VIOLENCE, DISSENT AND DEVELOPMENT

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I Two Humankinds, Two Universes

Violence and repression preeminently characterize the process of ‘development’ and ‘repression’ in the United States and India. Ideologies of constitutionalism and legal liberalism have constantly percpititated individual and collective violence, even as they are subtly invoked, in both societies, to legitimize repression. And neither sociologists nor lawmakers in India or the United States have perceived the centrality of violence and repression in relation to social ‘development’ and ‘repression’. Undoubtedly, in the United States, the ‘sixties and seventies’ there has been considerable social scientific concern with violence and at least one lawperson has sought to examine the “dialectics of legal repression.” In contrast in India, such concern has yet to emerge. In both societies, overall, the full implications of violence and repression in analyzing the role of law have yet to be grasped.

This paper does not attempt a study of even a most superficial similarity between forms of violence and repression in the two societies, United States and India which have many commonalities of political and legal culture. But, I believe, the differences in the material conditions of social existence of impoverished masses of India provide an insuperable barrier to even facile comparisons. India, like many other ‘developing’ countries of the South, belongs virtually to a different humankind, in comparison with the United States and other countries of the North. Just one or two indicators should suffice.

The average lifetime of male and females in India is about 42 years; in contrast to America and other countries of the North, the average life time is 71. Thus about “half the world’s population have average lifetimes about 29 years shorter than another quarter of world’s population.” And “it is not too much to say... that the wealthiest in the wealthy countries have two lives for each single life of the poor in the poorest countries.” No wonder that the foremost jurisprudential question in the United States today is the right to die; in India, it is the right to live.


And even the average lifetime of 42 years in South, including India, is characterized by disease and malnutrition from cradle to the grave. Not merely is the biological floor of survival reduced but “the most morally revolting aspect of the injustices caused by malnutrition is that it can prevent host of people from realizing even their genetic potential.” Constitutional conceptions of justice, liberty, equality may form stock-in-trade of American and Indian jurisprudence. But the underlying realities they must address to in both societies are markedly different. And so, too, are the viages of violence and repression.

Violence by, and repression of, the impoverished masses in an economy of scarcity represents, a phenomenon perhaps different in kind, rather than degree, compared to violence and repression in economies of abundance and superabundance. And if collectve violence “belongs to political life, and changes in its form tell us that something important is happening to the political system itself” violence and repression in India (and the South generally) tell us different stories altogether than in America (and the North). Perhaps, a universal theory of violence—its scope, intensity and duration—and repression is possible a bit Gurr. But there isn’t a single universe; there are at least two. In what follows, I attempt to delineate the other universe.

II Collective Political Violence

In this paper, eschewing the broad denotation of violence as behaviour designed to inflict injury to persons or damage to things, we look, rather, at collective political violence (CPV). The broadest definition of CPV will subsume revolutions and internal strife having the magnitude of internal or civil wars. Political violence will be defined as “all collective attacks within a political community against the political regime... or its activities.” A more explicit definition of interest to lawmakers is offered by Honderich:

[Politcal violence is a considerable or destroying use of force against persons or things, a use of force prohibited by law and directed to a change in the policies, personnel or system of government, and hence to changes in society.

Political violence, thus conceived, is the very antithesis of law. For a central idea on which the modern state law rests is the legitimate monopoly
of legal violence by the state. The state not only asserts a monopoly of force through the determinations of the legal system; it also claims that only legal force is legitimate force. Political violence is, thus, notionally illegitimate at the very moment of its birth. Any idea sanctioning the legitimacy of political violence threatens the very basis of institutionalized coercion or violence of the state apparatus.

Repression denotes suppression of political violence through the lawful exercise of state violence. Repression can be described as considerable or destroying use of force sanctioned by the law and directed to prevent a change in the policies, personnel or system of government and hence to changes in society. It is in situations of repressive political violence that the great dictum of Ihering—"the law is the politics of force"—assumes critical significance.

This way of defining 'repression' enables us to distinguish violent repression by the state from repression arising from dominant ideological institutions of the state, so acutely described by Ralph Miliband.11 Political violence is often effectively sanctioned or delegitimated by ideological institutions, also often pressed in service after a successful repressive campaign. The courts, the media, and other ideological institutions create conditions of "coercion of persuasion" in the wake of, or accompanying, "coercion of force."12

The current rediscovery of political violence by American social scientists has been accompanied by various typologies of violence. We concern ourselves here with a few typologies which might be relevant to our task. A distinction is often made among the forms of political violence: 'primitive', 'reactionary' and 'modern.' Primitive violence is usually "communal", "small scale" and involves participation by communal groups, and more frequently involves "mutual attacks of hostile religious groups." This kind of collective violence is labelled 'primitive' primarily because of its "inexplicit and unpolitical objectives." The other form is labelled "reactionary collective violence" because participants typically react to "some change that they regarded as depriving them of rights that they had once enjoyed." In this sense, violence is "backward-looking." On the other hand, modern collective violence involves not just considerable "organizational complexity" but a forward-looking character. Here "participants commonly regard themselves as striking for rights due to them, but not yet enjoyed."13

Professor Tilly appreciates his own analysis better toward the end of the essay when he points out that the essential distinction is not so much among types of violence as between types of political groupings involved and, in fact, the nature of the "organizational basis of political life." Primitive and reactionary violence characterize "traditional, localized, inherited, slow-changing" groups or communities. In contrast in the "pure modern

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13. See Tilly, supra note 7.
14. Supra note 7 at 36.
definition, not directed “to the ending of democratic systems” but to making them more democratic. Democratic violence is always in intention, and often in result, directed toward both the preservation and the enhancement of democracy.\textsuperscript{15}

By ‘democracy,’ Honderich clearly means representative liberal democracy—a set of practices which aspire to “uncoerced choosing” of those who form governments (free and fair elections), “uncoerced” influencing of elected representatives and governments, “proximate equality of opportunity in choosing and influencing of government” and “effective majority decisions by government.”\textsuperscript{16} Political violence which silences political processes of distortions in these practices is justified or at least justifiable.

In other words, with this thesis we go beyond the important banality that violence is normal in societies and move to a cautious normative commendation of democratic violence. The practice of democratic violence, and limits to toleration of it, will depend on judgments concerning choice of alternatives (for example, campaign for violence as against campaign for non-violent change) and rational assessments, although inherently probabilistic and characterized by radical uncertainty of likely short-term and long-term impacts.

Implicit in this analysis, is the notion of ‘un-’ or ‘anti-’ democratic violence. Political violence by dominating groups which dilutes practices of representative liberal democracy is inherently anti-democratic and is, to that extent, not legitimate. By the same token, to the extent that subservient or dominated groups resort to political violence which dilute or destroy democratic practices, it is also unjustified. Both the oppressors and oppressed are notionally liable to practice anti-democratic political violence; only the oppressed are notionally capable of resorting to democratic violence.

Honderich does not go this far, but it stands to reason that only those people who are coerced in choosing and influencing governments, or who are denied approximate equality, are prima facie justified in recourse to democratic violence. Historically, such groups have not been a part of dominant groups.

At the same time, Honderich’s analysis rules out the possibility of legitimate violence which seeks to convert a liberal democratic polity into a socialist or Marxist-Leninist polity. Since such political violence seeks to transcend practices of bourgeois democracy, it is by definition, anti-democratic. Violence of the Left or extreme Left will be anti-democratic. This is, to say the least, a curious result—the reactionary violence of dominating classes is lumped together with the revolutionary violence of those pursuing the ideals of people’s democracy.

What Honderich fails to appreciate explicitly is that “the point of socialist critique of bourgeois freedoms is not (or should not be) that they are of no consequence, but that they are profoundly inadequate. They need to be extended by a radical transformation of the context—economic, social and political—which condemns them to inadequacy and erosion.”\textsuperscript{17} In other words, socialist revolutionary violence can, at least in terms of its aspirations (if not actual results) be seen as democratic violence transcending the criteria of advanced capitalist legal liberalism.

I would, accordingly, include in the conception of political violence, both democratic violence (in the sense of Honderich), as well as revolutionary violence. Such expansion of the notion also enables us to appreciate the modes of repression. At a pinch, though real life complicates everything, democratic violence invites repression in which processes of law are prevenient. In contrast, revolutionary violence invites repression characterized preeminently not by legal coercion but by a regime of terror. In a society like India, marked by increasing incidences of both types of violence, the modes of repression increasingly interact, and raise intractable problems concerning the nature of legal system.\textsuperscript{18}

III Modes of Repression

Violence is destructive; it involves death, disablement, distress, carnage and damage. It suggests collapse of social order and threat to political stability. The legal system and culture in every society tends to delegitimize violence and criminalize processes of violence. This occurs in a variety of ways. First, historically, a prime cultural function of the law has been to draw boundaries between permissible and proscribed uses of force by its subjects, as an aspect of ensuring a monopoly of force for the nation-state. Second, the law seeks to institutionalizes conflicts and modes of their resolution. By continually depriving the individual and groups of their autonomy in identifying and resolving conflicts, the law professionalizes conflict resolution and, in turn, depoliticizes conflict. In other words, the legal system provides a repertoire of resources (including conflict avoidance) which have a tendency toward minimization of violent resolution of conflicts. Third, the law provides a normative language which camouflages its coercive modalities. This is a factor of enormous significance, and it is not available to violent actors. The normative language of the law carries its own justification, as it were, and it conceals the behavioural reality of repressive violence. For example, the statement that X was denied bail or a jail escape was prevented does not readily bring to our minds the elements of sustained violence involved at a behavioural level. The behavioural translation of both these statements would go something like this: (1) the magistrate has ordered that X be physically prevented from moving beyond confinement and the police or jailor is entitled to use all necessary force (including hand-cuffing, custodial confinement, custodial discipline, etc.) to keep X in custody.

15. Supra note 3 at 170.
16. Id. at 147-52.
and (2) the correctional staff in the escape situation have used all available coercion (shooting as to debilitating, shooting to kill the escapee, disciplinary coercion on frustrated escapee, etc.), permitted to them by the law. The behavioral reality of structured coercion, applied by specialized bureaucracies, trained and maintained for the purpose, is almost always concealed by the law except in rare cases (e.g. X is awarded capital punishment) and that too not with immediacy of feeling. In contrast violent actors do not have authoritative language which camouflages their behavior; violence is for all to see and feel.

Those who recourse to violence have, therefore, to use ideologies to legitimate their exercises. They do so without the benefit of a shared authoritative system of communication, like the normative language of law. Unless the ideology is powerfully articulated and disseminated, legal repression stands swiftly delegitimized. There is from the beginning an asymmetry in power relations notably introduced by the legal system and the culture. The police does not so much have to justify strategies and methods of ‘riot’ control as the rioters have to justify ‘rioting.’

The law depoliticizes collective political violence in another way, as Balbus has shown in his remarkable study on the dialectics of legal repression. The law, as it were, decollectivizes violent group behavior; it atomizes the participants, charging them singly (on similar, if not the same, offences) and proceeds to deal with each individual case, thus making collective articulation of the rationality of violence even more difficult. “Formal legal rationality thus circumscribes the conflict between the state and the accused into a conflict over the facts,” writes Balbus; thus, the “question of ideological, class or racial complexion... is prevented from entering the meaning of ‘crime’ in the liberal state.”

Balbus has shown in considerable detail, how formal legal rationality “offers important advantages to the elite in the struggle to minimize revolutionary potential and maximize long-term legitimacy.” He demonstrates that a “successful adaptation of the ordinary criminal justice system” in situations of collective political violence “is likely to have a profound impact on the consciousness” and ideological coherence of participants in the violence. Thus, the law and its processes share a dual character: they are important components of the state coercive apparatus. At the same time, they function as ideology-propagating institutions of the state.

In situations of violent mass demonstrations or disorders, the enforcers of the law typically have much more leeway than the participants in violence. In dealing with political violence, police and courts typically switch over to what I would call the “minimal due process” model. This is distinct from the “optimal due process” model expected to be followed under ‘normal’ circumstances. Mass or dragnet arrests using blank warrants are accepted as a part of law-and-order operations in such situations; scant attention is paid to the constitutional obligations of bringing suspects to court within twenty-four hours after arrest; courts accept prosecution requests without judicious application of mind, and set stiff bails ensuring preventive detention of suspects. The minimal due process or due process at its vanishing point still enables legal rationality to be maintained. During the Los Angeles, Detroit, and Chicago riots, although the police and military response “was brutal and led to considerable destruction of life, there was no wholesale slaughter of the riot participants.” People who were arrested “were prosecuted” and not locked up without trial. Although exorbitant bail was set, “bail was set” and the Writ of Habeas Corpus was not formally revoked. The minimal or vanishing due process involves “blatant abrogations of legality,” order triumphs over law. And yet some appearance of legality is retained. The Indian experience of dealing with CPV is much similar, though not extensively analyzed.

The regression to minimal due process reduces accountability of the state coercive apparatus. The lack of “wholesale slaughter” by police and para-military forces is no doubt reassuring, but violent deaths are not negligible in such situations. Between mid-1963 to mid-1968, 9,500 casualties resulted from police action in the United States, a rate of 48 persons per million, giving the United States the first rank among 17 western democracies.

The corresponding figures for India (for a comparative period 1961-65) is stated to be one per 100 thousand population, an estimate undoubtedly based on underreporting.

The point remains: violent deaths from police action remain strikingly high, though mercifully short of “wholesale slaughter.” The use of fatal force is usually unaccompanied by any accountability proceedings in legal or in political fora. When one recalls the mechanisms of non-fatal force inflicting severe or substantial physical injury (through lathi-baton-charge, water hoses, shootings to maim or paralyze, cavalry charges, etc.), the total picture of vast discretion to use counter-violence begins to emerge a little more sharply. It is important to stress that these forms of fatal and non-fatal violence remain virtually outside the pale of even the formal rationality of the law. What is more, this kind of repressive violence stands vindicated by two features: the restoration of “order” it achieves and the fact that it is used by agents of law, who are accredited with the monopoly on legitimate violence in society.

Legal repression of political violence involves, a la’ Balbus, some appearance of formal legal rationality; at the same time, it involves abandonment of formal legal rationality. It is important to stress that if political violence entails repudiation of the law, repression of that violence always, to some extent or the other, involves abandonment of the law. The category “legal

19. Supra note 2 at 8.
20. Id. at 12.
21. Ibid.
22. Supra note 2 at 234-35.
repression" is thus always problematic, containing within it, elements of extra-legal repression as well. Whether it could or should be otherwise is a different question altogether. But the somewhat misleading nature of the notion of legal repression, especially as it involves the use of state military and para-military forces, ought never to be lost sight of.

IV Agrarian Violence and Repression in India

Contemporary India has witnessed considerable escalation of political violence, notwithstanding the culture of nonviolence symbolized in Gandhi. From the Holocaust of the partition to the massacre at Nellie, political violence has haunted the Indian developmental experience. In fact, it would seem that India has a tradition of political violence, not contained by religion, culture or caste. From late 18th century through the present day, India has seen a large number of agrarian movements involving violence and repression. Kathleen Gough has identified at least 77 major peasant revolts in last 200 years, including the Mutiny of 1957-58. Of these about 30 revolts "must have affected several tens of thousands of people" and about 12 "several hundreds of thousands". And, significantly, about 34 revolts were conducted "solely or partly" by Hindus, exploding the idea that the hierarchical caste system inhibited political violence.

The classification of these revolts, interestingly, shows striking parallels with the American experience with CPV disclosed by the labours of the Kerner Commission. The "purely modern" form of political violence, a la Tilly, emerged with organizations of peasant unions on socialist lines around mid-1930s. But the nature and magnitude of relative deprivation (e.g., a total of 20,687,700 famine deaths in India between 1866 and 1943), the colonial repression, and related factors of political economy (e.g., rack renting and agrarian settlements), caution us even in such modest comparisons.

What is more, Gough demonstrates that there is a "continuity of tactics" in political violence in India, at least in its agrarian militancy. The "more successful" revolts have involved "mass insurrections, initially against specific grievances" and the "less successful" ones are characterized by "social banditry and terrorist vengeance."23

The acknowledgement of the fact that the Indian peasantry is not passive is not accompanied by any academic consensus on the nature and future of Indian peasant militancy. What basic shifts in the political economy of India are represented by agrarian violence is a question which naturally continues to evoke different answers or even approaches to answers. The

25. Gough, supra note 24 at 117.

29. Das, supra note 24 at 10.
has not "brought succour from these distresses, for imperial extraction of wealth from India" and "oppression by local property owners" who still "continue to produce poverty, famine, agricultural sluggishness and agrarian unrest." 30

A variant of these approaches is found in the notion of a dual mode of production. Sharat Lyn suggests that in modern India, both the capitalistic and pre-capitalist modes of production "interpenetrate." Both these primary modes are in historic conflict with each other and generate through internal dynamics, "dual ruling class interests"—the bourgeoisie and the feudal landlords. This "dual state power has aspects of both stability and transition." This has important implications for CPV:

any struggle against the feudal aspect without considering the bourgeois aspect will inevitably lead by default to strengthening the relative position of the latter and to the type of class collaboration exercised by various left parties.

Moreover, the existence of the dual mode means that bourgeois democratic revolution has only been half completed in India:

the existence of a dual mode of production and dual state power, relative political independence with relative economic dependence, the appearance of immature bourgeois parliamentary situations, the rise of the Indian "middle class," the general failure to deal with poverty and land reforms suggest cumulatively that only an.... "alliance of proletariat and impoverished peasantry who together constitute 90 percent of the population" can complete "a democratic revolution." 31

In the entire mode of production debate, Lyn comes closest to the notion of the state in India. The notion of dual state power enables us to better appreciate modes of legal and extra-legal repression in response to CPV. This suggests prospects of continuing agrarian violence matched by continual enhancement of repressive paraphernalia of the state power. The enormous growth of state para-military forces in the sixties and seventies which puzzled me in my analysis of the crisis of the Indian legal system 32 becomes less puzzling; my plea for moderation in their growth and for changes in their style of operation appear somewhat naive in light of Lyn's suggestive analysis of the dual and perpetually contradictory nature of national bourgeoisie in India.

At the same time, Lyn's analysis suggests two further probabilities: one is that an increase in agrarian violence may hasten the transition to "status dominance" (i.e. cohesion and emergence) of national bourgeoisie and the other (in much the same vein) is that left parties may continue with

32. Supra note 18.

their parliamentarism, transforming CPV from revolutionary to reformist ends. In other words, CPV may take the direction of democratic violence both in the short and long runs. If this happens one may also expect a mild reversal in the modes of repression: from militaristic modes of repression, state power may increasingly turn to "legal" repression.

The debate on the modes of production may be over, but the debate on the nature of state power in India has yet to begin. Arevvedly Marxist approaches to state power, I believe, promise us greater insight into the nature and future of collective political violence and repression than do the existing liberal approaches. Liberal approaches to political violence tend to perceive in terms of a "soft state" 33 or as "political decay" or as "crisis in legal liberalism" 34 or as "anomie." 35 These approaches fail to articulate the political economy of violence and repression.

V Violence against Untouchables

Violence against untouchables, who constitute 15 percent of Indian population, is on increase not just in levels of brutality. The period 1973 to 1978 according to one estimate, witnessed 62,295 violent incidents, commonly called 'atrocity,' against untouchable life and property. In 1977-78, 12,746 atrocities were registered involving 354 killings and 306 registered cases of rape. The very names—Kilvenmanni, Belchi, Dharampur, Villiparam, Panntagar, Marathwada, Pipra— evoke a cluster of images of inhuman violence: huts set ablaze, people tied to trees and burned alive, people shot at point blank range or hacked to pieces, women raped and brutally killed, children bayoneted or burned alive. The gruesome story of genocidal violence against untouchables is not yet fully told. But what we know is already enough to strip away overmuch pretense of tolerance and non-violence from the face of India and to reveal instead, a brutalized and brutalizing society.

The theatre of atrocities is mainly rural India, though the reservation riots in the city of Ahmedabad 36 show that this is not exclusively a rural phenomenon. Although there is some evidence to show that violence against untouchables is often caused by conflicts over ritual norms, assessments which have attributed 70% of atrocities for the period 1974-77 to 'ritual' disputes invite suspicion of exaggeration. 37 It is a fact that "the first cases of firm and vocal" untouchable resistance and their repression "recurred in the Green Revolution areas of Godavari-Tungabhadra delta, Thanjavur, Bihar and Punjab." 38 The provocation for resistance and

repression has almost always come from a variety of material factors: demand for higher wages, distribution of surplus land or persistent demand for land distribution or occupancy rights. And the "current conflicts... are neither local in implication nor sectional in interest, nor short-lived and transient." They have:280

remained confined neither to States which are supposed to have worked out the various crises of modernization (Maharashtra) or those with the strongholds of conservatism or backwardness (U.P., Bihar or M.P.) nor to the states where social reform movement favouring the backward castes had already occurred (Maharashtra. Tamil Nadu).

Moreover, the vulnerability of untouchables to repression, even as the scope for resistance, has increased. Not only does the upper peasant class (the landlords or rich peasants), but also the "socially backward but economically aspiring and politically ascendant castes of lower peasant", provide the fierce new source of untouchable repression. The "lower peasant castes are simultaneously pitted against both the upper castes" and the untouchables. In the late seventies they have particularly turned toward untouchables with ruthless "aggressiveness and ferocity."281

The last decade, with an authoritarian interlude of the emergency and its aftermath, complicates the understanding of violence against untouchables even further. The emergency propaganda and performance in the sphere of land reforms and 'uplift' of untouchables through the twenty-point programme have been shown to be a causative factor in the pattern of violence. In Bihar, for example, the state acquired an unprecedented 50,000 acres of surplus land under the ceiling laws, as compared with a paltry 9700 acres in the period between 1961-62 and 1974-75; in addition, the state received 20,431 acres in voluntary surrender scheme. Agricultural workers were settled in one lakh acres of government land. Sixty-eight thousand agricultural workers were awarded recovery totalling one crore rupees as arrears for minimum wages and indebtedness worth Rs. 4.5 crores. Arun Sinha suggests that these measures, coupled with socio-psychological propaganda, accentuated "anagatoniyan between agricultural proletariat and the landlords," and during the emergency, led to murders of and brutal assaults against untouchables. After the elections in 1977, "feudal anger" was aroused by the untouchable resistance to return to old wages and refusal to pay cancelled debts. This led to large-scale massacres.282 The leadership and patronage provided to rich and middle peasants by Charan Singh during Janata years aggravated the scale of atrocities all over India. In the late seventies, common "caste wars" and "peasant unrest", led to the massive mobilization of peasants and other backward castes.

Thus, at a very historic moment when change expectations were aroused in the most oppressed groups of untouchables, the repressive resolve and coercive arsenal of caste peasantry was strengthened. While a Marxist analyst sees in this situation a transition from "caste" to "class," marking in a way the potential for escalating violence of the oppressed, the liberal analyst finds that the opposition policies of "propping up the peasant castes" and the ruling party's policy of "isolating Harijan and Muslim issues from the larger struggle of all exploited sections," together amount to no less than joint authorship of a "programme of annihilation" of the untouchables.41

The class analysis of untouchable resistance and repression often overlooks or underplays the ritual or caste aspects of much violence against untouchables. Many conflicts and mayhems centre upon violation of traditional taboos—such as drawing water from water sources traditionally reserved for savarnas or higher castes.42 Similarly, in Marathwada riots, caste Hindus raised a campaign of violence lasting for 67 days over 1200 villages which totally frustrated a unanimous resolution (renaming Marathwada University to Ambedkar University) of the Maharashtra Legislative Assembly.43 Following Menaksipuram untouchable conversions into Islam44 some Hindu militant organizations have, since 1981, engaged in propaganda against Muslims. These have in turn contributed to communal riots in Pune, Sholapur, Ahmedabad and Meerut. The Arya Samaj has reportedly already mounted a vigorous reconversion drive in Menaksipuram.

These and many other episodes, continue to illustrate the "dissolve over the legitimacy of the ritual hierarchy on purity and pollution." Of course the "absence of any economic issue" does not necessarily imply "that religious ideology serves no latent function in supporting economic hierarchy." But the conflict—and resulting violence and repression—is perceived primarily in caste rather than class terms by participants themselves.45

Be that as it may, pervasive violence against untouchables, a kind of reactionary violence and untouchable militancy, mainly through Dalit groups (a violence for equality), raises crucial questions concerning the state and law. Notionally, both types of violence are illegal; in reality,

38a. Id. at 39.
39. Id. at 34.

45. Joshi, supra note 42 at 679.
available evidence suggests that violence by untouchables is more readily repressed by the law and the state than violence against them. This duality in modes of repression may be seen to correspond to the dual nature of state power, as analyzed by Lyn. 46 The dual ruling class interests—bourgeois and feudal landlords—are in direct and deep antagonism here. In a sense violence against untouchables by feudal landlords (and the newly emerging peasant classes), is an attack on the “status dominance” of the bourgeoisie. Barbara Joshi’s observation, although made in the context of three months of Gujarat reservation riots, that “violence involving ‘untouchables’ is often also a direct attack on the authority of the State itself” 47 furnishes, though outside the context of her analysis, is a perfect example of the dual nature of state power. And the first unanimous resolution (since the war with China) passed by Parliament on April 13, 1981, rededicating the nation to policy of reservations at the close of the decade of caste wars, furnishes yet another illustration of the process of fine balancing of dual ruling class interests.

VI Communal Violence

At the very outset we recall with Imtiaz Ahmad that “any attempt to discuss Muslim problems in India, is beset with one serious difficulty”—namely, the paucity of data “required to assess the nature of the problem or to estimate its magnitude.” 48 This observation applies most acutely to the problem of communal or Hindu-Muslim violence.

Since Independence, communal violence has occurred in almost every part of India. From an average of about 65 riots per year in the fifties, the number has increased to 367 riots in the seventies. Between 1954 and 1959, there were 367 violent clashes; the number has increased to 2938 between 1960-69. The decade 1971-80 was marked by 2574 riots. 49 In this period, 816 Muslims and 362 Hindus were killed and 15,404 people were injured.

These figures, besides erring on the side of caution, cannot possibly tell the story of destruction and horror which major communal riots entail. But the reports of some commissions of enquiry (as in the 1969 Ahmedabad and the recent Bhiwandi riots) and accounts of recent riots in Pune, Sholapur, Ahmedabad, Baroda and Meerut, indicate the brutality of attacks, not sparing Muslim women, old people, or even children.

Property worth tens of thousands of rupees was looted and destroyed. Obviously in each riot, Muslims suffer the most extensive casualties and property damage. Communal riots are triggered off by some rather trivial incidents, such as kite flying (in 1982 Ahmedabad riots), use of amplifiers in mosques, routes and progress of religious processions of either community, and claims over non-existent temples or mazars (tombs of saints). But behind these immediate provocations, sometimes stage managed, lies weeks and months of hostile propaganda and careful planning, including the collection of arms: knives, sharp weapons, country-made revolvers, bombs and grenade materials. The riots in recent years have been of longer duration (weeks and in some cases even months) and intensity (in terms of injury, death and damage). Riots usually take place in a middle-sized town with rather heavy concentration of Muslim population, about 30 per cent. 50 There is evidence in judicial commissions of enquiry pointing to an extensive amount of preparation by “a large number of workers,” some of whom are equipped with “technical skills.” 51 The pattern of fatal injuries including stabblings, indicates recruitment of trained personnel in communal conflicts on both sides. Although it has not been possible to positively identify their actual participation in riot situation, there has been evidence of the communal parties and organizations having fomented the actual situation of violence by hostile propaganda and rumour-mongering and by processions of door-to-door campaigns and pamphleteering. In all major riots following the 1981 Meenakshipuram conversion of a few untouchables to Islam, a militant Hindu non-political religious organization has been said to be very actively engaged. These include riots in Ahmedabad, Pune, Sholapur and the ghastly killings of Muslims in the Meerut riots. Occasionally, there is evidence that the state para-military and police forces assist the communalistic designs by acts of commission and omission. 52

Communal riots are generally projected in available literature as urban rather than rural phenomena. This may be due to the fact that despite the “social vacuum” created by exodus of 6 million Muslims (including 2.34 urban Muslim intelligentsia on the partition of India), there is an increasing trend among Indian Muslims to migrate to urban areas. Twenty-nine per cent of Muslims live in urban areas in India. The figure for Hindus is 18 per cent. 53

Most urban Muslims are employed in industry, trade, self-employed professions, and small scale industries. Except where their population in urban area is large (only in 9 districts of India is their population more than 50 per cent; it is more than 20 per cent in 30 districts of about 9 states), Muslims do not offer any substantial economic competition to Hindus. The bulk of urban Muslims is not economically dominant in most parts of India. Indeed, some are exceedingly poor. It has been reported that many

51. Inquiry into Communal Disturbances at Ahmedabad and Other Places in Gujarat on and after 18 September (1971).
52. See for their role in Meerut riots in 1982, Engineer, supra note 50.
Muslim women resort to prostitution in urban areas. In some parts of India, Muslims work as subcontractors from scheduled caste sweepers of the municipal corporation.54

Muslim representation in central services in official and clerical cadres, the Indian Administrative Service (IAS), and the Indian Police Service (IPS), shows chronic and seemingly irreversible under-representation. In fact their percentage in the IAS has declined from 4.6 per cent in 1960 to 3.09 per cent in 1974. In the IPS it declined from 4.1 per cent to 3.19 per cent in the same period. As of May 1971, only 7 out of 542 selection grade and grade I officers were Muslims. Only 19 of 4526 assistants, 9 of 2567 upper division clerks, and 30 of 6615 lower division clerks, were Muslims. The position in states, barring states like Bihar, is also said to reveal a similar picture.55

Politically, while Muslim votes are highly coveted, Muslim representation in Parliament has remained only 7 per cent in 1980, betokening virtually the same position which prevailed at the first general election in 1952. The situation in the Assemblies is much the same, despite some augmentation in West Bengal, Uttar Pradesh, Rajasthan and Bihar.56

The virtual non-representation of Muslims in state services is often attributed to their educational backwardness. But as Imtiaz Ahmad has pointed out, this backwardness is not due to “their religious fanaticism or their acute minority complex,” but rather due to the “small size of the social strata whose members can be expected to go in for education as a normal activity.” In other words, there has been no “tremendous expansion” of the urban Muslim middle class since Independence.57

The smallness or the relative decline of the urban Muslim middle class could be a factor engendered by the reality of communal violence and the overall insecurity created by this peculiar form of collective violence. On the other hand, it might be a factor facilitating the scale and the intensity of growing communal violence in India. Like the question of social ‘causation’ of communal violence in India, the magnitude of its social impact on concerned communities has not been fully examined. But it should be clear that apart from generating radical insecurity among the Muslims, increasing alienation of the educated and affluent Muslims, tendencies toward Islamization,58 the impact of communal riots, must also severely affect the forms of economic enterprise among the urban Muslims. Attacks on Muslim homes, shops, and factories

force them to change their occupations. A study reveals that in Uttar Pradesh about 16 per cent of Muslims “had to change their occupation following communal disturbances;” a majority of them were shopkeepers, who could not “reopen their shop or had to dispose them and accept inferior occupation....”59 Total looting and destruction of Muslim shops or commercial establishments is the standard feature of communal violence. It no doubt has an unsettling effect on modes of occupation and livelihood.

A complete understanding of communal violence is simply not possible at the present stage of knowledge. But it is clear that communal violence is now planned and organized; most incidents are difficult to characterize as “spontaneous.” And the sub-elites involved in the planning and execution of such violence, on both sides, seek to promote material, economic and political interests. Political interests seem to suggest a strategy of promotion of planned antagonism between the Untouchables and Muslims, as their unity, even in merely electoral terms, has certain far-reaching implications on the dual nature of the state. For example, in the recent Meerut riots, extremely poor untouchables (sweepers-Valmikis) were persuaded or conscripted to fight Muslims.60

It is possible to characterize communal violence as “reactionary” or “regressive” or “villianist,” in terms of categories usually used in classification of collective violence.61 Both in terms of causation and impact, communal violence appears to be not just collective violence, but also a distinctive form of collective political violence, articulating certain strategies common to the achievement of certain strategic interests of dominant groups. In many ways communal violence fragments the urban poor, discouraging alliances among the oppressed strata in urban areas, and marks a profound impact on certain Muslim social formations. It is also a crucial part of the ensemble of electoral violence. “Hindu militancy,” “Muslim fanatism,” and pan-Islamism (the convenient “foreign hand” argument), just cannot furnish any adequate explanation or even elements of such explanation of this form of collective political violence.

VII Conclusion

Many related forms of CPV have not been analyzed in this paper. Revolutionary violence is one such major form. In contemporary India it has occurred either as a Naxalite movement or a movement for secession from India. In both cases repression has taken the mode of counter-insurgency operations. Such operations have of necessity involved the armed forces and para-military forces of the state. Although the legal processes and institutions have been involved (e.g., preventive detention, criminal trials of ‘Naxalites’ or ‘subversives,’ enhancement of legislative and executive powers to meet the actual and potential violence, capital

54. A.A. Engineer, "Communal Violence in Ahmedabad", XVII Economic and Political Weekly 100 (1982).
55. Supra note 49 at 23-24.
56. Id. at 33.
57. Supra note 48 at 1461.
60. Supra note 50.
61. Tilly, supra note 7.
punishment), counter-insurgency measures have been preeminently characterized by militaristic use of force (e.g., annihilation campaign, reign of terror for those suspected of supporting subversion, torture in jails, hamleting, counter-propaganda and brainwashing.) The technique of annihilation has reached even the civilian police; they are entrusted with law and order operations in the "infested" areas. The term of art is "encounters," it describes rebel casualties as being results of armed confrontations between police and rebels. Social action litigation in India has sought to demonstrate, in many cases, that cold-blooded killings are being camouflaged as "encounters";

the state and society have been active in recent years in documenting suspected cases of extra-judicial executions by police and para-military forces. These also have been conceptualized as furnishing a leading illustration of "governmental lawlessness" and as signifying the crisis of legality in India.62

Such descriptions do not grasp the essence of counter-revolutionary state violence. The crisis of legality is intractable in situations of revolutionary terror met with counter-revolutionary terror. Revolutionary violence invites coalition, if not unity, between the two fundamentally opposed ruling classes to whom regime-sponsored counter-revolutionary state violence seems the 'rational' response to any threat to the evolutionary interaction between the semi-feudal and capitalist modes of production. Virtually the same response emerges when national unity appears threatened by secessionist movements. The category of 'legal repression' becomes problematic in such contexts.

In other words, neither the rebels nor their repressors are interested in acknowledging the existing legal order as setting any constraints on the nature, intensity, and scope of violence. But while the rebels may recognize the law and the courts, including all into a repressive state which has to be transformed by force and terror, the ruling classes are not altogether in a position to recognize the relatively autonomous legal system which serves their material or class interests. Their long-term interest in legal order is apt for the dual or dominant mode of production and often creates a need to justify counter-revolutionary violence as an aspect of legitimate legal repression. The liberal legal order is unable to fully sustain the legitimacy of such violence, which involves the indiscriminate and standardless use of force and even terror. It is this attempt to convert what, in essence, does not belong to the realm of legal repression into just that which creates the appearance of the 'crisis of the legal system' through governmental lawlessness. Paradoxically, even when rebellions fail to smash the state and the law, they succeed in one way or the other in demonstrating that the primary mode of resistance is the extra-legal mode. This contributes in some degree (this is an empirical question) to the eventual delegitimation of the law.

All this deserves more extended analysis. So do the other categories

of CPV which we have not explored. One of these categories 'social banditry' in contemporary India, thus appears only as 'dacoity' and is characterized by militaristic repression on the one hand and legal amnesty on the other.63

In both responses, formal legal rationality altogether gives way to regime-sponsored violence or extra-legal containment strategies. Once again the notion of 'legal repression' appears problematic.

Collective political violence involving the assertion, extension, and consolidation of ethnic groups or subnational identities, presents a situation involving mixed modes of repression. The "sons of soil" and language riots have led to fascinatingly complex exercises in constitutional and legal accommodation.64 Such accommodation has often occurred after the CPV has been contained, usually through the techniques of routine legal repression. The foreign national issue in the present Assam movement, like the "separatist"Telengana movement in the fifties, has demonstrated pointedly mixed modes of repression. A theoretically rigorous grasp of the Assam type CPV and modes of repression, and the emergent social formations, remains high on the agenda of the student of contemporary Indian CPV.

Other forms of CPV involve campus violence and violence against women. The former has been extensively studied in terms of alienation, frustration, "politicization," anomie, and so on. But the question of how to relate campus violence effectively to the transitional dynamics of dual state power has not been explicitly raised. Student violence seems difficult to explain in these terms, as most of it appears devoid of developmental content. In passing, it would be worthwhile to note two features of cumulative result of campus violence. First, symbolic violence has been increasingly legitimated. Symbolic violence means damage to property or things. Burning buses, damaging furniture, libraries or equipment, has rarely involved setting the criminal law in motion. In fact, zone of immunity surrounds such symbolic violence. Second, even the normal techniques of legal repression (force feeding in cases of fast unto death, mass prosecutions for violence against persons) are not noticeably used in dealing with campus violence.

Violence against women, especially in terms of bride-burning and rape, is certainly on the rise. Measures for legal repression of this kind of violence are inadequate and are made to operate with utmost difficulty. A structural understanding of violence against Indian women in terms of Marxist neo-Marxist theories of patriarchy65 is yet to emerge. Even a cohesive liberal theory of violence against women is not in sight. Such a theory in any event will not fully focus on a structural grasp of causes of violence against women. Such violence is usually identified in terms of cultural practices and overlooks the relation of violence against women to the dominant modes

62. Supra note 18; and Desai, infra note 67.

63. Ibid., also see the seminal work of R. Guha, Elementary Aspects of Peasant Insurgency in Colonial India (1983).

64. See for e.g., Weiner et al., India's Preferential Policies: Migrants, the Middle Classes and Ethnic Equality (1981).

65. I. Balbus, Marxism and Domination (1982).
Industrial and electoral violence also represent forms of CPV. Electoral violence must be seen as inherently anti-democratic in terms of the analysis of Honderich. The more traditional form of electoral violence is represented by coerced voting or prevention from voting and associated practices of booth capturing. This violence is designed to influence the electoral process and verdict. There are signs that this is now an organized practice. The other form of violence is typified by the Nellie massacre, a phenomenon too recent to allow reasoned and total analysis, but in essence, symbolizing a violent disapproval of the holding or conduct of elections in the first place. The massacre which resulted in over 2000 killings (mostly along ethnic lines) has messages for the dual ruling classes which still have to be decoded.

Industrial violence, on the other hand, broadly reinforces the predominance of the capitalist mode of production. Legal repression of workers is an oft-noted phenomenon more so when labour is unorganized or disorganized. Once again this is an area in which the interaction of the legal and militaristic modes of repression and qualitative changes in relations of production in terms of class consciousness at the very least, have yet to be fully examined.

This paper is incomplete and inadequate. It offers a partial, and in this concluding section, impressionistic view of violence and repression. The potentialities of modes of repression in transformations of modes of production still await fuller examination. This, in turn, requires a more thorough elaboration of the nature of state, and therefore, of the law in contemporary Indian society.

VIII Postscript

Since this paper was completed (in 1983) CPV has grown in dimensions which, in a variety of ways, threaten the survival of ways of doing “democratic” politics. From the vocabulary of “anti-social” and “anti-national” elements, the Indian political idiom has moved, in a full-fledged way, to “terrorism” and “state-terrorism.” Forms of the latter have been archived now by the immortal labourers of Professor A.R. Desai.67 “Terrorism” still remains a scientifically unexplored phenomenon. It has elements of a new form, what must be described as, non-ideological violence. By this I mean, the use of annihilating force against adversaries and ordinary people (as means to avenge adversaries) devoid of any redemptive vision of Indian society. Non-ideological violence may seem to be even more menacing than violence stigmatized as “criminal violence” which often enough carries with it an implicit acknowledgement of injustice in society and coded messages concerning a just society. The crimes of the “impoverished” may be labelled as criminal violence; but they are, by and large, animated by calls to reconstruct India on, to say the least, more egalitarian basis.

68. See e.g., Veena Das and Ashis Nandy, “Violence, Victimhood, and Language of Silence,” 19 Contributions to Indian Sociology (N.S.) 177 (1985).
70. Id. at 115.