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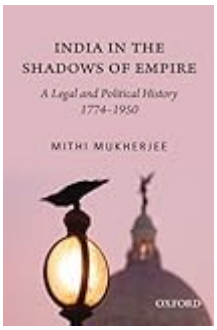

Mithi Mukherjee. *India in the Shadows of Empire: A Legal and Political History, 1774-1950.* New Delhi: Oxford University Press, 2010. xxxviii + 278 pp. $50.00 (cloth), ISBN 978-0-19-806250-9.

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A Discourse of Justice: British Imperial Law in India

Mithi Mukherjeeâs book examines the history of the empireâs lingering presence in and the colonial history of South Asia through the lens of laws and legal institutions, modes, and discourses. Mukherjee argues persuasively for the need to ground our understanding of postcolonial political formations in India in the colonial history of political discourses. She extends Michel Foucaultâs analysis to the political domain and deploys the categories of discourse and teleology (explained as goal-specific discourse) to remind readers that polity and political processes in India should not be simply understood as if they had no history and as if they originated sui generis. Instead, she maintains, this polity has a political and cultural genealogy, and is a product of discourses and conflicts of the colonial past.

In making her case through a study of judicial institutions and juridical categories, the author spotlights the centrality of claims about deliverance of justice as liberty and equity in colonial governance and anticolonial movements as well as in the lead up to the framing of the Indian constitution. She provides a history of judicial discourse by studying imperial and colonial judicial and legislative archives. The judicial discourse bore a core relevance to the empireâs existence on the subcontinent, to the colony, and to India, and was securely anchored in colonial history with its own moments of mutation. The narrative in the chapters advances by analyzing justice corresponding with major political contests and movements as cut-off points. The author grounds discourses in institutions and sees them as seeking expression through enunciative personae, such as that of an Edmund Burke or a Mahatma Gandhi.

Chapters 1 and 2 illustrate the enunciation of a discourse of imperial justice in the metropolis and the colony respectively. The trial to impeach Warren Hastings in the House of Lords demonstrated in a very public way various parameters of the claims made around imperial justice in Great Britain as Burke took up the role of a plaintiff in bringing up charges of misrule against the governor-general. Mukherjee tracks the construction of âa denationalized and de-territorialized discourse of empireâ in Burkeâs accusations (p. 7). Burke rested his dis-

course of imperial justice not on English common law but on natural law of justice and law of nations, which put the people of India, the colonial state, and the House of Lords or the king in a triadic relationship in which the monarch was visualized as an impartial judge. This was a discourse of universal justice pivoted on the empire which aimed to insert an âimperialâ arbiter in conflicts between the colonial state and the people of India. Hastings was eventually exonerated and even Burkean logic was set aside by the later-day utilitarians in the colony. But Burkean intervention was still significant as an important milestone in the development of the principle of justice in colonial and Indian polity.

In the last quarter of the eighteenth century, the practice of an exterior, censorial critique of the colonial state in the name of imperial justice also materialized in the workings of the Supreme Court from Calcutta. As the court attacked the legality of actions taken by colonial state officials, the East India Company state fought back to defend its sovereignty. The colonial administration advanced a competing discourse that underlined the need to preserve the powers of the state.

Neither the Companyâs colonial discourse of sovereignty over the people of India nor the imperial discourse of justice could fend off the eruption of the 1857 revolt. Chapter 3 documents the emergence of another set of justifications of colonial rule. The two new discourses of âjustice as equityâ and âjustice as libertyâ after the Queen Victoriaâs Proclamation of 1858 built a somewhat different type of defense of the empire (p. 74). The former gave to colonial rule the role of mediator in the vision of India as a society of warring communities. The latter seemed to promise some form of self-government to the people of India in a hazily defined, remote future when the latter would be ready for it, setting the context for an elaborate definition of a pedagogical mission for the colonial state. These new discourses were distinctive in that they were lodged in the person of the monarch and not in natural law as the prior discourses of imperial justice were. Justice was now going to be delivered to the Indian people as a personal gift of the monarch.

Chapter 4 makes an important argument that the moderate stream of the Indian National Congress, disavowing resistance as a means to freedom, represented imbrication of the anticolonial movement in imperial discourse. The Congress seemed to demand freedom as an act of charity from the monarch. The ultimate goal of Home Rule by the Congress revealed the partyâs limited political aspiration of citizenship of the empire. Mukherjee implies that the later demands for dominion status and self-government at the Round Table Conference were also largely anchored within the same framework of demand for justice to Indians. But an insurgent discourse of âfreedomâ as against âjusticeâ also gained a foothold, from 1893 to be precise. This was âan alternative discourse of legislative freedomâ that demanded for Indians âthe right to make laws for oneselfâ (p. 138). This rise marked the rupture between the demands for imperial justice and legislative freedom. The author highlights the significance of this competing discourse and the latterâs autonomy that has been somewhat simplistically passed over as the âextremistâ program.

But the real rupture with the paradigm of the moderate Congress and the contrary move toward explicit resistance of the empire came with Mahatma Gandhi as described in chapter 5. The Non Cooperation Movement marked the ascendancy of the ideas of ârenunciative freedom,â a core Gandhian idea, which the Congress quickly embraced. This move by the anticolonial movement enabled it to come out of the labyrinthine imperial and colonial trap and demand complete political independence. The Gandhian idea of transcendental freedom enabled two maneuvers: one, political resistance to colonialism and two, spiritual freedom through an ethical engagement with current mores of the society. The chapterâs argument counts among the most valuable contributions of the book in its new interpretation of a continuum between the Gandhian calls for political and spiritual freedom. In Gandhiâs vision, the author argues, political âpolitical freedom … was indistinguishable from renunciation, renunciation of desire, and of identityâ (p. 170).

In another important chapter (chapter 6), Mukherjee contends that the constitution adopted in 1950 represented âthe ultimate triumph of the juridico-epistemological framework of empireâ (p. 181). The Gandhian notion of freedom was eminently unsuitable to the task of formation of a nation-state. Casting it aside, the framers of the constitution proceeded to make justice (not freedom) the foundational principle out of which laws were to originate. This primary emphasis on justice was just the opposite of the convention of sovereignty and democracy in the West where justice emerged out of impersonal, universal laws, and not the other way round. Additionally, in making the deliverer of justice also stand above law, the framers anticipated the later rise of âdynastsâ in the Congress. All these reflected inheritance of the prior discursive infrastructure. The actual historical circumstances in which legislative representation was introduced into the colony ensured the lingering presence

of imperial principles.

But, in contrast, the Gandhian legacy of mass movement ensured that the positive principle of universal suffrage managed to find a place in the constitution. It is the right to vote that affirms individual freedom as citizens to the Indian people. This legacy retains importance in the democratic practice of postcolonial Indian polity and becomes especially pertinent around election cycles.

The book is an important addition to the political history of South Asia on many counts. It is a masterful account with new insights to the deeper colonial history of Indian politics. For that reason, it will be an important read for both historians and political scientists with interest in studying Indian politics and movements. Those with interest in legal history, empire, Gandhian philosophy, constitution, ideology, and discourse will find much of merit. It can be usefully included in the reading list for graduate teaching on South Asian colonial and postcolonial history.

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