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Abstracts

Dietmar Rothermund
Constitution Making and Decolonization

The constitutions of the decolonized new nations were marked by the process of the devolution of power. This process had an impact on the agenda setting and arena setting embedded in these constitutions. 'Agenda' refers to the conduct of political affairs and 'arena' to the delimitation of the powers of Parliament, the design of constituencies, etc. As a special feature, federalism was introduced by several constitutions. It emerged as a device for the gradual devolution of power. In some instances it proved to be a permanent asset (India), in others it was contested (Nigeria) or rejected (Rhodesia). None of the new constitutions contained adequate provisions for the civilian control of the armed forces. The armed forces were simply taken for granted and their potential political role disregarded. But in many new nations political power was soon usurped by the armed forces and constitutional government was suspended.

Ranabir Samaddar
Law and Terror in the Age of Colonial Constitution Making

In this exploration into the close relation between terror and law, I attempt first to show that the relation between terror and law is not a simple question of relating violence to law, but to the very process of constitution making. Second, laws relating to terror may or may not find a formal place in the constitution, but this relation is essential to the working of the basic law, of the foundational concept of the rule of law. Third, intelligence gathering occupies a key place in this relation, and this activity, which has no mention in the constitution almost anywhere in the world, is the fulcrum on which reasons of state stand. Fourth, intelligence is the close monitoring of human movement, of the body, of the physical activities, and in this physical form of politics we have the meeting of the body and reasoning, terror and constitution, violence and law. And finally, the article describes a specifically Indian experience; yet may have larger significance in terms of retrieving the history of constitution making.

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Olivier Le Cour Grandmaison
The Exception and the Rule: On French Colonial Law

During the imperial period, French colonial law developed regimes of exception for indigenous peoples in contravention of the principles of the Declaration of the Rights of Man and the Citizen. These were justified by the need to secure order and by the claim that 'natives' were too 'backward' for the juridical principles upheld by the Declaration to apply to them. Introduced as temporary measures in Algeria in the 1840s, these measures, which discriminated between the French settler 'citizens' and the native 'subjects', became firmly entrenched by the Third Republic, supported by the emergence of the 'colonial sciences' and the International Colonial Institute in the late 19th century. The exception became the rule. The colonial juridical regimes were derogatory of principle in two major ways: they subsumed universality to territoriality and defined the personhood of indigenous peoples according to racial, cultural or religious affiliations rather than as part of a shared humanity. Two particularly exorbitant measures of wide application were administrative internment without right of review and collective responsibility of a group for individual actions. Such regimes of exception persisted in French colonies until after World War II.

Zoya Hasan
Constitutional Equality and the Politics of Representation in India

This paper is organized around the theme of political representation in India. Its first section deals with the changing politics of representation in India in the past two decades, the growing demands for proportional representation, and for political inclusion of two influential groups: the scheduled castes and tribes and Other Backward Classes. In the second section, representation is briefly explored in relation to women and minorities. The third section deals with some reflections on the challenges of political representation in India's diverse democracy. The author aims to account for the varied trajectories of caste, community and gender in Indian politics through an analysis of the politics of representation. The main argument developed here is that the politics of presence does not offer a resolution to the problems of under-representation nor to the more fundamental issue of the representation of the interests of constituents, especially the needs of the most vulnerable.

Marcus Franke
Wars without End: The Case of the Naga Hills

When placed into longer historical perspective using an interdisciplinary approach that fuses historical anthropology, history and political science, as well as hitherto unutilized primary sources, it can be demonstrated that the newly independent Indian Union right from the start under Nehru used constitution and law as instruments of subjugation that, since the latter remained incomplete, have prepared the ground for a war without end in the Naga Hills of Northeast India. Moreover, its

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history since the 1820s shows that constitution- and law-making are in essence shaped by power politics only to be countered by force, leading in this constellation to an unending guerrilla war transforming ever larger circles of terrain into a low-level war-zone and firmly enthroning a culture of violence with all its concomitants.

Paula Banerjee
The Acts and Facts of Women's Autonomy in India

This paper addresses questions of women's autonomy in India and analyses its location within the legal discourse. The women's movement has primarily tried to analyse questions of women's autonomy through exploring women's position in law. Among other indicators, women's position in society is often analysed through marriage, divorce and property acts. This paper analyses the evolution of these acts and critiques whether they have led to women's autonomy or merely subsumed questions of autonomy resulting in further marginalization of women in the polity. The paper begins with the assumption that locations matter and that laws affect different women differently, particularly in the context of India where civil law is constantly pitted against personal and customary law. To understand the situation of women in India, therefore, an understanding of the evolution of laws seems necessary, because laws are considered to be primary markers of autonomy.

Mohammad Waseem
Constitutionalism in Pakistan: The Changing Patterns of Dyarchy

This paper deals with the nature and direction of constitutional thinking and practice in Pakistan. It is argued that the country reflects a general malaise of post-colonial societies characterized by tension between the locus of power in the politico-administrative machinery and the source of legitimacy in the constitution. In the post-independence period, the State increasingly absorbed pressures from the newly enfranchised public, which sought to reshape politics in pursuit of nationalist goals. The institutional–constitutional framework of the post-colonial state was ill-equipped to accommodate much less to sponsor and pursue these goals in earnest. This led to a general accusation of institutional decay, leading to a crisis of democracy. The inherent institutional imbalance between bureaucracy and politicians in Pakistan made a mockery of such constitutional provisions as parliamentary sovereignty, procedural and substantive aspects of the legislative process at the federal and provincial levels and the principle of the government's accountability to its public representatives.

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Ujjwal Kumar Singh
The Silent Erosion: Anti-Terror Laws and Shifting Contours of Jurisprudence in India

This paper unravels the diverse strands in the manifestations of the Prevention of Terrorism Act (POTA, 2002), *focusing not only on law's words*, i.e. the rules, principles and procedures, and its interpretations in judgments, *but also on its effects*. Adopting the violence of jurisprudence approach, it eschews the dichotomy between law and violence, examining the '*effects* of legal force', in particular, the ways in which law becomes an integral part of the organization of state violence. Through an examination of the unfolding of POTA and laws dealing with 'organized crime' and 'unlawful activities' (Unlawful Activities Prevention Act, 1967, 2005), the trajectory of specific cases and judgments by Trial Courts, the High Courts and the Supreme Court, this paper shows how through an interlocking of the ordinary and extraordinary, anti-terror laws erode both the procedural and substantive aspects of the rule of law, become the terrain where permutations in alliance politics and configuration of power are played out, and assume an antagonistic notion of politics which seeks resolution through the elimination and externalization of difference. Extraordinary laws, it argues, are manifestations of a politics of negation. Processes that prolong the lives of such laws, and procedural interlocking and intermeshing that seek to give them permanence, are symptomatic of a deepening of the politics of negation.

Marc Gaborieau
Alice Thorner (1917–2005)

This is the obituary of Alice Thorner, an American scholar-specialist of the social history of India, who spent most of her career in France. She first worked with her husband, Daniel Thorner (1915–74), who briefly taught in Pennsylvania before being expelled from the USA by McCarthy. They lived in India from 1952 to 1960, where they worked on *Land and Labor*. They settled in Paris in 1960 when Daniel was appointed to the EPHE 6th section (now EHESS) where he taught the economic (especially agrarian) history of India up to his death, and became a member of the Centre of Indian Studies created by Louis Dumont. Alice, who travelled to India every year, continued her own research on gender studies, on working-class women, and on the town of Bombay. This paper, written by a younger colleague and friend, uses personal anecdotes to sketch Alice's career; it also lists her principal publications.

Mordecai Roshwald
The Biblical Roots of Democracy

While democracy is usually perceived as a Greco–European development, it is noteworthy that some of its roots can be found in the Bible. The Covenant between God and the tribes of Israel at Mount Sinai is based on the people's consent. God is seen

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as the King of Israel: theocracy means the rule of God literally, and not the rule of priests. The earthly kings are the people's brethren and must submit to the divine law. Freedom of speech is practised by Abraham when he argues with the Almighty about His resolve to destroy Sodom and Gomorrah. Such freedom became part and parcel of the Israelite tradition, exemplified by the prophets and in subsequent ages. Indeed, the vitality of democracy in the modern state of Israel may be largely due to its biblical antecedents.

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