

CONFLICT, NOT CONSENSUS

Towards a political economy of the making of the Indian Constitution

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Unlike the Americans, the Indians do not have an exulted mythology of the “founding fathers”. But there does exist a watered-down version of it – focusing not so much on beatification of individuals, but on the celebration of a moment of collective wisdom. At the core of this celebration lies an important fact about the composition of the Constituent Assembly. The Congress – which had an effective monopoly over the choice of members to the assembly – decided to go outside of the ranks of its loyal office bearers to include eminent experts and statesmen. This included the lawyer A. K. Ayyar, bureaucrat N. G. Ayyangar, the former Congressman K. M. Munshi and, most famously, B. R. Ambedkar, the chairman of the Drafting Committee – who had been one of the most prominent antagonists of Congress and its leader M.K. Gandhi for over a decade. As Granville Austin, in his peerless history of the making of the Constitution notes, the leadership of the Congress ensured that “persons of exceptional ability found places in the Constituent Assembly”,¹ including the several “non-Congress ‘experts’” we just mentioned.² Austin also quotes K. Santhanam telling him that “there was hardly any shade of public opinion not represented in the Assembly”.³ Beyond the specificities of the contribution made by these individuals – most historians, and even Ambedkar himself, have noted that the ultimate control regarding the making of the Constitution remained firmly in the hands of the Congress party leadership⁴ – what this factoid reveals is a larger point about the way in which the postcolonial political leadership approached the making of the Constitution. It provides a sense of a ruling dispensation that enjoyed a stable and secure basis for its own legitimacy, and one which sought to rise above narrow particularity of interests to include eminent statesmen and experts even if their political

leanings did not always align with that of the Congress. The process of making of the Constitution, in such a scenario, can be analysed essentially as a consensual one. Not in the sense of an absolute unanimity of opinions, but rather as a process inculcated from conflicts between competing interests. It was a congress of wise (mostly) men, committed to certain abiding principles of constitutionalism, rule of law and democracy, engaging in a (at times contentious process of) deliberation regarding how to best realise them on the admittedly uncertain terrain of postcolonial India. One could consequently theorise such a process – and by extension the Constitution – through an analysis of the force of arguments advanced and values affirmed. One could furthermore do so without concerning oneself unduly about the messy social reality that existed outside the Constituent Assembly – from which the wisdom of the framers elevated the process.

The goal of this chapter is to argue against such a standpoint for analysing the making of the Constitution and for another one: that takes conflict rather than consensus as its starting point. This is not a factual claim, seeking to uncover some hitherto hidden instances of dissensus and factionalism among the assembly members. Rather, it is a methodological one. It starts from the claim that despite Congress's unrivalled hold over political power, the moment of postcolonial transition was not marked by a stability and consensus, but rather their lack. While a negotiated transfer of power maintained the integrity of the state apparatus, the transitional moment was marked by lack of an abiding consensus regarding the nature of the political and social structure to be constructed, and both the political and social terrain was fissured along lines of latent conflict. The task of the postcolonial leadership, as they often acknowledged explicitly, could not be understood outside of this dynamic and fissured terrain on which they sought to establish a new political regime that was both viable and stable. Once we, as scholars of the constitution-making process, shift our vantage point from the deliberative sphere of high ideals in the assembly to the contentious social world within which they sought to achieve their task, a different picture of process – and once again, by extension, the Constitution itself – emerges. It's such a shift in our perspective that this chapter argues for.

Such a perspective would situate the constitution-making process as a critical part of the postcolonial transition and regime formation, rather than an analytically autonomous activity accessible only to the specialised vocation of constitutional theory. In this context it is useful to quote a portion of the concluding speech by the Constituent Assembly president Rajendra Prasad. "The first question which arises and which has been mooted is as to the category to which this Constitution belongs", Prasad said. "It makes no difference so long as the Constitution serves our purpose. We are not bound to have a constitution which [. . .] falls in line with known categories

of constitutions in the world. We have to take certain facts of history in our own country and the Constitution has not to an inconsiderable extent been influenced by such realities as facts of history”.⁵ Prasad’s statement makes two related points: first, that the Indian Constitution escapes any easy description accorded to it through the lens of established constitutional doctrines, arrived from an a priori deduction of what a constitution is expected to look like. Second, that a proper analysis of the Indian Constitution must take into account “certain facts of history”, that has shaped the Constitution “not to an inconsiderable extent”. These “facts of history” I argue, were the specificity of the moment of postcolonial transition, rife with power relations, divisions and conflicts. Crafting the Constitution was part of the process of regime formation that was both constrained by those power relations and seeking to manage potential conflicts that could arise out of them.

The point here is not to advocate for a view of the Constitution making as a cynical exercise in reasons of state or naked bargaining between well-defined interest groups. Neither do I mean to suggest that those who gathered in Constituent Assembly did not hold certain ideals or principles as valuable. However, as they themselves reiterated multiple times in the Assembly, there was a real danger in assuming that they had inherited a condition where those values could be realised unreflexively. Therefore, general theories of “constitutionalism”, “democracy” or “liberalism” cannot provide us with the full story as to the specificity of the Indian Constitution-making experience. An analysis of the Indian Constitution on its own terms must then start from the complexity of the socio-political constellation that makes any claims about an unproblematic genealogy of either liberal or democratic constitutional values among the Indian Constitution makers difficult to maintain. Instead of a priori deductions regarding such values, the constitutional imagination has to be understood, and its embodiment situated, within a historical terrain marked by complexity, conflict and constraints. Not because the deliberations in the Constituent Assembly were simple reflections of existing social interests, but rather because the terrain marked by the complex interplay of those interests constituted the field of force that shaped those deliberations, and generated the potential conflicts that provided the orienting point for those arguments. This is not merely an expression of scholarly preference, but is supported by how the Assembly members themselves frequently referred to the nature of their work – speaking of rebellious masses, potential insurrections and a social revolution that was necessary (and not merely desirable) to be brought about. A full account of the work that they did therefore has to look beyond the walls of the Assembly to the messy terrain of social reality to which the inhabitants of that Assembly often glanced at nervously.

A complete or even substantial analysis of the Indian Constitution from such a methodological vantage point is beyond the scope of this chapter. What I would try to do instead is provide a brief justification for why I chose conflict rather than consensus as the central term of this reorientation that I argue for and provide brief outlines of some of the major fissures and fault lines of such conflict. Alongside, there will be suggestions of potential lines of enquiries that one might follow, and kinds of insights these might generate. At the risk of oversimplification, let me foreground the overarching claim about the Constitution that I see as emerging from those brief sketches. The focus on active and potential conflicts allows us to identify the lack of any abiding or hegemonic consensus arising out of the nationalist struggle regarding the nature of postcolonial political and social institutions. In such a condition, the postcolonial ruling elites saw their task as one of a complex management of potential social unrest through a gradual and controlled process of social transformation. The Constitution was not merely an institutionalisation of certain abiding principles' constitutional governance. Rather, it was also designed as a framework of state power that could achieve that task of precise and controlled transformation. An administrative point of view, focused on the skilful manoeuvring of state machinery to precisely manage social conflicts, therefore assumed prominence within the Indian constitutional vision. Beginning from the nature and threat of conflict allows us to apprehend the subject position of the administrator who was one of the most prominent, if not the preeminent, protagonists of the story of crafting the Indian Constitution.

Consensus or conflict

What we have termed the “consensual viewpoint” was by no means restricted to studies of the Indian Constitution. For a long time, it was the prevalent view of the postcolonial transition itself among scholars of Indian politics and history. The historians of the so-called “nationalist” school of historiography stressed the creation of a popular national imaginary generated by the anti-colonial struggle and represented by the Congress as *the* party of independence. On the surface the Congress did indeed seem to enjoy such an expansive popular legitimacy; and with the Muslim League's exit from the scene after the partition, an unchallenged domination of the postcolonial political scene. Scholars of Indian politics argued that under these conditions Congress acted less like a traditional party representing the interest of specific groups and more like an umbrella organisation mediating between different social interests. This line of thought found its most well-known exposition in the work of Rajni Kothari, who argued that India had a “one party dominance”, as opposed to a “one party rule”.⁶ Congress,

he argued, was a “party of consensus” that functioned both through an “in-built corrective through factionalism within the [...] party” as well as a “latent threat from outside”.⁷ The latter came from the marginal parties and organised interest groups outside of Congress. While these groups almost never had the realistic opportunity to win power, they gave voice to demands from outside of Congress, which at times overlapped with those of particular factions, resulting in realignment of the power within the party. In other words, a moderating and democratic dynamic existed through the “mobility and life of the internal power structure of the Congress”.⁸ More generally, such an analysis suggested an implicit tendency for negotiated centrism among the ruling dispensation – both the government and the party – during the transitional moment in India.⁹

This view began to be challenged, not coincidentally, as various forms of crisis – from political to economic to institutional – overwhelmed the Indian landscape in the 1970s. Rather than viewing these developments as essentially contingent events, scholars sought to interrogate the deeper structural contradictions of the political regime.¹⁰ At the heart of this reconsideration was the questioning of Congress’s claim to speak for and with the “people” at the moment of postcolonial transition. Despite its unquestioned pre-eminence as a political organisation, Congress was unable to establish an expansive hegemony through the anti-colonial movement in the sense of generating an organic “common sense” regarding the nature of the new political and social order based on the active consent and participation of the masses. There remained a meaningful lack of a genuine social consensus and the nature of the elite–mass alliance remained fragile and contingent, within the postcolonial political constellation. Highlighting this foundational deficiency recasts the project of postcolonial nation building as something that didn’t grow organically out of a new popular consensus but had to be a deliberate project, and one that had to be understood as continual process rather than a triumphant new beginning.

The analytical focus of this narrative of Indian political development is not consensus, but conflicts and their strategic resolution. By delineating the lines of conflicts – both actual and potential – we get a sense of the variegated social terrain and the contingent alliances which made the transformational constitutional project necessary and shape its particular instantiation. It helps us identify the coalitional – rather than consensual – logic that lay at the heart of the postcolonial transition. Taking the fissures and fractures in the social terrain as our focus helps us understand the constraints within which the political actors worked, and the choices they made within that.

To approach the making of the Constitution as informed by those contestations and constraints is to understand it in its historically specific

terms – as a part of the larger process of the postcolonial transition. However, one needs to add an important methodological clarification here. As scholars of the constitution-making process we cannot simply assume that the Constitution was a *mere translation* of social relations, conflicts and balance of forces during the transitional process. Rather, it was a particular institution form that sought to mediate those relations, conflicts and forces. That institutional form, as E. P. Thompson noted, “has its own logic, its own independent history and forms”. Consequently, “one has to be attendant to those forms if one has to say something meaningful as to how law acts as a mediating institution”.¹¹ For our purpose, it means that we must be mindful of the fact that the Assembly sought to mediate a process of managed transformation through a *constitutional* form – with its own well-worn precepts and conventions. One has to be careful as to not to reify those precepts into abstract ideals, but at the same time one cannot ignore them altogether. Instead, one has to be attentive to the history of the development of those precepts, how the constitution makers themselves understood them and the formal structure it imposed on their agenda. Therefore, an analysis of the Indian Constitution on its own terms – both historical and formal – would require one to specify how the necessities and antagonisms related to the project of postcolonial transition were ultimately negotiated within the formal possibilities of writing a constitution.

The crisis of consensus and the rebellious masses

To provide a brief outline of these necessities and antagonisms, it is useful to start a few years before 1947 with the well-known disagreements between M. K. Gandhi and the emerging leadership of the Congress – most notably his chosen successor, Jawaharlal Nehru. Gandhi had over a couple of decades transformed Congress from a party of petitioning urban elites to a genuinely mass organisation. His central contribution to the nationalist movement was to engender a discourse that succeeded in recruiting the peasant masses of India to the cause of the nationalist movement under the umbrella of Congress. In the process, Gandhi emerged as an all-important “hinge” in a contingent alliance between the masses and the elites that gave the anti-colonial movement its formidable character.¹² At the same time, he was scrupulous in avoiding “end oriented” mobilisations based on class or caste that could sow internal divisions and conflict within the national movement. However, the contingent condition for the alliance, and by extension Gandhi’s centrality as the “hinge”, was the struggle against the colonial regime. He was successful, as none before him had been, to forge a political language that could form an alliance between the elite leadership of the Congress and the peasant masses against colonial rule. However, he

had at the same time failed to create an abiding “common sense” around his vision of social and political order once that rule was abolished. As Shahid Amin pointed out in his seminal work on the violent events in Chauri Chaura that led to Gandhi calling off his first non-cooperation campaign, he had failed to fully discipline what was “popularly regarded to be just, fair and possible”.¹³ The peasants of Gorakhpur, in that instance, constituted their own notions of social injustice and political action often under the banner of Gandhian slogans. This was not a singular moment of failure.¹⁴

As independence drew nearer, and the focus turned more towards the postcolonial future rather than the colonial present, the slippages grew starker and more frequent. As Sudipta Kaviraj noted, at the last instance, Gandhi failed to create a single hegemonic “common sense out of the two conceptual languages which emerged in Indian culture through colonialism” – that of the elites and the masses.¹⁵ While his success as an anti-colonial political leader remained beyond question, he ultimately failed to form through that movement a “structural base” for the “foundation of an independent Indian state”.¹⁶ A more general way of stating the problematic here is that despite the success of the anti-colonial movement, the Indian elite were not successful in fully overcoming their distance from the peasant masses – remaining unable to create a new language of politics that could represent the view of the masses regarding what is “just, fair, and possible”. In other words, there was an inability on the part of the Indian elite in general, and Congress in particular, to create a common meaningful framework for a new social and political order through the anti-colonial struggle.

The subsequent disagreement between Gandhi and Nehru could be viewed in the context of this failure. Beyond the obvious ideological divide separating them on the desirability of a modern state form – which Gandhi opposed and which the Constituent Assembly subsequently affirmed – one could see Nehru’s views as a reflection on the persistence of conflict in Indian society.¹⁷ Given Gandhi and Congress’s failure to create an abiding consensus, the tried and tested machineries of the modern state were required to manage a conflictual social reality. The way it could do that was by identifying the probable causes of social unrest, addressing the demands arising from various quarters, and devising plans to balance competing interests. Nehru himself identified these challenges in primarily socio-economic terms. In a letter to Gandhi, Nehru stressed that the problem facing the Congress was not an abstract one regarding principles of “violence versus non-violence” but rather that of creating a condition of peace and stability.¹⁸ He identified “sufficiency of food, clothing, housing, education, sanitation etc.”¹⁹ as crucial to that project and hence the primary objectives to be met by the postcolonial leaders, and they had “to attain them speedily”.²⁰ Critical to the project of creating a viable and

stable postcolonial regime was a state machinery that was able to deliver a program of socio-economic development, and do so without engendering large-scale social disruptions. In other words, a modern state was not only ideologically desirable; it was also necessary to achieve a project of gradual social transformation – without which social conflicts simmering below the surface could threaten the existence of the nascent regime. The Constitution, consequently, had to be a framework that could facilitate that project.

The need to deviate from the Gandhi's vision for India – at least on this fundamental question – was not just Nehru's position. It was shared by the wider circle of leadership among the Congress. Despite Gandhi's towering position in the Indian political scene, and despite the multiple guilt-ridden lamentations in the Assembly of the betrayal of the Mahatma's vision, one finds little evidence of a serious push for considering decentralised federations of village republics in the Constituent Assembly. This could be understood as a common acknowledgement of a problem – namely that of the potential of discontent and discord. It did not signify any automatic unanimity – even among the Congress leadership – regarding how best to resolve it. Rather, it gave rise to the most meaningful *political* fissure among the postcolonial elites.

This division predated the Constituent Assembly, and had been developing within the Congress since the early part of the 1930s. It manifested itself in the familiar language of the Left versus the Right within the Congress. During the nationalist movement, those on the 'left' wing of the party would push for a greater mobilisation of the mass movement to confront the colonial regime. Those on the Right sought to avoid further mass mobilisation (and consequent radicalisation of the movement) and argued for a more accommodating and negotiating (rather than confrontational) posture vis-à-vis the colonial regime. The two most influential leaders of these two wings respectively were Nehru and Vallabhbhai Patel; and their struggle for power within the Congress could be viewed as oriented around these larger questions of strategy for the postcolonial ruling elite. As the movement ended, and the moment of transition came about, the orienting logic of this alignment also shifted. While Nehru and the Left advocated for a more thoroughgoing modernisation directed by the developmental state, Patel and the Right remained sceptical of the effects of such a thorough transition and the effects it might have on existing relations of power and interests in society. What is important to remember regarding this contestation is that unlike the image that is conjured up by the phrase "Left versus Right" – familiar to us from the experiences of modern Western politics – neither side represented a deeply held ideological position or a clearly demarcated social force. Rather, the debate was regarding the

direction, extent and mechanisms of managing the transitional moment and its attended social conflicts.

The nature and potential of the popular discontent were not a mere hypothesis in the minds of the Congress leaders. The meeting of the Constituent Assembly closely followed two massive – and very different – expressions of mass action outside the disciplinary controls of the Congress leadership. The first was the Quit India Movement, where the imprisonment of the top leadership of Congress resulted in a rapid radicalisation – leading to sabotage of infrastructure, guerrilla wars and even short-lived “free zones” – revealing clear signs of the tensions under the surface of popular politics. The second was the partition, overlapping with the initial years of the Assembly, that unleashed a gruesome spectre of violence. Perhaps even more worrisome were the massive labour strikes and militant peasant movements – including the largest armed peasant uprising in Indian history at Telangana – that were taking place at different parts of the country while the Assembly was drafting the Constitution. These unrests weighed on the minds of the members of the Assembly who spoke about the “dangers of insurrection and bloodshed”.²¹ They spoke about “revolution” and “rebellion”, which they did often, not as events of the anti-colonial pasts but of an uncertain postcolonial future. “These down-trodden classes are tired of being governed”. Ambedkar warned the Assembly. “They are impatient to govern themselves”.²² “This urge for self-realisation in the down-trodden classes”, he added, “must not be allowed to devolve into a class struggle or class war [. . .] That would indeed be a day of disaster”.²³ That Ambedkar – and his assessment was far from a unique one – viewed the threat of future unrest in terms of “class war” is explainable in terms of both the global and domestic contexts. The still potent example of the Russian Revolution and the more – both geographically and temporally – proximate example of China painted a concrete and meaningful picture of potential dangers, both of which were mentioned several times in the Assembly. The fact that the Communist Party of India remained outside the Assembly, and emerged as one of its most trenchant and organised critics further drove home those concerns.

The widely shared anxiety about an uncertain and potentially rebellious future among the members of the Assembly – as clearly evidenced from the transcript of the debates – needs to be stressed to counter the notion of a body of wise lawgivers functioning in relative seclusion from social tensions. It is further necessary to stress that this was not simply a theoretical and abstract notion of “unrest” that all constitution makers must address, but one based on concrete socio-political reality of India. However, there is a reason why I use the term “anxiety” – signifying something that is uncertain – rather than the more tangible term “pressure”. It’s because the masses

were not fully organised at a sufficiently large scale to present themselves or their interests as a coherent social group. Neither did they have a political party that could credibly claim to represent a sufficiently large number of them and present a list of institutional proposals. It was not as if the masses were passive or politically inert. I have already mentioned the various strikes, local rebellions and protests of various forms that increasingly marked the later years of colonial rule. However, these activities remained relatively localised and did not add up to a national organisation that could credibly claim to represent the peasants and workers, mobilise them successfully and, consequently, demand a bargaining seat with the Congress. In such a scenario, the transitional project – and hence by extension the Constitution itself – was not the result of a sort of a negotiated compromise between owners and workers, the way the advent of the post-war welfare state in the Western world has often been described. There were no coherent “party of the workers/ peasants” that could demand to sit on the other side for such a negotiation. Instead, what we get is an apprehension of instability and insurrections, and worries about poverty and immiseration. Instead of a compromise between the masses and elites, we get an anxiety about social unrest and the consequent acknowledgement of the need for intervention and managed transformation of the social condition. Crafting a precise mechanism for transformation becomes a central theme running through the various substantive debates in the Assembly. It created a prominence of the administrative dispensation among the constituent vision.

The divisions among the elites

The crisis of hegemony and the anxiety regarding mass unrest provides us with one half of our story. To fully analyse how the constitution makers sought to resolve the myriad questions such a condition generated, and how they sought to incorporate the project of managed transition within the Constitution, we also need to look at the fissures and contentions between the dominant social forces themselves. There were no homogeneous group of “elites” with a unanimous vision as to how best to devise a project for managed transformation. Rather, the moment of transition provides us with an uneasy coalition of three dominant classes, all of whom had a stake in creating a viable and stable regime sans social unrest, but had different stakes regarding how it was to be achieved.

The condition for such a coalition was crucial factor in India’s socio-economic history: the incomplete development of capitalism in India and the consequent weakness of the industrial capitalist class. The industrial capitalist class, which have by that time have evolved as the singular triumphant class in the Western world, was unable to assume a similar

role in India. To comprehend this distinction, it is useful to first set up a theoretical referent point as to what the relationship between a dominant capitalist class and political institutions might look like in advanced capitalist countries in the contemporaneous period. In his seminal work, Adam Przeworski set out to interrogate that relationship in terms of the paradox of European social democracies, where working class parties had won elections democratically but were unable to alter the fundamentals of the capitalist system.²⁴ This paradox, he suggested, could be explained by a refined version of the “structural dependence of the state on capital” thesis, which argued that the private ownership of productive resources limits the possible outcomes of a democratic process.²⁵ Private ownership means investment decisions are private. Since the party in power in a democracy depended on continued investments both for electoral gains and state stability, they were not willing to extend their redistributive agenda beyond a point that would – in Gramsci’s phrase – “touch the essential”. Przeworski argues that under such a condition of dependence, the present material interest of the capitalists (profit) appears as the future universal interest of the whole society (growth). The trade-off that at present looks to be between two particular interests – wage increase for workers versus profit for capital – is presented as a trade-off between a present particular interest (consumption) versus a future universal one (growth through investment). The relationship can be expressed through this formulation: “Appropriation of profit by capitalists is a necessary condition for the future realization of interests of any group”.²⁶ In other words, even when political power was held by parties ideologically opposed to the interests of the capitalist class, they had to acquiesce to the political economic interests of that class in a substantial way.

In India, on the other hand, colonial rule had meant that the developmental trajectory of indigenous industrial capital was heavily determined by the needs and policies of the metropolitan economy.²⁷ For most of colonial history, agriculture and trade provided the surest return on investment, and the focus was on exporting raw materials and importing manufactured goods from England. Development of indigenous industrial capital under this condition remained weak, sporadic and informal. Therefore, capital in India was not in a position where its interests could appear, simply by virtue of its place in the economy, as the universal interest of the nation.

The concept of a “dominant class coalition” was developed in India in response to such a condition where due to its historic weakness the capitalist class had to share power with other classes. This concept was given its most influential form by the economist Pranab Bardhan in the context of economic development,²⁸ and subsequently by Sudipta Kaviraj, in the context of political development.²⁹ The long-term ruling coalition consisted of

three distinct social groups – the industrial capitalist, the landowning elites and the bureaucratic managerial elites.³⁰ Independent dominance of any one of these classes was not a concrete historical possibility in mid-twentieth-century India. Precisely due to the lack of an “economic hegemony” – in Przeworski’s term – the political facet of a coalition of classes came to the fore. Hence the coalition was not an incidental fact or an accident; it was the very condition of elite dominance, which would otherwise be destabilised. This fact provided a centripetal constraint on the coalition but not a frictionless unity of purpose. The latter was not possible since meaningful differences existed in the interests and expressions of these classes. Each potential political move – even if for a supposedly common end – could have differential impact on the respective positions of the classes. As independence drew near, and the general goal of winning freedom from colonial rule gave way to more particular struggle for determining the structure of new political institutions and allocation of resources, these tensions were heightened. As a result, intense negotiation and bargaining among them was a central feature of the coalition. Several such engagements were taking place at the moment of postcolonial transition with regard to different pieces of economic and social policy. The Constitution, the most significant aspect of that transition, was not immune from that dynamic.

The Constitution was a unique object for such wrangling. It did not allocate substantive outcomes in the way a piece of legislation or policy document did. Rather, it set out a mechanism for future bargaining over substantive resources. In other words, a negotiation over a constitution was a negotiation about a framework of negotiations, which was simultaneously more complex and had higher stakes attached to it. What complicated the picture further, in the context of India, are three related aspects of this negotiation (though the sequence is for the sake of analytical clarity, not reflective of actual historical development). First was what could be termed the centripetal constraints of the coalition. The inability of any group to claim individual superiority made them unable to leave the coalition or afford to lose any other group. In terms of constitution making this implied an inability to propose a separate system of rule, either constitutional or otherwise, than the one being hammered out inside the Assembly. In other words, neither group was able or willing to lead either a revolution or a coup. Second, India was to be a democracy, and it was a democratic constitution one was negotiating about. This meant every negotiating move was double natured – that is, it had to be conceived and expressed in terms of both the position – of a dominant class within the coalition and their respective relationship to the masses outside the coalition. The third fact, following from the second, was that the nature of the relationship between the elite coalition and the masses at large had necessitated a constitutional

vision geared towards managed social transformation. This pushed the Constitution towards flexibility and need for accommodations, and made the process of finding guarantees about preservation of substantive interests an even trickier task.

The combination of all these factors constituted a “field of force” within which the lengthy deliberations on drafting the Constitution took place. The need to maintain the stability of the political rule of the elites made them accept the need for a transformational constitutional vision. At the same time, disagreements about the particular substantive questions within that broad vision led to intense negotiations about the specific way in which it was to be expressed in the form of a written constitutional document. In other words, while the lack of a political hegemony in India gave the broad constitutional vision its unique form, the nature of the inter-coalitional negotiations gave the constitutional document its specific textual form. The intensity of the negotiations increased when there were major differences in position on a substantive point. The point is not to break down each substantive question in the Assembly debates into three contending positions based upon the respective interests each class. Rather, the task would be to carefully reconstitute the “field of force”, which both constrained and animated the deliberations conducted and choices made by the Assembly members.

The weakness of the industrial capitalist class meant that they were crucially dependent on the state for their own future growth and stability. The two most significant areas where this dependence was evident was with regard to investment and managing labour conflicts. This led them to offer qualified acquiescence to a plan for state-directed modernisation and the wider project for a managed transition. Their firm insistence, however, was that this transition was in the nature of “development” rather than “socialisation”, a point to which we will return in the next part.

The landowning elites were internally differentiated among two major groups – the landlords or zamindars, the semi-feudal owners of estates who were often minimally involved in the productive process and concerned primarily with extracting rent; and the “big” peasants who owned and cultivated their own land, often with hired labour. The zamindars represented an economic form that not only had failed to evolve with the times but was also seen as an impediment to increasing agricultural production. More significantly, they were deeply unpopular politically – due to both their exploitative role in the agrarian economy and a history of active collaboration with the colonial regime. It was clear during the constitution-making process that the zamindars could no longer exist *qua* zamindars – i.e. as a legal status with the express backing of the state. The more significant group therefore were the big peasants. This distinction between these two

groups is crucial to analyse the issue of land reform – the substantive economic policy most frequently discussed in the Assembly – vis-à-vis the constitutional design.

The big peasants, often large tenants of the zamindars, were the ones who controlled the bulk of the labour, capital, and operational aspects of the cultivation on the ground. They were able – which postcolonial democratisation would further consolidate – to translate their social power into political influence, in time becoming a new “Pillar of the State”.³¹ Indeed, much of the local Congress organisation in the rural areas was already dominated by this group by the time of the constitution making. It was precisely their political and social dominance in the countryside that made the landowning elite an enemy of sweeping modernisation or land reform. The dominance of peasant elite to the social strata below them – the small holders, the share croppers and the landless agricultural labour – was sustained by a variety of extra-economic forms of coercion and subjugation. Therefore, they had little reason to be supportive of a plan of full-fledged capitalist transformation that could destabilise their complex network of control and coercion, or any robust plans for land redistribution. At the same time, unlike the managerial elites or the industrial capitalists, the landowning elite lacked the language of universality through which they could posit their interests as “national interests” – as the former have done with regard to discourses of “development”, “planning” or “stability”. Lacking an “alternate coherent vision to offer”,³² their efforts in terms of the Constitution were directed towards fragmenting and slowing down the centralising force of the transformational pressure. They could not repudiate a state-led developmental vision, but they wanted to make sure that it was sufficiently controlled and amenable to local variations and manipulations.

In terms of the constitution making, the most significant of the three classes were the managerial bureaucratic elite. Unlike the other two classes, they did not constitute a class by virtue of their place in the production chain, or due to their ownership of certain material resources. Rather, their subject position derived from their role in managing the state and the political institutions, and their mastery of certain forms of knowledge and procedures that is crucial to that end. The substantial autonomy already enjoyed by the colonial state, the strengthening of that autonomy during the complex and delicate process of postcolonial democratic transition, allied with the aforementioned weakness of the capitalist class, meant that the nascent Indian state enjoyed relatively more autonomy from capital than its Western peers in the mid-twentieth century. As a result, the class most connected to that state in various ways – the managerial bureaucratic class – developed a distinct sphere of influence of their own. Precisely because the state – with its well-honed machinery developed under colonial

rule – was to be the primary (and at times exclusive) protagonist of managing the fraught destiny of postcolonial India meant that the skills possessed by this class in operating that machine, perfected under colonial tutelage, was of precious value. These were the skills that were called forth to ensure that the broad principles of constitutional government were modified and adjusted to the specificity of the Indian “experience”. This explains the length and procedural minutiae of the constitutional document – one that made it resemble more a “Motor Vehicles Taxation Act” rather than a Constitution, in the words of one Assembly member. It also explains why that lengthy manual of the state machinery borrowed so heavily from the colonial Government of India Act – under which these skills were honed and the experiences garnered. But most significantly, their prominence reflected the centrality of what I have been calling the administrative dispensation in designing the constitution.

The preferences and priorities of the developmental state

To complete our picture of the social conflicts and tensions that marked the constitution-making process, we have to briefly summarise the nature of the managed transformation that emerged through these negotiations and provided the necessary background for the constitutional design that sought to accommodate it. We can identify three major themes of the regarding the “problem” of the socio-economic conditions of postcolonial India that had to be at best solved and at worst managed. The first such theme was the massive *inequality* in wealth and property. This manifested itself most starkly – and in most politically problematic form – in distribution of land in the countryside. The second major theme was that of *lack of productivity*. The agrarian sector in India, facing variegated factors of social hierarchies, colonial distortions, lack of investments and technological and infrastructural inputs, was stuck in a period of stagnation since the late eighteenth century. The average rate of growth in agriculture for the first half of the twentieth century was a meagre 0.4 per cent.³³ Similarly, in the absence of a capital goods industry, skilled labour force, indigenous technological capacity and significant domestic savings, the potential for industrial growth was also limited. Even in the 1950s, the entire industrial sector contributed to less than 15 per cent of the GDP, of which the share of private capital was even less.³⁴ The problem of underdevelopment manifested itself through three kinds of challenges – poverty, scarcity of resources (most significantly, food) and an inadequate capital base for industrial development.

The third theme was that of *extra economic forms of domination of labour*. The large portion of the agrarian workforce was bound by what has been

called a semi-feudal relation of production, most commonly through the zamindari system (though that was not its only form). It was *semi*-feudal in the sense that production was conducted with the capitalist market in view, and under the aegis of “modern” legal institution, but its functioning fundamentally depended on various “traditional” forms of extra-economic coercion and symbols of deference. Alongside this various other forms of extra economic coercions existed – like debt bondage,³⁵ menial labour practices along the lines of caste and the practice of *begaar*, whereby functionaries of the state or local landlords coercively extracted uncompensated labour for infrastructural and public works projects. The myriad and informal forms of domination extended even to the industrial labour force in the cities as well as those of plantations and mines. In the latter instances work was often coerced through the explicit force of the law, in particular the draconian doctrine of criminal breach of contract.³⁶

The deliberate ways in which the postcolonial elites conceptualised and sought to deal with these related sets of problematic can be found in the discourse of “development planning”. The most significant point one takes away from a study of the numerous economic policy discussions of this time is a certain sequence posited in dealing with the problems of inequality and productivity. The latter was made the priority, with issues of increased production being the primary goal in the short term, and the issues of distribution and equity to be dealt with subsequently in the medium or long term. Counterfactually, one can imagine a path that prioritised reduction of inequality and hence sought to achieve it – in the relative short term – by expropriating and redistributing accumulated wealth. But that path was rejected as being “undesirable” and “impractical”.³⁷ Instead, The First Plan, of 1951, defined its objective thus: “to promote a rapid rise in the standard of living of the people by efficient exploitation of the resources of the country, increasing production, and offering opportunities to all for employment in the service of the community”.³⁸ Distributional goals were not absent from this vision, but they were to be met primarily through growth in the economy – through increased employment and wages, say – rather than being the principal focus of the plan. That the postcolonial regime builders sought an interventionist state should not be confused with a plan for a gradual progress to a social-democratic, let alone socialist, regime in its usual sense. The distinction between the developmental state and the welfare state was not inconsiderable. The legal-institutional infrastructure reflected these preferences. Hence the Constitution did weaken certain classical liberal rights and safeguards – most significant of which was property – to create more space for state intervention. At the same time, it did not – in the manner of its mid-twentieth-century contemporaries in Europe – provide constitutional guarantees regarding certain social goods

to its citizens. In either case, the constitution makers did not want to commit to certain principles of desired social orders by embedding them in the legal-institutional architecture. Rather, they focused on creating a mechanism whereby precise interventions could be made if and when the social process demanded them.

An interesting study of this mode of constitutional design could be conducted regarding how the Constituent Assembly engaged with the third set of issues we have mentioned earlier – that of coerced or unfree labour. The widely prevalent fact of the multifarious forms of coercion exercised over labour, and the fact that it reflected a deeply hierarchical and exploitative social condition, were discussed in the Assembly several times. They often formed the backdrop of the realisation that the journey from subjecthood to citizenship cannot be viewed only through the lens of the transfer of power from the British to Congress. As Ambedkar pointed out in the Assembly, one could not ignore the “essentially undemocratic soil” on which one wished to erect a democratic Constitution.³⁹ The issues of “forced labour”, caste or reservation all brought to fore questions regarding forms of domination that were not sanctioned by law. What is important to disentangle here is that when faced with these issues, which were embedded within the larger question of social hierarchies and exploitation, the Constituent Assembly opted to legally sanction the most egregious forms of oppressive practices, rather than seek to address the larger systemic or structural factors that might lead to social unfreedom in general. So regarding land reform, they sought to eliminate the practice of zamindari rather than affirm any relationship between property rights and labouring in the land in general.⁴⁰ In the case of caste, the heinous practice of untouchability was prohibited, while the demands of certain Dalit leaders for an abolition of the caste system itself was ignored.⁴¹ Similarly, while ‘forced labour’ was prohibited, its definition was narrowly circumscribed with reference to the existing practice of *begaar* to ensure that it could not be used to litigate the distinction between free and unfree labour in general.

Conclusion

Taking conflict, rather than consensus, as our starting point for the study of the making of the Indian Constitution allows us to focus on the administrative dimension of the constitutional design – one concerned with deliberate, precise management of social conflicts and transitions. As scholars of that process, it calls on us to provide a picture of a legal-institutional architecture of managed transition, rather than institutionalisation of certain abiding principles or consensually settled vision of a social and political future.

For scholars of postcolonial transition, this calls us to be attendant to the complex legal and procedural modalities of the constitutional design as one of the more significant aspects of the formation of the nascent regime.

Notes

- 1 Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (New Delhi: Oxford University Press, 1972), p. 11.
- 2 *Ibid.*, p. 13.
- 3 *Ibid.*
- 4 B. R. Ambedkar, *CAD*, 25 November 1949. Also see Ambedkar's speech at the Proceedings of the Council of States, September 1953. Quoted in, Aditya Nigam, "A Text Without an Author: Locating the Constituent Assembly as an Event", in Rajeev Bhargava (ed.), *Politics and Ethics of the Indian Constitution* (New Delhi: Oxford University Press, 2008), p. 119.
- 5 Rajendra Prasad, *CAD*, 26 November 1949.
- 6 Rajni Kothari, "The Congress 'System' in India", *Asian Survey*, 4:12 (1964), 1161–1173. Also see Rajni Kothari, *Politics in India* (Boston, MA: Little and Brown, 1970).
- 7 *Ibid.*, p. 1162, 1165. Emphasis added.
- 8 *Ibid.*, p. 1165.
- 9 Apart from Rajni Kothari, this narrative, coming out of what can be called an "institutional" view of politics, found expressions in the works of W. H. Morris-Jones, who characterised the political system in India as "dominance coexisting with competition but without trace of alteration". See Wyndraeth H. Morris-Jones, "Dominance and Dissent: Their Inter-Relations in the Indian Party System", in Wyndraeth H. Morris-Jones (ed.), *Politics Mainly Indian* (Madras: Orient Longman, 1978); Wyndraeth H. Morris Jones, *The Government and Politics of India* (London: Hutchinson University Library, 1964); Wyndraeth H. Morris Jones, "The Indian Congress Party: A Dilemma of Dominance", *Modern Asian Studies*, 1:2 (1967), 109–132. For a variant of this argument, see Myron Weiner, *Party Building in a New Nation: The Indian National Congress* (Chicago: Chicago University Press, 1967).
- 10 See Sudipta Kaviraj, "A Critique of the Passive Revolution", *Economic and Political Weekly*, 23:45–47 (1988), 2429–2443.
- 11 E. P. Thompson, *Whigs and Hunters* (New York: Pantheon, 1975), p. 259.
- 12 Sudipta Kaviraj, *The Imaginary Institution of India* (New Delhi: Permanent Black, 2010), p. 115.
- 13 Shahid Amin, "Gandhi as Mahatma: Gorakhpur District, Eastern U.P., 1921–22", in Ranajit Guha (ed.), *Subaltern Studies III* (New Delhi: Oxford University Press, 1984), p. 55.
- 14 The instances of creative adoption of Gandhian tropes in the cause of militant peasant struggles were numerous. See Tanika Sarkar, "Jitu Santal's Movement in Malda, 1924–1932: A Study in Tribal Protest", in Ranajit Guha (ed.), *Subaltern Studies IV* (New Delhi: Oxford University Press, 1985), pp. 136–164; David Arnold, "Rebellious Hillmen: The Gudern Rampa Risings 1839–1924", in Ranajit Guha (ed.), *Subaltern Studies I* (New Delhi: Oxford University Press, 1982), pp. 88–142.

- 15 Sudipta Kaviraj, "On the Structure of Nationalism Discourse", in *Imaginary Institution of India: Politics and Ideas* (New Delhi: Permanent Black, 2010), p. 115.
- 16 Ibid.
- 17 For a fuller version of this argument, see Sandipto Dasgupta, "Gandhi's Failure", in *Perspectives on Politics* (forthcoming).
- 18 Jawaharlal Nehru, *A Bunch of Old Letters* (Delhi: Oxford University Press, 1988), p. 508.
- 19 Ibid.
- 20 Ibid.
- 21 Brajeshwar Prasad, *CAD*, 10 September 1949. Emphasis added.
- 22 B. R. Ambedkar, *CAD*, 25 November 1949.
- 23 Ibid.
- 24 Adam Przeworski, *Capitalism and Social Democracy* (Cambridge: Cambridge University Press, 1985).
- 25 The most well-known version of this thesis was suggested by Nicos Poulantzas and Charles Lindblom. See Nicos Poulantzas, *Political Power and Social Classes* (London: New Left Books, 1973), and Charles Lindblom, *Politics and Markets* (New York: Basic Books, 1977). It was then refined by Adam Przeworski and Michael Wallerstein. See Adam Przeworski and Michael Wallerstein, "Structural Dependence of the State on Capital", *The American Political Science Review*, 82:1 (1988), 11–29.
- 26 Adam Przeworski, *Capitalism and Social Democracy* (Cambridge: Cambridge University Press, 1985), p. 139.
- 27 See Amiya Kumar Bagchi, *Private Investment in India* (Cambridge: Cambridge University Press, 1972), and (for a different version) Tirthankar Roy, *Rethinking Economic Change in India: Labour and Livelihood* (London: Routledge, 2005).
- 28 Pranab Bardhan, *The Political Economy of Development in India* (Oxford: Blackwell, 1984).
- 29 Sudipta Kaviraj, "A Critique of the Passive Revolution", *Economic and Political Weekly*, 23:45–47 (1988), 2429–2443.
- 30 Bardhan used the term "professional elites", which I have replaced with the term "managerial bureaucratic elites".
- 31 Eric Stokes, "Agrarian Relations: Northern and Central India", in Dharma Kumar and Meghnad Desai (eds.), *Cambridge Economic History of India*, vol. 2, c. 1757 – c. 1970 (Cambridge: Cambridge University Press, 1983), pp. 36–82.
- 32 Kaviraj, "Critique of Passive Revolution", p. 2431.
- 33 Tirthankar Roy, *Rethinking Economic Change in India: Labour and Livelihood* (London: Routledge, 2005), p. 42.
- 34 Morris D. Morris, "The Growth of Large Scale Industries to 1947", in Dharma Kumar (ed.), *The Cambridge Economic History of India*, vol. 2, 1751–1970 (Cambridge: Cambridge University Press, 1983), p. 643.
- 35 See Gyan Prakash, *Bonded Histories: Genealogies of Labor Servitude in Colonial India* (Cambridge: Cambridge University Press, 1990).
- 36 See Michael Anderson, "India 1858–1930: The Illusion of Free Labour", in Douglas Hay and Paul Craven (eds.), *Masters, Servants, and Magistrates in Britain and the Empire, 1652–1955* (Chapel Hill, NC: University of North Carolina Press, 2004), and Ravi Ahuja, "The Origins of Colonial

- Labour Policy in Late 18th-Century Madras”, *International Review of Social History*, 44 (1999), 159.
- 37 A. Vaidyanathan, “Indian Economy Since Independence (1947–1970)”, in Dharma Kumar (ed.), *The Cambridge Economic History of India*, vol. 2, 1751–1970 (Cambridge: Cambridge University Press, 1983), p. 953.
- 38 Government of India, *The First Plan*, 1951.
- 39 B. R. Ambedkar, *CAD*, 4 November 1948.
- 40 The already existing demand of “Land to the tiller” made exactly such a connection, claiming that those who worked on the land should be the ones to own it. See Ronald J. Herring, *Land to the Tiller: The Political Economy of Agrarian Reform in South Asia* (New Haven: Yale University Press, 1983).
- 41 See B. R. Ambedkar, *Annihilation of Caste*, Mulk Raj Anand (ed.) (New Delhi: Arnold Publishers, 1990).