Entangled histories of uneven modernities:
Civil society, caste solidarities and legal pluralism in post-colonial India

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Cartographies of social ties seem to have changed so rapidly that it is difficult today to read the old and new maps of social connectedness together. In the heydays of modernisation theory just thirty years ago solidarities of caste, community and religion were considered to be undesirable relics of the passing of “traditional” societies destined for the dustbin of history. There were no communitarians then who would have shared the prevailing Indian “backward” belief that individual identities were shaped by communities whose ways of life must be preserved and protected. Theorists of social capital were yet to discover that dense social networks of any variety whatsoever were good for civil society and democracy. Those were the days before bowling together, or rather playing cricket, had been found to further civic ties or democratic values. Religious communities were viewed with deep suspicion in India as they were believed to be an obstacle in the realisation of a secularist ideal which societies in the West were assumed to have achieved long ago. We were brought up to believe that the ills of traditional societies like ours, and its inability to modernise rapidly, were due to too dense a network of social ties, or at least social ties of the wrong kind. Affiliations of caste, solidarities of religion, parochial loyalties of language, ethnicity or region were seen as signs

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of backwardness. It was considered imperative in the interest of national progress and prosperity that Brahmins, Bengalis or Muslims be turned into Indians. Ties of citizenship and nationhood were viewed as modern, and desirable, forms of social connectedness. The Marxists, who were equally nationalistic, preferred class solidarity as the quintessential form of modern social ties - but that is another story.

Prior to the celebration of multiculturalism in the West, an urgent task of the post-colonial state was seen to be the overcoming of diversity rather than the recognition of difference. Constitutional safeguards for religious and cultural minorities in the Indian constitution framed in 1950, including the right to be governed by religiously-defined family laws of one’s own community, was a legal novelty without western precedent. The provisions in the Indian constitution of quotas in education and public employment for underprivileged and disadvantaged groups were bold innovations with roots, however, in colonial legacies of the institutionalisation of difference. Such collective compensatory measures to redress centuries of discrimination were equally unknown then in Western democracies. Both the numerical quotas and the right to one’s own religiously defined family laws were regarded as temporary measures necessary to facilitate the transition to a mature modernity characterised by legal homogeneity and individual rights of citizenship. By accepting several group–specific rights and devising a set of policies for the recognition of cultural differences in the public domain, which granted minorities autonomy and equal treatment while seeking to redress inequalities between groups, the Indian constitutional experiment departed from the then current models of Western liberalism (Mahajan 1995). It chose instead what Thomas Pantham has termed a “communitarian-liberal democracy” (1995:171), a post-colonial precedent which remains unrecognised in contemporary Western debates on minority rights and multiculturalism.

Ironically, while western societies faced with a crisis of national political culture discovered multiculturalism and group rights as the chickens of the Empire came home to roost, in India minority rights came under serious attack in the name of cultural homogeneity and national integration. The militant Hindu nationalist attack against minority rights in India today is animated by the desire for a homogenous political community based on a unitary and uniform culture and on the religion of the Hindu majority as the fundament of a strong nation–state modelled on the western image. Central to the rhetoric of political Hinduism is its insistence to right the wrongs of history, i.e. the loss and humiliation suffered by the Hindu majority at the hands of the Muslim minority. Couched in the vocabulary of religion this is a highly
modern statist project to eradicate any legal and political recognition of cultural and religious differences as Khilnani (1997) has pointed out. It thus includes plans for the reform of the Indian constitution in order to introduce a uniform legal code to replace the plurality of civil codes of law for different religious communities. In such a conception, the possibility of a plurality of cultures in the public sphere is precluded along with the desirability of a dialogue among communities with very different visions of the good life out of which a shared national culture, which embodies more than only procedural commitments, could evolve. If it is assumed that the national culture should be the culture of the dominant group, usually the majority (Offe 1998), (an issue which exercised the political imagination in the recent German debate on *Leitkultur* as well) then the question of whom the nation belong to culturally does not arise. However, if a shared and inclusive national culture appears just and desirable, such a composite culture must be the product of a dialogue between different groups irrespective of size and degrees of similarity.

There remained an uneasy fit between the legal recognition of collective rights of communities to their culture which may end up cementing those very social ties which the political process of nation-building seek to dissolve. In the process particularistic ties may well change their form but not necessarily in the direction of universalistic ones of individual citizenship. Nation-building was seen to entail the fashioning of individual citizens, governed by a uniform common civil code, out of members of castes and religious communities owing primary allegiance to these “primordial” sub-state entities and governed in personal matters by their own “traditional” collective norms. A society with a plurality of religions, linguistic communities, ethnic groups, castes and indigenous peoples strove for decades, therefore, to find “unity in diversity”, to use the official vocabulary, even as it sought to wear the garb of modernity differently as Prime Minister Nehru put it. That this garb was fashioned out of a traditional social fabric very different from the West, and one which had been cut according to colonial design, was a much later realisation that post-colonial theory was to use in the 1990s to formulate the idea of multiple or *alternative* modernities.

Recent attempts to pluralize modernity have been concerned with two sets of issues- (i) differences in the trajectories of modernity in different parts of the world; (ii) differences in the outcomes of these processes in different societies. Conceptualisations of plural modernities such as those of Eisenstadt (2000) or Therborn (1995) raise several questions concerning the relationship of European to non-European modernities under highly
asymmetrical conditions of domination and exploitation. What status would be accorded to the paradigm of "western" modernity (which must be pluralized as well) in a conceptualisation which recognizes historical and contemporary entanglements between western and non-western societies? Can multiple modernities be conceived in terms of different elements of modernity variously combined at different points of time in different societies?

Anthropologists working with the idea of a pluralisation of modernities, or of vernacularisation of modernity (Knauft 2002) have usually emphasized the creative and selective appropriations of various aspects of western modernities in different colonial and post-colonial contexts to produce a variety of hybrid outcomes. Once modernity is pluralized, it becomes possible to conceptualise trajectories and outcomes which diverge from the ideal typical historical experience of western societies. But even more importantly, it is possible to analyse the unevenness of processes of modernization in different spheres within a society. Consequently, the idea of a homogenous western modernity travelling, more or less imperfectly, to the rest of the world must be replaced by a more messy and complex picture of what I have termed disparate and divergent but uneven and entangled modernities (Randeria 1999a, 1999b). Rather than reconceptualising multiple or alternative modernities at the level of the nation-state (Indian or Japanese modernity) or in terms of 'cultures' or religions (African modernity, Islamic or Confucian modernity), it would be more fruitful to explore uneven modernities within a society. For modernity as social experience varies in the understandings and practices of different groups of people. Modernity has always been in tension with its others (the non-modern or anti-modern) but it has now also become a contested concept with a multiplicity of meanings which vary with actors and contexts. Its status has, therefore, altered significantly from that of a teleological and a historical-philosophical category as part of the Enlightenment project to that of a dimension of social experience and a part of the social imaginary which is acted and reflected upon.

In the universal language of modern social theory the history of the West is always written as world history. Of course, by globalising the categories of Western modernity capitalism and imperialism have lent some truth to this claim (Conrad/Randeria 2002). But discourses of multiple or alternative modernities may paradoxically cement rather than destabilise the categories of Western modernity as a universal narrative against which local difference in the experience of non-Western societies is measured. I would suggest replacing a “history of
absences” (Mamdani 1996), as in discourses of modernisation theory, or a history by analogy, as in discourses of alternative modernities, by a relational perspective which foregrounds processes of interaction and intermixture in the entangled histories of uneven modernities (Randeria 1999a, 1999b). Such a perspective would not privilege Western historical experience or trajectories and would be sensitive to the particularities of the non-Western society under study.

This essay seeks to connect the sequestered histories of civil society and legal pluralism in the West and outside it, and to locate them within the framework of (post)colonial governance. The first section delineates the entangled histories of civil society as the *locus classicus* of social ties independent of state and market which I have discussed in detail elsewhere (Randeria 2001b). Indian debates on civil society, which I discuss in the second section, interact with different western imaginings of civil society and serve to understand how local and translocal ideas, institutions and workings of civil society are inextricably intertwined. Civic activism against the state, and political as well as scholarly debates about it, in many parts of the "Third World" predate its rediscovery in the "Second World". A Eurocentric perspective on civil society often overlooks the fact that many of these debates in Latin America, Africa (Bayart 1996, Mamdani 1996), India (Kothari 1988, Sheth 1984, Kothari and Sethi 1991, Gupta 1999) are independent of the resurgence of interest in the idea of civil society in the West in the light of the eastern European experience. A more cosmopolitan understanding of civil society would, therefore, include those debates along with analyses of the workings of civil society outside Europe.

The third section is concerned with what Dirks (1992) sees as the Indian variant of civil society instituted by colonial rule -the ties of caste. Using Sudipto Kaviraj’s distinction between traditional “fuzzy” identities and modern enumerated ones, I critically examine the refashioning of multiple, fluid, contextually shifting personal identities and collective ties in pre-colonial India into monolithic, stable and homogenous identifications and belongings based on common interest rather than on social interaction. This process of transformation is illustrated with reference to the so-called “untouchable” castes, or Dalits as they prefer to call themselves collectively today. The status of these castes at the bottom of the social hierarchy is also examined with reference to the vexed issue of their inclusion into a pan-Indian “Hindu” community whose boundaries come to be defined and shaped by discourses and practices of the colonial state.
The final section of the paper engages with the controversial issue of legal pluralism in the sphere of family law in India which has been framed by its advocates and opponents in terms of the choice between community identity/autonomy and national integration/social cohesion. In my view both protagonists and detractors of legal pluralism have a narrow understanding of the issue as they confine the legal sphere to that of state law, thus according it a primacy and a privileged position it does not enjoy in social life. I look at the question instead from the vantage point of autonomous informal institutions of justice, outside the reach of the state or in limited interaction with state courts, which set and adjudicate their own norms for the majority of lower castes among Hindus and Muslims in western India.

My argument is that caste or *jamat* assemblies as the sphere of the self-regulation of communities through an autonomous production and adjudication of family law form an important domain of civil society in (post)colonial India. The workings of a civil society containing such collectivities challenges the liberal western conceptualisation of it as the sphere connecting autonomous individuals to the state. If civil society is understood instead as concerned with establishing and maintaining bonds of social solidarity and as a sphere of relatively autonomous self-regulation, castes and caste councils offer interesting material to think about civil society governed and organised in a very different way from a liberal understanding of it. A liberal conception of civil society would include only formal associations based on voluntary membership and on that criteria rule out of the ambit of civil society castes based on ascription. It would be a mistake to see caste councils as reflecting merely the “tyranny of cousins” as against the freedom to choose one’s identity which Gellner (1995) sees as characteristic of modern civil society. In my view the modernist bias inherent in such a narrow and eurocentric conception leads one to overlook rich forms of associational life in non-western societies just as it leads one to overdraw the contrast between choice and ascription and to represent tradition and modernity as binary opposites.

Contemporary caste-based associations are as much traditional ascriptive bodies as they are modern organisations of colonial origin (Randeria 1992a). The form of these associations does not adequately reflect their purposes. Some of them own considerable property, have elected office bearers, have their accounts audited, are registered with the Commissioner of Charities and publish regular newsletters. Many caste councils, which set norms and adjudicate family and marital disputes, are also associations which perform a variety of
services for their members—run secondary schools, colleges and hostels for students in urban areas; provide scholarships for education; run dharamshalas (dormitories) at large temple complexes and places of pilgrimage; provide medical aid; form networks for political mobilisation; organise meetings in large towns, which are announced in daily newspapers, at which marriages between younger caste-members can be arranged by their families. A view of civil society in India which disregards these often lower caste organisations straddling the traditional-modern divide underestimate the often chaotic and messy pluralism of associational life in modern western societies. The modernist and individualist bias of such a liberal position, based on the trajectory of civil society in a few western societies, precludes it from considering why the criteria of voluntary membership should take precedence over the criteria of autonomy from the state and internal self-regulation, for example, when judging which associations to include into civil society.

If as my empirical material suggests normative conflict within the local community of caste members is pivotal to its constitution, multiculturalism and value pluralism can not be understood in terms of the opposition between state and communities. In arguing that processes of internal disputation and contestation of norms within each group (rather than the difference between “traditional” or customary law and state law) are central to the collective identity of a caste, I interrogate the communitarian representation of communities as internally culturally homogenous entities. If the state is a contested terrain, communities are equally so. If one does not romanticize communities as the communitarian discourse often does, or read legal pluralism as a sign of a deficient modernity as jurists often do, it is possible to the map the changing contours and the intertwining of state and society, the shifting boundaries between the public and the private spheres in the domain of family law. An analysis of the hybrid institutions in this domain remind us of the unevenness of modernity in India where social ties of caste have neither dissolved nor been entirely transformed by state processes of codification and enumeration. If there is a convergence of western and non-western modernities, it is western discourses of communitarianism and practices of multiculturalism which have come to resemble the uneven modernities of post-colonial societies.

**Entangled Histories of Civil Society**

Adam Seligman (2002) suggests that the idea of civil society in late seventeenth and eighteenth century Europe developed in response to a crisis of social order not unlike the one
which has led to its recent renaissance- the growth of market economies, the commercialisation of land and labour, and the need to reconcile individual interests with the public good. It represented then, as again today, an attempt to conceive of a new ethical model of the workings of society in the face of a crisis of social order. In eighteenth century Europe, civil society came to be conceived of as the new moral source of social order in the wake of the questioning of God and King as transcendental and external foundations of order (Seligman 2002). The preoccupation with the idea at the end of the twentieth century is clearly due to the dismantling of socialist states, the disappointment with the overreach of capitalist welfare states and the disillusionment with the unfulfilled promises of modernising post-colonial states. Debates about civil society are also debates about modernity, pluralism, social cohesion and value consensus, individualism and communitarianism, about the shifting boundaries between the public and the private spheres.

Most recently in the neo-liberal agenda of restructuring the state, civil society, whittled down to a depoliticised sphere of NGOs, is seen as a cheaper and more efficient alternative to the state. Represented as a domain of civic virtue and voluntary associations, communitarian solidarity and self-help, this redefined domain of civil society excludes political struggles and challenges to state power. Instead it is seen as a sphere of market friendly institutions and service delivery agents outside and independent of the state. Such a vision overlooks the fact that civil society can hardly substitute state functions since it depends in part on state regulation for its functioning. A strong state is a necessary concomitant to a strong civil society as Jürgen Kocka (2000) has pointed out. Similarly Neera Chandhoke (1995) has argued forcefully that state and civil society constitute, support, or may even impede, one another. Delinking the two to conceptualise them as separate and distinct spheres impoverishes our understanding of both.

Civil society is a relational term which can only be understood in the matrix of a set of interdependent ideas and institutions - nation-state, market, public sphere, citizenship, rights-bearing individual. As John and Jean Comaroff (1999) remind us, these terms have had a highly chequered history in former colonies still struggling to free themselves of the intellectual and institutional legacies of European imperialism. Concomitant with the setting up of the colonial state the idea of civil society travelled to the colonies in the nineteenth century. It designated a sphere outside the colonial state either because the rulers sought to demarcate a sphere in which the state would not interfere, or because colonial subjects sought
to delimit the influence of colonial rule on certain areas of their lives using this newly available political vocabulary (Kaviraj /Khilnani 2001). If civil society in nineteenth century Europe came to be defined within and in relation to the nation-state, its emergence in the age of discoveries was related in part to the interest in very different modes and models of organising social life in the non-European world (Seligman 2002: 14-15). Civil society in the colonies was a product of imperial rule with transnational referents from its very inception.

John and Jean Comaroff have suggested that the broad contemporary transnational appeal of the idea of civil society as a "trope for these uncertain times" (1999:viii) is predicated upon the fact that it is not a concrete entity waiting to be explicitly defined and analytically demarcated once and for all. Rather than see civil society with Hall (1995) or Gellner (1994) as a unique Western achievement, and see its specific contours in non-western societies as a sign of difference or of deficiency, it may be important to see that the substance of the idea of civil society is inherently elusive both in the West and outside it. This is in part due to the complex intellectual history, and uneven political realisation, of this ideal over several centuries in the West as well the chequered history of its translation and conflictual domestication within the framework of colonial rule in most of the non-western world. A preoccupation with the European roots of the idea often obscure an understanding of the routes through which various, often divergent and incompatible, ideas of civil society and the institutions it encompasses have travelled to other regions and been received there.

I think that it is important to emphasise that there is no single coherent idea of civil society which has travelled from the West and has been, or could be, replicated elsewhere. Its contours in Europe, and outside it, have been redrawn in various social and political theories of which it has been an element and the different political visions it has been mobilised in support of. Various ideas of civil society were produced in Europe in the context of political practice answering specific historical needs as Khilnani and Kaviraj have shown (2001). Their appropriation and cultural translation outside the West relate in creative ways to a diversity of western traditions and were shaped by the political context in which they were forged usually in opposition to colonial rule. The strategies of defiance crafted by Gandhi in the Indian national movement against British domination, for instance, owed as much to a recontextualisation of Indian religious traditions of non-violence and everyday strategies of domestic resistance as to Ruskin’s writings on civil disobedience. But they were also a deeply deliberated civil response to the incivility of colonial rule. Asked once by a young British
journalist “Mr, Gandhi, what do you think of western civilisation?”, Gandhi’s famous reply was, “I think it would be a good idea.”

Anthropologists have often cast doubts on the value of an ethnocentric term like civil society for comparative purposes (Goody 2001) and have made their own contribution in particularising the term by exploring its very different referents in different societies including various European ones (Hann 1996). The usual mode of engaging in a comparative exercise idealises and abstracts from western experience in order to then compare (more often than not negatively) non-western trajectories, transformations and institutions of civil society as deficient or different. These narratives, whether Marxist or liberal, view social reality through the lens of binary oppositions (West/non-West, modern/traditional, societies with history/societies without history, secular/religious). Non-western societies, as the very term signifies are defined by negation. As André Béteille (1991) has argued, the dominant traditions of comparative research in the social sciences assign a priority to contrast over comparison, to difference over similarity, and to discontinuity over continuity when all non-western societies are compared in terms of their contrast to the West. The historical and contemporary experience of non-Western societies is understood in such a framework not in terms of what it is but in terms of what it is not. But as Mamdani (1996) has suggested an ahistorical essentialisation takes place on the western side of the binary opposition as well. An idealised image of civil society in the West is created against which, for example, a "marginal" African civil society (Mamdani 1996) or an "embryonic" Indian one (Heins 2001) is measured and found wanting. Such an exercise partakes in a grand narrative of world history cast in terms of binary contrasts, in which European historical experience is seen as both unique and universal.

One consequence of such a narrative, as Mamdani (1996) has argued, is that it accords the European experience both an analytical value and an universal status while regarding the non-European experience as residual. But if such a perspective caricatures the experience summed up as residual, it also homogenises and mythologies the experience postulated as normal. It ascribes a "suprahistorical trajectory" (Mamdani 1996) of development to western societies positing a necessary rather than a contingent path unaffected by the struggles which produced it. It renders the experience of both European and non-European societies ahistorical by robbing them of their historical specificity. An exploration of these historical specificities would situate different meanings and trajectories of civil society in a framework sensitive to
“multiple modernities” (Eisenstadt 2000), which would map the very different paths and patterns of civil society both within Europe as well as outside it. Moreover, it would enable a delineation of the entanglements, of varying degrees and kinds, of different European societies with their imperial and colonial projects overseas at different points in time (Cooper and Stoler 1997). Viewing metropolitan self-understanding through the prism of the (post-) colonial would enable a discussion of the complex play of inclusion/exclusion, disenfranchisement, recognition and exploitation of subjects and citizens, the incivility of civil society not merely "at home" but as intertwined in racism and violence abroad (Gilroy 2000, Said 1993). Such a perspective of what I have termed “entangled histories” of modernities within and outside the West overcomes both the methodological nationalism and Eurocentrism of the social sciences by seeing colonialism as constitutive of European modernity and not as external to it. By drawing attention, for example, to the fervent missionary activities of modern Europeans in the colonies such a perspective would unsettle the modernist narrative of a progressive secularization of Europe, which makes it possible to overlook, or at least underplay, the role of the churches, missionary societies and of religious associations in modern western civil societies, and regard these as characteristic of backward or imperfect non-european ones.

A perspective of entangled histories would argue no only against seeing a single coherent idea of civil society as emerging fully formed in Europe but also show how various European ideas of civil society were creatively used and developed further outside the confines of Europe and how these in turn affected metropolitan discourses and practices. After all there is little in common between de Tocqueville’s idea of civil society as a realm of secondary associations, Hegel’s use of it as an analytical category to designate a sphere of ethics differentiated from the family and the state where societal ethics and individual morality can be reconciled, Gramsci view of it as the sphere where the capitalist state establishes hegemony over society, and a Foucauldian perspective which interrogates the neat demarcation between state and civil society through a conception of the state as a disciplinary formation whose capillary power flows into all social institutions and into the very constitution of its subjects. Therefore, instead of tracing the diffusion of the ideas and institutions of civil society as a near universal with purely western roots, it may be more fruitful to analyse the contestation and deployment of various conceptions of civil society in the service of diverse theoretical positions and political agendas in both western and non-western societies today. These dialogues with
Western modernity expand or modify some of it ideas, but remain in part uncomfortable with it, as the Indian debates on civil society I review briefly in the next section illustrate.

**Traditional Solidarities vs. Modern Institutions: Civil Society as Contested Terrain**

The current controversies about questions of civil society in India are fuelled by concerns about the nature of democratic politics and citizenship rights on the subcontinent, the widespread disillusionment with the failures of the post-colonial state to deliver the goods, fears that undue state interference undermines the functioning of intermediate institutions and an interest in the revival or strengthening of indigenous traditions of civility. Activists and scholars alike have adopted the language of civil society to frame the legitimate rights of people in a democracy to make demands on the state, to render it accountable, to redress its malfunctioning and to curb its authoritarian policies.

Rajni Kothari, the leading theorist of civil society in India, premises his call for a 'humane governance' (1988) rooted in the subcontinent's own civilisational values and pre-colonial moral ordering of social relations on a diagnosis of the ills of the modern state. He views violence as inherent in the modern state and not merely as endemic only to its post-colonial formations. For him the creation of civil society must draw "upon available and still surviving traditions of togetherness, mutuality and resolution of differences and conflict - in short, traditions of a democratic collective that are our own and which we need to build in a changed historical context. This is the basic political task facing Indians - the creation of a civil society that is rooted in diversity yet cohering and holding together" (1991:29). Critics of such a culturalist-communitarian perspective point out that its nostalgic and selective rendering of tradition overlooks the inequalities, hierarchies and denial of individual freedom in these pre-modern traditions which continue into the present (Gupta 1999). Such a sweeping critique, however, obscures the fact that these neo-traditionalist critiques of modernity do not advocate an unqualified romantic return to tradition but emphasise the need for cultural moorings if alien institutions are to be successfully domesticated, a process which in their view requires a sensitivity to traditions in order to recover the best out of them. Ironically, the communitarian concept of civil society implies a return to a traditional moral ordering of community, the very hierarchical and pre-modern past from which Locke, Rousseau and Hegel sought to break away using the concept of civil society to move towards a shared public sphere of civic ties and trust among citizens/strangers.
Indian scholars of civil society (Kothari 1988, 1991; Nandy 1984, 1989; Sheth 1984; Chatterjee 1997, 2001) are not alone in privileging community ties over modern institutional arrangements. This seems to be a relatively dominant trend in current renditions of civil society in Western scholarship as well. It is against the background of disappointment with state performance or the perceived "overreach" of the state, that a tendency to romanticise "society" can be seen, especially those aspects of it least coloured by the (post-) colonial or the welfare state and, therefore, more 'civil' or authentic. Protagonists of this view of civil society tend to define the current malady in India to be a result of the colonial rupture with tradition and the neglect of the subcontinent's distinct cultural roots in building modern institutions. Civil society is thus understood as a realm before and/ or outside modernity and the modern state as Gupta (1999) has pointed out. It is represented as a sphere sensitive to cultural plurality and social heterogeneity, a diversity which the state has sought to homogenise into a national monoculture.

An interesting contrast to this perspective is the view of the Indian sociologist André Béteille (1994), for whom the social value of an idea or an institution is irrespective of its geographical origins and can never be reduced to these. His is a powerful critique of the search for more authentic ideas and institutions in tune with the cultural logic of Indian civilisation. His argument for strengthening constitutional democracy in India (Béteille 1991) emphasises the role of modern intermediate and voluntary associations following de Tocqueville. He sees the well-being of modern institutions in India guaranteed only if civil societies are understood as comprising truly autonomous bodies be they of modern colonial origin (Béteille 1996). For him citizenship and constitutional democracy cannot be built out of primordial ties of caste, kinship and religion as these have formed the basis of a hierarchical social integration in the past. These traditional solidarities and exclusionary loyalties, therefore, are responsible for the fragility and malfunctioning of modern institutions just as much as intervention by the state is. A plurality of inclusive, secular mediating institutions, relatively autonomous from the state as well as insulated from particularistic ties, is indispensable for the development and functioning of democracy in India. The success of the modern project of nation building is predicated on the expansion of this realm of civil society (Béteille 1998).
Placing himself squarely in the Hegelian tradition, Dipankar Gupta (1999) too argues that a modern state, rather than traditional ties of caste and religious community, collective norms and customary law, is indispensable to the functioning of civil society. The primary task of civil society is, therefore, to constitute a community of citizens bound by the ethics of freedom and not by the particularities of tradition or by the calculus of market interests. At the centre of his discussion of civil society is the issue of individual freedom and citizenship, in contradistinction to the neo-traditionalist and communitarian views centred around the collective rights and autonomy of communities. From the neo-traditionalist or the culturalist-communitarian perspective a civil society based on the civilisational values of the subcontinent is the answer to containing the violence of the modern post-colonial state. For modernists, liberals and Marxists alike, it is important instead to strengthen intermediate rational-legal institutions in India and expand their ambit and to protect the well-being of these institutions from the state as well as from particularistic ties which corrupt them.

For Gupta, civil society would include only those rational bureaucratic institutions which are compatible with individual freedom, equality, citizenship, deliberative procedures of decision making, autonomy and the freedom of entry and exit. Partha Chatterjee (2001) concurs with this conceptualisation of civil society but argues that the history of modernity in non-Western settings is replete with the emergence of “civil-social institutions” which do not conform to these principles and continues to remain restricted to a small section of well-off citizens. The incomplete modernisation of Indian state and society, which modernists like Gupta and Béteille would like to see completed along a Western trajectory, is for Chatterjee a distinctive feature of non-Western modernity, a marker of its colonial origins and its cultural difference.

Anata Giri (??)

Colonial Transformations of Caste Solidarities

The following two sections attempt to historicize and contextualise the ideas and institutions of civil society in India. They explore some of the ambiguities and tensions inherent to the idea by examining the workings of really existing civil society, i.e. the social practices of its inhabitants in a (post)colonial context. Apart from contributing to a less Eurocentric and a more cosmopolitan understanding of the uneven texture and changing contours of this domain of social ties as coloured by the policies of the state, the analysis also challenges a western definitional monopoly on ideas and institutions which have travelled worldwide. Moreover, it
counters the easy essentialisations and binary contrasts which characterise the current debates on the western origins of civil society and its less than perfect realisation in non-western societies.

The institutionalisation of group rights and of legal pluralism in India is part of the entangled histories of liberalism in western and non-western societies. Western liberalism attempted to create homogenous universal citizenship in the metropolis while simultaneously instituting and cementing difference in the colonies. Unlike European polities conceived within a liberal democratic framework, colonies were never imagined as homogenous. As Dirks (1992) has argued, despite its rhetoric of universalising modernity, colonial governance was concerned with the management and often even the production of difference. Castes and religious communities as we know them today are very much a product of enumeration, classification and categorization by the colonial state in the nineteenth and twentieth centuries (Cohn 1984; Kaviraj 1992; Appadurai 1993). Thus the groups which are bearers of collective rights in contemporary India as well as the kinds of rights claimed by them are shaped by processes of collective identity formation and community representation in colonial India. Whereas the ideology of colonialism pointed towards secular modern right bearing free citizenship and eventually nationhood, its reality dealt with not only the essentialisation of racial inequality but also the institutionalisation of an elaborate grammar of cultural diversity through bureaucratic and administrative practice.

There are two variants to the thesis that communalism in contemporary India is of colonial origin. The provision of separate electorates for religious minorities and the reservation of caste-based quotas in the administrative services have been regarded as powerful historical factors in the formation of caste and religious identities. Bipan Chandra (1981) has argued that these measures were an important instrument of the divide and rule strategy of the British, whereas Sarkar (1983) is of the view that the element of calculated incitement of communal hatred through these policies has been exaggerated. More recently, the emphasis in historical scholarship has shifted from colonial policy to colonial discourse. Exploring the knowledge/power nexus, it has been argued that colonial historiography, ethnography, cartography and census operations shaped and strengthened the collective identities of castes (Cohn 1968, 1984), religious communities (Pandey 1990) and 'tribes' or indigenous peoples (Devalle 1992).
The multiple identities based on cultural differences in pre-colonial India were fluid and flexible rather than exclusive and exhaustive partitions of the world. The prevalence of overlapping and cross-cutting idioms of difference meant that personal and collective identities were situational and segmented. For example, the community of Mole-Salam Garasia Rajputs in Gujarat had until recently a Hindu and a Muslim name for each of its members. There was no monolithic overarching ethnic identity cutting across caste, region, village of origin, religious denomination or sect. Moreover, the sense of distinctiveness on which each of these identities was predicated, was not based on a reification or an essentialisation of 'cultural' features which characterises modern ethnicity. Kaviraj (1992) has argued that these 'Gemeinschaften', in Toennies sense, were based on a sense of belonging and solidarity that had little to do with a convergence of economic or political interests. In such a conception, pre-colonial communities are seen as based on organic bonds of kinship, as pre-political primordial groups bound by tradition rather than as constituted through voluntary ties of association of a contractual legal kind (Shodhan 2001). As I argue in the final section, such a contrast misrepresents the nature of communities in that it overlooks that castes were, and most lower castes continue to be, largely self-governing local collectivities with authority and jurisdiction over its members. Although ascriptive in nature and bound by multiplex ties of social, marital and gift exchange, they were nonetheless political and jural entities and have remained so.

Kaviraj (1992: 20-26) has tried to capture the difference between pre-modern genuinely communitarian ways of conceiving a community and modern conceptions of it in the contrast between 'fuzzy' and 'enumerated' communities. 'Fuzzy' communities belonged to a world which was unmapped and unennumerated. These communities had fuzzy boundaries because some collective identities like those of caste or religion were not based on territory. Their members were not concerned to draw exact geographical boundaries of their communities, nor were they interested to unambiguously define and count all other members of the same region, caste, linguistic group, or denomination. Numbers were not the basis of political legitimacy in pre-colonial India. It was only in the colonial and post-colonial states that they came to be used to bargain for economic resources and political privileges. Just how new the idea of exclusivist religious identities is can be seen from the fact that in the Census of 1911, 200,000 Indians declared themselves to be 'Mohammedan Hindus' (Lokhandwala 1985).
Kaviraj suggests that the difference between fuzzy and enumerated communities has important consequences for the action-orientation of their members. Fuzzy traditional communities "did not see historical processes as things which could be bent to their collective will if people acted concertedly on a large-enough scale" (Kaviraj 1992:26). The enumeration of communities, introduced as part of colonial governmentality, brought about a radical change in this regard. Enumeration was not only a source of psychological strength regarding the size of the 'we' group but numerical majority became the basis of political legitimacy in the emerging nation state and it became imperative to define and draw precisely the boundaries of nations and of regions and communities within it. As I show in the following section, an evolutionary view of the transformation of traditional multiple belongings and diffuse identities into modern monolithic interest-based ones obscures the fact that even in a world of enumerated collectivities, many castes continue to function as local territorially demarcated groups kin and affines with their own norms, procedures and practices of self-government which they jealously guard from state intervention. Relative autonomy as ascriptive groups in the domain of family law, however, does not prevent them from collective interest-based mobilisation based on the arithmetic of vote banks in the electoral context. So that different kinds of ties based on different logics of connectedness are deployed by caste members in different contexts.

But to return to the colonial context of objectification of ties due to the technologies of counting and codification. In order to enumerate the entities which were to form the basis of colonial policies, unambiguous definitional criteria were necessary. That these were messy categories was often clear to those administering them. The colonial state nevertheless adopted caste and religion for the purpose of census enumeration, for the allocation of seats in representative bodies and for job appointments in the administration. For example, concerning the term Hindu the Madras Census Report stated as early as 1881, "Regarded as a definition of religion, or even of race, it is more liberal than accurate" (quoted in Lütt 1993:1). But perhaps even more importantly, the decennial census operations and the policies based on them led to these categories becoming intensely contested. Being perceived as a member of a community was no longer a matter of the changing interactional contexts but became subject to definitive bureaucratic classification. It touched on not only questions of self-identity but involved high political and economic stakes for the elites of the different castes and communities. By the early years of the twentieth century, communal parties and caste organisations mobilised their respective all-India constituencies, created in the process of
enumeration, in defence of their interests and for a greater share of political and economic power.

The logic and dynamic of transformation of fuzzy local communities into enumerated regional or national entities can be illustrated with reference to the so-called 'untouchable castes' at the very bottom of the caste hierarchy. It is important to remember that this did not lead to the erosion of other modes of belonging but added another dimension to them which could be deployed according to context, as I have pointed out above. These communities at the very bottom of the caste system, whose existence interrogates the construction of a homogeneous Hindu majority, are chosen here to illustrate the new forms of social connectedness for three reasons. First, these are the castes whose practices of self-regulation are the focus of the next section on legal pluralism and the autonomy of caste councils.

Secondly, it will be argued that by separating them out and constituting them as an all-India category, colonial discourse and policy set in motion a process which acquired a dynamic of its own with several unintended consequences. It had important consequences for the subsequent self-identity of these collectivities at the all-India level and for the formulation and implementation of state policies in relation to them even today. The reflexive process of social ties being moulded by the way they are conceptualised by the states is reflected in the hundred year old career of the term 'untouchable castes' spanning local, regional, national and global levels (Randeria 1992a). Varying practices of discrimination against several communities at the margins of local caste hierarchies were first reified at a regional level in colonial ethnographies and then elevated in the census to form an all-India category embodying the essence of this discrimination in terms of 'untouchability'. The colonial policy of caste-based quotas, which continues in contemporary India, is a bone of contention for liberal secular intellectuals and the propounders of a Hindu nationalism alike. For the former, state policies based on particularistic identities contravene the principles of modern nation building based on the equality of all citizens, whereas for the latter a monolithic majoritarian Hinduism is difficult to maintain in the face of politicisation of caste identities and growing caste conflicts (Randeria 1996).

Finally, problems of collective identity and boundary maintenance have usually been studied with reference to minorities and disadvantaged groups on the implicit assumption that majorities and dominant groups have few problems in this regard. But the massive public
controversy in the 1920s on the question of whether Untouchables were Hindus -- a question which would have been both meaningless and of no significance only a century earlier--shows that the construction of a Hindu identity encompassing these groups was a highly contested process in colonial India. Moreover, their inclusion was perceived to be so vital for a Hindu majority in the political numbers game that in the early decades of this century, the need for a reform of Hinduism was advocated to avert the danger of a dwindling of the Hindu population through conversions. The concerted efforts of Hindu nationalists to 'reconvert' to Hinduism Untouchables who have become Muslims or Christians, and to prevent such conversions if possible, shows that the identity and integration of these communities remains a problem for political Hinduism in the present as well (Randeria 1996).

Castes arranged in an orderly hierarchy were chosen by the British administrators as the most important category with which to map and control Indian society. Although administrative necessity was said to be the official rationale for recording information on castes, nationalist Indians felt that it was part of the design "to keep alive, if not exacerbate, the numerous divisions already present in Indian society" (Srinivas 1966: 100). In order to collect 'objective' information, the fluid contours of a caste unit as well situational and segmented identities and belongings had to be resolved in favour of unambiguous categories. A standardisation of caste names and definitional criteria became necessary in order to ensure all-India comparability.

The groups separated out at the bottom of the local caste hierarchies as the repository of 'Untouchability' came thus to constitute a distinct all-India category embodying this essence. The group of castes so demarcated became not only the object of missionary activity and conversions, of philanthropic practice and Hindu reformist zeal but also of administrative interest and political concessions. In order to ascertain their numerical strength, a few defining features out of the diversity of local cultural practices were chosen which were used to construct an all-India community.

The estimate of the 'Depressed Classes' population, as the 'Untouchables' were then called, varied widely depending on the specific criteria of ritual and social exclusion that were used, e.g. non-access to temples, wells, association with an impure occupation, or more broadly low status in the caste hierarchy. Around 1917, pollution by touch for the upper castes (i.e. 'untouchability') came to be the chief criteria for inclusion in the category. My argument is not that the if castes had not existed, the British would have invented them. What they did,
however, was to use 'untouchability', an attribute of all inter-caste relations, to characterise a particular group of castes in every region and set them apart as beneficiaries of political concessions and welfare measures. But once these categories were used by missionaries, administrators and Orientalists, they functioned in a recursive manner and as ethnic labels were appropriated by the people so designated for the conceptual reification of groups.

The boundaries of an all-India category of 'untouchable castes' were drawn once and for all in terms of a check-list of 'civic disabilities' suffered by them put together by the Census Commissioner in 1931. These included access to services of Brahmans, to 'public utilities' like wells and schools, to temples etc. To conceive of these exclusions in terms of 'civic disabilities' is to impose a modernist category which pre-supposes the existence of a civil society rather than a world of caste divisions and interactions governed in different situations by different idioms of ritual ranking in which exclusion was a matter of degrees and contexts. Galanter (1984:122-131) has pointed out that it was also not clear what was to count as evidence with regard to a local practice, as services of Brahmans, access to wells and temples etc. were all matters of claims and counter-claims. Particular local practices did not reflect the rights of groups, which is what the state wanted to ascertain with regard to public utilities, but rather continual contestation about ranking.

How far colonial rule and modern competitive politics were responsible for the reshaping of collective identities, and the role of indigenous agency in the process, remain matters of deep division among historians of modern India. But for my purpose here it is enough to have shown the historically changing character of ties of communities of caste and religion in interaction with the state. Recognising the historical processes of community formation does not, however, render contemporary identifications, belongings and claims based on these illegitimate. But it does point to a central dilemma inherited by the post-colonial Indian state - how to institutionalise the recognition of difference in a way that does not essentialize and cement difference. Can bureaucratic and legal mechanisms for coping with cultural heterogeneity be made compatible with the constructivist insight that cultures are not immutable bounded wholes and that identities are flexible, plural and contextually shifting? One of the challenges for future social and political theory will be to simultaneously address the claims of both equality and identity, whose unresolved tension continues to trouble the Indian model of communitarian-liberal democracy. The Indian experience in this regard has much to contribute to western debates on differentiated citizenship, cultural rights of
communities and affirmative action which are carried out in ignorance of non-Western experiences with diversity and pluralism.

**Legal Pluralism and Autonomous Caste Councils**

These theoretical debates among historians, political scientists and sociologists/social anthropologists in India serve to frame my discussion of local castes, and especially caste councils, as relatively autonomous arena for the setting, implementing and interpreting of norms with regard to engagement, marital conflicts and affinal gifts, inheritance, divorce, remarriage and the custody of children. If civil society is the space of social self-organisation between, family, state and market (Kocka 2000:4), it must include in the Indian context not only caste councils and associations but a variety of other non-state legal institutions of self-government and regulation of social life relatively autonomous from the state. Given the pre-colonial and colonial history of relative legal autonomy and pluralism in India, the state has never had a monopoly over the production, administration or interpretation of personal law. In postcolonial India, non-state legal institutions span a wide variety of institutions ranging from "traditional" caste councils which exclude women from participation to "modern" hybrid women’s bodies. The latter comprises of newly established women’s courts (*nari adalat*) under a government of India directed, and Dutch government financed, project of women's empowerment (*Mahila Samakhya*) or experiments in gender justice by NGOs in Rajasthan supporting the inclusion of women into traditional caste councils and the setting up of parallel women’s caste councils.

Women’s organisations like Jyoti Sangh in Ahmedabad (Gujarat) would also fall under this category. It has a long history dating back to pre-independence India of settling marital disputes of women from all castes and classes and a formidable reputation for following up and enforcing the terms of reconciliation it has worked out with the couple after extensive consultations with the extended family. But the category of autonomous hybrid institutions in the field of dispute resolution, straddling the traditional and modern divide, would also include Gandhian organisations or Jesuit missionaries in south Gujarat who mediate in family and property disputes among the indigenous communities (*adivasi*) whom they provide various other educational and medical services. With the exception of the women’s courts (*nari adalat*), none of these organisations are recognised by the state as legal fora. However, their decisions, based on a norms woven together from a variety of sources, are accepted, and
sometimes even sought, by lower state courts. Compared to rulings by state courts, these usually elicit much greater compliance from the disputants because they not only recognise these decisions as morally binding and closer to their own quotidian values and practices but also because the parties to the conflict have participated, along with the entire community, in arriving at these compromises.

Six distinct sets of phenomena must be distinguished analytically within the contemporary plurality of legal regimes and the role of civil society institutions in the domain of family law in Gujarat (western India):

i) the prevalence of separate religiously based family laws for members of different religious communities throughout the country (Hindu, Muslim, Christian, Parsi). Codified by the British colonial state, and reformed by the post-colonial state in the case of the Hindu Personal Law, these are administered by state courts;

ii) the de facto toleration by the state of a multiplicity of "traditional" legal authorities and institutions along with a multiplicity of "customary" and scriptural sources of norms as administered by caste, "tribal" or jamat councils (panchayats) which both adjudicate and reform these laws for the members of their own local communities;

iii) the explicit constitutional provision for communities of indigenous peoples (so-called "Scheduled Tribes") to be governed by their own set of customary family laws in state courts as well as their own autonomous fora;

iv) the toleration by the state of the role of several voluntary organisations including women’s organisations, Gndhain institutions and church-based NGOs which seek to resolve family conflicts in accordance with a diverse set of legal norms using mediation;

v) the setting up by the state of "people’s courts" as a speedy cheap and accessible alternative to state courts in order to lessen the pressure on the state system;

vi) the introduction of "women’s courts" (nari adalat) by the “Mahila Samakhya” programmes set up under a state initiated programme for women’s empowerment and gender justice funded by Dutch development aid.

All these institutions operate parallel to, and in varying degrees of interaction with, state law and state courts. An analysis of their complex articulation with state-centred legal regimes would help to transcend the dichotomies in terms of which discussions of legal pluralism are often framed: tradition/modernity, state/community, state/civil society; secular/religious. These relatively autonomous “traditional” institutions such as caste councils fit neither the
liberal model of civil society based on individual rights of citizenships nor the liberal assumption of the monopoly of the state over law. But they do not fit Partha Chatterjee’s idea of "political society" discussed above either as these are not arena of collective bargaining and negotiation with the state but rather arena in which communities govern their own internal affairs. My argument is that caste and community based institutions be seen as part of the specificity of the workings of civil society, and the uneven texture of post-colonial modernity in India, rather than define them out of the public sphere of civil society as representing "primordial" ties as opposed to "civic ties", or see these as administering “customary law” as modernists like Dipankar Gupta are want to.

An examination of the concepts and conduct of "informal justice" in post-colonial India poses a challenge to liberal social and political theory derived from western historical trajectories of individual rights of citizenship as well as the monopoly of the state over law. Moreover, it reveals the existence of a fracturing of sovereignty within the nation-state which the contemporary academic and political debates about a uniform civil code in India obscure. By reducing law to state law they accord it a primacy and a privileged status it does not have in practice. Academic and public debates in India have been largely concerned only with religiously based personal law, of colonial provenance, administered in upper level state courts leading to a rather narrow understanding of legal pluralism. The exclusive focus on state law has eclipsed the role of civil society institutions like NGOs and women’s organisations, Jesuit and Gandhian institutions as well as the workings of caste councils and popular justice in the field of family law. Keeping the wide variety and hybrid institutions of informal justice and legal plurality in mind would enable a mapping of the changing contours of state and civil society relations along with shifts in the boundary between the public and the private spheres.

Nivedita Menon (1996) has argued that from the point of view of gender justice, feminists should reject the homogenising thrust of a uniform family law which seeks to subordinate women’s interests in the name of national integration. She cautions against the tendency to naturalise communities in order to claim rights in the name of such primordial ties represented as prior to other identifications and belongings. As I have argued in the previous section, contemporary communities are far from immutable entities with unalterable contours and customs but have been formed in the process of historical interaction with one another but also with the practices of the colonial state. So that any attempt to subordinate the interests of
women to the interests of communities defined as internally homogenous and conceived of as the collective bearers of rights is equally problematic. The rights of autonomy and difference which communities claim vis a vis the state must be extended to women as members of communities as well. It is in this context that the right to exit from a community, or the right to choose whether or not to belong to a community, has come to define its civility for many feminists rather than simply the ascriptive nature of membership in it by virtue of birth.

Yet another perhaps unusual argument for the civility of castes could be put forward in this context which contrasts with the stress on their unfree character in the literature on modern civil society and the coercive nature of this realm of the “tyranny of cousins” (Gellner 1995). The caste assembly, or panchayat, composed of all adult male members of a territorial unit of a caste, functions as the primary local unit of identification and belonging. Collective identity, patterns of solidarity, ties of kinship and affinity but also community power structures and the authority of caste elders are all constituted with reference to it. Following Moore (1994), a panchayat can be understood more as a process with changing participants than an institution or an event. It is an important forum in which local community norms are subject to continual deliberation and periodic revision. Processes of internal disputation and contestation of norms within each caste (rather than the difference between community and state law) are central to the collective identity of a local sub-caste (Randeria 1992a). My ethnographic material generated during fieldwork among the Dalits, or “untouchable” castes in north Gujarat reminds us of the workings of local sub-divisions of castes as communities of discourse. Caste assemblies, comprising of all adult men, set the rules and procedures by which they are collectively governed, they commit them to writing, and also interpret and change these norms in longwinded processes of public negotiation. Legal and rhetorical skills are well distributed in the community and the informal and nonprofessional nature of the proceedings ensures greater accessibility and participation.

Each Dalit caste in the area is subdivided into several named local units constituted by a set of villages spread over a particular area. These local units, or paraganu, often do not encompass contiguous villages. Following Max Weber, Klass (1980) treats each subdivision of a caste as an autocephalous Verband, a corporate group with its own leadership and internal control mechanisms, admitting no other or higher level of authority. Rather than emphasize their corporate character, I have chosen to follow my Dalit interlocutors in conceiving of them as territorially defined autonomous politico-jural units which may function as units of endogamy.
but whose main function is the administration of all local caste matters including the rules of
connubium and commensality which bind members together. Interestingly, the Gujarati word
for caste is either nat, (derived from the Sanskrit gynati meaning species) or samaj, or society,
which are used as synonyms. The latter usage is a pointer to the fact that the social world of a
caste is not conceptualised by its members as the arena of private particularistic interests as
opposed to a larger public sphere defined in relation to the state or seen as encompassing the
entire nation. In fact, they see the ties of solidarity marked by reciprocal food exchange and
the exchange of women and gifts which characterise castes as local communities to belong
to the public sphere of sociality par excellence, and contrast it to the private sphere of narrow
individual self-interest (Randeria 1992b;1999d).

Each local caste unit, or paraganu, has its own written and printed “caste constitution”
(bandharan) which contains all the rules of gift-exchange with kin, affines and service castes
to be followed at life-cycle rituals in addition to the procedures and punishments for breaking
an engagement, for divorce, for the remarriage of widows and divorcees and the custody of
children. Caste assemblies legislate, administer and adjudicate the internal affairs of the
paraganu, enforce and interpret the norms, punish transgressions and collect fines or even ex-
communicate the offending families from membership of the local caste. Written caste
constitutions all over Gujarat seem to have been a response to the process of collection and
codification of caste norms under colonial rule. In 1827, the British Collector of Ahmedabad,
Borrodaille, launched a large-scale administrative enquiry to collate the “customs” of all
castes through interviews with selected male caste leaders in order to provide the colonial
judiciary with information on which to base its decisions. This seems to have given a fillip to
caste assemblies to commit to writing and to publish their hitherto flexible oral local norms
which were highly contextual. The form of present day caste constitutions corresponds closely
to the structure of the colonial questionnaires administered almost two centuries ago
(Randeria 1992a).

The process of codification, however, has not completely frozen the highly flexible norms in
question. The written document remains only one source of norms besides precedent,
practices of neighbouring subdivisions of the same caste, etc. in the long and acrimonious
public contestation of the rules and their interpretation at caste assemblies. Caste councils
handle disputes very differently from the way courts do. As Hayden (1981, 1983) has shown, conflicts between individuals are transformed in the assembly into a matter of dispute between each party and the caste as a whole. Rather than treating the offending persons, or rather families, as parties to a conflict, the offending family, or rather all families of the caste resident in a particular village, are considered to have committed an offence against the caste. In speeches by caste leaders before the assembly, disputes are attributed to narrow self-interest and are represented as polluting the purity of the collective body of the caste, whose sacredness is compared to the river Ganges or to God. Dispute resolution on these occasions does not follow a set trajectory beginning with the statement of a complaint to the final resolution culminating in the crafting of a compromise capable of generating consensus. In these attempts at mediation, which last as long as it takes to reach a consensus, each side loses some and gains some. The family held guilty is made to pay a price for transgression of norms but an attempt is made to avoid a rupture in social relationships. Discussions proceed in a meandering manner in which mobilisation of kin and affinal networks, past alliances, behind the scenes bribes and relationships of power determine the course of the proceedings which may stretch over months of negotiations at various caste assembly meetings. These factors, along with the rhetorical skills of the disputing parties and their allies, influence which issues are brought up, how they are framed, which issues are kept out, how long the deliberations take, whether consensus can be reached, which set of norms are applied, which precedents are considered relevant, how heavy a fine is levied and whether the offenders are excommunicated from membership of the caste.

If normative conflict within a spatially defined caste unit (paraganu) is pivotal to its constitution as a community, then community justice is as contested a terrain as state law. Villagers told me in interviews that they often used both these fora parallely for different purposes. State courts are used in order to delay the resolution of a dispute interminably, demonstrate one’s networks of influence outside the caste, harass an opponent and ruin him economically by pushing up the costs of a prolonged conflict. Justice is then sought in the caste assembly using familiar local idioms, supported by one’s network of kin and affinal ties

2 However, the differences between the two are often exaggerated by seeing upper level courts as the prototype of state law. Lower courts, though of course not embedded in the social life of the community, often exhibit greater similarity to community justice for example in their use of mediation or in their application of the community’s own norms rather than state law.
and according to the norms of one’s community. There is a great deal of continuity between everyday social interaction and dispute settlement in caste assemblies. So that even women, who may not speak for themselves in these fora but have to be represented by their fathers and uncles, usually prefer the familiar arena of caste assemblies, embedded within their social world, to the unfamiliar and distant world of state courts. Usually only young upwardly mobile men, resident in urban areas and with good salaries of their own, prefer to use state courts for divorces in a bid to cut their ties of caste and to escape from family pressure. It is not as if villagers very often prefer caste panchayats to courts as speedier or cheaper options. Bribes have to be paid in both cases but the money spent in caste assemblies build upon and strengthen multiplex social ties and contribute to social capital which can be used in the future for other purposes as well. Money paid to lawyers, judges, police and witnesses is seen, on the contrary, as a waste. It nurtures no social relationships, builds no new bonds of trust and can not be put to any other future use either.

Unpacking categories like civil society or community enables the delineation of some of the richness, the complexity but also the ambivalences and paradoxes of contemporary processes of legal pluralism. Perhaps the uneven modernities of the semi-periphery make available political spaces for non-state actors, especially in the sphere of legal production, which are eclipsed in the advanced capitalist countries by a statist imaginary. Rather than merely see this as a sign of the weakness or failure of the state in post-colonial societies, one could also see it as a chance for justice to be realised by a diversity of actors possessing varying ranges of capabilities. Many women’s NGOs working in rural areas have, therefore, preferred to struggle for the inclusion of women into traditional caste councils or have set up alternate women’s councils rather than rely on state law and courts for gender-just family laws and their implementation.

Veena Das (1995) has argued that an authentic “traditional” telos is as unavailable in contemporary Indian society as is any modern institution which has not been coloured by its location. All major institutions in India are reconstituted through their double articulation in tradition and modernity. It is this texture of Indian modernity, with its failure to emancipate from the bonds of caste, class and gender, that a conceptualisation in terms of unevenness is meant to capture. As my account of caste solidarities and non-state legal regimes in India reminds us, “traditional” ideas, values and institutions are not residual traces of a vanishing past in colonial and post-colonial settings but constitutive features of modern life.
material on the plurality of sources of norms and of arena of conflict resolution in the area of family life shows how uneasily the ‘traditional’-'modern’ dichotomy fits the easy quotidian intermingling of discourses and practices posited as contradictory binary opposites in theories of modernization.

The scholarly debates and everyday practices I have outlined here allow an analysis of the actual workings of civil society and the dilemmas of its actors vies a vies the state. State intervention in the lives of poor and marginalised communities in India is highly selective. Indifferent to the governance of domestic discord among the poor, their caste conflicts and marital strife, the state is ever vigilant, and even coercive, in its control over their fertility and family size as the history of dirigist population policy in India amply illustrates (Randeria 1995, 1999c). Unconcerned about the lives and livelihoods of these citizens, the state is highly interventionist in its control over the natural resources held as commons by these communities (Randeria 2002a). It recognises the cultural rights of communities but not their collective rights over natural resources (land, water, forests). Thus the multiple or fractured sovereignties which are characteristic of the domain of family law could not be extended to cover the commons. The cunning state, as I have argued elsewhere (Randeria 2000; 2001a, 2002b), chooses to exercise selective and partial sovereignty over its territory and its citizens. However, what would appear in liberal theory, and from a statist perspective, as the failure of the state, or its weakness, could also be seen as an opportunity. The absence of state hegemony in some areas of social life along with its inability, or unwillingness, to colonise completely the lifeworlds of its citizens also provides a space for dissenting imaginaries. Rather than seek statist solutions based on western models, the challenge is to be able to develop alternatives, and experiment with them, as tools of a new moral and social imagination sensitive to the textures and rhythms of uneven modernities in India.

This paper has had a long and chequered history and has been presented to several audiences in its various incarnations. Originally written to address issues of multiculturalism, group rights and practices of citizenship in India for a conference of the “Theory, Cultural and Society” group in London in 1999, it benefitted greatly from the comments of Stuart Hall, Mike Featherstone and Scott Lash. Its focus shifted to include a consideration of legal pluralism and community justice thanks to intensive dialogues with Boaventura de Sousa Santos during my participation in the project of his Centre for Social Studies, Coimbra and the MacArthur Foundation on “Reinventing Social Emancipation”. A first draft of the present
version was presented at the conference on “Bindung” (Ties) as part of the Wissenschaftskolleg, Berlin AGORA 2000 project of which I was a member. Comments by Richard Schweder and Sally Humphreys helped me to clarify several issues in the last two sections. An earlier version of the paper was published in the conference volume edited by Yehuda Elkana et al. “Unraveling Ties: From Social Cohesion to New Practices of Connectedness” (2002, Frankfurt/M.). I am grateful to John Keane for discussions which helped give final shape to the section on civil society. In its present form the paper was presented at the conference “European Civil Society” organised by the Civil Society Network at the Wissenschaftszentrum für Sozialforschung Berlin (WZB) in Nov. 2002 and incorporates some of the comments and suggestions made by Prof. Shmuel Eisenstadt.

References


Chandra, Bipan (1981), Nationalism and Communalism in Modern India. New Delhi.


Dirks, Nicholas (1992), *Colonialism and Culture*, Ann Arbor.


Mamdami, Mahmood (1996), Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism, Princeton.


Offe, Claus (1998) “‘Homogeneity’ and Constitutional Democracy: Group Rights as an 

New Delhi.


Castes in Western India (Gujarat)*. Dissertation, Free University Berlin.

Randeria, Shalini (1992b),“Kings, Brahmans, 'Untouchables': Caste-Hierarchy and Gift-
Exchange Western India“, In: W. Lepenies (ed.): *Wissenschaftskolleg Jahrbuch* 1990-1991, 
Berlin, p. 294-312.


Randeria, Shalini (1996):“ „Hindu-Fundamentalismus": Zum Verhältnis von Religion, Politik 
und Geschichte im modernen Indien“, In: G. Elwert et. al, (ed.), *Kulturen und Innovationen: 
Festschrift für Wolfgang Rudolph*, Berlin, p. 333-361.

Randeria, Shalini (1999a): „Geteilte Geschichte und verwobene Moderne“, in: Jörn Rüsen et 
al. (ed.): *Zukunftsentwürfe. Ideen für eine Kultur der Veränderung*, Frankfurt, p. 87-96.


Randeria, Shalini (2001a), Local Refractions of Global Governance: Legal Plurality, International Institutions, the Postcolonial State and NGO’s in India, Habilitation. Faculty Politik- und Sozialwissenschaften Free University Berlin.


