manju was saying that the food was quite good but she dwelt upon the irrelevance of such parties. After all, we would vote for those candidates whom we wanted, party or no party.

In the meantime the candidate for Secretary arrived with his supporters. Someone from the supporters introduced the candidates. The candidate then greeted the advocates with folded hands and said. "I hope the *khana* (food) is good...Tomorrow I should receive your support". Many of the women there were not even aware as to who was giving the party. After eating, some advocates were seen carrying eatables to their chambers and some clerks were also busy taking food there. Some women were talking among themselves, saying that for the last fortnight they have had to carry their lunches back home; others said they give the lunches away to their clerks. Most of the women, however, felt that it would be more appropriate if the candidates gave parties only after they won. Manju remarked that when kitty parties or Friends' Club parties are held, the women behave so very naturally. Since advocates give those parties, the women are careful to ensure that there is no wastage or breakage of the crockery. But today there is no limit to the wastage, and nobody cares.

By 3 pm everybody had finished partaking. Presently tea, coffee and cold drinks started coming in from the candidate for treasurer. Women chose their drinks and started enjoying the event. While this was going on, the candidate arrived with his army. Some senior advocates thanked him for the beverages and appealed to the audience to vote for him the next day. After both parties were over, and the women in favour of the candidates had left the scene, some women were overheard talking among themselves that in any case people have made up their minds on whom to vote for. They said that just because somebody has thrown a party or distributed gifts does not mean they have purchased the voters. They would vote only for that candidate to whom they were committed.

By about 3.30 pm there were hardly four or five women besides us there. Suddenly Neeraj Bakshi turned towards us and asked, "What are you people doing here in this din and bustle?" The fact is that none among us is a member or either the Friends' Club or the kitty party. You can even say that we have deliberately kept away from them, because in their parties most of the time women talk only about their families, in-laws or food, and nothing else.

We told Madam Bakshi that we were attending these parties just to take stock of what happens.

Madam Bakshi countered, "What can happen? This is an occasion for a get-together, eat-together, some fun. That's all!"

I asked if the male advocates also have similar clubs and this habit of parties.

She replied, "For them every day is a party day. Except for one or two people, they all have daily parties. As evening approaches, bottles get uncorked. They don't lack anything. And if we throw an occasional party once a month they are sure to peep in while passing, and that too in such a way as if they have not seen a women in their lives". She added, "Not that it happens here only. This happens at home also...When half-a-dozen advocates gather together they go out for a picnic somewhere or the other. And when we think of going on a picnic and that too on behalf of the Friends' Club, maybe once in two-three months, we have to obtain permission from our husbands".

By this time Madam Bakshi had become quite aggressive and went on, "What do we not do for them? We come to them leaving our parental home and hearth. Leave everything else aside. We become Mrs Bakshi from Miss Dutta. Even then we have to remain suppressed".

In the meantime Madam Chowdhary confronted her. "Madam, nothing can happen by mere talking, but only by doing. Like me. Even today I am Mitalee Chowdhary and not Mitalee Renu".

Manju carried her say forward. "Chandra here is still Chandra Nigam!"

Well, the argument was stretching on, and already enough time had passed. We could have continued, but Jyoti, who had joined duty at 9 am, had to go home. She said, "Madam please, can you carry on the argument later. I have to close the Bar Room. My children would be waiting and in any case it is already past 5.30 pm..."

Bare Acts and Collective Explorations

The MKSS Experience with the Right to Information

PREETI SAMPAT + NIKHIL DEY

The MKSS experience with the Right to Information has emerged from a series of encounters with the multiple hierarchies of state and society. As a people's movement, interactions towards exercising this right have resulted in a deeper appreciation of democratic processes, and a gradual, but fundamental, transformation of our individual and collective relationships with the state and social structures. This is reflected in our (evolving) articulation of the concepts, and our exercise of the right to information or the right to work. This understanding has not emerged in an isolated location: networking and campaigning interactions have enriched and deepened our discourse and action. This takes the realm of action beyond the movement and the state to a host of other actors located outside the movement's 'local' context.

We chart below a series of engagements that have brought us to this deeper and critical appreciation of democracy and citizenship. Embedded within this appreciation is the transformation of equations of power between the state and the ordinary (as opposed to privileged) class of citizens on the one hand, and between privileged and marginalised citizens on the other. These transformations are borne out in the 'bare acts' of the state, legislation and citizens.

As individuals, we access multiple identities over the course of our lives. The identity of a citizen and the complex demands it makes on us as individuals, and as part of collectives, is a fascinating ongoing phenomenon that bears itself out during the life of a movement.

There is a need to separate the varied locations and privileges of different actors, and yet look at them as constituent citizens of the democratic state. At the same time, citizens in differently privileged locations have very different world-views, so that complementary action for a common purpose, say for equity in access to resources, rarely occurs easily. Interactions are generally encounters of privileges between citizens located within the state and those outside it, or between the privileged and the marginalised outside the state.

However, in the collective exploration of conceptual and legal space that attempts to make the state work in the interest of democracy, new unexplored spaces open up. The potential for expanding these spaces emerges with ongoing public action, and as the inherent contradictions between democracy and unequal citizenship are exposed,

sometimes these unequal encounters begin to be turned on their heads. The links between local relationships and external power structures leave unanswered questions, such as just how much can be changed by using these contested spaces. An even more important question, perhaps, is how much can be lost by not contesting the spaces at all.

The relationship of people's movements to laws is a particularly interesting one. When is the existing law used to suppress change in the context of a movement? When is the law used for bringing about change? And, when is the law itself sought to be changed? This ambivalent, fluctuating, and often contradictory relationship with the law makes for a fascinating study in the camouflages of law, and the continuous struggle of people's movements in securing democratic citizenship and its entitlements.

What are the norms that govern people's expectations and their relationship with the state? What happens when it concerns those who, more than anyone else, want things to change – those who are oppressed and marginalised despite the 'rule of law'? Does the law function as an agent of change? Or does it help maintain the status quo? Is it possible to fight for change without addressing questions related to the law?

The answer, in brief, is that 'bare acts' cannot be understood without exploring the ambivalent, contradictory, and complex relationship of people's movements with the law.

If bare acts represent the legal core – an intention shorn of all its padding – the picture is incomplete without understanding the schisms that emerge when the law is applied, and significantly, the attempts to fill these schisms. This may mean amending bare acts or bringing in new ones altogether...

When tracing history, especially of people's movements, very rarely is there a definitive moment identifiable as the initiation of a series of events. Multiple threads weave in and out of a movement's life, from the local to the global and the individual to the collective. It is difficult to isolate the operational influences at any given moment. We start our story with some of the first initiatives that can be traced as the founding the Mazdoor Kisan Shakti Sangathan.

Land Reform and a Definitive Act of Defiance: *Thakur, teri tanashahi nahin chalegi, nahin chalegi (Thakur, your dictatorship will not work anymore)!*

By 1987, Aruna, Nikhil and Shankar, activists with the MKSS since its inception, had moved to Devdungri, the village where the MKSS office and collective home were subsequently located. Searching for ways in which poor people could themselves effect political, economic and social transformation, their professed interests in organizing the poor led Lal Singh, also an MKSS activist since its inception, to soon join the group. The area is largely populated by the Rawats, an OBC (Other Backward Caste) community. Land is fairly evenly distributed, with an average landholding of about 2 bighas per family. Lal Singh, however, came from a village at the edge of the Rawat belt where traditional feudal land holdings and land relationships continue to this day. He often discussed the *thakur* (a Rajput landlord) in his village Sohangerh, who had appropriated vast tracts of community land, extracting fodder and fuel for his personal use, and prohibiting entry to anyone else. He asserted the land belonged to his family, as it had for centuries.

Discussions, first with Lal Singh and later with others in the village, led to the wielding of law towards social justice. At first, at a *Prashasan Gaon ki Aur* (Administration to the

Village) camp with the local Sub-Divisional Magistrate (SDM), an application was made for individual allotments of this land to the local residents. The allotment committee gave a split decision, and the Collector had to be approached. A women's society was formed, and an application was made for collective allotment of land to that society. The Collector recommended that forestland be allotted to the women's group.

The challenge to the *thakur* proved a decisive breach of local feudal relations, an empowering act of defiance, where earlier obeisance to the *thakur* had been the norm. However, the entire village did not come forward in this act of defiance: some watched, some hedged and some joined the *thakur's* ranks.

On the day of possession, the *thakur* sent armed men to fight the allottees and tension prevailed in the village for 15 days. A *van-utsav* (forest-festival) was celebrated in the newly acquired *bida* (forest) by 300-400 people, and including the reluctant participation of the local administration. For the people from the surrounding villages, and other local leaders who were present, this was an unbelievable development.

One day Nikhil and Shankar accompanied Surendra (a consultant appointed by the society), who was going to Sohargarh to make payments for construction works around the *bida*. The *thakur's* men waylaid them on the way back, and beat them up. Subsequently, people from three villages (Sohargarh, Kushalpura and Dhapda) took out a protest rally, marching to the sub-divisional headquarters of Bhim and raising slogans against the *thakur*. A decisive 'moment of transformation' in social and political consciousness took place when those returning from the rally stopped their bus in the *thakur's* village and shouted slogans, loudly denouncing him in his own domain.

It is not that Lal Singh or the others in Sohargarh did not know about land reform laws, one of the most radical pieces of legislation essential for social equity. But what happens when the law is not implemented for 50 years? It wasn't as if they did not know that the *thakur's* occupation of large tracts of land was illegal. The people in and around Sohargarh were fully aware that the law existed – but given the machinations of law in favour of the already powerful, they had little faith in its applicability towards justice. In the year 1990, the law and the state had failed to alter feudal relationships, to the extent that the *thakur* could show his wrath when not addressed as "*Thakur Sahib*" (*Thakur Sir*), allowing no one else to even be seated in his presence. He used violence with impunity, and no one dared complain. He laid claim to all the land in his 'fiefdom'. Anyone who wished to take clay from the public tank had to deposit half at the *rawla* (the *thakur's* mansion), and do the same for dry fuel wood gathered from the village commons. There had been many acts of defiance in the past. But they had been small, frustrating attempts, where those who defied the *thakur* ended up being 'taught a lesson'. Nobody had ever dared to consider applying for allotment from a piece of land the *thakur* called his own. That meant not just defiance but war. Taking on the *thakur* required preparation and strength, for any hope of success. When the battle did take place, the battlefield was also legal. Land records, sub clauses of the Tenancy Act, Allotment Rules, Societies Registration Act, Allotment Committees, Notifications became as much a part of the resisters' armoury as they had been a part of the *thakur's* briefcase that he carried around with him, wherever he went.

A Collective Is Formed with Equality and Justice as a Dream: *Nyay samanta ho adhar, aisa rachenge hum sansar* (We'll create a society premised on equality and justice)!

Behind every law lies a vision. Collectives, equally, are also formed with a vision. The extent to which a collective can translate this vision into reality depends on the extent to which legal spaces lend themselves to relevant application and evolution. At the same time, the new world that a collective constructs for itself through public action has also to translate the mystifying rhetoric of legalese into comprehensible language, in the process of realising its vision. In the course of the struggles for change waged by the collective, laws, rules and acts become part of the language of change. Fight for implementation. Fight against implementation. Fight against unjust laws. Fight for just ones. Fight for change in laws. And significantly, even fight for creating a new law – a necessary component of expanding and evolving democratic spaces. The irony is that collectives fighting for change are burdened with having to not only ensure that a law, in letter and spirit, is established within the legal, political and administrative framework, but also to ensure its proper implementation.

On 1 May 1990, the Mazdoor Kisan Shakti Sangathan (MKSS) took formal shape, at the first *mazdoor mela* (Mayday labour fair) organised by activists and supporters in Bhim. The atmosphere of threat and violence during the struggle against the *thakur* had demonstrated that a *sangathan* or collective is a requisite for any effective struggle for justice against embedded structures of power. Without a collective, the marginalised are vulnerable and can easily be suppressed at an individual level. Collective strength, then, is the fundamental basis for change; an understanding that has been absolutely clear to the MKSS from its very inception.

Minimum Wages – The State Violates Its Own Law: *Nyuntam mazdoori se kam nahin lenge, nahin lenge* (We will not take less than minimum wages)!

The poor always have to struggle for minimums. The rich think in terms of maximums. But what is the state of a minimum? What happens when the minimum becomes the maximum? The story of minimum wages in India is replete with these contradictions in word and deed. The Minimum Wages Act has rarely been enforced properly by the state. Even though minimum wage levels are defined as those below which a family cannot survive, these are rarely paid, so that the payment of minimum wage becomes the maximum that workers can get for their labour. The negotiability centres on ways and means of reducing the minimum further. Worse still, in the MKSS experience of fighting for minimum wages, the government is the employer and is therefore violating its own law. A simple law – a basic entitlement – is rendered unnecessarily complex by sections and sub-sections of the 'bare act'. Minimum wages must be paid, but these can be paid on a 'time rate' basis or on a 'piece rate' basis. The 'piece rate' norm is used as a justification to pay less with the claim that the work output is below 'norms'. When people fight for getting at least the minimum wage, then the concept of a 'guaranteed minimum' is introduced. The 'guaranteed minimum' is actually a sub-minimum wage, and it turns out that the minimum is actually the maximum that can be paid to a worker in a government project, thus redefining the minimum. Naturally, the poor are at the receiving end of this spin on words. The ultimate irony, of course, is that the poor

have no recourse but to continue to fight for their rights under the Minimum Wages Act.

On the day the Sangathan was formed, a pledge was made to not accept anything less than the minimum wage. This led to a series of minimum wage struggles. Typically, the *Panchayat* (the last rung in the administrative structure – the village unit) receives the money according to the stipulated minimum wage, but the people working on a particular development project undertaken by the *Panchayat* almost never get the minimum wage. Women as a rule get even lower wages than men, despite working the same number of hours.

Minimum wage issues started being raised more and more often, and the Sangathan was constantly confronted with the need to secure workers' livelihoods. By 1991 there was a *dharna* (sit-in demonstration) for the then minimum wage of Rs. 11 per day on the *Dadi Rapat Anicut* (water tank). What emerged was that the files had been closed by the Junior Engineer (JE) after miscalculation of the work put in (according to 'norms'), and people were being paid far less than their due. The workers refused to accept anything less than the minimum wage, but during negotiations with the administration, a 'neutral' group appointed with the Sangathan's consent compromised, and agreed for a raise in wages, albeit less than the minimum. A decision was taken to not put one's future in the hands of anyone else. From now on, the group would negotiate terms itself. However, the fact that the sanctity of the JE's Measurement Book was challenged through this demand for revision of wages irked the administration. On the other hand, it empowered workers and activists to raise their voice, and ensure their own truths were recognised, irrevocably establishing faith in collective action.

The MKSS was back in Bhim a year later, raising the same issue, but with far more preparation, and wariness with regard to premature deals. Five people from different districts and regions of the state sat on hunger strike this time. The *dharna* was lifted in May 2001 when the wages had been paid fully to all those involved. However, this *dharna* also helped reveal the importance of connections between local battles and larger interests at the state and national level.

The Right to Information – A Movement Coalesces: *Hum janenge; hum jiyenge* (We will know; we will live)!

The importance of access to *Panchayat* records became clearer as minimum wage struggles grew. There were fake entries in muster rolls and exaggerated wages with fake signatures that pointed to the serious anomalies in the schemes and programmes implemented through the national *Panchayati Raj* (Village Self-Governance) system. Upon detailed investigation of particular projects, wherever a sympathetic official had allowed access to records (at the time, photocopies were not allowed and 'access' often meant copying from documents manually), the corruption with regard to the practice of submitting fake and/or exaggerated bills for materials was exposed. This was the genesis of the struggle for the Right to Information.

Kesar Singh from Bagmal (Ajmer District) made a complaint that the *Panchayat* had used the services of his tractor for several construction works, but he had still not been paid all his dues. The *sarpanch* (chief elected village representative) refused to show the records, and with the Sangathan's advice Kesar Singh took his demand for information to

the *Panchayat Samiti* – the next step in rural governance hierarchy after the *Panchayat*. Even the *Panchayat Samiti* refused to show the records. Instead, the *sarpanch* was called by the BDO (Block Development Officer) and the BDO and his staff told Kesar Singh to take his dues, but not demand copies of the records. Kesar Singh stood his ground, and said that he would now only take his money after he had seen copies of the records and understood where the money due to him had gone. He then approached the SDO, and with the support of the MKSS, and pressure from the larger collective of the community, he was eventually, allowed to ‘note’ down records for a year. Anomalies in muster rolls and false billing soon surfaced. The *sarpanch* organised a caste *Panchayat* and in the presence of hundreds of his brethren (women do not attend these meetings) the *Jaati Panchayat* (Caste Panchayat) leaders put great pressure on Kesar Singh to take the money, this time even with interest, but save the jobs of his *jaati bhai* (community brothers). Kesar Singh remained steadfast. He refused to take any money until a full investigation was held and appropriate action taken. Several corrupt practices were uncovered by the investigation. Kesar Singh got his money. An FIR (First Information Report) was also filed against the *sarpanch*, but the Ajmer police closed the file. Every corrupt practice had an explanation. In fact, the case was finally closed on the pretext that even the same labourer shown working in three places simultaneously was possible. It was justified by saying that the same labourer must have worked day and night on a given day!

Negotiating Multiple Laws – Of the Land, the Caste Panchayat and Ethics

One must wonder which law Kesar Singh saw himself subject to, as he walked towards the *Jaati Panchayat* that day. Those who had done him out of his dues had violated the law, and the people who were supposed to implement this law actually did not believe in it. He had now been summoned by caste leaders who were invoking a different set of laws. Interestingly, the caste leaders, the violators of the law, and the official custodians of the law turned out to be the same set of people! So, as Kesar Singh stood before the *Jaati Panchayat*, he looked within himself, he drew on his sense of ethics, and refused to succumb to the pressure being brought on him. As the *Jaati Panchayat* threatened to excommunicate him for not following their diktat, he walked away promising to fight his own battle. One can only wonder what must have gone through his mind as he walked away from his community...

The Sangathan reviewed the strategy of going to the police for recourse. An understanding was emerging that since it was the interests of ordinary people that were



being compromised, these cases of corruption should be taken to a people's platform where public exposure based on proof would be used to develop public consciousness and vigilance, as well as apply pressure on the government to take action. The technology of *Jan Sunwais* (Public Hearings) began to take shape and evolve along with the articulation of the right to information.

Dispensing Justice: Evolving Platforms for Enforcing the Law

When the administration, the police and the courts refuse to implement the law, where does the collective turn? The challenge is to return to roots, and draw strength and sustenance from those who believe in the values behind the law. Democracy offers new and fresh opportunities for enforcing collective values. How much moral authority can be exercised by a collective? How does one ensure safeguards for justice and ethics over the brute force of democratic majorities? And finally how does one institutionalise the process? Is this the beginning of yet another set of 'bare acts'?



The first *Panchayat* for which records were made available by the concerned administration was Kot Kirana (Pali district), where a middle-aged man approached the Sangathan for support to get his minimum wage for work he had done for the *Panchayat*. When his application for being paid the full amount was ignored, he came to the MKSS. The Sangathan decided to ask for copies of all the muster rolls of the place where he had worked. The *sarpanch* and secretary refused access to records, but the BDO allowed MKSS access. The information was made public and numerous anomalies were discovered. An announcement was made about the intention to hold a public hearing on a particular day. As the MKSS activists moved around the *Panchayat* with the records, those responsible for executing the work (there had been no *Panchayat* elections for three years at the time, so a committee, including the secretary, was responsible for all *Panchayat* work) created a hostile environment, and distributed liquor as a bribe to ensure that no one would speak out at the hearing.

The first public hearing was conducted on 2 December 1994. People turned up in large numbers and spoke out against the fraud exposed in the records. FIRs were filed, along with people's affidavits. The MLA (member of the legislative assembly) at the time, however, took the case to court and got the same people who had filed the affidavits to turn hostile and file counter affidavits. The case finally came to naught, as another recourse to 'law' drew a blank.

The impact of the public hearing itself was lasting and significant, and it caused ripples right up to the state secretariat in Jaipur. This hearing was followed by two others, in Bhim and Vijaypur, in the same month.

Right to Information as Law: Towards Securing Entitlements and Expanding Democratic Spaces

As continuous engagements with legal spaces open up the problem areas in the law, with

regard to social justice and entitlements, new formulations emerge and need to be enacted. When information is denied to a people, what gets occluded is not just access to documents, but a whole paradigm of participation in decision-making that should be at the centre of any democratic framework. Without information there is not even the possibility of a 'say' regarding the trajectories of state policy and action, leave alone in actually evolving and determining these. If the state is elected through a democratic process, then this characteristic must be reflected in all its activities, with people's participation at the core; it cannot be limited to the exercise of a vote. The Right to Information (RTI) must find its place in legal and formal systems as a fundamental legislation.

Moreover, the demand for information cannot remain exclusive to the state, and must be extended to private bodies in order to guarantee transparency and accountability to citizens. What must be the nature of such a law? What kinds of information should come under the purview of such a law? Who will decide which information is 'permissible', and who will be privileged with access to information? Who will bear the cost of disclosure? What will be the cost (monetary and otherwise) of disclosure? What about non-compliance with such a law, and complaint and redressal mechanisms? Which platforms of investigation will be privileged, and how will citizens participate in the use of information to unearth further information that reveals the workings of political, administrative and legal systems? What about disclosures regarding anomalies in expenditure of public money, and punishment for atrocities and violations of human rights? Which other laws need to be amended in order to facilitate the Right to Information? To what extent are private actors exempt from the Right to Information? Who will determine the accountability of privileged private actors, and who will ensure that 'ordinary' citizens get a fair hearing in any contest with these actors? At the same time, what is the line between transparency and the right to privacy, and how will a balance be achieved between the two?

The next Public Hearing in Jawaja (Ajmer District) in January 1995 was very interesting, since access to records was completely denied. However, there were many complaints of irregularities based on information from different sources. The hearing was eventually held without the documents. A lot of people gave testimony about their experiences of corruption in *Panchayats* and the consequent denial of their rights. Some individual beneficiaries who had paid a bribe to get their housing grants, were immediately repaid the money by the concerned *gram sewaks* (panchayat secretaries), adding to the dramatic impact of the hearing, and affirming the power of a people's platform despite the denial of access to records.

Just before the hearing, the *gram sewaks* of the district had organized a strike in Ajmer, with *grams sewaks* from other parts of the state also supporting the demonstration. The Chief Minister, Bhairon Singh Shekhawat of the BJP, announced in April of the same year in the state assembly that the Right to Information (RTI) will be given to the people, and the state would take action in corruption cases by recovering money from the concerned officials. The Chief Secretary, who had visited the Sangathan a few times earlier in his career, was aware of the significance of the issue, and the intention of the MKSS to fight for legal entitlements. He advised the CM in the new government in favour of making an announcement for the RTI as legislation. It was a politically calculated decision, since the

Panchayat elections hadn't been held and the only people who would be held responsible would be from the bureaucracy. The CM's statement was quoted in a state Hindi newspaper, the *Dainik Navjyoti*, and that was enough: the MKSS took it up in a big way and never missed an opportunity to remind the state of the assurance made on the floor of the house. At the same time, a series of public hearings were organised in *Panchayats* in different blocks.

As the bureaucracy closed ranks and refused to part with information, it became clear that it would be close to impossible for citizens to get copies of records. In April 1996, one year after the Chief Minister's announcement on the floor of the assembly, the MKSS sat on an indefinite *dharna* demanding the RTI in Beawar. On the day of the commencement of the *dharna*, an Executive Order (EO) was passed by the *Panchayati Raj* department, allowing inspection of all records; originals, not certified copies. But we wanted a law, and one where certified copies of records could be obtained. The *dharna* was finally called off when the government agreed in principle to the formulation of the law and set up a committee to work out the mechanics of implementation. When the committee submitted its report, the government declared it a 'secret' document! A rally was organised protesting this, and demanding the immediate enactment of a law. Organisations from all over the state turned up for the rally in Jaipur, which 4,000-5,000 people attended.

Turning RTI into a Campaign: *Kaun kehta hai denge nahin; liye bagair rahenge nahin* (Who says they won't give it to us; we won't rest until we take our due)!

The years 1996-97 saw a period of intense campaign activity. The RTI movement had become a state-wide campaign by now, and numerous meetings, rallies and truck *yatras* (long-distance processions) were conducted by the MKSS all over the state in order to mobilise support for an RTI law. The National Campaign for People's Right to Information (NCPRI) was also formed with a core group of senior media persons, lawyers, activists and environmentalists, who in turn brought pressure to bear on the state and central governments for enactment of the law. In 1997 there was a state-level *dharna* once again, with a demand for a Right To Information law. It lasted for 53 days. Following this, the government came out with a gazette notification in the *Panchayati Raj* Act, backdated six months, regarding the RTI in *Panchayati Raj* Institutions; it accused us of not keeping abreast of legislative developments. The bluff was called, however, when the media questioned the state's constant announcements to the tune of 'it will be passed' (establishing that it hadn't really been) all through the *dharna*.

The *dharna* was followed by another spate of public hearings, this time with photocopies of records for five years (courtesy the gazette notification). These hearings were significant in different ways – for instance, in Kukarkheda, the *sarpanch* ceremoniously announced that she would deposit Rs 50,000 worth of usurped money back into the *Panchayat* account; she subsequently deposited the money, only to withdraw it again. Upon pointing this out to the SDM, the case went into inquiry and the recovery is still under 'due process'. Umarwas *Panchayat* was unique: the *sarpanch* himself came to the Sangathan requesting a public hearing on the works undertaken during his tenure! It emerged that he was a *dalit* (lower caste) who had been 'elected' from a 'reserved' seat. The influential and powerful family in the village that had controlled the *sarpanch* seat for many years had in

fact 'selected' him and fetched him from Surat, where he sold kerosene from a handcart. The deal was simple: they would get him elected, and would then not trouble him with running the *Panchayat*, but run it on his behalf. As a result of this puppeteering, the *sarpanch* was made to sign a lot of irregular documents that eventually led him to the Sangathan with a plea that only a public hearing would expose the fraudulent activities undertaken under his name. The hearing was held, and it was also established that the *sarpanch* was being made to defer to the powerful elite. The public hearing was clearly a breach of caste and power hierarchies and it was the *sarpanch's* conscience that prevailed.

Guilty in Law – But the Jury Holds Him Not Guilty

The public hearing in Umerwas raised interesting questions of who is really guilty for clear violations of the law in a society where the rich and the powerful control every forum of implementation. Pyarchand Khatik was guilty of violating the law in innumerable instances of fraud on paper. However, the real culprits were missing from those papers. The 'jury', consisting of the residents of the *Panchayat* sitting in the public hearing, already knew that Pyarchand was innocent. Which system would prevail? Which 'bare act' would come into play? Pyarchand Khatik has got away with his innocence. The culprits have got away with their guilt. Where does the law stand?

Formulating and Creating Legislation – People as Lawmakers

Yeh desh hamare aapka; nahin kisi ke baap ka (This country is ours and yours; not anyone's paternal property)!

Having irrevocably established the need for RTI legislation, the question was how and when such legislation would be passed, and more significantly, who would work out its basic details. When existing legislation falls demonstrably short in ensuring the adjudication of justice, it is only those at the receiving end of the injustice(s) that are best placed to point out the loopholes in existing laws, and point towards new legislation that might better serve in ensuring that justice prevails. Having said this, the law does not just secure and protect justice; it also protects and secures the dreams and aspirations of a polity. Development and expanding freedoms are some of these aspirations, and bare acts towards the protection and expansion of these aspirations must continuously evolve through direct engagement with people. The process of formulating the Right to Information comes close to this ideal of people's involvement and guidance in the formulation of law. However, we have to consider questions of accountability. How can the collective wisdom of people's struggles for justice inform law; and then, what is the extent to which this wisdom enjoys legitimacy within state and legal frameworks?

In 1999, with fresh elections, the Congress came to power with a promise of a Right To Information law as the first item on the party manifesto. With a new Chief Minister receptive to the RTI, the process of lawmaking began. After concerted campaigning, again with truck *yatras*, meetings and rallies, the campaign for RTI built up pressure for a comprehensive law. Later that year a committee was formed to identify the essential features of RTI legislation, and while the committee took a lot of advice from the campaign, its final decisions fell short on basic and essential provisions like penalties, time limits for

providing information (extended to 30 days), and lack of independent appeal mechanisms. Overall, the report made a positive recommendation for a law, and by 2000 the new RTI law was passed in Rajasthan.

Another Bare Act

Abhi to yeh angadayi hai; aage aur ladayi hai (This is just a pause; there are more battles ahead)!

The Act already suffered from the limitations mentioned above. The manner in which these prevented access to information was demonstrated in the very first public hearing that was organised after the law was enacted. Information for Janawad *Panchayat* took a year in coming. Since there are no penalties in the provisions of the act, the secretary kept postponing the disclosure of documents. The *sarpanch* also went to court against the Sangathan for demanding information – the case was eventually dismissed. Records, when finally made available, revealed corruption on a massive scale, and the public hearing has become a landmark case in the state. The ingenious mix of strategies of corruption used in the *Panchayat* was extremely revealing. What emerged upon investigation, based on the limited documents the Sangathan obtained, was various kinds of financial fraud to the tune of Rs. 45 lakh, out of the examined works for which Rs. 70 lakhs had been allotted. The government conducted its own investigation following the public hearing, establishing Rs. 73 lakhs of fraud out of a total expenditure of Rs. 1.15 crore. These were figures for one of Rajasthan's 9000 *Panchayats* in a period of five years...!

Since the landmark case of the Janawad *Panchayat*, given its sheer scale of corruption, public hearings on development expenditures have reached a definitive point – the methodology has been taken to other departments like health and public distribution centres, only to uncover more corruption, in varying contexts and degrees. While compensations, redressals and a vast increase in public awareness in the region and the state (owing to campaign-led hearings in areas other than those covered by the MKSS) have been extremely energising, the buck stops at a telling story – that of Gopi *bai* from Janawad. She, along with her husband, had worked on a *Panchayat* project and had not been paid for 90 days of work. She maintained her own record of small soot dots on a patch on her earthen wall and refused to wipe over the 'record' of money she and her husband were owed for years, even after her husband's death. Recovery of the money usurped by the entire nexus of elected representatives and lower officials is 'under due process'. Gopi *bai* died last year, without being paid her dues. This was despite the fact that state authorities had irrevocably established the fact of fraud, lack of payment, and recovery.

These fissures and contradictions reveal the tenacious potential of a citizenry committed to claiming rights. The multiple layers of class, caste and gender identities weigh on the democratic project: these frontiers need to be further contested, challenged and reworked. The onus is on all of us. A just legal recourse, functioning systems and a transparent and accountable democratic state can only emerge from ongoing contestations.

The follow-through on recoveries, prosecution and punitive measures is still the tangled end of the Right to Information. The MKSS has found itself hard-pressed to pursue complex

cases, when we are focusing our energies on securing sound national legislation through the NCPRI. On the other hand, marked improvements in the functioning of *Panchayats*, hospitals and ration shops in the area, and an overall vigilant citizenship, have also been facilitated. The project of democratic education is an ongoing one that the RTI has catalysed. From an administrative order in the department of *Panchayati Raj* in Rajasthan, it has expanded to become a comprehensive state law, and now a central law. The Right to Information Bill (2004) has been passed by the Union Cabinet to replace the older and much weaker Freedom of Information Act (2002). This democratic space will continue to expand, but only if we continue to push.





Zimbabwe's 'New Clothes'

Identity and Power Among Displaced Farm Workers

AMY R. WEST + BLAIR RUTHERFORD¹

“One day, two swindlers came to the emperor’s city; they made people believe that they were weavers, and declared they could manufacture the finest cloth to be imagined...The swindlers, therefore, were commissioned and pretended to be very hard at work, but they did nothing whatever on the looms... The emperor marched in the procession under a beautiful canopy, and all who saw him in the street and out of the windows shouted, “Indeed, the emperor’s new suit is incomparable! How well it fits him!” “But he has nothing on at all”, said a little child at last. “Listen to the voice of an innocent child...the emperor has nothing on at all”, cried the whole people”.

–Hans Christian Anderson, “The Emperor’s New Suit”

Introduction²

This article will examine the role ‘identity’ plays in defining the fate of farm workers in Zimbabwe, as well as the potential of this marginalised group to reframe public rhetoric and accepted notions of power. The identity invented for others may define the rules of engagement, but not always the way the marginalised define themselves, or the limits of their expression.

Questions of identity are central to Zimbabwe’s current crisis. ‘Identity reform’ of the nation is reflected in the destruction of ‘white agriculture’ and previously accepted internal ‘domestic governments’; the eviction and persecution, by members of the ruling party, of marginalised farm workers whose previous economic function as labourers for white farmers now represents reminders of ‘colonialism’. Farm workers in Zimbabwe are chosen as a focal point not only because they have suffered tremendously under the ruling party’s ‘reformation’ of the nation, as many international commentators have noted, but also because they challenge international definitions meant to protect and assist the world’s most vulnerable. The inability of farm workers, as a group, to fit within the internationally accepted frameworks that define vulnerability, along with their overwhelming ‘invisibility’ within the political and cultural contexts of the state, complicates any analysis of the situation today.

Zimbabwe’s identity is under construction. White farmers have left the farms, if not the country; landless peasants are subjected to violent ‘turf’ wars between local politicians;

veterans of the liberation struggle are bickering over land to which they feel entitled; and farm workers find themselves even more politically, economically and socially disenfranchised than ever before. By exploring the identity of farm workers, as defined for them by the international community, the Zimbabwean government and the communities in which they live, we will focus on how they reflect these perceptions and how they defy them. The consequences of misperception and the ramifications of predetermining peoples' role in society will be discussed. Emphasis will be placed on how farm workers, then, define themselves through actions that both passively accept and actively resist the mantle of expectation and judgment placed upon them.

Identity crucially shapes action and reaction. A misconstrued identity can, and sometimes does, alter the way in which crisis is addressed. Look at the example of how Rwandan refugees fleeing the genocide in the land of a thousand hills were defined in ways that extracted international sympathy for the misbegotten and vulnerable. Meanwhile, that same group, of war-torn and destitute *misérables*, was dominated by *genocidaires* in sheep's clothing who used international pity to mount successful surprise attacks against international aid workers and Rwandan Tutsis within the region. Refugees could no longer solely be identified as victims. This complicated the definition of the 'marginalised', who became a powerful force bent on undermining security and altering regional dynamics in order to protect themselves against a perceived threat to their lives, as well as their identity. In a similar vein, the case of farm workers disputes the international legal and political frameworks being applied to Zimbabwe. These parameters do not reflect the depth of the crisis with any accuracy.

A series of questions constitutes a starting point for any analysis of the situation of farm workers in Zimbabwe. Who are these people? What factors have made them vulnerable to displacement? How are farm workers constructed in public discourse? How do they then react to this persona fashioned for them by others? Furthermore, do farm workers define themselves, and if so, by what methods and means? Lastly, do identities incorporating 'victimhood' or 'threat', and notions of power politics, social and economic constructs involving land, farm and nation, perpetuate violence within Zimbabwe?

Background

Farm workers have been marginal citizens; some would even say "quasi-citizens" (Schou, 2000). They are citizens whose claims to belong to Zimbabwe have been treated with suspicion by the government and many other Zimbabweans because of the history of labour migration and, more importantly, the form of administration under which they fell. The former meant that many farm workers in the colonial period were foreign-born, while the latter has meant that they have been closely linked to white farmers and not necessarily the postcolonial nation. This construct and the perceptions embedded within it further alienated farm workers from the inner political and social circles of the community and the state.

Colonial administration and governments ensured that European farmers became important economic and political actors in the colony shortly after formal British colonialism began in 1890. This domination continued up to Independence in 1980. A racialised, so-called "dual" colonial rural political economy emerged. It consisted of comparatively

productive white commercial farmers, along with generally less productive black petty commodity producers whose livelihoods were crucially linked to non-farming activities (Moyo, 1995). Such a political economy created vast inequities in access to land and means of production, and was implicated in a particular concatenation of land, citizenship, and the nation (Worby, 2001; Hammar and Raftopoulos, 2003).

During much of the colonial period, white farmers relied heavily on foreign workers, largely coming from colonial Malawi, Zambia and Mozambique. Farm workers were prohibited from acquiring land in the native reserves (although some did) and were configured in policy, laws, and general arrangements to only be part of the landscape of white farms.

By the 1950s, farm workers were being administered differently from other African subjects. Farm workers fell under the state-sanctioned authority of the European farmer and his family, to form part of the “domestic government” of European farms – “domestic” in the dual sense of promoting the ‘private’ over the ‘public’ domain, and of valuing paternalistic, family-like relations between male workers and farmers, and between male workers and their wives and children (Rutherford, 2001). Colonial labour relations officials had minimal interest in improving working conditions; up to the 1970s, corporal punishment was common and even officially condoned. Domestic government firmly anchored the claims of farm workers to that of serving white farms as opposed to serving the nation (Rutherford, 2003, 2004).

Administered by the state-sanctioned authority of white farmers, farm workers were viewed by many to be apart from the other Africans in the colony. This meant, for example, that during the guerrilla war of the 1970s, African nationalist guerrillas often saw farm workers both as Africans exploited by whites and as people whose loyalties lay more inherently with their white “baas” than, say, with those struggling against colonial rule (Rutherford, 2001). This ambiguity surrounding the identity, and therefore ‘loyalty’, of farm workers continued throughout the postcolonial period.

Since Independence in 1980, farm workers as a group, though suffering from a crisis of a politically ambiguous identity, did have their economic identity ostensibly normalised at the national level. They were covered by the same labour regulations as other workers and were represented by a trade union in a national employment council. However, these codified rules that covered working conditions for all labourers in Zimbabwe were viewed with great scepticism by farmers and their representatives. Indeed, there had been a strong effort by many white farmers (the majority until 2000, despite the end of legislated racial segregation at Independence) to prevent ‘outsiders’ – be they union officials, government officials, or politicians – from entering into their farms to interact with their workers. This trend was often reinforced by government officials and politicians, who did not readily include farm workers as citizens who should partake in the expansion of the social welfare state during the 1980s (Rutherford, 2001).

The guerrilla war, the national liberation in the 1980s, and the aftermath of independence, became closely identified with a peasant struggle incorporating notions of entitlement to land and ZANU (PF) policy prescriptions for a just redistribution of it (Moyo, 1995; Werbner, 1998). By default, farm workers found themselves to be still politically and economically dispossessed and socially and culturally marginalised. Those possessing ambivalent identities

within the dominant discursive configuration of the nation were vulnerable. Violence increased, as was the case when ZANU (PF) faced challenges,³ and when the MDC (Movement for Democratic Change) emerged as a credible challenge to the ruling party during the build-up to the 2000 parliamentary elections. The targets of this animosity were those deemed to not properly belong to the nation. Domestic law was open for interpretation as ZANU (PF) leaders began to decipher what rules applied, and to whom. Their aim was to ensure that farm workers and farmers voted for ZANU (PF) in the upcoming parliamentary elections; those associated with MDC were seen as a threat and labelled as such.

In the aftermath of ZANU (PF)'s (disputed) electoral victory, national and international pressure mounted on the government to enforce its laws. Land demonstrations coalesced into the 'fast-track' land resettlement program, and violence continued under the label of the "Third Chimurenga",⁴ often increasing towards electoral competitions and mostly carried out by ZANU (PF) and its supporters. The political crisis quickly merged into an economic crisis. Productivity in the agriculture sector, Zimbabwe's critical economic sector, rapidly declined while donors and investors largely froze or withdrew their funds. In this context, the ambiguous citizenship of farm workers was foregrounded, with largely grim consequences for them and their dependents.

Identity Framework

Marginalisation of farm workers and intolerance of the opposition reached an apex after fast-track land reform. Anyone deviating from the 'identity' of those who held authority were assumed to be potential threats to that power. Mistreatment of farm workers, then, became justified through labels connoting opposition (MDC supporter); or betrayal (*vatengesji*/"sell-outs"); or foreignness (outsider). These definitions have been, in large part, accompanied by violence as farm workers are targeted as enemies of the state, or marked as denizens intending to deny livelihoods to more 'worthy' citizens.

The divisive notions of identity, preached by the government, resonate with a significant proportion of the population for reasons of fear and/or agreement. Farm workers, by virtue of their colonially inscribed identity, have largely been denied access to land while simultaneously been subject to various forms of violence (Sachikonye, 2003). These definitions serve to undermine a wider cohesion and alliance-building, while encouraging a violent competition for resources. Within this context, farm workers are left to passively accept political and social invisibility, or actively resist these definitions and re-define themselves and their role within Zimbabwe's crisis.

The uncertainties that once existed within the borders of the commercial farms still exist for farm workers, but are exacerbated by an equal or greater threat that permeates the public sphere. What does it mean for farm workers, defined by a combination of colonial identity formation and ZANU (PF) agendas, to act against or be perceived as acting against the state? The loss of employment and the security, however tenuous, of "domestic government" and its inherent system of representation for farm workers at the level of the state, has led to difficult choices and dangerous consequences.

As has been observed (Chabal and Daloz, 1999:80), "The whole of the parallel economy of African countries rests on the operation of vast national, regional and even

international networks, the functioning of which demands both protection from violence and access to the threat of coercion against competitors". Evidence of this parallel existence is easily found in contemporary Zimbabwe. Many young male farm workers join terror gangs, be they formal youth brigades known as Green Bombers, who are 'educated' in government camps, or youth leagues at various levels of the ZANU (PF) political structure. There are also gangs being used by individuals seeking to promote their own agendas of political power. Farm workers, then, be they physically displaced and/or dispossessed of their livelihoods, are incredibly vulnerable to political entrepreneurs who increasingly use violence in their disputes with competitors within ZANU (PF) or with members of the MDC.

In addition to the changing identities of young males in rural areas, many women are redefining themselves within the context of the crisis. Many are turning to prostitution as a survival mechanism. Although this was always a common livelihood strategy for some women on farms, particularly those who were not living with a male worker, the greater scarcity of wage jobs in agriculture has increased the number of women resorting to prostitution. Prostitution is one way in which women earn a bit of money, along with selling vegetables and other products they can find. This, though, subjects them to potentially extreme levels of violence. Male youth gangs, political entrepreneurs, and even frustrated unemployed farm workers will often 'take' without compensation in order to claim 'territory' or assert authority. What happens in peacetime is only exacerbated in the midst of crisis for women in rural areas (Zimbabwe Institute, 2004). "It is not surprising that ordinary men and women will seek to devise alternate strategies for coping with arbitrary force. As is the case in all disordered and poorly regulated societies, where crime is endemic, the very management of violence turns into a resource for some" (Chabal and Daloz, 1999:77).

Many Zimbabwean and, especially, international organizations have recorded the adverse situation of farm workers. They have written about the discrimination against farm workers in terms of acquiring land under the fast-track land resettlement activities, food security, voting, health and education, violence, and overall vulnerability. Although there have been a number of recommendations and demands placed upon the government of Zimbabwe and the 'international community', there is uncertainty about how to situate farm workers. We argue this is due in part to the problematic use of narrowly defined categories and assumed identities which often dictate policy and action. Furthermore, this grave misunderstanding of marginalised groups perpetuates violence, disrupts development and makes nations, regions and the world incredibly insecure and unstable in the long run.

The Marginalised

The world's marginalised can be covered through the classic definitions of an internally displaced person or population (IDP),⁵ or that of a refugee (individual or population)⁶ when defining 'vulnerability'. These groups can equally be defined as 'terrorists' and 'criminals' when failing to adhere to an internationally accepted definition of 'victim' and posing as an oppositional threat to an authoritarian regime. Global statistics estimate the number of uprooted people existing within their own country's borders to be nearly 25 million; compared with 10 million refugees worldwide. Numbers for Africa point to 13 million internally displaced people.⁷ What remains disconcerting is that these numbers might be

even greater, as statistics on the internally displaced remain inaccurate because they are never registered, or in some extreme cases, the displaced do not meet a strict definition but still represent the spirit of that definition.

In the game of semantics, Zimbabwe is, perhaps, an extreme case. Zimbabwe's internally displaced population is difficult to define as well as estimate in numbers. This ambiguity in how to accurately measure those most affected by the crisis begins with a displaced population one cannot even define. Farm workers play the pivotal role in the identity and numbers game. The simple fact that many still exist on commercial farms, despite the loss of the farm infrastructure and their subjection to extreme levels of violence, excludes them from an 'identity' that would bring them security and assistance. Identity, then, becomes a trap for those marginalised not only by internal power struggles, but also by homogenised definitions the international community seeks to apply to complex emergencies. The U.S. Committee for Refugees (2003) lists estimates of displaced peoples at 100,000 while Norwegian Peoples' Aid (2003) estimates IDPs at 150,000. Refugees International (2004) also suggests that the number stands at 150,000 individuals, noting that the majority of farm workers are not displaced but rather "internally trapped" on their former places of employment. At a minimum, unemployed farm workers reflect numbers of 210,000 to 245,000 (out of an estimated 320,000 to 350,000 workers in 2000 and a total population, including dependents, to be between 1 and 1.5 million; see Sachikonye, 2003), a group larger in number even than those persons deemed 'vulnerable' by international standards.

To add fuel to the fire, the UN in its Consolidated Appeals Process for Zimbabwe (2004) makes no direct reference to IDPs at all, reflecting the Zimbabwe government's position that internal displacement does not exist (Global IDP Project, 2004). Zimbabwe's "clever weavers", in this case, have the approval of an international organisation, woefully blinded by limitations that identify the vulnerable according to pre-determined models, rather than evolving identities. Thus former and current farm workers, some of whom constitute a percentage of the displaced population within Zimbabwe, and all of whom remain highly vulnerable to the consequences of being labelled as criminals, foreigners, sell-outs and opposition, are without international mechanisms that could potentially secure assistance and protection for them. Not a refugee, not an IDP, the farm worker is often paralysed on commercial lands and often unable or unwilling to cross the limits of the farm, let alone an international border. In many cases, there is nowhere to go. The complex nature of the farm worker's stagnation, in the midst of persecution, rather than movement (i.e., being "internally trapped") is not accounted for in international law and policy that focuses on protection and assistance.

How, then, are farm workers to be defined in order to most appropriately show the urgency of their situation? Do any international mechanisms exist that can offer protection and assistance to Zimbabwe's marginalised, without forcing them into the classic pre-existing definitions of refugees or internally displaced persons? Should farm workers continue to live vulnerably under threat of, if not actual, expulsion from their place of residence; dismissed without international protection or assistance, because they have not crossed Zimbabwe's borders to seek a safe haven in another country? Such uncertainty about large masses of

marginalised people within a society impedes not only an understanding of the depth of an existing crisis, but also threatens to challenge the social, political and economic institutions meant to develop and stabilise a country facing mounting insecurity.

Farm workers have no government protection or security where their lives and livelihoods are concerned, because they do not qualify as 'citizens'. Certainly those identified as 'citizens' will be served first, while those who are not may not be served at all. In addition, farm workers are not defined as refugees or internally displaced persons; therefore the international community is not obligated to intervene on their behalf with the government of Zimbabwe. Who holds a mandate that would protect and assist farm workers? The international community acts on accepted definitions that reflect past crises, while the state defines and redefines according to its interests. Both parties are promoting a dangerous environment.

If there is no definition to identify, and therefore qualify, farm workers' immediate vulnerability within Zimbabwe, then those who frame the crisis will stitch together definitions to serve their own interests, ones that more often than not promote and perpetuate violence. In the end, those who are vulnerable will not settle for being 'invisible'. Like many of the marginalised who fight 'invisibility', farm workers are complex actors who have various and sometimes crosscutting political, economic and social survival strategies. Farm workers, therefore, reflect and defy the perceptions levied against them; the choice depends mostly on how these definitions promote or undermine the acquisition of their greatest needs.

Farm Workers Defined

Farm workers are politically, economically and socially identified by power-wielders in the rural areas. Taking the example of several farms in Zimbabwe experiencing land reform since 2000, through interviews with farm workers and those who are in or who aspire to leadership positions within ZANU (PF) structures,⁸ we show that farm workers' identity and the ways in which they express their role in society are now strongly shaped and interpreted by war veterans and political leaders claiming allegiance to ZANU (PF), rather than by previous practices of "domestic government". Violence at the hands of war veterans or the ZANU (PF) towards outsiders is seen as protecting the statutes of the government against, as put by a local ZANU (PF) leader, those people who want to "hijack the process of government".⁹

If 'insider' is defined by the group that visibly controls a society, dictates policy and interprets law, membership is established through like-mindedness and obedience. Where there is insecurity, the suspicion that anyone could undermine the 'insider' group is prevalent, increasing the pressure to define and limit. Those who find no representation for themselves through the needs and interests promoted by the insider group, and do not endorse the interpretation of policy or law as defined by that group, are, by consequence, 'outsiders'. The connotation of being an 'outsider' implies a perceived threat and challenge to the identity and power structure, of the insider group.

With the removal or reduction of Zimbabwean white farmers through forced land take-over and violent intimidation, based both on an identity associated with the despised

colonial past as well as a presumed, and often actual, support of the MDC, ZANU (PF) rhetoric and practice has also targeted other groups who stand in contrast to their objectives. The mentality and practice of identifying the 'other' and forcing these defined notions of 'opposition' to the periphery, whether real or perceived, drives people further into the invisible political, economic and social spaces of what constitutes the rural and urban community.

Farm workers, historically, have been on the margins of the Zimbabwean nation. Their low-status employment, their association with "whites" whose own belonging to the nation has been increasingly questioned by a narrowly defined African nationalism, and their ambiguous citizenship claims define the farm worker in relation to others who comprise the entirety of Zimbabwean society (Rutherford, 2004; Rutherford, m.s.). Economically, 'outsiders' become 'criminals' if the protection of their livelihoods runs contrary to controlled availability, thus promoting illegal methods of sustaining themselves. Socially, they often have to choose between a life of exclusion and persecution, or else one of fraught inclusion in youth gangs, rogue bands and a world of prostitution. Farm workers especially must accept the consequence of being an 'outsider', repent and reform, or, be treated as children in the social hierarchy, i.e., vulnerable dependents meant to accept any punishment inflicted upon them.

The resistance by farm workers on a farm we will call Hondo was one such place where a reframing of farm worker identity had consequences. Farm workers demanded compensation for losing their jobs as settlers started to move onto the farm. Local ZANU (PF) leaders told the farm workers that there was no money coming from the government to compensate them, because the farm owner had retained a portion of the farm. A newly reconstituted alliance, one forged between the Hondo farmer and local ZANU (PF) leaders, left workers with little to no security and no compensation. The farm workers were ultimately forced into submission by being severely beaten by ZANU (PF) youths who had come to the farm and set up a branch office.¹⁰

Hondo farm workers were being defined in political terms; the abuse of their homes and livelihoods justified, thus, on the grounds of state security. As one ZANU (PF) leader argued:

"[Hondo's] farm was occupied by farm workers who strongly support MDC. This farm is in an area where one of the MDC leaders had a stronghold. We fought very hard to win this battle, with axes and sticks. The fight was so fierce; I had to restrain my youths [who included farm workers from other farms] from setting one farm worker on fire. The worker who was about to be set on fire was the most troublesome farm worker. I quickly intervened and restrained the youths before he was set alight".¹¹

The leader politically reframed farm workers' resistance to the establishment of a ZANU (PF) cell as insurrection. As elections, and the perception of choice, enter into aggressively shifting imbrications of land, society and reconfigured politics, 'opposition' becomes an enormous threat. The needs and wants of identified groups such as 'farm workers' (and white farmers, trade unionists, NGO activists), when not in harmony with the goals of those

vying for, or already in, political control, are identified as dangerous to the security of the whole. The local leader who has mastered support of many (be he, or she in a few cases, a war veteran, Councillor, member of parliament, senior ZANU (PF) leader, etc.) is guaranteed most often to win, as people are beaten or starved to death if they do not support him. Farm workers, whose interests are not represented by the particular leader of a given local area, find themselves reaping the consequences of their identity; oftentimes, ironically, at the hands of those who once shared the same identity.

Like other Zimbabweans, farm workers suspected of supporting the MDC were attacked in particular. Farm workers on several commercial farms were beaten terribly for being found with an MDC card. People were warned that if they voted for the opposition, ZANU (PF) youth would be able to track them down by studying fingerprints at the election sites. In addition, many people could not buy maize as the local Councillor was the one who divided the spoils and distributed them among those who were not viewed as MDC members, and who attended ZANU (PF) meetings.¹² As this Councillor declared at his ZANU (PF) victory celebration after winning the 2002 local council elections, "...work hard to bring about unity for the next council elections, so that no opposition will emerge. Winning the election is not enough. The youth must sweep and clean the area of those people who are not working in line with 'us'".¹³

Farm workers always needed to play the 'identity game', even under the "domestic government" system. But there is so much more at stake when identity politics are predicated on stripping a group of their contribution to the state, by reframing their role in society as a threat. The risk of fluctuating alliances and constantly shifting local authorities make farm workers susceptible to losing a fragile hold on land, livelihoods and life itself. Farm workers, like many other Zimbabweans, learn to obey the authority and orders of the ruling party or face the consequences of being labelled *vatenges* to the nation. As a result, there is a fear amongst farm workers to publicly discuss politics or raise vocal complaints about the current threats to their livelihoods (Rutherford, 2004). Thus, farm workers will accept labels of ZANU (PF) supporter, victim, and child in the visible, public sphere, while becoming the criminal, sell-out and opposition force in the invisible, informal spaces. The farm worker's life and livelihood depends on how well he or she can convince the social and political authorities that his or her identity reflects the 'insider's' rules and refutes popular fears that there is a proliferation of the "sell-out" mentality.

As such, farm workers will visibly attempt to politically support ZANU (PF) in order to acquire food or secure employment, not necessarily because they embrace the current political structure, but because they have no choice. Had it not been for hunger, one farm worker stated, he would rather not come to ZANU (PF)-called meetings where they were being treated like schoolchildren.¹⁴ Another farm worker described the intersecting points of redefining herself in politically acceptable terms in order to survive:

"I have been working at Pabasa but this farm was taken by the war vets...When I stopped working at Pabasa in May 2002, I began selling vegetables for a living. In April, I went to register for employment at another farm, but the manager who was present then told me and others that they were not employing former farm workers.

The manager did not tell us why. Yet, there are other former farm workers who are working there...These former farm workers who are working there now are ZANU (PF) youths. To get employment on that farm, a ZANU (PF) card is the major requirement. I do not have a ZANU (PF) card. So, I gave my money to someone to secure me the ZANU (PF) card. It appears, though, that he has failed to get me one".¹⁵

The effects of current political definitions have direct ramifications upon farm workers' economic strategies. It matters less what the actual politics are; perception has become a means to an end. Farm workers' livelihoods depend on their perceived allegiance to the ZANU (PF) party, though many can be found to support the goals and ambitions of the MDC. MDC loyalty, however, does not feed people.

As ZANU (PF) forces move onto commercial farms and replace the "domestic government" system, the definitions the state promotes about farm workers' identities hold greater weight. Farm workers can no longer retreat behind the borders of the commercial farms and try to curry favour with a potential patron in the form of the white farmer (or even a senior foreman or manager) who may decide to represent their interests at the level of the state. The public sphere in which farm workers possess no voice to register their needs and interests has come to the farm, thus moving them further into the 'invisible' space that had previously existed, principally, at the state level.

In addition to definitions with political repercussions, farm workers are defined frequently as criminals. This economic marginalisation pushes farm workers into the spaces occupied by black peasants battling to secure their own tenuous livelihoods in a country wracked by more than 200% inflation and 70% unemployment. This increased competition for resources and limited job prospects results in the group that is in a more precarious social position seeking remuneration through activities that exist outside the accepted, formal economic framework of a community. This parallel sector, referred to as subversive and illegal in many cases, serves to propagate and perpetuate the farm workers' identity as criminal.

As one displaced farm worker observed:

"I have stopped selling *mbanje* because I might be jailed for this, since there are people who are selling us out to the police. We buy and order *mbanje* from people who move around selling whatever they have. We also sell *mbanje* to people of this locality, and from other farms when they come to drink beer here. Apart from selling *mbanje* we also sell small items such as *maputi*, freezits, tomatoes and some matches. We also do not forget to sell *beche* [the vagina]".¹⁶

Forced from the commercial farms where their economic function as labourers was their identity, both men and women farm workers are economically displaced from society, with little means of redefining themselves within the formal structures of Zimbabwe's economy. The business of selling minutiae by the side of the road, or *mbanje* through local networks, or one's body for lack of another material good, creates an informal economic market in which farm workers reinforce the general perception that they are a criminalised

community working in opposition to the development interests of the state. Where heavy controls on the market seek to stop the supply and cripple the purchasing power of those operating in the market, the overall exchange of goods does not stop. People simply create another market, motivated all the more by desperate need of it, thus causing informal or 'black' markets to thrive (West and Wambugu, 2003). If farm workers are disenfranchised to the point where they are stripped from any form of social security, can no longer access a legal means of earning an income and cannot feed themselves, they will naturally seem to reflect the 'criminal' definitions to which they have been assigned.

Furthermore, the political and economic marginalisation of farm workers encourages social exclusion. "Many immigrant farm workers appear to fall outside what can be described as the cultural core group of the Zimbabwean nation; the peasants in communal wards" (Schou, 2000:44). Where black peasants have found political and economic representation and visibility at the level of the state, farm workers have not. Any visibility gained, then, is pejorative and threatening. Farm workers find themselves identified as "sell-outs", betraying the national black peasant majority by their very presence on commercial farmlands, and their perceived allegiance to the white farmers. There are many instances in which the livelihood practices of farm workers are portrayed as 'anti-social'; a label given in part to reflect their presumed 'foreign' ways and societal 'disobedience'. As a recent empirical study suggested, farm workers are not represented by the new, emerging institutions governing the fast-track resettlement areas and there is a "tendency for them to be accused [by the new settlers] of being undisciplined, disobedient and refusing to be governed" (Chambati and Moyo, 2004:26). There is a widespread assumption that farm workers do not 'belong' to the rural, mostly peasant, areas. An older Zimbabwean who worked on the railroads and returned to the rural areas in his latter years, typifies the general perceptions of farm workers:

"If you visit a farm, you will notice that 90% of the people came from outside Zimbabwe and the farm management, in most cases, is of foreign origin. Farm workers are disliked by citizens because they work in closeness to the whites and they are viewed as *vatengesesi* as they report any misdeeds by other farm workers to the whites. Another reason why they are disliked by the citizens of Zimbabwe is that foreign workers do not make any demands from their employers; maybe because they find it difficult to go back to their home, or countries of origin. Workers who come and go, are like passers-by. They do not come to consolidate, because they know that they have nowhere to go. At the moment, the foreign workers have been shaken, because of the land reform. The farms have stopped operating and now they have nowhere to go. Those of us who are citizens of this country, we are interested in the fast-track land reform programs, as most of us claim to be more able farmers than those from Malawi and other countries".¹⁷

There are a number of instances in which new settlers assume that farm workers must work for them, regardless of remuneration and working conditions, because that is assumed to be the farm worker's sole purpose. On some farms there is an "impasse", and thus,

“...a deadlock between new farmers and former farm workers and there are reports that some workers have been chased away from farm compounds for refusing to do contract work...and others have been forced to work in exchange for their continued residency in these areas. Some new farmers have resorted to charging access fees to former farm workers for use of farm resources, such as water, firewood, thatching grass, fishing on farm dams etc...as retribution for their refusal to provide their labour services. Some former farm workers thus live in fear of being evicted from the farm compound” (Chambati and Moyo, 2004:23).

Farm workers, traditionally, were imagined to have one accepted function: labour for commercial farms. The breakdown of this system, then, has left farm workers vulnerable to both assumption and redefinition. In such a context, marginalised groups will learn a system of acquiescence in the visible arena in which they exist, and silent resistance in the ‘invisible’ spaces towards which they are being pushed.

Conclusion

Zimbabwe’s “clever weavers”, reminiscent of Anderson’s tale, continue to form identities from a fabric that historical and current power relations have rendered increasingly complex. Only by looking closely at the weft and warp of what constitutes national identity can those in a position to affect change begin to rework the loom that will tell a different story for Zimbabwe’s marginalised. In the ever-expanding unequal terrain of power and class, where fear and suspicion are palpable, and options narrow from day to day, it is imperative on the international and national levels to critically re-examine the fabric of assumptions contributing to the misery and vulnerability of Zimbabwe’s farm workers.

NOTES

1. The authors wish to acknowledge farm workers in Zimbabwe whose ‘invisibility’ bears witness most powerfully to the changing voice of the marginalised and the courageous ways in which people challenge identity politics. In addition, they wish to thank the following organizations and individuals: Social Science and Humanities Research Council of Canada, Rinse Nyamuda, African Studies Association, Center for Human Rights & Conflict Resolution at The Fletcher School of Law & Diplomacy, Irene Martyniuk, and their families.
2. Amy West has nine years of work experience and contact with refugees, IDPs, and asylum-seekers in Africa, the Caribbean, Europe and North America. Blair Rutherford has twelve years of research experience in Zimbabwe, in particular on commercial farms and with farm workers.
3. The most glaring example of this is the persecution, mass killings, and rape of anyone identified as ‘Ndebele’ in the Matabeleland and Midlands provinces from 1982-1987 by the army and Central Intelligence Organisation (CIO, the secret police). The aim was to root out the rival African nationalist group and political party, ZAPU (Zimbabwe African People’s Union); see CCJP and LRF (1997).
4. *Chimurenga* translates as “struggle” from the chiShona language and in nationalist historiography. The ‘First *Chimurenga*’ refers to the uprising in the mid-1890s by various Africans against the first European settlers; the ‘Second *Chimurenga*’ refers to the armed struggle against colonial rule in the 1960s and 1970s.

5. "Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border". UN Guiding Principles on Internal Displacement, principle 2.
6. "Any person who as a result of events occurring before 1 January 1951 and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it". Article 1(2) of the 1951 UN Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force on 22 April 1954.
7. Please see http://www.idpproject.org/regions/Africa_idps.htm, and <http://www.unhcr.ch/cgi-bin/texis/vtx/basics> for statistics (accessed on 11/29/2004).
8. The names of the farms and people interviewed are pseudonyms.
9. Interview, 10 November 2002.
10. Interview, 5 October 2002.
11. Interview, 5 October 2002.
12. Interview, 28 September 2002.
13. Interview, 5 October 2002. See also reports by Amnesty International and Human Rights Watch on the violence in Zimbabwe.
14. Interview, 12 October 2002.
15. Interview, 21 July 2002.
16. Interview, 28 September 2002.
17. Interview, 10 November 2002.

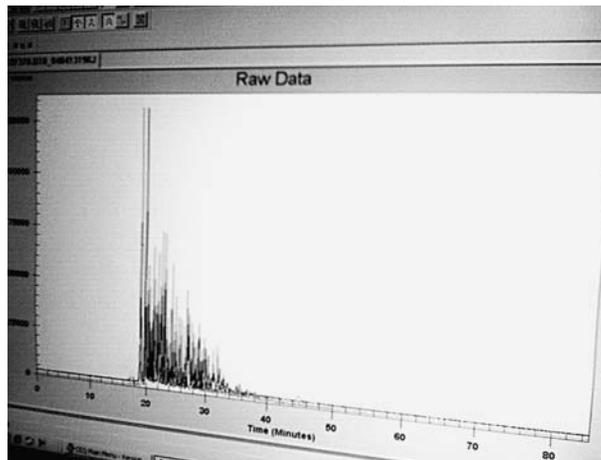
REFERENCES

- CCJP and LRF (Catholic Commission for Justice and Peace in Zimbabwe and the Legal Resources Foundation). "Breaking the Silence, Building True Peace: A Report on the Disturbance in Matabeleland and the Midlands 1980-1988" (CCJP and LRF, 1997, Harare).
- Chabal, Patrick and Jean-Pascal Daloz. "Crime and Enrichment: The Profits of Violence". In *Africa Works: Disorder as Political Instrument* (James Currey, 1999, Oxford).
- Chambati, Walter and Sam Moyo. "Impact of Land Reform of Farm Workers and Farm Labour Processes". Technical Paper No. 7, Review of Zimbabwean Agricultural Sector following the Implementation of the Land Reform (1995, Harare).
- Global IDP Project. "Zimbabwe: A Hidden Displacement Crisis" (Norwegian Refugee Council, 2004, Geneva).
- Hammar, Amanda and Brian Raftopoulos. "Zimbabwe's Unfinished Business: Rethinking Land, State and Nation". In Hammar, A., B. Raftopoulos, and S. Jensen (eds.), *Zimbabwe's Unfinished Business: Rethinking Land, State and Nation in the Context of Crisis* (Weaver Press, 2003, Harare).
- Holsti, K.-J. "Political Cause of Humanitarian Emergencies". Research Paper #36. United Nations University (World Institute for Development Economics Research, 1997, Helsinki).
- Kreisberg, Louis. *Constructive Conflicts: From Escalation to Resolution*. 2nd edn. (Rowman & Littlefield, 2002, Lanham).

- Moyo, Sam. *The Land Question in Zimbabwe* (SAPES Books, 1995, Harare).
- Norwegian People's Aid. "Zimbabwe Country Profile" (Norwegian People's Aid, 2003, Oslo).
- Refugees International. "Analysis of the Situation of Displaced Farm Workers in Zimbabwe" (Refugees International, 2004, Washington).
- Rutherford, Blair. *Working on the Margins: Black Workers, White Farmers in Postcolonial Zimbabwe* (Zed Books and Weaver Press, 2001, London and Harare).
- Rutherford, B. "Belonging to the Farm(er): Farm Workers, Farmers, and the Shifting Politics of Citizenship". In Hammar, A., B. Raftopoulos, and S. Jensen (eds.) *Zimbabwe's Unfinished Business: Rethinking Land, State and Nation in the Context of Crisis* (Weaver Press, 2003, Harare).
- Rutherford, Blair. "Desired Publics, Domestic Government, and Entangled Fears: On the Anthropology of Civil Society, Farm Workers, and White Farmers in Zimbabwe". In *Cultural Anthropology* (2004), 19 (3): pp. 122-153.
- Rutherford, Blair. "Shifting Grounds in Zimbabwe: Citizenship and Farm Workers in the New Politics of Land" (m.s. 2004).
- Sachikonye, Lloyd. *The Situation of Commercial Farm Workers after Land Reform in Zimbabwe* (Catholic Institute for International Relations, and FCTZ, 2003, London and Harare).
- Schou, Arild. "The Adaptation of Quasi-Citizens to Political and Social Marginality: Farm Workers in Zimbabwe". *Forum for Development Studies*, pp.43-63 (2000).
- UNHCR Statistics 2003/2004 (website).
- UK Refugee Council, Information Centre, Zimbabwe, June 2003.
- USCR 2003 Global Report, Zimbabwe.
- Werbner, Richard. "Smoke from the Barrel of a Gun: Postwars of the Dead, Memory and Reinscription in Zimbabwe". In Werbner, R. (ed.), *Memory and the Postcolony: African Anthropology and the Critique of Power* (Zed Books, 1998, London).
- West, Amy R. and Lydia W. Wambugu. "Left to their Own Devices: The Impact of Informal Information and Communication Networks on Security in the Tanzanian Refugee Camps". Africa Thematic Report, Article 19 (Global Campaign For Free Expression, 2003, Johannesburg).
- Worby, Eric. "A Redivided Land? New Agrarian Conflicts and Questions in Zimbabwe". In *Journal of Agrarian Change* 1(4), pp. 475-509 (2001).
- Zimbabwe Institute. "Playing with Fire: Personal Accounts of Human Rights Abuses Experienced by 50 Opposition Members of Parliament in Zimbabwe, and 28 Opposition Election Candidates" (Zimbabwe Institute, March 2004, Johannesburg).

Standardised, Packaged, Ready for Consumption

RAVI AGARWAL



Standards make everything 'normal'. They can make the 'ambient' air in New Delhi like the air in New York. The World Health Organization can measure it as proof. Irrespective of how either city functions, the attainment of a standard has become a universal goal. Standards are first defined, set, and then achieved, in that order. Actually, the air does become cleaner if the standard is achieved. The woman in the slum, though, is probably still dying of excessive indoor smoke in her shanty kitchen, from a fire made of twigs from the nearby tree. We cannot prescribe everything that she might need to ease her daily tasks. But we can say with certainty that the woman needs clean fuel and a smokeless *chulha* in a well-ventilated kitchen, to prevent exposure to high levels of pollutants. Improving something today needs a standard. As do car engines in order to lower emissions, generators in order to be less noisy, seat belts and air bags in order to provide driver/passenger safety, etc. The impulse to standardise is deeply intertwined with being 'safe', and 'normal'. What gets standardised is another question.

Standards have become central to our environmental imagination. They reside in the Air Act, the Water Act, the Environmental Protection Act, the Prevention of Food Adulteration

Act, the Insecticides Act. International organisations and environmental treaties make them. They are omnipresent, as a core apparatus in our public spaces. Regulating our compliance with them is the crux of our environmental strategies. Without them we would not know what to do.

The river Yamuna in Delhi is filthy. The Central Pollution Control Board (CPCB) has figures to prove it, and a mission to clean it to at least a minimal 'irrigation water quality', using the right technology. It is dirty because the city regurgitates its sewage into the river through 18 drains. No matter that once these drains were rainwater channels. Now they are just foetid streams of effluent. To achieve a desirable standard of water purity, the Japanese have given a massive aid package to ensure that toilets are built for the slum dwellers who live along the river, so that they do not defecate on its banks. The Supreme Court is bearing down on the Environmental Secretary, frowning because the proposed sewage treatment plants have not been constructed as yet. "They will cost hundreds of millions, and the Delhi Development Authority (DDA) does not give land!" they claim. "We direct them to do so immediately!" responds the Supreme Court.

So what if half the city has no sewers. The river must be cleaned and 'restored'. The 'Standard' must be achieved. That is the law.

The river extends beyond its historical channel, into the modern city. Unseen, but connected deeply to urban existence and ecological systems. Of course, it does not know that a number now defines it, and defines how dirty it is. It has watered this terrain much before even the first city was built here: from the time of Tughlaq through the Mughal dynasties, the British colonial administration, and until now. It even flowed through the Red Fort when it was diverted through a canal from the nearby city of Karnal by the Emperor Shahjahan. It then streamed through the romantic Chandni Chowk next to the Red Fort, and the emperor's royal *darbar*. Delhi was located in a hollow between the river and the Ridge Forest that is fifteen million years old. During the monsoon, rivulets of rainwater gushed down the hilly ridge into large lakes. It collected in cusps, like the recently levelled Najafgarh *jheel*. Canals (now drains) were dug to coax the water back into the ever-flowing river. Along the way it seeped into the soil and recharged the groundwater. Birds flew in and roosted on the banks. Animals drank even while being hunted as royal 'game'. Goods were ferried along the river, as were Delhi's citizens and the emperor in his ceremonial flotilla. Today, vegetables are grown on the riverbanks and on sections of the riverbed. Raggickers and priests, along with fishermen, labourers, sand dredgers and slum folk, also live there, servicing the city in one way or another. The river was (and unknown to the city, still is) central to Delhi's ecology and its life.

But for many, the Yamuna represents merely an unmet water standard; every other aspect of it is unimportant or even a hindrance. The river must be cleaned, and to achieve this, it will be partitioned. The cost of cleaning must be recovered by selling off its parts. Like amputating perfectly healthy arms and legs to save the body. Giving it a new transfusion of blood, but dismembering it alongside. Everyone's mission is defined. So the DDA is to reduce it to a 500 m canal and commercialise the priceless real estate land of the riverbed 'wasted' on either bank. The CPCB is to clean the river. The Municipality is to make walkways along its sides (like on the Thames!) and purge stubborn defecators from

its shores. The Public Works Department (PWD) is to ensure that the river does not hinder transportation and that people drive across it on modern bridges. The Delhi Jal Board is to ensure that drinking water would come from the Tehri Dam, so that the city need not be dependent on the Yamuna. The river will no longer be needed and can thus be showcased, as a 'cleaned' river. Its future is predicted and fixed.

But many local schoolchildren today do not even know where it is, or think of it as an organic phenomenon. Technology morphs the city and the river into each other. The Standard is the means to this end.

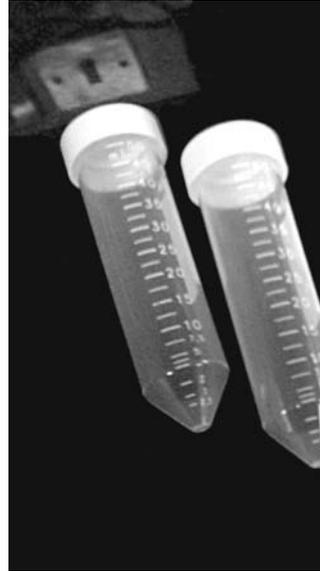
The struggle lies between two imaginations: the Standard on one side, ecology on the other. One represents technology, and the other an interwoven connection. The two seem irreconcilable, both implying different relationships and futures. Moving from one to the other seems impossible, and jettisoning one for the other is full of pitfalls. Unfortunately, even acknowledging the conflicted existence of these two paradigms is a problematic issue. Standards, and what they signify, are the dominant frame.

What are environmental standards? They are the interface between science and law. To exist, they involve bureaucracy, aim at efficiency, and need specialisation. An institutional, hegemonically structured governmental power to regulate the environment, in which the local person has little agency. Unmindful of everyday life, and its diverse and intimate interactions and exchanges with the environment. Or of its ability to play a role in keeping it unpolluted.

In theory, standards protect human health from environmental pollutants. But in practice, they struggle continuously with a far more complex reality.

Generally speaking, there are two types of environmental standards: Source and Ambient. Source standards deal with the type and extent of pollutants released from any one particular source. They are focused on specific technologies. Hence cars will have different source standards from thermal power plants, or waste incinerators. Emissions will vary depending on the technology employed and the fuel used. These emissions can be all types of discharges into air, water, and land. Ambient Standards, on the other hand, calibrate the load of a pollutant in these mediums. For instance, the amount of nitrogen oxide, sulphur dioxide or particulate matter in the air around a traffic intersection would constitute an ambient load, and must meet the ambient standard. Placed all around the city, devices to measure air pollution measure ambient air, or the air we breathe. Obviously, ambient and source standards are related, since source loads add up to ambient loads. But the relationships are complex, requiring mathematical modelling, and scientific expertise.

How are such standards set? Risk assessment is the answer. Here, scientific logic becomes murky and contested. The scientists of 'industry' argue against the scientists of





'environment'. For the former, stricter standards imply greater financial investment, while for the latter, stricter standards imply better public health and conservation efforts. It is a battle of interests, with science as the deciding weapon. What is the acceptable risk to human health if the air has 0.1 nanograms of dioxin (a deadly toxin) per meter cube? Such a question should be asked when setting a standard. That question itself should make evident the difficulties involved in such assessment. What is acceptable risk? Should the standard be set so that the risk is of one person in a thousand contracting cancer, or should that figure be one person in one million? If it is the former, many more variants of the toxin, in varying amounts, could be allowed emission from a

source. In addition, how does one know which level will cause cancer? One popular method is to calculate the dose-response. What is the dose required to kill 50% of a population exposed to a certain pollutant? Guinea pigs and hamsters are pumped with chemicals in laboratory tests. These results are then multiplied by a factor of safety to determine acceptable levels for human beings.

The question has become more complex as technology has become more sensitive, allowing the measurement of very low levels of emissions. Low dose and 'no safe dose' health effects can be seen and tracked. There is no threshold for safe exposure. Tobacco is a risk to health regardless of how many cigarettes are smoked. The effects manifest differently in each smoker, and may appear much later. This further complicates matters, since a dose earlier accepted as 'safe' is now unacceptable. The perception and articulation of what constitutes risk is undergoing change. Standards become stricter through the application of new parameters and more sensitive measurements.

Scientific institutions all over the world invest in this kind of research. Activists pounce on research 'findings', and then force environmental bureaucracies to recommend 'stricter standards'. These new findings are what international establishments such as the WHO and the International Agency of Research of Cancer (IARC) debate, in order to set new norms of what is 'acceptable'. This is what Industry fights. All this in the hope and belief that we are making an attempt to ensure that our lives become safer and healthier. Except that no one really knows for sure how safe we really are. For example, 'cleaner' may not mean 'safer'. Compressed Natural Gas (CNG) as a fuel produces less soot particles than petrol did, but more cancer-causing benzene. So now the benzene level has to be measured and the problem addressed. Who knows which pollutant will be next?

To this way of thinking, what is not measured does not exist. We have not systematically measured benzene in the air, or ground-level ozone, or cadmium or, till recently, even lead, though these have pervaded our environment for a long time. Today we have put these on our list. But then a new opponent emerges. Nano particles! These are less than 0.1 microns. The cleaner the engine, the more these are produced. So, is cleaner actually less clean? It seems so! We have barely started measuring the big ones, 10, 5 or 2.5 microns, and now we have to attend to the miniscule members of the family. More machines, more measurements, more parliamentary committees, more environmental activists, literally, climbing walls. Who knows what will come next? Like a cannibalistic monster, technology's hunger is never sated: it devours its contexts and yet continually creates its own obsolescence.

Standards are also set through political mechanisms. So the standard for dioxin in food has reduced from 4 to 0.75 ppt (parts per trillion) in the course of 20 years. The WHO still propagates 4 ppt while the European Commission has lowered it to 0.75 ppt. One institution is more affected by its political constituency than the other. This is not science. Often, those who set standards have little relationship to the problem they are called upon to fix. This is not an accident. This is the realm of 'experts'.

The terrain of standards is one of science. Scientists constitute the bulk of the 'expert' committees; many have acquired this position because of their professional reputations, built through publications in peer-reviewed journals. The scientific establishment has great legitimacy with those involved in the regulation of standards.

Standards are 'official'. They are made by official peer-review expert committees, which look 'upwards' into the world of science and institutions. They do not turn their gaze 'downwards'. Community 'expertise' is not their realm. Knowledge is 'defined'. Every form of knowledge other than the 'scientific' is relegated to a lower level of expertise, including social science too. The 'scientific' mode and the quantitative world of statistics have little regard for how communities live. People may have 'ground experience', but not 'expertise'. 'Cause and effect' is demanded as proof. If DDT has not been proven to kill human beings, or known to be directly carcinogenic, it cannot be dangerous. No matter if this compound has wiped out entire species of birds. After all, science cannot operate without proof!

The idea of the 'precautionary principle' is highly contested ground. It recommends that if there is reason to believe that something will cause harm, then it should be avoided. 'Avoiding' the problem is, however, not the normal way to proceed, while 'managing' the problem is. The 'managing' approach is to make pesticide use on food 'safer', through 'acceptable' application practices and limits. Precaution would imply moving away from chemicals and into more organic ways of growing food. Two different paradigms, with different sets of practices, assumptions and understandings.



Once the standard is set, it is non-negotiable, and cannot be imagined in any other way. The number has to be upheld. Regulatory bureaucracies ensure this, even as environmentalists monitor them, and the legal regimes watch. This is now a battle, fought in boardrooms, in courtrooms and on the streets.

Standards are thus about both technology and law. They are created by both of these factors, and they also drive both. They need even more technology to determine if they are being complied with, and to correct what is going wrong. The recognition that all internal combustion engines create pollutants, on a scale and of types that natural fires do not, led to the development of vehicular norms. To satisfy that, technology had to be pushed to measure and then to amend what was being developed. So we have BAT – Best Available Technology. Better than what is prevalent. Push the limit – but only to another limit. Do not push in the direction of creating parallel possibilities.

Even the promised alternate *technological* possibilities remain unfulfilled. If ‘cleaner’ cars become very expensive, will people not take to bicycles? The suggestion that standards will drive the costs of technology so high that people will be forced to explore viable alternatives remains hypothetical. Costs are never allowed to rise so high so as to destroy what is standardised. Those who have a stake in the matter ensure that renewable energy is still a chimera, unable to compete in costs with conventional energy. The supposedly higher costs of making superior quality fossil fuels, such as low sulphur diesel, have not driven conventional energy modes out of the market. The public awareness of pesticide residue in foods has not led to the support of organic agriculture.

The measurements of pollutants themselves may not represent real life situations. How do these chemicals or particles influence health when they act together, in mixtures or brews? If PAHs (polyaromatic hydrocarbons, a class of toxic chemicals) and heavy metals are present together in the environment, how will our body react? In actuality, pollutants do not take turns to attack; they do so simultaneously. It is a gang war. They have to be fought with all four limbs, in the manner of a martial artist. Yet after years of ‘scientific’ assessment we are still in the laboratory, uncertain, finding out.

And what about non-human health, the state of animals, fish, plants, and all the myriad forms of life, down to the microscopic level which we are not even aware of? Those who set environmental standards are indifferent to creatural needs. At best, if plants wither in a certain type of air pollution, they become an ‘indicator species’, indicating to us that the ecology is polluted, without us having to verify this ‘scientifically’. Or if fish die in a toxic spill, they function as evidence of toxicity. In most cases, such data is ignored. The population of the *Sarus* crane has declined dramatically because the crops they feed on are laced with pesticide. This fact has not provoked the revision of any standard. Often we fail to see that all life is linked in a complex web. The food we eat is contaminated from air pollution and the use of polluted water for irrigation. However, we insist on relocating polluting urban factories to distant areas,



amongst paddy, wheat and vegetable fields. Toxic effluents and dumped waste spread over the plants. Yet established standards do not account for this. What the standards are meant to control, returns, accumulated in our food. The products are toxic, but the Standard has been faithfully complied with.

Standards can create barriers and exclusions from new markets, especially for those who cannot participate in the arena of modern technology and of new commerce. Standards change the way things are done. Resisting standards is like saying "No!" to an entire system that has conceptualised a particular way of achieving its profit-oriented goals. Small organic farmers do not wish to follow the regime of international standards set by global food corporations. It is impossible, materially and financially, including the cost of certification. But consumers consider foods organic only if they are labelled as such. No standards – no markets!

This conflict becomes sharper in international trade. Developing countries fight global standards viciously, but for reasons other than the urgently needed re-imagining of ecology. For these nations, standards mean the creation and imposition of a non-tariff trade barrier. The developed world says, "We will not trade with you, since you do not follow our standards of limited chemical usage during production. If the tea has too much pesticide, we will not buy it from you". Such an approach puts every farmer who cannot comply with the 'German' standard out of the export business. To produce at German standards would need German technology, German air, German water, and a German certifying agency. No problem for corporate farmers, but a death knell for smaller ones. However, the strident 'inequity rhetoric' utilised by developed countries is not about protecting ecology in itself, but about protecting the right to be economically more powerful. What is at stake is 'trade'. The state uses the 'small farmer' argument in international for a to fight WTO-types of laws, while in practice, small farmers are not protected by national policy, and are used as fodder for making the case.

In other cases, such differentials lead to international dumping of technological waste. Scrap metal, toxic shipments, old computers, incinerators, all find their way across international borders to be dismantled and cheaply reused. They are welcomed as 'recyclables'. It is good business for some, even as it can prove to be a fatal agent for workers who actually break the material down. Standards protect. And kill.

Standards have also become a means of opting out from taking real action. We have created standards for almost everything, even the amount of silica dust that a stone crusher is allowed to generate in a distant quarry. Yet the worker is still exposed; this is an 'implementation' problem, a 'governance issue...a common malaise in our system'. The worker still dies of silicosis. Standards set. Job done.

Even with established standards, few check compliance, as it is expensive to do so. The US spends 2% of its GDP on it. India does not even come close. The industry loves this argument: "We told you so; standards and regulations are a bad idea, they are just not worth it; throw them out". This rhetoric is not for purposes of doing things differently; it is so that industry can do whatever it wants.

Imagining the river to be more than its water quality is to refute statistics (without negating them) and acknowledge the existential. Do standards reduce that possibility and

become the dominant operative principle to the exclusion of all else? Do they encapsulate ecology and package it neatly, to be consumed? The environment is framed today through laws, regulations and the standard. In popular understanding, little exists beyond that. There is little receptivity to the fact of a forest dweller's relationship with nature, a devotee's link to the river, or a schoolchild's possibility of understanding that water has a source other than the municipal tap.

Standards are essential for the project of achieving modernity through technology. They legitimise the violence that is inflicted upon existing ways of being. The environment has become an entity mainly mediated through technological 'advances'. Technology needs standards. It cannot perpetuate itself without them. There is somewhere to go, to 'progress' to 'develop'; and standards set the goals. They set the rules of engagement. If you do not fit in, you are out. Delegitimised. Backward. Resisting 'scientific' standards is not an option.

Humans are now put outside 'nature'. Nature needs to be preserved, conserved, controlled and used, not necessarily in that order, but outside the 'human', and not as part of it. There is a silent but eloquent separation between the two. Is the river dirty because we have stopped connecting to it, or because we have not installed proper sewage treatment plants? The word 'developed' works well in a society where the technical interface with nature is all that is left, since other linkages have long since faded away. Water comes from the municipal tap, and food from the supermarket. In India, it is a dramatically different context. Issues of environment cannot be separated from issues of poverty and conflicts about resource use, mediated by various types of social power. Institutions are more concerned about development than democracy, and there are conflicting interests, which deeply affect people's daily lives.

Escape from the struggle seems impossible. There is no exit, except perhaps by reclaiming our ecological connections, uncovering another way of being, reworking the ecology of the self in relation to our environment. This would also mean altering the 'development' paradigm; it would involve downscaling the 'god' of technology, and its associated, standard-driven religion.

The Act of Instruction

JAN RITSEMA

We think: Teaching can't be done without instructors, those who explain, who adapt their knowledge to the intellectual capacities of the pupil.

We think: There can be no progress without the mediation of such instructors.

We think: That we're helpless without instructors.

We think: That instruction is the most efficient way to make people know.

We are surrounded by instructors: in school, church and on the street, at the dinner table, on stage or on TV.

So far, no good.

How can we begin thinking about Instruction? First, let us consider the fact that almost all of us, regardless of gender, social condition and skin colour, are able to understand and use a highly complicated system without the help of a master explicator. This system is the language of our parents, our mother tongue, which we learn successfully, all by ourselves.

This act of learning is accomplished by hearing and retaining, by imitation and repetition, by making mistakes and correcting them, by a combination of chance successes and methodical trials, by comparing and verifying the unknown against the criteria of the known. In short, by using our own general intelligence.

The child learns to speak by relying on her own intelligence in the company of 'unconscious' teachers (her parents and others around her), none of whom explain the rudiments of language to her. But as soon as she does master language, we insist that she cannot continue like this any longer. From that moment on we surround her with instructors and explicators.

But, to explain something to someone is, first of all, to show her she cannot understand it by herself. How come? The child learnt her mother tongue perfectly; and not only this, she taught herself how to handle things and found out how things work and don't work. All this was done by observing and retaining, repeating and verifying, by relating what she was trying to know to what she already knew, by doing and reflecting about what she had done.

The pupil doesn't really need the explicator; it is the other way round. It is the explicator, the instructor, who needs the pupil. It is he who categorises the pupil as the 'incapable'.

This pedagogical myth divides the world into two. More precisely, it divides intelligence into two. It says there is an inferior intelligence and a superior one. The former registers perceptions by chance, retains them, interprets and repeats them empirically, within the closed circle of habit and need. The superior intelligence knows things by reason, proceeds by method, from the simple to the complex, from the part to the whole. It is this intelligence that allows the master to transmit his knowledge by adapting it to the intellectual capacities of the student, and allows him to verify that the student has satisfactorily understood what she learned.

(We are not talking here about an old-fashioned, aged, obtuse schoolmaster who crams his students' skulls full of poorly digested knowledge. On the contrary, we mean the enlightened pedagogue who is knowledgeable and who will say, in good faith: "The student must understand and therefore we must explain even better". Such is the concern of the enlightened pedagogue: "If the little one doesn't understand, I will find new ways to explain it to her, ways more rigorous in principle, more attractive in form, and I will verify that she has understood").

Unfortunately, it is just this little word, 'understand' – the slogan of the enlightened – that causes all the trouble. The child who is explained to will devote her intelligence to understanding that she doesn't understand until she is explained to.

But understanding is never more than translating, delivering the equivalences of a text in terms of import or significance alone, without necessarily offering an insight into the working of its reasons. There is nothing behind a text, no false bottom that necessitates the work of an other intelligence, that of an explicator.

Whenever we come across the subordination of one intelligence to another, we witness a process of stultification.

Whoever teaches without emancipating, stultifies. Emancipation is not an extraordinary thing. It consists simply in an ordinary person taking the measure of his/her intellectual capacity and deciding how to use it, in accordance with his/her own dignity. Whoever emancipates doesn't have to worry about what will be learnt by the person whose emancipation he desires: she will learn what she wants to. Maybe she will learn nothing.

On the other hand, the student must see everything for herself, undertake her own comparisons, and be prepared to respond to a three-pronged question: "What do you see? What do you think about what you see? What do you make out of it?"

In all this, there can be only one kind of power: that of seeing and speaking, that of paying attention to what one sees and says. One learns sentences and more sentences; one discovers facts, relations between things, and still other relations that are all of the same nature; one learns to combine letters, words, sentences, ideas. It cannot be said that in doing any or all of this that one has acquired a science, that one knows truth or has become a genius. But it will be known that in the domain of the intellect, essentially, one can do what anyone can do.

Most of what I have written till here paraphrases and summarises the first 30 pages of *The Ignorant Schoolmaster*,¹ a book by the French philosopher Jacques Rancière that I have found inspiring. I would recommend it to anyone who is fed up with the repressive nature of standard methods of teaching and learning.

I am a theatre director. Sometimes I teach, which means that I give daylong workshops for several weeks to young performance artists, directors, actors, dancers, choreographers. Whether I am directing, or teaching, I find myself confronted with demands to be 'instructed'. Be they actors preparing for a piece with me, or students in a workshop, everyone wants to know what to do. I call this: "They all want to be under the roof of a task".

I often find myself faced with people who want to learn some quick techniques they can take home with them. Whenever this happens, I refuse. I can only teach what the students themselves want to be taught. And I can only do this on a collegial basis. I say to the actors and to the students: "Let's try to formulate together what we want to know or want to do or have done away with; let's try and see how we might be able to do this by beginning with considering what we already know. Can we all be and stay the masters of the process of discovering possible answers to the tasks we formulate? Can we keep the learning process transparent, so that it becomes easy for each of us to follow and control? Can we all stay emancipated and not subordinate ourselves to the authority of the one who has the answers and the expertise?"

Generally speaking, there is a lot of mystification in arts education. Many instructors will say that they feel that something that a student does "is right, it works", without being able to express what it is that they are pointing to, and without pausing to clarify the parameters of their assessment of their students. On the other hand, there are instructors who insist that whatever has been taught by them is right, what the student does of her own accord is of little or no importance. This makes art education even more mystifying. As a teacher, I try and stay clear of both these attitudes.

But students give me a hard time. They still give me a hard time.

When I face the students, I tell them that I will not commence until they tell me what their professional concerns are, what they are working on at present and what they want to develop out of what they are doing. They have to formulate their concerns; otherwise I cannot begin working with them. For me, these (their concerns) can never be identical to 'what they want to be taught', which is never anything more than new or unfamiliar techniques and approaches which they want to learn to apply as quickly as possible.

Quite often the students refuse my proposal.

They say that they have paid for the workshop and want some clear results in return. Quite often I have had the experience of being thrown out of a workshop for being the teacher who is 'unwilling to teach what they want to be taught'. Even when I do survive in a workshop, I find that most students will refuse to teach themselves. I mainly end up with a handful of students who want to use their own capacities to make something singular and specific to the situation by responding to a problematic arising from the knowledge that the group builds by itself. These are the students who can work by themselves, who do not need me to verify, let alone assess, their doings, but who can instead use me as their sparring partner, their co-thinker. They realise that I am as curious as them, and as eager as they are for discovery.

In such situations I find it useful and affirming to remember Rancière: "Whoever looks always finds. He doesn't necessarily find what he was looking for, and even less what he

was supposed to find. But he finds something new to relate to the thing that he already knows. What is essential is the continuous vigilance, the attention that never subsides without irrationality setting in" (pp. 35-36).

I remain stubborn, because I know that if I make concessions and compromise I will end up using repressive schooling methods. I know that if I ever do so, they (the actors and students I work with) will continue to do this themselves with others as a consequence, and that their artistic work will be repressive towards their audiences. The repressed usually ends up looking for objects and subjects to repress in turn.

What is it that allows the thinker to scorn the worker's contempt for the peasant (like the peasant's for his wife, the wife for his neighbour's wife, and so on unto infinity)? Social irrationality finds its formulaic expression in what could be called the paradox of the 'superior inferiors'. Here, each person is enthralled by the one he represents to himself as his inferior, rendering him subservient to the very 'masses' that he pretends to be distinct from. "Thus the social world is not simply the world of non-reason; it is that of irrationality, which is to say, of an activity of the perverted will, possessed by inequality's passion" (Rancière, p. 82).

The desire to break this chain is what motivates me to remain stubborn in my practice.

In the film *Scénario du Film Passion*, Godard tells us how he brought a painting by Tintoretto to the first meeting that he had with the cast and crew. He had nothing to offer by way of ideas in this first meeting other than this painting. He wanted to start a discussion, to develop ideas. "But", he says, "they all started to fill it in with themselves". Their responses in the discussion were limited to the observation "What can I (as the cameraman or as the actress) do with it". They started and ended with what they knew. They didn't want to learn anything; they were not after anything other than what they knew about themselves or what they thought they were good at doing. They subordinated their selves to themselves by a process of self-explicatory moves. This too is not a means to the emancipation of the student, because self-explication is just as stultifying and limiting as explication.

The difference between religion or belief and knowledge can be summarised as follows: there can be no belief that makes room for doubt and no knowledge that can exist without doubt. About knowledge we can dispute, about belief we can only fight. One cannot believe a little bit in God, in Allah, or in reincarnation. One can't say that it might be possible that God exists or that reincarnation is a fact. One either believes or does not believe. A belief demands the acceptance of unverifiable factors as an acceptable procedure in the quest for truth. It presupposes a subordination that can only engender passive subjects.

The pedagogical myth, or that which we could also call the 'bare law' of pedagogy, is that knowledge needs to be taught and that a student needs to be instructed by a teacher. This follows from the notion that there is a gap between learning and understanding that the ignorant (the student) has to be helped to overcome. She needs the master explicator to explain to her what she doesn't know, to mediate between her ignorance and the world of knowledge.

This act of receiving the words of another as truth has its own political implications, which operate through a system of 'convictions' akin to religious faith. The master explicator

explains with authority what is constructed to be 'true knowledge'. Things are as the master has told you they are. And just as one subordinates oneself to one's 'faith', so too the 'student' places her 'faith' in the instructor. The perpetuation of the ritualised inequality between the student and the instructor makes for a relationship that eventually stultifies into dependence. The master's mode of presentation of knowledge relies on making the student dependent on his explanation. This requires the perpetuation of the student's passivity.

In theatre, the field in which I operate, the most common practice of performance ultimately relies on the arousal of emotions in the audience. Art in general is supposed to appeal, first and foremost, to emotions. Anything else is often dismissed as dry intellectualism. The spectator, we are told, wants to be dragged into another world. She wants to experience the travails of a life remote from her own, to forget herself in order to find herself again. She sits in anticipation of being made more firmly rooted; she hopes it will happen through a reintegration of her own sense of the world into the larger world.

Emotions are states of being. Experientially, they are not unlike religious phenomena. They admit to no doubt, they just 'are'. Thoughts and ideas we can discuss, emotions we can only fight. The 'truths' of performed emotions, like the truths of revealed religion or handed-down knowledge, simply declare: 'Believe me, I feel this, I know this, it is like this, this is how I see it, how I need it to be'. But nothing is quite as simple as that. Everything is in process, everything is not just something that 'is'; rather, everything is in the process of 'becoming'. Nothing can be simply a monad, an isolate, an entity that begins and ends with itself. Each particular is only an instance of the universal manifesting itself in disparate ways.

I see an analogy between my desire for the emancipation of the student and the need I feel for the emancipation of the modern theatre spectator. The stultification which usually takes place in theatre has to do with the subordination of the intelligence of the spectator to the sentimental and spectacular mechanisms that entertain her. The spectator is invited to observe the performance – a spectacle – from the seat in the dark auditorium with the necessary pathos of distance. She is literally spoken to, and figuratively spoken in the name of, by the performers on stage. The performance succeeds to the extent to which it enacts what is otherwise impossible for spectator to experience (the overwhelmingly great, or the infinitely small, the socially/psychologically 'abnormal', the aesthetic ideals of beauty and fragility, as well as the ethics of consolation). Or, on the contrary, it may mirror the dramas of everyday life with an extraordinary fidelity.

But in either case, it represents a difference, in terms of experience that is upheld for the spectator to either identify with, or recognise herself in. The performance explicates in that it does the work for the spectator: playing "as-if" and sucking the spectator into its vortex of meaning and affect by stimulating her desire to identify and fill the event with her presence. In the economy of everyday life, the time spent at the theatre, the evening out at a performance, serves to address the need for the intense and instant condensation of vicarious feeling that is part of the attraction of a live event. The attendance at the theatre is a ritual of voluntary subordination on the spectator's part to the power of higher, more intense, experiences than she can allow herself to feel in daily life.

An emancipated spectator, on the other hand, to follow again Rancière's thought, is invited to participate in the intellectual challenge of observing, relating, comparing and verifying what she sees with what she knows and feels. For this to happen, there has to be a desire to do the work of entering into new relationships, and a will to discover new ways of relating to the world and to people. This entails the spectator taking the risk of allowing herself to not be impressed or overwhelmed by stable opinions about people, the world, the artist, and of being willing to express her own views on the human condition, on the self and on fellow people.

When a performance is driven by the will to explore, to discover, rather than to confirm that which is already known in order to communicate the safety of mutual recognition, it invites the spectator to emancipate herself. Then it presents itself to its audience as an object for exploration. An exploration that can be embarked upon by both performers and spectators from the foundation of the consciousness of equality. Such an ethic of performance declares the sovereignty of everybody's intelligence.

Conventionally, performances are made to be looked at. The spectators look at the actors, at the performance. I seek out a situation where a performance can look back at the viewers, where actors can return the gaze to their spectators. A performance that looks back at its viewers, regards its audience in the plural, as an ensemble of emancipated spectators, whose points of access to the performance, whose levels of understanding and whose bodies of experience are necessarily differentiated.

I try to make performances that don't seek to unite the audience in a consensus, even as I do not desire to split them in an apparent struggle over moral binaries. Instead, I try to stimulate them to think further by advancing certain propositions, by offering a thought, a mode of reasoning, a bodily movement that embodies what it means to be immersed in a thought-process. Thus at the end of the performance I hope that they can exit the theatre without leaving their chairs. I hope that the time spent in being 'looked back at' during a performance can help them make meaningful relationships between their sentience and the realities of the world outside their lives. I hope that this can happen without the panic of losing themselves in the heterogeneity of other worlds, other intelligences and registers of thought and affect that are not their own, and that might connect to their thinking bodies.

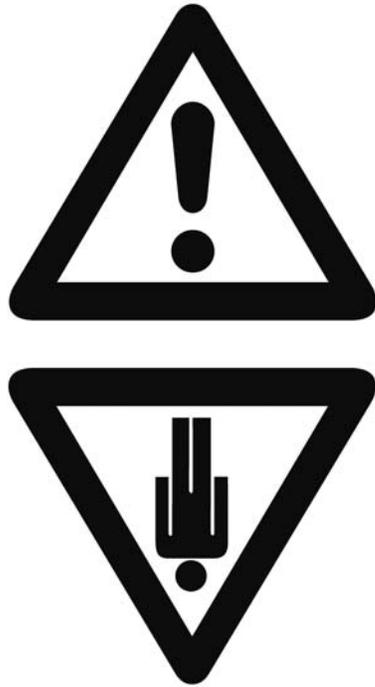
What has been stated here is not some utopia for the construction of an other world in and through theatre or performance. There is no other world. There is only the activity which emancipates us in this world. It keeps me, and I hope the spectators I manage to reach, out of, and away from, the self-reappropriation that became the primary function of the theatre (following from the demise of the church), and made it the moral institution of the middle classes.

For us, unlike Hamlet, there isn't only silence that remains. And, what remains for us to do is to persist with the multiplication of ideas and actions.

NOTES

1. Rancière, Jacques. *The Ignorant Schoolmaster*. Translated by Kristin Ross (Stanford University Press, 1991, Stanford).





VIOLATIONS

Womanhood Laid Bare

How Katherine Mayo and Manoda Devi Challenged Indian Public Morality

ALICE ALBINIA

During the 19th century, the meaning of Hindu womanhood was dramatically contested. Reformers focused on the treatment of women in their attempt to erase religion's 'evil customs,'¹ reactionary revivalists saw women as the guardians of Indian 'tradition,'² nascent Indian nationalism constructed notions of 'indigenous superiority' based around the vision of an ideal Hindu woman.³ This furor came to a head in 1929, via a piece of legislation intended to regulate that barest of all acts – sex – by banning sexual activity in girls younger than 14 years old. This essay examines the relationship between the act itself, and two books, apparently written by women, on the sex lives of Indians. The first book precipitated the passing of the act; the second critiqued it.

The Child Marriage Restraint Bill (also known as the Sarda Act) was the result of almost 70 years of agitation⁴ by Indian reformers and legislators, counter-protest by orthodox Hindus, and latterly, campaigns by the All India Women's Conference (AWC).⁵ The age of consent had been set at 10 years old for girls in 1860; the Special Marriage Bill raised it to 14 years for Brahmos in 1872; and in 1891 the age was raised to 12 years for all girls. But reformers considered this to be barbarically low; and their attempts to raise the age of consent still further were seen by conservatives as an attack on Hindu culture. By the 1920s, the debate had reached a stalemate. What happened in 1929 to precipitate the passing of this much-contested law is an interesting illustration of the power of public opinion in affecting government legislation, rather than vice versa. In this case, the catalyst for reform came from an unexpected and unwelcome quarter – a travel-book by an American journalist which luridly contested carefully-constructed notions of Indian female sexuality.

Katherine Mayo's book, published in 1927 and insultingly titled *Mother India* – a reference to Bankim Chandra Chatterjee's poem "*Bande Mataram* (Hail to thee, Mother)" which had been adopted as a nationalist song – shocked the American, British and Indian public due to its highly sensational descriptions of the "pitiful" life meted out to Indian women by Hinduism. In an age when the domestic sphere was still considered a largely private affair, Mayo flamboyantly exposed the sexual habits of Hindus by asserting that husbands regularly practised the marital rape of sexually immature girls. 'Early marriage' had been hotly debated in the Legislative Assembly for some time now,⁶ but Mayo's graphic

depiction of India's sex-life grabbed the headlines by linking premature sexual activity to male impotence (she claimed it affected 70-80% of Indian males), infant mortality (of both child-mother and baby), widespread venereal disease, and prostitution. Singling out Brahmin men and their laws for moral condemnation, Mayo also refused to make a distinction between the well-being of high- or low-caste women, insisting that in India, women were universally oppressed. Most shocking of all: she correlated prostitution with Hindu religious practice, alleging that high-caste wives with impotent husbands were sent to temples to be impregnated by priests,⁷ that young girls were bequeathed to priests as *devadasis* (whom she interpreted as prostitutes),⁸ and that the Indian widow "not seldom falls" into prostitution.⁹

This connection – between high-caste women/child-marriage/child-widows and prostitution – was a logical one, and it had been made before. At least as early as 1872, the British official A. Mackenzy, had noted: "In Bengal the prostitute class seems to be chiefly recruited from the ranks of Hindu widows...often it is stated: women of good caste".¹⁰ In 1885, R. Ragoonath Row dramatically described the tribulations of Brahmin widows, concluding: "She is shunned...It then becomes necessary for her to sell her body for the sake of bread".¹¹ In 1918, the reformer Ram Chandra had written: "One of the greatest evils today is the alarming increase in the number of prostitutes...we must devise some means to put a stop to further recruitment of our wives and widows".¹² But Mayo was probably the first person to bring the connection so forcefully into the public domain.

Hitherto an unbridgeable separation had been assumed in public discourse between prostitutes and high-caste Hindu women (*bhadramahila*). In contrast to the attention paid to governmental legislation on *sati*, widow-remarriage and child-marriage – issues which were seen to have direct bearing on upper-caste Hindu women and hence the whole fabric of Brahminical society – 19th-century laws on prostitution were passed without much protest from the Indian elite. Prostitutes may have been "an accepted part of society" but they nevertheless carried too much stigma to be defended from the British, and as Sumanta Banerjee points out, while the various measures legalised by the Contagious Diseases Act of 1864 (such as detaining suspected prostitutes for examination) were commented on in the Indian press, they were not seen as a colonial slur on Indian womanhood.¹³ The same definitely could not be said of other British legislation concerning women, the adverse reaction to which partly explains the government's slowness in instigating 'social reform'.

Historians concur that Mayo's "muck-raking" work precipitated the sudden passing of Sarda Act.¹⁴ For the British government, the worldwide focus on India was intensely embarrassing: *Mother India* was seen to "put the British record in India on the line and the viceroy called for action".¹⁵ In Britain and America, "the proceedings of the legislature were followed in as if the outcome would prove or disprove Mayo's conclusions".¹⁶ For Indians, Mayo was a racist,¹⁷ sex-obsessed/deprived spinster,¹⁸ and the "defamer of a nation"¹⁹; the government was criticised for aiding her research, and the "benevolent British press" for "booming" the book.²⁰ But it became obvious to (the majority of) the Legislative Assembly that the world would condemn them unless they passed the Bill.²¹

It is probably true, therefore, that the *Mother India*-induced uproar worked in women's favour to shake "people out of their complacency" (as an editorial in *The Statesman* of

Calcutta put it in 1929).²² But was the Sarda Act really what women wanted? An autobiography of a Calcutta prostitute, published in Bengali in 1929 (and in English two years later), suggested not.

Prostitutes are a popular subject of desire and abuse in most literatures, and 19th-century Bengali popular fiction was no exception. As Ratnabali Chatterjee has shown, the generic *beshya* was used both as salacious literary spice, while also reinforcing the entrenched social dichotomy between the “upper caste Hindu women as the embodiment of moral order” and the “moral decay brought about through the agency of sexually deviant women”.²³ Key to this construction, Sumanta Banerjee argues, was the assumption that the *patitar*, or ‘fallen women’, a “term invented by society to imprison them in an untouchable pigeon-hole”, came from the “condemned fringes” of society.²⁴ The prostitute’s opposite was the *bhadramahila*, the ‘goddess’ and ‘mother’ of Indian nationalism.²⁵

Like Katherine Mayo, Manoda Devi, a Calcutta prostitute, challenged this dichotomy. Polite *bhadramahila* autobiographies were an established form by the time the Sarda Act was coming into force.²⁶ Manoda Devi’s autobiography caused a scandal by presenting the *bhadramahila* as *beshya*.

There has been little academic work done on the Bengali edition of this text, published as *Shikshita Patitar Atmcharit* in 1929, probably (suggests Samanta Banerjee) by one of the “cheap Battala presses”²⁷; and apparently none on the English version, translated as *Autobiography of an Educated Fallen Women* and published as a (presumably more expensive) hardback in 1931. It is anybody’s guess whether the book is the authentic work of a Bengali prostitute, or a (male-scripted) propaganda fiction. The manner in which Manoda Devi’s views on women at times concur with those of male conservatives, suggests it might be the work of a man. Her heated condemnation of patriarchal hypocrisy indicates the opposite. The descriptions of prostitute life, grim as they are, could be seen to match “the indigenous literary formula” of 19th-century fictions written by Bengali men about prostitutes that Ratnabali Chatterjee analyses,²⁸ or the “lurid accounts of positive female sexuality punished” in 19th-century Marathi novels by men, which Rosalind O’Hanlon has studied; then again, Manoda’s conservative moralising tone bears similarities to those of genuine female moralists such as Tarabai Shinde.²⁹ Authentic or fictional, the text is a deft illustration of the complex contemporary relationship between reforming and retrograde public perceptions of female sexuality, child-marriage, and prostitution. Its crisscrossing notions and conflicting agendas give voice to the ambivalence that some Bengali men and women must have felt at the time, with regard to the rapidly changing socio-sexual scene.

As it stands, Manoda Devi’s life-story can be seen, up to a point, to vindicate Mayo’s claim that high-caste Hindu women became involved in ‘low-caste’ professions such as



prostitution. The work purports to be by a Brahmin woman who eloped from home as a teenager, and was forced into prostitution after her lover abandoned her and her father cut her off. Following a few years after the famous actress Binodini Dasi's *Amar Abhinetri Jiban* (My Life as an Actress) [1924/5], Manoda's story is Binodini's mirror-image: whereas Binodini came from the prostitutes' quarters and went on to find fame, Manoda began as a *bhadramahila* and ended up a *beshya*. No doubt the *Autobiography* was designed to exploit that connection.

It is more difficult to judge where Manoda Devi stands in relation to Katherine Mayo.

Some aspects of the *Autobiography* suggest its author was influenced by *Mother India* – the graphic depictions of female degradation; the sardonic attitude to “Khadder”³⁰ nationalists, and “*Bande Mataram*” (Manoda is seduced as she is singing it)³¹; the touristic survey of India's most famous religious sites which Manoda makes during her elopement. Yet Manoda did not become a prostitute for any of the reasons that Katherine Mayo delineates. Quite the opposite in fact.

Born into a “respectable Brahmin family”³² at the beginning of the 20th century, Manoda was given a liberal education. She was first tutored at home, and later sent to the renowned Bethune School – an institution which, as Ghulam Murshid shows,³³ had been the subject of fierce orthodox criticism in the 1850s, and even by the 1910s (when Manoda probably went there) still functioned as a symbol of women's emancipation, or ruin, depending on your viewpoint. Manoda's father, who was inclined to Brahma Samaj ideas, encouraged her education:

“Father used to reply, ‘I won't marry her so early. Let her first of all get through the Matriculation Examination, then, I think, it might be decided’. What people replied to it, it is un-necessary to repeat here. Now-a-days every reader is acquainted with those arguments, that daily fill the columns of our newspapers”.³⁴

So far so broad-minded. But Manoda suspected that her father – his hands full with a second wife not much older than his daughter – had kept Manoda in school because he was too lazy to get her married. A spinster at the ripe old age of 13, Manoda “gradually...grew conscious of my age...Through the negligence of my guardians and a chance favouring, the flame of flesh was ablaze in my heart. I knew of it all and I desired for marriage”.³⁵

Thanks to her schooling, Manoda had read “light literatures” – as well as Byron, Shakespeare and Bankim. So she knew just what to do. Sexually aroused by her books, her



male cousins and her male tutors, she contrived to elope like the heroines of her novels. Alas, like Flaubert's Emma, Manoda quickly found that "The world that I had seen so long in the pages of the novels and the books that I had read, melted away before me as soon as I came in direct touch with it".³⁶ Abandoned and betrayed by her father, her lover, and all her subsequent male protectors, Manoda was forced to fend for herself: she became a prostitute. The moral she draws from her own story is morose but predictable: "some sort of subservience even in emancipation is absolutely unavoidable".³⁷

Orthodox Hindus clearly felt vindicated by Manoda's timely confession: her autobiography seemed to uphold the classic Dharmasutric representation of women's insatiable sexuality and the need to control it.³⁸ Judging by the other books advertised in the end-pages of the English edition of Manoda's work, it seems highly likely that the *Autobiography* was translated by a conservative Hindu publishing house in order to promote the prostitute's life-story as a riposte to the Sarda Act's ban on child marriage. Thus, J.C. Bhattacharya's *Mysteries of Married Life* recommends Manoda's writing as essential reading for anyone who wishes to know why "Hinduism has fallen on evil times, on evil pens and evil tongues".³⁹ Syam Sunder Chakravarty's treatise, *My Mother's Picture: An Attempt to Get at the Hindu Spirit in Connection with the Mayo Challenge*, argues that the "evils to which Miss Mayo refers...in so far as they exist – are really the outcome not of the orthodox Hindu creed, but of a fall from that creed".⁴⁰ While Chakravarty attacks Mayo, Bhattacharya's work, in particular, is a direct retort to the Brahmo Samaj (which encourages "marriage in advanced ages"), Bethune College (for tolerating "all sorts of infectious corruptions resulting out of freedom to women"), and the Sarda Act (for forcing sexually frustrated young girls to "commit illicit sexual intercourse"). Bhattacharya warns that the Sarda Act will make India like Europe ("where after puberty marriages are prevalent women corruptions are so virulent that all sorts of sexual crimes are committed in public places like theatre, bioscope, restaurant and even in shops"). "Such", he observes, "is the baneful result of women freedom".⁴¹

To a certain extent, Manoda concurs. Her life-story, which spans 30 years – from her schooling, to her elopement, to her employment in the brothels of Calcutta – ends in what would have been the present day for the contemporary reader, just as the campaigns in favour of the Sarda Act have reached their height. Manoda, who is by now working as a high-class escort, overhears somebody commenting on the Sarda Act at a polite tea-party. She is unable to restrain herself from speaking out:

"I forgot the fact that I was acting as an educated woman of the so-called advanced society. I remembered those thousand instances where virgin girls unable to stand the first onslaughts of youth gave themselves up to illegal satisfactions of their lust and were forced to take shelter in our quarters...I said, 'In the natural course of time as the girl attends to puberty she readily awakens into sex-consciousness. It is necessary that



she should be married before that...If you approach those ladies that marched the other day towards the Town Hall to lend their support to the Sarda Act, and ask their opinion...they themselves would reply in the same language that I have said”⁴²

As Manoda herself admits, it is not a politically correct response.

Nevertheless, despite her refusal to endorse fashionable liberal practices, Manoda is not writing conservative Hindu propaganda. While she condemns frivolous education, irresponsible literature and even the reformed sari for leading girls into prostitution (“a profession that the heart abhors”⁴³), she no more finds succour in religion than she did in books. Instead, Manoda lays the blame for the fall of women at the feet of men. Like Binodini Dasi, who wrote in *Amar Katha* in 1912 that women “are lured by men... Who are these men? Are not some of them...admired and respected in society?”⁴⁴ Manoda indicts the patriarchal system:

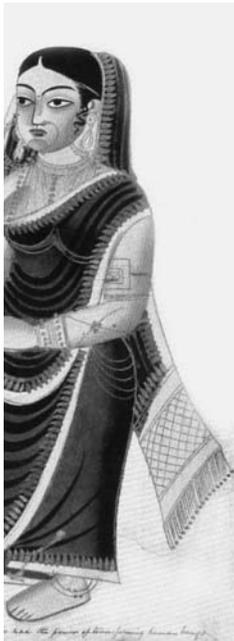
“I am a despised being – I live outside the pale of society... but my autobiography would disclose some pictures of those pseudo-honest men, those lewds that daily come in contact with us and yet occupy the highest seats of honour in our society”⁴⁵

She is writing her autobiography, she tells us, with the express purpose of exposing those who “belong to the blessed groups of poets, literatures, social reformers, legal luminaries, school masters, college-professors, political leaders and their assitans [sic], high officials, Brahmos, Mahamahopadhyas, Sanskrit Pandits holding the titles of Vidyabhuson, and Torkbagish, Priests, Mohunts and religious preceptors”⁴⁶ Manoda is unequivocal: her book is a catalogue of male hypocrisy.

Whether or not Manoda’s story was true, it would appear that it was not unusual. Indrani Chatterjee’s analysis of the 1935 “Calcutta Police Survey of Prostitutes”, shows that police data does not tally either with the contemporary assumption that prostitutes had been lured, abducted or raped into the trade by madams or pimps or that they are necessarily women of low-caste and loose morals.⁴⁷ Like Manoda Devi and her colleagues, the majority of women interviewed by the police came from good homes; they became prostitutes after their lovers or husbands abandoned them, or when they were widowed. What the Survey revealed, above all, was the difficulties faced by woman who transgressed the social norm; for high-caste women were not supposed to either experience lust or fall in love.

Manoda Devi, apparently, did both. The “sensation”⁴⁸ created by the Bengali version of her story, and its subsequent transition to an English readership, indicate the nerve it touched in contemporary society. Seventy years before, the ‘fall’ of an ‘educated woman’ may have seemed like a double contradiction in terms. As two unlikely female authors demonstrated, by 1929 the link was not so outlandish after all.

As for the Sarda Act itself, Geraldine Forbes stresses the positive side-effect that campaigns in favour of it had on the burgeoning Indian women’s



movement. However, “[e]nforcement of the Act was practically non-existent”, and by 1934, the AWC was “disappointed” with it.⁴⁹ Legal and bureaucratic frustrations notwithstanding, there does seem to have been a general emancipation of discourse concerning female sexuality at this time, as the writer of Manoda Devi’s autobiography proves – even if this did not automatically lead to women’s sexual freedom.

NOTES

1. Geraldine Forbes, *Women in Modern India* (Cambridge, 1996) p. 17.
2. See Tanika Sarkar, *Hindu Wife, Hindu Nation: Community, Religion and Cultural Nationalism* (New Delhi, 2001) p. 229.
3. Indrani Chatterjee. “Refracted Reality: The 1935 Calcutta Police Survey of Prostitutes” In *Manushi*, 57 (New Delhi, 1990) pp. 26-27.
4. The age of consent was set at 10 years old for girls in 1860; the Special Marriage Bill raised it to 14 for Brahmos in 1872; and in 1891 the age was raised to 12 for all girls. Forbes links renewed pressure for reform in the early 1920s with international discussion in the League of Nations (1996, *op cit*, p. 85).
5. Forbes, *op cit*.
6. See The Legislative Assembly Debates (Official Report): Second Session of the Legislative Assembly, 1925, V: III, Delhi, pp. 2823-2852, 2881-2913. It should be noted that while Mayo quotes liberally from the extremist reactions of Hindu conservatives, many of her arguments are culled, unacknowledged, from the opinions of reformist legislators.
7. Mayo, Katherine. *Mother India* (London, 1927) p. 36.
8. Mayo, *ibid*, p. 55.
9. Mayo, *ibid*, p. 84.
10. Quoted in Ratnabali Chatterjee, 1993: “Prostitution in Nineteenth Century Bengal: Construction of Class and Gender”. In *Social Scientist*, 21: 244-46, New Delhi, p.162 (1993). See also Sumanta Banerjee, *Dangerous Outcast: The Prostitute in Nineteenth Century Bengal*, Calcutta, p. 88 (1998) for other similar comments by the British on the link between the Hindu ban on remarriage and widow-prostitution.
11. *A Review of the Progress of Knowledge of Hindu Law and Custom Made Among Our British Rulers During the Past Hundred Years*, Madras, p. 18.
12. May 1918: “The Problem of Fallen Women in India”. In *The Vedic Magazine*, 11:10, pp. 549-53, quoted by Madhu Kishwar, “The Daughters of Aryavarta”. In J. Krishnamurty (ed.), *Women in Colonial India: Essays on Survival, Work and the State* (Delhi, 1989) p. 85.
13. Banerjee, *op cit.*, p.144.
14. The purview of the act was widened to include all Indians, not just Hindus. See Forbes, p. 88; Sonia Nishat Amin, *The World of Muslim Women in Colonial Bengal 1876-1939* (Leiden, 1996) p. 189; Dagmar Engels, *Beyond Purdah? Women in Bengal 1890-1930* (Delhi, 1999) p. 145.
15. Engels, *ibid*.
16. Forbes, 1996, *op cit*.
17. C.S. Ranga Iyer, *Father India: A Reply to Mother India* (London, 1927) pp. 1-12. See also James Henry Cousins, *The Path to Peace: An Essay on Cultural Exchange and India’s Contribution Thereto With a Prefatory Note on “Mother India”* (Madras, 1928) p. 2.
18. World Citizen [pseud. Shantaram Ganpatrao Warty], *Sister India: A Critical Examination of and a Reasoned Reply to Miss Katharine [sic] Mayo’s Mother India* (Bombay, 1928) p.103.

19. Rai Sahib Harbilas Sarda, Legislative Assembly Debates, V, p. 4410 (Delhi, 1927).
20. Lajpat Rai, *Unhappy India: Being a Reply to Miss Katherine Mayo's Mother India* (Calcutta, 1928) p. xxix.
21. Legislative Assembly Debates I, p. 196-97 and IV, p. 262 (Delhi, 1929).
22. Quoted in Harry Hubert Field, *After Mother India: Being an examination of Mother India, of the first nine volumes written in reply thereto, and of other criticisms; together with certain new evidence mostly from Indian sources*, (London, 1929) p. 214. Field was Mayo's friend, but his book is a useful anthology of press reaction to *Mother India*.
23. Ratnabali Chatterjee, *op cit*, p. 162, 166. This well-established theme, as Sumit Sarkar has illustrated, was connected to concepts of the Kaliyug (see 'The Kalki-Avatar of Bikrampur: A Village Scandal in Early Twentieth Century Bengal', *Subaltern Studies IV*, Ranajit Guha (ed.), Oxford, 1989, pp. 1-53).
24. Banerjee, *op cit*, p. 125.
25. Partha Chatterjee (1989), "The Nationalist Resolution of the Women's Question". In *Recasting Women: Essays in Colonial History*, (eds.) Kumkum Sangari and S. Vaid (New Brunswick, 1990) p. 248.
26. See Rimli Bhattacharya (ed. and tr.), *Binodini Dasi: My Story and My Life as an Actress* (New Delhi, 1998) p. 21; and Tharu, Susie and K. Lalita (eds.), *Women Writing in India: 600 BC to the Early 20th Century* (London, 1991) pp. 160ff.
27. Banerjee, *op cit*, p. 207.
28. Chatterjee, *op cit*, p. 167.
29. *A Comparison Between Women and Men: Tarabai Shinde and the Critique of Gender Relations in Colonial India* (Oxford, 1994) p. 46.
30. Manoda Devi. *Autobiography of an Educated Fallen Woman* (Calcutta, 1931) p. 159.
31. *Ibid*, p. 9.
32. *Ibid*, p. 1.
33. *Reluctant Debutante: Responses of Bengali Women to Modernisation, 1849-1905* (1983) p. 34, 48, 51ff.
34. Devi, *op cit*, p. 24
35. *Ibid*.
36. *Ibid*, pp. 40-41.
37. *Ibid*.
38. For discussion of this topic, see for example Uma Chakravarti's "Gender, Caste and Labour: The Ideological and Material Arrangements of Widowhood". In Martha Alter Chen (ed.), *Widows in India: Social Neglect and Public Action* (New Delhi, 1998, Sage Books) pp. 68-69.
39. *Mysteries of Married Life* (Calcutta, 1931).
40. *My Mother's Picture: An Attempt to Get at the Hindu Spirit in Connection with the Mayo Challenge*, (Calcutta, 1931) p. xx.
41. *Op cit*, pp.vi-vii.
42. Devi, *op cit*, pp.162-63.
43. *Ibid*, p. 158.
44. Quoted in Sumanta Banerjee, *op cit*, p. 120.
45. Devi, *op cit*, p. vi.
46. Devi, *op cit*, p. 95.
47. Indrani Chatterjee, *op cit*.
48. Banerjee, *op cit*, p. 207, 2n.
49. Forbes, *op cit*, pp. 80, 89, 113.



Literature and the Limits of Law

Crime, Guilt and Agency in Premchand's *Ghaban*

ULKA S. ANJARIA

"[T]he narrative in the document violates the actual sequence of what happened in order to conform to the logic of a legal intervention which made the death into a murder, a caring sister into murderess, all the actants in this tragedy into defendants, and what they said in a state of grief into *ekrars*. Construed thus, a matrix of real historical experience was transformed into a matrix of abstract legality".

– Ranajit Guha, "Chandra's Death"¹

In "Chandra's Death", Ranajit Guha details the modes by which historiography and the law work together to structure the past in ways that do violence to the "plenitude of historicity".² As textual and secular 'emissaries' of state power³, both historiography and the law not only structure the past, but "translate" other modes of structuring "into [themselves]".⁴ Alternative tellings thus must be retrieved from the margins of their narratives, where transgressions of the state and statist modes of knowing take place. One such repository of non-statist modes of knowing is the literary text.⁵ In this essay, I read Premchand's 1931 Hindi novel *Ghaban* for the transgressions of legality it reveals.

The conflict between the law's structuring of events and subjective experiences of self and history has been the subject of much of postcolonial and subaltern theory. This conflict is especially relevant for understanding a period such as pre-Independence India, where the contradiction between foreign-imposed legal structures and sovereign selves was heightened by the discourse of nationalism. While justifying itself with a critique of colonial rule, however, nationalism was at the same time moving toward actualisation in a form that would resemble very closely the statism of the colonial government. The nationalist critique of colonial legalism thus stopped short of being a critique of legalism at large, which was seen by many as the inevitable by-product of a national state. In this way, while pre-Independence nationalism opened the possibility for critiques of the law, it foreclosed the maturation of these critiques by its own statist teleology.

More profound critiques of the law can be found in moments, like Chandra's death, where the law is exposed as having an incomplete hold on what it claims to dominate. Although concepts such as 'agency', 'responsibility' and 'guilt' are often over-determined by

legal modes of structuring experience, the law's grasp on the plenitude of their significations is unsteady, at best. When that unsteadiness is located and the terms re-signified, lived experience can be retrieved from the dominant ways of knowing that reflect the statism of colonial and nationalist rule. It is for this reason that I pose an alternative reading of *Ghaban* from predominant ones which focus on its realist representation of social ills. I tentatively read *Ghaban* as a 'detective novel', as an attempt not at mere re-classification, but rather at highlighting the novel's deep engagement with questions of agency, responsibility and guilt – terms which are explicitly mobilised and taken to task in the genre of detective fiction as a whole. I suggest that only by paying attention to these questions as essential to both narrative *and* legal modes of structuring and understanding experience are we able to understand what is at stake in alternative, non-statist accounts of the pre-Independence period in Indian history.

***Ghaban*⁶**

Ghaban begins with the story of Ramanath, a middle-class clerk from Allahabad who desires to please his wife, Jaalpa, by buying her jewels he cannot afford. When his father hears of Rama's increasing debts, he pushes Rama into taking Jaalpa's jewels one night under the guise of a thief, in order to return them to the shop. Jaalpa's dismay at the theft makes Ramanath resolve to supplement his income by soliciting bribes in the course of his work. He earns more, but spends more, and when he finally buys a beautiful bracelet for Jaalpa, he has to ask the jeweller for credit. Therefore when one of Jaalpa's friends gives Ramanath some money to have a bracelet like Jaalpa's made for her, Ramanath can only use her money to pay off his debt at the jeweller's.

As Ramanath avoids the friend's repeated requests for the bracelet and continues to hide the truth from Jaalpa, the friend becomes more and more suspicious regarding her money. Finally, in order to assuage her suspicions, Ramanath takes a bag filled with money from his office safe. However, the same day he brings the money home, Jaalpa's friend conveys her suspicions to Jaalpa. Angered at the accusation of foul play, Jaalpa gives her friend the money from Rama's office, thinking it was hers originally. When Rama finds out that he is unable to return the money to his office, he becomes hopeless and desolate, and increasingly fearful of getting arrested for embezzlement. He writes Jaalpa a note admitting his mistake and runs away to Calcutta.

Upon reading Rama's note, Jaalpa hurriedly sells some of her jewellery and returns the money to Rama's office. Unaware that the money has been returned, Rama continues to hide out in Calcutta. He refuses to step outside, fearful of arrest for embezzlement. One day, during a rare excursion out of doors, he sees three policemen on their normal beat. He tries to avoid them, and in doing so, arouses their suspicions. But when the police take Rama to the station, he goes along willingly, confessing his 'crime' without being asked:

"Making an effort to look cheery, Rama said, 'Now I am in your hands, whether you choose to be lenient or harsh. I used to work for the Municipality in Allahabad. Call it stupidity or call it bad luck, but I managed to spend four hundred rupees belonging to the customs office. I wasn't able to collect the money on time. Struck

with shame, I didn't say anything to my family; otherwise it wouldn't have been difficult to make arrangements for that much money. When I couldn't do anything, I fled and came here. Not one word of this is untrue" (180).

Yet before imprisoning him, the police *daroga* (inspector) suggests a compromise. Ramanath will be free if he serves as a paid witness in the prosecution of a man against whom the police have no evidence. Although doubtful, Rama ultimately agrees. At the same time, the police call Allahabad and discover that the money apparently stolen from Rama's office has since been returned. But the police need Rama's testimony, and so they do not tell him that the charges against him have been dropped. Rama thus testifies in court against the accused man, resulting in the latter's conviction. It is only when Jaalpa hears from Rama's office that he is in Calcutta, under police custody, and she comes to the city to convince him to give up his role as false witness, that Ramanath acknowledges his mistake and reveals the truth to the court. He is tried for perjury and acquitted. The novel ends with Jaalpa and Rama beginning a new life on the banks of the Ganga, away from the lure of urban materialism.

Most scholars of *Ghaban* emphasise its critique of materialism and of the spiritual deterioration that characterised colonial modernity. As one critic writes: "[Premchand] stresses on the interaction between his characters and social environment in this novel. He reveals how circumstances can overpower a weak-minded character. The emphasis is laid equally on the development of character and the importance of the social problem".⁷ Equally, the novel is seen as highly critical of the institutions of subjection created by foreign rule: "In his portrayal of the political situation in India during British rule Premchand gives us in *Gaban* [a]...vivid account of bureaucracy...What emerges with frightening clarity is not so much the inefficiency as the callousness and inhumanity of the way bureaucracy works, in deadly alliance with the police".⁸

While these readings of the novel are useful for understanding Ramanath's character and the novel's social critique on its most general level, they are less than adequate in their interpretation of Jaalpa. Seeing the social world of late colonial India as veering between two extremes, morality versus spiritual degradation, enables an effective nationalist critique of colonialism; however, this critique relies upon women as static figures, serving only to influence men towards the extremes of colonial, Western corruption or national, Indian virtue.⁹ *Ghaban's* Jaalpa is conventionally read as both these extremes: first, as the cause of Rama's distress because of her materialistic love for jewellery; and then, after her 'transformation', as "the only redeeming feature and saving grace of [Rama's] life...the ideal of Indian womanhood in the story".¹⁰ Beyond this, a realist interpretation can go no further.

***Ghaban* as a 'Detective Novel'**

By contrast, through its explicit engagement with solving crimes, the detective novel provides an exploration of agency, guilt and responsibility that allows for a more dynamic reading of *Ghaban* and of Jaalpa in particular. Specifically, the detective novel calls attention to narrative as an alternative structure for lived experience. The role of the detective is to reconstruct, in narrative form, a character's experience in such a way that his or her guilt

or innocence can be determined. Reading *Ghaban* as an example of the detective novel genre thus allows us not only to see Jaalpa as an *actor* rather than as a merely idealized symbol, but also to see the narrative plot as an alternative structure to the law. In this sense, the events of Ramanath's life are given meaning by two distinct structures—that of the text, i.e., the plot of the detective novel, which writes him as a 'suspect,' a potential criminal whose guilt or innocence has yet to be determined; and that of the law, which writes him as an object of legal-judicial discourse in which he is *also* a potential criminal. Each structure makes meaning out of Rama's actions according to its respective logic. Insofar as the narrative and the law share a sense of Rama's agency and thus his guilt, he is doubly oppressed. As we will see, it takes the distinguishing of narrative from legal agency to save and redeem him.

From the outset, Rama is interpellated by the law as a 'criminal' without his having actually committed a crime. Whereas the crime is ostensibly the eponymic embezzlement, the complex narrative circumstances surrounding Ramanath's taking of the money, his flight and his capture make it questionable whether embezzlement is a 'crime' in any purely legal sense. Christopher King, the novel's English translator, expresses his bewilderment at Premchand's choice of title: "Although the title literally means 'embezzlement', no embezzlement actually takes place anywhere in the novel...Oddly enough, in Chapter 34 Premchand has Rama confess to the police that he has spent three hundred rupees of government money. He has done no such thing!"¹¹ Uncertain as to "[w]hether Premchand intended his title to be taken literally or not", King takes it upon himself to 'correct' it, "tak[ing] it more metaphorically".¹² He thus subtitles the English translation *The Stolen Jewels*.

What King fails to acknowledge is that although Ramanath did not commit a crime in the purely legal sense by taking the money, the law's *misrecognition* of his action as a crime – and Rama's own internalisation of that misrecognition – is the originary moment of the novel's plot. Although the embezzlement never took place, it impels the narrative to unfold *because* it is seen as a crime by the juridical narrative that structures Ramanath's sense of his own agency; as in any detective novel, the narrative 'impulse to continue' is driven by the particular meaning given to actions and events by the structuring logic of the law. According to King, Rama's theft of the jewels is the real crime, because it is the "act which sets off a chain of consequences which entangle the major characters for the rest of the novel".¹³ But Rama's theft of the jewels is not the event that makes him an object of the law – it is not because of this action that he leaves Calcutta, fears the police and becomes a false witness. In fact, Ramanath flees to Calcutta not because he is guilty of a crime, but because he *believes himself* guilty of embezzlement and further, he *believes* that he will get caught. Embezzlement thus impels his actions through the potentiality of its impending discovery.¹⁴ In this way, the stolen jewels function as the originary moment of the novel only if the novel is a realist critique of materialism; however, the embezzlement functions as the originary moment of the novel insofar as the novel thematises the coincidence of narrative and legal structures which determine Rama's fate.

What we are left with, then, is the unfolding of two structures of meaning-making – one literary, one legal – that both originate from an empty centre, the 'embezzlement' that never

took place. This 'crime' has a very different relationship to agency than a crime in any conventional sense, as it was never 'committed'. Terms central to the definitions of both law and detective fiction – agency, guilt and responsibility – are emptied of their referents. In this context, what is the task of the detective?

Jaalpa as Detective

If agency and guilt are determined where they do not literally exist, then the detective has a very different role vis-à-vis both the law and the detective plot. In a conventional sense, the detective must solve the crime by determining guilt and innocence. Broadly speaking, this entails matching up individual with action, and action with guilt/responsibility. With criminal and narrative categories such as agency emptied of their referents, it falls on the detective to re-signify them in ways that give new meaning to her endeavour.

Thus, far from being a static embodiment of ideal spiritualism to whom an ailing 'lost soul' such as Ramanath must turn, Jaalpa writes herself into the very gap that disconcerted King, where morality exceeds the law:

“Today for the first time her mind accepted the fact that all this was the fruit of her own doing. It is true that she had never insisted on having ornaments, but she had never clearly refused them either. If after the theft of the jewels she had not been so impatient, then this day would never have come. In this weak state of mind, Jaalpa began to take upon herself a greater part of the responsibility (*bhaar se adhik bhaag*)...Why had she not contained her joy at receiving gifts? Jaalpa was now taking this responsibility (*zimmedari*) too upon herself” (121).

Unlike what many critics say, this passage does not represent Jaalpa as moral exemplar. Rather, it shows her making a particular intervention into the law and the narrative based on her complex understanding of Rama's plight. Thus in this passage Jaalpa invokes two simultaneous notions of 'agency': narrative agency (the power of characters over outcomes, through which events can be seen as 'the fruit of one's own actions'); and moral agency ('responsibility'/*bhaar/zimmedari*, the ability to act positively in the world, understood narrowly within the legal domain as cause for guilt). Jaalpa's claiming of agency and responsibility in a detective novel implicates her into the mystery-plot, where she becomes an object – a potential suspect. But by *implicating herself*, Jaalpa activates her own agency in the narrative and thereby contests the complete objectification of the law over agency. Moreover, by objectifying herself in the language of *bhaar* and *zimmedari*, terms appropriated by the law from other kinds of non-statist, moral discourses, Jaalpa leaves open the possibility of alternative significations of these terms in a moral realm beyond the hold of the law. She thus questions the very correspondence between legality and morality that assures the law its power.

Thus enters Jaalpa as detective. For by implicating herself within the narrative, yet outside of the domain of the law, Jaalpa makes it possible to disentangle the structures in which Ramanath is bound. When she hears that Rama has become a *sarkari gawah* (government witness), she realises that underlying his actions is a profound confusion of

innocence and guilt: Rama was innocent, but believed himself guilty; in order to expiate his perceived guilt, he had committed a crime, leading to the false convictions of other innocent men. This confusion is not Rama's alone; rather, it reveals a gaping loss at the very place where law and morality ought to correspond. Jaalpa fears as much, if not more, for this loss, as she does for Ramanath's fate, as it is the loss of a whole social world struggling, as pre-Independence nationalism was, with defining morality outside of the domain of colonial law. Who can now claim rightful responsibility for any action, when the innocent can so easily become the guilty, and the guilty the innocent? Or, as Jaalpa herself wonders, "Upon whose shoulders will the blood of the innocent fall?" (119).

Thus, rather than merely trying to link up responsibility to the action of an individual (the 'criminal'), Jaalpa's action as detective is to reconsider the question of *bhaar* and *zimedari* within the broader moral context of society as a whole. Whereas under the law's hegemony these two terms were associated with *guilt*, she acts to reinvigorate their usage in terms of the excess morality they contain, which the law can only misrecognise. This excess includes responsibility as a positive relation, forming bonds and ties between individuals. To put this responsibility into practice, Jaalpa devotes her time to the family of Dinesh, one of the innocent men convicted due to Rama's false testimony:

"He has two children, a wife and a mother. All day she feeds these very children, she brings water from the river for the old woman, she does all the housework and she solicits contributions for them from wealthy men. In Dinesh's home there had been neither money nor means. His family had been in dire straits. There hadn't even been anyone to help them, or to go and give them support. Whatever friends and neighbours they had kept their mouths shut. A few of them were already close to starving. Jaalpa went there and revived them" (247).

Having written herself into the narrative as a responsibility-bearing agent, she is now able to activate that responsibility in a positive, ethical sense. This enables her to redraw the difference between innocence and guilt in extra-legal, though profoundly moral, terms.

The defence lawyer's recounting of Jaalpa's actions makes a huge impact in the courtroom during Rama's perjury trial. In this sense, when the novel ends happily, with Rama's acquittal,¹⁵ it is not because the law works, but rather because the narrative works, as a powerful and effective, non-statist mode of structuring experience. It is as if Jaalpa's radical detecting – her search for the assumptions behind the terms 'agency' and 'responsibility', and her reinvigoration of these terms with a plenitude of morality – was what was required to weaken the law's hold over other sorts of structuring claims. Her actions thus give strength to the claim of the narrative structure to determine outcomes, even when its 'decision' goes against the law. The presiding judge struggles, in his speech, to reconcile the illegality of perjury with a desire for Rama and Jaalpa to get their just due; in the moment where he must decide, these choices conflict. His ultimate acquittal of Rama marks his failure as a judge in a court of law. But the decision he makes is driven by another logic besides that of the law, introduced into the courtroom through the story of Jaalpa's actions. In this way, the final verdict is not over Rama's guilt or innocence, but rather over which of

the two structures, legal or narrative, will be allowed to prevail in the last instance. By activating the moral possibilities of the latter, Jaalpa brings about a minor victory for lived experience the law cannot grasp.

NOTES

1. Ranajit Guha. "Chandra's Death". In *Subaltern Studies V: Writings on South Asian History and Society*, ed. Ranajit Guha (Oxford University Press, 1987, New Delhi) pp. 140-41.
2. Ranajit Guha. *History At the Limit of World-History* (Oxford University Press, 2002, New Delhi).
3. Guha (1987) *op cit.*, p. 142.
4. Dipesh Chakrabarty. "Translating Life-Worlds into Labour and History". In *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton University Press, 2000, Princeton), p. 72.
5. I take my understanding of the relationship of literature to non-statist forms of historiography primarily from Ranajit Guha's discussion of Rabindranath Tagore, Guha (2002) *opcit.*
6. All citations from *Ghaban* are from the Hindi edition (Diamond Pocket Books, 2000, New Delhi). All translations are my own unless otherwise noted.
7. Indar Nath Madan. *Premchand: An Interpretation* (Minerva Book Shop, 1946, Lahore) p. 116-17.
8. V.S. Naravane. *Premchand: His Life and Work* (Vikas Publishing House, 1980, New Delhi) p. 146.
9. For a discussion of the women's question in the context of a nationalist critique of western materialism, see Partha Chatterjee, "The Nation and its Women" in *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton University Press, 1995, Princeton) pp. 116-134.
10. Madan *op cit.*, p. 52.
11. Christopher R. King. "Introduction", in *Gaban: The Stolen Jewels* (Oxford University Press, 2000, New Delhi) x.
12. *Ibid.*, x.
13. *Ibid.*, x.
14. Even before Ramanath has fled to Calcutta, the fear of arrest plagues him. When his boss tells him that his friendship has saved him thus far from the law, Rama has the following reaction: "Handcuffs! This word struck Rama's chest like an arrow. He began to tremble from head to foot. Imagining this misfortune caused his eyes to fill with tears. With lowered head, like a condemned prisoner, he slowly went to his chair and sat down, but this terrible word kept echoing around in his heart" (100).
15. It should be noted that the acquittal is not the final scene of the novel, it is only the ending of the particular thread I have focused on here. The actual ending involves the suicide of Zohra, a prostitute who had been inspired by Jaalpa's service to give up her profession. Conventionally, Zohra's death is read as a redemption, a spiritual cleansing of a polluted soul in the waters of the Ganga. However, in the context of this essay, I read Zohra's death as the marker of the limits of Jaalpa's intervention in the legal domain, which is enabled in part by Jaalpa's middle-class position as one of the future 'citizens' of independent India. Read in this way, the novel's ending implies that this model of national citizenship, however seemingly inclusive, can only exclude Zohra, whose claims to political belonging are restricted by the 'degraded' morality of her circumstances.

The Honourable Murder

The Trial of Kawas Maneckshaw Nanavati

AARTI SETHI

April 27, 1959: The Nanavatis are having lunch in their Cuffe Parade home. Kawas Maneckshaw Nanavati, Commander in the Indian Navy, has just returned after sea-time, and April is always a good season to be in Bombay. During lunch his wife Sylvia informs him that she has been having an affair with a rich Sindhi businessman, manager of Universal Motors, one Prem Ahuja.

Nanavati is a reasonable man. Lunch over, he drives Sylvia and the two children to the Metro Cinema for the afternoon show of *Tom Thumb* and then proceeds to the 'Mysore', his ship docked at Bombay Harbour. He signs out of the ship's armoury a semi-automatic revolver and six rounds of ammunition, and then drives to the Universal Motors office on Peddar Road. Ahuja has not arrived, he is told. He then drives to Ahuja's residence. Ahuja is bathing. Nanavati confronts him and enquires if it is Ahuja's intent to marry Sylvia and accept the children. Ahuja replies in the negative. It seems he "does not marry every woman he sleeps with". Nanavati is not happy with this reply. Three shots ring out; Ahuja lies dead. As Nanavati is leaving the building, the watchman at the gate asks him why he has killed Ahuja. Nanavati replies that he quarrelled with Ahuja and shot him dead because the latter had "connections" with his wife.¹

The next day, enterprising peddlers are selling 'Ahuja Towels' and toy 'Nanavati Revolvers' on the streets of Bombay. Now things start getting murky. For instance, how did Nanavati gain access to Ahuja's home with such ease? Did Nanavati gain entry because in fact Nanavati and Ahuja were not strangers? Was Ahuja a friend of Nanavati's? His brother almost? Meanwhile, Nanavati drives off and confesses to Provost Marshall Samuel, the Provost officer of the Western Naval Command, Bombay, who tells him to turn himself in to



the authorities. Accordingly, Nanavati confesses to John Lobo, Deputy Commissioner of Police, Bombay.²

In this essay, I suggest an alternative framework through which the above story of an adulterous wife, an enraged husband and a dead lover could perhaps be read. Through a consideration of the trial of Kawas Nanavati, I wish to open out a set of questions about the relationship between the operation of the bare act of the law, the culpable act, the victim of the act, the administration of 'justice', and the manner in which the act is rendered in subsequent narratives about community and the state. In this I will employ the conceptual framework of the 'honour crime'.

The term 'Honour Killing' is conventionally used to denote a specific category of extra-legal killings where the act of murder is seen to have been motivated by pre-modern affiliations/sentiments of some sort. Acts of violence committed against people for marrying outside of caste/religion/ethnicity, or other similar infringements where they are seen by their actions to have besmirched the honour of the family and the larger community, come under the broad rubric of the honour crime. Implicit in the use of the term are assumptions that mark it as being different from other crimes:

a) That individuals are culpable not for breaking the law as it stands, but for actions which violate norms and codes which may or may not be state-sanctioned, but which nonetheless govern the actions of people. The power of these codes derives not from their sanction by the state, but from other sources such as community and religion.

b) Individuals, then, are punished not so much for particular actions, though the action may be the catalyst for reprisal, but for a mode of being. Just as reprisal is aimed not at particular action but a mode of being, so too the act which is punished is seen to be directed not at particular individuals but at the entire community.

c) Most importantly, because of the above reasons, the honour killing enjoys a certain amount of legitimacy within the immediate community. Events told over time become part of the mythic lore of a community. They are told and re-told to define boundaries of action, to concretise norms and modes of being, to serve as warnings that will determine possible courses of action open to an agent. The underlying assumption is that certain acts lie outside the ambit of the rational life governed by a rational code such as the law.

The honour crime is further complicated by the fact that while the state and an elite 'progressive' section sees such an act as a remnant of a 'pre-modern' sentiment of people and communities, functionaries of the state themselves might well adhere to these notions of what constitutes right action. In such cases, subtle mechanisms of deferral and erasure are mobilised to justify/validate the crime. Testimonies are not recorded, FIRs (First Information Reports) not lodged, evidence tampered with, victims threatened with social ostracism or even death; and more often than not, the case is closed due to lack of evidence.

Honour crimes, in particular, stand in tense relationship to the state and disrupt its claim to rationality. They make us lament the barbarity of a society based on modern systems of jurisprudence, but too 'backward' to rise above deeply embedded parochial affiliations of caste, religion, gender, race. The fiction of 'due process of law' still stands unblemished, however, because the honour crime is interpreted as a lapse not of the law *per se*, but of its implementation;

not a failing of the machinery of justice but the failing of those charged with dispensing justice.

This essay suggests that certain acts of murder/violence committed by agents of the state must also be understood within the conceptual framework of the honour crime. My argument restricts itself to India, the Indian legal system and the Indian state, which makes a distinction between state law and codes such as religious law and personal law specific to particular communities. I will examine the Indian Penal Code (IPC) where this distinction is fairly rigid, as well as other codes governing the conduct of those who serve the state in some capacity or the other. Such agents are bound by a dual code of conduct – state law, and a code of conduct such as The Army Act 1950, The Air Force Act 1950, The Navy Act 1957, etc. Unlike the traditional honour crime where the conflict arises between a state-mandated code of conduct (the law), and a code which derives its authority primarily from sources external to the state, here the conflict is between two codes, that are both state-mandated and therefore demand equal fealty.

In most instances the code of conduct and the law are in consonance; but what happens when they are not, where the imperative to ‘honour’ one, necessarily requires the violation of the other?

Nanavati's crime occupies this paradoxical space: it is a double-bind where the law and its opposite, the violation of the law, have to be followed at the same time. The Commander turns himself in because while recognising he has broken the law which says he must not kill, he has stayed true to an ideal which says he must protect his honour, the honour of his woman and the honour of the Indian Navy.

The certification of the ‘good’ man, then, is not just the law-abiding citizen, but also the man who takes the law into his own hands when required. This thematic is played out in countless Hindi films where the hero kills the villain and surrenders to the authorities. The upright man abides by the law. However, when in the moment of crisis he violates what he has thus far preserved, he is excused because of his exemplary devotion thus far – the man who takes off his uniform in order to live up to the codes of the uniform; the cop who shoots to kill in encounters with state enemies (dacoits, terrorists, militants) because his duty requires him to exterminate ‘undesirable elements’; the agent of the state who breaks the law to preserve the normative foundation on which the state is built.

In traditional honour killings, other networks are activated in order to validate the act of murder. In instances which involve the breaking of a law and the upholding of a state-mandated code, however, both the action and its answer are committed against the state and the state itself must evolve mechanisms to deal with the consequences. It must evolve mechanisms that, like dominant cultural forces in the first case, compensate for the law's inability to honour the code. One such device is the Presidential/Governor's Pardon: the court pronounces Nanavati guilty, and upholds the law. The Governor pardons Nanavati, and so does justice to the code. A strange dynamic is set up. We have the law, we have a code of honour that governs the actions and behaviour of servants of the state, and we have the device of the Presidential/Governor's Pardon, the fulcrum upon which the conflict devolves.

The Nanavati case rocked Bombay. A stunned Navy quickly closed ranks behind Nanavati, while the Sindhi community was up in arms over what was in essence murder in the first degree. Nanavati was charged with culpable homicide amounting to murder under

Section 302 of the IPC; he was also charged under Section 304 for culpable homicide not amounting to murder. The case was tried in the Greater Bombay Sessions Court under a special jury. The jury acquitted Nanavati eight to one. Dissatisfied with the verdict, the Sessions court judge referred the case under Section 307 to the High Court. The High Court in such instances is authorised to admit appeals if it finds the judgment to be “perverse in the sense of being unreasonable” such that “no reasonable body of men could have reached on the evidence”;³ and if it believes there were substantial misdirections to the jury, on the part of the judge, which resulted in a skewed verdict. Having ascertained that the case fell under both these criteria, the High Court considered the evidence afresh. This time Nanavati was found guilty, and the High Court handed down a life sentence. The case then went to the Supreme Court on appeal. The Supreme Court upheld the High Court conviction. Nanavati was charged and convicted under Section 302 of the Indian Penal Code of culpable homicide amounting to murder.

Outside the courtroom another trial was under way, almost as significant, and much more dramatic than the in-court proceedings. The Nanavati case had become a battle of Sindhi (victim) vs. Parsi (murderer).⁴ Political loyalties were similarly divided. Ram Jethmalani, the well-known (Sindhi) Bombay advocate, though not directly involved as a prosecutor, had been instructed by Mamie Ahuja, Ahuja’s sister, to keep an eye on the case and ensure a conviction. Karl Khandavala (the eminent Parsi jurist), the Indian Navy, and the Parsi Panchayat were backing the Commander. *Blitz*, the immensely popular weekly tabloid owned by the charismatic Parsi newspaper baron Rusi Karanjia, ran a sustained campaign for Nanavati’s release. As the trial proceedings began, *Blitz*, under the stewardship of its able editor, ran a parallel trial by media that wholeheartedly not just acquitted Nanavati, but indeed celebrated the elegant Commander. “Three Shots that Shook the Nation” screamed the headlines to a nine-page pictorial record of the case.⁵ *Blitz* sold the case as a classic story of love, betrayal and the restoration of honour. It recounted the Nanavati love story, how the dashing naval officer had met his wife in England where they had married. How Sylvia had been tricked and seduced by the villain Ahuja, whom *Blitz* described bitingly as “a symbol of those wealthy, corrupt immoral and basically un-socialist forces which are holding the nation and its integrity to ransom”.⁶

Blitz exhibited none of the discretion that is normally reserved for the dead. “Some”, it wrote, “may attribute this sickening event to the heat of the season, but this is a mistake. Persons such as he do not share the lot of the common man. They live in a world of privilege. For their sins, their outrages, their crimes, they and they alone are to blame”.⁷

The Parsi community pulled out all stops in its campaign for its prodigal son. At a rally in the Cowasjee Jehangir hall, over 3,500 Parsis, with 500 more clustered around the door and spilling into the streets, expressed their solidarity with the Governor’s decree that Nanavati be placed in naval custody till the Supreme Court had adjudicated on the appeal against a life sentence handed down by the High Court. The enthusiasm of *Blitz* seemed to have infected even the more staid and conservative mainstream press. A small article in *The Pioneer*, while not much more than an announcement, still contained in its brief report of not more than 150 words a comment on the accused’s sartorial sense, “...the tall commander arrived dressed simply in grey trousers and a white shirt”.⁸

Blitz, however, was not all fun and games. Important points of law and evidence were debated in its pages. One such bone of contention was the matter of the towel. The defence claimed that the heated exchange of words between the outraged husband and his wife's paramour had escalated into a physical skirmish, during which the gun had gone off, accidentally killing Ahuja. Nanavati thus pleaded innocence under Section 80 of the IPC.⁹ However, it was conjectured that if there had indeed been an altercation the towel around the just-bathed Ahuja's waist should have slipped; and even if it were tied unusually tightly, once Ahuja was shot the muscular contractions would have made it fall. "Did the towel fall?" was the question doing the rounds on anxious lips in Bombay.

Even after Nanavati was convicted, *Blitz* did not let up. For the three years that Nanavati was incarcerated, it continued its relentless campaign for his release. It would not be altogether misguided to attribute the subsequent pardon in some part to *Blitz*'s exertions in keeping the case alive in public memory.

The Pardon

Nanavati spent three years in prison. The Commander was not an unimportant man. Besides the celebrity status bestowed on him by *Blitz* and Bombay society, Nanavati had also been the Defence Attaché to V.K. Menon when he was serving as High Commissioner in the UK, and was close to the Nehru-Gandhi family. Pressure was mounting for his release. The government, however, was in a difficult situation. It could not pardon Nanavati without angering the Sindhi community. The Nanavati pardon, bestowed by the then-Governor of Maharashtra Vijayalakshmi Pandit, is an interesting story of back-door political dealing. During the time of Nanavati's incarceration, another individual called Bhai Pratap, an ex-freedom fighter and now wealthy trader and Sindhi philanthropist, was also in jail. Bhai Pratap was wrongly convicted for misuse of imported goods. He too had powerful friends in high places. The government made a simple political calculation. It could release Nanavati if it simultaneously pardoned Bhai Pratap, thereby assuaging the sentiments of both communities.

There was still the matter of Ahuja's sister, however. Ram Jethmalani, formerly asked by Mamie to ensure a conviction for Nanavati, now essayed a different role. He convinced Mamie Ahuja to declare in writing that she had no objection to Nanavati's release. Bhai Pratap and Nanavati were pardoned on the same day.¹⁰

"Gambhir aur Achanak¹¹ (Grave and Sudden)" or The Unreasonable Acts of the Reasonable Man

Among other things, the Nanavati case is significant from the point of view of judicial history because, besides being the last case in India to be tried by jury, it also has one of the most detailed explications on Sub-Section 1 of Section 300. The exception relates to "grave and sudden provocation" which, if upheld, reduces a crime from murder to culpable homicide not amounting to murder, and therefore carries a significantly reduced sentence. In this case, the verdict hinged on whether the situation at hand qualified for the exception. In order to qualify, provocation must be both grave and sudden. In the words of the judgment, "Under this exception, culpable homicide is not murder if the following conditions are

complied with: (1) The deceased must have given provocation to the accused. (2) The provocation must be grave. (3) The provocation must be sudden".¹² The court continues, "It is not all provocation that will reduce the crime of murder to manslaughter. Provocation must be such that temporarily deprives the person provoked of the power of self-control, as the result of which he commits the unlawful act which causes death".¹³

The first part of the clause describes the nature of the provocation. It must be grave. The second relates to the act by the accused, i.e., it must be sudden. Even if both these conditions are met, however, the test finally devolves equally on the actor as on the act. The court notes, "The test to be applied is that of the effect of the provocation on a reasonable man...so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did".¹⁴

The law situates itself upon the legal fiction of the "reasonable man", i.e., one "having sound judgment", "moderate", "fair and sensible".¹⁵ Law, however, adds another dimension to the personality of the reasonable man which the dictionary definition fails to list. Since the reasonable man is reasonable precisely because he is not prone to extremities of emotion, in most instances his judgment can be trusted. This includes his judgment call to action in situations of stress and extreme provocation. The reasonable man is one who, in certain situations, displays his reasonableness by an act of extreme unreason. Indeed, if he did not react in this manner, we would be highly suspicious of his reasonableness in the first place.

This definition of the reasonable man is enshrined in the exception of grave and sudden provocation. The exception recognizes that under situations of extreme stress, we are all bound to sometimes lose control. The gravity of the provocation is seen here as leading to sudden acts with grave consequences. The court then lists several cases cited by the defence in which the accused has been acquitted under the exception. Not surprisingly, each case documents in detail the depths of madness to which a wife's infidelity has driven a husband. When confronted with evidence of spousal dalliance, the only obvious (and indeed right action) to take, if one is a reasonable man, is to follow one's impulse of murderous rage that may result in the death of the offending party. Paradoxically, in these situations the murderer is indeed the victim. In its citation of an earlier case, the court notes, "As stated above the whole unfortunate affair should be looked at as one prolonged agony on the part of the husband".¹⁶ The definition of the reasonable man, then, rests on an understanding that he is reasonable until such time as the foundations of his masculinity are not unhinged.

This presumption, however, does not seem to extend so easily to similar crimes by women who murder their husbands. In her work with undertrial women prisoners in Hyderabad, Vasudha Nagraj notes the vicious attitude of the courts, prosecutors and public opinion towards women charged with the murder of their husbands. Most cases involve murders, sometimes with the assistance of lovers, after years of domestic abuse and neglect. It would be stretching the provisions of the exception unduly to incorporate situations in which women have attacked a sleeping man, but the court has also noted in the same judgment that, "...one must not confine himself to the actual moment when the blow, which ultimately proved to be fatal was struck, that is to say, one must not take into

consideration only the event which took place immediately before the fatal blow was struck. We must take into consideration the previous conduct of the woman".¹⁷ This implies that the inflicting of prolonged physical and mental abuse should constitute the 'previous conduct' of the man. The researcher notes that there is almost always never any discussion of the history of abuse that preceded the killing. Rather, the court is "fixated completely in the then and there of the crime".¹⁸ These women are not acting in defence of their marriage. They cannot therefore be seen to be acting reasonably. These women are not 'reasonable men'.

The definition of a relationship between three people, some of whom have shared sexual intimacy, some of whom have committed murder and some of whom have been murdered, changes dramatically depending on the marital status of the actors.

The bare act of the law that notes a situation of grave and sudden provocation (where the notion of the 'gravity' of the provocation depends upon the intensity of emotional disorientation caused by a confession of infidelity) seems to take cognisance of gravity only when the actors happen to be married. It is a common practice in cases of rape for the Caste *Panchayat*¹⁹ to administer justice by marrying the victim to her rapist. We hear echoes of this in Nanavati's asking Ahuja whether he was prepared to marry Sylvia, as well as in the tenor of the judgment.

Nested in a quibble on the constitutionality of the referral by the Sessions Court judge to the High Court, is a discussion on whether there were misdirections to the jury on the part of the judge. Significantly, one of the grounds upon which it held that misdirections to the jury had occurred, was that the judge had failed to convey to the jury the significance of three love letters exchanged between Sylvia and Ahuja wherein they had decided to marry. The High Court felt that if indeed this had been admitted as evidence the jury would have reconsidered Sylvia and Nanavati's claim that Ahuja was trying to back out of the proposed marriage. The court noted:

"These letters show the exact position of Sylvia in the context of her intended marriage with Ahuja, and help to test the truthfulness or otherwise of some of the assertions made by her to Nanavati. A perusal of these letters indicates that Sylvia and Ahuja were on intimate terms, that Ahuja was willing to marry her, that they had made up their minds to marry...Both Nanavati and Sylvia gave evidence giving an impression that Ahuja was backing out of his promise to marry Sylvia and that was the main reason for Nanavati going to Ahuja's flat for an explanation. If the Judge had read these letters in his charge and explained the implication of the contents thereof in relation to the evidence given by Nanavati and Sylvia, it would not have been possible to predict whether the jury would have believed the evidence of Nanavati and Sylvia".²⁰

We can now trace how a certain understanding of honour runs through the case from the act, to the law, to the jury, to the trial by media, through the High Court, to the Supreme Court and finally to the executive decision by which Nanavati is pardoned. Nanavati's "reasonable" action is imbricated in a sense of honour which is itself enshrined as a silent law in the regime he is governed by, i.e., the Indian Navy.

An unwritten code within the Navy prohibits intimacy between Naval personnel and the wives of other Naval personnel. The code is not mentioned explicitly in the Navy Act 1957.

However, it is presumed that violation of this code constitutes conduct “unbecoming of a naval officer”, which is enshrined in Sub-Section 2, Section 64, Chapter VIII of the Navy Act 1957.²¹ It strikes me as interesting that outside of the sentiment that the statement expresses, and given that it is not actually enshrined as law, there is an exactitude to the phraseology employed by Naval officers I have spoken to when listing what actually constitutes ‘Conduct Unbecoming’. A significant item on this list of transgressions is “Stealing the affections of a brother officer’s wife”, which is considered an extremely serious offence and invites dismissal from active service. The officer concerned is unofficially asked to turn in his resignation.²²

As far as the Navy is concerned, therefore, there is nothing strange about Nanavati’s “reasonable” decision to kill Ahuja. Moreover, Ahuja was a civilian, and therefore ‘not one of us’. The Navy’s disdain for the law in this particular instance must have been fairly obvious, as evinced by the Bombay Bar Association’s anger at the Navy’s disrespectful attitude towards the Court, to address which Danial Latifi, advocate in the Supreme Court, was asked to appear on behalf of the Bombay Bar Association.²³

The jury is employing a similar model of behaviour when it acquits Nanavati in the face of overwhelming evidence. The High Court quibbles over the intentionality, intensity, deliberateness and temporality of the act. The Supreme Court upholds the High Court’s conviction, on the grounds that the provocation, while grave, is not sudden and therefore does not fall under the exception.

The court notes, “When Sylvia confessed to her husband that she had illicit intimacy with Ahuja the latter was not present. We will assume he had momentarily lost his self-control”.²⁴ The judgment describes the course of events, and then goes on to say, “Between 1:30 pm when he left his house, and 4:20 pm when the murder took place, three hours had elapsed and therefore there was sufficient time for him to regain his self-control, even if he had not regained it earlier. On the other hand his conduct clearly shows that the murder was a deliberate and calculated one”.²⁵

Section 497 of the Indian Penal Code reads:

“Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor”.²⁶

Thus, under law, the offence of adultery is only committed against the husband of the adulterous woman. A man cannot level an adultery charge against his wife, but can do so against the ‘other man’ involved. Besides the obvious implication that women are devoid of independent sexual agency, the Act rests on an understanding of the relationship between men and women in a marriage, to be, in essence, a property relationship. Adultery is an offence that a man commits by trespassing upon the property of another. This is why she is not liable as abettor, and why a charge of adultery cannot be filed against her. Let us for

a moment reverse the roles of murderer and victim. In the event Ahuja had killed Nanavati, there would have been no consideration of grave and sudden provocation, let alone the possibility of acquittal.

Finally, the pardon too, while it might have hinged on political machinations of the back-door variety, is communicated in the language of honour. This is cemented in the extraction of what amounts to a 'No Objection Certificate' from Mamie Ahuja.

The bare act of the law, then, is never actually just that. Law is woven within layers of considerations, which is why no case is like any other. Interpretation is the discursive mode through which a judge tries to ensure equality before the law on the one hand, and to preserve the uniqueness and specificity of circumstance on the other. In this essay I attempted to explore the operation of one such consideration, i.e. the ways in which a certain understanding of honour enters the law, the means by which it situates actors in the case and how it determines the outcome of the case. The law itself is the site where cultural understandings of right conduct and right action are produced. The argument is not to understand law in cultural terms, i.e., to say that the interpretation of the bare act of the law will change depending upon current cultural mores, but to say that the law is itself a site for the production of culture.²⁷ The rule of law needs to be understood in terms other than what it is permissible to do. It needs to be understood, in other words, outside of the binaries of *mens rea*, the intent to act, and *actus reus*, which is to act.

NOTES

1. *Kawas Nanavati vs. State of Maharashtra*, 162 (1) Cri. L. J. 521 at p. 540.
2. Information compiled from: Sharma, Vijay. "Defence vs. Prosecution", "Inspired by Nanavati", "Nanavati Released!", "The Nanavati Trial".
http://www.hindustantimes.com/news/specials/proj_tabloid/tabloidhome1912.shtml#
(accessed on 26 December 2004).
3. *Kawas Nanavati vs. State of Maharashtra*, 162 (1) Cri. L. J. 521 at p. 522.
4. See Gera, Nalini, *Ram Jethmalani: The Authorised Biography* (Viking/Penguin, 2002, New Delhi); see also Sharma, Vijay, "Nanavati Released!",
http://www.hindustantimes.com/news/specials/proj_tabloid/tabloidhome1912.shtml (accessed 5 February 2005).
5. Prakash, Gyan. "Blitz's Bombay". In *Seminar*, August 2003, No. 528.
6. Quoted in Indra Sinha, *The Death of Mr. Love* (Simon and Schuster, 2002, London).
7. *Ibid.*
8. "Murder charge against Naval Officer", *The Pioneer*, 29 April 1959.
9. Section 80 is contained in Chapter IV of the IPC relating to General Exceptions. It reads: "Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution". Nanavati claimed that during the course of an altercation the gun had gone off accidentally killing Ahuja.
10. See Gera, Nalini, *Ram Jethmalani, the Authorised Biography* (Viking/Penguin, 2002, New Delhi); see also Sharma, Vijay, "Nanavati Released!"
http://www.hindustantimes.com/news/specials/proj_tabloid/tabloidhome1912.shtml
(accessed 26 December 2004).

11. '*Gambhir aur Achanak*' is the Hindi translation of the phrase "grave and sudden". *Achanak* was also a famous film directed by Gulzar, starring Vinod Khanna and Fareeda Jalal among others, which was based on the Nanavati case. Unlike another earlier fictionalised rendition of the case, *Yeh Raaste Hain Pyar Ke*, starring Sunil Dutt and Leela Naidu, which sank without a trace, *Achanak* did extremely well at the box office. Interestingly *Achanak* (which means sudden/suddenly) refers only to the second part of the provision.
12. *Kawas Nanavati vs. State of Maharashtra*, 162 (1) Cri. L. J. 521 at p. 543.
13. *Mancini v. Director of Public Prosecutions*, 1942 AC 1 at p.9, cited in *Kawas Nanavati vs. State of Maharashtra*, 162 (1) Cri. L. J. 521 at p. 543.
14. *Rex vs. Lesbini*, 1941-3 KB 1116, cited in *Mancini vs. Director of Public Prosecutions*, 1942 AC 1 at p. 9.
15. *The New Oxford Dictionary of English*, (ed.) Judy Pearsall (Oxford University Press, 1998, UK).
16. *Jan Muhammad vs. Emperor*, AIR 1926 Lah 861 at pp. 662-863, cited in *Kawas Nanavati vs. State of Maharashtra*, 162 (1) Cri. L. J. 521 at p. 545.
17. *Jan Muhammad vs. Emperor*, AIR 1926 Lah 861 at pp. 662-863, cited in *Kawas Nanavati vs. State of Maharashtra*, 162 (1) Cri. L. J. 521 at p. 545.
18. Vasudha Nagraj, "Narratives of Passion Crimes", presentation at the 'Language, Media and the City' workshop held at Sarai-CSDS, Delhi on 2-3 April, 2004.
19. "The Battle against Fear and Discrimination: The Impact of Violence against Women in Uttar Pradesh and Rajasthan", Amnesty International, May 2001.
<http://web.amnesty.org/library/Index/engASA200162001?OpenDocument&of=COUNTRIES%5CINDIA>
20. *Kawas Nanavati vs. State of Maharashtra*, 162 (1) Cri. L. J. 521, at p. 539.
21. Sub-Section 2, Section 54, Chapter VIII of the Navy Act 1957 reads: "Every officer subject to naval law who is guilty of any scandalous or fraudulent conduct or of any conduct unbecoming the character of an officer shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned".
22. Author's discussion with Capt. Rajesh Sethi (Retd.).
23. Nauriya, Anil. "Danial Latifi 1917-2000: In Memoriam". In *Seminar*, August 2000, No. 492.
24. *Kawas Nanavati vs. State of Maharashtra*, 162 (1) Cri. L. J. 521 at p. 546.
25. *Ibid.*
26. Recently the Justice Malimath Committee for reforms in the criminal justice system has recommended amendments to provisions of the Indian Penal Code that disallow prosecution of women for the offence of adultery. In a report to the Centre the committee notes, "The object of this section (Section 497 of the IPC) is to preserve the sanctity of marriage. Society abhors marital infidelity. Therefore, there is no reason for not meting out similar treatment to the wife who has sexual intercourse with a man (other than her husband)".
<http://www.rediff.com/news/2003/aug/12adultery.htm>
(accessed 15 January 2005).
27. Liang, Lawrence. "Conceptualising Law and Culture". In *Seminar*, May 2003, No. 525.

Judicial Extract

A friend working on an ongoing case representing a beer bar girls' union in Mumbai sent us this very interesting case from the 1970s about whether cabaret shows were obscene. We have extracted portions from the First Information Report (FIR) as well as the written statement of the defendant from the case, as it touches on a number of fascinating issues of what constitutes a public space, what amounts to an 'obscene act', the performative nature of legal documents and the modes through which differently constituted legal subjects insert into legal narratives, relying on and yet subverting the language of law. This case opens out, in its most ironic mode, the homonymous world of the Bare Act.
– Lawrence Liang

**Extracts from State of Maharashtra vs. Joyce Zee alias Temiko
Bombay Law Reporter, Vol. LXXVII, p. 218**

On that day, information about the obscene cabaret dance at Blue Nile was received by the vigilance branch of Greater Bombay, C.I.D.

P.W.4 SGSA Desai, and P.W.5 S.I. Patil of that branch decided to attend the cabarets. One Doulatrai Kothari, P.W.3 owning a tailoring shop, were taken by them with them. They had reserved five seats in advance and they reached the place at 9:30 PM. They were sitting on table No. 2 facing the stage when the cabaret shows were to be given. They ordered food. The artist was Accused No. 1, Miss. Joyce, also called Temiko. We are concerned with her cabaret show in this case.

The prosecution alleged that Temiko, accused No. 1 was dressed in a transparent gown. She was smoking when she entered the hall accompanied by cabaret music. Spotlight was on her. All other lights were off; she danced for a few minutes. Then she started moving around the table shouting aloud. She nudged various customers at their backside and blew smoke on their heads. She approached the customers in the dance hall of Blue Nile to remove her clothes. Some customers obliged till she was left only with transparent panties. She then lay fatly on the floor making erotic moves with her legs and body suggesting sexual acts. She made strokes against the floor and uttered cries, which made people get up from their chair and look at her.

Subsequently she put on a transparent gown, which left her left breasts open to view. She shouted to the customers to suck them. She further put her nipples in the mouth of some customers, she was also brushing people with her breasts. The cabaret lasted till 12-30 AM. It is said that at the end of the show, SG SI Desai was annoyed at the show and approached Inspector Daxinar.

Inspector Daxinar contacted the clerk at the counter and obtained names of Christine and Temiko. Accused No. 2 one of the proprietors was present. SI Patil took the artistes to the vigilance branch. After completing the investigation, a charge sheet was filed in this case against the four accused.

The four accused pleaded not guilty. Accused No. 1 admitted having performed the show but denied the allegations of obscenities and annoyances. In her statement under sec. 342, she said:

"It is true that I did a cabaret at the Blue Nile between the night of 19-12-1970 and early hours of 20-12-1970. It is not true that I entered the hall in a transparent gown which was upto my hip. It is true that I entered the hall smoking. It is not true that I approached the customers and requested them to remove my clothes one after another. It is not true that except for my panties, I was completely naked. It is not true that I lay on the floor and that I was moving my legs, hands and my body in a typical way or in an erotic manner. I say that in a cabaret such as mine, I had to dance to the rhythm of the music. It is not true that I lay on the ground and was striking it with my body. It is true that people did gather around the floor.

"It is not true that I was striking my breasts in a violent manner. It is not true that I inserted my nipples in the mouth of the customers or I pushed them with breasts or hips, it is true that when I came to the floor, I removed my top gown. It is not true that I opened my brassiere. It is not true that I subsequently out on another gown which was open in front and which showed my breasts. It is not true that I blew smoke on customers and played with their hair. It is not true that some persons in the audience were annoyed. It is not true that nobody called at the show. They were great applause".

She also filed a written statement reiterating what she had said in her statement under sec. 342:

"I was giving the performance of a western dance known as 'Solo' which is a well known performance and during the same dance, I had to bend as low as to be near the ground and rise up again to the tune. I deny having rolled on the ground naked and taken out my brassiere at that time. It is clear that the witnesses have not understood the same as is evident from the statement of Khanna. I say that my performance is very much liked and that there are many who repeatedly come for the show. On the day in question also, my performance was very much appreciated by the audience who called me throughout the show by way of appreciation. There was none in the audience who left in the middle and everyone including the ladies sat through out the show. I have been giving these performances since last three years at various places and am appreciated.

"Assuming for the sake of argument that I did what the witnesses say, I submit that

the performance may not be called obscene so as to deprave and corrupt minds of those who attended the same. They are all adults between 25 and 50. They were mostly educated and widely travelled people and decent people of society. There is hardly any question of corrupting or depraving the minds of such people who come with zest and liking. The question of obscenity, I submit, of a particular thing may be considered not in abstract but in relation to those who had assembled there for the close door performance though it was a public place. I submit that the performance in relation to such elite persons who are mature and culturally developed cannot be called depraving, corrupting and much less annoying. "I submit that I am innocent and pray that I should be acquitted".

Representing a Woman's Story

Explicit Film and the Efficacy of Censorship in Japan

HIKARI HORI

In February 1936, young military officers in Tokyo attempted a *coup d'état*, which left the city under martial law. The Sino-Japanese War began the following year; this led to the Asia-Pacific War and the attack on Pearl Harbour. It was eventually concluded in 1945. The case of Abe Sada, who killed her lover and cut off his penis, took place in the early summer of 1936, the middle of this dark phase of modern Japanese history. It caused an outburst of media reaction; the whole phenomenon was later described one historian as “the last and biggest pre-war pornography” (Kano, 1992:166).¹

The newspapers ran Abe Sada stories one after another, depicting the case as a grotesque crime committed by a good-looking, nymphomaniac woman. When she was arrested three days after the murder of her lover, a rumour even spread that parliamentary proceedings were interrupted because the representatives wanted to read hot-off-the-press newspaper extras about the arrest. The papers were overflowing with news about her, though not a small number of articles were suspended due to censorship. Her trial proceedings in the winter of the same year were also covered in detail by the newspapers. Since 1936, Abe Sada's story has been the basis of more than 20 theatrical dramas, novels and movies, even after she disappeared from public view in 1969. Boom periods of renewed attention to her story repeatedly broke out, especially in the late 1940s, the 1970s and the late 1990s. Considering that the central focus of this case was an act of castration, it is interesting that Abe Sada has been written about by predominantly male authors, who refer to her act as a realisation of true love.

Representations of this woman's story deserve investigation, as over the past 60 years it has repeatedly been revived in various forms in Japanese popular cultural contexts. This essay focuses on films with the theme of Abe Sada. As her story always implicates expressions of desire, sexual practices and explicit representation, all of which belong to the sphere that often invites censorship, examination of Abe Sada films not only reveals what censorship does or does not do to the representation of sexuality, but also uncovers various problems relating to the narrativisation of women's sexual desire.

I will begin by providing a sketch of the Abe Sada case, followed by a discussion of a 1976 Abe Sada film directed by the art film director Oshima Nagisa (b. 1932), which best illustrates the issues of film censorship. Finally, I will examine the subversive re-framing of

the story by female pornographer Hamano Sachi (b. 1948). My primary concern in this essay is to point out that, censored or not, the Abe Sada myth is constructed by the dominant discourse of romanticised love, and that women's 'excessive' sexual desire was both recognised within and excused by the context of romantic love (in other words, romanticised sex), which I believe needs to be problematised.

The Abe Sada Myth, 1936-2000

On 18 May 1936, Abe Sada, a 31-year-old waitress, strangled her lover to death, cut off his penis, and took it with her when she fled. Having previously working as a prostitute, mistress, and domestic servant, Abe had run away to a hotel in Tokyo with this lover, Ishida Kichizo, her employer at an inn where she worked. Kichizo was a 42-year-old married man with two children. Spending money Ishida had taken from his inn and Abe had received from another wealthy lover, they stayed in the hotel for about one month, absorbed in having sex. As one of their sexual practices, Abe tied a string tightly around Ishida's neck because the spasms this caused enhanced her pleasure. Abe eventually strangled him to death not during intercourse, but later while he was sleeping. She then cut off his penis because she did not want anyone else to touch it. With his blood, she wrote "Sada and Kichi Together" on his thigh and on the bed linen, carved her name into his arm, and then fled the hotel. By her account, she was going to kill herself. After being found and arrested, she was interrogated by a pre-trial judge (a method employed in the pre-war process of criminal trial preparation).² The judge's *Record of the Abe Sada Investigation* (generally known as *Abe Sada Chosho* or *Yoshin Jinmon Chosho*) collected her confessions about her life, explicit details of her sexual practices and the motives of the crime. The record was leaked and illegally published in high-priced editions that circulated among a limited number of people in the pre-war era, but were reprinted and widely enjoyed in the post-war era.

The repeated reprinting of this pre-trial record greatly inspired later texts about the Abe Sada case. The document comprised questions and answers from the sessions of eight meetings (or six, in a different version of the leaked booklet) between the interrogator (pre-trial judge) and the accused. The record provided a set of very brief questions by the judge and her detailed, long answers. The interrogator's questions included such queries as: "Is your period regular?"; "Any mentally diseased family members or relatives?"; "Describe your life during the time period that you were a licenced prostitute"; and "Why is that you fell so deeply in love with Ishida?" Abe was represented as narrating a comprehensive account in response to these questions. The narrative style and structure of the record presented to the court were largely shaped by the police. Many post-war writers praised the record for being an amazing and compelling text, but in my view, it is the anonymous editor, associated with the police, who should be given the credit.

Loosened codes of sexual expression during the immediate post-war period of the late 1940s fostered the emergence of numerous magazines and novels with erotic content, including several Abe Sada books that portrayed her as evil, as a nymphomaniac and as a *femme fatale*. One of these was the 1947 *Sada's Erotic Confession (Osada Iro Zange)*, a fictionalised account of her sex life. It redirected public attention to her case as well as to Abe herself, who had been released from prison in 1941 and was happily living with a man

who, however, left her amid the furore created by this publication. Abe sued the publisher for slander, and published her own autobiography. But her public image did not shift from that of *femme fatale* to lovely and loving woman till December 1947, following the publication of an interview with her, along with an accompanying essay about her, both by the prominent novelist Sakaguchi Ango.

Sakaguchi insisted that it was Abe's true love and excessive feminine sensibility that provoked her to castrate Kichizo. Although it is true that Abe was not reviled for cruelty nor seen as a disgusting person even before the interview and essay, Sakaguchi fervently emphasised that Abe should be viewed as an icon of truly romantic love, and that her act of violence be seen as the outcome of her excessive love and womanly obsession. In the 1950s and 1960s Abe worked as a barmaid, an inn service maid and as the owner-operator of a small bar, and made her presence felt through interviews in magazines and on television. In 1969, she disappeared from public view.

At least five films about her case have been produced: the 1969 *History of Women's Grotesque Crimes (Meiji, Taisho, Showa: Ryoki Onna Hanzaishi)* by Ishii Teruo, in which Abe herself made a special appearance; the 1975 *A Woman Called Abe Sada (Jitsuroku Abe Sada)* by Tanaka Noboru; the 1976 *In the Realm of the Senses (Ai No Korida)* by Oshima Nagisa; the 1998 *SADA* by Obayashi Nobuhiko; and the 1999 *Abe Sada in the Heisei Era: I Want You (Heiseiban Abe Sada: Anta Ga Hoshi!)* by Hamano Sachi. The 1970s Abe Sada boom may have been accelerated by the influx of western pornographic movies such as *Deep Throat* (USA, 1972, directed by Gerard Damiano and starring Linda Lovelace), and *Emmanuelle* (France, 1974, directed by Just Jaeckin and starring Sylvia Kristel) with its multiple sequels.³

These imported films were heavily trimmed and edited according to censors' rules for public screenings, which provoked filmmakers to pay attention to free speech issues in Japan. On the other hand, the more recent Abe Sada boom in the late 1990s was mainly triggered by an extremely popular 1995-96 novel titled *Lost Paradise (Shitsurakuen)*, portraying the adulterous love affair and sexual practices of a middle-aged married man and a thirty-something married woman who were inspired by the Abe Sada story and ended up committing suicide together. This novel ran in serial form in the morning edition of a major financial newspaper, gained enormous popularity, and sold over two-and-a-half million copies when it was republished as a book in 1997 and 1998. The triple appeal of an extramarital love affair, romantic true love and the pleasure of heterosexual intimacy was widely celebrated and consumed in this popular cultural context.

From *In the Realm of the Senses* to *Ai No Korida*

Among the five films dealing with Abe Sada, Oshima Nagisa's⁴ 1976 film is especially interesting, as it exists in three versions released and screened in different countries and at different times. The first version, *In the Realm of the Senses* (original French title *L'Empire des Sens*), was exhibited at Cannes in the summer of 1976; this is a hardcore 'art' film that fully depicts genitalia and copulation. Previous film reviews and articles published by English-language authors on *In the Realm of the Senses* (hereafter in this essay, *Realm*) are based on this version (Burch, 1979; Desser, 1988; Heath, 1981; Lehman, 1980, 1987, 1988; Turim 1987, 1998; Mellen, 2004). The second version is a heavily edited, cut, trimmed and blurred-

out version of *Realm*, released in Japan in late 1976 under the Japanese title *Ai No Korida*, literally translating as *Bullfight of Love*. The third version is *Ai No Korida 2000*, which was re-released in Japan in 2000 as an uncut version of *Realm* but with minimal masking of genitalia. Perhaps the film's sexual explicitness was no longer such an issue in the era of international mail order pornographic videos and the Internet, where national level censorship was quite ineffectual and also meaningless. However, the original hardcore version, fully depicting genitalia, penetration and fellatio, has not been publicly screened in Japan, even today.⁵

According to an essay Oshima wrote about *Realm*, he had decided in 1975 that he would make a "pornographic film" (Oshima, 1992:260). In this context, by "pornographic" he meant hardcore; this was immediately after he learnt that France had completely legalised pornography and that the movies screened at the Cannes International Film Festival were overflowing with hardcore scenes. The French producer Anatole Dauman had already suggested to him that the theme should be Abe Sada (Oshima, 1976:39). Dauman thought the woman's name was reminiscent of the utterance 'sado', which seemingly accorded with the sado-masochistic sexual practices involved in her case; and also evoked the French title of *L'Empire des Sens*, which would echo Roland Barthes' collection of essays on Japan, *L'Empire des Signes*. Because hardcore as a genre was taboo in the Japanese film industry, Oshima's making a hardcore film served as a challenge to Japanese obscenity law as well as the rules of the Committee for Codes of Ethics in Film. As even the laboratory personnel could have been arrested for developing hardcore negatives, Oshima decided to produce the movie as a French film: the print stock was imported from France, the film was shot in Japan with Japanese crews and Japanese actors, then developed, edited and premiered in France (as *Realm*), and finally re-edited and imported back to Japan (as *Ai No Korida*).

Let me briefly point out three Japanese laws concerning censorship of sexually explicit materials (books, magazines, films and, recently, comics) before discussing the film in detail. The first is Title 175 of the Criminal Code, known as the Obscenity Law, which prohibits the "distribution, sale, or public exhibition of obscene documents, images and other forms of expression". Though modified in the post-war period, the Criminal Code has been in effect since 1908, when it was drafted (based on the French and Prussian Criminal Codes) in the process of Japan's modernisation. The specific definition of obscenity in post-war obscenity trials was based on that used in the 1950-57 trial of a translation of D. H. Lawrence's *Lady Chatterley's Lover*, in which both the publisher and the translator were ordered by the Supreme Court to pay penalties. According to this Supreme Court decision, "obscenity is an expression that unnecessarily stimulates one's sexual desire". Secondly, Article 21 of the Constitution of Japan, which guarantees Freedom of Speech, has been a basis of defence for those indicted based on Title 175. The third law related to censorship is Section 21 of the Fixed Tariffs Law, which is applied to import products at customs control of international ports. Obscenity trials in Japan have often condemned paper media – including a 2003 verdict on pornographic comics – and adult videos as well, but no film intended for public screening has been indicted since those charged in two major cases of obscenity were found not guilty in 1969 and 1980.⁶

Another important element specifically relating to film censorship is the Committee for Codes of Ethics in Film (hereafter, the Committee). This non-governmental Committee,

established in 1949, rates films and advises producers to edit, remove, or blur out violent and sexually explicit scenes both in screenplays and in completed films. Members are chosen from the film industry, and include journalists as well as retired personnel of major commercial studios. Though the Committee is not authorised to exercise legal enforcement, its approval is required for a film to be distributed to commercial theatres. Some filmmakers see the Committee as a censorial body, but others argue that one of the functions that the Committee has fulfilled is to serve the industry as a shield against direct police intervention, and that its decisions are complicit with film productions.

When *Realm* was 'imported' back to Japan, customs officers insisted that one third of the footage be edited (Oshima, 1992:266). In addition, the film underwent tremendous modification in accordance with the Committee's rules. Thus, the version shown in Japan, very different from the French version, could be called a co-production of Oshima, the Committee and the state, whereas the director might have wanted it to be seen as a contestation between an individual and the state. In any case, comparison of these films illustrates the efficacy of censorship. Even the opening scenes of the two versions were different. Scenes of pubic hair, genitalia, copulation and fellatio were trimmed and blurred in the Japanese version.

Despite the significant visual differences, the narrative remains the same in *Realm* and *Ai No Korida*. Both versions start with Abe's life; she works in an inn that rents rooms for eating and drinking parties, as well as for sexual liaisons. She falls in love with the owner Ishida; the two of them shut themselves up in another inn and become absorbed in sexual practices; she strangles her lover to death while he is asleep, and mutilates his genitalia; the last scene shows her lying down next to him. The film contains many scenes of sexual intercourse, including Ishida and his wife, Ishida and Abe Sada, Ishida and an old woman, with Abe watching, Abe and another lover, and so on. The film repeatedly presents Abe's obsessive sexual pursuit of Ishida, and Oshima claimed several times that the central theme was her love for him (Uchida, 1980).

Oshima created a sequence that emphasises the historical setting of the late 1930s: Ishida, on a short outing to the barber, walks in the opposite direction, passes a column of soldiers in uniform marching down the street near the hotel where he and Abe are staying. He then returns to their room, where she is waiting for him. Here, a notion of romantic love/sex is articulated as a site of liberation that contests and transcends social restraints, and this notion is visually politicised through oppositions between public/private, totalitarian/individual, and militaristic/libertine. The military presence in the film indicates the beginning of Japan's total war against China, a kind of dark age when seen in terms of today's anti-nationalist views.

The effect of censorship on the representation of sexuality is quite interesting. I would argue that the most noteworthy outcome is the manner in which the viewer is denied access to sexualised male bodies in the Japanese version; these bodies are erased/rendered invisible. Lehman observes that in *Realm*, neither Ishida's sexual activities nor his body are primarily presented to impress the viewer, and that a number of shots show men's flaccid penises, which decentralises a convention of hardcore pornography (Lehman, 1987:21-22, 1988:94). It is significant that the French version visually provided the potential to question

male dominance, virility, and hegemonic masculinity through full sexualisation of male body. This scrutiny of male sexuality was not available to the viewers of the Japanese version due to censorship, though it could have been an interesting addition to the Abe Sada myth in which female sexuality had been always exclusively foregrounded, to accord with Japanese popular cultural context. In the heavily modified Japanese version, it is even unclear that the castration is taking place. The images simply show a serious expression on Abe's face when she is supposedly mutilating the dead Ishida's genitalia. Thus, the apparatus of censorship generated a different conduit for the representation of the sexual story, and specifically highlighted female and not male physicality.

Counter-Narrative to Romanticised Sex

Mellen (2004:74-76) sees Oshima's *In the Realm of the Senses* as "a fully realised work of art" as compared to the vulgar softcore 1975 porn film *A Woman Called Abe Sada*, which also had a male director. She argues that Oshima's film is "feminist" as it raises Abe to "an allegorical level" so that "she represents all women released from repression, and stands for the idea that sexual satisfaction is best pursued free of all social norms", whereas the 1975 film "descends quickly into vulgarity", showing Abe's and Ishida's sexual play as "unpleasant, more animal than transcendent". Mellen raises three interesting issues concerning Oshima's *Realm*: a dichotomy of art versus 'vulgar' porn; transcendental romantic love versus social norms; and 'feminist' versus non-'feminist' sexual expression.

It is ironic that Oshima's film has been screened in art theatres, praised by critics and shelved in the art section of video rental shops, regardless of the director's initial identification of this film as hardcore porn. Despite its sexual explicitness, the film was appreciated within the modern notion of avant-garde art, which constantly breaks existing social taboos (at the same time providing an excuse for provoking sexual curiosity among the spectators). Such an avant-garde notion girded Oshima's challenge to the conventional visual language of sex in Japan, and a narrative framework of "sex with romantic love" was mobilised to contend with norms of sexual expression in Japanese filmmaking. In turn, the director's strategy of foregrounding and praising a story of woman's love and her compulsive sexual desire is recognized as 'feminist' by critics like Mellen or Japanese women's lib activist Ozawa Ryoko (Uchida, 1980:287, 294). Exalting a woman's initiative in sexual relationship could be in fact defined as feminist if it is seen as a form of women's sexual revolution. However, does the narrative of women's sexual pleasure have to always be fuelled by hetero-normative conventions of romantic love? Is a non-'art', "vulgar" form of porn an inadequate tool for the portrayal of women's sexual pleasure?

There were at least two Abe Sada films produced in the Japanese porn industry.⁷ In this context, by 'porn' I mean those films rated as adult by the Committee; in other words, sexually explicit 35 mm feature length films produced in accordance with the Committee's rules – usually shown in adult film theatres in sordid areas, and shelved in the 'adult' section of video rental shops when the film is made into a rental VHS. One such depiction is the 1975 *A Woman Called Abe Sada* discussed above. This is a very faithful reproduction of the *Record of the Abe Sada Investigation* released one year prior to Oshima's film. The other rendering is the 1999 *Abe Sada in the Heisei Era (Heiseiban Abe Sada)*, directed by the

female professional porn director Hamano Sachi. This film is subversive in its rewriting and parody of the existing Abe Sada myth, including Oshima's canonical depiction.

Hamano's⁸ Abe Sada film is set in contemporary Japan, and the names of main characters are changed to "Saki" and "Yoshio", though these are still derived from original "Sada" and "Kichi". The film begins by showing a woman knitting in a living room at night. Her name is not revealed in the first half of the film, and she is just referred as the "wife" of an accountant. One day her husband takes her to a gay bar that he frequents, intending to arouse her sexually. There she meets a bisexual male prostitute named Yoshio. Later she decides to buy his services and comes to the bar. She leaves her husband and shuts herself up with this younger man in a hotel, whereupon she tells him her name. Unlike Ishida Kichizo, a gentle but passive lover in *Realm*, Yoshio is very assertive and eager to please her. He assures her that he wants her to enjoy herself, and says, "Let's enjoy the best sex together". Saki strangles him to death during intercourse.

Reversing the previous narratives of both the prosecutor's record and the other Abe films, it is Yoshio/Kichi who first asks Saki/Sada to tie his neck to feel more (Ishida suggested that Abe Sada tie his neck during intercourse as his spasm was supposed to give her greater pleasure); she is a client, not a prostitute; she strangles the man in the midst of her pursuit of sexual pleasure. The death is accidental, as she is so immersed in her own intense sexual experience. These departures from previous narratives are accompanied by several 'revisionist' elements vis-à-vis the genre of pornography: literate scripts and scenes of extended foreplay for the purpose of sexually stimulating women. Woman's pursuit of sexual pleasure and desire *per se* are a clearly visible, dominant strand in Hamano's narrative of Abe Sada. Abe's subjectivity had been shown in *Realm* and other popular narratives as recovering its autonomy by means of 'true love,' which meant sleeping with her lover without getting paid. In contrast, in Hamano's film the main protagonists' sexual activity is not a matter of love; rather, it is one of consensual pleasure. Saki killed Yoshio not because she loved him but because she was too preoccupied with fulfilling her own needs. These departures from generic conventions subvert the existing narrativisation of Abe Sada's relationship to Ishida; they serve as an ironic comment on the ideology of heteronormative romantic love, and in particular, parody Oshima's film.

When feminists want to avoid regulations like those advocated by Catherine MacKinnon (1993), one way to express their frustration and opposition toward dominant visual languages of treating women's sexuality is, as Cornell discusses, to present alternative modes of representing women's sexual practices (Cornell, 1995:137). Hamano's version of the Abe Sada story is a counter-narrative, one that achieves a radical transgression without violating censorial codes. It is ironic that the film is not widely accessible to women, as it is primarily produced for male consumers. Hamano's narrative is created within the censorial rules; nevertheless, it is subversive, as it questions the notion of romantic love which has been always supposed to fuel sex in previous narratives. In this regard, explicitness is not the only means to contest social norms.

The editors suggested the removal of Oshima Nagisa's film stills of *In the Realm of the Senses* from this essay due to their explicit content, and the author agreed.

NOTES

1. In keeping with standard practice, names of Japanese individuals appear with the family name preceding the given name.
2. In the pre-war Japanese legal system, the accused was expected to reveal all details of the case by answering the questions of the pre-trial judge. This interrogation was performed without the defence lawyer's presence.
3. In addition to *Emmanuelle*, its sequels *Emmanuelle 2* (1975) and *Goodbye, Emmanuelle* (1977) were great successes in Japan. They were screened in non-adult film theaters and drew a large number of female viewers of a variety of age groups, which made film critics frown.
4. Oshima Nagisa is a well-known art film director. Born in 1932, he was a leftist student activist in the early 1950s, and then joined the Shochiku Studio in 1954, producing several films that became controversial for their political or sexual expression in the 1960s and the early 1970s. His early works were often regarded as Japanese counterparts of the French "Nouvelle Vogue". He also made numerous TV documentaries, often treating sensitive political themes such as ethnic discrimination and Japan's war crimes. His later works include *Merry Christmas, Mr. Lawrence* (1983) and *Taboo* (1999). He is very often seen as a controversial director who challenges social norms and authority.
5. Although pubic hair was allowed to be shown starting in 1993, unmasked images of genitals are still prohibited in all film and video.
6. I have discussed elsewhere the details of these two obscene film trials and their relation to the obscenity trial that resulted from a book based on Oshima's Abe Sada film (Hori, 2004). Oshima's book, which contains essays, the film screenplay, and still photographs, was indicted for violation of obscenity law in 1977. He was found not guilty in 1982.
7. It is hard to trace all the titles of this genre, which rapidly increased and reached about 200 titles a year in the mid-1960s, then continued to decline after the advent of adult video in the 1980s, as these products are usually junked when the prints wear out. However, the feature length 35 mm porn film production still survives in Japan.
8. Hamano Sachi (b. 1948) made her directorial debut in 1970 after training as assistant director with several porn film directors. She is a very rare example of a female porn filmmaker, and the only one who has survived in the industry for more than 30 years. Producing on average one film per month at the height of her productivity, by 1998, when she made her first non-adult film, an account of a forgotten woman writer entitled *Midori*, she had produced more than 300 porn films. It is not rare in Japan for film directors trained in porn industry to move to non-adult, mainstream filmmaking. Though the targeted audience of her porn films is male and they are commercially successful, her works, especially from the late 1980s on, offer many woman-oriented plots that attract a female viewership when the films are re-released in the video rental market. Also, although Hamano has always followed the Committee rules, nevertheless she is known among fans for her bold depiction of sex scenes, including the frequent use of close-ups, in the genre of porn. She is also known as one of the founders of an annual meeting of women directors and producers in both film and TV, and is an outspoken feminist.

REFERENCES

- Burch, Noel. "Oshima Nagisa". In *To the Distant Observer* (University of California Press, 1979, Berkeley).
- Cornell, Drucilla. "Pornography's Temptation". In *The Imaginary Domain: Abortion, Pornography, and Sexual Harassment* (Routledge, 1995, New York & London).
- Desser, David. *Eros Plus Massacre: An Introduction to the Japanese New Wave Cinema* (Indiana University Press, 1988, Bloomington).
- Heath, Steven. "The Question of Oshima". In *Questions of Cinema* (Indiana University Press, 1981, Bloomington).
- Hori, Hikari. "Ai no aru sekkusu' to iu shinario: waisetsu saiban, dansei eiga kantoku, feminizumu gensetsu no kosakuchiten/Scenario of 'Love': Obscenity Trials, Male Directorship, and Discourse of Feminism". In *Joseigaku*, Vol. 11, pp. 107-22 (2004).
- Johnston, William. *Geisha, Harlot, Strangler, Star: A Woman, Sex, and Morality in Modern Japan* (Columbia University Press, 2004, New York).
- Kano, Mikiyo. "Senso to poronogurafi: genron toseika no abe sada jiken/War and Pornography: Abe Sada Case under Media Control". In Kayako Shirafuji (ed.), *Nyu feminizumu rebu 3: poronogurafi [New Feminism Review 3: Pornography]* (Gakuyoshobo, 1992, Tokyo) pp. 160-70.
- Lehman, Peter. "The Act of Making Films: An Interview with Oshima Nagisa". In *Wide Angle*, Vol. 4, No. 2, pp. 56-61 (1980).
- Lehman, Peter. "Oshima: The Avant-garde Artist without an Avant-garde Style". In *Wide Angle*, Vol. 9, No. 2, pp. 18-31 (1987).
- Lehman, Peter. "In the Realm of the Senses: Desire, Power, and the Representation of the Male Body". In *Genders*, No. 2, pp. 91-110 (1988).
- Mackinnon, Catherine A. *Only Words* (Harvard University Press, 1993, Cambridge).
- Mellen, Joan. *In the Realm of the Senses* (British Film Institute, 2004, London).
- Ochiai, Keiko. "Emanieru fujin o kyohi shite koi ni ikiyou/Let's Refuse Emmanuelle and Go for Love". In *Kinema junpo*, pp. 208-09 (1975).
- Oshima, Nagisa. *Ai no korida/The Bullfight of Love* (San'ichi shobo, 1976, Tokyo).
- Oshima, Nagisa. *Cinema, Censorship, and the State: The Writings of Nagisa Oshima, 1956-57* (MIT Press, 1992, Cambridge).
- Turim, Maureen. "Signs of Sexuality in Oshima's Tales of Passion". In *Wide Angle*, Vol. 9, No. 2, pp. 32-46 (1987).
- Turim, Maureen. *The Films of Oshima Nagisa: Images of a Japanese Iconoclast* (University of California Press, 1988, Berkeley).
- Uchida, Takehiro. *Ai no korida saiban zen kiroku/The Complete Trial Proceedings of Ai no korida*, Vols. 1 & 2 (Shakaihyoronsha, 1980, 1981, Tokyo).

The Queer Case of Section 377

SIDDHARTH NARRAIN

In August 2004, the newspapers in Delhi were full of details of the double murder at Anand Lok, which involved the murder of two gay men in the posh South Delhi house of one of the victims. The media was quick to pounce upon the “unsafe lifestyle” of the victims, and instead of mourning the death of two people, began detailed reports of the “dark underbelly of Delhi’s nightlife”. Screaming headlines such as “Gay Murders Tip of Sordid Sleazeberg” (*The Hindustan Times*, 17 August) became daily fare; newspaper reports talked endlessly of the promiscuous and unsafe lifestyles of gay people in the city, and how Pushkin Chandra, one of the murder victims, was part of a “homosexual syndicate”. Even as the media attention over the double murders was dying down, the Delhi High Court, in a shocking order, dismissed the Naz Foundation¹ petition asking for the reading down of Section 377 of the Indian Penal Code (IPC), the law that criminalises “unnatural sexual offences”. To this day there has been very little media focus on the dismissal of the petition, and along with it the hopes of the queer community in the country. Section 377 of the Indian Penal Code reads:

“Unnatural Offences – Whoever voluntarily has carnal intercourse against the order of nature, with any man, woman or animal, shall be punished with imprisonment for life, or for imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation – Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section”.

The British had framed the Indian Penal Code (IPC) in 1860. The origin of the law can be traced back to Judeo-Christian moral standards at the time of framing, which insisted that any form of non-procreative sex was immoral or “against the order of nature”. In effect, Section 377 criminalises all penetrative sexual activity (between individuals of the opposite sex as well as between individuals of the same sex) that is not penile-vaginal.

The history of the legal challenge to Section 377 can be traced back to 1994, when a medical team inspecting conditions in Delhi’s Tihar Jail reported a high incidence of sodomy and recommended to the jail authorities that condoms be made available for the jail inmates, to prevent HIV transmission. The then-Inspector General of Prisons, Kiran Bedi, refused to do

so as she felt that it would be a tacit admission that homosexual behaviour was prevalent in Tihar; and that the availability of condoms would encourage male homosexual behaviour in the prison. Thus, according to this logic, the government's providing of condoms to prisoners would amount to a violation of Section 377 of the IPC, i.e., breaking the law. Subsequently, AIDS Bhedhav Virodh Andolan (ABVA/Anti-AIDS Discrimination Campaign), a human rights group, filed a Public Interest Litigation in the Delhi High Court challenging the constitutional validity of Section 377 and arguing for the supply of condoms to jail inmates, with a plea to the authorities to refrain from segregating or isolating prisoners with homosexual orientations or those suffering from HIV/AIDS. The petition argued that Section 377 should be repealed because it violated the right to privacy and because it discriminated against people with a particular sexual orientation. Though this petition was not followed up, in 2001 Naz Foundation filed a more comprehensive writ petition asking that Section 377 be repealed in the Delhi High Court.

The impact of Section 377 was seen clearly just before the petition was filed. On 7 July 2001, police raided a park in Lucknow that was frequented by the MSM (men who have sex with men) community. The raid was based on an FIR (First Information Report, filed at a police station in the event of a crime) filed by a person who alleged that he had been sexually assaulted. The raid led to the arrest of an outreach worker of the Bharosa Trust, a NGO working with the MSM community in the area of HIV/AIDS prevention. The police raided the offices of Bharosa and Naz Foundation and seized materials from there, arresting nine people in all. The media sensationalised the arrests, describing the police action as the busting of a sex racket. The arrested persons were remanded to judicial custody on 8 July 2001; they were allegedly beaten up and their offices sealed. They were charged under Sections 377 (unnatural offences), 292 (sale of obscene books, etc.), 120b (criminal conspiracy) and 109 (abetment) of the IPC; under Section 60 of the Copyright Act; and Section 3 and 4 of the Indecent Representation of Women Act. Their bail applications were rejected twice, first by the chief judicial magistrate (CJM) and then by the district judge, Lucknow.

The CJM denied bail, stating that "the work of the accused is like a curse on society". The sessions judge upheld the arguments of the prosecution, which alleged that the accused are "a group of persons indulging in these activities and are polluting the entire society by encouraging young persons and abetting them for committing the offence of sodomy; that the investigation is still under progress; that the offences are being committed in an organised manner". The appeal for bail was moved again on 8 August in the Lucknow High Court by Indira Jaising and Anand Grover of the group Lawyers Collective. It was only on 16-17 August that all four accused were granted bail, and that too only after the public prosecutor had stated that no link between the NGOs and the incident of 7 July could be established. A medical examination was done on all the four accused but no evidence to charge them under Section 377 was found.

This incident alarmed and disturbed the queer community in India, and made it clear that the threat of Section 377 being used as a means of discrimination was a concern that needed to be urgently addressed. The petition filed in the Delhi High Court by the Naz Foundation in 2001 asked, therefore, for the *reading down* of this law. It asked that private consensual sex between adults be decriminalised. The thrust of the petition is to challenge the law as a violation of the right to privacy; to question the legislative intent as being arbitrary and outdated; to challenge the effect of the law as being discriminatory on the grounds of sexual orientation; and

as having a damaging impact on the lives of the queer community in the country. The petition posits the main impact on the queer community as the violation of the right to life as a result of HIV/AIDS prevention work being impeded, and the MSM community going underground, i.e., refusing to publicly avail of HIV-prevention options such as condoms, out of fear of being arrested. The second reason given is that this law's proscription of "non-procreative sexual activity" violates the right to life because a person's sexual preferences are an inalienable component of this right. The third reason given is the social stigma and police abuse that Section 377 enables and perpetuates.

In its response to the petition, the Indian government has argued that "while the right to respect for private and family life is undisputed, interference by public authority in the interest of public safety and protection of health and morals is equally permissible – this is precisely what Section 377 does".² The government claims an act that is technically unlawful cannot be rendered legitimate simply because it took place on a consensual basis. It goes on to say, "Section 377 has been applied to cases of assault where bodily harm is intended and deletion of the said section can well open the floodgates of delinquent behaviour and be misconstrued as providing unbridled license for the same".³

In response to the argument that this law can be used against both homosexual and heterosexual couples, the government states that studies of criminal jurisprudence of Section 377 reveal that it has been basically used in India to punish sexual abuse of children and to complement lacunae in the rape laws, and that it has rarely been used to punish homosexual behaviour. Referring to the argument that Section 377 is outdated because many countries have repealed similar existent laws, the government said, "Law does not run separately from society. It only reflects the perception of society. Public tolerance of different activities changes and legal categories get influenced by those changes".⁴ According to the government, "Objectively speaking, there is no such tolerance to practice of homosexuality/lesbianism in Indian society".⁵

The government goes on to say, "The provision of Section 377 becomes operable only when there is a report to the police for either sodomising or buggery. If this provision is taken out of the statute book, a public display of affection would at the most attract charges of indecent exposure which carries a lesser jail sentence...while the government cannot police morality, in a civil society it has to express and reflect public morality and concerns about harm to society at large. If this is not observed, whatever little respect for law is left would disappear, as law would have lost its legitimacy".⁶

Surprisingly, on 4 September 2004, nearly a year after the government's response, a two-judge bench of the Delhi High Court consisting of Chief Justice B. C. Patel and Justice Badar Durrez Ahmed dismissed the petition. The judges said that there was no cause of action in the petition as there was no prosecution pending against the petitioner. The petitioners then filed a review petition saying that queer community in India, especially MSM, on account of criminalisation by Section 377 of the IPC, are a socially disadvantaged group, who are unable to approach the court directly for fear of being identified and being subject to discrimination, harassment and violence by the police and society. The petitioners pointed out that the Supreme Court, in a number of decisions, has held that when a person, or a class of persons to whom legal injury is caused due to a violation of a fundamental right is unable to approach

the court for legal redress, the matter can be brought before the court through a Public Interest Litigation (PIL). But the High Court rejected the review petition.

The petition and the government's response have highlighted the dichotomy in the state's position. While on the one hand the government, through the National AIDS Control Organisation (NACO) and the various state AIDS Control Organisations encourages diverse sexual practices within a safe-sex, HIV/AIDS prevention framework, it still believes that Section 377 is necessary. Though NACO was party to the petition, it had not yet responded to the petition before it was dismissed.

After much debate within the queer movement, a Special Leave Petition has been filed before the Supreme Court on the limited question of whether the court could dismiss the petition on the grounds that there was no cause of action. The setback in the legal battle is an opportunity to redirect the focus of queer activism from litigation to other arenas. The strategy of using the law as a tool for changing society is limited in the context of the ingrained fears and prejudices against queer people in India. Though legal reform can be a rallying point for queer activism, it is limited in terms of functioning as an effective strategy to address homophobia. The case being no longer *sub judice* makes it easier for activists to be directly critical of the state's response. It is an opportunity to focus on building public opinion and alliances with progressive movements before resuming the legal battle. It is a chance to debate whether a fresh petition should foreground violations on human rights of the queer community in the form of police harassment and extortion, rather than the traditional approach of focusing on the threat that Section 377 poses to public health by obstructing work that is meant to prevent the spread of HIV/AIDS.

In addition, an important question is whether the petition should ask for the law to be read down to include private consensual sex only. Most homosexuals against whom Section 377 is used are subject to harassment by the police in public spaces such as parks. If the repeal did not cover public spaces, it could lead to a situation where a heterosexual couple caught by the police in a park are charged merely with "nuisance" while any two people of the same sex would be booked under Section 377, a much more serious charge, for an identical "offence".

The campaign against Section 377 is now bringing on board child rights groups who are arguing that child sexual abuse cannot be an excuse for the government to retain this law, and that a separate comprehensive law for child sexual abuse must be drafted. Though used against homosexuals, the scope of the law brings anyone who has oral or anal sex under its purview. There has been a gradual expansion of those involved in the campaign against Section 377 from primarily queer rights activists to a broader coalition of progressive groups.

NOTES

1. "Naz Foundation is committed to raising awareness to prevent the spread of HIV/AIDS and providing support to those affected by it, with sensitivity and confidentiality".
From http://www.giveworld.org/naz/naz_profile.htm (accessed 17 February 2005).
2. Union of India's response to the Naz petition, 6 September 2003.
3. *Ibid.*
4. *Ibid.*
5. *Ibid.*
6. *Ibid.*





“For God’s Sake, Be Objective!”

SOMNATH BATABYAL

Journalists write for each other. Their readers are not involved in this process. As I sat, sipped tea and smoked cigarettes as a cub reporter at the police headquarters pressroom at ITO in New Delhi in the mid-1990s, this was one of my first realisations about my chosen profession.

Each afternoon, crime reporters from all the various local newspapers (English, Hindi and Urdu) would collect at the office of Mr Ravi Pawar, the police PRO (Public Relations Officer). Pawar *sahib* is a generous host, and tea and cigarettes would never be in short supply. The routine was always the same. If there was nothing much happening, i.e., no old couples murdered, children kidnapped or a devastating fire burning down houses, we would sit together discussing the papers and various reports, and wait for the bomb to go off somewhere.

The journalist who had managed to get one more detail on the South Delhi murder of the previous day – that the wife received a phone call before she was brutally hacked by her assailants – got to gloat for the day. The reporters who hadn’t managed to get this piece of ‘vital information’ were suitably chastened, knowing they would have to face the wrath of their chief reporters later. “Shithead, why didn’t you get the fact that there was a phone call before the murder? Stop spending time at the Press Club. Who are your sources? Get your ass to office”. And if he¹ had completely missed the story, then heaven forbid, the wrath might come from the newspaper editor!

Why were we so obsessed with detail? Most readers do not compare reports in different newspapers, they’re not bothered how many calls a victim received; they just want to know the bare facts, sometimes not even those. Who, then, were we writing for? The answer is, for ourselves; our self-esteem; to prove our claim to other crime reporters that we have better sources, better contacts; and last but not the least, to ensure that we have job offers in hand. It was the chief reporter of the rival paper, the metro editor, whose eye we wanted to catch. No reader, however loyal to my paper, can make me a job offer. So the journalist fraternity was our audience. Beyond that, we didn’t care.

In this game, the police officers who were our main sources, walked a very thin line. If the Deputy Commissioner of Police (say North Delhi) gave me a story as a reporter in *The Pioneer*, then he risked offending the gentleman from *The Hindustan Times* or *The Times*

of India. The trick was to become such good friends with the police officers that they would not be bothered about what other journalists said, and continue to give you stories anyway. My drinking capacity, and the state of my lungs and liver, speak for the nights spent in police stations with constables and all levels of police officers, and how devoted I was to building those contacts.

The class divide was easily visible in the mechanics of this process. The journalists from the Hindi papers were far more acquainted with the beat constables. They could speak cop language, and at times managed to drink more than their counterparts from the English papers. We, restricted by our missionary-school education, managed to reach out mostly to the senior officers. These officers, burdened with the responsibility of what appeared in the press, not only manipulated but also actively guarded information. The Hindi journalists almost always scored over us with lower level policemen passing on information to them, sometimes just to spite their senior officers.

It didn't really matter though. We were paid more, and had social prestige. In fact, we had our own sources amongst the Hindi journalists; they would share their stories with us in exchange for a decent dinner at the club, or sometimes much less.

All that has changed now. Television journalism, the boom of Hindi and other regional channels in news broadcasting, has ensured the emergence of a more level playing ground. The journalist from the English papers suddenly finds himself (and increasingly, these days, herself), at a disadvantage. Their colleague who speaks the local language gets more money and more job offers. The smugness of the English-speaking elite journalist has been destroyed. The slower pace, the afternoons spent drinking tea, hours over a quiet lunch, are no longer a reality. A new professionalism has been established through the format of 24-hour news. To be on the ball, always, 24/7, is the new mantra.

But with this boom in television channels, and the consequent proliferation of crime shows, another fundamental change has taken place. In their bid to deliver stories, crime reporters today are forced to bring out, on prime time television, reports that would not get a mention on the third page of the dailies. Radhika Roy, managing director of the immensely successful NDTV, recently told me that there was enormous pressure to add more crime shows because of the high TRP ratings these shows command.

So, press conferences which earlier would be attended by a dozen journalists have now turned into mega-affairs of over 100 television cameras, cameramen, their assistants and of course the reporters themselves. Officers who would have thought themselves lucky to get their photo in the newspapers are now assured of sound-bytes, and are becoming more camera savvy. Even the most mundane affairs are highly publicised. Pawar *sahib*, despite a recent heart attack, has become busier, his tea bills shooting up every day.

This is not nostalgic writing about the good old days. I have worked both in the print and the television industry, and can assure you that both have their advantages. The glamour and generous salaries of television compensated for the higher work pressure. A flight upgrade, a discount in restaurant bills, became more commonplace.

But is anything achieved by such increased coverage of crime, violence and bloodshed? I will not attempt to describe the effects of television on audiences. People better qualified than I, for instance media analysts and sociologists, have tried; and still no one has come

up with anything remotely comprehensive or satisfying. Repeats, however, definitely bore readers and audiences. This is the very reason even a disaster like the December 2004 tsunami in South Asia, or the 9/11 attack on the World Trade Centre, have a finite life span in the ever-changing world of daily news. Audiences hunger for the new; and despite the continuous fascination for crime, an overdose makes one immune to the horror that lies behind each death, murder, rape. These become mere statistics. Extraordinary violence becomes mundane, and loses its edge.

To overcome this, television anchors find more innovative ways to present their stories: better graphics, sound effects. Even the anchors change, in order to keep things 'new.' In my personal experience, the television camera has definitely taken away the investigative edge of crime reporting. The need for a sound-byte, and to have officials on camera, means that undercover operations are limited. The camera, much as it captures, is more important in what it is *not* allowed to capture. Policemen who were earlier candid in their statements and free with their opinions are now tight-lipped, and rehearse what they should say in front of the omnipresent lens. In short, a crime reporter's life has become less interesting. The days of sleuthing are over; a cameraman and an assistant, the weight of equipment and the pressure have replaced the pleasure of working and remaining incognito. This is not to discount what the spycam has managed to unveil, but episodes such as the Tehelka expose on the armed forces in 2000 are few indeed.

Besides the obvious problems of the camera and getting everything on record, the other thing that restricts investigative journalism on television is time. Most producers allow a minute-and-a-half to two minutes for a story. If it is longer, stories are frequently dropped. A regular story is meant have two sound-bytes, say of 15 seconds each, and then the journalist's piece-to-camera will be around the same length. That makes it 45 seconds, and s/he then has merely another 45 seconds to display investigative skills. No wonder most stories barely scratch the surface. Senior correspondents who carry weight in the organisation and can push through longer stories hardly ever report on crime, having long since graduated to covering politics.

Space is obviously a problem in print too. Many hours have been spent battling with sub-editors who would want to chop my exclusive which I believed was worth shouting "Stop the press!" for, to a single column on the fifth page.

Here, however, I will tell the story of what goes on behind the scenes: that which we could never write because of space or because of a commitment to silence. Any good reporter never writes more than one-fourth of what is in his diary. Here then is the other three-fourths. My focus here in these stories is the crime reporter, the 21-year-old straight out of college, the lowest in the pecking order, always the most overworked, most in demand and least paid. Excitement, you will see, made up for everything else. Uneasy sleep, tormented memories were the price.

A Kidnapping, a Rescue and Other Stories

Deepak Mishra, then Deputy Commissioner of Police (West Delhi) was an officer known to every crime reporter. You could like him or hate him, but you had to know him. He was the Dirty Harry of the Delhi Police; he had the maximum shootouts to his credit and boasted of

a crack team in which the members knew which way to point a gun. Deepak knew his job, was proud of his work, and arrogant. Imagine his chagrin when one afternoon, sitting in his office and drinking his tea, a young reporter who barely knew the ropes accused him of staging an encounter. I did not know then that encounters were mostly always fake, and this was a fact not to be mentioned; if spoken about, it could only be in unofficial tones, a shared secret between you and a policeman who has crossed the professional boundary and become a friend.

Deepak was not a friend, at least not then (and if he reads this, he might not remain one). I had heard from some sources that one of his recent operations had not been as genuine as the papers made it out to be. “*Arre saala*”, the man roared, “you call me a fake, you who have not yet lost your milk teeth?” Deepak liked to always point out the difference in our ages. Young crime reporters who did not know their business irritated him, and he was quick to offer a crash course. This evening I was to be his student and subject. I was to embark on a real life cop-and-kidnapper story, be a part of it.

“Do you want to see how Deepak Mishra operates?” he continued. I, still somewhat confused, uttered a feeble “Yes”. “Fine”, he said from behind his huge desk, lighting another cigarette. “You are going tonight on a rescue mission with my team. Go and see how we do things and then call me a fake...And not a word to anyone”, he added, with a slight grin on his face.

A high school student had been kidnapped from the All India Institute of Medical Sciences (AIIMS) recently. His father, a wealthy shop owner in Karol Bagh, had been asked for ransom of half-a-million rupees.² As is the routine, the parents had been told not to contact the police, or risk losing their son. As in most cases, the parents had.

The kidnappers had asked the father to come to a hotel in Meerut. The money was to be left with the hotel manager and the father was to leave immediately for Delhi. The son would be returned soon, the caller had promised.

It was 2 pm. The father and uncle of the kidnapped boy arrived at Mishra’s office. One by one, members of the police team, which was to be a part of the rescue mission, filed in. I knew Sanjay Singh, deputy to Mishra and in charge of this operation. A young IPS officer, upright and honest, he had already gained a reputation. With him was the Assistant Commissioner of Police L. N. Rao, a veteran of several shootouts, and the now famous ACP Rajbir Singh, still in the process of becoming a police sharpshooter, itching to go for his gun.

There were others, including a few policewomen. The plan was quickly laid out, Deepak left Sanjay to do most of the talking, interrupting only when necessary. The boy’s father and uncle would drive first to Meerut, go to the designated hotel, leave the money and come back. But before this, a police team in plain clothes would have done a reconnaissance of the hotel and surrounded it. After the parents left, three teams of two, a male and a female cop, posing as couples, would check into the hotel. We would wait for the kidnapper to come, then either nab him or shoot him if necessary. For this, another team of seasoned cops and a naïve reporter would be sent.

The teams left quickly: first the reconnaissance team, then the father and uncle, then the supposed couples, and then the seniors. Our team left at 4 pm. I was sitting with Rao, who found it hugely funny to have me with him; he would mention to the driver, “*Arre yaar*,

bulletproof jacket nahin laye. Kuch ho na jaaye (Damn it, we haven't brought bulletproof jackets. Hope nothing happens)". Then on the wireless to Mishra, he mentioned that three years ago, on this day he had been shot in the stomach in an encounter. To me, the jokes seemed tasteless.

We entered Meerut an hour later. The sun had gone down, and the winter chill was pronounced. The hotel was on the right, just as one entered the city. As we drove past it, I saw our team members trying to merge with the surroundings, some buying cigarettes, others drinking tea. They were either alone or in twos. They had informed us on the wireless that it was not an ideal place for a shootout; this was indeed the case. The hotel was in a teeming market. I seemed to be the only one happy about this.



Our car drove past the hotel before Rao asked the driver to stop. We got out. Rao walked off, leaving me with two other cops. A smoke seemed the only possible activity at that moment, so all of us lit up. Rao walked back a few minutes later to tell us that the father and uncle, having deposited the money, had proceeded towards Delhi. The 'couples' had checked in. Between ourselves we quickly reached the conclusion that the hotel manager and probably the staff was complicit in the kidnapping.

A few minutes later the drama started unfolding. A posse of uniformed Meerut policemen stormed into the hotel. We must have been 300 metres away. Rao was the first

to react. For a man his size, it was remarkable how quickly he made it to the hotel. We followed at his heels. By the time we reached it, Sanjay Singh had already taken control. The Meerut policemen were listening to him when we barged in. He silenced us with the wave of his hand.

Our assumptions regarding the hotel manager and his staff were proved wrong. The father and uncle had given the money to the manager. The money, Rs. 5,00,000 in cash, was wrapped in newspaper and put in a plastic shopping bag. The manager had been informed by someone who had booked a room by phone a day earlier, that a bag would be delivered for him. He was to keep the bag in the room reserved for him and it would be picked up the following day. The manager duly received the bag filled with money from the



father, and kept it under his desk.

Then things began to deviate from the script. The three 'couples' checked in too soon after one another. The manager got suspicious. He checked the bag and saw the cash. He panicked and called the police.

Sanjay wanted the uniformed men off the grounds, and fast. The kidnapper might have been watching, and that would mean the boy would be at risk. The Meerut policemen disappeared. The Delhi policemen and women were called in for a quick briefing. All the hotel staff was called in. The plan had to be reformulated. By now it was evident to Sanjay

Singh that the hotel staff were not involved. He chose to tell them the entire story, warning them that no one was leaving the premises for the night. The kidnapper, according to the manager, was to come the next morning. We were to turn in for the night. Part of the team would keep watch, just in case.

I shared the room with Sanjay, Rs. 5 lakhs and some pistols. We slept fitfully. Sanjay was already up when I woke, and my first sight of the morning was of him loading his revolver. "I know it's going to happen today. *Mujhe lag raha hai* (I have a feeling)", he said.

I did not care to ask him what was going to happen. The room Sanjay and I had chosen was directly opposite the one booked by the kidnapper. We quickly placed the money in the room. It was 7 am. After a hurried breakfast, Sanjay went down to talk to his men. I was told to stay in the room, keep my eyes glued to the keyhole, and watch the room opposite.

The hours stretched slowly, almost maddeningly. Every sound, every little movement seemed magnified during those few hours. I must have dozed off for a bit. My eyes opened when, at around 11 am, the phone in the room rang. It was Sanjay, his voice hushed and urgent. "Som, the chap is here. *Usey saman leno de* (Let him take the stuff). He is just the driver. The kidnapper is still not here". Sanjay need not have bothered cautioning me not to get into action. I was not planning on it. I saw the man go into the room and then leave with the bag. Moments later Sanjay called, asking me to come to the reception downstairs. By the time I reached, the man had gone. Sanjay told me that the man who had come to collect the bag was probably a taxi driver, and that the Delhi team was on his tail. He asked me to stay back with a couple of policemen while he went off on the chase.

It was depressing, to have been part of the action and then to be told to keep out. It was almost noon and as we had nothing to do, we ordered lunch. As far as I was concerned, this game was over.

Two hours later, a man walked in asking for me. "*Sanjay Singh sahib bula rahen hain* (Sanjay Singh *sahib* is calling you)". I left with him, got into the car. As we drove off, I was struck by an irrational fear. Who was this man? I didn't remember him as one of us, as part of the Delhi team.

I kept quiet. We stopped at the main market, a 20-minute drive from the hotel. Sanjay was there, showing an unusual amount of interest in the local pottery. He kept walking and I fell in, a step behind. He started talking to me in an undertone while pretending to look around. He said that he was pulling his men back. The kidnapper still had not showed up. The car and the driver were waiting. Sanjay felt that the kidnapper might have sensed there were policemen around. "We all look like policemen. You don't. Stay near the car. Not too close. If the man turns up, use this to call us", he said giving me his wireless set.

I had no time to react. Sanjay had already moved off. I walked towards the car. The driver was inside, dozing. A bus stop was right next to it, a good place to wait while I kept watch. An hour later, a few more cigarette butts lay scattered near my feet. I was getting bored. Damn, since yesterday evening, everything seemed to be one long wait.

He showed up suddenly. Over six feet tall, broadly built, with a handsome face and close-cropped hair, green shirt and jeans, he opened the car door on the passenger side and got inside. The driver woke and I saw them talk for a minute before they started the car and left. Panicking, I ran into a phone booth and radioed Sanjay. He said he was on his

way. I had barely stepped out of the booth when Rao and his men drove up in a white Maruti van. They pulled me in. The driver easily caught up with the taxi, an Ambassador. We followed it.

After driving around for about 15 minutes, the taxi turned around and drove again towards the market. Rao lost his patience. We had been advised not to go for the man. We still did not know where the boy was. But Rao was having none of it, muttering under his breath, "*Behenchod...char raat se nahin soya. Isko to abhi lena hain* (The sister-fucker...I haven't slept for four nights. I will take him now)". His driver and men knew their drill like clockwork. The taxi had pulled up again at the market and the man and his driver were each having a fruit juice. Our van, engine switched off, rolled up to them silently.

I can still recollect in entirety each detail of the next five violent seconds. As the car came up, Rao slid the door open. His giant hand reached out, lifted the man up and into the van, on the floor. The door was pulled shut and the van sped away. There was no time to be lost. The man was questioned, swiftly, efficiently. He told us that the kidnapped boy was in Ghaziabad. I was dropped off to tell Sanjay Singh what had happened, while Rao and his men sped towards Ghaziabad. Sanjay was a bit bewildered. He had no clue as to what had happened, and he was supposed to be leading the team. I filled him in on the events as we too rushed towards Ghaziabad in his car. Somewhere along the way, Rao radioed to tell us that he had reached the town and rescued the boy. Sanjay relaxed visibly. The job was done.

I got to meet the boy almost immediately after the rescue. A first-hand account of what happened, how he was kidnapped, what he went through – it made a good story. The kidnapers (there were two)³ were ordinary middle-class men, out to make a quick buck. The story of the rescue, however, how it was planned and its execution, remained untold. Deepak Mishra did not want every reporter to know, and as he put it, "*Sab mere peeche pad jaayenge. Agli baar sabko le jaana padega* (Everyone will be after me. Everyone will have to be taken along, the next time)".

I came back to Delhi jubilant. So this was going to be my life. Real-life chases, adventures, great stories. That myth was quickly dispelled. Over the next few years of reporting, I saw enough dead bodies to last me a few lifetimes. The Orissa cyclone, the tragic collision of the two planes over Haryana, the Rajdhani accident, these were events of gigantic proportions.

But it is the supposedly smaller ones – the particularly brutal murder, the somehow unnecessary violence – which haunt my mind. In 1998 I was working for *The Week*. I had moved on from regular crime reporting onto higher things. There was a spate of murders and dacoities in the city that year, and my boss asked me to have a look. It was interesting to get back to something I knew, and had enjoyed. A day after I was handed the assignment, an assault took place in the East Delhi locality of Mayur Vihar.

I visited the flat where an intruder had entered pretending to be a delivery boy. The lady of the house was alone with her one-year-old girl. The man had tied up the woman, ransacked the house and taken most of the valuables. While leaving he saw the child, who at the time of the incident was being given a bath in the tub. She had two plain gold earrings on. The man tried to pull them off. The child screamed. He drowned her in the bathwater to stop her screaming, while the mother looked on. I had to ask her how she felt. The next

day, the then-Police Commissioner V. N. Singh said to me, “Som, tell us, what kind of a society do we police? How can someone kill a child for earrings?”

In 1995, a Delhi Public School bus had an accident. Only one child was killed. I was sent to interview the mother. She kept asking me why it had to be her son. The younger brother of the dead boy wanted me to play cricket with him so he wouldn't miss his brother.

One of my first outstation assignments was to cover a fire that had broken out in a firecracker factory in Haryana. I saw children with 100% burns, writhing in makeshift hospital beds. Every inch of their body had been burnt, even their eyelids. They were from Sivakasi in south India, poor children who had been sent north by parents who needed the money. I filed a report which my chief reporter found excellent. He said I should have taken the byline for it. When I told him it did not matter, when I told him again of what I saw, he remarked that by the end of the year, I would stop feeling anything. And by the time the Rajdhani train accident occurred in Bihar in 2002, and I was in television, I was counting the bodies. More bodies meant more prime time. I was on air for two whole days, a reporter's dream.

NOTES

1. It is not that I am gender insensitive. Crime reporting till a few years earlier (and to a large extent today) was a male-dominated world.
2. This was 1995. Rs. 5,00,000 was a huge sum. For most of us, it probably still is.
3. The second kidnapper surrendered in court two days after his accomplice was arrested.

Another 9/11, Another Act of Terror

The 'Embedded Disorder' of the AFSPA

A. BIMOL AKOIJAM



Manipur Tableau, Republic Day Parade, 2001

To most people, the expression '9/11' conjures up the image of two hijacked airplanes colliding with the twin towers of the World Trade Centre in New York. For the President of the United States, the events of this date were coincidental with the launch of a 'War Against Terror' to defend 'Democracy and the American Way of Life' from suicidal hijackers and terrorists. When thinking of '9/11', we might remind ourselves of the fact that this method of numerical expression of the date September 11, when made bereft of the intervening slash, becomes identical with '911' – the number most Americans dial in times of emergency. This irony has not gone unnoticed.

The discursive practices particular to the post 9/11 'globalisation' of the 'War Against Terror' seem to point towards (the United States of) 'America' as taking over from 'Europe' as the sovereign and theoretical subject of all (future) histories. However, the identification of 11 September with 'attacks on democracy' has an ambit wider than the emergencies that visit the US population. The 1973 coup (an organised military attack on the institutions of popular democracy) that brought Augusto Pinochet to power in Chile, took place on 11 September of that year.

In this essay, I intend to narrate a story of another September 11, a story from the margins. It is the story of an 'attack on democracy', carried out not by 'terrorists' on a

'suicide mission', or through a military coup, but by the state in what is called the world's 'largest democracy', and through an instrument of state terror on a section of its own population.

On the 11 September 1958, the President of India signed his assent to a legislation enacted by the Indian parliament into law. This law was the Armed Forces (Assam and Manipur) Special Powers Act, 1958 (henceforth, AFSPA), which remains in force (in a much more extensive form) today, 47 years later.¹

The AFSPA, which began its career in Assam and Manipur, has in the course of the last 47 years also been deployed in Punjab (in the 1980s) and in Jammu and Kashmir (since the early 1990s). However, this essay will dwell on the implications of the act's career in Manipur.

The Act, and Acts

The abstract letter of the law finally translates into the concrete actions that mark, mar, or on occasion, end, the lives of individuals. The Act, in every instance, gives rise to a plethora of 'acts'.

The list of such acts in the North-East is long, but to name a few well-known cases, from the 1980s onwards, they include the massacres of civilians at Heirangoithong (Manipur) in 1984, and at the Regional Institute of Medical Sciences (then Regional Medical College) (Manipur) in 1995, at Malom (Manipur) in 2000; the horror of army torture and violence on civilians during Operation Blue Bird (Manipur) in 1987 and Operation Rhino (Assam) in 1991; indiscriminate firing on civilians by armed forces personnel when a tyre of their own vehicle burst in the town of Kohima (Nagaland) in March 1995; the shelling and destruction of the town of Makokchung (Nagaland) in 1994; the enforced disappearances of Loken and Lokendro (Manipur) in 1980, of C. Paul and C. Danial (Manipur) in 1982, and of L. Bijoykumar (Manipur) in 1996; sexual assault on women at Ujanmaidan (Tripura) in 1988, at Nantiram (Manipur) in 1995, the gang-rape of Mrs. Ahanjaobi Devi in front of her disabled young son (Manipur) in 1996, and the rape of Miss N. Sanjita (who subsequently committed suicide) (Manipur) in 2003.

One such cluster of 'acts' visited itself in July 2004 on Thangiam Manorama, a Manipuri woman, who was killed while in custody after allegedly being raped by the security forces.²

Testifying before the (retired) Justice Upendra Inquiry Commission instituted to probe the circumstances leading to the death of Ms. Manorama, her bereaved mother said that around seven or eight personnel of the Assam Rifles (AR) violently entered their house in the intervening night of July 10 and 11, and one of the personnel, pointing his gun at her, asked about Ms. Manorama. "At that point of time, Manorama came out of her room and the AR men pounced upon her and took her towards the verandah". She further said that Manorama was dragged outside the house and the personnel severely beat her up, and that she could hear the "muffled voice" of her daughter. After sometime, the personnel brought Ms. Manorama back into the house. At this time, the mother said that Manorama "was clutching her *phanek* (a sarong-like traditional garment worn by Manipuri women) with her left hand", and that her "shirt was unbuttoned". The personnel made out an arrest memo and got Manorama's mother to put her thumb impression on the memo; Manorama's

brothers were also made to sign the memo. Before taking her away, the personnel allowed Ms. Manorama to change into a new *phanek* and a shirt. The mother said that the lifeless body was discovered at Yaipharok Maring village the next morning.

The autopsy on Manorama's body was conducted at the Regional Institute of Medical Sciences Hospital (RIMS) in Imphal, the state capital, after the Irilbung police picked up her body. Testifying before the Upendra Commission, the doctors who conducted the autopsy confirmed the presence of semen on the undergarments of the victim, and more than a half a dozen bullet injuries, including on the genitals.

The spokesman of the security forces, while claiming "responsibility" for the "killing of a hardcore PLA cadre", stated that they had acted on the basis of "specific information" about the presence of PLA cadres at Bamon Kampu area. They went on to state that, on this basis, an "...AR team rushed to the area and apprehended Manorama. During interrogation she disclosed that she possessed an AK-47 rifle and was willing to take the army personnel to recover the weapon. However, on the way, she was gunned down by the AR personnel as she made a bid to escape by jumping down from the army vehicle...One radio set, hand grenade and some incriminating documents were recovered from her possession".

On the face of it, these accounts seem no different from the familiar stories that emanate from the 'normal' world of counter-insurgency operations in the North East.

The bereaved mother's statement could have been any 'unofficial' account, made only to be delegitimised by official spokesmen as 'baseless allegations' made by vested parties against the patriotic soldiers of the Indian security forces fighting the 'enemy within'. The post-hoc statements of the army officials³ would have been the final say on the 'official' reality of the situation on how they have eliminated an 'enemy'.

This time however, there was a 'Freudian slip' that revealed the inner reality beneath the normality of hitherto familiar counter-insurgency narratives in the North-East. *Havaldar* Sureshkumar of the Assam Rifles, who signed the arrest memo, inscribed on the memo that Ms. Manorama was being arrested as a 'suspect' and that nothing had been taken from her house or her person.

There is no legal 'absurdity' in the killing of Ms. Manorama or of any other 'suspect' under the AFSPA. This banal fact will be elaborated upon below. What does ring hollow is the credulity of a narrative that features a group of armed men of the mighty Indian military having necessarily to fire more half-a-dozen bullets in order to subdue a woman dressed in a *phanek* while she was allegedly trying to escape from them by jumping down from their vehicle, and that too, late at night. *Havaldar* Sureshkumar's inscription on the arrest memo says that nothing was recovered from her, meaning, she was un-armed. The post-hoc statement by the spokesman of the security forces, on the other hand, mentions the recovery of a "hand grenade", a "radio set" and "incriminating documents" from "her possession".

The death of Manorama opened out issues that became too unpalatable for the brutalised people of Manipur. Indeed, for many, this was the last straw. Venting decades of suppressed rage, a group of prominent women in the community protested by disrobing and staging a 'Naked Protest' in front of the Assam Rifles Headquarters in the heart of

Imphal City. They shouted, "Rape us, kill us, take our flesh", while attempting to break open the gate of the AR headquarters. In immediate response, an indefinite curfew was imposed in Imphal and the surrounding area. There was no let-up in the protests. In spite of the curfew, sit-in protests and mass rallies continued, and continue, in Manipur.

Following a spell of mass agitations, the Union Home Minister finally visited Imphal months after the killing and announced that a review committee would be formed to look into the repeal of the AFSPA. In the meantime, the Manipur Government withdrew the AFSPA from seven assembly constituencies in the Imphal area in August. Six months later, in February 2005, the review committee is still conducting its deliberations. The AFSPA, as of now, remains law.



A Colonial Inheritance

The AFSPA is no ordinary 'extraordinary law'. It is a re-invention of the Armed Forces Special Powers Ordinance promulgated by the British in 1942 (at the time of World War II) to suppress the nationalist 'Quit India' Movement. Unlike any other extraordinary law that has ever been in force in India, it allows for direct military intervention in the 'internal' affairs of a state, and gives powers to the personnel of the armed forces to shoot to kill.

In order to understand how such an unthinkable proposition became a legal and practical reality in the North-East requires us to look at the post-1947 history of the region, and more specifically at the 'Merger of Manipur'. This is necessary because the manner in which the controversial merger of Manipur was effected in 1949 in many ways anticipates the distinctly 'colonial' and 'militaristic' character of the regime inaugurated by the AFSPA in 1958.

Manipur, a princely state bordering then-Burma, now Myanmar, was the first territory within South Asia to have a democratic legislature elected on the principle of universal adult suffrage. The Manipur Constitution Act came into force in 1947, and the position of the *Maharaja* (King) of Manipur became that of a constitutional monarch. Following this, the Manipur Legislative Assembly was constituted in 1948 as an organ of self-governing representative democracy.

At the time of the transfer of power in 1947, Manipur, like many other princely states, was party to a 'stand still' agreement with the British crown that would defer the delineation of its precise constitutional status vis-à-vis the two major states (India and Pakistan) that were due to emerge as successor states with the demise of the British Indian empire.

From August 1947 till September 1949, the state of Manipur functioned as a virtually autonomous entity, governed in its external relations by the provisions of the 'stand still' agreement. Following the decision by the Government of India to 'take over' Manipur, based on strategic considerations, the newly-independent Dominion of India effected the Manipur Merger Agreement with the *Maharaja* of Manipur on 21 September 1949. This was done by

placing him under effective house arrest and military custody in neighbouring Shillong, a city in what was then 'undivided' Assam, a province of the Indian dominion. The Merger 'Agreement' did not have the sanction of the Manipur Legislative Assembly, the constitutional sovereign in Manipur at the time, and the only political body at that time in all of South Asia to be based on universal adult suffrage. In other words, the Merger Agreement effectively ignored the democratic will of the Manipuri people as expressed in the Legislative Assembly.

Subsequently, a battalion of the Indian army was sent to Manipur. The battalion arrived in Imphal, the capital of Manipur on 12 October 1949; the Manipur Legislative Assembly was unceremoniously dissolved on 15 October 1949. Thus began 23 long years of direct bureaucratic rule of Manipur by New Delhi. A state with its own written constitution and a democratically constituted Legislative Assembly was transformed into a fiefdom of New Delhi. It was fated to remain so, governed by Chief Commissioners and Lieutenant Governors who were not accountable to the people of Manipur for almost a quarter of a century. The term 'postcolonial', when applied to the post-1949 experience of Manipur, is nothing less than an oxymoron.

While there are other instances of 'Merger Agreements' being signed in situations of stress and duress (Jammu and Kashmir) as well as of military intervention (the 'police action' that ended the Nizam's rule in Hyderabad in 1948), what makes the Manipur situation unique is the steamrolling of democratic institutions that the merger represents. The irony of a state (India) which at that time aspired to be a democratic republic, but was not one yet, effectively undermining the foundations of an existing democratic state through a basically military manoeuvre, makes the case of Manipur quite exceptional.

That all this was justified not by reference to the 'will of the people' of the territories concerned (as was the case with Hyderabad), or by a response to internal aggression (as is said to be the case with Jammu and Kashmir), but by invoking 'strategic necessity' is all the more revealing. The reason cited for the decision to 'take over': Manipur is a 'border state' and 'backward'; therefore its takeover is a 'strategic necessity'. These were the expressions used by V.P. Menon (then-Home Minister Sardar Vallabhai Patel's able bureaucratic lieutenant, who has been described as the 'Arch Maneuverer' of 'Integration') when referring to the merger of Manipur with the Indian Dominion. The fact that he uses the expression 'takeover' to mean 'integration' speaks for itself.⁴

A 'border state' that is also 'backward' needs to be 'taken over' because it is a 'strategic necessity'. A 'backward' people need not be consulted about whether they would actually like to be 'taken over'. A battalion marches in, and a population is told by the armed forces of a state that is still trying to get its own constitution together, that the constitutions that 'backward' people give to themselves, or the democratic institutions that they evolve in the course of their history, are of no consequence. What is of consequence is the 'strategic necessity' of the emerging Indian state, trying to live up to the imperatives of its Imperial inheritance.

The preponderance of the dual logic of 'backward'(ness) and 'strategic thinking' that was instrumental in effecting the Merger of Manipur continues to influence the 'carrot-and-stick' approach that defines India's policy, not only towards Manipur, but towards the entire

north-eastern region today. 'Backward' people need to be propped up with subsidies, not left free to govern themselves; and a 'strategic necessity' needs to be maintained by military force. The evolution of democratic institutions can be arrested, or held in abeyance, or paid ritual obeisance to; but at all times, real power must be exercised not by the people of the region through free and fair processes, but by Indian state through the continued and uninterrupted presence of its armed and military forces.

This is the realisation of a perspective that envisions Manipur, and the North-East in general, at best as 'something that one does not really have to think about'. Hence its virtual absence in the standard histories of 'Modern', 'Medieval' or 'Ancient' India, except when some sites find mention as footnotes to the history of the Indian National Army in World War II. Or more generally, as a hostile and an alien space, inhabited by 'backward' people and 'tribes', who can 'integrate' with the national mainstream either under gunpoint, or by dancing their way through to citizenship on colourful 'folk dance' floats in the Republic Day parade in New Delhi each year.

As early as 7 November 1950, five years before the first spark of armed rebellion had been lit in the Naga-inhabited hill regions of Assam, Home Minister Sardar Patel, the 'Iron Man' of India, wrote an exceptionally revealing letter to Prime Minister Jawaharlal Nehru. In this letter he refers to the people of the entire North East in the following words:

"The people inhabiting these portions have no established loyalty or devotion to India...Even the Darjeeling and Kalimpong areas are not free from pro-Mongoloid prejudices".⁵

When reading the exact quote, we would do well to remember that in the sweep of the statement about the 'people' of the North-East, Patel would either have included Indian nationalists from Assam such as Gopinath Bordoloi and members and supporters of the Manipur State Congress (thus rendering them insincere in their patriotism), or would have completely neglected to mention them, ascribing no real consequence to their patriotic feeling for India. In either case, the race-inflected character of such a comment is symptomatic of Indian nationalism's myopia about the North-East, and of a wholesale and uncritical appropriation of the 'Orientalist' lens of European colonialism and its view of the peoples of Asia. It is this Orientalist consciousness that allows the narrative of a revolt in a small corner of the region, started in 1955 in the Tuensang and the Naga Hills, to inhabit the imaginary space of the entire North-East. It is also the same Orientalist consciousness that produces the *envisioning* of the North-East as an *alien* space, a necessary condition for the AFSPA to become a statutory reality.

The AFSPA: Disguised War

The AFSPA is presented as an instrument "in aid of civil power" (Section 3 of the Act) to "suppress" "armed revolt" or "armed insurgency" in the North-East. It was supposed to be a "temporary measure". But the actual operation of the act for over four decades has shown that all stated claims are false.

The Act, which today covers the entire North-East, was enacted in 1958 ostensibly to deal with the "armed revolt" of the Nagas that erupted in 1955. The Naga uprising itself may also be seen as a response to the failure of the Indian state to foster any institutions

that could speak to the democratic aspirations of the diverse indigenous communities of the North-East. Another decade of similar autocratic rule led to the emergence of armed insurgencies in Manipur and Mizoram in the 1960s. A variety of factors led to insurgencies breaking out in the 1980s in Assam and Tripura as well, which continue till today. The entire state of Manipur was brought into the ambit of the act in 1980. Thus, the uninterrupted military presence in the region, inaugurated by the AFSPA, has in no way brought peace to the area. On the contrary, it can be seen as the instrument of a self-fulfilling prophecy. Indeed it is questionable as to whether the AFSPA is a response to, or the progenitor of, the insurgent in the North-East.

Behind the enactment of the AFSPA lies the 'original sin' of the first military intrusion into the region: the controversial merger of Manipur. Every subsequent action of the state can only be seen as shoring up the defence of what is essentially an offensive operation. In effect, and on the ground, what it amounts to is the unleashing of a 'disguised war' on the local population.

The military character of the Act is reflected in more ways than one. To begin with, the AFSPA allows the "use of armed forces" defined as "military forces, the air forces operating as land forces" and "any other armed forces" of 'the Union' (Section 3) in within the nation, in domestic space. Section 2 (c) of the Act also clearly shows the close affinity between the AFSPA and those laws governing the military, such as the Army Act (1950). It reads, "...all other words and expressions used herein but not defined in the Air Force Act, 1950, or the Army Act 1950, shall have the meaning respectively assigned to them in those Acts".

For the AFSPA to come into force, all that is required is that a territory (a state of the Indian Union, a centrally administered territory, or any part thereof) be described as 'disturbed'. Subsequent amendments to the act have expanded the scope of the AFSPA to its application in any location, anywhere in India. This has led to its being invoked in Punjab in the 1980s, and in Kashmir, where it has been in operation from the early 1990s till today.

Under the AFSPA, once an area is declared as "disturbed", the personnel of the armed forces *simultaneously acquire* powers to use "force as may be necessary", based on their "opinion" and "suspicion", to effect "arrest without warrant" or "fire upon or otherwise use force, even to causing death" (Section 4).⁶

The nature of these powers conferred upon the armed forces is quite in tune with the military paradigm and the business of war. For instance, unlike the assumption of innocence of an 'accused' or 'suspect' (until he or she is proved guilty) in normal criminal law, a significant measure that protects a citizen, the *hostile intention* of the inhabitants of the space *that is rendered 'disturbed' by the simple fact of the declaration of the AFSPA is taken for granted by the military personnel*. Thus, the 'opinion' and 'suspicion' of the commanding officer of a military formation (commissioned, junior commissioned or non-commissioned officer in the military) *serves as the basis* for exercising the powers to "fire upon or otherwise use force", which he thinks is 'necessary'. These powers can also be exercised for acts that "likely to be made" or even "about to (be) commit(ted)" (Section 4).

There is a crucial difference between all other laws and the AFSPA. In all other laws, including the various preventive detention and anti-terrorist legislations that have come and gone or stayed in the course of Indian judicial history (National Security Act, Terrorist and

Disturbed Areas Act, Prevention of Terrorism Act, Maharashtra Control of Organised Crime Act, etc.), the forces of law and order can (or could) at the most detain without trial, for varying lengths of time. However, the AFSPA gives the armed forces personnel an additional and crucial item of power: to shoot to kill, or to destroy property, on the basis of a mere suspicion. Here, there is not even the necessity of the elaborate staging and retrospective narrative devices associated with the production of an 'encounter' (an average extra-judicial killing indulged in by the police or paramilitary forces in the course of its business in the field). The AFSPA empowers the armed forces to do away with the legal fiction of the 'encounter' and to act as judge, prosecutor and executioner all at once, and often in the course of an instant.

This is why the 'bare act' of the AFSPA, unencumbered by numerous qualifications, elaborate procedures and conditions, does not exceed more than six sections, and is contained in a single page in print form. That is also why attacks by 'insurgents' are 'retaliated' with indiscriminate firing and killing of civilians, including women and children, by the security forces. These non-combatant casualties can then be seen as instances of 'collateral damage'. Therefore, the numerous cases of massacre in the so-called 'crossfire' or 'excesses' of the army are not examples of the 'abuse' of but the 'use' of the AFSPA. To see these as 'abuses' or 'excesses' is to obfuscate the fact that, *theoretically and practically*, the AFSPA amounts to a *disguised declaration of war*.

This declaration, which amounts to the initiation of a 'disguised war', allows for a direct intervention of the military within what is 'domestic space'. However, the military is in a sense freer than it would be if it were actually in alien territory. The Geneva Conventions of 1949,⁷ to which India is a signatory, specify the limits of military action in the event of war. Section 4 of the Convention clearly prohibits the military from taking the life of civilians, non-combatants or even of combatants who have laid down arms. It furnishes detailed guidelines for detention of non-combatants; it goes on to prohibit collective punishments, and damage to property, explicitly forbids the military forces from interfering with the work of medical and religious personnel, and details the ways in which military forces are to deal with women and children, including a stringent prohibition on rape or any conduct detrimental to the dignity of women and children.

While these conditions pertain to 'international conflict', the Indian armed forces are governed by them through instruments known as 'Articles of War'. There is, however, no legal instrument that compels the armed forces to act accordingly in situations of what might be described as 'internal conflict'. The Additional Second Protocol of the Geneva Conventions,⁸ enacted in 1977, actually brings what are known as 'non-international conflicts' within its ambit. Interestingly, India is not a signatory to this protocol. Thus, while the AFSPA amount to a *de facto* declaration of war, yet it allows the armed forces to act as if they were, *de jure*, not in a war situation. To all intents and purposes the armed forces act as if they are at war, but at the same time they are not bound by the international laws that govern the conduct of war. Nothing, thus, requires them to restrain their actions as they go about securing the North-East for India. Nothing can stay their hand, because they act in the name of the 'citizens' they kill.

Acts committed under the ambit of this tacit declaration of war cannot be challenged by those who bear the brunt of the AFSPA. This becomes clear when we read in Section 6:

“No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government in respect of anything done or purported to be done in exercise of the powers conferred by this Act”.

Sadly, neither members of the Indian Parliament, when they voted on the Armed Forces (Assam and Manipur) Special Powers Bill in 1958; and again in 1972 (when an amendment was brought in to make the AFSPA more stringent, and when the power to promulgate AFSPA was vested in the central government), nor the President of India (when he signed it into law), or even the Supreme Court (when it upheld the ‘constitutionality’ of the Act in 1997) considered even for a moment that Section 6, apart from granting impunity to the members of the armed forces in the ‘disturbed areas’, also constitutes an effective challenge to the principle of the separation of powers that are vital to the checks and balances inherent in any functioning democracy, or of federalism.

What Section 6 does is to elevate the military arm of the executive above judicial and legislative scrutiny in a way that gives complete *carte blanche* to the State vis-à-vis a population that can have no legal protection, recourse or relief against the armed forces. It makes it impossible even for the regional government to initiate any action against anything done under AFSPA, and reduces it to nothing other than ‘proconsul’ of the tyranny of indirect central rule. Not only does Section 6 of the AFSPA subvert the principles of judicial remedy and independence, it also echoes the convenient legal fiction of the ‘extraterritoriality’ principle that Imperial powers invoke when they seek to protect their soldiers fighting wars on their behalf in distant lands.

In effect, it brings to bear one legal regime for people in the states and territories affected by the AFSPA, and another for the rest of India. The consequent legal inequalities that obtain between a ‘citizen’ of India who happens to live in Manipur and a ‘citizen’ of India who happens to live in, say, New Delhi, amount to a chasm so wide as to render the concepts of ‘Indian citizenship’ or ‘equality before the law’ devoid of any substance.

In fact, by legitimising the use of military force in the internal affairs of the state beyond what is already provided in the Criminal Procedure Code and the provisions of emergency in the constitution, AFSPA seeks to supplant rather than supplement civil authority with military authority in the administration of everyday life. There is no question that if exigency demands, the State, under the Indian constitution, can always promulgate an ordinance to use its military might to deal with that exigency. But to convert such an ordinance into a regular law that stays in place for almost half a century is to entrench a military structure and ethos in the polity and structure of the state. It sets into motion the process of reproduction and appropriation of the military structure and ethos by other instruments of the State (the paramilitary and police) as well as civil society itself. Ultimately, it leads to a complete subversion of the basic foundation of society and polity. It blurs the necessary distinctions between the police and the military, between the civilian and the combatant, and between ‘domestic’ and ‘alien’ space. This is what has happened in Manipur.

The Reproduction of Militarism

Historically speaking, the Indian army had already moved into the Naga Hills in March 1956, two-and-a-half years before the AFSPA was enacted, and has been conducting its operations since then. Indeed, the AFSPA, rather than being a response to the “armed revolt” in the North East, is in actual fact a reified expression of the *militarism* that characterises the policy of the Indian government towards the region from the foundational years of the Republic of India. This militarism exists despite and in spite of insurgency, be it of the Nagas, the Mizos, the Manipuris or the Assamese.

The deployment and operation of the “armed forces” under the AFSPA not only subverts and seeks to replace the power of the civil authority and the judiciary but it also tries to re-enact the roles of other institutions as well. Alongside violent operations, the “armed forces” also swing to the other end of behaviour by adopting a policy (such as was reflected in “Operation Samaritan”) of constructing bridges, schools, playgrounds, etc., and providing medical help to civilians. These ‘Samaritan’ activities invite uncomfortable questions as to why the military undertakes to do what other institutions of the state, such as the departments of public works, health, education, youth and sports, etc., should be doing. If the State has a real intention of providing these services to the people, different civilian departments and institutions should have legitimately carried out these activities. In a critical sense, under the AFSPA, the judiciary has already been made redundant and policing has been equated with ‘war’. What we have in the North-East is in reality a military State that masquerades under token institutions of civilian power.

The tragedies that the people in the North-East have suffered do not originate as much in their ‘suspect loyalties’ or even in the deeds of ‘foreign hands’ as they do in the mechanisms that give rise to this obfuscation. The violence that affects the North-East emerges from a paranoiac suspicion of the North-Eastern ‘other’, a tragic hangover of colonialist attitudes that resides deep within the heart of Indian nationalism.

In other words, the bipolarity marked by an alternate swing between an aggressive and a patronising posture is an outcome of an internally, rather than externally, located threat to the ‘Indian nationalist’ self. All that the Indian state tries to seek is a sense of *national security* through militarism to assuage its inherent sense of insecurity born out of the ‘absence’ of the North-East in the “national imagination” of the Indian state. The ‘mongoloid’ peoples of the North-East figure nowhere in the nation’s myth of itself, yet retaining them as citizens is vital to the nation state’s sense of security.⁹

This madness continues to subvert the basic foundation of a civilised democratic order in the North-East and, in a way, also critically threatens the very future of the societies of that region. The AFSPA is only a symptom of a violently embedded disorder.

The ‘repressed’ of the North-East can only ‘return’, to use a psychoanalytical metaphor, through the staging of a schism writ upon the body of the North-Eastern person. The state claims the Manipuri, or Naga, or Mizo, or Khasi, or Garo, or Kuki, or Bodo, or Assamese or any of the indigenous peoples of the region, as citizens, and simultaneously wages war upon them as insurgents. The Indian military, armed with the AFSPA, kills the Manipuri in order to save him or her as a citizen of India. Death and redemption simultaneously mark the same ‘encounter’ that the state stages in the North-East. The AFSPA is the script that

details the acts that the 'encounter' rehearses, time and again.

I would like to convey my deep sense of appreciation to Prof. Peter Ronald de Souza, Prof. C. Douglas Lummis, Mr. Thounajam Tarunkumar and Shuddhabrata Sengupta. Their discussions with me have been of enormous help in the formulation of this essay.

NOTES

1. For a detailed overview of the AFSPA, see "Armed Forces Special Powers Act: A Study in National Security Tyranny" by South Asia Human Rights Documentation Centre.
http://www.hrdc.net/sahrdc/resources/armed_forces.html
 See also Nandita Haksar (1991), "Armed Forces (Special Powers) Act, 1958", paper for the Human Rights Committee at the UN, p. 11-12.
2. The information on the 'Manorama Incident' is taken from the exhaustive timeline on epao.net: "Killing of Manorama and Events Pertaining to the Protests against the AFSPA in Manipur".
http://epao.net/epPageExtractor.asp?src=related_news.timeline_Manorama_killing_2004.html.
3. For the Indian Army's view on why the AFSPA needs to stay, see "AFSPA Indispensable: GOC-in-C", *Sangai Express*, 3 January 2005.
<http://e-pao.net/epRelatedNews.asp?heading=1&src=040105>
4. For more on the 'Merger of Manipur', see Akoijam, A.B. (2004): "Don't You Have a Brigadier: Democracy's Tryst with Nation-State", paper presented at the National Seminar on "Reconstructing Democratic Concerns in Modern India", Lokniti-CSDS (8-10 October 2004), Delhi; Menon, V.P. : *Integration of the Indian States* (Orient Longman, 1956, Madras); and Rustomji, Nari : *Enchanted Frontiers: Sikkim, Bhutan and India's North Eastern Borderlands* (Oxford University Press, 1971, Bombay).
5. For the complete text of this letter, see Durga Das (ed.), *Sardar Patel's Correspondence*, Vol. 10 [1945-50] (Navajivan Publishing House, 1974, Ahmedabad) pp. 335-41; see also
<http://www.friendsoftibet.org/main/sardar.html>
6. All quotations of sections of the AFSPA are taken from the Bare Act of the Armed Forces Special Powers (Manipur and Assam) Act, 1958.
7. For a full text of the Geneva Conventions (1949), [Convention IV: Relative Protection of Civilian Persons in Time of War, Geneva, 12 August 1949] and a list of parties and signatories to the convention, see
<http://www.icrc.org/ihl.nsf/WebCONVFULL?OpenView>
8. For a full text of the II Protocol to the Geneva Conventions (1977) [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977]; and a list of parties and signatories to the Convention, see
<http://www.icrc.org/ihl.nsf/WebCONVFULL?OpenView>
9. For a discussion of the 'absence' of the North-East in Indian national consciousness, see Akoijam, A.B. (2003), "Reporting Crisis or Part of the Crisis? Rastra Chetna and the Media: Coverage of the North-East", paper presented at the workshop on "Crisis Media: The Uncertain States of Reportage", held at Sarai-CSDS (3-5 March 2003), Delhi.

Warporn Warpunk!

Autonomous Videopoesis in Wartime

MATTEO PASQUINELLI

Grinning Monkeys

How do you think you can stop war without weapons? Anti-war opinion that fills public squares around the world stands as powerless in front of the raging US military as the cosmetic democracy of International Courts. Reason cannot prevail against the animal instincts of a superpower: a homicidal force can be arrested only by another, stronger force. Every day we witness such a Darwinian show: history repeating itself through a cruel confrontation of forces, while "freedom of speech" plays itself out as an ineffectual drawing room exercise. Pacifists too are accomplices of instinctive forces, because animal aggressiveness is within us all.

How do we express that bestiality for which we condemn armies? Contrary to the self-censored exterior of the radical left (not only that of the conformist majority), it should be admitted publicly that watching Abu Ghraib pictures of pornographic tortures does not scandalise us. On the contrary, it excites us in exactly the same way as the obsessive voyeurism that draws us to 9/11 videos. Through such images we feel the expression of repressed instincts, the pleasure rising again after its narcotisation by consumerism, technologies, goods and images. We show our teeth, as monkeys do, when their aggressive grin looks dreadfully like the human smile.

Contemporary thinkers like Baudrillard and Zizek acknowledge the dark side of Western culture. If 9/11 has been a shock for Western consciousness, Baudrillard puts forward a more shocking thesis: we Westerners had an active desire for 9/11, the death drive of a superpower that, having reached its natural limits, knows and desires nothing more than self-destruction and war. The indignation is hypocrisy; there is always an animal talking behind a video screen.

On the Videowar Battleground

Before pulling the monkey out of the TV set, we have to focus on the battleground on which the media match is played. The more reality becomes a function of mass, personal, and networked devices, the more wars become media wars, even if they take place in a desert. The global war that we are now engaged in began with the 9/11 broadcasts and continued with guerrilla video; now, every day we receive videos from the Iraqi front shot by invaders,

militiamen and journalists. Each action in such a media war is designed beforehand to fit its spectacular consequences. Terrorists have learnt all the rules of spectacular conflict, while imperial propaganda, much more expert, has no qualms about playing with fakes and hoaxes (for instance the dossiers on weapons of mass destruction).

Bureaucratic propaganda wars are a thing of the past. New media have generated new forms of guerrilla combat, opening up a molecular front of bottom-up resistance. Video cameras among civilians, weblogs updated by independent journalists, smart-phones used by American soldiers in the Abu Ghraib prison: each represents an uncontrollable variable that can subvert the propaganda apparatus. Video imagery produced by television is now interlaced with the anarchic, self-organised infrastructure of digital networked media that has become a formidable means of distribution (evidenced by the capillary diffusion of the video of the beheading of Nick Berg). Today's propaganda is used to maintain a connective imagery rather than a collective spectacle, and the intelligence services set up simulacra of the truth based on networking technologies.

The Videoclash of Civilisations

Alongside the techno-conflict between horizontal and vertical media, two secular cultures of the image face each other on the international mediascape. The United States embodies the last stage of videocracy, an oligarchic technocracy based on hypertrophic advertising and infotainment, and the colonisation of worldwide imagery through Hollywood and CNN. Ideologies such as Nazism and Stalinism in the 20th century were intimately linked to the fetishism of the idea-image (as all of Western thought is heir to Platonic idealism). Islamic culture on the contrary is traditionally iconoclast: it is forbidden to represent images of God and the Prophet, and usually of any living creature whatsoever. Only Allah is *Al Mussawir*, 'He who gives rise to forms': imitating His gesture of creation is a sin (even if such a precept never appears in the Quran). Islam, unlike Christianity, has no sacred iconographic centre. In mosques, the *qiblah* is an empty niche. Its power comes not from the refusal of the image but from the refusal of its centralising role, developing in this way a material, anti-spectacular and horizontal cult.

Indeed, on Doomsday, painters are meant to suffer more than other sinners. Even if modernisation proceeds through television and cinema (that paradoxically did not receive the same negative critique as painting), iconoclasm remains active and breaks out against Western symbols, as happened in the case of the World Trade Centre. To strike at Western idolatry, pseudo-Islamic terrorism becomes videoclasm, preparing attacks designed for live broadcasting and using satellite channels as a resonant means for its propaganda. Al-Jazeera broadcasts images of executed Iraqi civilians, whilst Western mass media removes these bodies in favour of the military show. An asymmetrical imagery is developing between East and West, and it will be followed by an asymmetrical rage, that will break out with backlashes for generations to come. In such a clash between videocracy and videoclasm, a third actor, the global movement, tries to open a breach and develop therein an autonomous *videopoesis*. The making of an alternative imagery is not only based on self-organising independent media, but also on winning back the dimension of myth and the body. Videopoesis should speak – at the same time – to the belly and to the brain of the monkeys.

Global Video-Brain

In the West, minds and media were both awoken by the simple physical impact of live media images, not by the news of tortures at the Abu Ghraib prison or of Nick Berg's beheading. Television is the medium that taught the masses a Pavlovian reaction to images. It is also the medium that produced a globalised, collective consciousness (something more complex than the idea of public opinion). The proliferation of the media caused feelings to mutate into video, led to a becoming-video of the collective brain and collective narratives. The global video-brain functions through images, but individual brains think outside images. This is not about crafting a theory, but recognising the natural extension of our faculties. Electronic and economic developments move at too high a speed for the collective mind to have time to respond in speech; there is only time for reacting to visual stimuli. A *collective imagery* arises when a media infrastructure casts and repeats the same images in a million copies, producing a common space; a consensual hallucination around the same object (that afterwards becomes oral culture or movies).

In the case of television, such a serial communication of a million images is much more lethal, because it is instantaneous. On the other hand, the networked imagery works in an interactive and non-instantaneous way; this is why we call it connective imagery. Imagery is a collective broadcasting of the same image across different media. According to Goebbels, a lie repeated a million times becomes public discourse, part of everyday conversations, and then accepted truth. It is in collective imagery that media and desire meet, that the same repeated image modifies millions of bodies simultaneously and inscribes pleasure, hope and fear. Communication and desire, mediasphere and psychosphere, are the two axes that describe the war to the global mass, the ways by which war reaches out beyond itself to our own, distant bodies, and the ways image inscribes itself into flesh.

Animal Narrations

Why does reality exist only when framed by a powerful TV network? Why is the course of events affected by the evening news? Collective imagery is not affected by the video evolution of mass technologies only, but also by the natural instincts of human kind. As what Aristotle called a "political animal", the human being is inclined to set up collective narratives which represent the instinct of belonging to a kind. Let's call them *animal narratives*. For this reason television is a "natural" medium, because it responds to the need of creating one narrative for millions of people, a single animal narrative for entire nations, similar to what other narrative genres, such as myths, epics and religious scriptures, did and still do. Television represents, above all else, the primordial feeling of belonging to one Kind.

Each geopolitical area has its own video *macro-tractor* (CNN, BBC, etc.), which the rest of the media relate to. Besides the macro-tractors, there are *meta-*



attractors, featuring the role of critical consciousness against them, a function often held by the print media (*The Guardian*, for instance) as well as web media. Of course, the model is much more complex: the list could continue on and end with blogs, which we can define as *group micro-attractors*, the smallest in scale; but suffice it to say here that the audience and power of the main attractor are ensured by the natural animal instinct. This definition of mass media might seem strange, because they are no longer *push media* that communicate in unidirectional ways (one-to-many), but *pull media* that attract and group together, media in which we invest our desires (many-to-one). Paraphrasing Wilhelm Reich's remark about fascism, we can say that rather than the masses being brainwashed by the media establishment, the latter is sustained by the desire to belong.

Digital Anarchy: A Videophone vs. Empire

Traditional *media war* incorporates the Internet. The networked imagery (with television, internet, mobile phones and digital cameras) turns into a battleground: *personal media* such as digital cameras bring the cruelty of war directly into the living room, for the first time in history, at the speed of an Internet download and out of any governmental control. This networked imagery cannot be stopped, and neither can technological evolution. Absolute transparency is an inevitable fate for all of us. The videophone era seriously undermines privacy, as well as any kind of secrecy, including state secrecy. The outrage expressed about the scandal at Abu Ghraib by US Secretary of Defense, Donald Rumsfeld, in his testimony before the Senate Armed Services Committee is extremely grotesque: "We're functioning...with peacetime constraints, with legal requirements, in a wartime situation, in the Information Age, where people are running around with digital cameras and taking these unbelievable photographs and then passing them off, against the law, to the media, to our surprise, when they had – they had not even arrived in the Pentagon". A few days later, Rumsfeld prohibited American soldiers in Iraq from using any kind of camera or videophone. Rumsfeld himself was the 'victim' of the Internet broadcasting of a famous video that shows him politely shaking hands with Saddam Hussein in 1983.



New digital media seem to have created an unpredictable digital anarchy, where a videophone can fight against Empire. The images of torture at Abu Ghraib are the internal nemesis of a civilisation of machines that is spinning beyond the control of its creators and demiurges. As Baudrillard notes, the Empire of the Spectacle is now submitted to the hypertrophy of the Spectacle itself, to its own greed for images, to an autoerotic pornography. The infinitely repeatable character of digital technology allowed for the demise of the copyright culture through P2P networks, but also for the proliferation of digital spam and the white noise of the web. Videophones have created a networked megacamera, a super-light panopticon, a horizontal Big Brother. The White House was trapped in this web. Digital

repetition no longer delivers us to the game of mirrors of weak postmodern thought – to the image as self-referential simulacrum – but rather to an interlinked universe where videopoesis can connect the farthest points and cause fatal short circuits.

War Porn

Indeed, what came to light with the Abu Ghraib media scandal was not a casual short circuit, but the implosion into a deadly vortex of war, media, technology, body, desire. Philosophers, journalists and commentators from all sides rushed to deliver different perspectives for a new framework of analysis. The novelty of the images of Abu Ghraib and Nick Berg (whether fictional or not is not the point) consists in the fact that they forged a new narrative genre of collective imagery. For the first time, a snuff movie was projected onto the screen of global imagery; and Internet subcultures, used to such images, suddenly came out of the closet: *rotten.com* finally reached the masses. Rather than making sense of a traumatic experience, newspapers and weblogs worldwide are engaged in drawing out the political, cultural, social and aesthetic repercussions of a new genre of image that forces us to upgrade our immunity system and communicative strategies.

As Seymour Hersh noted, Rumsfeld provided the world with a good excuse to ignore the Geneva Convention from now on. But he lowered the level of tolerance of the *visible* as well, forcing us to accept cohabitation with the Horror. English-speaking journalism defines as *war porn* the popular tabloids and government talk-shows fascination with super-sized weapons and glinting uniforms, hi-tech tanks and guided missiles, a panoply of images that some define as the aseptic substitute of pornography proper. Ridley Scott's *Black Hawk Down*, for instance, is war hardcore. The cover of *Time*, showing "the American soldier" as Person of the Year, was considered pure war porn by Adbusters: "Three American Soldiers standing proudly, half-smiles playing on their faces, rifles cradled in their arms".

War porn is also a sub-genre of *trash porn* – still relatively unknown, coming from the dark side of the Net. It simulates violent sex scenes between soldiers or the rape of civilians (pseudo-amateur movies usually shot in Eastern Europe and often passed off as real). War porn is freed from its status of Net subculture; its morbid fetishisation of war imagery becomes a political weapon, serving the voyeurism and the nightmares of the masses. Is it a coincidence that war porn emerges from the Iraqi marshes right at this time?

Digital-Body Rejection

The metaphorical association of war with sex that underpins much Anglo-American journalism points to something deeper that was never before made so explicit: a libido that, alienated by wealth, awaits war to give free reign to its ancestral instincts. War is as old as the human species: natural aggressiveness is historically embodied in collective and institutional forms, but several layers of technology have separated today's war from its animal substratum. We needed Abu Ghraib pictures to bring to the surface the obscure background of animal energy that lies underneath a democratic facade. Did this historic resurfacing of the repressed occur today simply because of mass dissemination from digital cameras and videophones? Or is there a deeper connection between the body and technology that is bound to prove to be deadly sooner or later?

As the mass media are filled with tragic and morbid news, the digital media, by contrast, seem to lack what Alain Badiou calls the “passion of the real”. Instead, new personal media connect to the psychopathology of everyday living; we might say that they create a new *format* for it and a new genre of communication, but above all, they establish a relation with the body that television never had. *War porn* seems to signal the rejection of technology by subconscious forces that express themselves through the same medium that represses them: this rejection might point to the ongoing adaptation of the body to the digital. The proliferation of digital prostheses is not as rational, aseptic and immaterial as it seems. The electronic media seemed to have introduced technological rationality and coolness into human relations, yet the shadows of the digital increasingly re-surface. There comes a point when technology physically unbridles its opposite. The Internet is the best example: behind the surface of the immaterial and disembodied technology lies a traffic of porn content that takes up half of its daily bandwidth.

At the same time, the Orwellian proliferation of video cameras, far from producing an Apollonian world of transparency, generates instead domains ridden with violence, blood and sex. The next *Big Brother* will resemble the movie *Battle Royal* (2000), in which Takeshi Kitano places a class of students on an island and forces them into a game of death where the winner is the last one to survive. We have always considered the media to be prostheses of human rationality, and technology the new embodiment of the *logos*. But new media also embody the dark side of the Western world. In war porn we find this Siamese-twin body comprised of libido and media, desire and image. Two radical movements that are the same movement: war reinvests the alienated libido, personal media are filled by the desperate libido they alienated. The subconscious cannot lie; skeletons sooner or later start knocking on closet doors.

Imagery Reset

War results from the inability to dream that comes after all libidinal energy has been depleted by an outflow of prostheses, commodities, images. War violence allows us to believe again in images of everyday life and images of the body – as well as advertising images. War is an *imagery reset*. War brings the attention and excitement for advertising back to a zero degree, where advertising can start afresh. War saves advertising from the final annihilation of the orgasm, from the inflation of the value currency towards utter indifference. War brings the *new economy* back to the *old economy*, to traditional, consolidated commodities; it gets rid of immaterial commodities that risk dissolving the economy into a big potlatch and into the anti-economy of the gift that the Internet represents. War has the ‘positive’ effect of redelivering us to ‘radical’ thought, to the political responsibility of representation, against the interpretative flights of the “weak thought” of semiotics and postmodernism.

Pornographic images of war, as stated earlier, are the reflux of the animal instinct that our economic and social structure has repressed. But rather than a *psychoanalysis* that simply justifies new customs and fashions, we seek to carry out a ‘physical’ analysis of libidinal energy. In wartime we see images re-emerge with a new autonomous and autopoietic force. There are different kinds of images: war porn images are not

representations, they speak directly to the body, they are a cruel, lucid and affirmative force, like Artaud's theatre, they are re-magnetised images that do not provoke incredulity. They are neural icons running on the spinal motorways, as J.G. Ballard might put it.

Radical images redeliver the body to us; radical images are bodies, not simulacra. Their effect is first physical, then cognitive. Deleuze: "The movement-image and the flux-matter are rigorously one and the same thing". The damned tradition of the image is back, with the psychic and contagious power of Artaud's theatre, a machinic image that joins together the material and the immaterial, body and dream. Ballard: "Fiction is a branch of neurology". In a libidinal explosion, war porn liberates the animal energies of Western society like a bomb. Such energies can be expressed through fascist reactions as well as liberating revolts. Radical images are images that are still capable of being *political*, in the strong sense of the word, and they can have an impact on the masses that is simultaneously political, aesthetic and carnal.

Videopoesis: The Body Image

How can we make an intelligent use of television? The first intelligent reaction is to switch it off. Activist collectives such as Adbusters.org (Canada) and Esterni.org (Italy) organise yearly TV strikes, promoting a day or a week's abstinence from television. Can Western society think without television? It cannot. Even if we were to stop watching TV because of a worldwide blackout or a nuclear war, our imagery, hopes and fears would carry on thinking within a televised brainframe. This is not about addiction; the video is simply our primary collective language, just as once upon a time there were religion, mythology, epic and literature. We can repress the ritual (watching TV) but we cannot repress the myth. We can switch television off, but not our imagery.

For this reason, the idea of an autonomous videopoesis is not about alternative information but about new mythical devices for the collective imagery. In its search for the Perfect Image – the image that is capable of stopping the War, subverting Empire and starting the Revolution – the global movement has theorised and practiced *video activism* (from Indymedia to street TVs) and *mythopoesis* (from Luther Blissett to San Precario). However, it never tried to merge those strategies into a *videopoesis* capable of challenging bin Laden, Bush, Hollywood and the CNN at the level of myth, a videopoesis for new icons and formats: for instance, the video sequences in William Gibson's novel *Pattern Recognition* that are distributed on the Net. Videopoesis does not mean the proliferation of cameras in the hands of activists, but the creation of video narratives, a new design of genres and formats rather than alternative information. The challenge lies in the body image. Through videopoesis we have to welcome the repressed desires of the global movement and open the question of the body, buried under a polite rhetoric of Third Worldism and residual Christianity. While Western imagery is being filled with the dismembered bodies of heroes, the global movement is still uneasy about its desires.

War porn issues a challenge to the movement: not to try and equal the horror but to produce images that target and awaken the sleepy body. Throughout its history, television has always produced macro-bodies: mythical, giant bodies magnified by media power, bodies as cumbersome as ancient gods. The television regime creates monsters,

hypertrophic bodies, images of the President of United States, Al Qaeda phantoms and movie stars – while the Net and personal media try to dismember them and produce new bodies out of their carcasses. Videopoesis must eliminate the unconscious self-censorship that we find in the most liberal and radical sections of society, the self-censorship that conceals the monkey's grin with crypto-Christian imagery, hides the grin of the monkey. Once crypto-religious self-censorship is eliminated, videopoesis can begin its creative reassembly of dismembered bodies.

Warpunk: "I like to watch...!"

Watching cruel images is good for you. What the Western world needs is to stare at its own shadows. In Ballard's *The Atrocity Exhibition*, war news and violent scenes improve adults' sexual activity and the mental condition of psychotic children. Warlords are filling the collective imagery with brute force. Why leave them to do it in peace? If in the real world we are always victims of the blackmail of non-violence, in the realm of imagery and imagination we can feed our wet dreams at last. If American imagery permits the drift towards fascism and offers an apology and justification for any kind of violence, our response can only be one of resistance and action, i.e., *warpunk*.

Warpunk is not a delirious subculture that aesthetically embraces weapons. On the contrary, it uses radical images as weapons of legitimate defence. To paraphrase a Japanese saying, *warpunk* steals from war and empire the art of embellishing death. *Warpunk* uses *warporn* in a tragic way to overcome the self-censorship of Western counter-culture. Above all, we are afraid of the hubris of the American warlords, of the way they face any opposition, stepping over all written and unwritten rules. What is the point of confronting this threat with the imagery of the victim, that holds up to the sky hands painted in white? Victimhood is a bad adviser: it is the definitive validation of fascism, the sheep's bleat that makes the wolf even more indifferent. The global movement is quite a good example of "weak thought" and reactive culture. Perhaps this is because, unlike warlords and terrorists, it never developed a way of thinking about the tragic; about war, violence and death.

In Chris Korda's video *I Like to Watch* (2002; download available at www.churchofeuthanasia.org), porn scenes of oral sex and masturbation are combined with those of football and baseball matches and with well-known 9/11 images. The phallic imagery reaches the climax: the Pentagon is hit by an ejaculation, multiple erections are turned into the 9/11 New York skyline, the Twin Towers themselves become the object of an architectural fellatio. This video is the projection of the lowest instincts of American society, of the common ground that binds spectacle, war, pornography and sport. It is an orgy of images that reveals to the West its real self. *Warpunk* is a squadron of B52s throwing libidinal bombs and radical images into the heart of the Western imagery.

Edited by Arianna Bove and Erik Empson.

'First, Do No Harm...'¹

Ensuring *Humanitarian* Military Interventions

BIKRAM JEET BATRA

“When I use a word”, Humpty Dumpty said, in rather a scornful tone, “it means just what I choose it to mean, neither more nor less”. Humpty Dumpty may as well be referring to the term ‘humanitarian intervention’ rather than ‘glory’ as he was in *Through the Looking Glass*, Lewis Carroll’s timeless work. The “splendidly fuzzy” ‘humanitarian intervention’ has had as many meanings as authors, lending itself for easy use and misuse (Whitman, 1994).

With increasing emphasis on political correctness, to define the intervention as ‘humanitarian’ seems to provide the necessary moral righteousness, development jargon and the language of rights, access to the fringes of international law, and, eventually favourable public opinion. While hegemony has an option to ignore international law and public opinion, their unilateral actions can become less controversial when there is support in law or favourable opinion. Increasingly, wars are being fought for ‘humanitarian’ concerns rather than on the traditional ground of ‘self-defence’. Even the Bush/Blair-led ‘coalition of the willing’ could not risk excluding a reference to the right to liberty and freedom of the Iraqi people in its justification for overthrowing the Iraqi regime. This sort of use and abuse of the language of humanitarianism and the subversion of rights is an example of what Baxi calls the politics of human rights.²

From a human rights perspective, the use of military force in interventions on ‘humanitarian’ grounds continues to pose a dilemma. It is inconceivable that the mass murder of citizens by states be treated as a domestic issue. Such veiling condones despotic regimes’ abuse of authority, and sacrifices the rights of peoples on the altar of state sovereignty. Therefore, in cases where a state is guilty of gross violations, an intervention to protect the citizens may be acceptable. Yet, creating such a ‘right’ of intervention ignores the possibility and probability of abuse. In practice, the ‘right’ would only be exercised by nations with expanded military capability. The ‘right’ would thus be available only to hegemony – global and regional, giving them a *de facto* license to police weaker ‘Target States’.³

Trapped within this dialectic in the context of the intervention in Kosovo, the jurist Richard Falk wrote that it is “jurisprudentially problematic *both* to regard ‘ethnic cleansing’ as intolerable to the international community and to condemn the form and substance of

the NATO interventionary response designed to prevent it". He further went on to refer to his defence of the double condemnation as posing the "essential normative challenge for the future: genocidal behaviour cannot be shielded by claims of sovereignty, but neither can these claims be overridden by unauthorised uses of force delivered in an excessive and inappropriate manner" (Falk 1999:848).

This essay seeks to examine and interrogate the myriad meanings, understandings and interpretations of 'humanitarian' within the context of 'humanitarian interventions'. The argument suggests that any solution to the above jurisprudential problem lies in a limited doctrine of humanitarian intervention. Such doctrine would set in place a process of sanctioning interventions on the basis of a clearly understood criterion.⁴

Any understanding of a doctrine of humanitarian intervention would thus be limited to a notion of exceptional necessity, rather than a right to intervene. Besides *being humanitarian*, these interventions would necessarily have to *be seen to be humanitarian* and accountable. The development of a limited intervention is also crucial to offset any unilateral right to intervention (based on state practice) in the post-Kosovo world. Although this understanding of a limited doctrine foresees largely regional forces or those involving a group of states, an intervention by a single state would be permissible as a last resort but with express sanction of the UN General Assembly.

The Changing Limits of Humanitarian Intervention

The term 'humanitarian intervention' has been used widely to mean different things. This confusion is not always unintentional. A loose concept of 'humanitarian intervention' often acts as initial justification and has assisted many 'adventures' by states. Thus, 'regime change' and intervening in failed states has been sometimes included within a conception of humanitarian intervention. Some authors have gone so far as to justify a military coup as an "internal humanitarian intervention" (Reyhan, 1997).

Such a setting breeds pessimism among other authors. "The term humanitarian intervention has gained great currency in recent years, yet a common definition is neither easy nor succinctly achieved" (Murphy, 1996: 8). Others have argued that a usable definition would be "extremely difficult to formulate and virtually impossible to apply rigorously" (Franck and Rodley, 1973: 305). A few are more cynical and suggest that ambiguities and obscurities in the exact meanings of the terms involved, 'humanitarian' and 'intervention', render any attempt to define humanitarian intervention useless. (Bazyler, 1987).

In his seminal work, Winfield (1922:23) notes that "intervention may be anything from a speech of Lord Palmerston's in the House of Commons to the partition of Poland". In the conservative world of international lawyers, however, intervention means dictatorial interference in the domestic or foreign affairs of another state, that impairs its independence. Most authors thus use the term 'intervention' in a specific sense: i.e., the use of military force against the territorial sovereignty of a state, however temporarily, without the consent of that state (Forbes and Hoffman, 1993).

Others, predominantly within political science, preferring a wider understanding of intervention, understand humanitarian intervention to include non-military action as well. A

good illustration is Harriss' *The Politics of Humanitarian Intervention* (1995), which uses the term in both contexts – as assistance and as intervention. Mario Bettati's *The Right to Humanitarian Intervention or the Right to Free Access to Victims?* (1992) deals almost exclusively with humanitarian-medical assistance. Weiss and Campbell (1999:451) refer to both the no-fly zones in Iraq and flood relief in Bangladesh as military humanitarianism – another term to add to the muddled list. Governments too are prone to this – a report by the US House of Representatives on 'humanitarian intervention' deals almost completely with issues of humanitarian aid and relief, but also uses the term to refer to use of force (US House of Representatives Select Committee on Hunger, 1992).

However, Pieterse (1998:4) correctly notes that the basic distinction between humanitarian assistance and humanitarian intervention is the use of coercion and armed force in humanitarian interventions. Although the use of other enforcement (armed police, etc.) measures during humanitarian assistance would blur the line, conceptually there remain clear differences between humanitarian assistance and humanitarian intervention. Other definitions have ranged from including the threat of use of force (Brownlie, 1974:217) to including mass Gandhian non-violent intervention (Parekh, 1998:145-46).

Humanitarian intervention, used in the generic sense, also includes UN, regional and unilateral interventions.⁵ However, Malanczuk (1993) points out that peacekeeping operations, UN or otherwise, can be differentiated from humanitarian intervention, as they are almost entirely with the agreement of the respective parties involved in the conflict. Similarly, intervention on request of, or with consent from, the lawful government of a state is not relevant to a study of humanitarian intervention, as such intervention would be deemed valid and compatible with state sovereignty. This would be closer to military assistance than humanitarian intervention.

The Threshold for Intervention

Questions have also been raised about whether there is a transnational and transcultural understanding of the term 'humanitarian'. Parekh (1998:146) notes that since what is humanitarian is culturally conditioned, there can be no neutral definition of humanitarian intervention. To complement this, Thomas and Reader (1998:125) illustrate the different standards of humanitarian intervention in a discussion on the accompanying Covenants to the Universal Declaration of Human Rights. Finnemore (1996) too charts the different meanings the word humanitarian has taken in different historical contexts. However, cultural objections can be limited by retaining a high threshold for any intervention. Further, some dimensions of universal human rights, e.g., protection against genocide, are now regarded as customary international law, and thus not threatened by cultural exceptions.

Tyagi (1995) argues that traditional humanitarian intervention meant the use of collective or individual force to protect and rescue own nationals abroad (e.g., the Israeli raid at Entebbe in Uganda). The second generation of humanitarian interventions saw claims of protection of minorities and enforcement of human rights (Vietnamese in Kampuchea, Indian in East Pakistan). Intervening in cases of 'failed states' incapable of fulfilling their responsibilities produced the third generation (recent interventions in Congo, etc). Fourth generation humanitarian intervention, Tyagi notes, is anticipatory, to prevent a humanitarian

crisis (the present situation in Zimbabwe demands an intervention).

Some scholars accept Tyagi's understanding of traditional humanitarian intervention.⁶ Others, however, dismiss it in their understanding of the widely accepted and classical definition of humanitarian intervention as "coercive action by one or more States involving the use of armed force in another State without the consent of their authorities, and with the purpose of preventing widespread suffering or death among the inhabitants" (Roberts, 2000:5).

In a 1999 report commissioned by the Danish government, the Danish Institute of International Affairs replaced "wide-spread suffering or death" with "preventing or putting to a halt gross and massive violations of human rights or international humanitarian law" (11). Klintworth (1989) notes that fundamental human rights ought to be threatened and the situation should be one of extreme deprivation that shocks the conscience with either sustained large-scale loss of life or imminent risk of a continuation thereof. An isolated incident cannot be justification for armed intervention, which should be a last resort after other peaceful options have been tried. Authors such as Guicherd (1999) have also argued that gross violations of humanitarian law can be grounds for a humanitarian intervention in the same way as gross violations of human rights.

Halberstam (1995:1) adds that the state in whose territory the intervention is taking place "must be unwilling or unable to protect" those for whom the intervention is taking place. Greenwood (1993) elaborates this point by clarifying that in cases where a state slides into anarchy, an intervention to prevent violations would be considered a humanitarian intervention since consent is no longer an issue.

Therefore, while there seems to be general acceptance that it is only gross or massive or large-scale violations of human rights that can justify intervention, there is no clear definition as to what constitutes "Gross Violations" (Pease and Forsythe, 1993:208). While Krylov (1995: 391) includes "creating conditions of intolerable suffering for large numbers" as a justification for intervention, Roberts (2000) points out that any criteria should not be based on numbers alone. Halberstam (1995:1) widens it further by referring to "grave injury". Other variations include Lauterpacht's "shock the conscience of mankind", Lillich's "substantial deprivation of human rights", and Murphy's "widespread deprivations of internationally recognised human rights", etc.

Further, opinion is divided on the issue of what rights would amount to fundamental human rights. While most tend to agree with Fonteyne (1974) that the right to life and freedom of torture should be regarded as fundamental rights, Murphy (1999) goes further and even foresees humanitarian intervention in cases of extreme environmental degradation. This lack of consensus could be overcome by relying upon the definitions of 'genocide', 'war crimes' and 'crimes against humanity' that have been adopted by the statute of the International Criminal Court (ICC).

The inconsistency in the past practice of interventions is glaring. This is well epitomised by the 1992 intervention in Somalia and the lack of intervention in Rwanda in 1994. The rhetoric of Somalia (we *must* intervene!) was lost in Rwanda, where despite the well-documented genocide, the world leaders merely made polite noises (umm...maybe someone *should* do something...). If there is a clear message from the last two decades, it is that there is no consensus on when a state should act militarily on grounds of

humanitarian concerns.

Given that national and other interests often play a larger role than humanitarian concern in the decision, or not, to intervene, the question of sufficient grounds for intervention becomes crucial. An agreement between states on when the threshold for intervention is reached is unlikely, but increasing clarity on 'gross violations' and 'crimes against humanity' in international criminal law bodes well for the future.⁷

Ensuring 'Clean Hands'

Crossing the threshold for intervention should not be the sole requirement for an intervention to take place. It is imperative that the intervening state act "with clean hands"; this must translate into humanitarian aims and objectives, humanitarian modes and means of intervention, as also an appropriate conclusion or result.

a) Exhaustion of All Peaceful Means

From a humanitarian and human rights perspective, military interventions must only be a last resort. As obvious as this may sound, in both Iraq and Kosovo serious questions can be raised as to the completion of negotiations and exhaustion of all peaceful means before the use of force. A procedure that works within the UN system, however, will ensure that such concerns would be dealt with – peaceful means as required by the UN Charter would have to be exhausted prior to use of force. The case of East Timor, when Indonesia was ultimately pressurised into giving its consent, is an example of the success of such means. Charney (1999) also suggests that a period of notice be given to the target state.

b) Placing of Evidence

The issue of determination of violations is also important, and would be an inbuilt procedure that requires international backing. The role of third party states and international organisations cannot be underestimated here. Roberts (2000) notes that allowing non-state parties to give testimony would assist in arriving at a conclusion, as would sending delegations to investigate particular cases, as in East Timor and Sierra Leone. Charney (1999) argues that such evidence should be publicly available. Nafziger (1999) suggests that UN bodies, including the UN Commission on Human Rights and its various mechanisms, can play a supplementary role. At the UN, the target state also has the opportunity to rebut the evidence and show why the intervention would not be required. In the case of Darfur, Sudan rebutted the evidence and appears to have succeeded in convincing a number of fence-sitting states that the intervention was not necessary.⁸

An important feature of the evidence before the international community is that a direct link must be made between the authorities in the target state and the violations in question. Thus, it has to be proved that the authorities are either guilty of committing the acts, unwilling to prevent the acts, or both. Straightforward in theory, Roberts (2000) notes that it has been far more difficult in practice, particularly in the 1990s. Robertson (1999) suggests using indictments by the International Criminal Court as indicators of this direct link. Such a process would indeed make the process equitable and give it judicial sanction. Given the strong resistance from a few powerful States to the ICC, this, however, is no foolproof solution.

c) Disinterested Interveners

While intervening states are obviously those who are able and willing, as far as possible the intervention should take place as a UN enforcement action involving a number of states. Where the intervention cannot be carried out as a UN action, it should preferably be carried out by a regional organisation or sub-regional organisation with the sanction of the UN. Operations like the one in East Timor are also welcome where one state (Australia) is willing to lead the operation but is not acting alone. Single states acting should however be a last resort in cases where there are no other willing parties.

The above-mentioned procedure already works for most UN operations. In the case of Rwanda, France (despite the vast colonial baggage) was sanctioned to intervene only as a last resort when no other states were willing to do so. Similarly in the case of East Timor – in the absence of any other state displaying the will, Australia led the military force that intervened, despite its well-known geo-political interest in Indonesia.

d) Clear Mandate

The mandate of humanitarian interventions has always been a difficult issue. Roberts uses the analogy of the need to provide both first aid and long-term treatment to medical cases (Roberts, 1993b:10). He notes that combining both can be difficult in international relations. Clarke and Herbst (1997) use the intervention in Somalia to make the same argument. There is, however, disagreement over whether 'nation building' interventions are feasible or even desired. Though such a decision would need to be based on particular facts and the willingness and commitment of the intervening states, there needs to be a clear mandate provided to and by the intervening state.

Ensuring Humanitarianism in the Intervention

The intervention in Kosovo showed that questions regarding the means, and the actual intervention itself, are crucial and demand attention. Jones (1995) observes the paradox that 'humanitarian interventions' are so titled because of their humanitarian motives, but their means and outcomes are often not so. While this section does not privilege humanitarian outcomes and means over motives, it argues that all three – motive, means and outcome – need to be humanitarian for an intervention to be classified as a humanitarian intervention. This section focuses on the manner in which the intervention is carried out while the next section discusses appropriate outcomes.

a) Use of Proportionate Force

For a humanitarian intervention to achieve its objectives, the means employed by it must be proportionate to the objective. The use of tactics such as high altitude aerial bombing is questionable in a humanitarian intervention. Although the use of military strategy seeking to limit own casualties is not in doubt in other conflicts, when a force is seeking to attain a humanitarian outcome, large-scale casualties in the target state are not in consonance with the humanitarian motives.

Furthermore, the laws relating to armed conflict should also bind all such interventions. In this regard, the use of weapons such as depleted uranium shells and cluster bombs, etc., is questionable. The International Committee of the Red Cross (ICRC) has, in an internal legal note, discussed the relationship between humanitarian intervention and international

humanitarian law (IHL). While humanitarian intervention is largely seen as a *jus ad bellum* question (in what situations can force be used) it must also respect IHL as *jus in bello* (the law that applies during conflict irrespective of the nature of the conflict) (Ryniker, 2001:30). For the retention of humanitarianism in spirit rather than in form and title alone, it is crucial for the intervening state to respect the laws of armed conflict and devise military strategy consistent with IHL.

b) Fixed and Limited Duration

Unlike the Indian intervention in East Pakistan and the Tanzanian intervention in Uganda, where the forces withdrew almost immediately, the Vietnamese intervention was criticised since its forces remained in Kampuchea for a decade. The post-1991 Allied 'no-fly zone' in northern and southern Iraq was also viewed with scepticism, because it continued for over a decade. However, the issue of duration is also contested. The French intervention in Rwanda was restricted to two months, and there was huge human cost for their compliance with the mandate since the French withdrawal led to a large refugee flow (Murphy, 1996). Klintonworth (1989) argues that in the case of Kampuchea as well, there was no doubt that had the Vietnamese returned, the Khmer Rouge would have re-established control. Similar claims are also made by the US and UK with regard to the interventions in Iraq, supposedly in the interest of protecting the Kurdish and Shiite population.

To overcome this hurdle, it is recommended that in the first instance, interventions be sanctioned for a limited period of time and renewed by the UN for further extensions. This would also be practical, and remove the problem of the 'reverse veto'. Chesterman (2001) shows how under the current system, unless a resolution terminating a previous mission is adopted, the mission continues with the same mandate and function. However, as in the case of the UN Military Observer Group in India and Pakistan, the task (of supervising the ceasefire after the war in 1965) is now redundant. The duration of the intervention would be directly linked to the mandate of the intervening forces.

Appropriate and Humanitarian Results

a) Change in Political Structures

As the Vietnamese intervention shows, the duration is also linked to the intended role and mandate of the intervening force. Murphy (1996) notes that though in theory a humanitarian intervention does not favour one group in a civil war over another or alter the political structure of a state, practice is very different and a regime change is an almost inevitable effect. While interventions cannot be sanctioned solely for the purpose of a 'regime change' and must fulfil the other requirements prior to an intervention, involvement in long term 'solutions' too is ethically questionable, and puppet regimes remain a threat. It is suggested that a case-to-case analysis is the best solution with regard such an issue.

The evaluation of a military intervention must thus use a number of indicators – whether the intervention achieved its stated and mandated objective; the extent of 'collateral damage' and loss; civilian casualties and destruction; the role of the intervening state in relation to the target state after the intervention, etc.

b) Accountability of the Intervening States

States that seek to intervene on humanitarian grounds need to be held responsible for

their action. However there remains little accountability where interventions take place outside UN control or involvement. Under the system followed by the UN, even if the states involved were in control of their own soldiers, they would be required to report regularly to the UN. Thus there would be a system of accountability (Fonteyne, 1974).

Charney (1999) suggests, valuably, that states participating in the intervention must consent both to suit in the International Court of Justice (ICJ) and the International Criminal Court (ICC) by any directly injured state for violations committed in the course of the humanitarian intervention. The infamous images of Abu Ghraib have brought this issue back into the limelight. It is however questionable whether such criteria would be agreed to, given that the US, Russia and China and various other states oppose any such jurisdiction before the ICC.

A Sobering Conclusion

This essay aimed to deconstruct 'humanitarian intervention' and its two conceptual components: 'humanitarian' and 'intervention'. In doing so it looked at what are the key factors and elements that would make an intervention 'humanitarian'.

The power given to the international community to determine when to act is not infallible. Even though it is hoped that the international community would act on clear criteria for intervention, *realpolitik* makes it unlikely that interventions will take place in all cases where they should. Greater involvement of the UN and increased stress on humanitarian means and outcomes, along with humanitarian motives, could lead to more scrutiny of interventions, thereby limiting abuse. However, even these improvements will not ensure that an intervention takes place when it is urgently required.

Further challenges await us. International organisations like Amnesty International and Human Rights Watch are gradually moving from a 'no-position' stand on humanitarian interventions to a situation where they often condone, support or even call for military intervention. Given the almost certain North-South divide on the issue, it's time for the global South to develop its own rights-based perspective and position on humanitarian intervention.

Humpty Dumpty would be proud.

I would like to acknowledge the suggestions made by Upendra Baxi and Sammy Adelman, amongst others at the University of Warwick Law School, where most of these strands of thought were developed.

NOTES

1. *Primum non nocere* – the general ethic of the Hippocratic Oath for physicians. Attributed to the Roman physician Galen.
2. As opposed to the politics *for* human rights that may reflect actual and consistent humanitarian concerns (Baxi, 2002).
3. The term 'target state' as distinguished from the 'intervening states[s]'. Murphy notes that it is an unfortunate term "within the context of humanitarian intervention since the objective of the intervention is not to attack or subjugate the will of a State, but, rather, to assist its nationals" (Murphy, 1996: 11-12).
4. Notions of interventions on grounds of human rights must also be understood within the use of force in

international relations. The practice of use of force re-interprets, stretches and even completely ignores the norms and law of use of force if the state is powerful enough to do so. In the past decade, besides the second Iraq war and the bombing of Afghanistan, the US also used air strikes against Kosovo, Sudan, Afghanistan and Iraq. The massive firepower and single-minded determination of the US and its allies in its destruction of Afghanistan in 2001 and Iraq in 2003, using and ignoring international law to suit their convenience in their pursuit for a 'better and safer world', provides one view, while the genocide in Rwanda and the present situation in Darfur complete the picture, reflecting the gravity of the task ahead.

5. Unilateral intervention may include intervention by more one country since its dominant meaning is an intervention without sanction of the UN rather than that conducted only by one nation (Greenwood, 1993:34).
6. Verwey, however, does not refer to nationality of the persons being protected in determining whether the action is a humanitarian intervention or not, thus bringing interventions to rescue own nationals as within the sphere of humanitarian intervention (Verwey, 1998). Teson argues similarly that there is no reason why protection of nationals of intervening states should be, by definition, less humanitarian than action undertaken to protect the nationals of the target state. He defines humanitarian intervention as "the proportionate transboundary help, including forcible help, provided by governments to individuals in another State who are being denied basic human rights and who themselves would be rationally willing to revolt against their oppressive government" (Teson, 1988:5). However, the right to intervene to rescue own nationals has often been argued by some states, including the US and Israel, to be an inherent extension of the right to self-defence, and is not generally seen to be included within humanitarian intervention.
7. However, concerns remain regarding the preventive nature of humanitarian intervention being blunted if there cannot be a pre-emptive intervention (Roberts, 2000). This view is supported by others, including the Danish Institute of International Affairs, While such a concern is valid, there must be sufficient evidence, and not mere speculation, for an intervention to have a valid basis.
8. A more cynical reading of the Darfur situation might suggest Sudan has been given too much credit for the lack of intervention. Perhaps it is Darfur's lack of geo-political importance and/or the lack of natural resources and contribution to the world economy that led to the lack of intervention.

REFERENCES

- Abiew, Francis Kofi. *The Evolution of the Doctrine and Practice of Humanitarian Intervention* (Kluwer Law International, 1999, The Hague).
- Baxi, Upendra. *The Future of Human Rights* (Oxford University Press, 2003, New Delhi).
- Bazyler, Michael. "Reexamining the Doctrine of Humanitarian Intervention in Light of Atrocities in Kampuchea and Ethiopia". In *Stanford Journal of International Law* 23: pp 547-604 (1987).
- Brownlie, Ian. "Humanitarian Intervention". In John N. Moore (ed.), *Law and Civil War in the Modern World* (Johns Hopkins University Press, 1974, Baltimore).
- Charney, Jonathan I. "Anticipatory Humanitarian Intervention in Kosovo". In *American Journal of International Law* 93 (4): pp. 834-41 (1999).
- Chesterman, Simon. *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford University Press, 2001, Oxford).
- Clarke, Walter and Jeffrey Herbst. "Somalia and the Future of Humanitarian Intervention". In Clarke and Herbst (eds.), *Learning from Somalia: The Lessons of Armed Humanitarian Intervention* (Westview Press, 1997,

- Boulder) pp. 39-253.
- Danish Institute of International Affairs. *Humanitarian Intervention: Legal and Political Aspects* (1999, Copenhagen).
- Falk, Richard. "Kosovo, World Order and the Future of International Law". In *American Journal of International Law* 93 (4), pp. 847-57 (1999).
- Finnemore, Martha. "Constructing the Norms of Humanitarian Intervention". In Peter J. Katzenstein (ed.), *The Culture of National Security: Norms and Identity in World Politics* (Columbia University Press, 1996, New York) pp. 153-185.
- Fonteyne, Jean-Pierre L. "The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity under the United Nations Charter". In *California Western International Law Journal* 4, pp. 203-370 (1974).
- Forbes, Ian and Mark Hoffman. *Political Theory, International Relations and the Ethics of Intervention* (Macmillan, 1993, London).
- Franck, Thomas M. and Nigel S. Rodman. "After Bangladesh: The Law of Humanitarian Intervention by Military Force". In *American Journal of International Law* 67 (2), pp. 275-305 (1973).
- Greenwood, Christopher. "Is There a Right to Humanitarian Intervention?", *The World Today* 49 (2), pp. 34-40 (1993).
- Guicherd, Catherine. "International Law and the War in Kosovo". In *Survival* 41 (2), pp. 19-34 (1999).
- Halberstam, Malvina. "The Legality of Humanitarian Intervention". In *Cardozo Journal of International and Comparative Law* 3, pp. 1-8 (1995).
- Jones, Bruce D. "Intervention Without Borders: Humanitarian Intervention in Rwanda 1990-1994". In *Millennium: Journal of International Studies* 24 (2), pp. 225-229 (1995).
- Klintonworth, Gary. *Vietnam's Intervention in Cambodia in International Law* (Australian Government Publishing Service Press, 1989, Canberra).
- Krylov, Nikolai. "Humanitarian Intervention: Pros and Cons". In *Loyola of Los Angeles International and Comparative Law Journal* 17, pp. 365-407 (1995).
- Malanczuk, Peter. *Humanitarian Intervention and the Legitimacy of Force* (Het Spinhuis, 1993, Amsterdam).
- Murphy, Sean D. *Humanitarian Intervention: The United Nations in an Evolving World Order* (University of Pennsylvania Press, 1996, Philadelphia).
- Murphy, Michael K. "Achieving Economic Security with Swords as Ploughshares: The Modern Use of Force to Combat Environmental Degradation". In *Virginia Journal of International Law* 39, pp. 1181-1218 (1999).
- Nafziger, James A.R. "Self Determination and Humanitarian Intervention in a Community of Power". In *Denver Journal of International Law and Policy* 20, pp. 9-39 (1999).
- Parekh, Bhiku. "Rethinking Humanitarian Intervention". In Jan Nederveen Pieterse (ed.), *World Orders in the Making: Humanitarian Intervention and Beyond* (Macmillan, 1998, London) pp. 138-69.
- Pease, Kelly and David Forsythe. "Human Rights, Humanitarian Intervention, and World Politics". In *Human Rights Quarterly* 15, pp. 290-314 (1993).
- Pieterse, Nederveen Jan. "Humanitarian Intervention and Beyond". In J. Pieterse (ed.), *World Orders in the Making: Humanitarian Intervention and Beyond* (Introduction), (Macmillan, 1998, London) pp. 1-23.
- Reyhan, Patricia Y. "Genocidal Violence in Burundi: Should International Law Prohibit Domestic Humanitarian Intervention?" In *Albany Law Review* 60, pp. 771-99 (1997).
- Roberts, Adam. "The Road to Hell ... A Critique of Humanitarian Intervention". In *Harvard International Review* 16 (1), pp. 10-13 (1993).

- Roberts, Adam.. "The So-Called o-Called 'Right' to Humanitarian Intervention". In *Yearbook of International Humanitarian Law* 3, pp. 3-51 (2000).
- Robertson, Geoffrey. *Crimes against Humanity: The Struggle for Global Justice* (Allen Lane, 1999, London).
- Ryniker, Anne. "The ICRC's Position on "Humanitarian Intervention". In *International Review of the Red Cross* 83 (842), pp. 527-32 (2001).
- US House of Representatives Select Committee on Hunger. "Humanitarian Intervention: A Review of Theory and Practice". 102nd Cong. Serial No. 102-37 (1992).
- Teson, Fernando R. *Humanitarian Intervention: An Inquiry into Law and Morality* (Transnational Publishers, 1988, New York).
- Tyagi, Yogesh K. "The Concept of Humanitarian Intervention Revisited", *Michigan Journal of International Law* 16, pp. 883-910 (1995).
- Verwey, Will D. "Humanitarian Intervention in the 1990s and Beyond: An International Law Perspective". In Jan Pieterse (ed.), *World Orders in the Making: Humanitarian Intervention and Beyond* (Macmillan, 1998, London) pp. 180-210.
- Wedgwood, Ruth. "NATO's Campaign in Yugoslavia". In *American Journal of International Law* 93 (4), pp. 828-34 (1999).
- Weisberg, Howard L. "The Congo Crisis 1964: A Case Study in Humanitarian Intervention". In *Virginia Journal of International Law* 12 (2), pp. 261-76 (1972).
- Weiss, Thomas G. and Kurt M. Campbell. "Military Humanitarianism", *Survival* 33 (5), pp. 451-65 (1991).
- Weiss, Thomas G. "Rekindling Hope in UN Humanitarian Intervention". In Clarke and Hebst (eds.), *Learning from Somalia: The Lessons of Armed Humanitarian Intervention* (Westview Press, 1997, Boulder) pp. 207-28.
- Wheeler, Nicholas J. *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press, 2000, Oxford).
- White, Nigel D. "The Legality of Bombing in the Name of Humanity". In *Journal of Conflict and Security Law* 5 (1), pp. 27-43 (2000).
- Whitman, Jim. "A Cautionary Note on Humanitarian Intervention", *GeoJournal* 34 (2), pp. 167-75 (1994).
- Winfield, P.H. 1922 "The History of Intervention in International Law". In *British Yearbook of International Law* 3: p. 130. Quoted in Francis Kofi Abiew *The Evolution of the Doctrine and Practice of Humanitarian Intervention* (Kluwer Law International, 1999, The Hague) p. 21.

War Cake

LINDA F. BEEKMAN

In war, time often seems to stand still, but it doesn't. People fall in love, marry, have babies, observe anniversaries and celebrate birthdays. During the siege of Sarajevo, many children celebrate four birthdays. As in many parts of the world, the ritual of celebration, whatever the occasion, is not complete without a cake. In Bosnia during the war, it is called *ratni kolac* (pronounced 'kolach') or 'war cake'.

While the Bosnian army, primarily men and a few women, holds the aggressor at bay on the front line, it is mostly the women left behind who assume total responsibility for the health and welfare of the children and, many times, the elderly.

Women often assume the task of collecting humanitarian aid, sometimes standing in long lines in dangerous places, or in the cold, for hours. Many times mothers must decide whether to take their young children with them, or leave them at home alone. Staples such as oil, rice, beans and flour are usually delivered in bulk to one building in each neighbourhood, where it is distributed in a fairly organised manner, according to the number of members in each household. Everyone must supply his or her own paper or plastic bags for the food, and containers for the oil. Deliveries are often erratic, and the amount of aid received small. Rice and beans are frequently distributed, causing residents to ask, "Does the world think Sarajevo is a *third world* country?" The resentment comes because Sarajevans feel the international community, especially Europe, is responding to the tragedy in Bosnia as though Bosnia is not a part of Europe.

Some families are lucky enough to have a small garden, lessening their dependence on humanitarian aid. During my first visit to the city in 1993, Jagger, my friend Renata's brother-in-law, takes me to visit a family living across the river and up the side of the mountain from Renata's apartment. The father is in the army and stationed out of Sarajevo. The mother cares for their two children; the girl is six, the boy is ten. The day we visit, our host makes *pita*, a baked Bosnian pastry stuffed with savoury fillings. On more than one occasion during the siege I have eaten empty *pita*, but because of their garden, she fills hers with fresh vegetables.

After lunch, the little girl takes me outside the two-room cottage to show me their garden etched into the cliff. The war's frontline lies just over the ridge only several hundred

metres away. The view of Sarajevo takes my breath away. My eyes focus on hundreds of red tile roofs, or at least what is left of them. From a distance, the devastation doesn't look so severe. The little girl stands at the edge of the cliff near several tomato plants loaded with ripe tomatoes. She sweeps her arm out, declaring, "Paradise!" I first think, "Wow, she really loves Sarajevo". Then I think, "Yes, it is a paradise, even in war!" Later, I learn that the Bosnian word for tomato is *paradajz*, pronounced 'paradise'. In any case, I will never forget the view, the tomatoes, or the hospitality that day.

Many women I meet, because of the uncertain and unfamiliar circumstances of war, try to comfort their children by recreating familiar tastes from the life they enjoyed before the war.

After the siege begins in the spring of 1992, days quickly stretch to weeks, weeks to months, and, finally, months to years. Ana, the mother of a nine-year-old boy, says, "The war turned washing, cleaning, cooking and other ordinary day-to-day housework into a daily struggle for survival. We suddenly found ourselves in a situation we never dreamed possible – living without electricity, gas, water and adequate food. But we discover a strange power inside us. We feel abandoned by the rest of the world and left alone to die, but pure pride, spite and anger forces us not to give up".

To create familiar, comforting food for her son, Ana experiments with substitutions and exchanges war recipes, some kept by older women since World War II. To make cream, she mixes yeast, powdered milk, water and salt and allows it to ferment overnight. For fake mayonnaise, she cooks flour and water, and then stirs in powdered milk and oil. Especially for her son, she makes French fries from corn flour, white flour, bicarbonate of soda and a little water. After mixing all the ingredients, she rolls the mixture out with a rolling pin, cuts out shapes resembling French fries, and then bakes them. Often she picks nettles and makes soup by adding rice, salt and water. Her speciality is "paste", a substitution for chicken paste. She mixes two large spoons of dried breadcrumbs, two spoons of dried yeast (large bags of it are often found in humanitarian aid packages), one onion chopped and roasted, and enough water to bind the ingredients together, and then adds all the spices she has available, including mustard if she has some. Finally she spreads the mixture on biscuits or bread, and her family enjoys a hint of a treat they knew before the war.

If there is wood, carpet, old shoes, books or parts of furniture to build a fire, Ana uses her family's flour ration to make bread. After preparing the dough, she uses her pressure cooker to save energy. She cooks the dough for about ten minutes, opens it, turns it over and then cooks the other side. She says, "When it is done the bread is heavy and dense, but it is hot and smells so good. In the winter, we cannot wait to eat it at dinner, so we eat it the moment it comes out of the pot".

When I go to Italy to buy supplies, I always bring back cinnamon and vanilla, almond and lemon flavouring for the women in the neighbourhood. Some might think it a frivolous gift, but the tiny bottles are inexpensive and take no space in my pocket. The small gifts return the women to a tiny part of their pre-war reality of creating desserts with real flavouring. Women tell me sweets are a big part of the Sarajevan culture. It is only after the war that I understand how important! When the stores reopen, I discover dessert shops scattered all over town, especially on every block of the main pedestrian cobblestone street of the old town.

Cake, or *kolac* as it is called in Bosnian, tops the list of favourite desserts, especially ones made at home. A good host would not be caught without *kolac* to offer unexpected guests. Bosnians pride themselves on their hospitality, especially hospitality to strangers. During the 1984 Olympics there were not enough hotel rooms in Sarajevo to accommodate visitors, so the government appealed to the people to open their homes to visitors, and they did.

Although cake improvised in war circumstances usually can outwardly be recognised as cake, many times it's difficult to identify the ingredients. Certainly, it won't contain eggs, and maybe not milk, flour or flavouring. There is no shortage of flour. I arrived with several tonnes of it on my first flight into the city, but with the absence of electricity and gas, flour is useless unless you want to make dried pasta for a future meal or glue for a child's art project.

Bread or biscuit crumbs top the list as the best flour substitute for war cake. Ana calls it "bread cake". She mixes a couple of cups of dried breadcrumbs with a little oil, sugar or artificial sweetener, a little powdered milk or water, and presses it into a cake pan. Before serving, she spreads the top with the cream mixture made from powdered milk and sugar.

On the birthday of a friend's four-year-old daughter, a teenage boy brings a gift – the cake. The children and adults are surprised to find raisins in the cake, but the teenager says, "No, they are not real raisins, they are artificial. My mother made them from soy flour and concentrated juice". Everyone is amazed at how much the chewy dark brown pieces resemble raisins. Later he admits it is a joke. The raisins are real. Then someone comments, "It is sad, even tragic; we have gone without for so long that we do not recognise reality even when we are eating it".

During my visits to Sarajevo in the siege, various hosts serve me war cake. Always they place two pieces on the plate – I think a symbol of abundance and of generosity. If only one piece is available, they cut it into half to make two. I never question the custom or the ingredients. The taste is not important. What is important is the woman's hospitality and her effort to maintain a sense of normalcy and tradition for herself and her family amid the chaos of war.

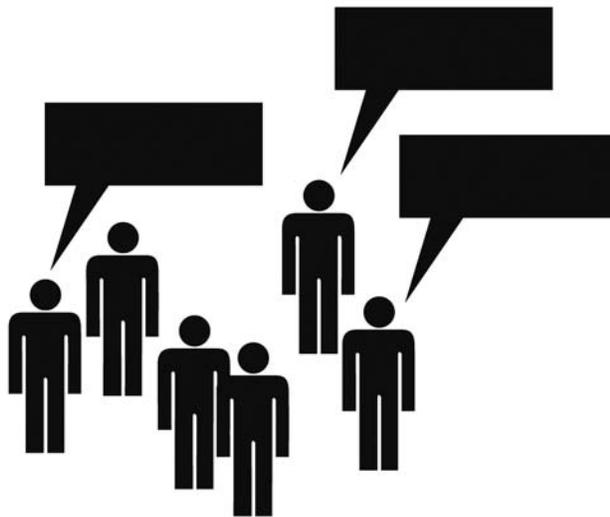
Celebrating milestones such as birthdays, weddings and anniversaries affirms our existence and helps us define who we are. For any one caught in a war – guest or host – *kolac*, however prepared, brings a sense of sanity and hope for the future.

From War Cake: A Witness in the Siege of Sarajevo (2004), self-published by the author.





DISSENSIONS



The Law of the Mother

Soldiers' Mothers and the Post-Soviet Army

IRINA ARISTARKHOVA

"Here is an example, comrades women: when one sells the house, there are two people involved: a buyer and a seller...Though we blame the army, we still give our children to it. No matter what, the officers are with our children [for 2 years]. Let's agree then: it is a kind of Holy Trinity. First, it is us, mothers. We give you, the military men, our children...Then you return them back to us. Who is the third? Those who finance you. There is no one else".

Lera Mamkhegova
The Committee of Soldiers' Mothers
Republic of Karachaevo-Cherckessiya
Caucasus, Russian Federation



Over the past decade I have studied the unique position of the Soviet and post-Soviet 'mother' as a political subject, activist, political innovator (of the 1990s), and as a citizen with unique rights and responsibilities vis-à-vis the Bolshevik government and Soviet society. Today I am more convinced than ever that the radical political and social work done by Soviet and post-Soviet mothers must become a matter of wider cultural, philosophical and, in particular, political debate – though I am less optimistic of the latter either within academia, or on the streets. At the same time, I would caution against the use of sweeping generalisations and essentialist comparisons in any effort to connect this particular form of 'maternal' politics to mothers' movements elsewhere – be they in South America or India.

Like mothers of Russian soldiers, I am aware of the work done in this field by organisations and movements in other parts of the world. I am more pessimistic with regard to any 'global' maternal politics, since I believe that the effectiveness of the post-Soviet situation (of Soldiers' Mothers' work) is directly related to social, political and cultural conditions specific to a space and time. The ongoing process initiated by the Bolsheviks in 1917 enabled a radical shift in the figure of the Russian 'mother'. From her role and status as a family member, part of a more or less organised group of women who demanded

answers from a government they considered responsible for the death of their sons, the 'mother' became a political citizen-subject who demanded a radical transformation of society as a whole, beginning with the judicial system and the army (Aristarkhova, 1995).

What this transformation implies within the post-Soviet political climate, as well as within the crisis of traditional party politics, I have discussed elsewhere (Aristarkhova, 1999). Here I would like to focus on particular strategies that members of the Committee of Soldiers' Mothers employ in their legal work, and the consequences of their strategies in relation to the deconstruction of the notion of government 'ownership' of the soldier. The results of much activity undertaken by the Committees of Soldiers' Mothers across Russia and the former USSR cannot be explained by anything other than specific local conditions, mentalities and political situations. If at all their experience is crucial for other contexts, it is in how sensitive they have been to those conditions, how sensitive and sincere, and how much part of them. Or, as one of them told me, "We, ourselves, have not thought it would have such an effect".

Soldiers' Bodies as Cannon Fodder: Military Law Meets the Mother

In Russia, military recruits are commonly referred to as 'cannon fodder' (*pushechnoe myaso*). Certainly, this attitude to a 'young male body' is not specific to Russian society. If this body is from poor classes (working, peasant, etc.), ethnic minority groups, or those who are persecuted or 'outlawed' in some other way, strategies are developed to ensure that it ends up in some dangerous zone where, voluntarily or not, it would be destroyed in the interest of war or of peace (serving in the police, the army, prison systems, medical experiments, religious/fundamentalist militia, etc.). There is a significant demand for 'young male meat' in these markets, worldwide.

From the military point of view, there are two efficient legal ways to obtain that meat: first, by offering a profession (by signing the contract, recruits sell their bodies to the military in exchange for a salary, scholarship, housing, food, clothing, security, depending on the situation); and second, acquiring recruits through mandatory national military service – conscription.

Throughout the centuries, in various contexts, those who have also had a stake in the 'young male body' have tried to shape the way in which it is used for the purposes of war in particular. During the times of so-called peace, there might be some idea that the army makes 'men out of boys'. During war, this idea is less popular among other stakeholders, such as parents, civil society groups, extended family and village communities, as well as friends and the 'young male bodies' themselves.

Law is needed when the community does not want to self-organise. The key word here is 'needed'. Without it, a particular result cannot be achieved. So, it is out of impotence – or resistance? – that the law is born. Impotence to do by means other than the law: by persuasion, by duty, by inherent impetus, by desire, by ethics, by common sense. If young male bodies would voluntarily submit *en masse* to recruitment, like sacrificial lambs, or like sheep herded into a meadow, one would not need a law to ensure that they experience the 'honour' of military service. If *all* parents would willingly give their male children away at the age of 12 or 15 or 21 willingly, or at least as a patriotic and social duty, there would be no

need for law.

A large amount of academic literature has been devoted to the topic of the 'male body and subjectivity' in relation to the state, the family, the 'mother' and the military. These studies are mostly based on Western philosophical, psychoanalytic or anthropological insights, and point out how deeply the question of masculinity and gender roles is linked to social organisation, especially incarnated in institutions such as the government, the family and the army. Without denying the importance of such research, and allowing for my own interest in alternatives to patriarchal ways of thinking, feeling and organising communal life, I feel that very often when we say 'maternal' or 'mother', we refer mostly to so-called 'pre-Oedipal' early experience, understood symbolically, biologically, socially, physically, etc. However, the 'mother' as a political subject-citizen is rarely a focus of academic discourse other than in relation to fields traditionally associated with women, such as reproductive technologies and the raising of children.

The Legality of War: Post-Soviet 'Mothers' Defy Russian History

In 1998, The Committee of Soldiers' Mothers was renamed The Union of the Committees of Soldiers' Mothers of Russia (UCSMR). It reflected the change in the number, scope and political standing of the committees across Russia as a whole. It also reflected the close networking and grassroots nature of the work in various geographical regions across Russia's huge terrain. But even more significantly, it is a response to the mechanisms of militarisation: its barracks, its weapons programmes, its use of soldiers' bodies to do 'slave work' at various construction projects, as well as the problems of defending a vast land with very long borders; too much to 'guard' and 'protect'.

The phenomenon of the UCSMR (commonly referred to as 'The Mothers' in Russian political and media discourse) can best be evaluated through the impact of their work. It is still not clear (both to the group itself and also to external observers) why the Russian government, and especially, the Russian military apparatus, finds it difficult to ignore The Mothers or simply treat their work and demands as 'topical' and of limited effect. On the surface, it might be even more surprising that Russian military and legal representatives collaborate with The Mothers on a day-to-day basis on a number of essential issues in law and practice. Most 'non-mothers', human rights and non-governmental organisations, including the influential Western-based Greenpeace, Amnesty International, *Médecins sans Frontières* (Doctors without Borders), etc., fail to influence the Russian government with regard to its policies and presence in Chechnya and other 'hot spots'. Ignoring soldiers' mothers has been the 'normal' ongoing governmental practice in most countries, both in the West and elsewhere. The most recent example, of course, is Donald Rumsfeld's use of the new technologies, when letters addressed to the families of US 'cannon fodder' who recently died in Iraq were machine instead of hand-signed.

Unlike the American media that asks questions in such cases, though obviously there are no serious repercussions for the US authorities, Russians only smile at such Western scandals ("If only we had *their* problems..."). They still cynically believe that for any politician, 'young male meat' is mainly good for one thing: to be sent to fight a war that is related to someone else's political and economic interests. As a result, Russians

themselves cannot comprehend why the UCSMR's impact, influence, and the organisation itself, are not disappearing from the post-Soviet political and social stage.

Here we have a few *babushkas* who somehow have been forcing the Russian government to actually change its laws regarding the army, military service, the channels of communication between soldiers and society, etc. What 'the mothers' demand, even if not implemented directly or immediately, still finds its way into the parliament. The most recent move on their part is a direct response to the change in President Vladimir Putin's political strategy. In a situation of total collapse of party politics; in the absence of any meaningful party ideology that has social credibility (and not only in Russia); when the electorate in the so-called democratic countries mostly chooses between 'very bad' and 'bad', and votes not 'for', but 'against' (NOT Bush, NOT Yanushenko, NOT ultra-right), The Mothers have decided to become a registered political party – 'The Party of Soldiers' Mothers'.

Conscription: Male Gender as a Curse

The situation for recruits in the Russian army has been bad for centuries. It has been a model for prisons and other social institutions, transferring its practices across various layers of society. Poor classes supplied 'free labour' to the Russian state long before the Soviet regime made use of workers' bodies for rapid industrialisation and massive projects such as road-building in Siberia. What most Western countries have been doing, mediated by geographical distance, in their colonies and in new labour markets, Russia has been doing to foreigners closest at hand, 'ethnic minorities' on the land that it has occupied, and to (most) male Russians.

Since the break-up of the USSR, it has been common knowledge that it is better to have female rather than male children. State feminism has to do with it, in part, but the main factor lies in simple pragmatic accounting. It is a unique situation: created first by centuries of forced labour, enslavement of the poor, the peasantry and others of low status; second, by the particularly brutal attitude towards human life in the army during compulsory military service (a policy for almost 25 years); and third, by constant periods of war in an effort to appropriate more land from Russia's neighbours, or defend what has been occupied. According to UN statistics on life expectancy, it is clear that the republics of the former USSR (such as Ukraine, Belarus and Russia) have the highest difference between male and female life expectancy in the world: a difference of 10-12 years, more or less. In most developed countries, women live five years longer than men, on the average. But for women to live so much longer is unique to Russia.

Like most Christian countries in the West, Russia has been a patrilineal society, and subscribed to patriarchal laws and customs. However, the current trend of 'not preferring boys' was earlier helped by a number of new laws introduced in the Soviet period, when previous patriarchal property, family and education legislation was changed to render girls and boys of equal status, and often privilege 'the mother'. In the USSR, earlier disdain for a 'traditional bourgeois family', when a housewife was considered a product of the 'old order', meant, paradoxically, that women had more say in family planning than men. For decades, men traditionally have not participated equally in decisions related to having

children, how many and when – it was a ‘woman’s issue’, of lower status, so to speak. Most of the time a woman herself decided it – with or without consultation and discussion with her boyfriend or husband. The situation was fluid, open, and left to the agency of the mother and father, rather than the general community. Despite the widespread belief in the ‘participatory’ role of the Soviet state in family planning, this period is more characterised by the state *granting* reproductive rights and the status of ‘individual’ to women, rather than women being seen as autonomous individuals, with agency and the capacity to fight for their rights.

If one is going to become a parent in Russia today, one knows that:

- 1) There is a war in Chechnya that has been going on for 10 years, with poor provisions for the Russian soldiers who are sent there indiscriminately and in unpredictable manner.
- 2) Alcoholism and drug addiction rates are growing, and as a result, death from AIDS, combined with deaths from accidents and epidemics, have established male life expectancy at 61-62 years, and female life expectancy at 72-73 years.
- 3) Symbolic patriarchal ‘value’ placed on a boy is more and more substituted by an individualised preference by one or both parents,

Whom would YOU prefer? Especially if one does not really care whether it is a boy or a girl – the child can be of any gender, all one wants, like any *normal* parent, is that the child should be happy and healthy. Would you want him to die in Chechnya or another ‘hot spot’ of anti-terrorist operations? Would you want your child to live to be 61 or 72 years, statistically? One might not want to go for an embryo sex screening, but it would be *normal* to suggest that a parent would want a girl in Russia – *just in case*. This situation of ‘just in case’ creates an atmosphere of anxiety among the parents of boys, who have to start early in planning how to deal with the negative Russian record on male life expectancy that is often sharply reduced during military service. And if death happens while the ‘young male meat’ is in the army, Russians rarely consider it to be ‘fate’ or ‘accident’.

Mother/Citizen Articulation

What follows are two extended quotations that clearly show how soldiers’ mothers work with the military establishment to achieve demilitarisation. Mothers question the State – as mothers, and simultaneously as legally embedded citizens. Unfortunately, Russian academics and activists are slow to document, learn from and reflect upon the work of Russian soldiers’ mothers, their localised political and legal interventions. What does the enactment of such a possibility imply? Where else, if not in Russia and in post-Soviet times, could such a combination not only exist, but actually function?

These materials are taken from the materials of the USMR Congresses that took place in Moscow in 2000 and 2002. First, Kuklina Ida Nikolayevna clearly connects the notions of ‘mother’ and ‘citizen’ in her speech at the Second International Congress of Soldiers’ Mothers in Moscow. Second, General Nikolai Kurta, a Russian army ideologist, presents his version of how the work between soldiers’ mothers and the army should be organised.

Together, these speeches enable us to understand how the Law of the Mother penetrates the current military law and political context in post-Soviet Russia.



Kuklina Ida Nikolaeva, member of the Moscow Committee of Soldiers' Mothers.
Extract from presentation at the II International Congress of Soldiers' Mothers,
2 February 2000, Moscow.

"I plan to speak about things that you know very well. My speech would not have much novelty, in general. It is a strange coincidence that we are gathered in this hall again after five years. I am going to speak, however, not only about the war. The war, surely, is the most painful. At the same time, more importantly, we need to discuss at this Congress what has happened in the last five years, evaluate it, and consider what is next. Five years have passed – and what is next? We had the war then, we have it now. All the committees that are represented here, we have not started recently, we have lots of experience. So, what is next?...Here is what we have achieved, a list, without much commentary:

"First, we have won the amnesty for *begunki* (deserters) and for the participants of the first Chechen war.

"Second, we have won the continuing funding of the 124th laboratory. It is already six years since this work of search and identification of the missing soldiers and civilians has been established, with subsequent proper burial of the dead. We have this laboratory working, and the corpses of our soldiers are not anymore eaten by dogs, as was happening in Chechnya in 1995. This is our direct achievement.

"Third, the number of casualties is being announced publicly, lower than in reality or not, but it is announced now, unlike during the first Chechen war.

"Fourth, for the first time the generals are saying (sic) that they care about the soldier's life. My opinion is that they are just saying it. But still – it is the first time, it was not happening before.

"Fifth, they send (recruits) to war only after the initial six months of training. Sometimes earlier, but it is considered against the law, still. You see, here we have another small achievement. Of course, we can also add that soldiers are now paid, that their lives are better insured, but these are not ours, not our achievement.

"Let's move on now. What have we lost?...We have lost a 'governmental (state) decision' as we called it in our Executive Committee: a governmental decision to move towards a professional army. Let's compare what we have gained with what we have lost – not as the

soldiers' mothers, but as Russia's male and female citizens (*grazdane i grazdanki*). We have gained nothing!

"As we were losing lives and health of recruits then, we are losing it now. Not as mothers anymore, but as citizens of our country. In wartime and in peacetime. It is a myth that generals protect the lives of their soldiers...Take newspapers, and see: when was the beginning and the end of the first war? And how long is the second? Take the official number of casualties that generals are presenting. We had the number for the first war, now finally we have more or less regular numbers for the second, announced on television and in the newspaper *Red Star* (*Krasnaya Zvezda*). Calculate the number of casualties per month. Now we are losing more than in the first war. It is an illusion that they protect soldiers' lives more now. The horrific fact, already mentioned, is the possibility of this war to continue indefinitely. Calculate by yourselves, by your own hand, and see that this war is more bloody even by officially given numbers of casualties. This is what we've lost as Russia's citizens.

"As taxpayers, we are losing our money that goes to support the army. Soldiers are killed in peaceful times. Our money is used to make boys suicidal, deserters, and the like. And we continue to lose the money. We are told now that we fight for the preservation of the integrity of Russian territory. Yes, I agree completely that there is a threat to the integrity to our country. But it is impossible to preserve it by military means. One cannot keep the territorial integrity by force eternally. It does not work this way – one day it will surely collapse. There is only way of shared everyday living, shared interests to preserve that integrity. And what shared interests do we have now with Chechnya? The war only separates us.

"*Have I lost or have I gained, as a Russian citizen, the integrity of Russia as a result of the war in Chechnya?* This question is, pardon, undecided. And nobody can tell how it will be decided. And of course, I have lost from the fact that now in one part of my country, we practically have a lawless military rule. Or call it 'state of emergency' and a 'curfew' situation...So, the war for me, as a Russian citizen, remains illegal, though it is called various names. First we were fighting against an "aggression in Dagestan". It was a war, but not on paper, legally. Then we had "sanitary cordoning off Chechnya", and the war was called "a construction of sanitary cordoning". Then it became, quickly, an "anti-terrorist operation". As a Russian citizen, I am losing in this war. And the situation in Russia has not stabilised...

"What do we want?

"Obviously, we cannot stop the war. We can demand here to go back to a 12-month military service, and demand a voluntary participation in military conflicts. It is a tactical measure and it does not solve the problem in full, but it is in our line of the interests. However, our main energy should be concentrated on the demand to abolish enlistment by conscription altogether. This is the main question, since without abolishing of conscription, nothing will change in the army. And the burden of the problems with security of our country and in Chechnya would be again put onto boys' shoulders, yesterday's schoolboys. This entire pyramid: excessively huge country, huge government, huge apparatus, all short-circuit on the boy-soldier's shoulders. We must fight this. Boys just 18 years old cannot

carry the whole burden of this problem and pay for it with their lives. Indeed, the value of one's life is not apparent when one is 18 years old. It seems eternal, life, and it is being destroyed!..."

(Nikolaeva, 2000:33-36; emphasis and translation by the author)



Nikolai Kurta, General, Head Office for National Education, Army of the Russian Federation. Extract from presentation at the III International Congress of Soldiers' Mothers, 23 March 2002, Moscow.

"Good afternoon, dear comrades, dear women, beautiful and incredible! I am grateful for being invited to your Congress. The problems you are raising here are indeed urgent, they exist, and there is no way we can run from them.

"First, what I would like to say concerns the participants of this Congress, the audience here. Woman has always inspired man in beauty, bravery, self-sacrifice, she always taught man: love the motherland, love Mother Russia, with all your strength, spirit and energy. And thank you for that. I remember days when my head was not as grey-haired as it is today. I was on leave from a military college in Leningrad, on my way to Rostov district, Kamensk-Shakhtinsky town. In Kazan station, when we stopped for 20 minutes, I saw a beautiful young woman. I have never seen her again, though there is a poem left from that moment:

*Oh, if your eyes told me
Where to go to find you...
I see you here for the first time
It pains to know: to lose you without meeting.*

"Yes, woman always calls us, men, towards the sublime and the creative. Certainly, comrades, when coming here, I hoped to be met with understanding, companionship, working out solutions and recommendations for our collaboration, that we all strive towards. I started working in the Head Office a year ago. Before that I was there, where our main bolt is swirling, our subject here – the soldier. The soldier is really burdened today twice over, he suffers a lot. Before going to the army, he is under stress, if he was not properly fed and educated at home. And we see it too often. It burdens him even more. And the discussion of the army today, despite many negative comments, cannot be separated from society as a whole. Army is a slice, a block of society. And what kind of society you

give us, we have to work with it. We hear these numbers that always shock me, these 5, 20, 30% (of the sick children). We forbid the mentioning of these numbers in the army. What can we do? We have to work with such people as the state gives us. And we cannot avoid problems that the young man has had over 18 years. I do not believe the army can re-educate him in two years. Yes, we can frame him in certain boundaries, we can give him clear tasks, supervise; however, we cannot 'cheat' his nature.

"It does not bother me that the army is heavily criticised at this Congress. Reforms are on going, it will happen, its time has come. You participate in this process, comrades, it is your achievement and help too, but everything needs to be done within the legal framework. We act according to the legal field. Military forces cannot work otherwise. The laws that exist are acted out in practice and if changes in the army are necessary, they need to be first enacted in the law. The person in military uniform and his actions become illegal and criminal without proper legal foundation. That is why it is necessary and possible to reinforce all suggestions, it is necessary to propose and create for it proper conditions.

"We see here representatives from various foundations. And I want to hear, how much any of these foundations have supported, financially, at least one of the committees of soldiers' mothers.

"And how wonderful the committees of soldiers' mothers work with their conscripts or with those who are conscripted from their region! I remember gladly Taiganat Baisultanova from Dagestan. Some of you smile – yes, she is an unusual person – she comes and knocks on your door, insistently; she gathers local people, she talks to them about law...I know other committees, like from Bryansk. I can name many, I served in the western part of Russia. I have always met them with a certain kind of pleasure. After meetings with our soldiers' mothers each time I would sit down and think over the issues: how to make it happen, how this could work, etc. And indeed, many of the tips have worked and helped a lot. And this kind of collaboration is good, otherwise nothing effective would come out of discussion. I am convinced that any discussion carries a useful seed, and this seed would definitely germinate on our Russian soil. As the great Russian poet said:

*Mind cannot comprehend Russia
Common measure does not apply
She has a special posture
Only faith in her possible.*

"You understand that I, a military man, have a faith in Russia. In the fact that she will bloom, be a strong, solid, rich, talented and intelligent Russia. We cannot avoid it, it is our destiny.

"Another thing I want to say, comrades. There are unacceptable words and expressions, especially in public. When a person comes to a microphone to say that our chief commander, Vladimir Vladimirovich Putin, President, should be taken out, I cannot comprehend that. He was elected by all people. He has to be respected, hence why such almost insulting words? Besides, you were asking here if he understands mothers. Russia is reforming, and with any process things cannot go all smoothly, that no one is hurt or touched. Life does not work this way.

"Now our common pain is the Northern Caucasus. The President of the Russian Federation directed the Defence Minister to create (on 10 April 2002) a department of social protection of the military personnel and their families, under the Head Office of National Education, Russian Army. All help to those who are affected in the Northern Caucasus would go through this office: financial and other help. All-Russia's National Military Fund will provide financing. Those who were injured from December 1994 onwards, and the families of the dead, would be assisted. Issues with accommodation, prostheses, medical assistance would be dealt with. This department is now under construction, and probably, chance will make me the head of it. Most probably, it will be me, yes. That is why I am asking the committees of soldiers' mothers: ask families who have lost their father or son, who do not have an apartment, the disabled in need of a prosthesis, of treatment, to call us. If they have correct papers to support their claims, we will write a contract and pay for everything, we will help them financially. My phone is 293-8985. This department is formed not for other offices, but to interact directly with the All-Russia's National Military Fund, to help people in concrete ways, materially and financially. Thank you for your attention". (Kurta, 2002:36-38, translation by author).

REFERENCES

- Aristarkhova, I. "Women and Government in Bolshevik Russia". Warwick Labour Studies Working Papers, No. 4, University of Warwick, pp. 1-26 (1995).
<http://www.warwick.ac.uk/fac/soc/complabstuds/russia/irawp.doc>
- Aristarkhova, I. "Maternal Politics". In *Against All Parties*, (ed.) Oleg Kireev (Moscow, 1999). Russian: <http://www.tac.spb.ru/cfc.htm>
 English: <http://www.constantvzw.com/cyberf/book/articles.php?pg=art26>
- Kuklina, I. N. Presentation at II International Congress of Soldiers' Mothers, "For Life and Freedom", 2000. Moscow: Union of the Committees of Soldiers' Mothers of Russia.
- Kurta, N. Presentation at III International Congress of Soldiers' Mothers, "For Life and Freedom", 2002 (published 2003). Moscow: Union of the Committees of Soldiers' Mothers of Russia.
- Theweleit, K. *Male Fantasies*, Vols. 1 & 2. Trans. Chris Turner (University of Minnesota Press, 1987).

Naked Protest and the Politics of Personalism

ISAAC SOUWEINE

I.

In the Canadian winter of 1903, members of a Christian sect called the Doukhobors became the first modern naked protestors. Similar to the Anabaptist/Mennonite sects of Western Europe, the Russian Doukhobors rejected ecclesiastical hierarchy, traditional Orthodox liturgy and modern forms of social organisation in favour of individual spirituality, radically simplified worship and anti-modern communitarianism. To some degree, their heterodox attitudes were tolerated by church and political authorities. But when, in 1896, they made bonfires from their own weapons to protest conscription in the Czar's army, stiff repression was inevitable. By 1899, as many as 8000 Doukhobors fled the post-bonfire crackdowns for the Canadian province of Saskatchewan. Considering conditions in the failing Czarist regime, Canada was probably an improvement, especially for a group that had little interest in political revolution. Even so, radical Doukhor emigrants calling themselves the *Svobodniki* (Freedomites) or 'Sons of Freedom' soon began agitating again, moving outside of their settlements to spread their radical understanding of the gospel. Initially, the *Svobodniki* punctuated their preaching marches by untethering their animals, discarding their metal tools and starting bonfires of leather. By 1903, the Sons of Freedom had added nudity to their repertoire, seeking through nakedness to walk with the simplicity and moral purity of Christ. The Doukhobors brought their nude proselytisation to surrounding towns, where beatings and jailings only served to fortify their religious zeal. For the next fifty years, public nakedness remained a central aspect of their proselytisation and political dissent.

One hundred years after the Doukhobors first disrobed, naked protest has re-emerged on the political scene. From anarchists and activists to soccer moms and sex workers, nudity has become a familiar term within the broadly progressive political vocabulary. In sheer numbers, the re-emergence of naked protest is dominated by Western women, many of them protesting US militarism in Iraq by spelling out anti-war slogans with their naked bodies. Taken as a whole, however, naked protest crosses race, nationality and gender and includes protestors of almost every stripe. They include anti-globalisation activists of all colours: British men and women protesting fox hunting, South African women protesting slum clearance and Indian women resisting police and army brutality. Even the naked anti-

war movement is diverse enough that on one weekend in March 2003, the California women (60 people spelling “Peace”) and Australian women (250 people spelling “No War”) were outdrawn by the Chilean unisex group photo (300 people – no word spelled); Aussies take the weekend prize only if the separate men’s photo (250 people spelling “Peace, Man”) is included in the tally. In an era where modes of public dissent have experienced a surge in popularity and innovation, naked protest is undoubtedly ascendant.

Apart from a shared affection for nudity as a form of political speech, the connection between the Doukhobors and today’s naked protestors may seem distant. A group of utopian Christians protesting Czarist repression seemingly have little in common with modern protestors, engaged as they are in generally secular challenges to contemporary regimes of state and capitalist power. As the stories of the Doukhobors are either mostly forgotten, or else sullied by the arson and property destruction popular amongst the most radical members of the sect, today’s naked protestors neither act in the name of what the first naked protestors stood for, nor even carry the name of the Doukhobors upon their lips. But though the Doukhobors and today’s naked protestors share little in the way of motivation, they do share a common political heritage. In the terms of this article, the tie that binds the Doukhobors and today’s naked protestors will be called political personalism.

In philosophical terminology, personalism refers to a broad array of movements and tendencies that privilege individual subjects over abstract systems. While 19th century Romantic thinkers, most notably the German Friedrich Schleiermacher (1768-1834), were the first to explicitly claim the term, personalism of some form could be traced all the way back to the ancient Greeks. In the 20th century, Christian thinkers, including Pope John Paul II, have been the most ardent proponents of personalism, founding journals and societies, and even extending the interpretive apparatus of personalism into sub-fields such as economic personalism. Though diverse, personalists remain united by their rejection of abstract (especially materialist) system building and by their dedication to a subjectivist ethics that understands human affairs through the prism of individual consciousness.

Building on the basic personalist frame of reference, political personalism can be understood as the adoption of a subject-oriented perspective towards politics that privileges the attainment and expression of individual moral truths. Though never a self-conscious school of political thought, political personalism aptly describes a variety of 19th and 20th-century movements and thinkers who are linked not only by their attention to individuals, but more importantly for the understanding of naked protest, by their reliance on peaceful, personally redemptive, symbolic forms of speech and action. From the perspective of this article, the history of political personalism is the crucial hermeneutic key for understanding the techniques and motivations of naked protestors. From the perspective of this collection, political personalism can also be seen as a vital aspect in the political theory and practice of the “bare act”.

II.

The Doukhobors’ passage to Canada was underwritten in part by Count Leo Tolstoy (1828-1910), who donated the proceeds from his 1899 novel *Resurrection* to their cause. The connection is not incidental: famous for his novelistic achievements, Tolstoy’s political

philosophy, often referred to as Christian anarchism, represents one of the founding moments in the history of political personalism. Presented in writings such as *What I Believe* (1884), *The Slavery of Our Times* (1900), and most notably, *The Kingdom of God Is Within You* (1893), Tolstoy's Christian anarchism injected a shocking dose of political personalism into his political milieu. In some ways, the great author's voice was easily integrated into the tone of revolutionary ferment – who better to describe the oppression endemic to Czarism and capitalism than the country's greatest writer? But when impassioned critiques of private property, wage labour and bourgeois nationalism were followed by a Christian pacifist repudiation of violent revolution, they became harder to disseminate. The key to Tolstoy's personalism was his faith. Unlike his leftist peers, most of whom viewed religion as a source of regressive hierarchy and “false consciousness”, Tolstoy saw an individualistic religiosity as essential to ethical action. With the certainty of a believer, he argued forcefully against political philosophies built upon moral compromises. If Tolstoy's models were explicitly Christian, however, his impact on the landscape of modern politics would extend far beyond his fellow believers.

In assessing the depredations of Czarism and capitalism, Tolstoy explored established lines of radical thought through compelling narrative and emotional rhetoric. Though capable of methodical argumentation, Tolstoy was most convincing as a storyteller and raconteur. His talent for capturing the personal and psychological implications of political trends is most evident in *The Kingdom of God is Within You*, a polemic that features soldiers deluded into killing “their famishing fellow creatures”; merchants “profiting by the misery of cultivators”; and government officials who “violate every human duty” in the name of their post. The combination of such vivid portraits with Biblical quotations and appeals to Christian ethics breathed fresh life into leftist critiques of authoritarian, capitalist and liberal forms of social organisation. Impressed by his presentation, even Lenin, who in the main thought Tolstoy's pacifist anarchism a “crackpot preaching of submission”, lauded the “absolute clearness” with which the author “laid bare the inner falsity of all those institutions by which modern society is maintained: the church, the law courts, militarism, ‘lawful’ wedlock, [and] bourgeois science”.¹ Anarchists, who appreciated Tolstoy's uncompromising attitudes and his acknowledged reliance on the French anarchist Proudhon, were even more admiring; writing in the 1911 *Encyclopedia Britannica*, Potemkin glowed in his praise of Tolstoy, who “took the anarchist position as regards the state and property rights”.²

From well-worn leftist tracks, however, Tolstoy diverged onto a path that used religious moralising to interrogate the relationship between political means and ends. Even when critiquing modern power relations, Tolstoy's concerns were couched in religious terms. Though conscious of the mundane conflicts of class versus class, he saw the ultimate tension of his age in the “acute contradictions”³ between the entire social order and the uncompromising moral teachings of Christ (and a few like-minded sages that he subsumed into his philosophy with a gregarious orientalism). From this perspective of universal morality, the compromises endemic to most theories of social change were wholly inadequate. Liberals and reformers, whom all leftists saw as self-interested sycophants of power, were the easiest target. But Tolstoy reserved ample ammunition for the left itself – socialist, communist and anarchist – which he derided for its materialism, hyper-rationalism and

tendency towards very un-Christian violence. To satisfy his moral standards, only the example of history's greatest revolutionary would suffice: "You have been taught to oppose violence by violence, but I teach you: turn the other cheek when you are struck, that is, suffer violence, but do not employ it".⁴ Or, as Tolstoy rendered it in his own words: "Do not resist evil, but also do not yourselves participate in evil – in the violent deeds of the administration of the law courts, the collection of taxes and, what is more important, of the soldiers".⁵

Tolstoy was not the first romantic or utopian figure on the left. Decades before him, utopian socialists such as Saint Simon and Fourier argued for a romantic communitarianism based on a belief in human perfectibility and the power of small-scale socialist experiments to influence history. Likewise, anarchists from Proudhon to Bakhtin predicated their theories on a romantic and utopian view of human nature left to its own devices. And even Marx, the father of 'scientific' socialism, is credited with more than one romantic passage about the possibilities of the communist society. Rather than simple romanticism or utopianism, Tolstoy's special contribution to leftist thought is tied to his politically personalist themes. Even Tolstoy's most romantic leftist peers saw themselves as looking down from great heights and charting the forward-march of history. In contrast, the great novelist preferred to swoop from the precipice of abstract power relations in order to examine the psychological and moral conditions of individuals, especially an idealised Russian peasantry. When combined with a spiritualist Christianity that raised morality and godliness above worldly political concerns, the product was a political philosophy that saw individuals, as opposed to social bodies, as the ultimate point of reference. In its original form, such a contrarian political theory could do little more than mark one man's spiritual confrontation with modernity. Indeed, Tolstoy's uncompromising outlook made it so difficult to practically apply his theories that, in order to do so, his successors would be forced to alter their character.

If Tolstoy represents one of the opening volleys of political personalism on the left, Henry David Thoreau (1817-1862), who preceded and influenced the Russian novelist, occupies an analogous place in a history of political personalist ideals within the liberal tradition. Like Tolstoy, Thoreau's political personalism, recorded most memorably in *Civil Disobedience* (1849), rejected not only dominant power structures, but also the moral compromises required to overturn them. Though delivered with a special mix of aphoristic verve and self-aggrandising anecdote, Thoreau's attacks on the corruption of the powerful were hardly unprecedented. Far more unique were his criticisms of liberal modes of dissent. By the standards of European politics at the time, America's democracy was radically populist. Even so, its distinctive features – universal white male suffrage, majoritarian representative government, and judicial due process – were unable to pass Thoreau's ethical litmus test. Rather than lauding America's relative advances, Thoreau attacked its fundamental political assumptions by famously reconsidering traditional approaches to minority politics as little more than shallow endorsements of the existing regime. In place of voting, public assembly and petition, Thoreau offered up a contrarian individualism that celebrated personal moral behaviour over compromised attempts to reform the social and political order. Though largely rhetorical, his contribution to a liberal version of political personalism also included a sketch of a new technique – civil disobedience – that would become central to movements that abided by the ideals of political personalism.

For Thoreau, civil disobedience, which today refers to the idea that unjust laws can be changed through strategic defiance, was part of a broader attack on the basic tenets of liberalism. This is not to say that *Civil Disobedience* does not provide the inspiration for the many movements that have claimed its title. Among other things, the text is a record of Thoreau's refusal to pay the poll tax in protest against American militarism in Mexico. What's more, it includes direct calls to principled lawbreaking: "Unjust laws exist: shall we be content to obey them, or shall we endeavour to amend them, and obey them until we have succeeded, or shall we transgress them at once?" But though Thoreau undoubtedly broke the law as a form of protest, he also explicitly distanced himself from simple reformism through criminality. "It is for no particular item in the tax bill that I refuse to pay it [the poll tax]. I simply wish to refuse allegiance to the State...I do not care to trace the course of my dollar, if I could, till it buys a man a musket to shoot one with..."

Instead of a proposal for reform-oriented dissent, Thoreau's civil disobedience was part of an individualist critique that rejected not simply the immoralities of the powerful but more crucially the systems by which they secure affirmation for their deeds. Thus, he heaps scorn on voting, "a sort of gaming, like checkers or backgammon, with a slight moral tinge..." while expressing distaste for any mass political action, which has "but little virtue". He distrusts the market, preferring the economic self-reliance depicted in *Walden*, and even rejects the basic notions of a liberal social contract: "It is not necessary that [I] should be petitioning the Governor or the Legislature any more than it is theirs to petition me".

From its mainly symbolic role in *Civil Disobedience*, Thoreau's notion of principled lawbreaking would become an important aspect of more organised forms of political personalism. But even as they adapted his techniques, Thoreau's heirs would have trouble matching the force of his defiant independence. Inspired by American transcendentalism, a radical yeoman's celebration of anti-clerical religiosity, material simplicity and nature worship, Thoreau's attack on liberalism thrived on an unapologetic mix of romanticism and moral surety. While his society created unjust rules, he answered to a "higher law" that respects not what is lawful but what is "right". From this vantage, institutions of state and capital possessed no assumed moral legitimacy. Provided one was willing to live in independence from the benefits which these regimes provide, as "a majority of one", the moral force of the individual was not simply equal but unsurpassed, such that, "if one honest man, in this State of Massachusetts, ceasing to hold slaves, were actually to withdraw from this co-partnership, and be locked up in the county jail therefore, it would be the abolition of slavery in America".

Although such claims can seem deeply problematic, even reactionary, in today's political environment, their moral force remains compelling. As was the case with Tolstoy, whose Christian beliefs only magnified the force of his moral hectoring, Thoreau's romantic individualism set the tone for a political tradition focused on personal moral redemption as a central aspect of political life.

III.

Thoreau and Tolstoy's rejection of the politics of social change in favour of individualist moralising produced a tension within the politically personalist themes they helped inaugurate. On the one hand, politically personalist orientations drew their strength from an

uncompromising moral attitude; on the other, there was little the willing political personalist could do outside from an unorganised proclamation of independence and dissent that would not reek of compromise, either by dint of collaboration with power or infection by it. Unresolved in the work of Thoreau and Tolstoy, this tension was confronted by their political heirs, most of whom were considerably less free than the wealthy Russian aristocratic and the independent American intellectual to simply reject capitalist, imperialist and state repression. Even as they retained the fascination with individual redemption typical of their political mentors, 20th century personalists tended to look for ways to harness the power of personal moralising in the service of goal-oriented political movements. As they shaped politically personalist ideas into an effective base for political action, the heirs of Tolstoy and Thoreau cultivated a vast array of personalist techniques – marches, boycotts, sit-ins, hunger strikes, lawbreaking, political rallies and political performances – that focused on dissenting bodies as symbols of contestation and resistance.

The shift from theoretical, psychological and spiritual critique to forms of bodily action was natural, for while political oppression could take many non-physical forms, resistance to that oppression was demonstrated most convincingly through a focus on the most concrete and universally recognisable site of oppression. In terms of the essential tension between moral purity and political efficacy, the shift from uncompromising rhetoric to politically engaged bodily dissent was not so much a resolution as a reorientation. While the techniques of political personalism proved wildly successful in the 20th century, their every achievement entailed at some level a movement away from the uncompromising attitudes so typical of the writings of Tolstoy and Thoreau.

The single most important figure to contribute to the recalibration of political personalism as an effective political tool was Mohandas K. Gandhi (1869-1948), the so-called “father of the Indian nation”. An admirer of Thoreau and a correspondent of Tolstoy, Gandhi’s version of political personalism fused elements from both men’s political philosophies. From Thoreau, whose *Civil Disobedience* he called a “masterly treatise”,⁶ Gandhi borrowed the basic notion of principled lawbreaking, which he would adapt into a form of mass political dissent. He also followed Thoreau in his embrace of self-reliant economic production. For Gandhi, the most important mark of economic self-reliance was the willingness to eschew imported English textiles for *khadi* (homespun cotton cloth), which he asked members of the nationalist movement to spin daily. Economic self-reliance also extended to boycotts of English goods and the famous resistance to laws prohibiting the making of salt. From Tolstoy, who exchanged views with the Indian leader in his famous *Letter to a Hindu* (1909), Gandhi borrowed the Christian model of passive resistance, especially the notion that one could shame the evildoer into bettering himself by refusing to resist his abuses.

In Gandhi’s terminology, this translated into *satyagraha*, or “truth force”, a doctrine of non-violent political persuasion built upon an inner search for truth. Gandhi’s philosophy also echoed the themes of Thoreau and Tolstoy in its valorisation of pre-modern moral communities, which he understood through the rubric of the Indian village, an essentially good and sufficient institution corrupted by the developments of modernity. To this potent mix of politically personalist themes, however, Gandhi added a crucially innovative element: the willingness to deploy the attitudes and techniques of political personalism in the name

of an organised social and political movement.

Fittingly, the character of Gandhi's political personalism is most evident in the record of his own political acts. This is not to minimise Gandhi's intellectual output or his capacity as a political organiser. Rather, it is to suggest that the essence of both Gandhi's writings and his political allegiances are expressed in his bodily acts of political dissent. Gandhi's initial political awakening came in 1893, when he refused to accept apartheid-seating on a train in South Africa. From there, his career was marked by a series of encounters that speak to the essence of political personalism: the focus on individual moral action as the essence of politics. Whether sitting at his spinning wheel making *khadi* or marching to the sea to defy the English ban on homemade salt, Gandhi's wiry frame was not simply a rallying symbol for millions; in many ways it represented the essence of the nationalist movement. Gandhi melded the personal and political so completely that by the 1940s his hunger strikes effectively pitted his moral and religious potency against the very fate of his nation's history. While the force of these acts was multiplied in a South Asian religious context that comprehended his force of character as akin to divinity, the basic example would resound in regions far removed from his particular religious surround.

If Gandhi's own example provides the most indelible memories of his politically personalist philosophy, the movements that he led give the best estimation of its import. Building on a tradition premised on individual redemption through morally uncompromising dissent, Gandhi's willingness to enter the fray of anti-colonial politics was an epiphany. Under his leadership, the impulses behind political personalism were translated into organised political techniques such as marches, boycotts, mass civil disobedience, abstention from representative government and self-reliant economic production. From inspired peasants to elite leaders, application of these techniques formed the backbone of a nationalist movement that shocked the world by rapidly evicting the seemingly entrenched British colonists. The successful integration of politically personalist ideals into mass politics, however, did not come without costs. Once a refuge for the uncompromising political individualist, political personalism would henceforth be deployed most frequently in large-scale movements dedicated to the achievement of specific political goals. Moral compromise – with existing regimes of power and with the often quite conservative forces of social change (in Gandhi's case, the traditional and capitalist elites that dominated Indian nationalism, not to mention his own religious and social conservatism) – was an inevitable outcome of this shift.

While Gandhi fought against the dilution and instrumentalisation of his version of political personalism, especially in his insistence that his Congress Party should retire from politics upon achievement of the nationalist goals, the trend was inevitable. By the time Gandhi was pushed out of a nationalist movement torn asunder by communal politics and bourgeois self-interest, the die was cast: though the individual search for moral truth that Gandhi dubbed *satyagraha* would continue to provide the capital of politically personalist movements, this capital would no longer be generated for its own sake, but rather would be spent willingly in the service of limited political ends.

Of the immediate heirs to Gandhi's re-conception of political personalism as a system of mass politics, the most notable is the American Baptist minister and political leader Martin Luther King, Jr. (1929-1968). A powerful orator and effective organiser, King shaped a

movement that built explicitly on Gandhian techniques in its effort to secure basic human rights for oppressed Southern blacks. Like Gandhi's nationalist movement, King's civil rights movement was built around acts of civil disobedience, communal solidarity and performative acts of speech and dissent. Sit-ins, boycotts and marches were the fuel that sustained the movement, both in terms of the motivation provided by individually redemptive acts, and the ability of those acts to function as effective modes of speech within a national debate.

In terms of the continued development of a Gandhian mass political personalism, the special genius of King's movement lay in its ability to multiply the force of politically personalist dissent through visual media. In the technologically advanced United States, the core images of Civil Rights personalism – black men and women being sprayed with fire hoses and chased by dogs; thousands of whites and blacks marching together on Washington; the tired body of Rosa Parks, who refused to move to the back of the bus – were easily transferred outside of their immediate context. Such images not only conveyed eloquently the abuses borne by black bodies and the moral force entailed in peaceful resistance to those abuses, they spread the message throughout the nation, and even the world.

King's civil rights movement represents the apotheosis of political personalism as a form of compromising political reform: though revolutionary in context, his ultimate aim was not social revolution but simply equal treatment under existing law. Not long after King, American counter-cultural movements began to reinvigorate the more romantic, individualistic and uncompromising tendencies within political personalism. From Ken Kesey's *Merry Pranksters* to Timothy Leary's drug sloganeering, counter-cultural reprisals of anti-political personalism echoed the fathers of personalism: in their valorisation of communal self sufficiency; in their fascination with Eastern wisdom (both Thoreau and Tolstoy were avid orientalists); and in their celebration of individual redemption over political organisation. The counter-culture's take on political personalism also spoke to more historically specific problems of social conformity within an advanced bourgeois society. As an answer to conformity, the counter-culture offered hedonism and self-expression, as realised in sit-ins, be-ins, rock concerts and student takeovers.

In a political tradition that had until then thrived on the spare religious puritanism of Thoreau, Tolstoy, Gandhi and King, the shift was profound. Individual bodies, symbols of violent repression in the movements of Gandhi and King, became spaces where more subtle forms of oppression were resisted through alternative forms of social organisation, leisure and public comportment, including nudity, the ultimate sign of anti-establishment self-expression. Even as the counter-culture reasserted romantic and utopian forms of political personalism, however, it also reflected the post-Gandhian realignment of political personalism as a tool of mass politics, with much of the rhetorical and performative force of counter-culture personalism being channelled into movements protesting the Vietnam War.

The romantic turn of the 1960s counter-culture was connected to a groundswell of world utopian spirit that saw real possibilities for fundamentally altering the post-War social and political landscape. Peaking in 1968 in a surge of student protest movements, hope for wholesale change soon crumbled in the face of external repression and internal disorganisation. In its wake, movements that applied the attitudes and techniques of political personalism to sectional reformism once again rose to the fore. As was the case

in the 1960s, most of these movements – environmentalism, feminism, gay rights, nuclear disarmament and anti-apartheid, to name only the most effective – can be divided into a radical fringe that tended towards romantic statements of individual morality (tree sitting for environmentalists, direct action for gay rights activists) and a mainstream that mixed politically personalist techniques such as boycotts, demonstrations and organised civil disobedience with traditional tools of liberal dissent, such as petitions and lobbying.

In an ever-more sophisticated media environment, the ability of both radical and conservative applications of political personalism to attract media coverage assured their continued relevance. At the same time, the increasing post-1968 skepticism about the possibility of large-scale political reform made the existential transcendence offered by personalist techniques ever more attractive, especially in movements that protested broad and seemingly immutable social patterns such as warfare or the existence of nuclear weapons.

IV.

While nudity as a form of political speech has been a noticeable facet of political personalist trends since the 1960s, it seems to have found a niche in the age of media-savvy protest ushered in by the 1999 anti-IMF protests in Seattle, Washington. The backdrop for the increased popularity of naked protest is the rise of an amorphous, US-dominated global system characterised by ever-more sophisticated methods of repression and persuasion. In the face of a post-Cold War historical narrative that, if not “dead”, at least appears paused, the progressive left (especially in the developed world) has leaned towards modes of dissent that foreground issues of representation and identity. With its power for symbolic speech and resistance, naked protest is ideally suited to this context, especially in the West, where sensational forms of individual resistance appeal to veterans of the 1960s counter-culture uncomfortable with their own level of bourgeois cooptation.

But if naked protest gains motivation from certain trends within the contemporary left, its considerable impact is dependant on the rise of an international, 24-hour, entertainment-news cycle fuelled by satellite technology, cable and the Internet; in other words, the ascendancy of mediainment. In a world where spectacular news images are circulated and spun at an ever-increasing rate, the media-savvy tactics of naked protestors are a perfect fit.

In utilising a form of personally redemptive political speech as a means of garnering support for specific political ends, naked protestors confront the essential tension of political personalism: between moments of individual moral expression on the one hand, and effective political calculation on the other. As a form of personally redemptive speech, the ability of public nudity to express freedom and independence from abstruse systems of power is significant. Nudity implies a righteous innocence, especially for the scores of women whose nakedness defies a masculine culture of violence that is deeply connected to late capitalism's sexualisation and commodification of the female body. In this sense, public nakedness is a truly ‘bare’ act of politically personalist expression: by stripping in public, nude protestors create moments of dissent predicated on a simple but profound verb. And yet, by dedicating their individually redemptive political speech to reformist political causes such as resistance to the Iraq war, naked protestors necessarily compromise a certain moral purity in the name of pragmatic political goals. As they attempt to negotiate tensions that are inherent to political

personalism, naked protestors thus continue to reflect them.

From the perspective of goal-oriented politics, naked protest's romantic and performative nature challenges the consequentialist assumptions of contemporary reformist and radical movements, which tend to assign value to action based on its efficacy in achieving specific political goals. From this broadly utilitarian standpoint, naked protest tends to appear self-indulgent, flaky, even flippant – a celebration of individual gratification and symbolic contestation at the expense of the 'real' work of organising unions, pressure groups and political candidates. At the same time, naked protest remains insufficient to the strict personalist individualism of Tolstoy and Thoreau. Unlike the earliest contributors to the tradition of political personalism, who brooked no compromise in their quest for individual moral redemption, naked protestors have few qualms about instrumentalising the moral force of their acts in the name of mass politics, including deeply reformist cause.

In assessing the capacity of naked protest to mediate and transcend the basic tension in political personalism between individual morality and political calculation, one potentially fruitful approach is provided by Andrew Boyd and Stephen Duncomb, whose recent article in the *Journal of Aesthetics and Protest* (Issue III)⁷ argues intelligently for a "politics of spectacle". For Duncomb and Boyd, experienced organisers in anarchist-inspired direct action movements like Reclaim the Streets and Billionaires for Bush, the present climate of intentionally vacuous public discourse demands symbolically compelling, media-oriented politics that comprehend a culture of "persuasion and manipulation" by engaging in a "propaganda of the truth" and "a manufacture of dissent". As contemporary exemplars of the politics of spectacle, Boyd and Duncomb present small but visible leftist groups and individuals such as The Ruckus Society, Critical Resistance and Reverend Billy, all of whom advance their generally anarcho-reformist agendas through a mix of direct action and absurdist public performance. The authors also claim historical heroes of spectacle, from obvious choices such as Yippie leader Abbie Hoffman and dramatist Bertolt Brecht to less expected names like Civil Rights figure Rosa Parks, the activist turned mythical "Everywoman", Zapatista leader Sub-Commandante Marcos, practitioner of the theatre of military insurrection, and the populist post-modernism of architectural theorists Diane Scott and Robert Venturi, patrons of the fabulously democratic Vegas Strip.

As a means of interpreting naked protest, Boyd and Duncomb's notion of a politics of spectacle is compelling. Mediainstitutional institutions are built largely around the packaging of the barely clothed female figure. Presented with public nudity that speaks to an entire different set of concerns, mainstream media cannot resist. And so, though they make anchormen squirm and force newspaper editors to make hard choices about photo editing, these subversive nude bodies inevitably receive coverage that far outstrips their frequency or mass appeal. In America and Australia especially, naked anti-war protests have garnered extensive coverage, with 50 naked women from Marin county making it onto the docket for CBS Sunday morning in 2003. In India, the naked protest of 13 Manipuri women in July 2004 sparked serious national debate over an issue – the abuses of the Indian army in quelling separatist movements in the country's troubled North-East – that had been dormant in the national consciousness for most of its thirty-year history. In England, Steve Gough (the naked hiker) and his friend Russell Biggs, two idiosyncratic naked protestors and social critics, continue to

receive considerable attention in a media environment particularly attuned to spectacle.

Considering naked protest as an almost archetypal form of personalist politics however, Boyd and Duncomb's politics of spectacle in the end only covers half of the story. For while naked protest is without doubt a spectacular form of mass communication, its capacity to create effective political spectacle cannot be divorced from its ability to provide moments of personal moral speech and redemption. As a personalist act, naked protest allows its practitioners to achieve a sense of autonomy and empowerment in the face of political realities over which they have little control. Through their nudity, naked protestors reject available terms of political debate in favour of a type of performative speech that is at once absurd and penetratingly incisive. Whether preformed by Western bourgeois elites or Asian subalterns, the act of stripping in public forces spectators to engage with the sense of personal moral outrage that it conveys.

In the end, the result of naked protest is undoubtedly political spectacle of the first order. But the power of such spectacle resides ultimately in the pursuit of individual moral redemption that it communicates. By baring their bodies, naked protestors create bodily tableaux of "truth force" that cannot be ignored. While they do not therefore resolve the tensions inherent to all versions of political personalism, they do remain true to its most basic assumption: that the public expression of individual morality is the ground of political dissent.

NOTES

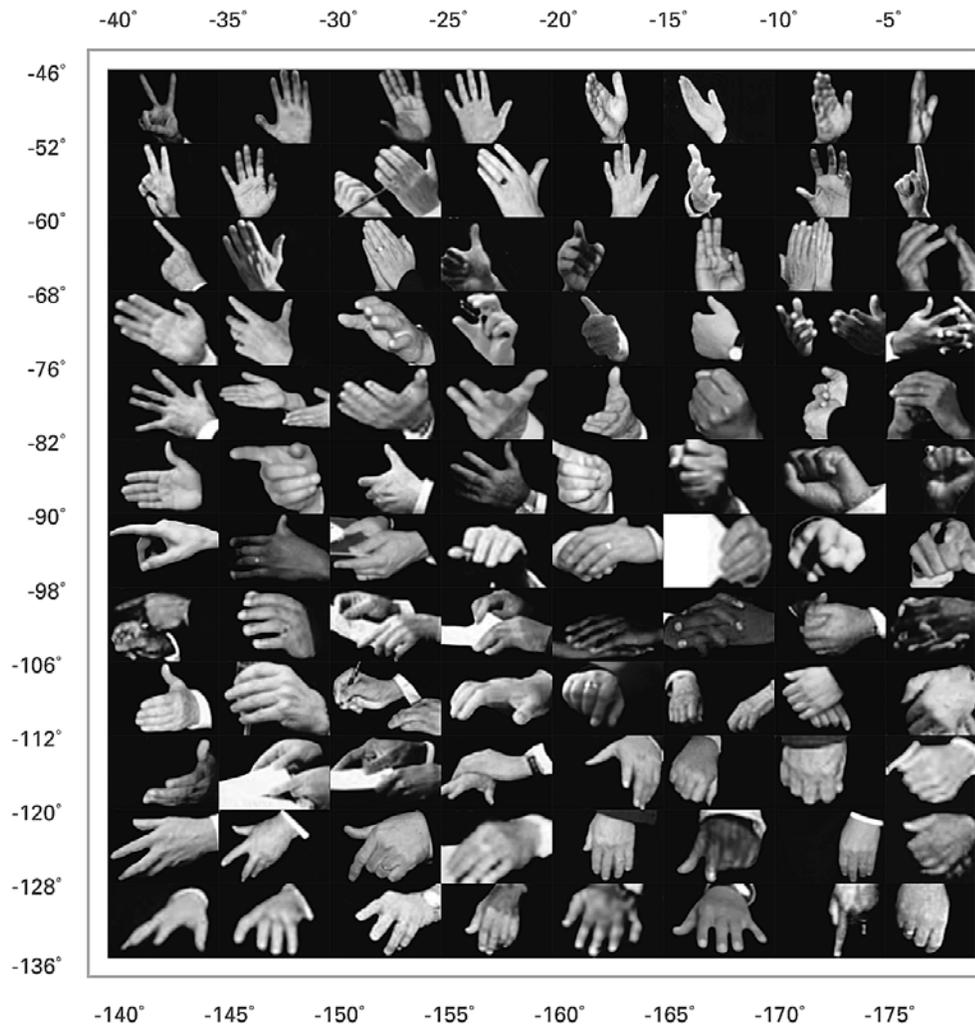
1. Lenin, Vladimir. *Rabochaya Gazeta*, No. 2, 18 December 1910.
<<http://www.marxists.org/archive/lenin/works/1910/dec/18.htm>> (accessed November 2004).
2. "Leo Tolstoy". *Wikipedia: The Free Encyclopedia*.
<http://en.wikipedia.org/wiki/Leo_Tolstoy> (accessed December 2004).
3. Tolstoy, Leo Tolstoy. "Last Message to Mankind". *18th International Peace Congress*. Stockholm, 1909.
<<http://www.jesusradicals.com/library/tolstoy/last.html>> (accessed November 2004).
4. Matthew 5:38-48, quoted in the prologue to Tolstoy, Leo, *The Slavery of Our Times*.
<<http://whistleblowers.freehosting.net/slavery.htm>> (accessed November 2004).
5. Tolstoy, Leo. In Gandhi, Mohandas K. (ed.). "Letter to a Hindu", 1909.
<http://wikisource.org/wiki/Letter_to_a_Hindu_-_Leo_Tolstoy> (accessed December 2004).
6. Frederick, Michael L. *Transcendental Ethos: A Study of Thoreau's Social Philosophy and Its Consistency in Relation to Antebellum Reform*. A Thesis in the Field of History for the Degree of Master of Liberal Arts in Extension Studies, Harvard University, November 1998.
<http://www.walden.org/Institute/thoreau/scholarship/f/Frederick_Michael/thesis.htm> (accessed December 2004).
7. Boyd, Andrew and Stephen Duncomb. "The Manufacture of Dissent: What the Left Can Learn from Las Vegas." In *The Journal of Aesthetics and Protest*, 1.3. <http://www.journalofaestheticsandprotest.org>. (accessed November 2004).
Quotes from *The Kingdom of God is Within You* were taken from an online transcript found at: <http://flag.blackened.net/daver/anarchism/tolstoy/iwu126.html>
Quotes from *Civil Disobedience* were taken from an online transcript found at: <http://www.cs.indiana.edu/statecraft/civ.dis.html>

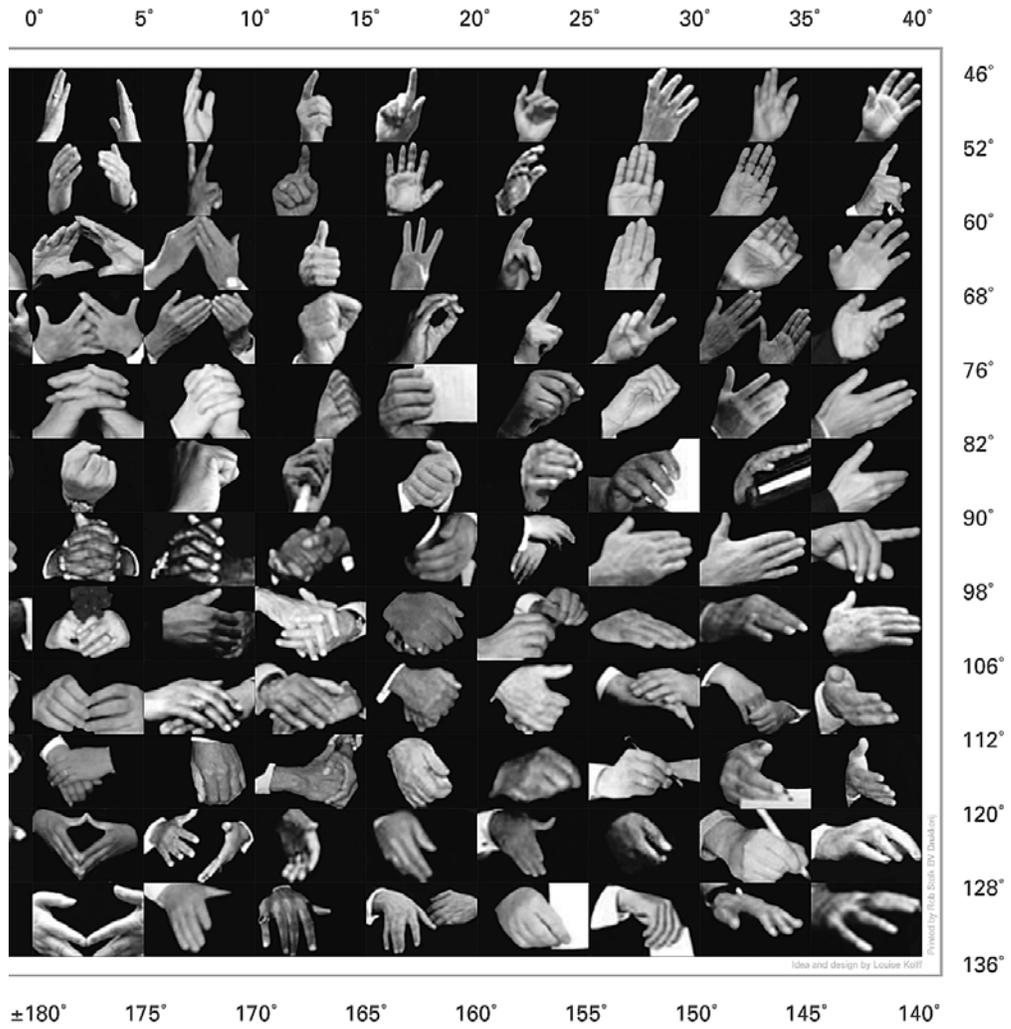
Analytical World Statistics Wall Chart, 2003

LOUISE KOLFF

Afghanistan	Denmark	Latvia	Saint Kitts and Nevis
Albania	Djibouti	Lebanon	Saint Lucia
Algeria	Dominica	Lesotho	Solomon
Andorra	Dominican Republic	Liberia	San Marino
Angola	East Timor	Libya	Sao Tome and Principe
Antigua-Barbuda	Ecuador	Liechtenstein	Saudi Arabia
Argentina	Egypt	Lithuania	Senegal
Armenia	El Salvador	Luxembourg	Seychelles
Aruba	Equatorial Guinea	Macedonia	Sierra Leone
Australia	Eritrea	Madagascar	Singapore
Austria	Estonia	Malawi	Slovakia
Azerbaijan	Ethiopia	Malaysia	Slovenia
Bahamas	Fiji	Maldives	Somalia
Bahrain	Finland	Mali	South Africa
Bangladesh	France	Malta	Spain
Barbados	Gabon	Marshall Islands	Sri Lanka
Belarus	Gambia	Mauritania	St. Vincent & the
Belgium	Georgia	Mauritius	Grenadines
Belize	Germany	Mexico	Sudan
Benin	Ghana	Micronesia	Suriname
Bermuda	Greece	Moldova	Sweden
Bhutan	Grenada	Monaco	Switzerland
Bolivia	Guatemala	Mongolia	Syria
Bosnia and Herzegovina	Guinea Bissau	Morocco	Tajikistan
Botswana	Guinea	Mozambique	Tanzania
Brazil	Guyana	Namibia	Thailand
Brunei	Haiti	Nauru	Togo
Bulgaria	Honduras	Nepal	Tonga
Burkina Faso	Hungary	Netherlands	Trinidad and Tobago
Burma	Iceland	New Zealand	Tunisia
Burundi	India	Nicaragua	Turkey
Cambodia	Indonesia	Niger	Turkmenistan
Cameroon	Iran	Nigeria	Tuvalu
Canada	Iraq	Norway	United Arab Emirates
Cape Verde	Ireland	Oman	Uganda
Central African Republic	Israel	Pakistan	United Kingdom
Chad	Italy	Palau	Ukraine
Chile	Jamaica	Panama	Uruguay
China	Japan	Papua New Guinea	United States of America
Colombia	Jordan	Paraguay	Uzbekistan
Comoros	Kazakhstan	Peru	Vanuatu
Congo	Kenya	Philippines	Venezuela
Costa Rica	Kiribati	Poland	Vietnam
Cote Ivoire	Korea, North	Portugal	Western Samoa
Croatia	Korea, South	Qatar	Yemen
Cuba	Kuwait	Romania	Yugoslavia
Cyprus	Kyrgystan	Russia	Zambia
Czech Republic	Laos	Rwanda	Zimbabwe

 WORLD LEADERS ORDERED ACCORDING TO POSITION OF HANDS





A Comparative Anatomy of Post-Mortem Acts

SMRITI VOHRA

1.

Once again, sleep abandons me. And tonight, even the radio is faithless. The sepulchral “*Mein aur Meri Tanhai...*” yet another time.

No. Change the station.

Richard Strauss. In the court of kings, the “Dance of the Seven Veils”. Bewitched, bewitching Salome turns in tightening circles, shawled in her eighth – a prophet’s fierce resolve, woven of desert sun, locusts, wild honey.

No. Change the station.

Four songs back to back. Bands named, respectively, Drowning Pool, Saliva, Oedema, Garbage. None bad at all.

But no, tonight television will have to answer an insomniac’s prayer.

Change channels, change channels. Then I stop. National Geographic. For a full hour, mesmerised, I gape at Gunther von Hagen’s tableaux of crafted corpses, “the democratisation of anatomy”, performance art with plastinated “biomass”. Exhibited in European, Asian, American cities; until now viewed by over 14 million people. Thousands, including grandparents and children, are signing up for the procedure. For convenience, the body donation form can be downloaded from the official website.

Never have I been wider awake. In a warehouse, Chinese employees in surgical garb sit on benches around tables with cadavers stretched out. Noses an inch away from the putrefaction, the teams excise tissue with tweezers, needles, scalpels, hooks, fine-tipped tools. Concentration is absolute. None looks up, left or right, relaxes, breaks rhythm or stops.

Another warehouse, with more Chinese employees in surgical garb. In a precise drill they lift prepared bodies, arrange them in large tanks filled with liquid. Hallucinatory high priest von Hagens supervises. In a later clip his wife confirms that he has persuaded her, after much effort on his part, to ensure that he too is plastinated after he dies.

2.

<http://www.bodyworlds.com/>

Gunther von Hagens invented plastination at the Institute of Anatomy at Heidelberg

University in 1978 and has been developing it further ever since. With the invention of plastination it has become possible to preserve decomposable specimens in a durable and lifelike manner for instructional, research and demonstration purposes. During a vacuum process, biological specimens are impregnated with a reactive polymer developed specially for this technique. The class of polymer used determines the mechanical (flexible or hard) and optical (transparent or opaque) properties of the preserved specimen. Plastinated specimens are dry and odourless; they retain their natural surface relief and are identical with their state prior to preservation, down to the minutest level; even microscopic examinations are possible.

The plastination technique replaces bodily fluids and fat with reactive polymers, such as silicone rubber, epoxy resins or polyester. In a first phase, solvent gradually replaces bodily fluids in a cold solvent bath (freeze substitution). After dehydration, the specimen is put in a solvent bath at room temperature for defatting. The dehydrated and defatted specimen is then placed into a polymer solution. The solvent is then brought to boil in a vacuum and continuously extracted from the specimen; the evaporating solvent creates a volume deficit within the specimen, drawing the polymer gradually into the tissue. After the process of forced impregnation, the specimen is cured with gas, light or heat, depending on the type of polymer used.

3.

<http://news.bbc.co.uk/1/hi/health/2493291.stm>

20 November 2002

The first public autopsy in 170 years has gone ahead before a paying crowd on Wednesday, despite police threats that they would intervene. Professor Gunther von Hagens defied warnings from Scotland Yard that his show in front of a sell-out crowd at London's Atlantis Gallery could be illegal. Among the audience were anatomy professors, asked by Scotland Yard to attend and monitor proceedings. Her Majesty's inspector of anatomy, Dr Jeremy Metters, had sent the professor a written warning which said the planned procedure would be "a criminal offence under the Anatomy Act" as neither he nor the venue had post-mortem examination licenses. Professor von Hagens told the BBC that he would rather go to jail than cancel the autopsy and that he was "on good legal grounds" to hold the autopsy in public.

The event was shown on giant screens outside the east London art gallery. More than 1000 people were on the waiting list for tickets and around 200 hopefuls were left disappointed outside the gallery in the rain.

There were gasps from the audience as he cut through the skull with a hacksaw. After opening the chest, he stuck his hand in deep and, with the help of a colleague, pulled up a huge portion of innards.

"I have liberated the lungs and the heart", he declared.

In all, eight organs are removed in a standard autopsy: the heart, the lungs, liver, spleen, kidneys and the brain. Many viewers covered their mouth and noses as the stench from the body filtered into the auditorium.

Liberal Democrat health spokesman Dr Evan Harris said, "There are good reasons to restrict the performance of autopsies to licensed people and licensed places, not least of

which is the importance of ensuring adequate consent and to protect those members of the public who do not wish to view human remains. Health ministers should be clear that action against Professor von Hagens is on the basis of unlawful autopsy, and not a matter of censorship”.

Channel 4 planned to televise the autopsy later on Wednesday. It defended the decision to broadcast the event. A spokesman said, “The broadcast, at midnight, will be preceded by a clear and specific warning; and a studio debate before and after footage of the autopsy is shown will put the event in its proper context”.

4.

Sit, Gunther. Here we are, two courteous eviscerations flexed in a livid ceremonial of ducts and sphincters, tendons and cartilage. Hand me the remote control, I have something to show you on the Discovery channel. Scientific terminology in Hindi is a discourse doubly alienated, but for a programme such as this, on gestation and birth, we need not even listen. Even you are amazed. How, where, was the camera implanted? Its relentless eye has entered terrain beyond even the fabulous, recording the milky violence of the inevitable spasm, and the single fearless egg that waits alone in a furrow, solid as a bowling ball. Around it, sperm in their millions fight and die. The last two remaining warriors increase their frenzy; as one weakens, the other with lightning force buries its head in the egg's patient membrane, triumph instantly sealed, inviolable. This unstoppable act, this end, is the beginning. No, Gunther. You say I should be everlasting because I am a wonder of nature; I say all nature is wonder, this is all I need to understand; this much knowledge is sufficient.

5.

http://www.fact-index.com/b/bo/body_worlds

Von Hagens maintains strict copyright control over pictures of his exhibits. Visitors are not allowed to take pictures, and press photographers have to sign agreements permitting only one publication in a strictly defined context, followed by return of the copyright to von Hagens. Because of this, a German press organisation has suggested that the press refrain from reporting about the exhibition altogether. In 2003, officials of Munich tried to prohibit the exhibition there, arguing that it violated human dignity and laws regulating burials. Von Hagens appealed and managed to obtain a temporary injunction allowing the exhibition but requiring that certain ‘artistic’ exhibits (including a man carrying his own skin, a man on a horse holding his brain in his hand, and a man kneeling in prayer, holding his heart in his hand) be covered.

The exhibition in Hamburg in 2003 took place in the rooms of an erotic art museum on the Reeperbahn. A local official's initial objections to the artistic exhibits were overruled by officials of the Hamburg Senate.

6.

<http://www.hindu.com/2004/12/08/stories/2004120813530300.htm>

8 December 2004

Originality is what makes MEDEX-2004, the medical exhibition on at the Gandhi Medical

College till December 16, different from other expos.

There are preserved forms of mutilated limbs, fetuses, cadavers, an open mortuary with real bodies inside – bloodcurdling it might seem, but then, the aim is education.

The originality goes to such an extent that anyone casually passing by Room No. 204 could scream “Suicide!” on seeing a woman hanging from a rope. It takes some time to realize that this too is just one of the scenes of death put up by the Forensic Department.

Formally inaugurated by the Home Minister, K. Jana Reddy, here on Tuesday, the exhibition, which will be open from 9 am to 8 pm daily, has a striking range of exhibits on display, photographs of gory crime spots and scenes of death, apart from various working models made by the students of the college.

With 32 departments vying to outclass each other through 40 rooms spread over four floors, visitors surely have something to see on hand. There are messages too, like the one against female foeticide put up by students of the Anatomy Department. The cadavers too catch one's eye easily, particularly that of a child, its head and limbs bandaged and placed casually on a chair.

The exhibition on Tuesday had scores of schoolchildren, medical students and nursing students as well, making the rounds of the departments. If some were full of queries, others were silent, a handkerchief held tightly to the nose, staring at the exhibits with a look of disbelief.

7.

No, Gunther. Unsuture me from the loom of my bones, thread my sweat into garlands, leach tormented voltage from my nerves, plunder me till I pour from the chalice of your brimming hands. But I do not want to endure the five thousand years that you promise me, in the unblinking rapture of the plastinated. And can you contain all of us: foetus, human, gorilla, colt, giraffe? How will you manage the blue whale? Its heart alone is the size of a small car, the blood vessels large enough to accommodate a fast-swimming full-grown trout, or the leap of salmon catapulting up the falls to mate and die.

8.

[http://www.guardian.co.uk/russia/article/17 October 2002](http://www.guardian.co.uk/russia/article/17%20October%202002)

Russian police have charged a senior Siberian pathologist after investigating for a year how 56 corpses ended up in Germany as part of Gunther von Hagens' project to preserve human bodies as works of art.

The police say that eight corpses were supplied under false pretences to the German institute where Professor von Hagens developed his “plastination” technique of replacing bodily fluids with synthetic resins.

Prosecutors in the southern Siberian city of Novosibirsk say that Vladimir Novosyolov, head of the regional bureau of medical expertise, told the relatives of eight dead people under his jurisdiction that their bodies had been cremated.

The relatives were given urns containing their supposed ashes, while their real bodies, it is alleged, were sent on to Professor von Hagens' Institute of Plastination in Heidelberg, in 1999.

Russian law permits “unclaimed bodies” – those for which relatives cannot be found or show no interest – to be used for scientific research, but customs officials noticed unexplained shipments of human remains from Novosibirsk to Heidelberg.

Professor von Hagens’ institute provides bodies for his exhibition *Body Worlds*, in which plastinated corpses are cut open to expose their internal organs and bone structures, and then put in lifelike poses. The professor said none of the bodies in the exhibition was from Russia.

The police in Novosibirsk have not implicated the professor or his exhibition in their inquiries. They say that Mr Novosyolov signed misleading documents, which were given to relatives. Investigators are struggling to find a reason to charge him with abuse of office.

Each family paid only the equivalent of forty pounds for the urn of ashes and the crematorium service. “If this money went into their pockets we would be able to accuse them of fraud”, said Yevgeny Gosteyev of the prosecutor’s office. “But the money went to the accounts of the regional bureau of criminal medical expertise, for development”.

The prosecutors suspect that scientific advancement and cooperation was the main motive. Mr Novosyolov could not be reached for comment.

The macabre chain of events has outraged Russia. A further 13 people, including the rector of the Novosibirsk medical academy, Anatoly Yefremov, who made the agreement with Professor von Hagens’ institute, were investigated, but no one else has been charged. The authorities say they stopped a second shipment of bodies several years ago, and that the agreement between Novosibirsk and von Hagens has been terminated.

Mr Gosteyev said, “We managed to identify all the 56 bodies. But they were supplied to Prof. Hagens as nameless merchandise, which neither he nor the families can identify. In the customs declaration they were simply called ‘biomass’. In many case we did not find relatives”.

Professor von Hagens said, “I really do not know what this fuss is about. My exhibit was ready before I had a contract with Novosibirsk. I have no reason to doubt that the bodies [at my institute] were acquired by legal means”.

He said he had hired a journalist to go to Novosibirsk and record testimony from officials to prove that there was nothing illegal about the way he acquired the bodies. He added that he thought the investigation was over: “I have as much to do with this case and the problems, and the alleged betrayals, as a penguin has to do with Christmas celebrations”.

9.

Hurry, hurry, Gunther. But be careful, this is ITO, supposedly the busiest traffic intersection in all of Asia. You don’t want to end up as a statistic on the board near the Police Headquarters, close at hand. The numbers change daily. Reported road deaths are about 60 per month on the average; as for the unreported, it doesn’t matter. We are over a billion citizens, and we are always dying – imagine the biomass, Gunther! The sheer volume and variety, in generous, copious, ever-proliferating quantities! Snatched from immolation, from immersion, from interment, our potential to serve art, to serve science! Your resin baths, your skilled realigning of our warp and weft the final destination of all our violently-embedded castes and creeds!

But we are not in Heidelberg, Gunther. We have our own laws. The 1949 Bombay Anatomy Act (adapted and modified by the Adaptation of Laws Order, 1960) provides for the supply of unclaimed bodies of deceased persons to hospitals and medical and teaching institutions for therapeutic purposes, or for the purpose of anatomical examination and dissection. The 1982 Maharashtra Kidney Transplantation Act; the 1957 Bombay Corneal Grafting Act; the 1982 Eyes Act; the 1982 Ear Drum and Ear Bones Act. We have the 1994 Transplantation of Human Organs Act that provides for the regulation of removal, storage and transplantation of human organs for therapeutic purposes, and for the prevention of commercial dealings in human organs and for matters connected therewith or incidental thereto. With the Act coming into force, brain death has finally acquired legal status in India. Any offence punishable under this Act shall be tried in the court of a metropolitan magistrate or a judicial magistrate of the first class. But what does the law influence, since so many of us prefer to surrender our biomass to fire, to earth, rather than to the hands of the living? Even when we are past all touching, we don't want to be touched by anything except by flames, worms, river water.

Hurry, Gunther. I can see your black hat across the road, you are still in the same place. You should follow the pregnant beggars, the urchins, the lepers stuffed into crates, the maimed, the armless and legless, the destitute biomass deftly wending between the wheels of the buses, rapping on the windows of cars, beseeching. But today they are all coming towards where I am standing, outside the office of the newspaper I work for. The stench of the dead camel at the entrance of the building is pulling all the pedestrians this way. The *chaiwalas* and *paranthawalas* have abandoned their stoves; lucky cows are feasting on the bananas piled on carts that vendors have left to come here and stare. This is not how I want to begin my Sunday duty, Gunther. Normally it is quiet, very little happening in the city, hopefully nothing to report. I like to take refuge among the pages of the international newspapers and read about the hygienic streets and orderly public life of those first-world countries I know I will never see. Yet here I am, next to the putrid biomass that apparently dropped dead exactly outside the office entrance during the night, no one knows when.

"*Mar gaya, bas* (It died, that's all)", says the *chowkidar* (watchman). "*Uthwa dijiye* (Get it disposed of)..."

This is valuable biomass, Gunther: unless you arrive quickly and stake your claim, other interested parties will be here very soon. Crows are already perched on the upper ledges of the nearby buildings, there are vultures circling overhead, flies are sipping from the beast's crusted eyelids and mouth. Stray dogs, ribs showing, are gathering in eager packs behind the crowd.

I go upstairs, call the disbelieving municipal corporation, hang up. I go outside, stand by the festering bulk, wait. Everyone is waiting, Gunther – the crows, the dogs, the vultures, the humans. The odour gags us like a thick handkerchief. About 15 minutes later, an MCD tempo with a dilapidated towing winch arrives, horn blasting. The driver and another man get out, assess their task. The crowd closes ranks, edges forward.

"*Truck kahaan hain* (Where is the truck)?" I ask.

"*Maine bola to tha aapse, itwaar hai, tempo hee mil sakta hai* (I told you, it is Sunday, you will only get tempos)..."

"Tempo mein aap oont ko kaise laad sakange (How will you load the camel into a tempo)?"

"Chinta mat kijiye, upaay hai (Don't worry, there is a plan)".

The man picks up a huge crowbar from the back of the tempo. "Oont ke taang tod denge, tab mod denge, tab usko ghusa denge tempo mein (We'll break the camel's legs, then bend them; then we'll shove it into the tempo)".

He waves the implement at the crowd. "Chal, peechey hat, peechey hat (Come on, move back, move back)..."

People retreat a few inches. Those at the back of the crowd begin to eagerly jostle towards the front. The MCD man positions himself, swings the crowbar at the camel's knees, callused into dense pads from innumerable obedient genuflections and risings to the tug of reins, bit, bridle, rope through the septum. My hands fly up to cover my ears but it is too late, the sound of iron on cracking bone ripples through me like terrible lightning. I can still hear it. The pounding continues, the mangy pelt ruptures, the condyles splinter, flesh begins to protrude. Some in the crowd turn away, some press forward; the flies continue to drink unperturbed from the beast as it lies unmoving in a mode of bloodstained deliverance, absolved from all mauling, all caressing. In our country, Gunther, every last inch of this biomass, from nose to tail, will be used and re-used.

I don't stay to witness the end of the battering, the tethering, the lifting, the winching. You should have crossed the road in time to help us, Gunther. Here in the third world we always need to learn from skilled practitioners, we need models of greater efficiency.

10.

The anatomy theatre is filling up, Gunther. From where you have placed me, on a table in the middle of the central well, I see the procession of your hallowed teachers. Herophilus; Erasistratus; Marinus; Galen; Avicenna; Vesalius; Fallopius; Fabricius; Casserius; Spigelius; Eustacius; Sylvius; Servetus; Harvey, who spent half his life searching for the path of blood from the twigs of the arterial tree, with its great trunk and branches, to those of the venous tree; Malphigi, who stood on a hillside near Bologna, held up a piece of frog's lung against the Italian sunset, and saw for the first time the delicate lace of capillaries.

Save a seat for Dr Mengele of Auschwitz, perhaps he too considered himself to be of this learned tribe.

Tier upon tier comes into view, crowded with unnamed others: those who sliced the bandaged meat of mummies, the sodden muscles of wounded gladiators, to feed an obsession; the showmen with cleavers, deaf to the cries of the live apes, pigs, dogs roped to their tables, skinned to amuse crowds on public holidays; medieval vivisectionists searching the body for the soul, entering corpses the way spades pillage graves; the ones who tied candles to their scalps and went about their blood-soaked task at night, in secret; the ones who exhumed the innocent, caressed rigor from the marrow of the condemned, cut down from the executioner's gibbet those hanged for sodomy, for theft, for murder.

Finally I glimpse him, the half-paralysed guest of honour, magnificent old da Vinci. Beard combed by spiders, cranium pocked with the embers of dying constellations, lips sealed with rust. Yet as he fumbles to his place I hear each of his phrases fall, like withered fruit

from the stem, through the centuries: "Abbreviations do harm to knowledge and to love, seeing that the love of everything is the offspring of this knowledge, the love being the more fervent in proportion as the knowledge is more certain...Of what use, then, is he who abridges the details of those matters of which he professes to give thorough information, while he leaves behind the chief part of the things of which the whole is composed? It is true that impatience, the mother of stupidity, praises brevity, as if such persons had not life long enough to serve them to acquire a complete knowledge of one single subject, such as the human body; and then they want to comprehend the mind of God in which the universe is included, weighing it minutely and mincing it into infinite parts, as if they had to dissect it...!"¹

Despondent, solitary, exquisite Leonardo. Falcon in the sky of thought, bestow your undimmed gaze upon this specimen on the anatomy table, this irreducible intersection of planes, projections, dimensions, depths, foreshortenings, theorems, axioms, intervals, convergences, symmetries, coordinates; this regressed horizon; this vanishing point of all perspective. The maestro has remembered to do what you forgot, Gunther: he calls two boys from a rowdy gang of studio apprentices, free today from grinding colours and cleaning brushes; he sends them up and down the noisy tiers to ignite clumps of incense on the ledges, preparing a shroud of jasmine, rose and musk for the slimy ghost of my disinterred fumes.

11.

<http://www.channelnewsasia.com/stories/europe>

18 January 2004

Controversial German anatomist Gunther von Hagens used the corpses of executed Chinese prisoners to create his exhibitions of synthetically preserved human bodies, German newsmagazine *Der Spiegel* reported on Saturday.

According to *Der Spiegel*, a centre operated by von Hagens' company in the Chinese coastal city of Dalian held a stock of 647 preserved bodies in November 2003, which were destined to be either exhibited or sold to universities. The report said a number of bodies were procured from two nearby prisons, including one housing political prisoners, and that a number were purchased rather than donated. *Der Spiegel* cited the case of a young woman and young man, whose bodies were delivered to von Hagens' centre in December 2001, shortly after they were both executed by a bullet to the head.

Interviewed by the magazine, von Hagens admitted that his co-workers had accepted the two bodies in question, although he said he had been shocked to discover the incident and that the workers had since left his company.

The anatomist appeared last year before a parliamentary committee in Kyrgyzstan to answer questions about the discovery of 200 decaying corpses in the basement of a centre he established in Kyrgyzstan's medical academy.

12.

Follow me into the tower of the church, Gunther, up the steps, a few more. I have been up here before, alone. Massed grey clouds, New York's winter wind blowing off the river, raking

my face; the skyline as distant as a thought subsiding. This city was different then, the World Trade Center still standing, Osama's minions not yet woken into their dream of a martyr's paradise. I took a moment to catch my breath, put my hands on the cold casings of the giant bells. Shock as the thunder coiled in their silent tongues surged through my palms. Gunther, the anatomist in you would appreciate the invisible, fantastic circuitry of electric ringing. Let me explain; I looked it up in the Encyclopaedia Britannica. Wires lead from a standard piano-type keyboard to relays, located near the bells; and wires from the relays run to solenoids connected to the clappers. Pressure on the console keys transmits the current to the solenoids which pull the clappers. A good bell, properly struck, should give out two distinct notes – the strike note or key of the bell, and the hum note that should be a major sixth below the strike note. A good bell possesses a full, round tone, and if cast thick, should be able to last through the ages.

By the way, Gunther, to the ringers a bell is always feminine.

It was getting colder by the second. I struggled towards the little cabin on one side, opened the door, stepped into warmth. The old man sitting at the bell console, head jerking from left to right in a compulsive twitch, looked up without surprise. As if he knew me, as if he had been waiting. I stared at his clenched fists, heavily bandaged into stumps to control the constant tremor of nerves gone forever wild.

No greetings, no questions, no statements. Nor did I have anything to say. He lifted the stumps from his lap, set them on the console.

"What shall I play for you?"

Stunned, I went completely blank; then mumbled the name of the one composition that came to mind, since it was Christmas eve: Bach's "Jesu, Joy of Man's Desiring".

He grunted approval, pressed the stumps to the keys, began. Sweat crawled upon his forehead as his hands moved, extorted unwavering obedience from the degraded ions that somehow pulsed with complete precision across the gap between his spliced axons, past corroded fibrils and papillae, through the roots and stalks of stuttering ganglia. Snow began its drift downward; the great throats of the bells filled up, emptied, released notes as crystalline as the falling flakes, their lattices immutably meshed before the final liquefaction and dissolve. In that moment, Gunther, I realised the one way true art comes to be – travail and expulsion, never anything less than an arduous birth from the immaculate, impersonal sanctum of beauty. I thought of a master-practitioner, your famous countryman Kappelmeister Johann Sebastian Bach: celestial octaves storming through the canals of one ear, and deep in the other, slowly dilating and contracting around malleus-incus-stapes, the sumptuous carnal fugue of his 20 children. I thought of a master-artist: the crown of thorns, the nails hammered through bone, the yielding flesh splayed on rigid wood, the spear hauling back drapes of skin to lay bare a fearless crimson magnificat; I thought of the agony of the perfected life, the ecstasy of the perfected death, and the absolute knowledge that there is no difference between them. Gunther, perhaps the acceptance of this phantasmagoric certitude is what brings, what will bring, the peace that passes all understanding.

13.

Welcome, Gunther. You finally crossed the road, entered the office, reached me at my typewriter. Before I open the assignments book to see what I have to report on today, let me tell you about last Sunday. Among others, a quadruple homicide in East Delhi. I found the resettlement colony, a maze of lanes, choked gutters overflowing. It was raining so hard, I was soaked to the bone, could barely see. The house I needed to get to was blocked off by a large buffalo dozing, gloriously wet, stretched across the lane from end to end. I splashed up to it, stood still. The only way to get past it was to climb over it – and this is what I did, Gunther. I straddled the animal it as if it was a fence, and managed to lurch over; it remained unmoving. I crossed the threshold of the house and stood dripping in a crowded room with the body of a youth on the floor, wrapped in a sheet. Women beat their breasts and wailed, and a very young wife smashed her bangles against the doorframe. Sparks of glass scattered around my feet, tiny chimes fading into silence. I looked around for the other three bodies and realised with a shock that I was completely in the wrong place – this was the wrong site, the wrong community, the wrong death. Yet I could have crossed the threshold of any home in any lane in any neighbourhood, and the fact would always be the same: death, the unremarkable guest, who one extraordinary day becomes the master of the house. Even if all that can be seen is the pulse of the living: tea boiling on the stove, babies crying for the breast, fingers picking grit from rice grains, plants in need of water, clothes in need of mending, wounds in need of balm.

I did finally locate the house of the quadruple homicide. The constables at the site remarked with jaded conviction that the attack was committed by the *banwaria*, officially classified as a “criminal tribe”. Allegedly, their women scout the back lanes of colonies in the guise of ragpickers, gathering information; the men go about their business of housebreaking and violent crime wearing only loincloths, bodies lathered with oil to make escape easier, should anyone try to take hold of them. In this case the assailants had fled across the border into Uttar Pradesh, so were out of the jurisdiction of the Delhi police. There was nothing to follow up. But I did follow up on the victims. They had been attacked while asleep, with the legs of a *charpai*. Bludgeoned on the skull with such force that blood flying upwards had stained the curtain pelmets.

I tracked the sole survivor to the same hospital I had spent hours in the previous week to report on a seminar on embalming techniques. The only thing I could recall were slides of maggot-crusting forensic exhumations, a commentary on how the pharaohs were ritually eviscerated by a hook mechanism inserted through the nostrils, and one speaker claiming to have plucked 87 sten-gun bullets out of a riddled former head of state assassinated at close range. The woman who survived the *banwaria* assault was barely breathing, several months pregnant, head swollen almost to the size of her belly. The nurse standing by the gurney told me that bodies of the victims were in the morgue, in the basement of the hospital. I had to take the lift to get there. I held its wheezing cage open for a painter with a bamboo ladder, and then for two employees struggling to hold upright a corpse wrapped in a dirty sheet. Full rigor. They muscled the bulk forward with strenuous effort.

“*Yeh kya kar rahe ho* (What the hell are you doing!)” the painter exclaimed, as the weight was thrust forward and pushed between us.

"Arrey, do minute ki baat hai. Seerhee do (Oh, it's only a matter of two minutes. Give the ladder)..."

They wedged the corpse into the angle between two walls of the lift and pressed the ladder against it, to hold it in place. Caged in the lift, sentient and insentient biomass travelled down to the basement together. I held the door open. The two men heaved the stiff flesh onto the ladder, shouldered it like an awkward palanquin and moved at a quick trot down the dank corridor to the morgue.

The painter followed, protesting. "*Meri seerhee kahaan le ja rahe ho* (Where are you taking my ladder)?"

"*Waapas kar denge, do minute ki baat hai, maaloomb hai maans ka tukda kitna bhaari hota hai? Kabhi pahaar ke barabar lagta hai.* (We'll return it, it's only a matter of two minutes, do you know how heavy a piece of meat is? Sometimes it feels equivalent to a mountain)".

I followed the men to the morgue, but the bodies I sought were missing. Only three trays that stored cadavers were functioning, the other dozen were jammed shut. There was floor space for about 25 bodies, and at least as many rats, some of which were at work on ears and toes while the morgue attendant sat examining the oily triangle of a *breadpakora* as if to verify the genius of Euclid. "*Hamein kya maaloomb* (What do I know)", he snapped, waving at the corpses. "*Aap inse poochiye! Shaayad inke paas kuch jaankaari ho jo aapke kaam aa sakti hai* (Ask them! Maybe they possess some information that will be useful to you)!"

All in a day's work, Gunther. But my final assignment, another infant-falls-into-open-manhole incident, on Asaf Ali Road, did bother me. I went to the site, returned to my desk, wrote nothing. There was nothing to write. The parents, illegal Bangladeshi migrant ragpickers, could not be traced. As for the crumb of starving biomass, instantly metabolised by the fecund, voracious, seething bodyworld of Mother India: what could my one inch of futile type say, about the reeking mouth that had swallowed a tiny life just barely begun?

14.

The Plastinator approaches, hovers. Hat black as a raven's wing, each retina a small mad jewel splashing pale blue fire. He sets his icy ear to my ribs. The carillon still peals within, strike note and hum note insistent, atrocious, louder than war. Unmoved and unmoving on the anatomy table, I am as alert as an eye under its lid, my bodyworld a charred seed in the moist bed of mind. His lustful acids have rendered me crisper than new silk, softer than the breast of a dove. Scimitar phalanges part me, stroke through navel of ashes, spine of rock, womb of water, thighs of plunging sand. His teeth of flesh and tongue of bone spit obscene labials and gutturals as tiger-claw forceps extract from my flayed throat the fugitive tremolo of a lost child. No, Gunther von Hagens, it was not I who said that the body is a garment; that the body is a sheath; not I who said that the body is like a dream; that when we see this and wake, not a trace remains.

NOTES

1. Windsor Anatomical MS. C, II, 14 (dated 1513). See Kenneth Clark, *Leonardo da Vinci* (Penguin Books, 1959, Harmondsworth, UK).



The Accidental Activist

FREDRIK SVENSK + KRISTOFFER GANSING

A lot of people around us seem to be spontaneously 'doing it' together, as a multitude of artists, researchers and architects turn into urbanists engaging in the invention and reconnection of everyday life functions in both material and virtual public spaces. These kinds of micro-political projects celebrate connectivity and interactivity and often try to create a site-specific, heterotopic platform of common experimentation, reflection and creation. In the art world, this has almost become a genre of its own and is sometimes labelled a social laboratory paradigm. Many of these interdisciplinary practices seem to satisfy a need to expand the field of art practice that is not media specific, and secure art as a useful tool within the production of knowledge and human good, as if the artistic subject had some specific knowledge and ethic imbedded in itself. Most often, these kinds of projects only try to create a sense of local communality; more seldom they try to deal with matrices of social discrimination, for example, sexism and racism, and how these are spatially distributed. In this text we will take a closer look not at such intentionally political art projects, that we do have experience of. Rather, we want to discuss a similar phenomenon that is intentionally not thought of as either art or political activism, but which is at some point becoming-activism. This is what we call *accidental activism*.

To get a background of how this concept is constructed, we first need to make a somewhat unfair caricature of artistic and interdisciplinary urban activism. For us it seems that underlying this urban activist trend is an institutionalised reading of 'French theory' (the name used in the US for a kind of soaked mishmash of post-war phenomenology, psychoanalysis, structuralism and post-structuralism) that allows for a mainstreamed critical standpoint on how the limits of power and representation are drawn in public space. This theoretical appropriation is commonly legitimised by the idea that misreadings are creative, critical and liberating practices in themselves. In other words, cultural development is due to "bad" translations and "false" appropriations. Within this discourse, sceptical of utopias, the notions of the modern society of discipline has been followed by the vision of the control society where surveillance is everywhere; this in turn is countered by a reading of de Certeau's *The Practice of Everyday Life*, which describes how resistant creative practices could emerge from within these power and control structures, constituted through the actualisations of immanent potentialities. *Potentiality* (with the

hidden reference to Spinoza) is the buzzword that has made contemporary art wholesome after the supposed execution of the Kantian aesthetics. The common (mis)understanding here seems to be that power, even when completely decentralised and individually as well as collectively internalized, still seems to hold the position of an absolute enemy that can be countered through tactical practice, for example in the form of 'creative' interventions. This understanding mixes up two different concepts of power, one discursive and one antagonistic, without really taking this challenge seriously.

We are thinking of projects that are all about using whatever is at hand to make participants engage in creative production as a goal in itself, as opposed to a practice that intends to find a common meaning in a chaotic world. Connectivity and interactivity are concepts now part of our everyday life, yet many artistic projects still celebrate these as good *per se*, establishing a new kind of public service ethos which follows a DIY (Do It Yourself) model of empowerment. We are not saying that these activism-tinged art projects are counterproductive in principle, but we find it strange how seldom such projects take into account that transgression, hybridisation and interdisciplinary practices have become habitual and affirmative within the regulatory forces of neo-liberal capitalism. They also rest on an unresolved problem that concerns the very idea of public space (or more precisely, the dichotomy public/private) as one of the founding principles of democracy. On the one hand, we have the public space in the classical Greek and Roman sense, as *agora/forum* – always based on some form of inclusion/exclusion, an empty square vacated by those representing only themselves. But on the other hand, there is the understanding of public space as regulated by a representational form where the function of the actors has been decided by social groups in a prior, self-reflecting process of consensus-making. The latter understanding has become even more important in the age of a mass mediated public space, in other words, in the age of representative parliamentary democracy. Generally speaking, most of the intentionally micro-political urban art projects of today do not seem to question the normative idea of public and private spaces, even though what is considered to be private and public is contingent and a question of relationality.

Escaping Public Space, Escaping Particularisation

This is where we think accidental activism is an important concept. We want to argue that this kind of praxis challenges the constructed dominating images of public space, both the ideal Greek *agora* where 'everybody' is represented with their own bodies situated in the public space, and the Habermasian idea of public space as a place of mediation and consensus-making through self-reflection. In doing so, we hope to contribute to how we can think democracy and politics without referring to the presence (or absence) of a common universal ground or ontological fundament. The praxis within public space that we are going to discuss is not an intentionally political praxis in the form proposed by situationism or the 'reclaim the streets' movement. It is also neither purely consumption praxis, nor an attempt at moulding public opinion. And it is definitely not any politically correct and relational contemporary art project that intends to make 'different' people meet, in the name of something. Instead, we are going to take a look at a *civil* practice of leisure in a specific kind of newly designed public space. This actual praxis is mainly about having a good time,

but it has still managed to become a case of political activism – an activism that cannot very easily be particularised as ‘only political activism’ or ‘only art’ or ‘only everyday life’.

This is an important point, since particularisation has become perhaps the most common way to dismantle political activities in liberal democracies. In this climate, ethnicity particularisation based on the idea of cultural identity has become the racism of multicultural society. And we are afraid that old French heroes, such as Foucault, Deleuze or de Certeau, cannot help us much in the way they are most commonly appropriated in the Western mainstream of critical thought, without being captivated by the power of Freudian melancholia. What is the point of arguing that everyday practices are genuinely flexible, self-reflective or rhizomatic, creative and intelligible, when this is precisely the main demand of the global market economy? The insights of these French thinkers are important indeed, and their concepts are useful, particularly in the fields of feminist, postcolonial and queer theory, even though the face of the enemy has changed since the days of the Cold War when most of them wrote their most important works. Still, it does not seem enough to assert that everything is discursively constituted, and that through our actions and operations, we are reproducing and changing these discourses in relation to our contingent position within networks of discourses. It seems that this problem has become increasingly crucial since the launch of new labour politics, first in the UK and then in places like Denmark and Sweden. When all parties are heading for the middle position, the parliamentary system has in itself institutionalised an implicit critique of identity politics that is far from the one Foucault and Deleuze outlined, but which still bears alarming similarities. It is not surprising that both neo-liberals and post-Marxists love to compete in the game of referring to Foucault and Deleuze in the most bizarre ways, especially when dealing with the common disease of identity phobia and anti-representationalism.

It takes a lot of guts to ‘speak for others’ in the politics of today, even if the subalterns sometimes cannot speak for themselves. Our opinion is that one does not become innocent or ethically safe just because one only represents oneself, and one’s own identity. At a time when political struggle for the realisation of ‘common good’ utopias such as the welfare state is no longer really at stake on a parliamentary level, identity politics enter the arena as one of the main concerns of liberal democracy. Why is it that the EU project remains bureaucratically limp while engaging in unashamed identity branding? Large-scale struggles are simply too risky when the thing that counts is the quarterly reports of multinational companies and their next moves. Almost every political question on a parliamentary level is presented in terms of right and wrong – as an ‘ethical problem’. This binary presentation seems to suggest that as long as we present issues in terms of ethics of doing the right or wrong thing, everybody is included; that once we have made the right choice, everybody benefits and no violence is committed. As if the act of doing the right thing would necessarily mean to commit a completely non-violent act.

The equivalent logic prevalent in a public art context is that an art project is good if different people get together to do something. Classical, non-ironic monumental practices are not that popular in contemporary art. All too often, the vantage point in anti-monumental contemporary public art projects can be characterised as being based on a confused mix of perspectives of public space, saying on the one hand that there can be no pre-

constituted meaning of a public space dictating its use; and on the other, that specific groups within the city must *reclaim* 'their' space and their use of it. Taking into account the two conflicting points of view on public space as outlined roughly earlier, this position becomes highly contradictory. This seems to reflect, in a somewhat nasty way, the dominant procedure of today's postcolonial identity politics, where an idea of particular identities as being *a priori* always in the making is a necessity in order to make space for consumer choice. These politics operate by a logic which claims the right to identity while at the same time prohibiting social actors from thinking about the multiple places from which those identities can be conceptualised and constructed.

'Monumental' Identity Politics

Maybe in times such as these, even though the old logic of the material monument with universal pretensions has fallen to pieces, there is a need of turning back to The Monument, to locate *its* virtual properties that are not simply waiting or *wanting* to be actualised, but are already so. We will discuss an architecture fair as a monumental practice – in the middle of this shift – since the monument is hard to think of outside the idea of a political public space: a space of different interests and therefore a space of conflicts – always already in opposition on some level. The practice in question here is not simply the production of this kind of neo-monument, but rather the practice of the excluded civil actors – in the very imagination of this site – and who have come back to haunt it in the form of what we have proposed as a form of *accidental activism*. Since it is impossible to control one's identity over time and space, projects such as the ambitious architecture fair *Bo01* in Malmö concerned with the political identity of cities, have become never-ending stories of monumental identity politics. An event like a fair and a brand new space for living the good life is only a strategically essential point – a possibility to rest a mo(nu)ment, one could say. But the work of *accidental activists* disturbs this resting.

This example of 'accidental activism' in Sweden is situated in relation to the infamous architecture and planning fair *Bo01* (translated as Living in the Year 2001). With this fair, the city of Malmö got an attractive new shoreline with exclusive housing overlooking the bridge between Sweden and Denmark, a view symbolising the making of the new competitive 'inter-region'. The fair, and the West Harbour area in which it is located, have been constituted as a kind of nodal centre for global capital to hang on to; an anchor point in an economy where value and capital is more or less fluid. Such a project – concerned with identity politics, assisted by city planners, architects, designers and artists – has become very popular when regions and cities want to change their image and, accordingly, their identity. These projects of identity branding try to create virtual monuments rather than material ones, and in doing so they simultaneously render the materiality of the architecture into a virtual commemoration of the future. Perhaps we can say that it is exactly at this mo(nu)ment that architecture becomes inseparable from mediating technologies such as photography, film and text. On the technological level, this is most obvious in the process of media convergence through digitalisation. Architecture and urban space have not only become an image; this image has also made a life outside media unthinkable. To buy an apartment is therefore always to buy an image that has both a relation to modernist aesthetic autonomy as well as to the functionality

of architecture. As Hal Foster has argued, not only have commodity and sign become inseparable: so have also commodity and space.

As many of the expensive apartments and houses at *Bo01* failed to attract buyers and the accompanying exhibition failed to attract visitors, leading the fair to bankruptcy, the area quickly became desolate. It is hard to say if the common image of the site as an elite area for the rich where 'no one' would want or could afford to live had an influence, leading to an absence of buyers. Malmö has for a long time been a typical working-class town with big industries that has just recently established its own university and a symbolic (as well as real) bridge to 'the continent' in the form of the bridge to Copenhagen. At the same time, the town has also turned into the most segregated city in Sweden when it comes to parameters such as ethnicity and social class. The grand project, the first large-scale living and architecture fair in the EU of the new millennium, with all its efforts towards ecological sustainability, turned out to be conceptually in opposition to the dominating idea of old Malmö as essentially a working-class city. And, frankly speaking, the monumental project of *Bo01* was not initially able to subvert or overcome this hegemonic identity of Malmö. At least not according to the original purpose of the project leaders and city planners.

However, the fabrication and construction of a new idea of Malmö as a centre for the knowledge industry and Information Technology business seems to prevail, even though this particular identity project did not turn out to be immediately successful, according to both project leaders as well as reactionary forces in mainstream public life. These contrasting views of the built environment could be seen as a testimony to oppositional qualities inherent to the practice of planning and architecture. In this particular example, these oppositional qualities have generated new and unexpected uses. The normative architectonic act of installing *Bo01* became a generative one, since the original marketing idea of *Bo01* was transgressed by its projected 'others', and their unexpected use of the area. It might come as no surprise that these others are mostly people living in the suburbs on the other side of town. These acts of appropriation would not have been possible without the actual realisation of the architectonic reference of "The New Malmö" in the form of *Bo01*. The case of "raising the monument" as a violent action constituted the possibility for unacceptable civil actions. And at one point these actions transform into activism. This occurs when it becomes clear to the unexpected users of the space that they are using and reorganising the space in a way that does not fit with the ideas of the governing politicians, the city planners and the project leaders.

The New Beach

The new beachfront, extending from the traditional sand beach of Malmö, has been used for pleasure and socialising by citizens from all over the city, including those who were originally the most excluded from the area, i.e., the people living in Malmö's suburban and generally poorer neighbourhoods. We have to remember that 'these people' do not fit within the framework of the image builders of the Malmö City elite. They are living on another 'island', and it (at least initially) seemed as if there was no bridge to that island in the minds of the city planners. Excluding 'them' and their 'home spaces', the segregated suburban zones, from the project of re-branding Malmö could be understood as the constituting

action for the project as a whole. And now they, the excluded 'others', are haunting this violent identity project on a material level, just by using a space that they were not supposed to, since they did not have the money to buy an 'environmentally sustainable' apartment in the area. This appropriation, however, is not about reclaiming a place, or intentionally and politically challenging the architectonic identity project. In other words, they do not think of their actions as intentionally subversive, or even political at all. But at the moment when they want to improve the functionality of the space, and they come in contact with politicians and bureaucrats accountable for that, then it becomes clear that it has been a case of *accidental activism* all along.

Accidental Activism and the (Metro)Polis

The new beachfront was not built for bathing purposes, yet elements in its design were (mis)interpreted as utilities for going into the water. Or rather, appropriation seemed to be more relevant than interpretation. After all, it looked like a nice public space by the sea. Why would one spend time interpreting the true essence and purpose of the space, the way it has been formulated by the entrepreneurs, when one is not a part of the project at all, even though it concerns one's own city? This ignorance – as a result of being excluded – made the accidental activism possible. And the characteristic incident is what we call the Scout case. This was the case of the notorious so-called 'Scouts' – small platforms extending into the water at regular intervals along the otherwise hostile and stony shore. At the end point of each Scout are metallic handles and steps that were naturally treated as steps *into* the water – when in fact the City Council had clearly stated that according to the 'Detail Plan', the area is not meant for bathing and that the Scouts were only meant to take you to the water, with the steps providing a means to climb *out of* the water should you be so unlucky as to accidentally fall into it. The oceanic landscape here becomes a screen both mediated by, and itself mediating, the newly built architecture.

However, the 'other' appropriators of this staged visual spectacle simply did not restrict themselves to the roles of a few urban *flaneurs* happily strolling along the new shoreline as envisioned by the entrepreneurs, the 'ideal inhabitants' and the Malmö City Council. Several 'outside' users of this space found out, however, that it was really easy to slip and hurt oneself while going into the water. After a number of accidents had taken place, people responded by contacting the city council. However, when a citizen asked the city council to provide safer access to the water in the form of anti-slip designs, she was met with disapproval and with the statement that it was not a bathing area, the ambiguous design of the Scouts notwithstanding. The artisans of the *Bo01* had made a material concept, and now they tried to restrict the use of it. Thus the representative of the city council symbolically instituted a 'law' through this regulatory speech act that did not take into account 'other' ways of understanding the meaning of *Bo01*. And if accidents were happening on account of people bathing, it was due to the conflicting views of the actual place: this bathing activity in itself could itself be regarded as an accident.

The immanent conflict in the project of *Bo01* was now actualised, even though this actualisation showed that the force that wanted to dictate what was and was not allowable was not yet hegemonic. The unexpected use by outside users of the space activated the ambiguous nature of the new shoreline design. If we are, however, to talk of any 'inside' users

(in a virtual sense) of the space, we would probably encounter a collective identity much closer to the one dictated by the official plan. A survey in the summer of 2003 showed that most of the inhabitants did not want this illicit bathing to take place in front of their apartments. These inhabitants, who had a representative body in the form of the construction and housing companies behind the area, were demanding prohibitions with reference to the official fact that the bathing area simply *did not exist*. The struggle for hegemony became visible only when one of the 'accidental activists' wanted to improve the design of the beach by getting in contact with the city council. In classic ideas about the public sphere mentioned in the beginning of this essay, there is always a logical relation between the use of the public sphere and the democratic decision-making concerning this use. But in this case it is very difficult to cope with both the Habermasian idea of self-reflection and consensus making *and* the Greek idea of the *agora* where everybody represents themselves. The discourses were so different that the city council would have to give up the vision to which they, together with the investors, construction companies and customers, had committed a lot of money.

Outro

As stated by the programme declaration of a congress of "oppositional architecture" held in Berlin in 2004, where the outlines of our case was first presented: "Corporations, regions, and nation states require spectacular architectures for representative and branding purposes, while the multitude of consumer subjects demand room for individualised privacy". Accidental activism constitutes an activity that cannot be thought of in purely oppositional terms to any of these interests. If so, both the imagined inside capitalist production of space, and the imagined outside – the opposition – become static. This cannot be the case for developing macro- or micro-level identity projects, because when (and if) they stop, they die. Today, the beach of *Bo01* is one of the most popular hangouts during summer in Malmö. There's no doubt that the governing body now has to regard this as a 'happy accident' and restructure the area accordingly. This is effectively a case of actualisation of qualities that could be perceived as oppositional to those of the original sketches of the area – where there was just the right number of curious visitors present, not the excessive crowds of today. The concept of *accidental activism* defines both an individual and a collective action that is not *intentionally* thought of as political activism but has the potential to become that when interacting with dominating institutions. Still, the processes of exclusion and inclusion inherent to planning and building practices become naturalised into the social fabric, rendering the oppositional quality of these processes invisible. It, therefore, becomes necessary to engage in a tracing of the contours of an always and already 'oppositional architecture', leaving the space open for thinking about other kinds of potential accidents.

A brief outline of this case was presented at the Camp for Oppositional Architecture, Anarchitektur Congress, Berlin, June 2004.

REFERENCES

- Foster, Hal. *Design and Crime [and Other Diatribes]* (Verso, 2003, London).
 Spivak, G. *In Other Worlds: Essays in Cultural Poetics* (Methuen, 1987, London).

'Our'chitecture

JAYSON CLAUDE



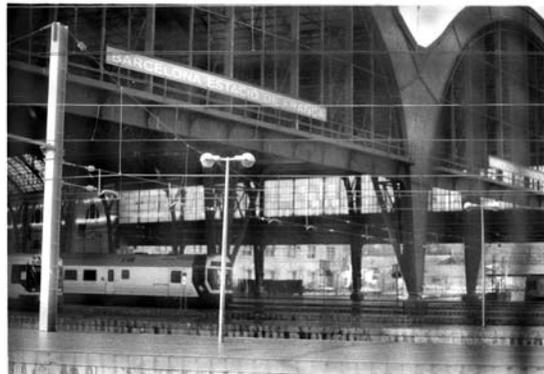
1.

"Again and again, actions, seemingly designed to help people, frustrate and bewilder them by alienating them from the context of their lives as they perceive it".
- Marris (1980), quoted in *Domicide*, p. 11

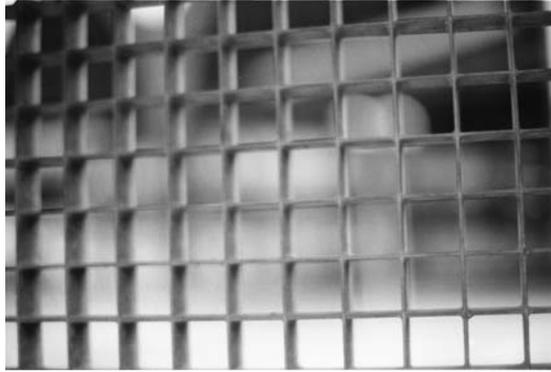
What could be considered a design rant? Does successful design require an exhaustion of resources to self-proliferate and add value to its own inclusive group? Can design and ethics once again be a highly connected system of communication without scapegoats, and can the same happen with design and economics, politics or construction? Can one's beliefs be fully manifested into 'architecture', or is there a necessary interconnectedness lost to other disciplines that was once enveloped by the word 'architecture'?

How can the professional assemblies of the architectural discipline disengage from their elitist tendencies to presume power and control? Does one have to be worth a certain amount of currency to be considered an architect, or if an architect is poor, can he/she still be successful? There is a rising need and momentum for subversive practices in architecture. Internal struggle within a system produces fear, for those who control the system have the most to lose. Internal struggle can also be welcomed as necessary for social evolution and can reveal the diverse and heterogeneous nature of the once controlled. Can personal extensions of self, local productions of shelter, intimate and spontaneous dwelling, and informal constructions help bring back self-worth for the excluded? Can subversive practices in architecture and urban existence help bring back ownership of public space and care for the public spectrum?

'A'rchitecture cannot address these issues alone, where 'A' stands for the elitist tendencies of the current regime heading the design discipline. Continued belief and reliance on star-architects and their mega-sculptures results in the squandering of potentially powerful public funding. I propose a new 'our'chitecture that will develop the infrastructure to allow design and construction to return to the people who really need it. Continuing a separation between those who can afford design and those who could really use it will only call for a collapse of an ethical architectural paradigm, if it hasn't done so already. Interestingly enough, the movement that will allow for the change in architectural thinking is dependent upon the body which it reacts to and lives off like a parasite. With the ability to compare paradigms and ethics to a greater body of knowledge, the subversive can take shape and momentum.



2.



3.

Inclusive/Exclusive Development

“Designing the rule system took on a far greater significance than designing the dwelling plan itself”.

Nabeel Hamdi, *Designing without Houses*, p. 68

Inclusive development is the decision-making process which involves all of the parties affected by destruction and construction. Some examples of inclusivity include design/building projects, public enablement, post-occupancy architectural evaluation, and always, community involvement. A completely holistic view would include all of those being displaced by the construction as well as all of those who will reside within and use the spaces being created.

All too often, power is seized by city government officials and developers without an understanding of the real users of the spaces. The inclusion of all user groups – from displaced people to owners – would only enrich the quality of the space, and of society as a whole. Development standards would be based on bringing equality and diversity to the urban situation and would begin to create a heterarchy of design standards. The outcome from this decision-making process can involve economics, clean imaging, style even, and bring power to self-governing movements within a larger system.

Gated communities, inaccessible sites, retail speculation, chain stores and the death of the old European city centres are the results of exclusive development. Exclusivity has been one way in which Western cultures have expressed their levels of civilisation. In a world that is more mixed than ever with globalised economies and working populations, the exclusive levels of this century will reach unprecedented heights.

As cultures become more and more a melting pot of races, creeds and ideas, those who fear this will need to procure the greatest levels of exclusion to escape. It will become increasingly more difficult to find room in the cities of tomorrow for those who cannot afford exclusion. If a city wants to keep up with its social equality it will need make room for inclusive practices in codes, zoning ordinances, and design.



4.

“Man is born homeless; and the search for home creates him and destroys him hour by hour”.

– Herbert Reed Tindall (1991) quoted in *Domicide*, p. 45

REFERENCES

Hamdi, Nabeel. *Housing Without Houses: Participation, Flexibility, Enablement* (Van Nostrand Reinhold, 1991). Hamdi outlines ideas for improving the working climate of those to create houses for people to live it, especially in low-income groups. He interrupts the daily grind with a look at housing from the outside.

Morton, Margaret. *Fragile Dwelling* (Aperture Foundation, 2000). Images of Bushville, New York City. This book shows, reveals, and embraces the existence of informal works of dwelling in America, and the city forces at work to bring them down. Where else could one say, “we all build our own homes”?

Porteous, Douglas J. and Susan Smith. *Domicide: The Global Destruction of Home* (McGill-Queen's University Press, 2001). This book does wonders in describing the causes and effects of large scale domicide, the intentional destruction of homes for gain. This is practiced prolifically in the world and in particular our nation, America.

IMAGE LIST

1. Berlin's underbelly

The city of Berlin has had a long history of a dichotomy which has prevailed as the two sides to the image of the city. One side is the massive monumentalism of Berlin's Third Reich architecture, and the other side is seen in this picture. This is the side that clings on to the necessities of real life, and exists visibly within the public spectrum. Currently, Berlin is attempting to lose this subversive side with hyper-capitalism of the former Berlin Wall grounds and the relocation of the political centre of Germany to the heart of Berlin. This system of massive scale development derails the dichotomy and the eternal progressive struggle for the 'underbelly' of Berlin.

2, 3. Estacion de Franco, Barcelona.

The French Train Station in Barcelona is a historical landmark, a beautiful building, and also nearly empty. The landmark has been in city debate for re-use or destruction. True, the station's railyards disconnect a population from the sea, but the station itself retains the ability to become the site of massive scale debate. The city of Barcelona also has a long history of pushing through projects of great scale (e.g., Forum 2004) without public consent or involvement. Barcelona has also decided to turn an old bullfighting arena into a shopping mall with the largest glass dome in Europe. Although any replacement to the maiming of animals is welcome, an exclusive shopping development is far from what people need. These two pictures reveal R.W. Emerson's idea of "the eye of the beholder", where what we see is naturally what we desire to see. Either we see the fence before us, or the grand scale public space on the other side.

4. Roof of Sam Wong's house, The Hill, 1991.

5. Margaret Morton's pictures of the community of Bushville in New York City (1993) reveal the record of a forgotten civilisation.

Sex Workers' Manifesto

DURBAR MAHILA SAMANWAYA COMMITTEE, KOLKATA

A new spectre seems to be haunting society. Or maybe those phantom creatures that have been pushed into the shades for ages are taking on human form – and that is why there is so much fear. The sex workers' movement for the last few years has made us confront many fundamental questions about social structures, life sexuality, moral rights and wrongs. We think an intrinsic component of our movement is to go on searching for the answers to these questions, and to raise newer ones.

What Is the Sex Workers' Movement All About?

We came together as a community through our active involvement as health workers, Peer Educators, in a HIV/STD Control Project which has been running in Sonagachhi since 1992. This Project provided the initial space for building mutual support, facilitating reflection and initiating collective action among us (sex workers). Very early on in the Sonagachhi Project, we, with the empathetic support of those who had started the Project, clearly recognised that to realise even the very basic objectives of controlling transmission of HIV and STDs, it was crucial that we be viewed in our totality – as complete persons with a range of emotional and material needs, living within concrete and specific social, political and ideological contexts which determine the quality of our lives and our health. We do not wish to be seen merely in terms of our sexual behaviour.

For example, while promoting the use of condoms we soon realised that in order to change the sexual behaviour of sex workers, it was not enough to enlighten them about the risks of unprotected sex or to improve their communication and negotiation skills. How will a sex worker who does not value herself at all think of taking steps to protect her health and her life? Even when fully aware of the necessity of using condoms to prevent the transmission of disease, an individual sex worker may feel compelled to jeopardise her health for fear of losing her clients to other sex workers in the area, unless it could be ensured that all sex workers were able to persuade their clients to use condoms for every sexual act. Some sex workers may not even be in a position to try and negotiate safer sex with a client as they may be too closely controlled by exploitative madams or pimps. If a sex worker is starving, either because she does not have enough customers or because most of her income goes towards maintaining a room or meeting the demands of madams,

local power-brokers or the police, can she be really in a position to refuse a client who cannot be persuaded to use condoms? And what about the client? Is a man likely to be amenable to learn anything from a woman, particularly an uneducated 'fallen' woman? For him, doesn't coming to a prostitute necessarily involve an inherent element of risky and irresponsible behaviour? In which case, don't notions of responsibility and safety completely contradict his attitude towards his relationship with a prostitute? Doesn't a condom represent, for him, an unnecessary impediment in his way to 'total' pleasure?

In most cases this male client may himself be a poor, displaced man. Is he in a position to value his own life or protect his health? Again, why does a sex worker who is ready to use a condom with her client, generally never have protected sex with her lover or husband? What fine balance – between commercial transactions and love, caution and trust, safety and intimacy – engenders such behaviour? How do ideologies of love, family and motherhood influence our every sexual gesture?

Thus, thinking about such an apparently uncomplicated question – whether a sex worker can insist on having safe sex – made us realise that the issue is not at all simple. Sexuality and the lives and movement of sex workers are intrinsically enmeshed in the social structure we live within and the dominant ideology which shapes our values.

Like many other professions, sex work is also an occupation, and it is probably one of the 'oldest professions' in the world because it meets an important social demand. But the term 'prostitute' is rarely used to refer to an occupational group who earns its livelihood through providing sexual services. Rather, it is deployed as a descriptive term denoting a homogenised category (usually of women) that poses threats to public health, sexual morality, social stability and civic order. Within this discursive boundary we systematically find ourselves to be targets of moralising impulses of dominant social groups, through missions of cleansing and sanitising, both materially and symbolically. If and when we figure in political or developmental agendas, we are enmeshed in discursive practices and practical projects which aim to rescue, rehabilitate, improve, discipline, control or police us. Charity organisations are prone to rescue us and put us in 'safe' homes, developmental organisations are likely to 'rehabilitate' us through meagre income-generation activities, and the police seem bent upon regularly raiding our quarters in the name of controlling 'immoral' trafficking. Even when we are inscribed less negatively or even sympathetically within dominant discourses, we are not exempt from stigmatisation or social exclusion. As powerless, abused victims with no resources, we are seen as objects of pity. Otherwise we appear as the self-sacrificing and nurturing supporting cast of characters in popular literature and cinema, ceaselessly ready to give up our hard-earned income, our clients, our 'sinful' ways and finally our lives, to ensure the well-being of the hero or the society he represents. In either case, we are refused enfranchisement as legitimate citizens or workers, and are banished to the margins of society and history.

The kind of oppression that can be meted out to a sex worker can never be perpetrated against a regular worker. The justification given is that sex work is not real work – it is morally sinful. As prostitution is kept hidden behind the façade of sexual morality and social order, unlike other professions, there is no legitimacy or scope for any discussion about the demands and needs of the workers of the sex industry.

People who are interested in our welfare, and many are genuinely concerned, often cannot think beyond rehabilitating us or abolishing prostitution altogether. However, we know that in reality it is perhaps impossible to 'rehabilitate' a sex worker because society never allows to erase our identity as prostitutes. Is rehabilitation feasible, or even desirable?

In a country where unemployment is in such gigantic proportions, where does the compulsion to displace millions of women and men who are already engaged in an occupation which supports them and their extended families come from? If other workers in similarly exploitative occupations can work within the structures of their profession to improve their working conditions, why can't sex workers remain in the sex industry and demand a better deal in their life and work?

What is the History of Sexual Morality?

Like other human propensities and desires, sexuality and sexual needs are fundamental and necessary to the human condition. Ethical and political ideas about sexuality and sexual practices are socially conditioned and historically and contextually specific. In society as we know it now, ideologies about sexuality are deeply entrenched within structures of patriarchy and largely misogynist mores. State and social structures only acknowledge a limited and narrow aspect of our sexuality. Pleasure, happiness, comfort and intimacy find expression through sexuality. On the one hand we weave narratives around these in our literature and art. But on the other, our societal norms and regulations allow for sexual expression only between men and women within the strict boundaries of marital relations within the institution of the family. Why have we circumscribed sexuality within such a narrow confine, ignoring its many other expressions, experiences and manifestations?

Ownership of private property and maintenance of patriarchy necessitates a control over women's reproductive rights. Since inheritance is maintained through legitimate heirs, and sexual intercourse between men and women is what carries the potential to procreate, capitalist patriarchy sanctions and privileges only such heterosexual couplings. Sex is seen primarily, and almost exclusively, as an instrument for reproduction, negating all aspects of pleasure and desire intrinsic to it. Homosexuality is not only denied legitimacy, it is considered to be undesirable, unnatural and deviant.

Thus, sex and sexuality are given no social sanction beyond their reproductive purpose.

Do we then not value motherhood? Just because our profession or our social situation as sex workers does not allow for legitimate parenthood, are we trying to claim that motherhood and bearing children is unworthy and unimportant for women? That is not the case. We feel that every woman has the right to bear children if she so wishes. But we also think that through trying to establish motherhood as the only and primary goal for a woman, patriarchal structures try to control women's reproductive functions and curb their social and sexual autonomy. Many of us sex workers are mothers – our children are very precious to us. By social standards these children are illegitimate – bastards. But at least they are ours, and not mere instruments for maintaining some man's property or continuing his genealogy. However, we too are not exempt from the ideologies of the society we live in. For many of us the impossible desire for family, home and togetherness is a permanent source of pain.

Do Men and Women Have Equal Claims to Sexuality?

Societal norms about sex and sexuality do not apply equally to men and women. If sexual needs are at all acknowledged beyond procreation, it is only for men. Even if there are minor variations from community to community, and if in the name of modernity certain mores have changed in some place, it is largely men who have enjoyed the right to be polygamous or seek multiple sexual partners. Women have always been expected to be faithful to a single man. Beyond scriptural prohibitions too, social practices severely restrict the expression of female sexuality. As soon as a girl reaches puberty, her behaviour is strictly controlled and monitored so as not to provoke the lust of men. In the name of 'decency' and 'tradition', a female teacher is prohibited from wearing the clothes of her choice to the university. While selecting a bride for the son, the men of the family scrutinise the physical attributes of a potential bride. Pornographic representations of women satisfy the voyeuristic pleasures of millions of men. From shaving cream to bathroom fittings, innumerable commodities are sold through attracting men via advertisements depicting women as sex objects.

In this political economy of sexuality, there is no space for the expression of women's own sexuality and desires. Women have to cover their bodies from the gaze of men and at the same time have to bare themselves for male gratification. Even when women are granted some amount of subjecthood by being represented as consumers in commercial media, that role is defined by their ability to buy, and normed by capitalist and patriarchal strictures.

Is Our Movement Anti-Men?

Our movement is definitely against patriarchy, but not against all individual men. As it so happens, apart from the madams and landladies, almost all people who profit from the sex trade are men. But what is more important is that their attitudes towards women and prostitution are biased, with strong patriarchal values. They generally think of women as weak, dependent, immoral or irrational – beings who need to be directed and disciplined. Conditioned by patriarchal gender ideologies, both men and women in general approve of the control of sex trade and oppression of sex workers as necessary for maintaining social order. The power of this moral discourse is so strong that we prostitutes too tend to think of ourselves as morally corrupt and shameless. The men who come to us as clients are also victims of the same ideology. Sometimes the sense of sin adds to their thrill, sometimes it leads to perversion, and almost always it creates a feeling of self-loathing among them. Never does it allow for confident, honest sexual exchange.

It is important to remember that there is no uniform category 'men'. Men, like women, are differentiated by their class, caste, race and other social relations. For many men, adherence to the dominant sexual norm is not only impracticable but also unreal. The young men who look for sexual initiation, the married men who seek the company of 'other' women, the migrant labourers separated from their wives who try to find warmth and companionship in the red light areas, cannot all be dismissed as wicked and perverted. To do so would amount to dismissing a whole history of the human search for desire, intimacy and need. Such dismissal creates an unfulfilled demand for sexual pleasure, the burden of

which, though shared by men and women alike, ultimately weighs more heavily on women. Sexuality, which can be a basis of an equal, healthy relationship between men and women, between people, becomes the source of further inequality and stringent control. This is what we oppose.

Next to any factory, truckers' checkpoint or market, there have always been red light areas. The same system of productive relations and logic of profit maximisation, which drives men from their homes in villages to towns and cities, make women into sex workers for these men.

What is deplorable is that this patriarchal ideology is so deeply entrenched, and the interest of men as a group is so solidly vested in it, that women's issues hardly ever find a place in mainstream political or social movements. The male workers who organise themselves against exploitation rarely address the issues of gender oppression, let alone the oppression of sex workers. Against the interest of women, these radical men too defend the ideology of the family and patriarchy.

Are We against the Institution of Family?

In the perception of society, we sex workers and in fact all women outside the relation of conjugality are seen as threats to the institution of family. It is said that enticed by us, men stray from the straight and narrow path, destroy the family. All institutions, from religious to educational, reiterate and perpetuate this fear about us. Women, and men too, are the victims of this all-pervasive misogyny.

We would like to stress strongly that the sex workers' movement is not against the institution of family. What we challenge is the inequity and oppression within the dominant notions of an 'ideal' family which support and justify unequal distribution of power and resources within the structures of the family. What our movement aims at is working towards a really humanitarian, just and equitable structure of the family that has perhaps yet to come into existence.

Like other social institutions, the family too is situated within the material and ideological structures of the state and society. The basis of a normative ideal family is inheritance through legitimate heirs, and therefore, sexual fidelity. Historically, the structure of the family has in reality gone through many changes. In our country, by and large, joint families are being replaced by nuclear ones. In fact, in all societies people actually live their lives in many different ways, through various social and cultural relations which deviate from this norm, but are still not recognised as such by dominant discourses.

If two persons love each other, want to be together, want to raise children together, relate to the social world, it can be a happy, egalitarian, democratic arrangement. But does it really happen like that within the families we see, between the couples we know? Don't we know of many, many families where there is no love, and where relations are based on inequality and oppression? Don't many legal wives virtually live the life of sex slaves in exchange for food and shelter? In most cases, women do not have the power or the resources to opt out of such marriages and families. Sometimes men and women both remain trapped in empty relations by social pressure. Is this situation desirable? Is it healthy?

The Whore and the Madonna: Divide and Rule

Within the oppressive family ideology, it is women's sexuality that is identified as the main threat to the conjugal relationship of a couple. Women are pitted against each other as the wife against the prostitute, the chaste against the immoral; both represented as fighting over the attention and lust of men. A chaste wife is granted no sexuality, only a de-sexed motherhood and domesticity. At the other end of the spectrum is the 'fallen' woman, a sex machine, unfettered by any domestic inclination or 'feminine' emotion. A woman's goodness is judged on the basis of her desire and ability to control and disguise her sexuality. The neighbourhood girl who dresses up cannot be good; models and actresses are morally corrupt. In all cases, female sexuality is controlled and shaped by patriarchy through reproduction, and to perpetuate the existing political economy of sexuality that safeguards the interests of men. A man has access to his docile homemaker wife, the mother of his children, and to the prostitute who sustains his wildest sexual fantasies. Women's sexual needs are considered to be insignificant; in most cases, these needs are denied autonomy, or their existence erased.

Probably no one other than a prostitute really realises the extent of loneliness, alienation, desire and yearning for intimacy that brings men to us. The sexual needs we satisfy for these men is not just about mechanical sexual activity, nor a momentary gratification of 'base' instincts. Beyond the sex act, we provide a much wider range of sexual pleasure with regard to intimacy, touch and companionship – a service that we render without any social recognition of its significance. At least men can come to us for their sexual needs despite the system of prostitution being seen as prurient or shameful. Women hardly have such recourse. The autonomy of women's sexuality is completely denied. Ironically, the only option they have is to be prostitutes in the sex industry.

Why Do Women Take Up Prostitution?

Women take up prostitution for the same reason as they take up any other livelihood option available to them. Our stories are not fundamentally different from the labourer from Bihar who pulls a rickshaw in Calcutta, or the worker from Calcutta who works part-time in a factory in Bombay. Some of us get sold into the industry. After being bonded to the madam who has bought us for some years, we gain a degree of independence within the sex industry. Most of us end up in the sex trade after going through many experiences, often unwillingly, without fully understanding all the implications of being a prostitute.

But when do women have access to choice within or outside the family? Do we become casual or domestic labourers willingly? Do we have a choice about who we want to marry and when? The choice is rarely real for most women, particularly poor women.

Why do we end up staying in prostitution? It is, after all, a very tough occupation. The physical labour involved in providing sexual services to multiple clients in a working day is no less intense or rigorous than ploughing a field or working in a factory. There are occupational hazards such as unwanted pregnancy, painful abortions, risk of sexually transmitted diseases. In almost all red light areas, housing and sanitation facilities are abysmal, the localities are crowded, most sex workers are quite poor, and there is constant

police harassment and violence from local thugs. Moreover, to add to the material condition of deprivation and distress, we have to take on stigmatisation and marginalisation, the social indignity of being 'sinful', being mothers of illegitimate children, being the target of those children's frustrations and anger.

Do We Advocate 'Free Sex'?

What we advocate and desire is independent, democratic, non-coercive, mutually pleasurable and safe sex. 'Free sex' seems to imply irresponsibility and lack of concern for others' well-being, which is not what we are working towards. Freedom of speech, expression or politics all come with obligations and need to acknowledge and accommodate the other's freedom too. Freedom of sexuality should also come with responsibility and respect for other's needs and desires. We do want the freedom to explore and shape healthy, mature attitudes and practices about sex and sexuality, that are also free from obscenity and vulgarity.

We do not yet know what this autonomous sexuality will be like in practice. We do not have a complete picture as yet. We are working people, not soothsayers or prophets. When, for the first time in history, workers agitated for class equity and freedom from capitalist exploitation, when blacks protested against white hegemony, when feminists rejected the subordination of women, they too did not know fully what the new system they were striving for would exactly be like. There is no exact picture of the 'ideal' future: it can only emerge and be shaped through the process of political movement.

All we can say is that in our imagination of autonomous sexuality, men and women will have equal access, will participate equally, will have the right to say 'yes' or 'no'; and there will be no space for guilt or oppression.

We do not live in an ideal social world today. We do not know when and if ever an ideal social order will come into place. In our less-than-ideal world, if we can accept the immorality of commercial transactions over food or health, why is exchanging sex for money so unethical and unacceptable? Maybe in an ideal world there will be no need for any such transactions; where the material, emotional, intellectual and sexual needs of all will be met equitably and with pleasure and happiness. We do not know. All we can do now is to explore current inequalities and injustices, question their basis and confront, challenge and change them.

Which Way Is Our Movement Going?

The process of struggle that we, the members of Mahila Samanwaya Committee, are currently engaged in has only just begun. We think our movement has two principal aspects. The first one is to debate, define and re-define the whole host of issues about gender, poverty, sexuality that are being thrown up within the process of the struggle itself. Our experience of Mahila Samanwaya Committee shows that for a marginalised group to achieve the smallest of gains, it becomes imperative to challenge an all-encompassing material and symbolic order that not only shapes dominant discourses but, and perhaps more importantly, historically conditions the way we negotiate our own locations as workers within the sex industry. This long-term and complex process will have to continue.

Second, the daily oppression that is practiced on us with the support of the dominant ideologies has to be urgently and consistently confronted and resisted. We have to struggle to improve the conditions of our work and the material quality of our lives, and that can happen through efforts towards our gaining control as sex workers over the sex industry itself. We have started the process. Today in many red light areas in cities, towns and villages, we sex workers have come to organise our own forums to create solidarity and collective strength among a larger community of prostitutes, forge a positive identity for ourselves as prostitutes and mark out a space for acting on our own behalf.

Male Prostitutes Are with Us Too

The Durbar Mahila Samanwaya Committee was originally formed by women sex workers of Sonagachhi and neighbouring red light areas, and initially for women prostitutes. However, within two years of our coming into existence, male sex workers have come and joined us at their own initiative. These male sex workers provide sexual services primarily to homosexual men. As our society is strongly homophobic (in fact, the penetrative sexual act even between consenting adult men can still be legally penalised), the material and ideological status of male sex workers is even more precarious. We therefore welcomed them in our midst as comrades-in-arms, and we strongly believe that their participation will make our movement truly representative and robust.

The Sex Workers Movement is going on: it has to go on. We believe the questions about sexuality that we are raising are relevant not only to the sex worker community but to all men and women who question subordination of all kinds — within society at large and also within themselves. This movement is for everyone who strives for an equal, just, equitable, oppression-free and, above all, happy social world. Sexuality, like class and gender, makes us who we are. To deny its importance is to accept an incomplete existence as human beings. Sexual inequality and control of sexuality engender and perpetuate many other inequalities and exploitative practices. We need to shake the roots of all such injustice through our movement. We have to win this battle, and the war too, for a gender-just, socially equitable, emotionally fulfilling, intellectually stimulating and exhilarating future for men, women and children.

Bare Wiring

SOPHEA LERNER

BARE WIRING
ad hoc
open content
hybrid radio

it was easy to get the license...
...when we went to switch the transmitter
we found that everyone who knew we had
broadcast licence was on the way

COPENHAGEN
neoscenes
dinner
archive
remix

RADIO
ASTRONOMY

radio-astronomy.net
a radioqualia project
streaming live from
jupiter and the sun

ficora.fi
licensing
authority

public broadcast
masa21
ReCo(d)eR
beta scheduler
radioqualia.net
1mbit net
connection
upload and
streams to
transmitter

BRIGHTON
i scream for icecream
using public WiFi on the beach
and a big greek meal

some of us had never
to see what you
tommi decided to
together for a s

LOCAL
LIVE
MUSIC

TAIDEHALLI
radio listening
lounge bar

HTTP
aura.siba.fi

USERRADIO
aug.menti.org

ethernet au

BALTIMORE
casual
interaction
corn and
crabs

WHERE ARE WE EATING?
live global radio feast
phonebox.org/eating

tour
IRC
begins
and ends
#aurala

telephone
hybrid
borrowed
from YLE

radio
reciever
to stream
icecast2

8000
MP3
cmt.siba.fi
darwin
streaming
server

masa23
icecast2
to kiasma

SANTA
BARBARA
microphones
are grilled on air

we had a very flexible
workspace where
we could repatch everything
in lots of ways so it didn't matter
if something went down, we could
reroute the signal through some
borrowed server

GSM

AURALA OPEN
STUDIO PROJECT

...we
hour

SYDNEY
realtime manipulations
for sonic consumption

...mix live
from a 56k modem in australia...

energy
enthusiasm
imagination
lateral thinking
creative problem solving



ÄÄNIRADIO
aura.siba.fi/aaniradio
103.1 FM
HELSINKI
13-23 AUGUST
2004

all these projects needed an fm
broadcast for isea so we decided
to make our own radio station with
whatever we could lay our
hands on

boys network
DIGITA OY

50W FM transmitter
135m above sea level
on broadcast tower

POTS email
snagari hotline waw aware.uiah.fi
in antti's office in andrew's office

UIAH
mlab.uiah.fi

NC

month of radio to play with
ord out locally

..since we had fig
dining on

REC ROOM
Musikiin Tila 2004
musicians
here

LAN

ART SCHOOL
impromptu live
broadcast of
BANDUNG CITY NOISE
www.commonroom.info/bcfma/isea_radio.html

LAN
dining on
silja opera
in ALAND ISLANDS
isea2004.net

STUDIO
TEKNO
live
mix

8000
KIASMA
MUSEUM OF
CONTEMPORARY
ART
quickstream.kiasma.fi

http
rstp
irc
mp3
ftp

LIVE
NETCAST

quickstream.kiasma.fi/aaniradio

GSM street interviews in
finnish and english

GRILLIRADIO
eating, walking, talking,

GPRS
broadcast relayed to tour
via portable tadios

relays of call status
over gprs chat client

airport
802.11
stream on
port 80

LIVE TO AIR
GRILLI KIOSK

LINURIN GRILLI
live cooking sounds
7pm-4am

sometimes you have to
let people know that
they have options about
licensing their work...one

OPEN CONTENT

call for open content
one off broadcast permissions form artists
creative commons music resources
specially curated programming from
broadcasters in australia, austria and finland...

network of trust publishing
to ensure content is open for
ääniradio broadcast
and direct to transmitter upload
or streaming

CONTRIBUTORS (in alphabetical order)

Aarti Sethi currently works as a content editor with Sarai. Her interests include political theory, the anthropology of law, the politics of sexuality and cyberfeminism. She is a member of the editorial collective of the broadsheet *Sarai.txt*. <aarti@sarai.net>

Alice Albinia is writing a book about the Indus river. <alicealbinia@rediffmail.com>

Angomcha Bimol Akoijam taught at Delhi University before joining the Centre for the Study of Developing Societies (CSDS), where presently he is an Associate Fellow. Besides his research interests in the area of cultural, social and political psychology, he is also a film and theatre enthusiast.
<abakoijam@csdsdelhi.org>

Amy R. West has nine years of policy and advocacy experience working with and writing on refugees, asylees, and victims of torture in the US, Africa, the Caribbean and Europe. <cymruwest@yahoo.com>

Alexander Karschnia is a theorist and practitioner of theatre; he currently works at Heiner Muller's Shakespeare Factory. He is a co-founder of the artists' collective andCompany&Co. which had a residency in 2003 at the TAT (Theatre at the Tower) in Frankfurt. During this residency, andCompany&Co collaborated on a reading performance of the "Wherehouse" project by Raqs Media Collective. <alextext@nekonect.de>

Anand Vivek Taneja is a media practitioner currently working as a researcher with the Publics and Practices in the History of the Present (PPHP) project at Sarai. His interests include films, photography and travel-writing, and telling stories/histories of the city of Delhi. <anand@sarai.net>

Armin Medosch is a writer, artist and curator, and Associate Senior Lecturer in digital media at Ravensbourne College, UK. Together with <KOP> (Kingdom of Piracy) he edited the book and CD ROM "DIVE", and is currently engaged in an R&D project about commons rules and games. He is working on a publication about the relationship between science, technology and social change. <armin@easynet.co.uk>

Ateya Khorakiwala is a student of architecture at KRVA, Mumbai. She is currently working with the Design Cell, KRVA, on architectural and urban research projects. <ateya.k@gmail.com>

Blair Rutherford teaches anthropology at Carleton University in Ottawa, Canada, and has done research on farm workers in Zimbabwe since 1992. <blair_rutherford@carleton.ca>

Bikram Jeet Batra is a Delhi-based lawyer and researcher associated with Amnesty International (India). He is also interested in issues relating to human rights, sexuality, progressive lawyering and Calvin & Hobbes. <bjbatra@hotmail.com>

Brian Holmes is a France-based art critic, writer, cultural theorist and activist, particularly involved in the mapping of contemporary capitalism. <brian.holmes@pop.wanadoo.fr>

Chander Nigam is a Delhi-based practicing lawyer specialising in matrimonial and criminal law. She is also associated with the Dalit and women's rights movements. <chandernigam@rediffmail.com>

Chitra Ganesh is a New York-based artist whose work has been exhibited worldwide. Her collaborative project with Mariam Ghani, "Disappeared", can be seen online at <http://www.turbulence.org/works/seethedisappeared/> <warmdata@kabul-reconstructions.net>

Clifton D' Rozario is a Bangalore-based researcher currently working on issues of the politics of land, slum histories and their relationship to law and power. He is trained in civil engineering and law, and has also worked in media. <clifton@altlawforum.org>

Colette Mazabrard is a teacher who has been living in New Delhi since 1996. She creates narratives through photographs, texts and sound recordings, focusing on the relationship between locality and the self. <colettemazabrard@yahoo.fr>

Cybermohalla Practitioners

Cybermohalla (CM) is a collaboration between Sarai-CSDS and Ankur (Society for Alternatives in Education). It now includes a network of three locality labs (in the LNJP squatter settlement, Dakshinपुरi resettlement colony and Nangla Maachhi squatter settlement) and an experimental R&D lab at Ankur. Over 60 practitioners work and experiment with various media tools and forms at these labs, including writing, animation, photography, storytelling, performance, radio, stickers, broadsheets, event-based conversations in the locality, wall writing, booklets, wall magazines, blogs, mailing lists, hyperlinked projects, etc. CM practitioners' work has been exhibited in international art, tactical media and performance contexts. CM practitioners are presently also engaged in dialogues with other initiatives to set up locality-based media labs outside Delhi. <cybermohalla@sarai.net>

Azra Tabassum is the Network Coordinator. She is currently researching on practices around cultures of listening, which she considers to be a key to understand and publicly share the processes at the CM labs. <azra@cm.sarai.net>

Babli Rai at the LNJP Compughar is currently researching locality-based public forms. Challenged by the diversity of surfaces in the locality, she and her colleagues are searching ways in which texts and images respond to local textures. <babli@cm.sarai.net >

Lakhmi Chand Kohli is a content editor at Cybermohalla. A prolific storyteller, he adeptly creates contexts for himself and others in the locality to share stories from everyday encounters in the city. <lakhmi@cm.sarai.net>

Prabhat K. Jha works in Ankur and coordinates the Cybermohalla project. He is currently building a framework to connect CM content and practices to imagine the library as a site of re-drawing the lines between the creator and the reader, and between the library and the archive of the locality. <prabhat@cm.sarai.net>

Sangeeta has recently joined the Dakshinपुरi CM lab. Shy and withdrawn, she pushes the lab into thinking about the complex relationship between participation and hesitation. <sangeeta@cm.sarai.net>

Shammi makes time to be at the LNJP CM lab between attending VII class in afternoon school and hawking "Chinese" food during the evenings. Writing appeals to him, possibly because he finds he can share his questions and curiosities in the short intervals between his different, demanding roles. <shammi@cm.sarai.net>

Shveta works with the CM labs as a process chronicler and keeps the diverse CM content in circulation among English-speaking publics through blogs, essays and postings in discussion lists. She seeks to critically engage with the debates in pedagogy, translation, technology and inequality. She is a member of the editorial collective of *Sarai.txt*. <shveta@sarai.net>

Yashoda Singh is a content editor at CM. Passionate about writing, she shares her time between the LNJP lab, listening and responding to her peers' texts, and the R&D Lab where she edits the CM broadsheet. She is assisting in setting up labs in two villages in Gujarat from her CM experience. <yashoda@cm.sarai.net>

David Beer is a doctoral student in the Department of Sociology at the University of York, UK. He researches the digitalisation of music and contemporary music cultures. <db150@york.ac.uk>

Durban Mahila Samanwaya Committee is a Kolkata-based forum of more than 60,000 female, male and transgender sex workers, their support groups and individual supporters. It demands the decriminalisation of adult prostitution, and social recognition of sex work as a valid profession.

<http://www.walnet.org/csis/groups/nswp/dmsc/index.html>

Francesca da Rimini co-founded VNS Matrix in 1991, making "A Cyberfeminist Manifesto for the 21st

Century", "vapourware", "All New Gen" and the computer game "Bad Code". Her current project, "Rough Trade", uses customised search bots developed by Mongrel to dynamically visualise links between HAARPesque weather weapons and free raid agreements. <dollyoko@thing.net>

Fredrick Svensk is an art critic and art theory lecturer at the University of Gothenburg, Sweden. <fredriksvensk@yahoo.se>

Gauri Bajaj is a graphic designer and recent graduate from the National Institute of Design, Ahmedabad. Her interests include film, animation, music and photography. <gauri_bajaj@rediffmail.com>

Guido Cimadomo is a Seville-based architect and doctoral student in architecture at Seville University. He is an active member of the NGO Architects Without Frontiers. <guido@cimadomo.com>

Gunalan Nadarajan is an art theorist and curator based in Singapore. <pups2320@pacific.net.sg>

Helen Jilavu is a photographer and visual artist studying at the Gerrit Rietveld Academie in Amsterdam. She works on theatre projects and audiovisual installations, including photography, sound and text. <helenji@andco.de>

Hikari Hori is a scholar of Japanese film and cultural history, and Senior Curator of the Japan Society Film Center. She has taught at Barnard College and also served as a Research Associate at the National Film Center in Tokyo. Her publications include film reviews, articles on Japanese film history and translations of essays on contemporary art. <hhori@japansociety.org>

Iram Ghufuran is a filmmaker and media practitioner working at the Sarai Media Lab. She is a member of the editorial collective of *Sarai.txt*. Her interests include films, new media, cyberfeminism and surveillance. <iram@sarai.net>

Irina Aristarkhova teaches courses in gender and technology, and cyberculture at the National University of Singapore. Her main research interests lie in the areas of human-machine interaction, cyberfeminism and technological figurations of space and embodiment. <icmia@nus.edu.sg>

Isaac Souweine recently completed a year of study, work and travel in North India. He currently lives in New York City, where he works as a producer for an educational software development project. <souweine@hawaii.edu>

Jan Ritsema is a Brussels-based independent director, actor and dancer in the field of experimental and political theatre. He researches theatre and teaches in art schools. <jritsema@gdt.nl>

Jayson Claude is trained as an architect. His interest lies in the representation of the "voices of the unheard and unseen in the cities and streets of our lives", and his relationship to these voices through community-oriented architectural practice. <jaysonmclaude@hotmail.com>

Kai Friese is a journalist and magazine editor in New Delhi.

Kristoffer Gansing works as an artist/theorist based at the Art and Technology Studio at the University of Malmö, Sweden. <kristoffer.gansing@k3.mah.se>

KR+CF (Knowbotic Research: Yvonne Wilhelm, Christian Heubler, Alexander Tuchacek) experiments with forms of information, interface and networked agency, in relation to art practice in the public domain. They are based in the New Media Department at the University of Art & Design, Zurich. <krcf@khm.de>

Linda Beekman lives in Clearwater, Florida, where she provides housecleaning and other home-care services. She has served as a volunteer observer for elections in Bosnia, Kosovo and Georgia. <lfbekman@juno.com>

Louise Moana Kolff is an Amsterdam-based graphic designer working on different art and design projects. <louise@moana.net>

Mariam Ghani is a New-York based artist whose work has been exhibited worldwide. Her collaborative work with Chitra Ganesh, "Disappeared", can be seen online at <http://www.turbulence.org/works/seethedisappeared/> <warmdata@kabul-reconstructions.net>

Matteo Pasquinelli is a writer and activist based in Berlin and Bologna. He is the author of *Media = Activism: Strategies and Practices of Independent Communication* (2000), and editor of *Rekombinant.org*, a site on media culture, Italian post-operaism and Western psychopathology. <mat@rekombinant.org>

Menso Heus is a technology enthusiast who has written various articles for *Net Magazine*. Currently he works at *xs4all*, the Netherlands' first Internet Service Provider, where he focuses on tech and innovation. <menso@r4k.net>

Meta Haven Project (Daniel van der Velden, Tina Clausmeyer, Vinca Kruk and Adriaan Mellegers) is a Maasricht- and Amsterdam-based design research group working in close collaboration with the Jan van Eyck Academie. <office@metahaven.net>

Mrityunjay Chatterjee is an artist who works in graphic design, digital and web art at the Sarai Media Lab. He has done collaborative work with other artists, media practitioners and photographers. He has also worked as designer for the *Deewan-e-Sarai* series, *Cybermohalla* publications and *Sarai.txt*. <joy@sarai.net>

Naveeda Khan is a postdoctoral fellow in the Department of Anthropology at Johns Hopkins University, Baltimore. She has worked with the Bangladesh Rural Advancement Committee, the UNHCR and the Field Museum of Natural History. <nkhan5@jhu.edu>

Nikhil Dey is an activist working with MKSS (Mazdoor Kisan Sangharsh Samiti) in Rajasthan since its inception. <mkssrajasthan@yahoo.com>

Ninad Pandit is an architect and currently a postgraduate research fellow at KRVA, Mumbai. His research interests include developing an archive/repository of imaginations of public space in Mumbai. <furrylogic@gmail.com>

Pilar Martinez Ponce is an artist at Seville University. Sculpting in traditional materials (i.e., clay and wood), she asserts the traditional way of modelling over today's "fast-food" artistic expressions. <pilar@cimadomo.com>

PPHP Researchers:

The Publics and Practices in the History of the Present (PPHP) project at Sarai examines the changing relations between old and new media and tactical media practices in the city of Delhi. The project specifically focuses on the way media forms converge through new electronic and digital technologies. As an interdisciplinary engagement with the dynamics of creativity, it takes the form of sustained research in media history and media practices in urban spaces in India, along with experiments and interventions in media practice that either address new publics, or address existing publics in new ways. <http://pphp.sarai.net>

Ankur Khanna is a researcher, filmmaker and actor. He is unravelling the film production system in Mumbai. He has been with PPHP since July 2004. <ankurva@gmail.com>

Bhagwati Prasad is working on popular music culture, and copy culture in Delhi. He has been with the project since June 2002. <bhagwati@sarai.net>

Bhri Gupta Singh's interests include anthropology of media and the politics of representation in India. He researched the film distribution trade in Delhi. He is currently studying for a Ph.d in Anthropology at Johns Hopkins University. <bhri Gupta@hotmail.com>

Debashree Mukherjee is a trained filmmaker. She is based in Mumbai and has been writing about the process of film production since July 2000. <debashree_m@mail.com>

Diya Mehra is an anthropologist by training. She is currently doing her Ph.d from the University of Texas. She has researched urban histories of Delhi as part of the project. <diya@sarai.net>

Jawahar works as a lawyer with the project, representing its media and law interface. He joined the PPHP team in February 2004. <jawahar@sarai.net>

Khadeeja Arif is a researcher and filmmaker. She is researching video parlours and technology. She has been with the project since November 2004. <khadeeja@sarai.net>

Lokesh is researching the cable TV Industry. She enjoys talking to people and therefore finds it easy to initiate conversations with her respondents in the field. She has been with the project since June 2002. <lokesh@sarai.net>

Mayur Suresh is trained as a lawyer, and is looking at the different viewing cultures and video parlours in Delhi. He joined the project in October 2004. <mayur@sarai.net>

Parvati Sharma's interests include hypertextual writing, online research and popular culture. She worked at Sarai as a researcher in the Sarai Media Lab. <itsorap@yahoo.co.uk>

Rakesh K. Singh is an activist-researcher. Trained in mass communication and journalism, he works on media markets, and is interested in labour issues and urban religious practices. He has been with the PPHP research team since April 2002. <rakesh@sarai.net>

Ritika Shrimali is an urban geographer by interest. She is building the contemporary media archive for the project, and is also the associate Project Coordinator. She has been with PPHP since June 2002. <ritika@sarai.net>

Tripta Chandola's interests include film posters, street life and graphic design. She researched Nehru Place while working at Sarai. <c_tripta@hotmail.com>

Yamini Jaishankar is trained as a lawyer. She was looking at enforcement agencies in the city during her involvement with the project. <yam_jaish77@yahoo.co.in>

Preeti Sampat is an activist working with the Mazdoor Kisan Sangharsh Samiti. She was a Sarai independent research fellow in 2004. <preetisampat@gmail.com>

Raqs Media Collective (Jeebesh Bagchi, Monica Narula and Shuddhabrata Sengupta) is a Delhi-based group of media practitioners and artists working in new media, installations, video, sound, photography and text.

The collective works at the Sarai Media Lab. Their work includes the installations "The Impostor in the Waiting Room", "Lost New Shoes", "The Warehouse", "5 Pieces of Evidence", "A/S/L", "Coordinates of Everyday Life - 28.28N/77.15E::2001/2002", "Location(n)", and the "Temporary Autonomous Sarai" (in collaboration with Atelier Bow Wow, Tokyo) and Opuscommons. Raqs has exhibited at Documenta 11, the Venice, Taipei and Liverpool Biennales, at the Walker Arts Gallery, Minneapolis, the Generali Gallery, Vienna, and other international venues. <raqs@sarai.net> www.raqsmediacollective.net

Ravi Agarwal is a Delhi-based environmentalist and photographer. He has been involved in several environmental policy and standard making initiatives both nationally as well as internationally, especially on "brown pollution" issues. He has exhibited and published widely. He heads Toxics Link, an environmental non-profit organisation. <ravig1@vsnl.com>

Satyajit Pande is a cinematographer based in Mumbai. <se2@rediffmail.com>

Sharon Daniel is Associate Professor of film and digital media at the University of California, Santa Cruz. Her research involves collaborations with local and online communities, using information and communication technologies as new sites for "public art". <sdaniel@ucsc.edu>

Shujen Wang is Associate Professor in the Department of Visual & Media Arts at Emerson College and Research Associate in the Fairbank Center for East Asian Research at Harvard University. Author of *Framing Piracy: Globalization and Film Distribution in Greater China* (2003), her work has also appeared in international journals on

film, communication and media. She is currently working on a book project examining copyright governance and media industries in post-WTO China. <shujen_wang@emerson.edu>

Siddharth Narrain currently works as a Delhi-based reporter for *Frontline* magazine. Trained in law, he is part of Voices Against Section 377, a Delhi-based coalition of human rights, women's rights, child rights and sexuality rights groups actively arguing for the repeal of the law that criminalises homosexuality in India. <siddharth.narrain@gmail.com>

Solly Benjamin is a Bangalore-based urban researcher. Trained as an architect, he is interested in urban planning and the way cities are shaped by globally connected corporate capital in land, space and location. <sollybenj@yahoo.co.in>

Somnath Batabyal is currently pursuing a doctorate in media studies at the School of Oriental and African Studies, London University. He has worked for nine years in print and television journalism. <sbatabyal@yahoo.com>

Sophea Lerner is an Australian radiomaker, sound engineer and new media artist currently based in Helsinki where she teaches media and sonic arts at the Centre for Music & Technology. Her work combines experimental radio and new media art into a collaborative practice that explores audience interaction through movement and sound. <sophea@phonebox.org>

Smriti Vohra works as a content editor at Sarai, and is a member of the editorial collective of *Sarai.txt*. Her interests include ceramics, music and the radio. <smriti@sarai.net>

Taha Mehmood works as a researcher with the Information Society project at Sarai. His interests include film, new economies, the politics of information and surveillance. <taha@sarai.net>

Tripta Wahi is a Reader in the Department of History, Hindu College, University of Delhi. She is a convenor of the Forum for Democratic Struggle (Delhi University Teachers for Academic Reform). <triptawahi@vsnl.net>

Ulka Anjaria is a doctoral candidate in the Department of Modern Thought and Literature at Stanford University. She is currently working on a project that focuses on the relationship between literature and nationalist imaginations of the state in India between 1920-1947. <uanjaria@stanford.edu>

Ursula Biemann is an artist, curator and videomaker whose work focuses on gender relations in economy, media and geography. She has published books on art practice, video essayism and the politics of mobility. She teaches at art schools in Zurich and Geneva. <geobodies@smile.ch>

Vishwajoti Ghosh is a communications professional based in New Delhi, with interests in comics, illustration and graphic design. His recent work "Paris: Mythologies and Memories", an exhibition of drawings, postcards and comics, is currently touring all over India. <ghoshvishwajoti@rediffmail.com>

Yuwei Lin is currently researching hacker culture, knowledge management in online communities and open source software studies at the Department of Sociology, University of York, UK. <yuwei@ylin.org>

Zainab Bawa is completing her postgraduate diploma in Indian Aesthetics from Mumbai University. She is currently associated with Sarai as an independent researcher. She is interested in issues of locality, ecology and community. <zainabbawa@yahoo.com>

Editorial Collective (in alphabetical order)

Awadhendra Sharan is a historian and a Visiting Fellow at the Centre for the Study of Developing Societies, and a Fellow of the Sarai programme. He is currently working on a research project that connects environment and urban space, with reference to the city of Delhi. He coordinates the archival activities at Sarai. <sharan@sarai.net>

Geert Lovink is a Dutch-Australian media theorist, activist and Internet critic. He is currently Director of the Institute of Network Cultures, Amsterdam. He is the co-founder of mailing lists such as Nettime and Fibreculture, the Australian network for new media research and culture, and author of *Dark Fibre*, *Uncanny Networks* and *My First Recession*. <geert@xs4all.nl>

Jeebesh Bagchi is a media practitioner, researcher, artist and filmmaker with Raqs Media Collective, and one of the initiators of Sarai. He has been coordinating the Cybermohalla project (with Ankur, Delhi) and the Knowledge/Culture Commons project (with ALF, Bangalore). He is currently working on a series of inter-media and digital projects at the Sarai Media Lab. <jeebesh@sarai.net>

Monica Narula is a media practitioner, artist, filmmaker, cinematographer and photographer with Raqs Media Collective, and one of the initiators of Sarai. She is the coordinator of the Sarai Media lab. She is currently working on a series of inter-media and digital culture projects at the Sarai Media Lab. <monica@sarai.net>

Ravi Sundaram is a fellow of the Centre for the Study of Developing Societies, Delhi, and one of the initiators of Sarai. He coordinates the Public and Practices in the History of the Present project at Sarai. <ravis@sarai.net>

Ravi S. Vasudevan is with the faculty of the Centre for the Study of Developing Societies, Delhi, and one of the initiators of Sarai. He coordinates Sarai's media city research project with Ravi Sundaram. He researches the history of film and has edited *Making Meaning in Indian Cinema* (2000). <raviv@sarai.net>

Shuddhabrata Sengupta is a media practitioner, artist, filmmaker and writer with Raqs Media Collective, and one of the initiators of Sarai. He coordinates the distributed research network at Sarai. He is currently working on a series of inter-media and digital culture projects at the Sarai Media Lab. <shuddha@sarai.net>

Guest Editor

Lawrence Liang is a legal researcher with the Alternative Law Forum, Bangalore. He is currently working in collaboration with Sarai on a project that seeks to interrogate the politics of media and intellectual property laws. His recent work as a research fellow at the Piet Zwart Institute, Rotterdam, "A Guide to Open Content Licences", is available at <http://pzwart.wdka.hro.nl/mdr/research/liang/> <lawrence@altlawforum>

Image and Photo Credits

- Back Cover: installation view, "Lost New Shoes", Raqs Media Collective (2005)
- p. 7, 12, 69, 153, 304, 426, 470, 476, 477, 514, 584: Monica Narula
- p. 20/21: Subramanya Sastry and Manoj Saranathan
(accessed from <http://www.narmada.org/images.html>)
- p. 57, 60/61, 68: courtesy andCompany&Co
- p. 94: courtesy Sharon Daniel
- p. 98/99, 100/101, 102/103, 104/105: courtesy Meta Haven Project
- p. 112/113: courtesy KR+CF
- p. 138: courtesy Kai Friese
- p. 145, 146/147, 148/149: courtesy Ursula Biemann
- p. 150/151: courtesy Guido Cimadomo + Pilar Martínez Ponce
- p. 176: installation view, "The Impostor in the Waiting Room", Raqs Media Collective (2004)
- p. 189: downloaded from http://www.jonroseweb.com/a_jonrose_discography.html
- p. 240: from "Coordinates <280 28" n/ 770 15"e>", Raqs Media Collective (2002)
- p. 260-286: fragments from the PPHP collection, Sarai Archive
- p. 301, 302, 303: courtesy Sarai Archive
- p. 308, 321, 322: courtesy Cybermohalla Archive
- p. 340, 343, 346: from "One Cycle of Memory in the City of L", Jill Magid (2004)
- p. 390/391, 396: downloaded from <http://www.freedominfo.org/case/mkss/photo.htm>
- p. 412, 414/415, 416/417: courtesy Ashish Mahajan
- p. 481: downloaded from http://pib.nic.in/archieve/phtgalry/republic_day_2001.html
- p. 484: downloaded from
http://sify.com/news_info/news/infographics/manipur/index.php
- p. 494/495: courtesy Matteo Pasquinelli
- p. 516, 521, 523: DVD cover of Vsevolod Pudovkin's *Mother* (1926)
- p. 559, 560, 561: courtesy Jayson Claude

SARAI READERS

The Sarai Readers are annual anthologies of essays, critical writing and image-text assemblages around a given theme. They have brought together perspectives on media, technology, culture, politics and city life. The books can also be freely downloaded from www.sarai.net/journal/journal.htm

01 THE PUBLIC DOMAIN (2001)

entering the public domain - claiming the city - old media/new media: ongoing histories - internet interventions - wetware: bodies in the digital domain - 'free as in freedom': software as culture - <alt/option>

ISBN 1-57027-124-0 : inr 150 : us\$ 12 : euro 12

02 THE CITIES OF EVERYDAY LIFE (2002)

urban morphologies - the city as spectacle and performance - the street is the carrier and the sign - for those who live in cities - cybermohalla diaries - 9/11 - media city - virtual architecture + digital urbanism - the politics of information - <alt/option>

ISBN 81-901429-0-9 : inr 250 : us\$ 18 : euro 18

03 SHAPING TECHNOLOGIES (2003)

leverages - excavations - scans - registrations - devices: cybermohalla diaries - imaginations + aesthetics - encode + decode - practices + politics - <alt/option>

ISBN 81-901429-3-3 : inr 295 : us\$ 15 : euro 15

04 CRISIS/MEDIA (2004)

approaching crisis - image disturbance - case studies - truth/testimony - reporters at work - war correspondence - deep instabilities - cybermohalla street logs - information politics - contesting censorship - <alt/option>

ISBN 81-901429-4-1 : inr 295 : us\$ 15 : euro 15

"The 2004 Reader produced by Sarai is devoted to the dual themes of crisis reporting in the media, and the crisis within the media when it comes to reportage of violence. Contributors write from surprising places: cinemas, libraries, law courts, dam sites, art galleries, prisons, where people confront fear and gain a modicum of mastery over it...As a unique experiment in India's over-institutionalised academic and activist landscape, 'Crisis/Media' deserves to be widely circulated". - *The Telegraph*

"This rich text (Sarai Reader 04) collects mostly unheard voices who live and tell, from their point of view, what they have seen and studied, without the haughtiness of the 'special correspondents'. These voices are among the few who can speak about the conflicts as seen from the inside, describing facts and the manipulations. Essay after essay, the choices imposed by media propaganda (for or against a president, a war, an ideology or a religion and its followers) are challenged by many necessary reflections". - *Neural*

"Reader 03...explores the fields of intermedia art and software culture, setting them in the context of the creative and conceptual definitional blur between art, science and technology. In the perspicacious texts by curators and cultural workers we trace the interplay, in these fields, between utopian political belief and ludic aesthetic impulse, between a scientific duty towards research and a commitment towards the performance of art". - *The Hindu*

"Sarai Reader 03 is replete with dialogue...achieves a wide geographical palette...opening new territories and introducing reflective approaches...that inject necessary complexity and rigour into discourse". - *Leonardo Online*

"The Everyday is embodied in the Sarai Reader's very form. Interspersed visuals and text, diary entries, journal pages, details of routines and journeys, list serves and photomontages of streets and signs convey a sense of the proliferation of experience in the urban. The Reader 02 seeks to hold onto this palpable sense of multitude and multiform by providing numerous entry points into the city, presented in different voices. In the Indian context, where there has been little focus on such a modern city, the Reader makes a valuable contribution in its collection of essays that delineate the particularities of our own urban space". - *Biblio*

"*Sarai Reader 01: The Public Domain* is a creatively curated collection of essays, memoirs, observations, quotations and photographs, original and 'recycled', that begin with Delhi but end up in places as far afield as Uttar Pradesh, Pakistan, Nepal, Yugoslavia and Silicon Valley". - *Biblio*

