Understanding political trials remains crucial for the future of human rights in a world torn asunder by the two wars of terror: the ‘war of terror’ and the ‘war on terror’ (see Baxi, 2005). Understanding its past is crucial, too, because the colonial constantly reproduces itself in the post-colonial cultures of power and law. At last, the Indian past has founded a gifted raconteur in A.G. Noorani who provides in this work detailed narratives of political trials in colonial India from “the judicial murder of the Maharaja of Nanda Kumar in 1775 to the INA trial, in, of all the places, the Red Fort in 1945”. These are stories of colonial/imperial justice “red in tooth and claw”, to appropriate here the poet Alfred Tennyson’s poignant phrase.

Noorani, however, desists from describing colonial political legality as a reign of terror. But the very first chapter of the book quotes Maulana Abdul Kalam Azad, who said memorably at his trial in 1922 that:

wherever the ruling powers took up arms against truth and justice, the Court rooms served as the most convenient and plausible weapons.

Azad further states that “the list of injustices committed by the Courts is a long one”.

How may one read Azad? Is he tracing here the normal history of judicial lawlessness or providing a narrative of exception? Put another way, is Azad saying that the list of judicially committed
injustices grows only when “the ruling powers” take up “arms against truth and justice?” Or, is he saying that the list is always growing because no ruling power may do otherwise? Far from being a play on words, all this raises the question: are political trials the exception, or are all trials necessarily political? This is a deep and difficult question, involving analyses of the histories of the practices of power and ideologies animating the patterns of domination.

The book under review settles the question by an attempt to lend coherence to the idea of “political trials” as exceptional, not normal, and as the Introduction (pp.1-40) suggests, placed beyond the timespace of the colonial. Not all trials in colonial India may be described as ‘political trials’. Only some trials deserve this appellation; these mark a space where judicial autonomy is infringed or altogether absent, or where aberrant exercise of judicial power occurs at the hands of “committed judges” or judges “hostile to dissent” (p.2). This created a space in which courts became (in the words of Azad) instruments and fora of vendetta “for wreaking vengeance and perpetrating injustice”. Azad thus should not be read, according to Noorani, as denouncing the entire genre colonial legality as a mass production of, and for, “a tyrannical and repressive government”. Indeed, Noorani believes that each concrete situation of each political trial is singular, sustaining no overarching denunciation of the British colonial legality.

No universal judgment is possible; even at this point of time Noorani is able to write: “Judgment on the record of British justice must await a full study” despite the fact that: “When its prestige was at stake the British Raj had no qualms about cutting corners and perpetrating frauds” (p. 32). Instead he extols the ways in which the British solved the dilemma with aplomb in the style and manner for which British genius won lasting fame—declaration of commitment to liberal principles combined with practice that was governed by self-interest (p. vii).

He also celebrates the fact that the common law tradition was “imbibed by the Indian lawyers, as the British staged show trials against important political figures in India right from the commencement of their rule in India...”. These lawyers “drank” deep at the fount of British constitutional history, “of which the state trials formed a vital part” (p.7). This not so grudging admiration, this Anglophobia, then sets the stage in which the narratives of the (in)famous colonial trials stand fully framed.
I do not here contest Noorani’s reading of the British legal or jurisprudential history, but remain concerned with its presentation as quintessentially non-ideological. The “Rule of Law” itself constitutes an ideology; and the political trials archived here further demonstrate how colonial liberal legalism as a governance ideology facilitated brute domination. Noorani’s own invocation of Alexis de Tocqueville shows how far this ideology cultivates public opinion and belief in the illusion of rights and justice. Tocqueville wrote:

the opinion of mankind ... clings even to the appearance of justice long after the substance has evaporated; it lends bodily form to the shadow of the law (p.39).

That long shadow is cast perhaps not so much by the opinion of humankind but rather opinion, often violently, attributed to humankind. All too often Anglophilism mystifies the operations, and operatives, of a barbaric colonial legality.

The deep implication of Noorani’s reading of Azad is that in a legal Utopia where the rule of law prevails and judiciary is independent, and justices stand possessed of robust integrity, political trials may not ever occur. This in itself remains an ideological statement extolling the virtuous imagery of the rule of law governed societies. The trouble then was not caused by the reign of terror unleashed by colonial legality, but merely by the flawed institutionalisation of independent judiciary and the rule of law achievement. To say the very least, this is a provocative perspective.

These prefatory remarks do not at all detract from my high esteem for the author or the achievement of this work, which should be scrupulously read by legal historians, sociologists of law, exponents of Indian jurisprudence, political theorists, who stand to benefit evenly. India’s Justices, and Noorani’s own colleagues at the Bar, will likewise benefit from this account of legality under formidable distress. Law teachers, researchers, activist justices, interdisciplinary scholars will be enabled further to shed their naïveté which relegates political trials to a minor chapter in legal history. I believe that a full and critical reading of this work will transform the landscapes of reading colonial legality. It should also enable an understanding of post-colonial political trials in India, to which he has eminently contributed in the columns of The Frontline and the
The Trial of Bal Gangadhar Tilak at the Bombay High Court for sedition, from *The Illustrated London News*, October 2, 1897

Photo courtesy: Oxford University Press, India
Noorani vivifies the ways in which the Bar and the Bench sought, in some exemplary ways, to perforate the scattered hegemony of imperial rule, in the long period from 1775 to 1947. Of course, this legacy is a mixed blessing. Itarchives the birth of the "glorious tradition" of the Indian Bar, as well as the emergence of the "English lawyers" and Judges "who spoke for the Indians" (p. viii). By way of example, I may here cite just one munificent example of conversation between Justice Rowland and Justice A.N. Sen in the chapter on the 'great Wahabi Case' (pp.94-96). Noorani is quick to lament, in this context, the judicial pusillanimity, even complicity, in the infamous emergency decision of the Supreme Court of India denying habeas corpus (p.97).

Narrating the bright side of colonial legal liberalism is a venerable tradition, exemplified thoroughly by Eric Stokes (1959) in his classic work (see more recently, Chandak Sengoopta, 2003). No doubt, there were benign colonial administrators, justices, reformers, and lawyers. Equally, there occurred episodes of juridical-and judicial insurgency. But all this stood enwombed within the violently dark side of colonial legality. Surely, it far exceeds the narrative potential of legal history conceived merely as a string of stories about some friendly lawyering and adjudications.

Space constraints, unfortunately, forbid a detailed account here of the superb narrative Noorani gifts. Yet, I may not entirely in the passing, urge your attention to the moving stories of the Trial of the Last Mughal Emperor (pp.76-92); the defense by Jinnah of Tilak (pp.163-184); the Gandhi trial (pp.223-237); the INA trial (pp.265-284); and the ordeal of Sheikh Abdullah (pp.285-310). These stories speak to us movingly about the promise and betrayal of the colonial, post-colonial, and even post-modern conceptions of the rule of law. Those inclined to vulgar Marxian gestures of hasty denigration of the ideology of the rule of law must indeed find in this narrative a fortunate reflexive pause. Noorani richly illustrates the complexity and contradictions indwelling the bleeding heart of the privileged conceptions of this very notion. And he does so adroitly, and with high craftspersonship.
A principal narrative strength of this book is a careful archival recall of the actual events, of individuals caught by these events yet resisting the colonial rule as active agents. Non-legal readers may at times be exasperated by the wealth of detailed narrative; perhaps this could have been presented in a more reader-friendly style. Yet, I believe they ought to persevere in acts of reading, not just for the sake of history but also of the future of the Indian state and law already upon us. The remark of Tilak that “the fiend of repression has the possession of the body of the Government of India” (p.129) applies equally to contemporary India, unhappily bereft of a Tilak. One refers here not just to the declared Emergency of 1975-76, and the undeclared de facto nefarious emergency rule of Narendra Modi, but also to a whole variety of microfacisms.

The valiant defense by C.R. Das in the Aurobindo Ghose trial has unfortunately no analogue in Independent India. Das said on his behalf the following: “If it is an offence to preach the ideal of freedom, I admit having done this”(p.149). The learned trial judge regarded insurrection in the cause of freedom as toxic, and he said:

The danger of conspiracy lies ... not so much in the prospect of success as in the fruition. When once the poison has entered into the system it is impossible to say where it would break out or how far-reaching will be its effects (p.154; italics added).

Unfortunately, these words find their echo in many a courtroom of India throughout the fifty-plus years of the working of the Indian Constitution.

Colonial legality remained concerned with epidemiological jurisprudence of militant free speech, which it severely sought to quarantine by individualising the punishment of deportation. The abolition of the sentence of deportation has generated the mechanisms and justifications for internal exile, through indefinite and arbitrary preventive incarceration. Although the Indian appellate justices have valiantly sought to confine and curb the arbitrary use of detention powers, often their own exertions manifestly fall short of waging a war for the effective promotion and protection of human rights in India, as every hapless impoverished Indian citizen truly knows. Incidentally, reading Noorani’s chapter “Jinnah Defends Tilak” (pp. 164-165), one becomes fully aware of the lack of spine in the even most illustrious leaders of the Indian Bar today, who remain ever ready to strike but afraid to wound, even in the cause of justice, the self-esteem of some our Justices.
And the trial of Sankarcharya (pp. 205-207) carries an odd resonance with the political fracas over the ongoing trial of Sankarcharya of Kanchipuram. Unlike this lineal descendant, his predecessor boldly stated that:

We are in Holy Orders and recognise only one law, the Law of Dharma (Truth, Justice, and Duty)—the law of life-embracing, sustaining and unifying (at least co-ordinating and harmonising) all activities of life (p. 205).

Unlike his contemporary successor, the Sankarcharya in the case of the trial of the Ali Brothers articulated the furtherance of the "spirit of composite culture" (which now is a fundamental duty of all citizens under Part IV-A of the Indian Constitution. As a believer in "Swadharma for all", he said that "every Hindu should necessarily sympathise with the Khilafat cause" (p. 205).

The pièce de résistance, of course, is chapter 9 entitled "Gandhi's Trial". In my opinion, this should be compulsory reading for all concerned citizens and the communities of human and social rights, activists. His matter-of-fact, rather anodyne, narrative style unfortunately does little justice to Gandhiji's remarkable ability to invert the naming and conduct of political trial as a weapon of just insurrection. Put another way, he memorably converts his trial into a trial of imperial legality itself. This inversion speaks to the power of subaltern vision and voice pitted against the awesome might of the British Empire.

Further, Gandhiji addresses already the future of Indian legality by his soulful articulation of the citizen's duty to resist unjust laws which question the authority and legitimacy of law, without putting at stake the idea of fidelity to the law as a civic virtue. Unjust laws ought to be disobeyed in good conscience; this means that one defies the unjust law and takes full punishment for transgression; for, the refusal to do so frustrates in the long turn the practice of the ethic of legality as an ethical virtue. Resistance to vicious illegality is a virtue only when it affirms the ethic of rule compliance—because no society, culture, or civilisation that denies it may ever justly and peacefully survive. The Mahatma stresses the idea of justice as a good social order. In this sense, the ethic of good resistance counsels against those practices of peaceful or militant disobedience that lead to the occurrence of failed states and failed decolonisation.

I may add here a further question: how may we understand the fact that contemporary Indian leaders and cadres of major Indian
political parties have converted the imagery of political trials to their own advantage, and that of their lethal party machines? How may we read the standard political response that any criminal indictment of a political leader in high political places for corruption, and similar dreadful acts of criminal abuse of power by definition constitutes political trial? Is a scrupulous regard for the rule of law ever possible in a political culture in which political parties feel constrained to nominate, and voters coerced to elect candidates with a long list of criminal indictment? Or are the political leaders to enjoy complete impunity (to evoke Edmund Burke’s words framing Warren Hastings’ impeachment) from being tried:

in the name of the people of India, whose laws, rights and liberties ... [they] have subverted, whose property ... [they] have destroyed whose country ... [they] have laid waste and desolate?(p. 9).

The spectacle of wielders of power against the Indian people presenting themselves as victims of ‘repressive governance’ is nauseatingly familiar, thanks to the investigative and sting journalism and Bollywood. It is, in sum, Ghar Ghar Ki Kahani. However, to bring super Indian citizens to justice is not to engage in political trial; rather it is the Kar Seva to be performed by all conscientious citizens in the fulfillment of their Part IV-A constitutional duties as citizens.

I very much hope that Noorani’s work is not merely translated in all constitutionally recognised languages, and prescribed by the NCERT and the UGC, but also brought home by televised serials in the genre B.A.G., or Balaji Productions. The mass dissemination of this work would make a singular contribution to the cause of human rights education, enabling us all to protest, historically, this ultimately debasing mercenary reinvention of political trials by India’s political classes.

The book under review deserves at least a synoptic conclusion. In my imagination of a conclusionary chapter, the following messages would have emerged. First, political trials constitute an integral aspect of colonial legality, not an incidental one. Second, histories of colonial legality remain woefully incomplete without stories of resistance. Third, in their very nature political trials constitute a grand theatre of domination in mortal combat with mass insurgency.
Political trials in the colonial moment constitute a dreadful exposé of what I call elsewhere as "predatory legality" (Baxi, 2003.) Fourth, these testify to the truth that the Rule of Law, in all its hybrid manifestations, whether colonial, post-colonial, or post-modern, occurs simultaneously with the co-production of the reign of terror. No reader of the tormenting corpus of Mahasweta Devi may successfully fake and forge an alternate legal conscience. Fifth, the Kafkaesque character of political trials is not an exception; for the rightless masses of India, it constitutes the 'everydayness' of the Indian law. Sixth, post-colonial India has vastly innovated colonial inheritance of political trials in ways that mark the near complete ruination of the ideals and visions of Indian constitutionalism put daily to work.

I apologise in advance to the author, were he to regard my figuration of a conclusionary chapter to his book as an act of gross impertinence! At the same time, we need to recall the famous aphorism of Roland Barthes who said memorably that the birth of the reader necessarily entails the death of the author! By this Barthes meant, among other things, that reflexive reading always recomposes the authorial intendent.

All this is a very long way, indeed, of saying rather bluntly: read this book or else risk self-impovery! This is high praise, indeed; it is also eminently deserved.

References