Violence and Democracy

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Contents

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Preface
Ash Amin

'There is no antinomy between violence and reason, in things concerning the state at least'. [1]

 Michel Foucault

We are used to thinking of democracy as a limiting force on violence, through its structures to gather voices and interests, contain and channel grievances, and legislate civic rules of conduct. It is not unusual to suppose that democracy opposes rule by violence, taking the step beyond and resorting to aggression only to defend itself against its detractors and enemies. Yet this supposition may not hold in all parts of the world or indeed even among members of a democratic society used to other forms of customary rule that might not exclude violence. In turn, democratic societies routinely integrate, or turn a blind eye to, violence in their workings, ranging from the militarisation of force and security to the legitimate and illegitimate uses of violence to exert authority and influence, sometimes by the very movements that feel neglected or betrayed by existing democratic practices. Finally, with violence in its many forms and intensities so intrinsic to most societies, it is not as though democracy does away with violence, however serious the intent. History would seem to indicate that violence, including political violence, has been intrinsic to the evolution of human society.

These observations allude to proximities and connections between violence and democracy, suggesting the need to understand one with the aid of the other, rather than in isolation. Understandings of violence – its existence, its forms, its interpretations and its power within societies – may illuminate understandings of the character, limits and potential of democracy in different societies. If violence and democracy are mutually constituted, or at least interdependent, our conceptions of, and hopes in, democracy must be recast, with interest shown in the forms and situations of violence that threaten democracy, but also those that might strengthen democracy. Interesting questions arise. If violence lies at the core of the democratic order, is the task to contain it so that democracy works better for all citizens? Is the desire for non-violent democracy a symptom of a narrow view of democracy, for example, the paradox in liberal democracy of violence against detractors but also subalterns reduced to violence in order to be heard?

These were some of the sensitive questions addressed by an unencumbered group of emerging scholars from diverse regions and disciplines at the British Academy-Centre for the Study of Developing Societies symposium in Delhi. Our explicit intention was to promote interdisciplinary dialogue on the status and role of violence within democracies, including the legitimacy of different forms of violence deployed within both contemporary and historical democracies, so as to move beyond canonical understandings of democracy silent or biased on these matters. The dialogue was by no means straightforward, not only because of conceptual and normative differences between the scholars, but also due to varying definitions of both violence and democracy, revealing interesting disciplinary assumptions. We had to work hard at establishing a common language, but amidst the gaps and nuances a space emerged to imagine new ways of thinking about violence and democracy. It is in this space that many of the papers in this collection sit, opening new vistas rather than foreclosed answers.

Beginning in India, Sohini Guha comes to the topic by focusing on the shared set of values that exist within societies that cast themselves as democratic, using India's post-colonial democracy as an

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1   M. Foucault. 'Lecture Ten', 15 March 1978. Published in *Security, Territory, Population: Lectures at the College de France, 1977–78,* ed. M. Senellart, trans. G. Burchell, London: Palgrave Macmillan, p. 345.

example to demonstrate the impact that government attempts to uphold those values – particularly its procedures – had on its relationship with the society it sought to govern. Through this lens, she is able to demonstrate the part played by political parties in the degradation of institutions and the rule of law, and the crafting of violence into a tool of democratic parties, especially when restorative justice is the stated aim. Amit Upadhyay also examines the interaction between violence and democracy in India in the period around Independence, charting the development of constitutional democracy through the lens of civil liberties and their growing power to mobilise Indian society, taking the further step to explore the extent to which political leaders did or did not seek to harness this mobilisation. Anushka Singh analyses the conception of harm in relation to speech in contemporary Indian politics, demonstrating how different forms of violence elicit different reactions both from those in power and those who have been shut out of power, placing democracy's treatment of speech that incites violence as a powerful gauge of the health of the democracy.

Moyukh Chatterjee explores the exposure model – and looks beyond it – to analyse the purposes for which violence is used. Explaining that 'the politics of exposure is a way of touching, feeling, and writing violence […] that approaches violence as a dark object that withers in the light', Chatterjee draws on the example of India's first televised riot following the public massacre of Muslims in Gujarat in 2002, to demonstrate the impact of the broadcast on public violence and the ways visual culture can shape societal groupings of minorities and majorities within a democracy. Also focusing on ways in which the visual and narratives can have a powerful impact on social mobilisation, Rin Ushiyama explores the importance of power and ownership over memory in manifestations of violence, highlighting the importance of the growth of counter-memory movements to allow liberal democracy to develop in a way that could incorporate long-suppressed perspectives.

On representations of violence, Gowhar Yaqoob uses visual images of the changing city-scape of Srinagar to highlight the day-to-day effect of protracted violence on a society, giving an insight into the very real infractions facing vast numbers of people living in ostensible democracies today, impacting not only on the human life, but also the life of the spaces themselves which will bear the scars of violence for many years to come. In a similar quest to get to the essence of how the somewhat abstract terms manifest themselves in everyday life, Dominic Davies focuses on the 'feelings' and 'atmospheres' of democracy, using contemporary British democracy as his example, to explore the problem of what we understand by democracy and the impact that this lack of a comprehensive definition has.

In his paper on democracy in Classical Greece, Roel Konijnendijk provides a historical perspective on the way that democracy has been understood, demonstrating that the issues facing us today in pinning down democracy have plagued theorists since the concept itself was developed. He uses the link to violence to highlight the elusive nature of the democratic ideal, and argues that, while it may not have been perfect, Ancient Athenian democracy is still the form that many take as the foundation of what are interpreted as more progressive democracies. Does this render the 'departures' noted in contributions on the South aberrations or might it be that the Athenian model is of its own time and space too?

Moving across continents, Alexandra Abello Colak explores the failures of democratic governments in Latin America and the Caribbean to find a way out of violence, and asks whether the criteria that are used to demarcate successful democracies from unsuccessful ones are the right ones, or whether there needs to be a stronger focus on the level of violence within societies as a benchmark for success or failure in itself. Meanwhile, Astrid Jamar's paper on transitional justice acts as a warning on how processes that are designed expressly to bring a society out of violence can perpetuate that violence through reproducing the inequalities and injustices that allowed the violence to take hold in the first place. For the effective consolidation of liberal democracies, core structural issues need to be addressed – both within the society implementing these transitional justice efforts, and between the Global North and South.

From this collection of papers we see different ways in which violence and democracy interact in different perspectives and settings, highlighting the importance of questioning long-held assumptions about a theme loaded with value assumptions about democracy as an ideal type. The collection offers an opportunity to rethink democracy on the ground alongside and through the exercise of violence, both to suppress and to liberate. For, as Chimamanda Ngozi Adichie has recently stated:

> *'the mark of a true democracy is not in the rule of its majority but in the protection of its minority'.*[2]

2   C. Ngozi Adichie, 2014, 'Why can't he just be like everyone else?', *The Scoop,* 18 February. Available online at: https://thescoopng. com/2014/02/18/chimamanda-adichie-why-cant-he-just-be-like-everyone-else/

Beyond the politics of exposure: notes on violence and democracy from the South

Moyukh Chatterjee[3]

Public lynching of Muslims in India, the murder of a British MP before Brexit, police shootings of Black men in the US, the popular extrajudicial killings of criminals in the Philippines – the long list of public violence within thriving democracies is well known. The point of putting disparate, even incommensurable, events of violence on the same page is to show that the old division between the normal and the pathological, the liberal and orderly North and the fragile and chaotic South is dissolving before us.[4]

In the current political landscape, where most of the world wakes up to a daily crisis in Trump's America and Brexit UK – crises that are often marked by threats and incidents of violence – can we still argue that the goal for democracies in 'other parts of the world' should be Western democracy? If we recognise that the present populist majoritarian moment – marked by a politics that supports violence against minorities of all hues – cannot be circumscribed spatially as something happening where wild things are, an elsewhere populated by crumbling states and violent cultures, but instead is an intrinsic feature of democracies across the world, then we are forced to rethink the relationship between violence and democracy.[5]

For example, India has an impeccable record of holding free and fair elections and a robust judiciary that professes the highest forms of constitutional morality. But it is also undergoing the second rise of extreme Hindu nationalism, including recurrent anti-Muslim violence that does not weaken but strengthens the ability of a popularly elected regime to rule a multi-ethnic and diverse society. A major part of democratic politics in India involves political actors transferring structures of feeling – a mix of persecution and revenge among the majority Hindus – produced before, during and after riots and ethnic violence, into political campaigns for electoral profit.[6] It seems that the whole liberal edifice – elections, an independent judiciary, a free market, and a vibrant press – can only do so much to curtail this kind of violent politics within democracies. In this context, lessons from the South, especially Latin America and South Asia, show that democratisation and violence can happily co-exist. But the more troubling question that arises from contexts such as Modi's India, Trump's USA, and Erdoğan's Turkey is: under what conditions does violence *strengthen* democracy and can the politics of exposure help us understand or resist this process?

The politics of exposure

Perhaps one reason why scholars and the public in both the West and the non-West continue to shield liberal democracy from accusations of being inherently violent and treat ethnic conflict, genocide, displacement and everyday violence as an aberration, is due to our reliance on a particular form of critique that I call the politics of exposure. The politics of exposure is a way of touching, feeling, and writing violence (not restricted to analysis of violence within liberal democracies)[7] that approaches violence as a dark object that withers in the light.

Ethnographies, political theory, newspaper editorials, human rights reports, journalistic exposés are only too happy to uncover hidden and repressed violence within democracies. Whether it is Hindu majoritarianism in India, white supremacist rhetoric in Trump's rallies, or the deep xenophobia and anti-migrant feeling in Europe, there is no dearth of studies that show us the violence lurking underneath the cool surface of our politics. This work is important and necessary, but not sufficient. If we take violence as a given across the history and practice of democracy in most parts of the world, then it may not be enough simply to expose the deficiencies of democracies in dealing with violence.

Let me highlight four limitations of the politics of exposure. First, it assumes that violence is always already hidden and needs to be uncovered by the analyst. And yet, in many contexts today, the hyper-visibility of the violence – against Muslims in India, against so-called criminals in the Philippines, against 'terrorists' and academics in Turkey – legitimises popular regimes. Second, it assumes that the exposure of violence will produce progressive publics and enlightened politics, both of which do not naturally flow from simply exposing violence. For instance, there are now many videos of minorities being lynched on YouTube in India, but these videos are often created by the perpetrators of the violence and not those who want to criticise these acts. Moreover, new technologies of exposure like Whatsapp often accelerate, rather than limit, the proliferation of violent acts and the making of illiberal publics. Third, much of the politics of exposure is focused on exposing 'the state', and pointing to the violence underneath the workings of the liberal state. Not only is the exposure of state violence redundant; pointing out new instances of state violence does not help us to understand the immanent deficits of liberal democracy and its remarkable ability to absorb violence. Finally, the exposure model is wedded to exposing the exceptional; these may be exceptional times (riots, war, emergency) or exceptional spaces (borders, prisons, Global South). This focus on the exceptional, however, is not helpful to understand the background practices (forms of legality, popular politics and public discourse) that link the exceptional with the everyday within democracy.

In sum, the exposure model does not help us unpack the productivity of violence – its affective, collective and infrastructural aspects – that allows it to reorganise hierarchies, expand the social, and produce new forms of the political. On the other hand, does this move away from the politics of exposure condemn us to silence and complicity? And where do we go from here? What does it mean to analyse violence outside the politics of exposure?

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7   E. Kosofsky Sedgwick and A. Frank (2003), *Touching Feeling: Affect, Pedagogy, Performativity*, Series Q, Durham: Duke University Press.

An example from India

I came up against the exposure model when I tried to write about anti-Muslim violence in India. After the death of Hindu activists during an altercation with Muslims in Gujarat, there was a public massacre of Muslims, where over 1000 people, mostly Muslims, were killed in broad daylight.[8] As an anthropologist, over the last decade, I have worked beside activists, human rights lawyers and survivors to understand the various institutions and actors involved in the violence and its aftermath, and like them, I found myself face to face with the egregious role of the Indian state and the ruling regime in facilitating the massacre. Except that in this case, unlike other cases in the past, there was no dearth of evidence of state complicity. This was India's first televised riot. At one level there was nothing puzzling about the massacre: Hindu-Muslim violence is endemic to India's democratic politics and runs parallel to its electoral rhythms. It is well known that Hindu-Muslim violence often polarises the Hindu majority electorate and helps Hindu nationalist political parties win elections (which is exactly what happened in Gujarat in 2002).

But does this public secret help us understand the ways in which the Hindu nationalist regime in Gujarat galvanised the violence to consolidate its popularity and legitimacy? Or how a violent regime managed to turn human rights criticism and scathing media exposure on its head? Does exposing the riots as 'state violence', or even as a state of exception, help us understand its widespread popularity? Does it help us understand why public violence in democracies continually forms new publics and politics in its wake?

So rather than exposing, yet again, the power of death and destruction in the Global South, what if we choose to understand such recurrent public violence as a key moment to grasp the forging of 'the people' or the hallowed 'we' enshrined in the heart of all democracies? What if riots and pogroms are moments when we see the forging of new relationships between violence and democracy, popular sovereignty and the ruling regime? And what if this forging takes place in the public and in the name of 'the people'? So, for example, in considering why so many ordinary people joined Hindu mobs in Gujarat and how they could attack Muslim life and property so easily in broad daylight, what happens if we shift our focus away from exposing the illiberal state, and instead look at the spatial and temporal forms that arrange peoples and feelings in ways that allow violence to become the medium for collective mobilisation? In other words, what perfectly ordinary and popular mediations in India connect public massacres with public culture?

In asking these questions, I foreground the power of vernacular political forms like the *bandh* (shutdown) – that is used by political groups across South Asia to shut down the city in order to stage public protests. It is these vernacular forms that often allow collective violence to be staged as a form of public protest.[9] As a form of performative crowd politics, the *bandh* is not merely a curious detail of something that can later be classified as state violence or ethnic conflict or even genocide. It is precisely the *bandh-form* of anti-minority violence that makes it an integral part of normal democratic politics of protest and outrage in many parts of South Asia.[10] Such an approach takes seriously the fact that much violence within democracies might take place only under the cover of darkness, but frequently does not.

8   Human Rights Watch (2002), *'We Have no Orders to Save You'*: State Participation and Complicity in Communal Violence in Gujarat, New York: Human Rights Watch.

9   M. Chatterjee (2016), 'Bandh Politics: Crowds, Spectacular Violence, and Sovereignty in India', *Distinktion: Journal of Social Theory*, Vol.17, No.3, pp. 294-307.

10   For a review of this form of politics in South Asia see A. Blom and N. Jaoul (2008), *'Introduction. The Moral and Affectual Dimension of Collective Action in South Asia'*, South Asia Multidisciplinary Academic Journal, (2).

Majoritarian formations

What if that which lies at the heart of all multicultural democracies is the potential energy of collective and public violence to forge 'the people' into historically shifting formations constituting an angry and wounded majority and a killable and disposable minority? And what if these formations are embedded not just in elections, but also in everyday speech, police narratives, legal trials and media reports? As I followed the Gujarat violence into the courtroom, I found little effort to repress the violence. For instance, it was common to see Muslim witnesses being shouted down by Hindu defence lawyers in the trial courts. What I found was an elaborate legal infrastructure that absorbed, captured, circulated and framed violence.[11] A legal machine that did not break down in the face of spectacular violence but processed that violence in the ostensibly innocuous language of the majority and the minority. In such contexts, legal exposure of illegality or revealing the cultural weight of majoritarian ideologies like Hindu nationalism on the legal apparatus is not enough. What we need is an account of forms of legal capture – police paperwork, courtroom performances and legal bureaucracy – that absorb exceptional violence within normal processes of legal inscription. But this normalisation of spectacular violence is only the beginning. The legal system is more than an impunity machine; it captures and inscribes the Muslim as a deceitful and malicious witness. And in this way the legal is an important node to create majorities and minorities.

We see here the active role of public violence as a mode of shaping the majority and minorities within democracies, not merely as numerical entities, but as affective, legal and narrative formations. The characters at the centre of this process in India – Muslims – are also at the centre of majoritarian political formations in many parts of the world today – in Trump's Muslim ban and Le Pen's speeches in France, for example. Arguably, the proliferation of majoritarian formations should expand our notions of the political, regardless of whether the democracies in question are situated in the North or the South.

Such a project can take many forms. First, it can mean more postcolonial readings of democracy. What happens when we revisit Western philosophy's enduring suspicion of democracy from the Global South? To counter our presentist amnesia about the long history of the interrelationship between violence and democracy, it may help to revisit the deep suspicions that political theorists as far apart as Plato and Tocqueville (and almost everyone in between) have about democracy. Some have argued that democracy may contain within itself the seeds of its unmaking and dissolution,[12] by democratically voting out democracy. As elections around the world show, the voting out of democracy is a real effect of elections and not simply an empty paradox. What is voted out is not democracy as procedure (elections) but democracy as agonistics and dialogue. Second, we need more empirical and comparative cases of how democracies temper, or not, their illiberal tendencies.[13] If public violence can usher in new publics and social orders, then we need to ask how does this ability of violence to transform, disrupt and congeal hierarchies work itself out in London, Paris and Charlottesville? Finally, the rise of majoritarian democracies across the world shows us that in terms of governance, violence in fact strengthens the power of violent regimes to govern a divided society in so far as public anti-minority discourse becomes one way of forging a 'majority'. As our democracies confront universal and irreversible challenges – rampant unemployment, global warming and the vanishing dream of a middle class life – we may see the rapid proliferation of majoritarian formations.

11   M. Chatterjee (2017), 'The Impunity Effect: Majoritarian Rule, Everyday Legality, and State Formation in India', *American Ethnologist,* Vol.44, No.1, pp. 118-130.

12   J. Derrida (2015), *Rogues: Two Essays on Reason,* Stanford: California University Press.

13   D. Dzenovska and L. Kurtovic (2018), 'Introduction: Lessons for Liberalism from the "Illiberal East"', Hot Spots series, *Fieldsights,* 25 April https://culanth.org/fieldsights/series/lessons-for-liberalism-from-the-illiberal-east

Commemorating violence in and beyond liberal democracies

Rin Ushiyama[14]

In January 2019, braving the bitter English cold, a mass of more than a thousand people gathered at a cemetery in Hertfordshire. The people they came to honour were not powerful, popular or famous – rather, the opposite. In fact, none of the attendees knew them personally. Their name, age, job and even their gender had been lost to history. Nevertheless, it was what little the congregation knew that had brought them together for mourning. They knew that there were six bodies to be buried that day: six of the six million Jews who perished in the Holocaust. Their bodies, which had been donated to the Imperial War Museum more than two decades ago, were to be given a religious burial by the United Synagogue – a union of British synagogues – after forensic analysis confirmed that they were human remains.[15] Among the attendees were relatives of victims and survivors, as well as representatives from the UK, Germany and Israel. Delivering a sermon, Chief Rabbi Ephraim Mirvis paid tribute to the victims of the Holocaust and warned against contemporary threats of antisemitism, xenophobia and racism. The funeral served not only to lay their souls to rest but also to act as a renewed reminder of the dangers of bigotry and prejudice in the present day. Violence casts a long shadow over history.

This funeral was both unique and commonplace: unique because funerals are rarely held three-quarters of a century after a person's death, and commonplace because remembrance of the dead is ubiquitous across time and space. The burial of the six victims, beyond reiterating the obvious religious and historical significance of the Holocaust to the participants, also illustrates more general characteristics of collective memory. Memories of the 'past' as experienced in the present are a product of constant and continuous social processes, such as rituals, ceremonies, celebrations, art, literature, museums and monuments.

Memory is an integral aspect of social life because actors rely on knowledge of the past not just to understand it but to exercise control over it. Actors rely on a command of the past to address present problems, pursue interests and instigate social change. Studying collective memory, therefore, means studying power relations involved in representations of the past. The purpose of this paper is to examine how this relationship between memory and power informs theoretical understandings of liberal democracy. In the first section, I reflect on contemporary developments relating to social reactions to violence and consider what collective memory can tell us about power and vice versa. In the second section, I explore how understanding the nexus between memory and power can help to refine theoretical critiques of liberalism and democracy.

The lively debates at the Violence and Democracy symposium held at the Centre for the Study of Developing Societies brought to light the importance of commemoration as a key aspect of social and political responses to violence, especially in relation to state violence. Some participants highlighted the role of technology, especially social media, in shaping actors' responses to violent events. In my view, two features of social media that distinguish them from antecedent technologies are particularly relevant for understanding commemoration.

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14   Rin Ushiyama's current project examines the relationship between the Japanese right and public efforts to deny the occurrence of atrocities committed by the Japanese Empire. In particular, he looks at the social networks of support between nationalist religious organisations, public intellectuals, politicians, elites, and political parties. In his introductory remarks at the Violence and Democracy symposium, he discussed what he thought were some of the most important dimensions of commemorating and remembering violence as 'Four Ts': Time, Trauma, Technology, and Truth.

15   R. Wearn (2019), 'Holocaust Victims Funeral a Reminder to "Confront Racism",' BBC News, January 20, 2019. <https://www.bbc.com/news/uk-46924619>

Firstly, due to their user-driven nature, social media are vastly superior to traditional media in both scale and speed at spreading content, including commemorative events. Notably, the funeral of the six Holocaust victims was streamed live on YouTube and has been preserved on the same platform for posterity. As such, it has now become possible to engage in commemorative rituals without being physically or temporally co-present with other participants.

Secondly, social media have enabled disparate social groups to come together in response to perceived violence by identifying collectively as victims. The spontaneous creation of the *'Je suis Charlie'* slogan in the aftermath of the attack on Charlie Hebdo's headquarters in January 2015 was a salient moment in which social media played a vital role in the construction of a transnational identity in response to terrorism. More recently, the Black Lives Matter and the #MeToo movements have gained momentum across the world through social media in response to racial and gender-based violence, enabling marginalised groups to step forward in public.

While these movements demonstrate the emancipatory potential of social media, it is also important to note that the same platforms have provided a particularly fecund environment for reactionary, conspiratorial and violent forces.[16] Conspiracy theories are now global in scope, and populist language that targets and denounces the 'global elite' has permeated the political vocabulary in many countries. Most recently in March 2019, a white supremacist terrorist espousing such conspiracy theories attacked two mosques in Christchurch, New Zealand, killing 51 people. He live-streamed the attack on Facebook, and the video was later reproduced on multiple social media sites.[17] Put simply, social media are amoral: they can be harnessed either for good or evil with minimal effort and maximum effect.

Despite the transformative and global capabilities of digital media that I have highlighted here, physical objects of memory also continue to evoke passions for many communities around the world. Many contentions over commemoration still occur in national contexts, with reference to national values, identity and history. The recent debates in the US over the removal of statues of Confederate leaders, for example, points to the enduring emotional weight that national memories hold for both sides of the debate. Historical monuments are frequently sites of intense symbolic and political battles.[18] Like all cultural objects, monuments and memorials inherently have plural meanings because of the potential discrepancy in meaning between the creator's intent and the audience's reception, as well as between disparate audiences, who interpret the significance of monuments in multiple and often conflicting ways. Hence, as captured by the demonstrations by the Rhodes Must Fall movement or the American protesters against Confederate monuments, an object that symbolises historical glory and pride for some (usually the historically dominant strata) is an affront and a mark of continuing historical injustice for others. Struggles over commemoration and memorials often have both national and international dimensions. This is particularly true of the Rhodes Must Fall movement, which originated in the University of Cape Town but later found resonance at the University of Oxford – famous for the Rhodes Scholarship – as well as at other universities with historical ties to donors who benefited from slavery and colonialism.[19]

16   With thanks to Hugo Drochon, whose project studies the popularity of conspiracy theories in contemporary societies, for this contribution at the symposium.

17   C. Graham-McLay, A. Ramzy, and D. Victor (2019), 'Christchurch Mosque Shootings Were Partly Streamed on Facebook', *New York Times*, 14 March <https://www.nytimes.com/2019/03/14/world/asia/christchurch-shooting-new-zealand.html>

18   See R. Wagner-Pacifici and B. Schwartz (1991), 'The Vietnam Veterans Memorial: Commemorating a Difficult Past', *American Journal of Sociology,* 97 (2), pp. 376–420; and V. Vinitzky-Seroussi (2002), 'Commemorating a Difficult Past: Yitzhak Rabin's Memorial', *American Sociological Review,* 67 (1), pp. 30–51.

19   With thanks to Dominic Davies for this contribution at the workshop, who commented on the politics surrounding the Cecil Rhodes statue in Cape Town.

In another recent example of contentions over physical monuments, Korean-American civic groups in the US have made concerted efforts to honour 'comfort women' – women who were forced into sexual slavery to serve the Japanese military during the Asia-Pacific War – by erecting statues in their memory. The 'comfort women' and the broader 'History Problem', regarding Japan's official responses to its wartime atrocities, have been a major source of tension in East Asia (and, to a lesser extent, South East Asia) for decades. However, the expansion of the site of struggle by ethnic diasporas from directly affected nations such as Korea, China and Taiwan to countries that were not colonised by Japan – such as the US and Canada – is a relatively novel phenomenon. In response to these new developments, Japanese conservatives have sought to extinguish such commemorative movements. In 2013, in an important test case, Japanese-American plaintiffs, along with right-wing denialist organisation Global Alliance for Historical Truth (GAHT), sued the City of Glendale, California for erecting a statue dedicated to comfort women in a public park *(Gingery et al. v City of Glendale)*.[20] GAHT is an organisation with non-profit status in Japan and the US whose mission, in their own words, is to combat 'Japan-bashing' and address 'fabricated history' that damages the 'honor of Japan and the Japanese people'.[21] It also has strong interpersonal ties to Nihon Kaigi (Japan Conference), the largest conservative lobbying group in Japan. For decades, these nationalist figures and groups have invested heavily in efforts to deny the very occurrence of Japanese atrocities; the test case is illustrative of their more recent international efforts. The plaintiffs argued for the removal of the comfort women statue, alleging that the erection of the monument by the city intruded upon the federal government's constitutional authority to conduct foreign affairs. Courts rejected the plaintiffs' arguments in the trials and the comfort women statue remains standing today. Notably, after the Court of Appeals for the Ninth Circuit dismissed the plaintiffs' case, the Japanese government intervened by submitting an amicus brief in support of the plaintiffs for the case to be heard by the Supreme Court.[22] While the Supreme Court rejected the petition to consider GAHT's position, this case is demonstrative of the complexities of the transnational commemorative struggles over historical violence and the cultural and political potency of monuments as sites of remembrance.

Having considered these examples in which memory and power are inextricably intertwined, what kinds of critique or defence of liberal democracy might emerge from them? To return to the discussions at the workshop, a key insight that emerged over the course of the two days was that liberal democratic states do not necessarily reduce violence. If we accept the Weberian definition of the state as an institution that holds the monopoly of the legitimate use of violence over a given territory, then we must also accept that liberal democratic states do not stop being states: that is to say, they do not simply relinquish the right to exercise violence simply because they are liberal democracies.[23] All states which are successful at maintaining this monopoly of violence exercise a great deal of power within and beyond their territorial borders, whether through war, police killings, profiling of racial and religious minorities, online surveillance, data collection, or media censorship. As such, we must be sceptical of straightforward arguments that claim that a particular political arrangement for allocating power through elections can automatically reduce violence. Liberal democracy as such is no panacea for reducing violence or for promoting greater freedom.

Despite these limitations, I believe that a qualified defence of liberal democracy is possible. Liberal democracies hold open the potential for redressing violence in ways that other, non-democratic political systems do not. Firstly, popular sovereignty, *in principle*, encourages the national population to act as sovereign citizens, and not as passive political subjects. This can enable previously persecuted groups to step forward to demand restitution for past injustices.

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20   On the denial of the realities of 'comfort women', see also Y. Nozaki (2005), 'The "Comfort Women" Controversy: History and Testimony', *Asia-Pacific Journal,* Japan Focus 3 (7).

21   Global Alliance for Historical Truth http://gaht.jp/aboutGAHT.html

22   The obvious irony here is that GAHT accused the City of Glendale of meddling in foreign affairs between the US, Japan and Korea, at the same time that the Japanese government waded into a civic, domestic dispute between Korean-Americans and (a handful of) Japanese-Americans.

23   Sohini Guha's introductory remark at the symposium on 'democracy' as the justification of state violence was particularly insightful for addressing this issue head on.

In other words, democracy encourages a sense of 'counter-memory' from dominated, subaltern groups to challenge socially dominant histories and narratives. Such was the case with Japanese-Americans who demanded an official apology from the US government for their internment and the confiscation of their property during the Second World War – policies that had been justified historically as necessary wartime measures. If the state is open to the possibility of making amends for its past moral transgressions, it may become possible for past injustices to be incorporated into a national memory – as seen by the example of the Holocaust in German national memory.[24] In countries including Chile, South Africa, Canada and Rwanda, truth and reconciliation commissions have also emerged as a common model for admitting state culpability for historical injustices. Though this awaits more rigorous empirical discussion, my hypothesis would be that liberal democracies are more likely to provide formal apology and redress to victimised groups and minority populations than non-democracies.

Secondly, liberalism, *in principle,* guarantees the rights of those historically subjugated populations to engage in acts of counter-memory without fear of intimidation or retributive violence from the state or opponents. The precondition for a non-violent field of memory is the acknowledgement by participating parties that freedom of expression is inviolable and equally distributed. It opens the discursive space, both physical and abstract, in which movements such as Black Lives Matter and #MeToo can emerge, even if the results of such movements are imperfect or incomplete. Consequently, liberalism can propagate civic discourse that does not silence minority voices and provides a democratic forum in which 'polyphony' – the interaction of multiple voices and opinions – prevails.

Needless to say, these defences of liberal democracy are theoretical in scope, and the actual practice of counter-memory in liberal democracies is likely to be hindered by factors including political repression, party politics, state capacity, power relations between interest groups, and the uneven distribution of social resources. As such, a continuous critique of liberal democracy is necessary to realise and safeguard its emancipatory potential. Furthermore, there are several strands in liberal democratic thought that can be exploited for the benefit of dominant groups at the expense of the most vulnerable. The first strand is majoritarianism: there is always a risk that democracy is used to justify current or past violence against minorities. Often, democracy is the mask that majoritarianism wears to justify itself. When the majority population is insensitive or indifferent to injustices against minorities, the trauma and suffering of subjugated groups are likely to remain unaddressed. The second strand is populism: as we have seen in Europe, the US and elsewhere, populism, by drawing an arbitrary definition of what constitutes 'we, the people', justifies the systematic exclusion of the cultural 'Other'. When populism holds sway, the 'Others' are condemned to cages in detention centres or left to drown in the Mediterranean Sea. The third strand that threatens social justice is libertarianism. An insistence that the state's role should be minimised in all aspects of social life places limits on the state's ability to provide redress for structural inequalities and historical injustices through policies such as financial restitution and affirmative action.

As we can see, not all variants of liberal democracy can guarantee or enhance the rights of victims of violence. Perhaps, beyond these narrow definitions of liberal democracy as majoritarianism, populism or libertarianism, a more capacious conception of liberal democracy as pluralism can be articulated. Pluralism goes beyond the majoritarian 'winner takes all' electoral model in ensuring that the minority views and rights do not go unrepresented. Moreover, pluralism, by placing the interests of minority and majority groups on level ground and seeking to accommodate different views to reach a compromise, could present a more viable political arrangement for actualising the ideals of popular sovereignty, equality, representation and freedom.

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24   I. Buruma (2009), *The Wages of Guilt: Memories of War in Germany and Japan,* London: Atlantic Books.

To conclude, a theoretical defence of liberal democracy is possible, although the implementation of these liberal democratic ideals may be more difficult in practice. While there are significant contemporary challenges to liberal democracy – in particular, the apparent global rise of populism and the far-right – I believe there is some cause for cautious optimism about liberal democracy's future emancipatory potential. The recent public debates over what statues and monuments should be torn down and what should be erected in their place – as divisive as they have been – suggest that there is a nascent pluralistic discursive environment that is more sensitive to the historical and present hurt experienced by minority communities. The growth of counter-memory movements, therefore, not only suggests a growth of pluralism in politics but also presents a potential antidote to the poisonous effects of populism and majoritarianism.

Violence, lower-caste politics and India's post-colonial democracy
Sohini Guha[25]

It is by now well-established that democracy does not look the same everywhere. Scholars studying democracy in non-Western, and particularly post-colonial, contexts have made the case that democracy is, in each and every instance, historically and sociologically conditioned, which makes any attempt to construct a universal, grand theory a fraught exercise. One significant way in which some post-colonial democracies (India, Lebanon, Mauritius, South Africa, Sri Lanka) diverge from the Western standard is that group life and communitarian solidarities have a persistent relevance there. When this very different social fabric of the post-colony interacts with the procedural and institutional framework of electoral democracy, the outcomes that emerge are often novel and startling.[26]

However, accepting that a country's past, and societal weave, may give its democracy a unique inflection (say, a communitarian inflection rather than a liberal one) should not discourage us from identifying a core set of values, or orientations, and expecting these to be embodied in every democracy. The vital issue pertaining to democracy in post-colonial societies is this. The past may work here to make available to democracy modes and grammars of mobilisation not seen in the West, without defiling its spirit in any way. But some particular elements of the past may also violate that spirit, and be simply incompatible with democracy. The past, in other words, has its discontents, and so does 'post-colonial difference', whose contours are shaped by the past in critical ways. This awareness is best kept firmly in the forefront as we seek to historicise and de-universalise our understanding of democracy. In other words, the task of historicising has to proceed carefully, so as not to relativise the idea of democracy, or drain it of all normative content.

It is neither my brief nor my objective here to define the orientations which democracies everywhere ought to take. But I would insist that a public culture of democracy should have, amongst its key ingredients, a regard for procedures and for the rule of law. Here, I dwell on an intractable problem facing India's post-colonial democracy, namely, the rapidly fading value of democratic procedures amongst the general public, particularly in north India, and an associated predicament stemming from the dense interweaving of violence and democratic life. It is a matter of no small irony that the widespread disregard for procedures that is evident amongst ordinary people in north India today was, in a significant way, fuelled by those very same processes that led to considerable democratic deepening in the region, that unfolded in the course of the 1990s and the following decade.
I refer here to the political assertion of subalterns, specifically lower and backward castes, and the formation of governments by parties representing these groups in the large, and electorally critical, states of Uttar Pradesh and Bihar.[27] The entry of large numbers of representatives from these groups into the state assemblies in question changed the caste profile of these assemblies to a degree never

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witnessed before. But this downward flow of political power came at a cost, and had consequences for India's democratic culture. For it bred an impatience with the rule of law which, for reasons I lay out below, came to be seen by subaltern constituencies, as well as the governments representing them, as obstructing the speedy delivery of caste-based 'social justice'.

The idea of 'social justice' is an integral component of the vocabulary of democratisation in India. It is associated with an ethical-political project that took shape in the run-up to the achievement of independence, and in the course of crafting the Indian Constitution, several of whose provisions gave it tangible form. This project sees communities (rather than individuals) as units between which parity must be achieved, and defines these communities in terms of caste. The initial thrust of the project was to address the disparities arising from historically accumulated injustices, and from the practice of 'untouchability' in particular – it was this rationale that underpinned the affirmative action provisions for Scheduled Castes (SCs), or former untouchables, laid down by the Constitution, that came into effect when the Indian republic was founded. Much later, in 1990, the project broadened to address the wider problem of 'backwardness'; 'social justice' provisions came to target a plethora of lower castes who had, despite not suffering the practice of untouchability, lagged behind – economically, socially and educationally – and who came to be referred to as the 'Other Backward Classes' (OBCs), or simply, 'backward castes'. As will be evident from the discussion in this paper, lower and backward castes clearly considered reservations as not having sufficed to empower them, thus making it necessary for the 'social justice' project to be carried forward through social and political mobilisation, and electoral politics involving parties that represented these groups.

It is not my claim here that the attrition of procedural sanctity was set off by the politics of lower caste empowerment. Procedures had long been violated in India by political elites. What the lower caste assertion of the 1990s did, however, was make procedural violations appear legitimate, and make sense, to large swathes of the people, which had not been the case before. It has often been argued that India, which has held elections regularly over the post-Independence period (except during the Emergency, which lasted from 1975–1977),[28] robustly passes the test of a procedural democracy. In response, it needs to be pointed out that the hosting of elections – even if these are competitive, multiparty elections – is not enough. The test needs to be tougher, and one that subjects the electoral process itself to scrutiny for procedural violations. For it is precisely in order to win elections that political parties have engineered riots,[29] murdered political opponents, courted corporations and flouted spending norms. Violence has been in abundant display on the day of the vote itself; it has been deployed to 'capture' polling booths, prevent people from casting the ballot, coerce them into voting in a particular way, and achieve a range of other objectives. When the electoral process in a democracy itself subverts the rule of law, the occurrence of elections cannot, in and of itself, be considered an index of good procedural health. Procedures, in the strong sense, denote the wider legal and institutional set-up that structures the functioning of democracies, and also constrains the conduct of elections.

The violations described above were committed for the most part by political parties – their leaders, cadres and candidates – with the voting public being at the receiving end of these misadventures. It could, of course, be argued that there is no such thing as a broad voting public in India, but only voting blocs based on caste or religion or whatever else, and that in committing these offences, political parties secured some strategic advantage for the specific groups they spoke for. Going by this view, these violations would have appeared expedient to those whom they benefitted; they would not, however, have appeared *just*. For we were still short of that moment, representing a critical turn in public culture, when the infringement of procedures came to be invested, not simply with clear purpose, but also with urgent legitimacy. That moment was brought upon us by the

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28   While serving as Prime Minister, Indira Gandhi had a state of emergency declared in India in June 1975. The emergency remained in effect until March 1977, with elections being suspended, civil liberties being curbed, press freedoms being curtailed, and Mrs. Gandhi's opponents being imprisoned during this period.

29   Paul R. Brass has argued that Hindu-Muslim riots in India are 'produced' with electoral calculus in mind, their specific purpose being to consolidate the Hindu vote and secure a winning majority in targeted constituencies. See P. R. Brass (2003), *The Production of Hindu-Muslim Violence in Contemporary India,* New Delhi: Oxford University Press.

'social justice' politics of the 1990s, which saw, in the systematic undermining of the rule of law, an effective avenue for achieving a redistribution of power in favour of lower and backward castes. It was following this moment that procedural infractions came to be perceived not only as powerful instruments of democratisation, but also as powerful instruments of justice – capable of righting some old and persisting wrongs – by a wide range of constituencies, who made up a clear majority of the voting populace in north India.

By way of analysing the intersection between procedural violations and lower caste politics, I discuss here the phenomenon of the *bahubali*, which illustrates this intersection to good effect. A Hindi term connoting physical strength and aggressive masculinity, *bahubali* refers to a class of politicians who are established criminals, with a proven record of murders, kidnappings, extortion and the like. These figures have no fear of the police and administration, despite their run-ins with the law. They have easy recourse to violence, and a capacity to unleash it even as they remain lodged behind bars, by activating the criminal networks that they control, which has the effect of terrorising government servants as well as ordinary citizens. They also have monetary power, drawn from illegal businesses, which they use to buy off a range of state agents – police officers, bureaucrats, judges, jail wardens, and officials overseeing the conduct of elections. It was this hold that *bahubalis* exercised over state employees – through a combination of bribes and terror – that made lower and backward caste parties eager to award them tickets and host them aboard their platforms. This hold allowed these parties to partially circumvent the bureaucratic obstruction that they typically encountered when they sought to channel resources to subaltern groups while in government. Thus, the Bahujan Samaj Party (BSP) and the Samajwadi Party (SP) in Uttar Pradesh, and the Rashtriya Janata Dal (RJD) in Bihar – all of which sought to represent lower and backward caste groups – offered parliamentary and state assembly tickets to an entire spectrum of hardened criminals, with many of them emerging winners, some several times in a row.

If exercising a grip over pockets of the state was the first key feature of *bahubali* functioning, leveraging that grip to empower subalterns and damage dominant strata was the second. *Bahubalis* of lower and backward caste backgrounds invariably had a 'social justice' component to their politics, and took on a Robin Hood persona in their constituencies, and the localities in which they operated. It was precisely this element of the *bahubali* mode that aligned it with the programmatic agenda of lower and backward caste parties. *Bahubalis* typically sought to empower subalterns by getting the administration to award them state sector jobs, and lucrative government contracts, that involved the construction of public infrastructure and housing. They also often instructed the police to expressly pursue cases involving upper caste offenders and lower caste victims, and saw to it that the former were brought to justice.

It is worth asking why policy efforts designed to empower plebeian strata, undertaken by parties such as the SP, BSP and RJD upon coming to power, met with such determined resistance from the bureaucracy. Answering this question calls for us to undertake a historically and sociologically informed analysis of state institutions in India, that captures the prejudices that drove their working for most of the post-Independence period. These institutions, and in particular the bureaucracy, made a pretence of upholding norms of liberal neutrality while selectively serving dominant strata, and specifically upper castes; busting the myth of neutrality thus became central to the politics of lower and backward caste assertion. It was also not surprising that the 'social justice' parties were vehemently critical of the Indian National Congress (henceforth, the Congress), and harboured a bitter antagonism towards it. For while it was true that the state institutions inherited from the colonial past came already stamped with elite dominance, the Congress, which governed the country (both the centre and a majority of Indian states) uninterruptedly for close to three decades following Independence, did very little to rectify this. On the contrary, the upper caste bias that marked the Congress's own functioning leaked over into state institutions and reinforced their historically inherited prejudices. The lower caste assertion of the 1990s succeeded remarkably well in altering the sociological profile of state legislatures in north India; however, it had much less impact on the bureaucracy and the non-elected arms of the state in general. Consequently, the government and the administration remained locked in conflict, with a policy deadlock ensuing,

and a fractured state. It was this fractured state that, in Uttar Pradesh especially, played a critical role in preventing a lower-caste-dominated legislature from delivering substantive and lasting policy gains to lower caste constituencies.

The context, then, for the *bahubali* to emerge as an instrument of levelling was one in which democratically elected governments with a 'social justice' mandate had immense difficulty translating that mandate into concrete policy outcomes using regular institutional channels. It was this institutional obstruction that compelled lower and backward caste parties to rely on gangster-politicians to force through an egalitarian redistribution of resources, albeit in an uneven and sporadic manner. The caveat needs to be added here that not all *bahubalis* hailed from subaltern communities; there were those that belonged to dominant castes and who represented the interests of those groups. However, when the latter used their influence over state officials to channel benefits to their own people, they merely reinforced the ties that were already in place, connecting upper castes within the state to those outside it. The political logic driving the functioning of *bahubalis* from plebeian communities was exactly the reverse; these figures used their hold over the state to weaken the bureaucratic-societal nexus that had serviced dominant strata for decades.

The question is bound to arise as to why the decade of the 1990s and the politics of lower caste assertion should, in particular, be invoked to account for the fading value of procedures in public life. Why should the Congress, which undermined procedural neutrality so consistently over several decades, not be held accountable? The Congress had made clever use of the feudal relations prevailing in agriculture up to the mid-1960s, and of the material dependence of lower castes (most of whom were landless agricultural labour) on landed high castes – a stratum that was firmly affiliated to the party, and from which it drew its leadership. Mobilising the lower caste poor vertically, the Congress integrated them into party structures dominated by landed elites, and benefitted from their votes without offering them political representation. As Paul Brass argued in his 1960s study of the Uttar Pradesh Congress, electoral support for the party was much broader than its leadership there, with lower castes making up its most reliable constituency.[30] This strategy of vertical mobilisation, which entailed discrimination between elite and subaltern constituencies, was distinctly at odds with the image the Congress carefully constructed, and projected of itself, which was that of a neutral, catch-all party that never catered to any one group at the cost of another.[31] The practices of governance that the Congress adopted while in power, that aligned the state closely with the interests of party elites, also remained completely at odds with this image.

The 'social justice' parties, upon coming to power, sought not only to reverse the bias the Congress had injected into state functioning, but also to supplant it with their own (that they had difficulty doing this, on account of bureaucratic recalcitrance, is another matter). But in what was a sharp and significant departure from the Congress, they dispensed with the pretence of neutrality altogether, seeing no need to apologise for their claims to represent specific caste groups exclusively, and their designs to use state power to damage the caste enemy. This transformation in the language of politics was remarkable and presaged a new normal. The divergence between discourse and practice that had prevailed at the time of the Congress had only served to establish the discourse as standard, or norm, and the practice as deviation. Procedural neutrality and the rule of law had, in other words, continued to be regarded as valued ends worth striving for, their betrayal in lived public life notwithstanding. But the lower and backward caste parties trashed these norms and devalued these standards, arguing that these had fortified the status quo, and now obstructed the downward and democratic flow of power. It is significant that the denigration of the rule of law succeeded by way of being hitched to what was portrayed as a specific project of justice – the dismantling of an old, persistent and pernicious hierarchy of caste, in all its political ramifications. What made it legitimate for the state to now acquire a frank and militant particularity, for its civic potential to be stamped

30   P. R. Brass (1965), *Factional Politics in an Indian State: The Congress Party in Uttar Pradesh*, University of California Press, p. 230.

31   For a discussion of the neutral image the Congress carefully cultivated, see K. Chandra, 'Post-Congress Politics in Uttar Pradesh: The Ethnification of the Party System and its Consequences,' in R. Roy and P. Wallace (eds.) (2000), *Indian Politics and the 1998 Election: Regionalism, Hindutva and the State*, New Delhi: Sage, pp. 59-61.

out, and for lower and backward castes to unambiguously make it 'their own', was precisely that all of these modalities would go to further this justice-centric goal.

I conclude with two observations, both pertaining to the relationship between violence and democracy. First, in most discussions of violence in democratic contexts, the state has tended to receive a great deal of analytical attention, and not without good reason. Conventionally understood to enjoy a monopoly over the legitimate use of force, the state has worked over time to expand the scope of 'the legitimate', and thereby extend the sphere of its own violence in the name of securing borders, guaranteeing security and pursuing development. The discussion here, while understanding this, seeks to direct our attention to the role institutions other than the state have played in weaving violence into the fabric of democratic life. Specifically, it emphasises the part played by political parties in the degradation of institutions and the rule of law, and the crafting of violence into a tool of democratic politics. We need to be further aware that the culture of the state is shaped in critical ways by the culture of the political parties that inhabit it. Given that political parties continually slip in and out of the state, the state is best understood as being in a recursive relationship with political parties; it cannot be seen as standing apart from the latter. I also attempt here to foreground public culture in the discussion of violence and suggest that public culture needs to be understood relationally as well, as being shaped by political parties, and eventually the state, and in some contexts also possibly constraining these actors in turn.

Second, the discussion here prompts us to think about what follows when political actors interpret their goals in a specific way – that is – as advancing the cause of justice, and communicate this effectively to their constituencies. The idea of justice succeeds in mobilising powerful emotions, associated with the righting of wrongs, in the face of which procedural considerations appear bureaucratic and superficial, and get simply washed away. A public mood thus ensues that judges the rule of law to be entirely dispensable. This is particularly so if the rule of law poses obstacles to the instant egalitarian fixes the public demands, in face of the difficulties facing long-term structural change. Such a public mood also sees violence as a perfectly legitimate tool if it can help deliver these instant egalitarian fixes. Violence thus becomes an instrument aiding democratic transformation, and enters the repertoire of strategies available to democracy to push through a more equal order. It now ceases to remain outside that repertoire. This testifies to the inherently unstable nature of the understanding as to what constitutes illegitimate force: what appears as wrongful use of violence to one can appear justified resistance to another.

But when a political culture and praxis that value right outcomes over right means gain widespread acceptance, that then poses a challenge for democratic theory. It brings the procedural and substantive elements of democracy into sharp conflict, where progress along the substantive dimension entails regression along the procedural one. Whether this is a quirk marking India's specific democratic experience, or a more general feature of hybrid democracies everywhere, it is a problem of simply too much practical and normative import to be casually dismissed as arising from 'post-colonial difference' and, hence, to be either celebrated or stoically borne.

Feelings in common: democracy as maintenance and repair
Dominic Davies [32]

Delhi is pleasantly cool in November. The usual suffocating blanket of toxic smog still rests heavily on the city, burning the back of the throat and dulling the sun to a soft amber. But there remain a few large open spaces that function both as environmental and social lungs in a city gasping for air. The large courtyard of the Masjid-i Jahān-Numā, or Jama Masjid, provides one such space. Here, the city and its inhabitants are allowed a moment to catch their breath. Children play and families gather; the young and the old kneel in worship; tourists wander and photograph the curved arches that cut against the burnt sky. Many simply repose along the edges of the central water basin, soaking themselves in the calming atmosphere. A raised island surrounded by the chaotic, bustling streets of Old Delhi, the courtyard's serenity is both literally and metaphorically heightened. The feeling of tranquility that emanates from these stones – stones that have witnessed some of the most violent moments in India's colonial and postcolonial history – soothes those who walk, sit and lie upon them. While the mosque's foundations vibrate with the footfall of imperial soldiers and the reverberations of sectarian bomb blasts, on a winter afternoon in 2018 the square was activated differently, woven together by the feelings in common of those temporarily enjoying its shelter.

In this short reflective paper, I want to consider briefly how these common 'feelings' come about, and how they relate to feelings, or 'atmospheres', of democracy. I will try briefly to explore the political, physical and affective infrastructures that might bring these feelings into being – or that conversely might curtail and inhibit them. And I will conclude by suggesting that it is not only through building and developing new such infrastructures that democratic atmospheres might be conjured; just as importantly, it is through the routine activities of maintenance and repair that feelings of social and political commonality might be revitalised. In order to contain these admittedly large and riskily abstract reflections, I will route them through the specific context of contemporary Britain, focusing in particular on the conditions created by the political phenomena of austerity.

I should stress my initial hesitancy in taking contemporary British politics as a case study in this paper. The British Academy workshop, which took place in Delhi at the end of November 2018, in fact presented momentary relief from the relentless cycle of Britain's autumn showers and Brexit-obsessed debates. The global insignificance of the UK's current failure to come to terms with its own post-imperial decline is somewhat ironically evidenced in the overwhelming social life of India's second largest city – a city that was, after all, once an administrative and symbolic centre for Britain's expansive empire. And yet, as British and Indian academics embarked upon two days' interdisciplinary reflection on the concepts of 'democracy' and 'violence', the UK's 2016 referendum decision to leave the European Union remained, for me at least, a dogged and intractable point of reference. Throughout the workshop, I had no wish to reignite or engage with the intricacies of the Brexit debates, and it is not my intention to address them in any particular detail here. But the phenomenon did seem to encapsulate several of the conceptual tensions that surfaced across the workshop's conversations. I will, therefore, cautiously refract the various interventions I have drawn from the workshop, and as they are included in the following paragraphs, through the current UK context.

The paradox unwittingly revealed by the UK's 2016 referendum is the extent to which such large, performative gestures of electoral democracy – not to mention the notion of 'mandate' that they are designed to bestow – seem not only to be produced by the social erosion of democratic inclusion and participation, but also to contribute to it. The Leave campaign's anti-establishment rhetoric peeled back the veneer of liberal democracy to unveil a populist alienation from parliamentary politics, even as the leaders of that campaign were about as 'establishment' as it is possible to be. Now, as the saga unfolds and the House of Commons becomes a site of endless and unproductive debate thoroughly detached from actual governance, I would ask whether 'democracy' as it is institutionally conceived is still the most productive or relevant conceptualisation of the term. This is something that we returned to repeatedly in the symposium discussions. Is a parliament the only place where democracy can happen? We have settled, it seems, for a very narrow notion of what a 'democratic society' should look like, pegging it to the lazy indices of 'fair elections' and 'parliamentary representation', rather than insisting on the everyday construction, participation and consultation of an active civil society as an integral component of democratic governance.

The extent to which the room of academics in Delhi, when confronted with the unwieldy concepts of 'democracy' and 'violence', at first fell back upon rather conventional interpretations of democracy and democratic practice is, I think, revealing. The conversations, perhaps panicked by the scale of the topics they were asked to navigate, repeatedly made recourse to what felt to me, as a humanities scholar, like a 'nuts-and-bolts' language of social-scientific – even technocratic – explanation and analysis. This was the metaphoric architecture of 'the state', of 'politics', of 'elections', and so on – a labelling of the mechanical apparatus of democracy in its institutionalised incarnation. Even if such language of course trades in intellectual abstractions, it nevertheless *feels* concrete, and it offered us something firm on which to ground our discussion. The idea of the 'state' seemed especially unavoidable in our attempts to connect the concept of democracy with violence. Democracy must be violent, it was agreed, because democracy requires and therefore creates a state; meanwhile, the very premise of a state (at least in its contemporary neoliberal incarnation) is the necessity of its monopoly on, and ability to wield, violence. There can, therefore, be no such thing as a non-violent state.

But what happens when the power and reach of the state, which always remains far more patchy and uneven than conventional analysis allows, is eroded by the state itself? In 2010, David Cameron's catchphrase for this process, 'the Big Society', was code for a politics of austerity and for the retreat of the state from social life. Here, the absence of the state also leads to violence, and the catastrophic effects of austerity policies both in Britain and beyond have been well documented.[33] It is a slow brutality that in Britain, where austerity policies are now nine years old, becomes increasingly visible. It has caused numerous other unanticipated crises, of which a surge in knife crime among an abandoned generation of young people, often of colour, is just one example. Starving the public to appease the private, austerity appears to prove that parliamentary politics is – and for a long time has been – in the service not of the 'people' or 'society', but of financial capital.

Yet I wonder if maybe austerity has inadvertently – and I stress, inadvertently – revealed something else to us. I am not so interested here in the cause-and-effect reading of austerity policies and the recent populist antagonisms that have resulted in phenomena such as the Brexit vote, though the two are clearly related (in Britain and elsewhere). Rather, I want to ask how austerity, by manufacturing spaces of community resilience out of brute necessity, by creating a new volunteer class of compassionate social activists, and by forcing people into food banks and shelters, has recreated a kind of civil society that operates in disregard of the state, not through it. Where I live in London, a semi-permanent encampment of homeless people is frequently ignored by passersby; and yet, I am surprised by how often I see people kneeling down in conversation, purchasing food from nearby shops, and dropping off blankets and pillows. There is a seed of sociality here, perhaps even solidarity, a momentary acknowledgement of the other's humanity and a glimmer of the civil

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33   See V. Cooper and D. Whyte (eds.) (2017), *The Violence of Austerity, London*: Pluto Press.

commonalities that bind us together. I am the first to concede that the spaces and interactions that austerity has generated remain geographically and socially uneven, and that they arise from the violent eradication of many other social spaces and communities. But I do wonder if the violent displacement of these spaces beyond the realm and reach of the state has implications for how we think about the amorphous thing we call 'democracy'. Thus we might ask: is there a way to reimagine and reclaim these social actions as atmospheric infrastructures that, when gelled together, offer templates for new forms of democratic practice?

It is of course very difficult to be positive about the inadvertent consequences of austerity in this way. A celebration of the communities arising to fill the gaps left by the state always risks condoning its retreat and, worse still, the violence that this retreat has so demonstrably caused. Rebecca Solnit, in all her work committed to a cautious optimism, describes the communities that arise in the face of disasters – from the 1906 San Francisco earthquake to the 2005 decimation of New Orleans by Hurricane Katrina – as 'utopian paradises', even as she laments those disasters themselves.[34] If we think of austerity as a 'slow' disaster, or a form of 'slow violence', as Rob Nixon might,[35] can we follow Solnit in simultaneously condemning the man-made causes of those disasters and the state failures that exacerbate them, while also celebrating the community-based actors that have come together to alleviate their consequences? If so, then the question becomes whether or not we have the intellectual capacity to pursue four trajectories, which do not quite sit comfortably with one another, all at once. Can we: 1. condemn the democratic failure of a state that reneges on its social contract to provide basic rights (shelter, food, education, cultural enrichment) to its citizens; 2. lobby for a state that will commit to restoring these most basic of promises; 3. celebrate and cultivate the communities that have arisen where the state has failed or violently withdrawn; 4. build on this 'Big Society', if we must use such a phrase, to create a different kind of social atmosphere, one that reveals to us the many needs and feelings we have in common?

These last two points are of especial concern. Rather than allowing the metaphoric architecture of 'the state', and indeed the literal architecture of the House of Commons (or indeed any other parliament), a semantic, spatial and practical monopoly of the term 'democracy', can we instead reclaim and reapply the concept to describe not 'Politics' with a capital 'P', but other fundamental tenets of our social and cultural life? If neoliberalism's systematic privatisation of everything from public space to state politics has entirely eroded liberal democratic notions of civil society, where else can we look for new civil engineers able to build and maintain newly public, perhaps even democratic, infrastructures? If referenda and electoral politics isolate democratic participation to a single performative moment, what does a more expansive architecture of democracy, or indeed a devolved democratic infrastructure, look like?

I allude here to a phrase used by the anthropologist Antina von Schnitzler, who in her book *Democracy's Infrastructure* tells an instructive story of the post-apartheid liberal consensus in South Africa, one to which I found myself repeatedly returning during the course of the 'Democracy & Violence' workshop in Delhi.[36] In pre-1994 South Africa, the routine theft of basic infrastructural services, such as water and electricity, was a highly effective form of everyday protest against the apartheid government. Such activity, practised mostly by those in townships and other marginalised zones, claimed a set of citizenship rights that subverted the discriminatory violence etched into the physical and spatial infrastructures of apartheid governance. With the transition to liberal democracy, the social contract between the people and the state shifted, but the infrastructural conditions of everyday life for many township inhabitants did not. Overnight, the reclamation of basic citizenship rights through the theft of electricity and water went from being a mode of celebrated democratic protest to a criminal activity.

34   R. Solnit (2010), *A Paradise Built in Hell: The Extraordinary Communities That Arise in Disaster,* London: Penguin Books.

35   R. Nixon (2013), *Slow Violence: The Environmentalism of the Poor,* Cambridge, Massachusetts: Harvard University Press.

36   A. von Schnitzler (2017), *Democracy's Infrastructure: Techno-Politics and Protest After Apartheid,* Princeton, New Jersey: Princeton University Press.

What I want to ask is: *where* is democracy in this story? I think von Schnitzler is suggesting that 'democracy' is not practised in the liberally ordained halls of parliamentary power, but rather *outside* of them, in the everyday encounter with, and insistence upon access to, those infrastructures that fundamentally sustain and enhance human life. While formal democracy remains confined to the parliamentary spaces of party-based governments, which invariably highlight and necessarily campaign on the differences between themselves and their constituencies, what kind of spaces would instead draw out the needs and feelings that we have in common as a society and a public? For Bruno Latour, the places where people come together to discuss such 'matters of (public) concern' are sites of assembly integrated fully into the immediate needs of social life.[37] They are not isolated to some parliamentary location that, tasked with representing the concerns of so many diverse and uneven publics, must claim a democratic mandate through an emphasis on difference. In short, a food bank is a site of assembly where people gather to negotiate and to solve a pressing matter of social and material concern, recognising in and through that assembly that they all have this matter in common. The place and space – indeed the infrastructure – of this kind of democracy does not require the indissoluble social contract that ordains the state with a warrant to wield a monopolistic and catastrophic violence.

Again, as I hope should by now be obvious, this is not to celebrate the rise of food banks. But it is to celebrate what Latour, with his collaborator Peter Weibel, might call their 'democratic atmosphere'.[38] In such spaces, which recognise the needs their participants have in common rather than capitalising on the anxieties they do not, democracy can be 'felt' – it is 'in the air', so to speak. Such atmospheres require real spaces; they require a set of infrastructures that make space for the assembly, be it the courtyard of the Jama Masjid or the hall of the food bank. But those spaces are themselves activated and made alive by the assembly that takes place within them. Which is to say, the architecture is made to speak of and as democracy by the actions and *feelings in common* that animate the space with social meaning.

A common retort to the shift away from the parliamentary spaces of representative politics is that many of the problems we are currently facing – climate change, mass displacement, financial crises – operate at cross-regional, cross-national, and ultimately global scales. It might be argued that the scale of the assembly is no match for such challenges, and that we do still need a global, geopolitical dispensation of nation-states willing to cooperate around ratified agreements, multilateral accords, green new deals, and so on. But without a well-funded and regularly consulted civil society, this line of argument returns us to the same dilemma, confining democracy once again to the representative forum that, preoccupied by the differences rather than commonalities *between* as opposed to *within* nation-states, has also demonstrably failed us. If we were to decouple the idea of democracy from the vehicle of the state, is there not more potential for democracy to 'happen' between different national citizenries? And more importantly, might it allow democratic relationships between national citizenries and those displaced from or denied such representative citizenship to emerge?

A single assembly is preoccupied by the need to be representative; a constellation of partially layered, multi-scalar assemblies, are not so distracted, and can instead focus their efforts on being reparative. Participants of such assemblies therefore become civil engineers intent on designing, constructing and maintaining the physical and atmospheric infrastructures that not only undergird democratic practice, but are constitutive aspects of it. In a recent article, media scholar Shannon Mattern asks us to shift our focus from what is broken to that which is constantly being fixed, and her lesson is instructive. We should study not the performative failures of the liberal democratic apparatus, but 'the everyday work of maintenance, caretaking, and repair' that keep those apparatuses functioning in spite of such performances, rather than because of them – for Mattern, studying and recovering such acts of repair itself becomes an act of maintenance.[39] The impulse

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37   B. Latour (2004), 'From Realpolitik to Dingpolitik, or How to Make Things Public', in B. Latour and P. Weibel (eds.) (2005), *Making Things Public: Atmospheres of Democracy,* Cambridge, Massachusetts: MIT Press, pp. 14-41.

38   B. Latour and P. Weibel (eds.) (2005), *Making Things Public: Atmospheres of Democracy,* Cambridge, Massachusetts: MIT Press, pp. 14-41.

39   S. Mattern (2018), 'Maintenance and Care', *Places Journal*, November 2018. https://placesjournal.org/article/maintenance-and-care/.

underpinning the redefinition of democracy as maintenance, and as a kind of civil engineering, may be utopian. However, our common feelings and needs, and the everyday repair and maintenance of the infrastructures that cater to them, are not.

In the realm of everyday state violence: changing landscape and spaces in Kashmir
Gowhar Yaqoob [40]

Kashmir is often represented in films, travel and literary writings as a romantic landscape with pristine natural beauty and extolled through epithets such as 'the paradise on earth'. There is another equally or more powerful way in which Kashmir has been talked about in the recent past – a dangerous conflict zone. The differences between India and Pakistan over the accession of Kashmir to India in 1947 produced a protracted political conflict, as the accession was supposed to be ratified by a plebiscite which has never been held. So far the conflict has led to three wars between India and Pakistan. Kashmiris have waged armed rebellion against India's unconstitutional control of Kashmir, leading India to deploy military force in Kashmir. This paper illustrates how state violence, through military intervention in Jammu and Kashmir, is legitimised. It brings to the fore modes of state reliance upon the military in order to exercise its authority over the people. It does so by analysing a few photographic images of the urban landscape of Srinagar. The paper thus a) maps the patterns of militarisation and the extent to which they help to establish a systemic nature of violence, b) explores the limitations of individuals in exercising their free will in the realm of the everyday in a highly militarised location where the civil and the military cohabit. The paper thus attempts to reconceptualise the questions of self-determination and freedom in nation-state discourse.[41]

How must freedom and free will of individuals and societies be understood in a democratic system where violence deployed by the state is usually presented as either the last resort or as the only way to protect the territorial integrity of nation-states from threats such as secession? How must one perceive the notion of freedom in a place where the civil and the military cohabit and are entwined in the social fabric of everyday life?

In the Indian subcontinent, nation states with a democratic model of governance emerged more or less at the same time in 1947, when the British left and the independent states of Pakistan and India were formed. Kashmir, which was a princely state at the time, could in principle choose to accede to either India or Pakistan. The then ruler of Kashmir, Maharaja Hari Singh, hoped for an independent Kashmir. His unwillingness to sign the Instrument of Accession proved fatal for Kashmir, as Indian and Pakistani forces fought their first war over Kashmir in late 1947. India referred the Kashmir conflict to the United Nations on 1 January 1948. In a resolution dated 13 August 1948 the UN asked Pakistan to remove its troops, after which India was also to withdraw the bulk of its forces. India promised to hold a plebiscite to decide the political future of the people of Jammu and Kashmir. The plebiscite was never held and Pakistan continued to control and administer a portion of Kashmir. On 1 January 1949 a ceasefire was agreed, with 65 per cent of the territory under Indian control and the remainder controlled by Pakistan. The ceasefire line was intended to be temporary but the Line of Control (LoC) remains the de facto border between the two countries to date. Kashmir remains contested between the two nation states.

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40   This paper is part of a larger research project of Gowhar Yaqoob's that looks at processes through which visual culture can help us to understand political subjectivities in contemporary Kashmir.

41   'Everyday realm' means the ordinary, cyclical and habitual routine of the day-to-day. 'State violence' refers to the measures of control and subjugation of the people by the state (here, the Republic of India) specifically through military surveillance and operations. In other words, it refers to state control that is highly marked by militarisation. I have used the term 'landscape' to mean physical geography, a natural environment. I use the term 'space' to refer to alterations in the landscape made by human activities. Space is a point of human contact and social interaction, as seen in streets, buildings, tourist resorts, bridges, cafes, roads, shopping complexes, parking areas, pedestrian pathways, playing fields, etc.

By the late 1980s, the people of Kashmir began to lose hope that electoral politics could offer a solution to redress their grievances and address issues related to their citizenship rights, particularly after the 1987 State Assembly elections.[42] In 1989 an armed struggle started against what was perceived as India's illegal occupation of the valley. In response, the Indian state deployed a force of no less than 700,000 soldiers in Jammu and Kashmir. The intense militarisation of Kashmir has produced a conflict terrain where militarised operations are viewed as necessary to bring stability and peace in the region. Thus, the use of military tactics becomes an extensive part of everyday life.[43]

In 1999, when I completed high school and joined one of the colleges in Srinagar's old quarter, known as Downtown, I had to cross the city, where I confronted slow change in the urban landscape. I began photographing the military bunkers that appeared in civilian localities.[44] I did so without a predetermined photographic protocol or interpretive framework; however, the images (Figures 1–6) are overwhelmingly shot horizontally in landscape format.[45] Rather than a detached observational record, this collection of photographs constitutes an ethnographic research tool conforming to the participant-observational paradigm of photography.[46]

Figures 1 & 2. Khanyar Chowk, Srinagar

Figure 3. Budshah Bridge, Lal Chowk, Srinagar

Figure 4. Lal Ded Hospital, Goni Khan Chowk, Srinagar

42   See S. Wildmalm (1997), 'The Rise and Fall of Democracy in Jammu and Kashmir', Asian Survey, Vol. 37, No. 11, pp. 1020-1. In 1987, the Muslim United Front (MUF) was constituted to participate in the State Assembly elections, which were afterwards alleged to have been rigged. Neither the central government nor the Election Commission responded to the MUF demands that the allegations of rigging should be investigated. Several young activists from MUF joined the armed struggle after the elections.

43   See S. Kazi, 'Law, Gender and Governance in Kashmir', in C. Zutshi (2017), Kashmir History, Politics, Representation, New Delhi, Cambridge University Press, pp. 150-171. Independent estimates cite a figure of at least 500,000 troops including, among others, the Indian army and paramilitary regiments such as the Border Security Force (BSF), Central Reserve Police Force (CRPF) and Special Task Force (STF). Also see S. Kazi (2007), Between Democracy and Nation: Gender and Militarisation in Kashmir, New Delhi.

44   The earliest photographs do not encompass the wider context due to my own fear of reprisals from the armed forces whenever I shot the sand bunkers. Over a period of time, the bunkers became concrete and permanent structures replacing the older sand-bag bunkers. Photographing became less intimidating and I began photographing wide-angle landscapes.

45   This wide-angled lens or horizontal format captures (what Michael Young notes as) the 'context of situation'. For details see C. Pinney (2011), Photography and Anthropology, New Delhi, Oxford University Press.

46   For details on visuals as ethnographic research material see Pinney (2011), Photography and Anthropology, 'Picture Anthropology', pp. 11-14 and 'Photography Internalised', pp. 50-62.

Figure 5. Zero Bridge, Srinagar

Figure 6. University of Kashmir, Rumi Gate, Dargah Hazrabal, Srinagar

The presence and activities of the Indian military have been constantly transforming public spaces in Kashmir. Streets, bus stands, market places, post-offices, banks and bridges are transformed into checkpoints, barricades, bunkers and barbed wire enclosures creating a sequence. Following Marc Auge, I use the term 'non-spaces' to refer to bunkers, military camps, barricades, barbed wire enclosures and checkpoints. The term 'non-space' is clearly distinguishable from the term 'space' in terms of the manner in which it comes into existence, its use and its purpose. The conversion of spaces into non-spaces allows military surveillance in the civilian domain as well as the naturalisation and neutralisation of excessive militarisation on the pretext of security. 'Non-spaces' mark a state of conflict, contradiction, and insecurity, as they become sites of prohibition, surveillance and control by the state over the civilians. These non-spaces, which create a circuit of power, not only alter the landscape but also transform the ways in which people use spaces every day; they are less free to choose and act in their daily lives. Incremental creation of non-spaces across the urban landscape builds up tension in people's lives as 'non-spaces' challenge civilians' freedom, continuity and mobility. However, transforming the spaces into non-spaces is justified as security measures necessary for maintaining peace in Kashmir. I use the term 'military geography' as an epithet for the Kashmiri landscape in which new generations of Kashmiris have grown up living next door to military camps and bunkers, in stark contrast to the common representation of Kashmir as a place of beauty.[47] Military geography does violence to the civilian population by imposing military-civil cohabitation.[48]

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47   See A. J. Kabir (2009), *Territory of Desire: Representing the Valley of Kashmir,* Minneapolis, University of Minnesota Press.

48   As an example, hoardings outside military camps, bunkers or barbed wire enclosures instruct people not to stand and wait near these 'non-spaces' or not to use the streets running behind the camp after dark in the evening.

Figure 7. Amar Singh College, Srinagar

Figure 8. Army Encampment at Nowhatta Chowk, Srinagar

Figure 7 illustrates rerouting of pedestrian and civilian traffic movement on the street. The bunker shows a bold text on the front: 'May I Help You', and provides the help-line telephone numbers; we see here how non-spaces are portrayed as legitimate security measures for the safety of the civilian population. Above the text 'May I Help You' is an opening revealing a guard on duty armed with a light machine gun. Thus the text is not simply instructive but hints at the draconian punishment that will be dispensed to civilians who do not comply. Figure 7 shows that 'non-spaces' not only control places and intimidate civilians in their everyday activities but also extend the gaze of the ever-present Indian state.

The text on the 'non-space' in Figure 8, '*Mera Bharat Desh Mahan*' (Bharat, My Great Country) in Devanagari script, has both political and religious subtexts. From the late 1920s onwards, landscapes and allegories played an important role in imagining a pan-Indian nation. Landscapes formed an inestimable resource for the imagination of Indian religious nationalists.[49] The popular painting 'Land to Defend' (1963) by Yogendra Rastogi set the precedent for such images, depicting troops trudging through the Himalayas. In 1965 during the war with Pakistan India's second Prime Minister, Lal Bahadur Shastri, popularised the slogan '*jai jawan, jai kisan*', or 'hail the soldier, hail the farmer', at a public gathering at Ramlila Maidan in Delhi. Thereafter, *jawan* (soldier) and *kisan* (farmer) became iconic tropes in the nationalist imagery, which depicted soldiers safeguarding the nation by protecting the snow-clad Himalayan border and farmers on tractors producing food for the nation.[50] Through such scenic representations of snow-clad mountains, that link the landscape of Kashmir to a nationalist imaginary, its inclusion within the Indian nation has become justified. In the Indian Hindu-civilisational discourse, Kashmir figures as a primal place of Sanskrit tradition and higher seat of exclusively Brahmanical learning.[51] The appellation *Bharat*, even if not an officially-sanctioned name for the Republic of India, is often used to invoke historical links through the sacred geography with Kashmir. In Figure 8, religious imagery functions as a legitimate claim to defend the Indian nation territorially by making Kashmir integral to this idea of nation. '*Mera Bharat Desh Mahan*' written in Devanagari thus becomes significant politically, religiously and historically.[52] It grants the military a presumptive right to appropriate the land as sacred for Hindus, thus saving it from being contaminated by other religious communities. Hyper-nationalist claims combine with religious sentiments to fetishise the territory of Kashmir as sacred and integral to Indian territorial integrity, and to justify military control.[53]

49   C. Pinney (2004), *Photos of the Gods: The Printed Image and Political Structure in India*, New Delhi, Oxford University Press, pp. 169–70.

50   For a detailed study on visual culture and nationalist history in India, see C. Pinney (2004), *Photos of the Gods*. The patriotic images of young soldiers holding rifles and farmers tilling land, mark both the progress and protection of the national territory and are flamboyantly invoked in Hindi cinema.

51   For details, see C. Zutshi (2014), *Kashmir's Contested Pasts: Narratives, Geographies, and the Historical Imagination*, New Delhi, Oxford University Press.

52   For details on the script and religious divide, see C. R. King (1994), *One Language, Two Scripts: The Hindi Movement in Nineteenth Century North India*, New Delhi, Oxford University Press.

53   See P. van der Veer and H. Lehmann (eds.) (1999), *Nation and Religion: Perspectives on Europe and Asia*, Princeton University Press, which argues that religion and politics are mixed together in complex and vitally important ways, not just in the East, but in the West as well. Religion and nationalism produce a notion that the nation has a historical task, where national revival and political leadership become a form of salvation.

Figure 9. Hari Singh High Street, Srinagar

Figure 10. Hari Singh High Street, Amira Kadal Bridge, Srinagar

'Non-spaces' are intended not just to control civilian movements, but to break their morale. In Figure 9, Indian armed forces have encamped on a riverbank and have fenced it off as reserved for funeral prayers, as depicted in the hoarding '*Ye Jagah Jinaazgah keliye waqff hai*' (The place is reserved for the funeral prayers of the dead). The conversion of public spaces into 'non-spaces' has reached a point where a barricade or a barbed wire enclosure does not surprise the passers-by. The man walking with his head lowered is a natural response to encountering the 'non-space', because the civilians have now internalised the military geography. Hence a new relationship with the space is formed through violence.

Figure 10 shows people walking and traffic moving on the bridge in a routine manner. What is unusual in this image is the barbed-wire mesh left behind from the previous bunker. The bunker was removed but the barbed-wire mesh makes the corner in the street inaccessible and dysfunctional. It symbolises how the transformation is not a reversible process, that is, 'non-space' cannot be converted back into a space. Bunkers are sites of military surveillance, which have created a threshold that presents the occupation as legitimate. For civilians, 'non-spaces' are sites of fear and intimidation. The corner in Figure 10 could be also read as a metaphor of erasure because the relationship that had existed between the civilians and space is transformed. The change results in a sense of the loss of familiarity with space.

Conclusion

The urban landscape of Srinagar is not a site of social encounters between civilian populations but has become a site of military control. Control of peoples' movement on streets and in open spaces by the military has symbolically become a field of politics and power. When the citizenship rights of the people of Kashmir are abrogated on an everyday basis, understanding these patterns becomes crucial. It is important to conceptualise how 'non-spaces' act as networks inflicting control and oppression upon the masses. The presence of 'non-spaces' fractures the sense of freedom a space would offer and generate. The connections between spaces are cut. In such a context, people's resistance must not be seen as aggression but as a resilient political subjectivity formed through encounters with an increasing military geography. The political resilience becomes a form of subjectivity, both at an individual and at a collective level. This raises two basic questions: a) of self-determination and b) of individual freedom to choose. These questions cannot be addressed by the state deploying violence in order to resolve the political conflict in a democratic set-up. There is a need to hold an ethical standpoint while addressing these questions, which this paper attempted to highlight using the example of Kashmir. I suggest that if democracy is the desirable system of governance in the contemporary political context of south Asia, it is important to foreground freedom as an ethical question.

What kind of a spatial labyrinth has evolved? How to translate the distance between the individuals and the 'non-spaces'? Have the 'sites' already become landmarks? What kind of a vocabulary is becoming part of the larger repertoire of language while mapping the landmarks which are eventually replaced by bunkers, camps, check posts? Does this mapping produce a new order of space? How does one interpret the experiences and responses of people in their everyday life, when their fundamental relationship to the space is violated? These are a few questions which may allow us to establish the patterns of a systemic violence perpetrated on people that eventually shape their subjectivities.

Untrusted democracies and failing security strategies: crises that refocus democratic governance in Latin America and the Caribbean

Alexandra Abello Colak[54]

This paper explores the shortcomings of forms of democratic governance in Latin America and the Caribbean through a focus on people's experiences of insecurity and state responses to increasing violence in the region. Using Charles Tilly's criteria for assessing political relations in democratic regimes, it argues that in Latin America and the Caribbean it is necessary to rethink the criteria normally used to assess democratic governance. Democracy in contexts affected by chronic violence, it is argued, should not be thought of exclusively in relation to the functioning of political institutions and access to rights. It should also be considered in relation to its capacity to produce and sustain forms of political, economic and social interaction that do not reproduce violence.

Reassessing Latin American and Caribbean democracies

The democratisation processes experienced by countries in Latin America and the Caribbean (LAC) in the 1970s and 1980s led to the consolidation of the political systems, constitutions, institutions and policies that made electoral democracy possible and aided the advancement of civil liberties in the region. These processes were accompanied by the establishment of neoliberal economies, economic growth, the expansion of the middle class and a reduction in poverty. Despite some achievements and the relative stability with which the transition from authoritarianism to electoral democracy took place, citizens today are sceptical and frustrated with the capacity of democracy to deliver. The last regional survey by the Latin American Public Opinion Project (LAPOP) shows a significant decline in the average citizen's support for democracy and a substantial increase in support for coups. In Costa Rica, Paraguay, Mexico, Guatemala and Peru, between 40% and 55% of people said a military coup would be justified when society was experiencing high levels of crime. In the same countries between 44% and 53% of respondents replied that they would support a military coup if the country was affected by high levels of corruption. In Jamaica, where the survey has recorded citizens' increasing support for military coups during the last 10 years, that percentage reached 59.3%.[55]

The decline of democratic values in the LAC region is also epitomised by increasingly authoritarian rhetoric and practices by democratically elected governments, and by what Jenny Pearce calls 'authoritarian forms of citizenship'.[56] These changes, which have led to the curtailing of citizens' rights and civil liberties in several countries, are exacerbated by economic slowdown, corruption scandals and rising levels of violence and criminality.

54   Alexandra Abello Colak's work focuses on security governance in cities affected by chronic violence across Latin America and the Caribbean. She also works on the development of innovative research methodologies to study urban violence and insecurity and to address their impact on vulnerable communities.

55   A. Harriott, B. Lewis, N. Hinton, and E. Zechmeister (2018), 'The Political Culture of Democracy in Jamaica and in the Americas, 2016/17: A Comparative Study of Democracy and Governance', Latin America Public Opinion Project.

56   J. Pearce (2017), 'Authoritarian and Resistant Citizenship: Contrasting Logics of Violence Diffusion and Control in Latin America', in J. Mackert and B. S. Turner (eds.) (2017), *The Transformation of Citizenship: Struggles, Resistance, and Violence,* Routledge.

Analyses of democratisation in the region have traditionally focused on electoral processes, the quality of citizen participation, the functioning of state institutions and the protection of rights. According to these criteria academics have pointed out the partial, illiberal and disjunctive nature of the democracies that have consolidated in the region.[57] It has been argued that these democracies established legal, political and institutional systems that enabled narrow forms of participation, but these did not lead to the full protection of people's social, economic and cultural rights.

Poverty levels and the persistence of inequality, which have a strong correlation with lethal violence and robbery,[58] illustrate the limitations of democratisation in terms of providing fair access to such rights for all sectors of the population. Despite periods of prosperity, investments in infrastructure, efforts to widen social protection systems and increased social spending, which led to important reductions in poverty levels from the early 2000s until 2015, 30% of the total population of the region (184 million people) still live in poverty and 10.2% (62 million) in extreme poverty,[59] with children, young people, women, indigenous people and afrodescendants disproportionately affected. Worryingly, achievements of the previous decade do not seem irreversible. Since 2015, increases in poverty and extreme poverty levels and in unemployment rates have been recorded. Additionally, LAC countries are still the most unequal in the world, with an average Gini index that is almost a third higher than that of Europe or Central Asia, labour markets that are characterised by high levels of informality, an insufficient number of jobs, and very poor access to the social protection and wages that could enable people to live with dignity.[60]

Rights-based analyses of the outcomes of democratisation in the region demonstrate that people's participation in electoral democracies has not altered the power structures that sustain unequal access to human development. However, these analyses do not fully explain citizens' decreasing confidence in key democratic institutions, such as political parties and elections, or the low levels of trust in the police and judicial institutions. To unpack the diminishing support for democracy in the region, it is also necessary to assess the types of relations that have consolidated between states and citizens in the context of democratisation. Charles Tilly's definition of democracy is particularly useful in this regard. He suggests that a regime is democratic to the degree that political relations between states and citizens feature the following four elements: *breadth* (no one is excluded), *equality* (everybody is equal in terms of their relations with the government), *protection* (individuals are protected from arbitrary state action), and *mutually binding consultation* (governments answer to regular binding consultations).[61]

The following section offers an analysis of security provision in the region using Tilly's criteria. The dramatic increase in violence in the region, which makes it the most murderous continent in the world,[62] and the fact that insecurity and crime have become key concerns for citizens, civil society and policy-makers, make an analysis of security responses by democratic governments useful for exploring the democratic nature of people's daily interactions with state institutions.

57 P. Smith and M. Ziegler (2008), 'Illiberal and Liberal Democracy in Latin America', *Latin American Politics and Society* Vol. 50, (1), pp. 31-57; T. Caldeira and J. Holston (1999), 'Democracy and Violence', *Brazil Comparative Studies in Society and History* Vol. 41, No. 4, pp. 691-729; P. Smith (2005), Democracy in Latin America: Political Change in Comparative Perspective, Oxford University Press.

58 P. Fajnzylber, D. Lederman and N. Loayza (1998), Determinants of Crime Rates in *Latin America and the World: An Empirical Assessment,* Washington, DC: The World Bank.

59 Comisión Económica para América Latina y el Caribe (CEPAL) (2019), *Panorama Social de América Latina,* 2018, LC/PUB.2019/3-P, Santiago.

60 A high proportion of employed people (around 40%) earn less than the minimum wage, many of whom are forced to work overtime to achieve incomes that allow them to overcome poverty (ibid.).

61 C. Tilly (2007), *Democracy,* Cambridge: Cambridge University Press.

62 J. Watts, (2015), 'Latin America Leads World on Murder Map, but Key Cities Buck Deadly Trend', *The Guardian,* May 6, 2015, https://www.theguardian.com/world/2015/may/06/murder-map-latin-america-leads-world-key-cities-buck-deadly-tren

Responses to violence in existing democracies

Since the late 1980s, levels of violence have been increasing in LAC, making it the most violent region in the world, with a homicide rate more than three times higher than the global average.[63] Although the region has only 8% of the world's population, it has 33% of the total number of homicides[64] and 43 of the 50 most violent cities in the world. Every year 144,000 people are murdered in LAC countries and lethal violence is only part of the complex picture of violence and insecurity in the region. Other forms of non-lethal violence are also pervasive: physical assaults and violent robberies are the highest in the world and victimisation rates are extremely high.[65] Violence in various countries in the region has been defined as chronic. This means that levels of lethal and non-lethal forms of violence are high and sustained for five years or more, that these forms of violence occur across several socialisation spaces, destroying and distorting social relations, and that they have the capacity to reproduce inter-generationally.[66]

There is no single explanation for the shocking increase in lethal and non-lethal forms of violence and crime in the region. However, social inequality, impunity and the expansion of drug trafficking and other illegal economies have been associated with the problem. The current situation is also the result of an acceleration in the capacity of violence to reproduce, which has been facilitated by processes of state-formation.[67] In this context it is important to explore to what extent state-society relations are democratic and might also be playing a role in the reproduction of violence.

In terms of equal and inclusive protection – a key element that according to Tilly characterises a democratic regime – it is important to highlight that the crisis of violence and insecurity has disproportionately affected the poorest urban communities. In the most violent cities in the region, for example, homicide rates tend to be substantially higher in communities also affected by marginalisation and lower levels of human development. Despite these communities being the most vulnerable to the most serious problems of violence and insecurity, policing in them is often insufficient or intermittent, easily co-opted and corrupted by criminal actors and highly abusive, especially towards young people. On the other hand, citizens from more affluent neighbourhoods and tourist and commercial areas, where people can afford to rely heavily on private security for their protection, tend to have their demands and needs heard more often by police and security authorities, often due to their connections. They are also more successful at negotiating more collaborative forms of interaction with municipal authorities and the police for their protection. Even in cities where policing reforms have taken place and community-policing approaches have been attempted to improve community-police relations, residents from the most vulnerable communities, and young people in particular, have a very problematic relationship with the police. This contributes to the under-reporting of crime across the region, which is at an exceptionally high level. In Mexico, for example, 93.6% of crimes are not reported to the authorities. Similarly, in Brazil the number is 80% and in Colombia 76%.[68]

In terms of providing protection from arbitrary state action, as is expected in democratic regimes, security responses in some of the most affected cities of Brazil, El Salvador, Mexico, Jamaica and Colombia, seem problematic. Security strategies have taken the shape of highly militarised operations carried out by police and military forces in the most critical areas. Despite the popular support for these types of responses, violence perpetrated by state security forces in the context

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63   Currently 21.5 per 100,000 and is expected to reach 39.6 per 100,000 by 2030. See R. Muggah and K. Aguirre (2018), 'Citizen Security in Latin America: Facts and Figures', IGARAPE Institute, Strategic Paper 33.

64   United Nations Office on Drugs and Crime-UNODC (2013), *Global Study on Homicide* https://www.unodc.org/gsh/

65   According to Latinobarometro, in Venezuela 89.3% of people reported that they or their relatives had been victims of crime or assault in the last 12 months. The percentages were 57.5 in Mexico, 50.7 in Peru and above 47 in Brazil and Argentina. See Latinobarometro (2015), IDB. http://www.latinobarometro.org/lat.jsp

66   J. Pearce (2007), *Violence, Power and Participation in Contexts of Chronic Violence,* Brighton: Institute of Development Studies, Working Paper no. 274; and T. Adams (2012), 'Chronic Violence and its Reproduction: Perverse Trends in Social Relations, Citizenship, and Democracy in Latin America', Woodrow Wilson International Center for Scholars, Latin American Program, Washington.

67   J. Pearce (2010), 'Perverse State Formation and Securitized Democracy in Latin America', *Democratization,* Vol. 17, No. 2, pp. 286–306.

68   C. Farfán Méndez (2019), 'Beyond the War on Drugs: Violence and Security in Mexico', in G. Santamaria and A. Abello Colak (eds.), *Human Security and Chronic Violence in Mexico: New Perspectives and Proposals from Below,* MA Porrua, Mexico.

of these operations often leads to human rights violations and new cycles of victimisation. Police violence is a chronic problem in some of these cities. In Rio de Janeiro, for example, police violence reached a record high in 2018, with more than 1,444 people killed by the police, often as a result of extrajudicial executions.[69] In El Salvador and Mexico recent data also demonstrates a pattern of excessive and lethal use of force by police and military forces. In 2016 in El Salvador, the ratio of presumed gang members killed in armed confrontations with police officers and military members compared to the police and military killed was 59:1.[70] In Mexico, the ratio of civilians killed in confrontations with marines reached 74:1 in 2014.[71]

The unwillingness to investigate and prosecute the members of state security forces involved in human rights violations only reinforces the vulnerability of young people, who are disproportionately affected by this type of violence. It also serves to condone the use of extreme forms of violence and coercion against certain groups and individuals, such as gang members or criminals, who are portrayed as threatening to society. The persistence of high levels of impunity regarding serious crimes, including those committed by state and non-state actors, contributes to the reproduction of violence and pushes citizens to take matters into their own hands. In some countries in Latin America only 8% of homicides are solved.[72] There has also been an increase in cases of lynchings and vigilantism,[73] as well as in the number of citizens who approve of 'taking the law into their own hands'.[74] Additionally, crimes like forced disappearances, which have reached disproportionately high levels in Mexico, with more than 37,000 victims between 2007 and 2017, and in Colombia, with 82,998 victims during the internal armed conflict (1958 -2017),[75] have often been met both with the state's unwillingness to investigate or its weak institutional capacity to do so. This has forced relatives of the victims to organise to demand state investigations, and also to conduct their own investigations in search of their loved ones, often exposing themselves to great risk in the process.

An important number of preventive initiatives that do not rely on coercion and repression have also been implemented in the last two decades. These rely on the use of social services, interventions in educational institutions or improvements in the urban space, for example, as mechanisms to reduce and prevent different types of violence and crime in the region. These preventive and citizen-oriented approaches have been seen in the region as an alternative to reactive and violent strategies regarded as counterproductive and responsible for prompting the sophistication of gangs, overcrowding in jails, collapse of judicial systems and even more violent responses from criminal organisations. Nevertheless, in practice, preventive and punitive responses have often been implemented simultaneously and have contributed to the stigmatisation of poor young people as a problematic sector of society that needs to be controlled as a potential or actual threat. This stigmatisation has not only contributed to making physical and structural forms of violence against 'problematic' youth seem acceptable, but it has also affected the agency of young people and their capacity to exercise their right to meaningful participation in democracy.

Tilly's criteria for democratic governance considers the protection of individuals from arbitrary state action as key. However, in the context of the security crisis in LAC, institutions are not only failing to protect people from the violence that state actors like police and military forces can perpetrate,

69   Human Rights Watch (2018), 'Brazil: Police Killings at Record High in Rio: Unlawful Actions Undermine Public Security', December 19, 2018. https://www.hrw.org/news/2018/12/19/brazil-police-killings-record-high-rio

70   G. Thale and K. Amaya (2017), 'Amid Rising Violence, El Salvador Fails to Address Reports of Extrajudicial Killings', WOLA, November 3, 2017 https://www.wola.org/analysis/amid-rising-violence-el-salvador-fails-address-reports-extrajudicial-killings/

71   C. Silva Forné, C. Pérez Correa y R. Gutiérrez Rivas, 'Índice De Letalidad 2008-2014: Menos Enfrentamientos, Misma Letalidad, Más Opacidad', *Perfiles latinoamericanos,* 25(50), pp. 331-359.

72   Muggah and Aguirre (2018), 'Citizen Security in Latin America: Facts and Figures'.

73   A. Godoy (2004) 'When "Justice" Is Criminal: Lynchings in Contemporary Latin America', *Theory and Society,* Vol. 33 (6), pp. 621–651.

74   In Bolivia, Ecuador, El Salvador, Guatemala, Nicaragua and the Dominican Republic, over 30% of people accept taking the law into their own hands. See Muggah and Aguirre, 'Citizen Security in Latin America: Facts and Figures'.

75   Observatorio de Memoria y Conflicto, Centro Nacional de Memoria Histórica (2018), 'En Colombia 82.998 personas fueron desaparecidas forzadamente', February 23, 2018. http://www.centrodememoriahistorica.gov.co/noticias/noticias-cmh/en-colombia-82-998-perso-nas-fueron-desaparecidas-forzadamente

but also from the violence and exploitation that other non-state actors are capable of exercising. In Tijuana, Guatemala, Medellin, Rio de Janeiro, Acapulco, San Salvador and Kingston, democratic institutions are failing to protect young people from recruitment by criminal organisations. This contributes to the vulnerability of young people in the region, illustrated by the fact that 50% of the total fatal victims of violence are between 15–29 years old and 80% of them are male.[76]

Democratic systems of governance are also failing to protect communities from expanding systems of extortion, racketeering and scamming, as well as women and children from risk of lethal and non-lethal violence in public and private spaces. In 2017, 2,795 women were murdered in 23 countries in LAC, due to gender-based violence, with a staggering 10.2 femicides per 100,000 women registered in El Salvador, 5.8 in Honduras, and 1.233 femicides committed in Brazil in 2017.[77] Notwithstanding advancements in legislation, levels of impunity regarding gender crimes are very high. In Mexico, for example, 98% of cases go unpunished despite the fact that the penal code establishes heavy sentences for femicide.[78]

Democratic governance is also meant to be representative of the interests and needs of the people and to ensure state accountability. Active participation by citizens is key for this and for making governments answer to binding consultations, as Tilly suggests. Across the region, citizens participate in processes of social transformation. They become active in their communities: making use of democratic processes and rights to articulate their demands and needs, influencing government and policy, and mobilising to transform the conditions in which they live. However, this type of democratic participation can be very dangerous. Violence against human rights defenders, environmental activists, journalists and community leaders and activists who embody 'democratic forms of citizenship' is very high and is often committed with impunity. In LAC countries, democratic regimes' failure to protect democratic participation is hindering processes that could help address structural factors associated with the reproduction of violence in the region.

Widening the criteria for democratic governance

The analysis of people's interactions with state institutions in the context of the crisis of security provision in the region, shows that democratisation processes have fallen short of citizens' expectations and aspirations, not only by limiting people's equitable access to socio-economic and cultural rights, but also by maintaining highly undemocratic state-society relations. These relations contribute to the reproduction of multiple and historic forms of violence despite and through democratisation. Some authors have argued that violence needs to be recognised as integral to the configuration and maintenance of current democratic institutions in the region. Proof of that is that in the 'violent democracies' of Latin America, violence has been used 'simultaneously as an instrument for political rule and as a form of resistance within democracies'.[79] Though this is true, it is also true that in Latin America and the Caribbean, democratisation is still an ongoing and challenging socio-political project increasingly shaped by people's expectations of finding ways to deal with violence and crime. As such, it needs a set of criteria that can guide social and political action. Until now the criteria to assess democracy in the region have focused on the functioning of political institutions and citizens' access to rights. However, the magnitude of the problem of violence and insecurity in the region demands the rethinking of such criteria.

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76   Homicide Monitor, Igarapé Institute in Muggah and Aguirre (2018), 'Citizen Security in Latin America: Facts and Figures'.

77   Observatorio de Igualdad de Género de América Latina y el Caribe (2018), Comisión Económica para América Latina y el Caribe (CEPAL), November 15, 2018. https://www.cepal.org/es/comunicados/cepal-al-menos-2795-mujeres-fueron-victimas-feminicidio-23-paises-america-latina-caribe

78   M. E. Lopez (2018), 'Femicide in Ciudad Juárez is enabled by the Regulation of Gender, Justice, and Production in Mexico', LSE Blog. https://blogs.lse.ac.uk/latamcaribbean/2018/02/15/femicide-in-ciudad-juarez-is-enabled-by-the-regulation-of-gender-justice-and-production-in-mexico/

79   E. D. Arias and D. M. Goldstein (eds.) (2010), *Violent Democracies in Latin America,* Duke University Press, p. 4; and M. Müller (2018), 'Governing Crime and Violence in Latin America', *Global Crime,* 19:3-4, pp. 171-191.

This paper suggests that democratic systems of governance in contexts of chronic violence need also to be considered in relation to their capacity to produce and sustain forms of political, economic and social interaction that do not reproduce multiple forms of violence. They need to enable processes that can help transform the relations that contribute to such reproduction, such as reforming institutions, or in North's words, the 'rules of the game' in society, which comprise formal and informal norms and shared beliefs[80] that have led to the acceptance of violence as a means to achieve a wide range of social, economic and political aims. On the other hand, such processes require enabling forms of agency and organisations that allow individuals to coordinate their actions to de-sanction forms of structural, physical and cultural violence and to address the multi-dimensional consequences of chronic violence on societies.

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80   D. North, J. J. Wallis and B. R. Weingast (2009), *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History,* Cambridge: Cambridge University Press.

Liberal democracy, advocacy of violence and criminal harm

Anushka Singh[81]

The contemporary moment in Indian politics is witnessing an escalation of the debate over the increasing use of the colonial-era sedition law,[82] which relocates the complex relationship between democracy and violence in the discourse on speech and suppression. Sedition is a political offence committed in expressions targeting the existing political authorities. Seditious speech[83] is perceived to have ramifications for the security of the state and public order, and democratic states the world over have enacted laws against sedition to criminalise categories of political speech not protected under the right to free expression. This paper engages with the question of violence as manifested in the expression of certain kinds of political speech that are criminalised as seditious and the consequential violence of law that may occur in the suppression of those expressions. The criminalisation of seditious speech by a liberal democratic state produces a situation wherein the violence of speech is countered by the violence of law. The counter positioning of two different forms of violence is examined in this paper to explore (i) how a liberal democratic state creates a threshold for a permissible level of violent advocacy against political authorities and (ii) whether that threshold is sustainable when measured along the theoretical framework of liberal democracy. While the former offers a unique defence of democracy's negotiation with violence, the latter uncovers the inadequacy of that defence. The paper attempts to make a conceptual distinction between restriction on speech that may advocate violence, and its criminalisation. The framework for analysis is Indian democracy though which comparative inferences from other liberal democracies are drawn.

The relationship between speech and crime is premised upon the conception of harm. The notion of a speech-act, borrowed from the speech-act theory developed by J. L. Austin, is useful in an analysis of all speech crimes in general and sedition in particular. Speech-act theory claims that speech needs to be viewed as an action either in a narrow or wide sense, hence the distinction between speech and action cannot be sustained.[84] In other words, the notion of a speech-act states that an action is performed in relation to speech, either in the sense that speech *in itself* is an action or speech results in an action. The criminalisation of forms of expression largely rests on this idea of speech as a form of action being able to act on its addressee in an injurious way and produce consequences resulting in violence.[85] The framework of a liberal democratic state, informed by the principles of liberalism, encounters a dilemma in relation to the criminalisation of speech. Liberalism advances the notion of the harm principle as the only possible justification for the criminalisation of speech.[86] The dilemma rests on the fact that the state's prerogative to regulate speech violates the principle of individual autonomy that liberalism promises to secure,

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82   After much debate that followed in the wake of students of Jawaharlal Nehru University (JNU) being charged with sedition in 2016, there was an upswing of cases, particularly against peaceful protestors demanding the withdrawal of the Citizenship Amendment Bill 2016 and social media posts related to terror attacks in Pulwama, Jammu and Kashmir.

83   Speech is used here as an umbrella category inclusive of all forms of oral, written and visible representations.

84   J. L. Austin (1962), *How to Do Things with Words,* Oxford University Press.

85   A counterargument says that not all forms of speech are capable of producing action. Judith Butler uses a category of 'felicitous speech' to distinguish those expressions that produce an effect from others. See J. Butler (1997), *Excitable Speech: A Politics of the Performative,* Routledge.

86   The harm principle states that individual liberty can be restricted and activities resulting out of the practice of liberty can be criminalised only if they cause harm to others. The principle finds foremost expression in the works of J. S. Mill among other liberals.

because the power of judgement shifts from the individual to the state, in determining the forms of expressions that individuals can exercise.[87] Criminal law intervenes in the domain of speech at the cost of violating an individual's autonomy, in order to prevent harm to other individuals targeted by speech. This penal force of the state, manifested in criminal law, unfolds differently in relation to seditious utterances, as the law of sedition presents a situation where speech acts of private citizens are criminalised to prevent harm to their political representatives.

Violence of seditious speech, negotiating the threshold

The law against sedition in India is of colonial origin, introduced in the Indian Penal Code (IPC) by the colonial administration in 1870 within the category of the Offences against the State, and is defined under section 124A of the Code. The section criminalises expressions which excite or attempt to excite feelings of hatred, contempt or disaffection against the government. Even though the colonial law continues to exist in the Code, post-Independence in 1962 the Supreme Court of India reinterpreted disaffection as a form of expression which tends to promote public disorder through incitement to violence against the government.[88] This was a case of prosecution of a communist, Kedar Nath Singh. The Court interpretation inferred that sedition was no longer the offence of merely exciting feelings such as contempt or hatred of the government but a specific category of incitement to disaffection tending towards unlawful actions. The court clarified that government, as distinguished from the persons engaged in carrying out the administration, is the visible symbol of the state and the continued existence of the government was imperative to the stability of the state. Sedition, now reinterpreted as expression having the tendency to public disorder and incitement to violence, was read as having the effect of subverting the government by the use of disaffectious expressions, hence a threat to the state.

The effect of this judgment impacts on the status of sedition viewed as a speech act, that is, a form of speech capable of action. Austin's theory of speech acts argues that speech can act on its addressee by producing two kinds of effects – the illocutionary and the perlocutionary.[89] The illocutionary effect of speech implies that the performance of speech itself constitutes action, that is, in saying something, something *has been done*. The perlocutionary effect of a speech implies that action is produced as a consequence of speech, that is, by saying something, something *has been done* or *will be done*. The illocutionary speech, hence, is that which *constitutes* action in the expression itself and perlocutionary speech is that which causes an action only as a consequence which may or may not be intended by the speaker. The criminalisation of seditious speech as was originally defined under section 124A, IPC presumed the illocutionary effect of utterances. The assumption was that mere expression of disaffection was a harm by itself as the action was constituted in the expression itself. In other words, criminalisation of illocutionary effect meant that words inciting feelings such as hatred, contempt etc., in their expression alone were seditious, regardless of the probable effects they may or may not cause.

The judicial interpretation of sedition in India, finding expression in the 1962 judgment, seemingly moved away from criminalising the illocutionary effect of sedition to criminalising its perlocutionary impact by linking it to the probable effect of seditious performance, like public disorder and violence. It meant that the action of exciting disaffection may not be performed in the expression of disaffection but only if the expression had the tendency to lead to an unlawful consequence. An expression may result in the act of disaffection against the government if it has the tendency to incite people towards violence or public disorder, in which case it will be termed as a seditious expression.

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87   For further debates on liberalism and criminalisation on the basis of the harm principle, see the English Law Commission Consultation Paper 139, Consent in the Criminal Law, 1995.

88   K. N. Singh v. State Of Bihar (1962) AIR 955, SCR Supl. (2) 769.

89   Austin (1962), *How to do Things with Words,* pp. 99-101.

By linking seditious speech acts to probable violent consequences, Indian judicial discourse apparently took the road that most ageing liberal democracies had trod, that is, defining speech crimes in relation to their probable unlawful consequences instead of assumed illocutionary power of speech to constitute harmful action in expression alone. The position taken in the judgment, however, needs to be distinguished from what it achieved effectively. The judgement in effect outlawed forms of expression against the government that have a 'tendency' to effect violence, without having qualified the word 'tendency'. The court did not specify how the 'tendency' to a harmful effect can be gauged in a speech, unlike the judicial interpretations of sedition in other liberal democracies to be discussed below. In the absence of any test of causality to link tendency in speech to its possible action, the judgment did not fully move away from criminalising the illocutionary effect to criminalising only perlocutionary performances as seditious.

Unlike the judicial discourse in India, much earlier in 1909, the English Court in R v. Aldred, a case related to the prosecution of a periodical, the Indian Socialist, had ruled that for a charge of sedition to be upheld, there must be an intention to provoke violence and the language of the speech must incite public disorder or physical violence.[90] Similarly, the free speech jurisprudence in the USA is believed to have evolved over time the most robust protection for extreme speech and violent advocacy, by marking a shift from reading the effects of speech in its illocutionary performances to its perlocutionary consequences. This implies that injury is not assumed to have been constituted by a speech in its mere expression. In 1919, Justice Holmes in his dissenting note in a trial involving the publication of seditious pamphlets by members of the Socialist Party, formulated a 'clear and present danger' test, which stated that only if there was a proximate relationship between speech and its probable effect, should limitation on speech be tolerated.[91] In 1957, after a series of successful prosecutions of members of the Communist Party of the United States of America (CPUSA) in the absence of any immediate danger posed by their speech-acts, the Supreme Court stated in a landmark judgment that the Sedition Act in the US did not criminalise abstract advocacy calling for the overthrow of the government. It said advocacy of violence, unless directed at promoting specific unlawful action, cannot be criminalised.[92] The highest doctrinal standard, however, was set by the US Supreme Court only in 1969, in a trial related to a racist speech and not sedition. The court held that the advocacy of use of force or violence can only be proscribed if it incites immediate lawless action which is likely to occur.[93] The imminence of violence to occur as a consequence of a speech was made the only ground on the basis of which that speech could be proscribed. In India too, such standards locating criminality in the possible perlocutionary effect of the speech have been developed by the Supreme Court but ironically none in relation to sedition trials. In 2015, in a case challenging an ambiguous provision of the Information Technology Act, the Indian Supreme Court ruled that even advocacy of unlawful acts which do not incite in a manner that they are likely to be acted upon immediately, cannot be criminalised.[94] This was a great shift from the 1962 Kedar Nath ruling penalising pernicious tendency in a speech, to penalising the actual attempt of incitement to violence or illegal activity.

Regardless of the jurisprudence that has evolved around sedition, Indian democracy, much like other liberal democracies, has tried carefully to craft the legal threshold that would separate abstract violent advocacy which cannot be linked to the context in which the expression has been made from speech capable of inciting immediate violence in terms of a clear attempt. While democracies have used causality between speech and violence as a principle to outlaw those forms of expressions where the causal connection can be closely established, two questions emanate from this principle. First, can a similar standard be applied to all forms of speech irrespective of their target? Second, does outlawing incitement to violence against government uphold democratic principles? The next section reflects on the two questions.

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90   R v. Aldred (1909) 22 Cox CC 1, 3.
91   Schenck v. United States (1919) 249 U.S. 47.
92   Yates v. United States (1957) 354 U.S. 298.
93   Brandenburg v. Ohio, (1969) 395 U.S. 444.
94   Shreya Singhal v. Union Of India (2015) AIR SC 1523.

Legal threshold and democratic principles: question of sustainability

The status of sedition as a criminal offence means that a seditious speech would not only be restricted but also criminalised; the criminality is situated primarily in personal harm to incumbent political authorities which may have consequences for the wider public. In turning back to the premise of liberalism, which makes abridgment of free speech permissible only to prevent harm to its target, the notion of harm can be understood in a variety of ways. While in law, harm is understood to be the violation of a legally protected interest such as equality, liberty, dignity; in the social realm which is often invoked in the legal, harm can mean a sense of loss or suffering or being reduced to a state of impairment.[95] In both idioms, it is difficult to establish how seditious speech would bring about any substantial harm to the ruling political authority. Unlike the notion of guarantee to basic rights being identified as the legally protected interest of individuals, the argument about the legally protected interest of the entity called the government can only be imagined through concerns of national security and public order, which may be better described as government's obligations rather than its interest. Hence, sedition becomes a valid offence only when a direct causal connection can be made with a threat to national security or public order. Consequently, it becomes imperative to probe how speech against the ruling authority will result in a concern for public order and security. The very idea of a democratic political system is that governments change without violence. Even the minimalist defence of democracy rests in the fact that it allows people to get rid of the government peacefully.[96] If incitement against the government results in public opinion turning against the incumbents or popular mobilisation to remove those in power, a democratic system must be able to support that incitement. Such a political moment cannot be termed as a threat to security and order.

If the incitement calls for the use of violence against the government, it can have two possible outcomes – first, a successful incitement, and second, an unsuccessful incitement. If there is a successful incitement to violence, its manifestation would take the form of an armed struggle against the government which all democratic jurisdictions, including India, penalise under the offence of waging or attempting to wage war against the government. Sedition as an offence becomes dispensable in that instance. If incitement to violence causes no effect, that is, no causal connection can be established between speech and public disorder or likelihood of violence, the use of the law against sedition suggests criminalisation of attempts to cause personal harm to persons in government where the harm can be understood in terms of loss, impairment etc. Such an ambit of criminality becomes inimical to the idea of democracy where citizen voices against their own representatives become criminal even in the absence of any unlawful consequence. Such an ambit of criminality is also founded on irrational grounds. Criminalisation of attempts to cause subjective harm, defined as loss, suffering, etc., when directed against individuals, finds space in democratic jurisdictions in the forms of criminal categories of hate speech, libel etc. The justification is that harmful words directed against vulnerable targets would violate their constitutionally guaranteed rights and would have a silencing effect[97] on them, possibly resulting in a state of impairment. Applying the same principle of protection from personal harm in the case of a speech directed against the government, is based on extremely tenuous grounds as the target of the speech claims a monopoly over the use of legally sanctified violence. Harmful expressions against the government, however damaging, cannot result in its incapacitation in terms of a state of impairment. In fact, they allow the political authority to assume the role of a victim-aggressor which unleashes the violence of law on the seditionist. The image of the government as the victim-aggressor is unique when compared to the targets of other speech crimes which happen to be either individuals or social groups. In cases of protection from personal harm coming from political speech such as sedition, the victim of the speech – the government – by virtue of being victimised by seditious speech, in response inflicts legal repression on the attacker – the seditionist – thus, transforming itself from a victim to an aggressor which has the force of law at its dispersal.

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95   For further discussion on traditions of harm, see J. Kleinig (1978), 'Crime and the Concept of Harm', *American Philosophical Quarterly,* Vol. 15, No. 1.

96   Karl Popper is famously credited with this view which has been appropriated by the defenders of procedural democracy. See A. Przeworski (2003), 'Minimalist Conception of Democracy: A Defense', in R. Dahl et al. (eds) (2003), *The Democracy Sourcebook,* MIT Press.

97   S. Sorial and C. Mackenzie (2011), 'The Limits of the Public Sphere: the Advocacy of Violence', *Critical Horizons,* Vol. 12, No. 2.

An analysis of the notion of harm helps to conclude that the criminalisation of speech targeting the ruling authority can be consistent with democratic principles only when the speech threatens public order and national security by inciting violence. The criminalisation of speech, however, is always a post-hoc response, as opposed to a restriction which may be preventive in nature. Speech is weighed on the parameters of effecting possible violent consequences after its actual occurrence, regardless of whether it has actually caused any public disorder. In the instance of criminalising speech when no actual effect has been felt on public order and security, criminalisation only symbolises an act of avenging the assumed sense of personal harm done to the government through speech. In fact, if the rationale behind containing seditious expression is that it will incite people against the government, the criminal action against it gives more public coverage to the speech to create a possible effect, particularly in the context of a judicial trial. Thus, in spite of higher standards of protection given to extreme forms of speech within liberal democracies, the criminalisation of citizen voices against their political representatives on the basis of their probable violent effects when no actual instances of violence could be found, dents the principles of both liberalism and democracy. This, however, does not mean that any intended speech that results in immediate violence should also be protected within liberal democracies. Such forms of speech inflicting violence are already covered in all democratic jurisdictions under various legislations related either to offences against public tranquillity or to waging war in extreme cases of armed violence. Sedition, as a legal category, thus becomes redundant.

The threshold of toleration in a democracy has to be higher if democracy is to be projected as an alternative to a violent society. The erasure of violence is not in its suppression but in its resolution. Democracy's treatment of utterances that advocate a violent doctrine or have the possibility of resulting in violence has to be different from that of a non-democratic regime – this is where the redemption of democracy lies.

Democracy as protection against intra-communal violence in Classical Greece
Roel Konijnendijk[98]

It is often and easily said that democracy started in Ancient Greece. But what does that actually mean, considering there is no straight line from the Classical concept of *demokratia* to our own?[99] From a modern perspective, the best-known example of Greek democracy – Classical Athens – falls far short of the ideal of liberal democracy: it never questioned its habit of enslaving other people and only raised the notion of political rights for women as a hyperbolic joke.[100] For their part, wielding their own set of definitions, Greek political thinkers would categorically deny that any modern state anywhere in the world deserved the name 'democracy' either. Elected representatives and heads of state were among the hallmarks of oligarchy in Aristotle's typology of constitutions.[101] The political values and institutions formally shared by most countries in the present day are relatively new inventions to which the Greek label was only applied from the mid-nineteenth century onward – a remarkable choice after two millennia of unanimous dismissal of the idea of people power among the elites of Europe.[102] When we assert that democracy, like freedom or justice, is universally considered a good thing, we are not referring to anything like the political system named so by the Greeks. Is it insightful, then, to hold up Ancient Athens as a mirror for modern thought on democratic rule?

This question seems especially pertinent in an examination of the ties between democracy and violence. Athens' political system grew concurrently with its empire, and in interstate relations the city behaved like the select group of historical powers John Keane has dubbed 'imperial democracies'.[103] It funded its democracy (and its near-constant wars) by levying tribute on subject communities, and regularly showed callous and extreme aggression toward smaller states.[104] In its internal politics, Athens developed a reputation for mindlessly following demagogues and for exiling or killing its most prominent leaders on the flimsiest of pretexts; most shamefully of all, it voted to execute Socrates. Citing such evidence, European political thinkers from the Romans to Rousseau declared the common people to be a wild beast – volatile, ungrateful, greedy, vindictive – and democracy little more than anarchy. It is easy to read Classical Athens as a disruptive force, demonstrating that people power does nothing to ameliorate a state or government's propensity for violence, and might even make it worse.

But this negative interpretation mostly has its origins in the writings of elite Greek authors hostile to a political system that, exceptionally, they did not control.[105] To them, 'democracy' was not an unassailable 'hurrah-word', but a challenge that prompted them to consider what society and

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98   This paper is an offshoot of Roel Konijnendijk's research on Classical Greek warfare and its place in society. Lacking our modern boundary between civilian and military spheres, and voting on wars they would have to wage in person with their whole community at stake, the Greeks offer a unique case study of the interaction between war, violence, citizenship and political thought.

99   M.I. Finley (1973), *Democracy Ancient and Modern,* Rutgers University Press, pp. 3-37; M.H. Hansen (1992), 'The tradition of the Athenian democracy, A.D. 1750–1990', Greece & Rome, Vol. 39 (1), pp. 14–30.

100   For instance, in Aristophanes' comedy *Assemblywomen*, or in Plato's farcical version of Athenian democracy *(Republic 563b-c),* in which women, immigrants, enslaved people, and even dogs and donkeys supposedly considered themselves equal to male citizens.

101   Aristotle, *Politics*, 1294b.32-34

102   J.T. Roberts (1994), *Athens on Trial: The Antidemocratic Tradition in Western Thought,* Princeton University Press; P.J. Rhodes (2003), *Ancient Democracy and Modern Ideology,* Bloomsbury, pp. 27-33; W. Nippel (2008), *Antike oder moderne Freiheit? Die Begründung der Demokratie in Athen und in der Neuzeit,* Fischer Taschenbuch; and P. Cartledge (2016), *Democracy: A Life,* Oxford University Press.

103   J. Keane (2010) 'Epilogue: Does Democracy Have a Violent Heart?', in D.M. Pritchard (ed.) (2014), *War, Democracy and Culture in Classical Athens,* Cambridge University Press, 2010, pp. 378-408; see also E. Robinson, 'Greek Democracies and the Debate over Democratic Peace', in A. C. Hernandez (ed.) (2010), *Démocratie Athénienne – Démocratie Moderne: Tradition et Influences,* Geneva, Fondation Hardt, pp. 277–300.

104   Xenophon, *Hellenica* 2.2.3; Isocrates 4.100, 12.63.

105   All Greek authors whose works survive were members of the socio-political elite; the most relevant to this discussion are the unidentified Old Oligarch (cited below as 'Pseudo-Xenophon'), Thucydides, Xenophon, Plato and Aristotle.

government ought to look like. Between their works and the assertions of democracy's proponents, we find more than antiquarian wrangling over the definition and track record of long-gone political institutions. We find a contested space in which the principles and values of different forms of government are laid bare.[106] We find the oldest surviving explicit discussion of many of the concepts that we now consider essential to a democratic state, such as equality, tolerance, individual liberty, and freedom of speech – even if we have to qualify such terms to understand what they mean in their Greek context. We also find different perspectives on our theme: the critical connection between violence and an egalitarian political system.

The only non-violent system?

Arising after generations of tyrannical rule and elite in-fighting, Athenian democracy may have needed a while to figure out what it was, but it knew from the outset what it was not: the arbitrary rule of few over many. The political system introduced in 508/7 BCE was deliberately designed to break the power of the old leisure-class factions.[107] Its defining feature was the political equality of all male citizens regardless of their birth or wealth (though it still excluded women and non-citizens). It replaced disruptive and frequently violent competition between powerful men with institutions like ostracism, which allowed the people in assembly to exile any individual by majority vote. The new system's original name, before the term *demokratia* was coined, was *isonomia* (equal rights) – 'the most beautiful name of all'.[108]

However, in the face of the traditional elite's claims to greater experience and better judgment, even male citizens could never be equal in practice unless their participation in politics was both guaranteed and protected by the law. Equality could only exist if it was accompanied by freedom of speech – that is, the unqualified right to a political voice in key institutions of government. Without such a right, citizens would inevitably end up being ruled by others. Athenian democracy therefore developed an ideology in which the personal freedom and political equality of citizen men were the interwoven pillars that held up the system: freedom meant the right to participate in politics, 'to rule and be ruled in turn'.[109] Only in such a system could there be security for all; only in such a system could the most knowledgeable and useful rise to prominence without being silenced out of prejudice or fear.[110] As the playwright Euripides put it, 'this is freedom: who wishes to offer useful advice to the city?'.[111]

Other forms of government could never pretend to offer the same degree of political freedom to their citizens. By the logic of Athenian democratic ideology, this meant that these systems ultimately could not claim to protect their subjects against the self-interested decisions of the few. Without equal political rights, the rich (or worse, tyrants) would dominate, and without oversight or accountability the law would become subject to their whims. Even if they unleashed a regime of expropriation, exile or execution, there was nothing a disenfranchised population could do to stop them. The people of Athens had experienced this first-hand under the ruthless tyrant Hippias in 514–510 BCE, and would do so again during the two oligarchic interludes of 411 and 404–3 BCE – the

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106   M.H. Hansen (1989), *Was Athens a Democracy? Popular Rule, Liberty and Equality in Ancient and Modern Political Thought,* Copenhagen, 7-8; F. Carugati, J. Ober and B.R. Weingast, (2016), 'Development and Political Theory in Classical Athens', *Polis: Journal for Ancient Greek Political Thought,* 33.1, pp. 71–91. For a recent exploration of this discussion in the works of Plato, see A.D. Sørensen, (2016), *Plato on Democracy and Political Technē,* Leiden: Brill.

107   J. Ober (1989), *Mass and Elite in Democratic Athens: Rhetoric Ideology and the Power of the People,* Princeton University Press; R. Browning, 'How Democratic was Ancient Athens?', in J.A. Koumoulides (ed.) (1995), *The Good Idea: Democracy and Ancient Greece,* New Rochelle, NY, pp. 57–69; P. Cartledge, 'Greek Political Thought: the Historical Context', in C. Rowe and M. Schofield (eds.) (2005), *The Cambridge History of Greek and Roman Political Thought,* Cambridge University Press.

108   Herodotus, *Histories,* 3.80.6.

109   Aristotle, Politics, 1317b.2, 18–25; O. Murray, 'Liberty and the Ancient Greeks', in Koumoulides, 'The Good Idea', pp. 33–55; J. Ober (2005), *Athenian Legacies: Essays on the Politics of Going On Together,* Princeton University Press, p. 33; M.H. Hansen (1989), 'Was Athens a Democracy? Ancient Democratic Eleutheria and Modern Liberal Democrats' Conception of Freedom', in A.C. Hernandez, *Démocratie Athénienne – Démocratie Moderne,* pp. 307–339.

110   Thucydides, *History of the Pelopennesian War,* 2.37.1, 6.39; Plato, *Menexenus,* 238c–d; E. M. Harris (2006), *Democracy and the Rule of Law in Classical Athens,* Cambridge University Press, pp. 29–39; C. Farrar, 'Power to the People', in K.A. Raaflaub, J. Ober and R.W. Wallace (eds.) (2007), *Origins of Democracy in Ancient Greece,* Berkeley, California Press, pp. 174–175.

111   Euripides, *The Suppliants,* 438–439.

latter a collectively traumatic reign of terror that left as many as fifteen hundred citizens dead. The Athenians concluded that democracy was not just a better system than its contemporary rivals, but the only system that had any claim to being lawful and legitimate.[112] Democracy, by offering equal access to power, by holding its magistrates accountable to the people, and by enshrining these principles in written law, ensured that no male citizen was arbitrarily subjected to another.[113] In other words, in the eyes of democracy's supporters, its codified concepts of equality and freedom of speech made it the only form of government not based on violence. The orator Lysias offered the clearest expression of this idea when he described what supposedly inspired the founders of the system:

> *they were the first and the only people in that time to drive out the ruling classes of their state and to establish a democracy, believing the freedom of all to be the greatest form of harmony (….) They deemed that it was the way of wild beasts to be held subject to one another by force, but the duty of human beings to delimit justice by law, to convince by argument, and to serve these two in act by submitting to the sovereignty of law and to the instruction of argument.*[114]

Context makes the claim hollow: Athenian democracy deliberately excluded many from power, and ruled like a violent oligarchy over society at large. But the patriarchy, slavery and xenophobia perpetuated by Athenian men confirms the logic they used to justify the egalitarian system they had built for themselves. Without equality, freedom of speech and accountability, how could a population be protected from coercion by those in power? Even if an oligarchic group does not commit violence, it cannot deny that it has the potential to do so with impunity. This is not the case in a democracy on the Athenian model. In this sense, democracy may have some claim to reducing violence – at least internally, within the group it privileges with equal rights – if the system functions as it should, with all citizens participating equally in a government that ruled by consensus.

The tyranny of the masses?
The Lysias passage above highlights the importance of persuasion for the democratic ideal. Oligarchic or tyrannical rulers might use force, but believers in people power used words to bring critical minds over to their side. Greek critics of democracy already saw the weak point of this ideal: what if you were not persuaded? In such cases, the will of the people as expressed by a majority vote was law, and the law must be obeyed.[115] But, as the subversive Alcibiades points out in one of Xenophon's dialogues, if a decision was imposed on a dissenting minority by sheer weight of numbers, was this not the same as using force?[116]

The problem identified by such critics is the difference between democracy and majority rule. The ability of any majority to dominate the government made the free and equal status of minorities meaningless, since the majority could use its votes to pass whatever laws it wanted. In such a system all citizens were not truly equal, and therefore a democracy controlled by a coherent majority was not a democracy at all.[117] The problem of majority rule versus minority rights haunts all egalitarian political systems. As one twentieth-century observer noted, the Greeks did not solve this problem, and neither has anyone since.[118]

However, we should bear in mind that Greek authors who made this point had a very specific minority in mind: the rich, whose interests would be better served by an oligarchic regime. They asserted that democracy's claims to equality were only a pretence. In reality, democracy was a class government, in which the poor majority ruled over the rich, in the same way that the rich would

112   Aeschines 1.4–5; Demosthenes 24.75–76; Roberts, *Athens on Trial,* pp. 45–46.
113   C. Carey (2000), *Democracy in Classical Athens,* Bristol Classical Press, pp. 30–32.
114   Lysias 2.18–19.
115   Plato, *Crito,* 51b–52a.
116   Xenophon, *Memorabilia* 1.2.40–46.
117   P. Woodruff (2006), *First Democracy: The Challenge of an Ancient Idea,* Oxford University Press, pp. 11–14, 65–68.
118   D. Kagan (1965), *The Great Dialogue: Greek Political Thought from Homer to Polybius,* New York and London: Praeger, p. 88.

rule over the poor under oligarchy.[119] There was no way to avoid this if the popular vote had ultimate authority, since the poor were well aware of their own interests, and they would always outnumber the rich.[120] From this nihilistic perspective, all forms of government were mere instruments of self-interest: as Aristotle put it, 'tyranny is monarchy ruling in the interest of the monarch, oligarchy government in the interest of the rich, democracy government in the interest of the poor, and not one of them is government for the profit of the community'.[121]

It is a cynical argument to level against the only form of government that gave all male citizens the right to be heard. All Greek political systems held homonoia ('same-mindedness') to be the highest good,[122] but only democracy required itself to establish such harmony, to the best of its ability, among all classes together. Its institutions were designed to encourage consensus building, and surviving vote tallies suggest that something close to unanimity was the goal of their long deliberations.[123] While nearly every topic will generate dissenting opinions, such an egalitarian system seems least deserving of the accusation that it silences minority views by force. Even contemporary critics of Athenian democracy like Thucydides and Xenophon recognised that there were ways for the wealthy to work with, benefit from, and lead the people – as long as they acknowledged the sovereignty of its collective knowledge and moral judgment.[124] In this aspect, again, democracy ought to be the least prone to violence against those it counts as its own.

The sections above present only a few superficial thoughts on Athenian democracy. I gloss over many fundamental scholarly debates – on the Greek definition of concepts like citizenship and freedom, on the difference between the democracy of the early and late Classical period, and on whether a political community like Ancient Athens can even be considered a state acting independently upon its community. Nevertheless, I hope this brief exploration of the relationship between democracy and violence in surviving works of Classical Greek political thought has given some substance to the claim of democracy's supporters: 'if you would like to inquire why a person would rather live in a democracy rather than an oligarchy, the most obvious reason is that everything is more gentle in democracy'.[125] The characteristics described here are a good part of the reason why a moderate type of *demokratia* eventually became the only legitimate and practised form of government throughout the Greek world,[126] and why modern reformers of representative democracy still look to Ancient Athens for inspiration.[127]

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119   Pseudo-Xenophon, *Constitution of the Athenians 1.8–9; Plato, Republic* 557a; Aristotle, Politics, 1292a.15–21; Roberts, Athens on Trial, pp. 48–64; L. Kallet, 'Dēmos tyrannos: Wealth, Power, and Economic Patronage', in K.A. Morgan (ed.) (2003), *Popular Tyranny: Sovereignty and its Discontents in Ancient Greece,* Austin, TX, pp. 121–122.

120   Pseudo-Xenophon, *Constitution of the Athenians,* 2.20.

121   Aristotle, Politics 1279b.7–10.

122   Xenophon, *Memorabilia,* 4.4.16; P. Cartledge (2009), *Ancient Greek Political Thought in Practice,* Cambridge University Press, pp. 19–20; P. Woodruff, *First Democracy,* pp. 81–107.

123   M. Canevaro, 'Majority Rule vs. Consensus: the Practice of Democratic Deliberation in the Greek Polis', in M. Canevaro, A. Erskine, B. Gray, J. Ober (eds.) (2018), *Ancient Greek History and Contemporary Social Science,* Edinburgh University Press, pp. 101–156.

124   J. Ober, 'How to Criticize Democracy in Late Fifth and Fourth-Century Athens', in J. Ober (1999), *The Athenian Revolution: Essays on Ancient Greek Democracy and Political Theory,* Princeton University Press, pp. 150–154; E. M. Harris, *Democracy and the Rule of Law,* pp. 34–36.

125   Demosthenes 22.51.

126   J. Ma, 'Whatever happened to Athens? Thoughts on the Great Convergence and beyond', in M. Canevaro and B. Gray (eds.) (2018), *The Hellenistic Reception of Classical Athenian Democracy and Political Thought,* Oxford University Press, pp. 277–297.

127   C. Farrar (2009), 'Taking our chances with the Ancient Athenians', in A.C. Hernandez, *Démocratie Athénienne – Démocratie Moderne,* pp. 167–217.

Taking liberties: preliminary debates on political violence in India
Amit Upadhyay[128]

If there are lessons to be learned from the experience of violence and democracy around the world, we must be open to how these experiences are discussed in various spatio-temporal settings. One can of course speak about democracy and violence in India in essentialist terms, and tease out the interconnections between these concepts.[129] However, this paper argues that violence and democracy have to be explored spatially and historically. This approach would reveal that the ideological defence of violence in the service of strengthening democratic dissent was the culmination of several minute shifts in discourse over time. Certain shared understandings and agreements were argued over, modified or abandoned entirely in order for these seemingly imperceptible shifts to occur. Many older arguments are therefore important to revisit because they help understand later disputes about violence and democracy. Further, one needs to be attentive to the language and practice of concepts within which these disputes were invoked, without reducing them to semantic quibbles.[130] Accordingly, this intervention seeks to historicise questions about violence and democracy in India, where Gandhi's ideas have often been the popular points of departure.

Gandhi's ideas on non-violence (*ahimsa*) during the anti-colonial struggle dominate most discussions on violence and politics in India, but these can also be distracting. There is a rich history of debates about the limits of violent protest within anti-colonial civil disobedience, ones in which Gandhi participated earnestly, and without necessarily invoking ahimsa. For instance, he drafted an important resolution in September 1938 that disqualified violent protests by communists and communal groups during the colonial period.[131] This resolution was tabled at the Delhi All India Congress Committee session on 26 September 1938, and has to be understood in the context of a wider purge he was suggesting to rid the Congress of violent mobilisation as a form of political action. The immediate background to this resolution was that the Communist Party of India (CPI) had objected to (what they believed was) the rather genial approach of the Congress regarding landlordism in Bihar and United Provinces.[132] Further in this connection, prominent Left historian Sumit Sarkar reports that the Indian National Congress's (INC) denunciation of 'class war' in Gandhi's civil liberty resolution reflected the INC's hostility towards the militancy of workers' associations.[133]

Therefore the language of civil liberties in the above 1938 resolution made possible two things: first, it afforded legitimate space to ordinary citizens to describe and curtail government power, and second, it regulated protest norms of the protesting groups. In short, these constitute what we can call the inner and outer limits of civil liberties articulation: the one directed inward regulating the community of protesting groups, and the other directed outward protecting the domain of

128   Amit Upadhyay's doctoral research on the shifting terrain of civil liberties discourse in India is increasingly in conversation with ideas on violence and democracy.

129   N. Chandhoke (2015), *Democracy and Revolutionary Politics,* London and New York, NY: Bloomsbury.

130   For an appraisal of how political approaches occlude certain modes of description and analysis when considering historical questions of rights in the Indian context, see A. Upadhyay and S. Hegde (2017), 'Back to the Rough Ground of Rights: Pathways for a Historicisation of "Civil Liberties" in India', History and Sociology of South Asia, Vol. 12, no. 1.

131   'Gandhi's Draft Resolution on Civil Liberty,' in B. Chatterji (ed.) (1999), *Towards Freedom: Documents on the Movement for Independence in India 1938,* New Delhi: Indian Council for Historical Research [ICHR] and Oxford University Press, Vol. 1, pp. 102–03. For further elaboration of the stakes of this resolution, see A. Upadhyay and S. Hegde (2017), 'Back to the Rough Ground of Rights', *History and Sociology of South Asia,* Vol. 12, no. 1.

132   *The Hindustan Times* (1938), 'Patel Clarifies Congress Positions', January 5, 1938, in B. Chatterji, *Towards Freedom,* Oxford University Press.

133   S. Sarkar (1983), *Modern India*: 1885-1947, Delhi: Macmillan, p. 365.

individual liberty from executive incursion. The twin imperatives of regulating protest and curbing the executive were therefore useful to two types of protesters: those who wished to modulate protest as well as those wishing to further it. The latter asked that civil liberties be guaranteed and extended, whereas the former (those concerned with modulating protest) disqualified some demands for being beyond legal limits and/or perpetrating *violence*. The scales between the executive-curbing and protest-regulating imperatives of the civil liberties discourse were thus being established through the language of civil liberties.

While many in the INC, led by Gandhi, sounded the limits of protest, Lohia in his 1937 pamphlet emphasised those claims of protest that were facilitative of social transformation,[134] thereby setting in place a tension between the executive-curbing and protest-regulating imperatives of the civil liberties discourse in India. The tension emanated from disagreements about the meaning of civil liberties and what kinds of protest the concept protected. Through these disagreements, the INC and the Indian Left also contested each other's policies and forwarded alternative norms.[135] Across the ideological spectrum in British India, the emerging civil liberties discourse was useful in disqualifying protests deemed to be inciting communist and communal violence. This balance between forwarding civil liberties and qualifying the limits of violent protest was in place throughout the Constituent Assembly Debates (CAD), as also in the early years of Indian Independence. Consider Jayaprakash Narayan (popularly known as JP) who, whilst inaugurating a civil liberty conference in early 1950, stated that:

> there was a school of thought which believed in violence and indulged in acts of violence. People had to beware this school. For they must remember that those who indulged in acts of violence struck at the very roots of civil liberties. No group could demand liberty to loot and murder and commit acts of arson. There were certain groups who were vociferous in demanding civil liberty but undermined it immediately by senseless acts of violence.[136]

JP was addressing communists as well as right wing Hindu activists – groups that were on the warpath at this juncture. Violent protest was thus disqualified throughout the 1950s to the 1960s. This disqualification had currency with rights organisations that were then active, and also with the primary protest constituencies whose struggles the rights organisations were defending. This regulation of protest norms continued at least until the mid-1960s, which is when a moment of transition occurred. In the context of the mass incarceration of the communist cadres in the war years of the 1960s in India, more and more working class issues were taken up by civil liberty groups. There were nevertheless some shifts in ideas; Lohia, for instance, maintained that the mass arrest of CPI (M) leaders in the mid-1960s demonstrated how those who did not believe in democracy still had to be afforded the protections inherent in a democratic order[137] – thereby expanding the regulatory imperative outlined earlier.

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134   See R. Lohia (1936), The Struggle for Civil Liberties, Allahabad: Foreign Department, All India Congress Committee 1936, pp. 34–35, for his view on how defence of civil liberties was important for nationalist and socialist struggles around the impoverished world in checking a colonial state which supported the 'class policy of finance capital and landed aristocracy'.

135   See B. Chatterji, *Towards Freedom*, p. 88, recalling how the grounds of civil liberties were being fashioned within the INC's warring Left and Right segments. Quentin Skinner, for instance, argues that when arguments are made in evaluative language legitimising and describing attitudes and activities, it places certain limits on what acts and attitudes can and cannot be justified and legitimised in future. This suggestion is worth keeping in mind as we try and understand discussions about violence and democracy historically in India. See Q. Skinner (2002), *Visions of Politics Volume 1: Regarding Method*, Cambridge: Cambridge University Press, pp. 172–74

136   Editorial Collective (1950), 'Civil Liberties Conference: Mr. Jaya Prakash Narayan's Inaugural Address,' *The Indian Civil Liberties Bulletin*, Vol. 1, no. 8 & 9, p. 104. Nehru had earlier joined issue with civil liberty organisations that he alleged were started at the behest of the militant CPI; see his speech reproduced as a pamphlet by the Ministry of Home Affairs (1949), *Communist Violence in India*, Delhi: Government of India, February 28, 1949, p. 6. Civil liberty organisations offered swift rebuttals but agreed on the instituting of limits to civil liberties that Nehru and JP were pointing out; see Editorial Collective, 'Comments: "Too Busy with Criticisms of Governments",' *The Indian Civil Liberties Bulletin*, Vol. 1, no. 4 (1950): pp. 42–43. For arguments that retained these founding limits of civil liberties that were echoed during constitution making in India, see *Constituent Assembly Debates: Official Report* (2009), New Delhi: Lok Sabha Secretariat, 5th ed, Vol. 11, pp. 681–82; 733–34; 803; 819; 851, and 968.

137   R. Lohia's speech reported in the Times of India, (1965), 'Opposition Parties to Hold Talks on Kerala Situation: All-India Convention', 24 March 1965.

The Marxist-Leninist armed struggle originating at Naxalbari in West Bengal radicalised the rights discourse in India,[138] even potentially dispensing with the disqualification of violence at protests as established and adhered to earlier. Civil liberty platforms now worked as sheet-anchors to armed struggle – often propagating it from their meetings. The equilibrium of protest norms seen earlier was disturbed and the agreed inner limits hemming in socio-political protest were partially suspended. The rhetoric invoking rights underwent a transformation in the wake of the Naxalbari armed struggle: the language of 'democratic rights' was more often articulated alongside claims for more militant approaches to solving people's grievances. In Marxist-Leninist literature from this period, there is a disavowal of civil liberties as a 'bourgeois sham'; civil liberties were deemed as illusory as emancipation from parliamentary democracy.

This new militant rights discourse set itself against what it perceived to be an exclusively legal approach to civil liberties in providing legal aid. Indeed, the turn to a language of 'democratic rights' reflected the rights platform taking up strong political positions on the nature of society and polity. They defined India as both semi-feudal and semi-colonial. Rights organisations were meant to intervene therefore as a 'sheet-anchor' to revolution, with some organisations quite actively also propagating armed struggle, particularly in the erstwhile composite state of Andhra Pradesh. Thus, while in an earlier phase, the term 'civil liberty' was meant to shield protest as a public act within legal bounds, in the Naxalbari stage of the debate, the term was used to broadcast and propagate left-wing politics and, soon thereafter, the politics of armed struggle.

In addition to the Naxalbari-inspired radicalisation of the civil liberties discourse, the 1970s were witness to protracted battles between the government and a broad arc of political forces across the ideological spectrum. This protest coalition, which was meant to strengthen democracy in India, was strung together by JP who was convinced that Mrs Gandhi's rule was revealing increasingly authoritarian tendencies, in the garb of social transformation. The Emergency of 1975–1977 was a critical event. Not only did it curtail liberties of people at large; political parties opposed to Mrs. Gandhi and the Congress bore the brunt. Around mid-February 1975, JP convened a meeting of opposition leaders and other eminent persons, heralding the beginning of the 'Coordinating Committee for People's Struggle', with himself as its President and members from a broad spectrum of opposition parties: J.B. Kripalani, Morarji Desai, A.B. Vajpayee, Asoka Mehta, Charan Singh, N.G. Goray, George Fernandes, Piloo Mody, Era Sezhiyan, Nanaji Deshmukh, Raj Narain, Madhu Limaye, L.K. Advani, Tridib Chaudhury, S.M. Joshi, S.N. Mishra, Surendra Mohan, Mohan Singh Tur and P.G. Mavalankar.[139] These individuals – spanning the left and right banks of the Indian polity – converged with the aim of JP's movement to reinvigorate Indian democracy.[140] It is therefore useful to think of JP's intervention as stitching together anti-Congress forces to strengthen democratic institutions, forming a forum that channelled its multiparty energies into protecting civil liberties.

This moment marked a proliferation of rights organisations around the country, and is usually thought of as the constitutive moment of civil liberty mobilisation in India. Even as it marked an upsurge, something had changed with the commingling of JP-inspired and Naxalite-backed rights activism. To cite an instance, rights organisations investigating communal violence in the immediate post-emergency period were no longer recalling the qualifying limits to civil liberties that had shackled communal and communist protests from about the 1930s to about the late 1960s. In this post-emergency moment, rights organisations alleged that the government was in collusion with organisations that fanned communal enmity, since members of the *Jan Sangh* (forerunner of the Hindu nationalist Bharatiya Janata Party: the BJP) were a part of the ruling Janata Party. This allegation of collusion was meant to primarily expand the registers of state culpability and identify that the state had become communal. On the other hand, there was

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138   Interview with Gautam Navlakha, 6 October 2009

139   E. Sezhiyan (2007), 'Justice Tarkunde – Defender of Democracy', *PUCL Bulletin*, Vol. 27, no. 3: Special Issue; Tarkunde Number, p. 9.

140   The CPI (M) agreed to align with the JP constellation against Mrs. Gandhi only on a civil liberty platform, since right-wing elements were a part of the constellation; see J. Basu (ed.) (1975), *Documents of the Communist Movement in India*, Calcutta: National Book Agency, Vol. 17, pp. 49–50.

little criticism of Naxalite groups and the different nationality struggles in this immediate post-Emergency period.

From this period onwards, rights groups were also reticent in condemning the retaliatory violence of exploited groups, which they might have done earlier. We recall that civil liberty groups historically drew the line at violent protest, and so this principled non-condemnation was certainly an escalation from the established limits of the discourse. An example from this period should suffice. Over the backdrop of increasing ethnic bloodshed in Assam and in Punjab in early 1982, prominent political scientist Rajni Kothari addressed the controversial and topical question of the violence of extremist groups. He generates a typology of those who practise violence: those who hurt, knowingly or otherwise, innocent and non-violent people on the one hand, and those, on the other, who are forced to resort to violence against or in the face of (state-structural) violence. He states that he had to defend:

> *those who are forced to resort to violence against violence. Let us say when a landlord goes on killing the landless, routinely rapes their women, burns their homes without thinking twice and this goes on all the time and no action is taken against him. When the people themselves resort to violence or those who organise them do so when this happens what position can be taken? It is a controversial situation. The purists will say we should condemn such violence at all costs. My own position is that whereas I will not defend them, I will not condemn them either…because they are acting in a situation in which the law has broken down, and there is no justice in the system, it becomes a law of the jungle. And in the law of the jungle there is nothing but violence. I still believe in militant non-violent resistance.[141]*

In this conjuncture, there would be principled non-condemnation of the protests of exploited groups, even when this was beyond the pre-determined violence limit. This was certainly active encouragement of violence used by the marginalised, and Kothari's 'principled non-condemnation' was probably a pacifist rendition of further hard-line Naxalite positions. Even as these changes were taking place, the very idea of violence appeared to expand beyond the 'political' to include the 'social' in the post-emergency period. In this expansion, questions about community and gender (and caste, somewhat perfunctorily) were increasingly articulated. These developments affect the limit on violence espoused by rights groups (and Kothari also) in different ways – particularly given the refashioning of the nature of 'violence' cognisable at the time – which cannot be adequately addressed here.

Conclusion

In order to embark on the journey of constitutional democracy towards the end of the anti-colonial struggle, certain agreements pertaining to violence and acceptable forms of protest were necessary in Indian public life. Mapping how these agreements were achieved or modified will allow us some measure of the experience of violence and democracy in India. The attempt here was to outline the ineluctable linkages that 'civil liberty' has in relation to constitutional democracy and outline the limits of political violence. In fact, the discussion about violence and political violence as arguably the limits to protest-related rights – a discussion with a rich history in the language of civil liberties – has a direct bearing on how similar questions pertaining to democracy and violence were later addressed. This paper has hopefully demonstrated that the ideological defence of violence in the service of strengthening democratic dissent was the culmination of several minute shifts over time. The thumbnail sketches of many older arguments fleetingly mentioned here are important to revisit because they help us recall and reorganise present-day categories of analysis. The suggestion originally from Quentin Skinner about arguments made in evaluative language is useful here. He states that evaluative language, in legitimising and describing attitudes and activities, places certain limits on what acts and attitudes can and cannot be justified and legitimised in future.[142]

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141   R. Kothari (1982), 'Civil Rights and the State', *PUCL Bulletin*, Vol. 2, no. 6, p. 23. Kothari was addressing the Tamil Nadu state conference of the People's Union for Civil Liberties (PUCL) in May 1982. He has much more to say about state violence in the face of increasing bases of social violence in the wake of the Ram Janmabhoomi – Babri Masjid dispute, and particularly within the rights discourse to which he richly contributed alongside D.L. Sheth and Harsh Sethi as part of the Delhi PUCL.

142   Q. Skinner (2002), *Visions of Politics Volume 1: Regarding Method,* Cambridge: Cambridge University Press.

It is with this organising principle in mind that one is urging the recognition that the language of civil liberties constituted the inner and outer limits of political articulation. It ensured that various political articulations were protected from incursion by the colonial state, which is the more classical civil liberty mandate. It also legislated the contours of political articulations in India from the inside, by thinking about the limits of protest and political violence in India's search for a future constitutional democracy. We find that unexplored dimensions in Nehru's, Gandhi's and, to an extent, Lohia's discourse created a tension between the inner and outer limits of civil liberties articulation that replayed in subsequent periods – as recalled by JP after the transfer of power. It is in coming to terms with these developments in the language of civil liberties that we come to have some measure of the relationship between violence and democracy. This reshuffling of the historical record is hopefully a gentle reminder that normative political theory needs to be much more historically sensitive.

The crusade of transitional justice: tracing the journeys of hegemonic claims

Astrid Jamar [143]

Engaging with Third World Approaches to International Law (TWAIL), this paper reviews the crusade of transitional justice by tracing the journeys of problematic claims across the world. Building on original empirical material, I document the dissemination of specific sets of claims as well as their hegemonic functions through a systematic review of the transitional justice provisions contained in all peace agreements signed since 1990. I centre on the epistemic violence[144] perpetuated through this normative crusade. The crusade and limitation of disseminated claims neglect the inevitable arguments about the past, frictions between legal 'global standards', the resulting technocratic practices and the often-silenced politicised negotiations taking place through transitional justice practices. Gradually, the consolidation of hegemonic approaches took over institutional debates addressing legacies of mass violence and, consequently, silencing certain types of violence. In other words, I argue that transitional justice is simultaneously: 1) an increasingly normative and technocratic field that claims to deal with legacies of violent pasts for democratic futures, 2) a set of processes that silences normative and discursive battles about a violent past and perpetuates epistemic violence.

In policy settings, transitional justice efforts are mostly perceived as tools to account for legacies of mass violence, to end authoritarianism and hence to contribute to liberal democracy. From post-colonial theoretical grounds, TWAIL clarifies the role of international law that sustains unequal structures and maintains the growing North-South divide[145] and historical association of international human rights law with colonial conquest and Western domination in Africa.[146] TWAIL also denounces contemporary ideology's assumption that liberal institutions and international human rights norms can tackle issues of abuse of power and authoritarianism. To quote Sripati, TWAIL is an intellectual endeavour that 'assails the creation and perpetuation of international law as a "racialised hierarchy" of international norms and institutions that subordinate the third world by the first world'.[147] The application of such a twailean perspective to transitional justice projects the image of an increasingly professionalised industry that deploys fact-finding, training and reporting activities that seek accountability and aim to provide reparations to victims, ultimately to achieve sustainable peace and democratisation to redress

144 Building on Dos Santos' concept of 'epistemicide' and Steve Biko's praxis of Black Consciousness, Madlingozi argues that the 'Global Transitional Justice Project (GTJP) is one of the most effective vehicles for the imposition of Western epistemologies and, conversely, the re-inferiorisation of 'non-Western' epistemologies and ways of being in the world; that is, a way of perpetuating epistemicide. The GTJP is, therefore, a key mechanism in buttressing the coloniality of power, knowledge and being. Understood in this way, in historically settler colonies the GTJP ultimately facilitates a transition from settler domination to settler hegemony.' See T. Madlingozi (2015), 'Transitional Justice as Epistemicide: on Steve Biko's Pluralist Co-existence "after" Conflict', Seminar, Wits Institute for Social and Economic Research, Witwatersrand University, 7 July.

145 B. S. Chimni (2006), 'Third World Approaches to International Law: A Manifesto'. International Community Law Review, 8:3.

146 See, Madlingozi, 'Transitional Justice as Epistemicide'; M. Mutua (2000), 'Politics and Human Rights: An Essential Symbiosis', in M. Byers (2001), The Role of Law in International Politics, Oxford University Press, pp. 149–76; and M. Mutua (2001), 'Savages, Victims, and Saviors: The Metaphor of Human Rights', Harvard International Law Journal, 42:201.

147 V. Sripati (2008), 'The United Nation's Role in Post-Conflict Constitution-Making Processes: TWAIL Insights', International Community Law Review, 10 (4): pp. 411–20.

conflict-affected or 'broken' societies.[148] In such technocratic interventions, the professional elites of transitional justice disseminate and consolidate a contentious normative framework that neglects (and hence reproduces) unequal power dynamics. From such perspectives, the transitional justice normative crusade enables token democracies to be consolidated and epistemic violence to be inflicted.

Consolidation of hegemonic packages: norms that inflict epistemic violence

The field of transitional justice emerged out of debates addressing how the Latin American and former Yugoslav countries experienced political transitions from authoritarian rule to democracy.[149] Over the last decades, the field was transformed from unsettled debates interrogating which approach would be best[150] to a hegemonic package standardising normative claims and routinising institutional practices.[151] In order to trace the dissemination of transitional justice norms at a global scale, I reviewed all transitional justice provisions in the 1518 peace agreements signed between 1990 and 2015 in 80 countries, across 140 peace processes.[152] Of these 1518, 760 agreements entail some form of commitment to deal with legacies of past violence. With an interest in institutional and normative claims, this paper narrows down its focus to the 102 agreements that provide for a non-judicial mechanism, i.e. providing for an institution of some sort to 'deal with the past'.[153]

The texts of peace agreements document how such 'global' standards get integrated into specific peace processes across the world, as illustrated in Graph 1. The flowers on the world map indicate the countries for which peace agreements contain transitional justice mechanisms commitments.[154] The 20 examples in lined-up boxes illustrate further the normative dissemination across space and time. Three key points stand out from the graph: (1) the geographic and chronological scale of transitional justice dissemination; (2) the direction of dissemination; (3) the similarities of the names of mechanisms. In contrast to literature that focuses on norms entrepreneurs that celebrates such dissemination,[155] I clarify here how the direction and the normative content of such a crusade are relevant to depict the epistemic violence emerging from such hegemonic and normative consolidation.

148 See V. Nesiah (2016), 'Theories of Transitional Justice: Cashing in the Blue Chips', in A. Oford, F. Hoffman and M. Clark (2016), *The Oxford Handbook of the Theories of International Law*, Oxford University Press; T. Madlingozi (2010), 'On Transitional Justice Entrepreneurs and the Production of Victims', *Journal of Human Rights Practice*, 2 (2); and T. Madlingozi (2016), 'Transitional Justice as Epistemicide: on Steve Biko's Pluralist Co-existence "after" Conflict', Conference Paper, ISA Annual Meeting, San Francisco.

149 See M. Albon (1995), 'Truth and Justice: The Delicate Balance – Documentation of Prior Regimes and Individual Rights', in N. Kritz (ed.) (1995), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, United States Institute of Peace Press; and N. Kritz and N. Mandela (1995), 'Country Studies' in N. Kritz (ed.) (1995), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, United States Institute of Peace Press.

150 R. Siegel (1998), *'Transitional Justice: A Decade of Debate and Experience'*, Human Rights Quarterly, 20 (2).

151 V. Nesiah (2016), 'Theories of Transitional Justice: Cashing in the Blue Chips', in A. Oford, F. Hoffman and M. Clark (2016), *The Oxford Handbook of the Theories of International Law*, Oxford University Press

152 Using the provisions related to transitional justice mechanisms coded geographically and chronologically, I re-coded these provisions with further thematic sub-categories into Nvivo (a qualitative data analysis computer software). As a part of the team of the Political Settlements Research Programme, I was responsible for the transitional justice theme in the construction of PA-X. The peace agreement database is fully accessible: <https://www.peaceagreements.org/>

153 C. Bell, S. Badanjak, R. Forster, A. Jamar, J. Pospisil and L. Wise (2017), 'PA-X Codebook, Version 1', Political Settlements Research Programme, University of Edinburgh.

154 Each flower represents one agreement, some countries have several agreements containing transitional justice provisions, and hence several flowers.

155 Literature that celebrates the successful cascade of human rights norms e.g. M. Finnemore and K. Sikkink (1998), 'International Norm Dynamics and Political Change', *International Organization*, Vol. 52, No. 4: pp. 887–917.

National
Reconciliation
Commission
Guatemala, 1991

Joint Commission
to trace missing persons
and mortal remains,
Croatia, 1991

National Peace and
Rehabilitation Commission,
Nepal, 2006

Commission for Truth and
Reconciliation, Indonesia,
2005

Commission on
the Truth, El
Salvador, 1991

Commission of Inquiry,
South Africa, 1991

Truth Commission,
Columbia, 1991

National Unity and
Reconciliation Commission

Working Group on
National Reconciliation
and Transitional Justice

Sa'adah Reconstruction
Fund, Yemen, 2014

Clarification
Commission
Guatemala, 1994

Truth and Reconciliation
Commission, Sierra Leone, 1999

Truth and
Reconciliation
Commission,
DRC, 2002

Transitional Justice and
Reconciliation Commission,
Philippines – Mindanao, 2014

The Verification
and Truth
Commission,
Honduras, 2009

Truth Justice and
Reconciliation
Committee,
Kenya, 2008

Comprehensive
System if Truth,
Justice, Reparation
and Non-Repetition,
Columbia, 2015

Historical Investigations Unit

Independent Commission
on Information Retrieval

Orla History Archive,
Northern Ireland/Ireland/UK

Truth and Reconciliation
Committee,
Sudan/South Sudan,
2009

National Reconciliation
Committee, Madagascar, 2009

PA-X, Peace Agreement Access Tool – © University of Edinburgh
The upper visualising map was created by Mengting Bao

Graph 1: World map of commitments to transitional justice mechanisms contained in peace agreements

The direction of transitional justice dissemination displays a geographic discrepancy towards the Global South.[156] Transitional justice commitments expand from Latin America (Guatemala, Salvador and Colombia) in the early 1990s to Europe (e.g. Bosnia and Herzegovina in 1992, Georgia – Abkhazia – Russia, and Croatia, Tajikistan and Kosovo in the late 1990s, and Northern Ireland in 2001 and 2003). After that, there is no transitional justice provision in any peace agreement related to a European country until 2014. On the African continent, the transitional mechanisms spread from South Africa to Mali, Rwanda, Somaliland, Burundi, Gabon, Niger, Uganda, Sierra Leone, Comoros, Eritrea-Ethiopia, DRC, etc. Africa became the continent with the most countries establishing transitional justice mechanisms. In the Middle East, peace agreements committed to establish similar mechanisms in Iraq in 2004, in Bahrain in 2011, and in Yemen in 2014. In the Asia and Pacific region, transitional justice mechanisms were introduced in Indonesia and the Solomon Islands in 2001, in the Philippines in 2002, in Sri Lanka in 2003, and in Nepal and Pakistan in 2006. Commenting on the historical discrepancy of human rights scrutiny and knowledge production being slanted towards the Third World, Okafor states: such a geographic trajectory 'helps to foster a racialised hierarchy in which Third World societies are endemically and perpetually viewed as the sites of human rights violations'.[157] A clear parallel can be drawn for the direction of the normative dissemination: transitional justice commitments expanded from the endogenous appearance of transitional justice efforts in Latin American peripheries to a global hegemony which gradually disseminated to the East and mushroomed speedily and predominantly in Africa.

To clarify these normative commitments, I coded what peace agreements texts actually provide for in terms of the type of mechanism, the set aims, and the actions that allegedly connect such institutional frameworks with the aims set. The names of these mechanisms contain different combinations of the transitional justice global 'toolkit' and suggest an inherent complementarity between these elements (i.e. reconciliation, justice, healing, truth): National Unity and Reconciliation Commission (Sierra Leone, 1996), National Peace and Rehabilitation Commission (Nepal, 2006), Justice, Truth and Reconciliation Commission (Sudan, Darfur, 2011), National Reconciliation Commission (DRC, 2013), Commission for Truth, Reconciliation and Healing (South Sudan, 2014), Comprehensive Process for Reconciliation and Healing (Philippines, Mindanao, 2014), Transitional Justice and Reconciliation Commission (Philippines, Mindanao, 2014).

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156   The nature of the empirical evidence used to document such dissemination (peace agreements) increases such difference. Excluding all transitional justice institutions established outside of peace agreements also excludes several transitional justice mechanisms in Western countries. Transitional Justice in Balance, which draws on global databases, still projects a similar discrepancy (Tricia D. Olsen, Leigh A. Payne and Andrew G. Reiter (2010) *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy,* USIP Press).

157   O. C. Okafor (2014), 'International Human Rights Fact-Finding Praxis in Its Living Forms: A TWAIL Perspective', *Transnational Human Rights Review,* 1:59.

Mechanism types		Actions		Aims	
Truth	44	Fact finding – investigate	71	For reconciliation	27
Inquiry	26	Produce report	19	For non-repetition	19
Reconciliation	9	Clarify events – history	16	To investigate events	9
Reparations	6	Compensate victims	9	To heal	8
Genocide prevention	3	Efforts to fight against impunity	8	For accountability	5
Tradition	3	Treat claims	8	For justice	5
Justice	2	Address human rights violations	7	To repair harm caused	5
Peace	1	Bring guilty to justice – punish	7	For rehabilitation	4
Gender	1	Qualify crimes	6	For forgiveness	3
		Truth-telling	6	For reparation	3
		Civic, peace and reconciliation education	4	For rule of law consolidation	2
		Apply vetting or sanctions	4	To end impunity	2
		Rehabilitate victims of genocide	3	For co-existence	1
		Work out a TJ programme	3	For institutional reforms	1
		Adopt legislation against genocide	2	For truth	1
		Organise consultations	2	To monitor society (prevention)	1
		Establish inter-ethnic front to resist genocide	2	To strengthen democracy	1
		Make public apology	2		
		Undertake regional monitoring for genocide prevention	2		
		Report events	2		
		Organise cleansing ritual	1		
		Fight against discrimination	1		
		Rewrite history	1		
		Assure the security of witnesses and victims	1		

Table 1: List and numbers of mechanism type, actions and aims included in peace agreements in relation to non-judicial (transitional justice) mechanisms

By listing the types of mechanisms, actions and aims in order of frequency, the table shows the most common elements: of 95 mechanisms, 44 are some form of truth commission (46%) and 26 are inquiry commissions (27%). In terms of specific actions, fact-finding and investigative activities are by far the most provided for in peace agreements (included in 71 peace agreements). The production of a report (in 19 agreements) and efforts to clarify events related to past violence (in 16 agreements) are also relatively frequent. The texts of peace agreements relate these different institutions and activities to various aims, most importantly to reconciliation and non-repetition. The provisions for other forms of institutions or activities exist but are much less frequent, as illustrated by the numbers at the lower ends of these three lists. Another noticeable element is the lack of articulations of how these institutions should achieve the set aims. On the contrary, the dissemination of such similar approaches consolidates contested claims: fact-finding, investigations or the production of reports would lead to reconciliation or non-repetition.

While the complementarity between different elements of transitional justice is increasingly contested,[158] extensive research criticises the field of transitional justice for the claimed benefits attached to truth-seeking initiatives, its reconciling, healing or preventive functions.[159] Such institutional practices have also been criticised for favouring specific accounts of violence while silencing others.[160] Denouncing the hegemonic functions of transitional justice, Nesiah observes that 'assumptions are normalised and institutional practices routinised in ways that have consolidated rather than troubled the field', instead of being challenged, revisited or defined.[161] For Madlingozi, the normative dimension of such hegemonic packages is 'one of the most effective vehicles for the imposition of western epistemologies, and, conversely, the re-inferiorisation of "non-western" epistemologies and ways of being in the world; that is, a way of perpetuating epistemicide'.[162] Similarly, this global review of transitional justice commitments draws attention to the hegemonic functions of such normative and geographic dissemination. Instead of a celebratory normative cascade, I depict a normative crusade that consolidated contested normative claims and disseminated them across the Global South. In other words, transitional expertise brought in peace mediation contributed to the production of such normative knowledge. On a global scale, this inflicts epistemic violence by silencing necessary, politically difficult and unsettled debates to address legacies of mass violence.

It is crucial to read such observations with the implementation of transitional justice efforts in specific contexts to grasp the political functions of the normative package. As argued elsewhere,[163] the Burundian and Rwandan cases present contexts where ambitious transitional justice agendas

158   See P. Naftali (2015), 'The Politics of Truth: On Legal Fetishism and the Rhetoric of Complementarity', *Revue Québecoise de Droit International,* Special Education Review, 101; B. A. Leebaw (2008), 'The Irreconcilable Goals of Transitional Justice', Human Rights Quarterly, 30 (1); S. Lefranc and G. Mouralis (2014), 'De Quel(s) Droit(s) la Justice Internationale est-elle Faite? Deux Moments de la Constitution Hésitante d'une Justice de l'après-Conflit, *La Nouvelle Revue des Sciences Sociales,* No.3; K. McEvoy (2018), 'Travel, Dilemmas and Nonrecurrence: Observations on the "Respectablisation" of Transnational Justice', *International Journal of Transitional Justice,* 12 (2), pp. 185–93.

159   See L. Fletcher and H. Weinstein (2002), 'Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation', Human Rights Quarterly, 24 (3); D. Mendeloff (2004), 'Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?', *International Studies Review,* 6 (3); R. Shaw (2005), *Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone,* United States Institute of Peace, Special Report, No. 130; J. E. Burnet (2009), 'Whose Genocide? Whose Truth, Representations of Victim and Perpetrator in Rwanda', in A.L. Hinton and K.L. O'Neill (eds) *Genocide: Truth, Memory and Representation*, Duke University Press; B. M. French (2009), 'Technologies of Telling: Discourse, Transparency, and Erasure in Guatemalan Truth Commission Testimony', *Journal of Human Rights,* 8 (1), pp. 92–109; and F. C. Ross (2003), 'On Having a Voice and Being Heard: Some after-Effects of Testifying before the South African Truth and Reconciliation Commission', *Anthropological Theory,* 3 (3).

160   See Fletcher and Weinstein, 'Violence and Social Repair'; Mendeloff, 'Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding'; J. N. Clark (2008), 'The Three Rs: Redistributive Justice, Restorative Justice, and Reconciliation', *Contemporary Justice Review,* 11 (4); Nesiah, 'Theories of Transitional Justice'; T. Madlingozi (2010), 'On Transitional Justice Entrepreneurs and the Production of Victims', Journal of Human Rights Practice, 2 (2); and P. Naftali (2017), 'La Construction "Du Droit à la Vérité" En Droit International', Bruylant.

161   Nesiah, 'Theories of Transitional Justice'.

162   Madlingozi, 'Transitional Justice as Epistemicide'.

163   See A. Jamar (2014), 'Training in Transitional Justice in Rwanda and Burundi', *L'Afrique Des Grands Lacs, Annuaire 2013–14,* L'Harmattan; A. Jamar (2016), 'The Social Life of Policy Reports: Reporting as Tool for the Transitional Justice Battlefield', Pending Review; A. Jamar (2016), 'Transitional Justice Battlefield – Practitioners Working around Policy and Practice in Burundi and Rwanda', PhD Dissertation in International Development, University of Sussex; and A. Jamar (2018), 'Victims' Inclusion and Transitional Justice: Attending to the Exclusivity of Inclusion Politics', PSRP Report, Transitional Justice Series.

have been promoted. These two neighbouring nations of the African Great Lakes region are still evolving towards authoritarianism. Such transitional justice efforts, or technocratic interventions, are not just taking place within a general context of token democratic practices (i.e. organisation of elections, referendums, participatory reforms for good governance, etc.) that consolidate authoritarianism. These two transitional justice processes also entailed inclusive and participatory dimensions to seek stronger legitimacy and increase their own democratic appearance (i.e. involvement of lay judges and community participation in Gacaca procedures in Rwanda, national consultations in Burundi). In the two cases, extensive political battles took place between and within the various national and international organisations involved in the two processes when framing the meta-narrative about violence. Additionally, technocratic battles have been taking place through disagreements over the mandate and procedures of Gacaca Law or the legal framework of the Truth and Reconciliation Commission in Burundi, on top of the political arguments over their implementation. All these battles have been silenced through references to the normative and technocratic dimensions of transitional justice.

In short, transitional justice efforts adopt a technocratic discourse that silences other voices and inherent political battles while diverting attention from contemporary use of violence and oppression towards political opponents. As demonstrated by tracing the transitional justice crusade, the required expertise and epistemic hegemony contributes to structural violence as 1) it reproduces inequalities and injustices without addressing core structural issues related to perpetuated violence; 2) it creates impunity for global (essentially Western) contributions to the consequences of authoritarianism and/or mass violence under scrutiny by transitional justice efforts; 3) it depoliticises efforts dealing with the past and hence creates ideal hooks for political manipulation by both global and domestic factors; 4) it continues to project a vision of the world where the North is portrayed as an international saviour and the Global South depicted as home to broken societies. Simply put, rather than consolidating liberal democracies, the crusade of transitional justice produces epistemic violence through the consolidation of elite cohorts and pre-formatted technocratic solutions to 'broken societies'

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