

FROM SUBJECTS TO CITIZENS: LEGALISM FROM BELOW AND THE HOMOGENISATION OF THE LEGAL SPHERE

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Introduction

The paper discusses the question whether in the process of the citizens' struggle for a state conforming to their ideas of just rule, legal pluralism is reduced. It examines the increasing relative social significance of the normative and institutional complex of state law particularly in relation to political structures of domination and procedures of ruling in urban India.

The thesis is that citizens in their everyday interactions with state agencies as well as other governing bodies negotiate with or struggle for the state to act according to certain norms of governance, namely those prescribed by law. Thereby, the hegemony of state law is furthered – sometimes inadvertently – in most legal fields. The state's patterns of domination are often shaped by extralegal (or illegal) practices. Resistance to these everyday structures of domination is increasingly sought by the use of law which complements or even replaces other modes of resistance such as protest, withdrawal, subversion or other 'weapons of the weak'. While citizens might often not act according to state law themselves and also make strategic use of the extra-legal practices of state agents, they are at the same time engaged in a protest that uses legal terms against the transgressions of law by state agents and other bodies of governmental authority. This is evident in their efforts against a misuse of state powers and their fight against corruption. In this we see a shift towards state law as a means of resistance as well as a parameter of the 'good order'.

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While earlier discussions of the use of state law in India have attributed this either to the litigiousness of Indians (e.g. Cohn 1959; Baxi 1992), or to the hegemonic sway of élite ideas (e.g. Chatterjee 2004), this paper seeks a different explanation for this process of ‘legalism from below’. It proposes that, particularly when structures of domination are upheld by extralegal rules and procedures (but not only then), the law can serve as a ‘weapon of the weak’. This is conditional on the substantive content of state law and on the value of the cultural capital of legality. It arises where, firstly, there is a competition between political authorities and this competition is decided by popular support; and where, secondly, popular support is (also) dependent on the perception of legality, as it is where law is esteemed as a ‘weapon of the weak’.

The use of law as a ‘weapon of the weak’ is thus interlinked with the larger political processes of democratisation in India. While the state used to provide for its subjects via the paternalist mechanisms of the Congress Party system (Kothari 1964), today demands on governance are put forward by a wide array of organised claims. Democratisation is transforming a sense of entitlement rooted in the Nehruvian ideology of the developmental state into a rights consciousness. These claims are often put forward by means of law even by those sections of the Indian population which have until now had little access to judicial institutions, such as urban slum dwellers. Particularly those who have to face transgressions of state legal norms by state agencies on an everyday basis increasingly make use of the law to negotiate their rights.

Such active citizenship as is observed in the use of law as a weapon of the weak in urban India raises several questions about the effects of such practices. This concerns both the immediate effects, or the success of law as a weapon of the weak, and the more long-term effects, such as the reproduction or transformation of structures of domination. Studies on the basis of, for example, the ideas of Bourdieu (1976, 1979) focus on the reproduction of structures of domination through practices that are shaped by dispositions engrained in the habitus of individuals. Particularly analyses of governmentalities in the Foucaultian line identify the disciplining effects of governmental regimes. Others, such as those following de Certeau (1988) or Scott (1985, 1990), concentrate on the subversion of rules and the manifold ways of resisting domination. This paper proposes to open up the analysis of practices to their productive and transformative potentials. It engages with discussions of the state and proposes to look at the way practices shape the state beyond producing a ‘state effect’ (Mitchell 1999) or the mimetic

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reproduction of bureaucratic procedure (Gupta and Sharma n.d.). The article will investigate whether the active use of law does entail a gradual transformation of institutions of government.

The paper thus proposes to look at the use of law as a more active (and creative) practice, rather than a passive acquiescence or belief system. It does so in the context of everyday struggles in urban India.

Urban Constellations of Legal Pluralism

The constellation of legal pluralism in Indian cities has undergone substantial transformations during the last decades. Traditional authorities of adjudication, mediation or conflict regulation, such as caste councils or religious bodies, have been reduced in their sway. They are still active in some communities that show a high degree of internal cohesion and an equivalent degree of social control. They are also still involved in resolving disputes amongst members of communities in which both sides seek a consensual solution. However, in much of urban disputing they have lost influence. People seek out bodies of adjudication with a clearer potential of enforcing judgments and decisions. Such a potential for effective enforcement is limited to those agencies which are integrated into the political relations shaping urban power structures. In the city of Mumbai, matters of adjudication, law and order, crime and security are administered by welfare-oriented NGOs, the heads of local branches of political parties, 'community leaders' with effective alliances in the governmental apparatus, leaders of organised crime groups and the police. This is particularly so in disputes in which members of different communities (castes, religious affiliation) are involved. But these judicial authorities also play an increasing role in 'community internal' matters. They are active in the fields of family law (often divorce and alimony, but also domestic violence), labour law (particularly in the so-called informal sector), disputes about public space and public property (such as encroachments, pollution or the use of water taps which are often matters of contention, especially in urban slums), property issues ranging from the occupation of houses to loans and fraudulent money schemes, etc.

There is thus a growing pluralism of judicial authorities. This new judicial pluralism differs from more traditional forms of judicial pluralism, which involved mainly authorities particular to individual castes or localities. The new judicial pluralism is not actually so very new in urban India (Chandavarkar 1981, 1994:

168-238). However, the particular constellation of actors who are now at the centre of adjudication has evolved along with changes in urban politics. The increasing role of NGOs and the specific social embeddedness of political parties (see Eckert 2003) relate to the changing nature of labour and migration in an era in which large scale (formal) industry has left the urban centres and an ‘informalisation’ of life-worlds and biographies is shaping the experience of many urban residents (Eckert 2003: 170-209).

The judicial pluralism now characteristic of urban dispute regulation differs from earlier constellations of legal and judicial pluralism in two aspects. Firstly, it differs in terms of the norms which are referred to. Traditional bodies of judicial authority, those of caste groups and religious communities, mostly referred to norms and rules in their decision making that were rather clear cut albeit applied situationally. These were particular to a specific group, but also entailed mechanisms of dealing with ‘outsiders’. The newly emerging authorities in matters of conflict regulation and adjudication mostly refer to what they call a ‘common sense’ idea of justice when describing the normative base of their decision making. Judgments are characterised as ‘common sense’ also because authorities of adjudication compete for clients; if judgments conform to what is seen as a popular idea of justice, authorities expect support also in the political field. The ‘common sense’ is in effect an eclectic mix of norms, often (and increasingly) including everyday understandings of state legal norms. The ‘common sense’ applied often depends on the disputants in question and on the different bodies of judicial decision making involved in a particular dispute: the norms are negotiated situationally between the bodies of adjudication and the disputants.

These negotiations have as their normative horizon more often than not state legal norms. They do not refer to other bodies of law, such as caste legal rules, beyond what is codified in state laws such as the Hindu civil code and the Muslim civil code, etc. Thus, the ‘common sense’ referred to is a form of ‘unnamed law’ (F. v. Benda-Beckmann 1992) in which state law has a different place from that which it used to have in more traditional forms of legal pluralism. In the past, state law and other legal orders in India could be said to be in a parallel relation to one another, triggering practices of forum shopping since different forums applied different laws. This was true all the more in the urban centres of India, where all forums were present. Today, all non-state forums of adjudication apply an amalgamated type of law that is strongly shaped by situational interpretations of state law. The selective adaptation of state legal norms is determined by the disputants’ respective bargaining power and the question of which state legal norms support the stronger

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party's interests. More generally, state law has an increasing impact on the notions of right and wrong, and the 'common sense' expressed in local adjudicative decisions enters into state law through the practices of state officials that cooperate with non-state judicial authorities (Eckert 2004).

The paradox is thus that the current constellation of judicial pluralism does not go hand in hand with a growing legal pluralism; rather, legal pluralism is giving way to an increasing homogenisation of norms of rights and 'right and wrong'.

This is also due to a new interconnectedness of state and non-state institutions of governance. The new judicial pluralism differs from earlier constellations, secondly, in its relation to state agencies. Not only have the norms underlying judicial decisions a closer relation to state legal norms. The judicial bodies are also connected to state agencies in a different manner than 'traditional bodies' mostly were in the past. While the relation of traditional authorities to the state could often be described as parallel, the interdependence of the 'new' judicial authorities and state agencies is stronger. The urban forms of governance integrate state and non-state actors into cooperative and at the same time competitive relations. This intricate linkage is produced above all through the common political field in which all actors partake. All the actors, NGOs as well as local party leaders, the small scale *Dalals* (brokers between state offices and the population) and those who are called *social workers* as well as the *Dadas* (local strongmen) and *Dons* (the leaders of organised crime groups) operate as what Partha Chatterjee, in his book on *The Politics of the Governed*, calls "mediators" (2004: 64). Local leaders of the various types act as middlemen, *Dalal*, between the various institutions of the state and the citizens. They procure settlement rights and water connections, they prevent demolitions being carried out or fines being collected. They help to procure licences and certificates as well as school admissions. They assist the municipal ward officers in controlling an area and are repaid by preferential provisions of civic amenities. They mediate in local disputes and often have to deal with the police. And, most importantly, they play a distinct role in the democratic process. They can ensure the benevolence of corporators and MLAs by garnering votes, thereby securing civic services and infrastructure. And since they can garner votes and, to some degree, 'provide' them to candidates, they play an important role in winning or losing an election.

Political parties often 'adopt' local leaders as election candidates and attempt to establish themselves within the various self-help groups active at the local level. Especially in municipal elections, parties try to secure their success by putting up

external candidates with a standing in the locality and by translating the latter's popularity into votes. Since community work can often be delivered more easily with political clout at hand, people choose to address people 'with connections' rather than community workers without such patronage, although principally they object to such practices. As mentioned above, it is particularly those organisations which are sought out for adjudication that have a sanctioning potential, and this sanctioning potential is constituted by an organisation's hold over votes because this determines its relations to party politicians and, thereby, to the police.¹

The configuration of institutions of adjudication (and other governmental activities) is thus strongly related to the (democratic) competition of political parties for political offices. Because judicial authorities are hardly ever only that, but are at the same time political actors and organisations involved in urban governance, they are in a deeply competitive relation. They all operate within a common political space and in this space compete for the various sources of power. Democratisation has intensified this competition, thus introducing different forms of checks and balances that bind the power of these actors to the interests of their various groups of clients. Because of this competition, all judicial authorities have to pay heed to some degree to their competitors' normative offers (Eckert 2004) – and to the ideas of justice, the 'good order' and just law of their clients. One could say that the semi-autonomous social fields described by Moore (1973) are becoming ever less autonomous. Although rules of conduct are developing in various social fields, in most the different authorities of conflict regulation are confronted with frequent references to state legal norms, if only because their competitors use them. Often they can resist paying heed to the demands on legality, and often they achieve results by sheer physical force. But sometimes it is in their political interest to acknowledge law. Here, the paradox of decreasing legal pluralism in a field of judicial pluralism is located.

Legalism from Below

In Bombay's slums, ideas of justice, of the 'good order' and of right and wrong are increasingly shaped by state legal norms, especially those applying to norms of governance and the relation between citizens and the state. One might assume that

¹ On the influence of party politicians on police performance see Eckert 2003: 152-156; Eckert 2005: 352-359.

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this might be due to the state or its various agencies imposing their norms on their collaborators. Since bodies of governmental authority are so intricately connected to state governance, the state might hold to account more closely its various affiliates and introduce its norms into their mode of operation. This, however, is not the case. In fact, the collaboration between state and non-state agencies in various fields of urban governance does not follow formal rules and regulations. Rather, it evolves its own type of rules for different purposes. These rules are widely known, and sometimes take on a near-official status, as is the case with prices for certain state services and the like.

The process of the introduction of state legal norms is counter-intuitive. References to state legal norms are not introduced into local politics *by* the state agencies but often *against* them. They are used precisely as a means to counter the rules that shape everyday governance.

In a Zhopadpatti (slum) area of Jogeshwari, young boys were loitering about. A local butcher got annoyed with them hanging around on his front steps. He organised them into cleaning up the area, cleaning above all the filthy and blocked gutters of Premnagar. The boys were quite enthusiastic about their new role within the community and searched for new tasks. They discovered them in the fight against illicit liquor dens and gambling halls in the neighbourhood. Being devout Muslims, they had a moral as well as a socially inspired objection to them. They felt that these establishments were spoiling the youth of the area and destroying families morally and economically. When they thought about what to do against the gambling halls and liquor dens they decided that since gambling and selling home brewed liquor was illegal, it was up to the state to take action. It was the state's duty, they held, to uphold public morality and, of course, to uphold law and order. If the state outlawed gambling than it should have an interest in fighting it. So they went to the police to complain about it.

Their complaints at the police station did not lead to anything. Suspicious about the police being hand in glove with the vice dens and even profiting from their activities, they went to buy the booklets on sale in many Mumbai bookshops in which single laws are explicated. They then drew up a list naming the precise legal offences, the offenders *and* the relevant sections of the Indian Penal Code and handed this over to the police. This way they wanted to force the police to do their duty and act according to the law against the illegal activities in the area.

For the last fifteen years now they have prepared such lists for the police. The police did not remain inactive: they did act on some of these complaints, but they also defended their sources of extra income. In response, the young men have had to face frequent accusations by the police including one of murder, one of terrorism, but also more harmless ones. They have thus faced arrest again and again and have in the process become specialists in defending themselves. They have learned about the law of arrest – and thus about the difference between legal and illegal arrests, the legal grounds for granting bail, the amount of time preventive arrests can legally last, and other such matters. Having thus developed into experts in specific fields of law, they have become somewhat of a legal counselling body within their neighbourhood. Over time, they have expanded their legal knowledge to include not only questions of illegal arrests or other forms of police corruption, gambling laws etc., with which they started out, but also the complex matters of building regulations and construction rules. Thereby they could face the frequent threats of demolition or fines or ‘taxes’ that residents of their semi-legal slum were encountering from municipal officers. These were sometimes based on false allegations of illegality. Municipal officers invented illegalities, for example, when they told one family who had tiled their floor with the tiles reaching up the walls by ten centimetres that it was not permitted to have tiles on the walls. They threatened to demolish the whole house if the family did not pay a fine. The group of young men in this case simply informed the family of the legality of wall-tiles and the family refused to pay the fine. Such threats are a common experience among the residents of slum areas who have only shaky legal titles to their property.

The career of these young men as legal experts in their area had started out with their (religiously inspired) moral and social ideas about what they felt was beneficial to their community. Rather than dealing with the officially illegal activities of some of their neighbours, such as brewing liquor or opening gambling halls, through non-state channels such as the traditional and religious authorities in this largely Muslim area, they chose to take the state itself to task. To them, the state was responsible for enforcing its norms. These specific state norms were in accordance with the social and moral norms of the young men.

Because of the involvement of the police in many of the illegal activities which they were now called upon to stop, the police tried to scare the young men out of their campaigns by lodging complaints against them, arresting them, etc. However, this led to a further use of state law by the young men – with the result that they familiarised themselves with various fields of law and discovered this as

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an instrument to resist state harassment. They had quite some success. Most of the allegations filed against them were judged to be baseless by the courts. However, not only did they discover law as a tool to resist state harassment; they also formulated their ideas of the socially and morally good into the terms of state law. They sought ways to further their religiously based ideas of how people should live together in their area through state law.

Despite their own 'illegality' in many aspects, and despite the fact that people often make use of the extra-legal methods of governing bodies for their own benefit and against their opponents, state legal norms are often introduced by citizens dealing with the various bodies of governmental authority. They are used, above all, in opposition to illegal or extra-legal ways of governing. In conflicts between citizens and state agencies, citizens may have no alternative but recourse to state law – especially poorer citizens who have little money and no social capital to bring to bear against the state.

However, state agencies often do not act on their own, or even simply in their own interest. Non-state agencies of governance are implicated in the transgressions of state law by state agencies. State law is therefore also used as a defence against the collusion of state agencies and non-state local authorities and their activities. Interestingly, this often means filing suit against the transgression of the state agency rather than against their associates. Moreover, since state agencies, and above all the police, are in some way involved in many disputes among citizens as well, reference to state law is also the chosen means in disputes which are not directly with the state or even its 'allies'. Indeed, there are many cases of disputes between citizens in which the participants also refer to state legal norms. In one case, a local mosque had been frequented by members of the Tabligh movement, a puritan Islamic movement founded in India in the early 20th Century. Tabligh conduct pilgrimages during which they travel through South Asia, these pilgrimages usually lasting 40 days. The local mosque, a Sunni mosque unaffiliated to any particular school, was used by the Tabligh during their pilgrimage. They used it not only for prayers and teaching, but also as a hostel for the night and generally for their stay. The local Muslims who usually used the mosque at some point felt that the Tablighi were taking over the mosque completely and that there was no longer space left for their own religious activities. They went to court, rather than to the religious authorities of the area. They were granted their claim to their 'property', but the court order was not implemented by the local police. So they went to court again, this time against the

police, and again they won a court order directing the police to implement the first judgment and remove the Tablighi from the mosque.

Because citizens use the state agents and their extra-legal methods in disputes against their opponents, for example, by lodging false complaints and having their opponents arrested, those who are the victims of such an instrumental use refer to state law to defend themselves. This state of affairs, and these modes of urban governance, so it is claimed, trigger ‘legalism from below’.

Good Law and Bad Law

Since local state rule is based not solely on the enforcement of law, but also on extra-legal means and threats of laws that do not exist, ‘legal literacy’ is increasingly seen as a vital resource of existence for slum dwellers. As one young man said who had experienced several arrests:

We want to use law. We have rights. But we do not know enough. We need legal information, legal literacy. The powerful break the law. We also have rights in law. Law makes us illegal, but the business that others make from us being illegal is even more illegal. We want to use the law against them. But we always lose out because we do not know the precise laws which give us the right, or tell us about whether the harassment is legal or illegal.

In Dharavi, allegedly Asia’s largest slum with a population of at least 900 000, seminars were conducted by a local self-help organisation instructing people, and especially young men, in the laws of arrest. Illegal arrests were one of the most common problems young men of the area had to face. Again, the instructors were those who had suffered arrests themselves in the past. In the police stations they had heard how their own arrests had been justified legally and had thereby learned the rules of legal arrest. With this knowledge they could now distinguish legal from illegal arrests and resist the latter by filing suits against policemen. Even where these complaints did not result in any action being taken against the policemen responsible, the threat of a complaint constituted a change of balance in the bargaining powers between the police and the young men. As one young boy (of about 10 years) screamed excitedly during the meeting: “So the police are not allowed to beat me!?”

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A community leader from a slum in Bandra felt: “Law is so very useful, the knowledge of law. The law is the sword.” But he also felt: “If I go against the government with law I will be implicated [with false allegations]. If I fight for law and rights against the government, I will die.” A young man, who had taken a course in law himself after his business had been destroyed in a local rivalry, and he had faced severe allegations from the police who took the side of his opponents, also stated:

Whoever works to awake people they put false charges against him.... Police is our main enemy. In their eyes we are their main enemy. Those who work for upliftment are implicated in false cases. Because police make money out of illiteracy ... our work is very risky. How can we expect better treatment: we teach people to fight for their rights and we fight with the police.

The valuation of state law does not concern ‘law’ in general. People distinguish very clearly between those laws they feel are just and those they feel are unjust; or between those laws that support a regime of governance they feel exploited by, and those that are emancipatory. The various anti-terrorism measures, the latest of them being POTA (Prevention of Terrorist Activities Act), were widely felt to be unjust and dangerous by the urban poor. On a more harmless level, a taxing law which levied a tax upon shops in Dharavi that wanted to open their shutters on Monday afternoons was considered mere chicanery. It was all too obvious that the tax served no other purpose than filling either the state’s coffers or the pockets of the enforcing agency (the police) with fines or bribes, respectively. On the other hand, the obligation to pay for electricity was seen as just – and the many illegal electricity connections were considered a breach of a just law even by those who committed it themselves.² Thus, people did not simply distinguish between emancipatory rights and regulatory laws, and supported the former and rejected, resisted or circumvented the latter. Just law also encompassed regulating laws which burdened them.

² Interestingly, the rise in electricity prices was put down to the many illegal connections also by those who were “stealing” electricity themselves. It was not seen that the price rise was actually caused by the process of privatisation in which the energy company Enron had taken over much of Maharashtra’s energy supply and had hiked prices tremendously until it dissolved as a result of its own internal corruption.

So, neither a simple general awe of all state law nor an acquiescence in governing norms prevailed. Nor were all emancipatory rights acclaimed and regulating duties subverted as a rule. Rather, peoples' distinctions between just laws and unjust laws followed a different logic. A more active evaluation of norms and rules in terms of an idea of the 'good order' took place. As mentioned above, this idea relates quite closely to expectations and norms of governance that accompanied the promise of state development, to the 'idea of India' as an idea of a state which has to fulfil its duties towards its people. This idea was the founding myth of independent India and central to the anti-colonial project (Chatterjee 1995: 216). The idea of the developmental state was one of a largely bureaucratic state, an administrative state, and positions that equate 'good politics' with 'good administration' are still widespread. This entails a certain valuation of regulating law also in the perception of those who hardly ever experience 'good administration', such as the urban poor. While we have seen that rights are believed in with a high degree of hope, regulatory law is part and parcel of the 'good order' in that it is part of a good administration. Of course, the evaluation of a legal regulation as principally just does not stop people from violating that rule.

A Weapon of the Weak or a Weak Weapon?

Increasingly, the reference to state legal norms is at the centre of people's attempts to resist governmental authority and its forms of ruling. This is the 'legalism' referred to in the title, representing a change in modes of resistance and submission. Reference to state law replaces to some degree the manifold forms of circumventing, withdrawing from, subverting, and avoiding governmental authority or other 'weapons of the weak', or even simply of submitting to everyday pressures. This does not necessarily entail going to court; state legal norms are referred to at a much earlier point than when a formal case is registered or a legal suit is instituted. However, it might also mean filing a suit against a state agency either in an ordinary court or, increasingly, by addressing either the State or the National Human Rights Commission.

Every one of the three judges of the State Human Rights Commission of Maharashtra receives 40 cases a day on average. The National Human Rights Commission in Delhi took on 50,634 new cases in 1999 (NHRC 1999-2000: 89). In 2000 there were 71,555 new cases (NHRC 2000-2001: 108), in 2001 69,083 and in 2002 68,779. These concern deaths in custody, disappearances, illegal

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arrests and detentions, false implications, atrocities against members of the scheduled castes and a few cases of sexual harassment. A large number of complaints are directed against the police, many others concern the negligence of state officials. At the same time *Crime in India*, the Publication of the National Crime Records Bureau of the Ministry of Home Affairs, for 1999 reported 74,322 complaints against the police alone (National Crime Records Bureau 1999: 393).³ In 2000, *Crime in India* cited 68,160 complaints lodged against the police, of which 62.5% were found not to be substantiated or not to be true (National Crime Records Bureau 2000: 385).⁴ The National Human Rights Commission, too, dismisses many cases every year (e.g. NHRC 2002-2003: 168). There are no reasons given, but in the State Human Rights Commission of Maharashtra the most frequent reason for dismissal was that the case was not in the mandate of the commission. Sometimes cases were dismissed also because the complaint had been lodged with several bodies at the same time, for example with the State Human Rights Commission, the National Human Rights Commission and a court.

The discrepancy between cases lodged with various institutions and cases actually admitted could be interpreted in terms of the alleged litigiousness of Indians. It seems that many people are ready to submit a case to any institution available. It has been assumed that in India litigation does not necessarily imply 'serious' attempts to enforce one's rights, but is foremost a means of harassment or of carrying on a conflict (Cohn 1959; Baxi 1992). However, rather than interpreting this active use of institutions of complaint as an expression of 'frivolous litigiousness', the discrepancy between cases submitted and cases admitted could also reveal something about the negotiations over an understanding of rights and justice that people seek to engage in. The claims express the expectations of a specific notion of governmental behaviour and governing norms. They express an understanding of civil rights. The discrepancy thus reveals something about the difference between 'official' interpretations of substantiated claims, i.e. the legal version of rights, and the rights people perceive themselves to own towards the state, rather than about mere litigiousness for the sake of disputing. The citizens' perception of legitimate rights and claims, and their pursuit of them in their legal

³ Of those, 56.1% were declared unsubstantiated (*Crime in India* 1999: 393).

⁴ There are also frequent complaints lodged with the Anti Corruption Bureau of Maharashtra. However, the statistics do not separate those cases which are investigated because of complaints from others, and thus no statement can be made about the use people make of this institution.

struggles, is not entirely separated from the official legal version – sometimes it might be considered closer to the letter of the law than interpretations put forward by judicial practice. Obviously, people refer to state legal norms in their claims and familiarise themselves with the legal options they have. Claims before the various institutions could therefore be seen as addressing the interpretation of particular cases under specific legally constituted rights. In some ways people's interpretations of these options, their version of their rights as citizens, are creative interpretations of the law, an attempt to establish a specific reading of the law.

The 'legalism from below', therefore, is evident firstly in the fight against various forms of transgression of state powers, be it petty corruption by various state agencies, illegal arrests (for the purpose of corruption or for other purposes) by the police or threats by the municipal authorities regarding semi-legal constructions. State law is also used against the negligence of state authorities, mainly in the form of Public Interest Litigation (PIL). The rise of PIL as a means of claiming rights and entitlements is closely connected to the activist phase of the Indian judiciary, or rather of several Supreme Court judges, in the late 1970s and 1980s (Sathe 2002: 100, 195). Upendra Baxi termed what the activist judges, like Krishna Iyer and P.N. Bhagwati, had in mind 'Social Action Litigation' (Baxi 1987) on the part of or in favour of the marginalised sections of the Indian population who had no access to law. Nowadays PIL is used predominantly in the more 'classical' sense (Ahuja 1997: 7-8). Nonetheless, PIL is also used for claims to socio-economic rights, or 'the right to life' of the Indian constitution and its broad interpretation. Moreover, judicial activism and PIL, for all their limited results, have furthered the idea of law as an emancipatory instrument.

Resort to these measures is not at all a phenomenon restricted to the urban middle classes. On the contrary, often it is especially those who in many respects have an insecure legal status themselves, either in terms of their residence, their work or their property. Neither the National Human Rights Commission nor the State Human Rights Commission nor the Anti Corruption Bureau (ACB) or the courts have statistical data on the socio-economic background of the complainants. However, as the cases above show, it is often the large parts of the urban population making up the so-called informal sector who make use of the law in various ways to claim their rights. On Saturday, 18 January 2003, the *Times of India* in its Mumbai pages published a big headline story about Sadhu Yadav, a vendor of ice, who had made the long way from Sion (in Mumbai), where he hawked his perishable goods, to Worli and the ACB. There he filed a complaint against his being regularly harassed by the police and their demanding *hafta* (a

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regular bribe) on a daily basis. A slum colony filed a PIL case against the municipality of Mumbai. They put in a claim demanding a school in their neighbourhood after several of their children had died crossing a six-lane highway on their way to the nearest school. They were granted the school by the court under the 'right to life' provision of Art. 21 of the Indian constitution. The implementation of the order, however, is taking time.

Usage of courts by the poorer sections of the city's population is largely restricted to the lower courts, but increasingly the High Court is also addressed with appeals. The Supreme Court, however, despite its provision that any citizen may submit a letter of complaint and it will be looked into, is often out of reach simply because it is too expensive for most to be represented there. When the young men from Jogeshwari were accused of murder in the context of their fight against illegal activities within their neighbourhood, they had to refrain from turning to the Supreme Court in the effort to defend themselves for that very reason. Instead, in order to get bail until the case was decided by the High Court, they collected money to bribe the judge of the lower court – and were assisted in this by an internationally funded NGO. This proved much cheaper than appealing to the Supreme Court.

The outcomes of such struggles are not always in favour of the state agencies, as is sometimes assumed by activists. In one case, a young man, Shakeel, lent money to a neighbour. When he asked for the return of his money, the debtor threatened him. They both went to the police and the debtor had to repay the debt. The police then asked Shakeel to hand over to them a part of the repaid debt. Shakeel refused and asked the police: Why do I need to give you money? He was then beaten severely by one of the policemen and had to go to hospital. He wanted to file a complaint against the policeman who had beaten him up, but the police refused to register the complaint. They said they would register the complaint only if they could arrest him under sec. 151 of the Criminal Procedure Code, which provides for preventive arrests for 24 hours. He agreed to that deal and was locked up. He got bail, but the police did not file charges against the police officer who had beaten him. Hence he went to the High Court as well as to the National Human Rights Commission. The High Court held that the police officer who had beaten him up was to pay him 15,000 Rs. in compensation. The policeman then appealed to the National Human Rights Commission himself. The outcome of this appeal is still open. But meanwhile he had to pay the damages.

There are other cases where the police have lost court actions brought by their victims. In one case, the inhabitants of a neighbourhood collected money to pay a lawyer to defend somebody whom they thought innocent. A little girl of the neighbourhood in Andheri (East) had been raped and murdered. The police were under strong pressure to solve the case, particularly as the local District Commissioner of Police (DCP) was due for promotion and was keen to solve the case quickly in order to better his statistics. He arrested a local 'hoodlum', a man known for drinking and loitering who had had many minor complaints lodged against him by many residents of the area. He made a good culprit as he was socially isolated. However, the neighbourhood was infuriated; they said that he could not possibly be the culprit because he was so dirty and awful that the little girl would never have accompanied him, and in fact she had severely disliked him. It was also dangerous to present him as the perpetrator as that would enable the real culprits to evade arrest. The judge released the man and ordered disciplinary action to be taken against the DCP in charge.

There are many of these stories. There are individuals and groups who take up the law in some way or other. For the success of their endeavours they are dependent on the courts to give equal credence to their version of the story and that of the police or any other state agency standing accused. To put it more generally, they depend on the effective separation of powers within the Indian state. Moreover, they are often helped by the fact that, contrary to the popular image, even within the police or other state agencies not everybody stands together. There are internal rivalries preventing this, but also different opinions about professional ethics. Many state civil servants are inspired by a bureaucratic ethos that would surprise even Max Weber. 'The state' is thus in no way acting in unison; it is not an impenetrable whole with a unitary purpose.

It must be said that the majority of complaints, for example against the police, are not followed by disciplinary action. Moreover, even if action is taken against policemen, the politicians who have officially or unofficially given orders to the former are hardly ever prosecuted. It is immanent in the political structures that the specific forms of domination in urban India are upheld. The police are an important pillar of these structures but are intricately connected to their 'political masters'. In India the police are a state responsibility; the state Home Secretary has the power of decision over every police officer's career. He decides on promotions, on allocations of positions and other career opportunities, even of those who belong to the Indian Police Service (IPS) and who are recruited and assigned on a federal level. The subordination of the police force to the control of

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democratically legitimated representatives, of course, corresponds first of all to constitutional principles. But because violations of the law (not least because they are not being sanctioned) have become established as effective ways of politics, direct control of the police by individual politicians results in a so-called 'politicisation' of police work. Owing to the policy of transfers and promotions, the autonomy of the police is de facto limited; it becomes an instrument of specific monetary or political interests of key politicians. The two special ways of political exercise of influence on police work are bonus transfers and disciplinary transfers. If policemen act according to their patrons' wishes, they can be sure of agreeable, prestigious, or lucrative positions. If they refuse to comply with such requirements, they are confronted with disciplinary transfers. The latter are directed at policemen who disturb the various political or economic activities of influential networks by their work, who uncover chains of corruption, or who belong to rival networks. Police action, therefore, is often, even in small cases, 'politicised', that is, guided by the political imperatives of politicians. Complaints against the police as a result do not target the structural problems that often lead to the extra-legal use of state agencies.⁵

It is thus difficult to assess the success of the legalism from below. There are small successes in single cases and many failures. There are symbolic successes that have no other results but to affirm the claimant's rights in principle. And there are

⁵ Not only citizens but also police representatives try to take action against their integration into the nexus. The police put their hopes in a reform of the rules of selection, promotion and transfer as suggested e.g. by the Police Commission Report of 1980. This would grant the police greater autonomy from the state governments and transfer control to a commission in which the opposition party as well as others would be involved. A group of retired policemen has lodged a suit with the Supreme Court to press for the implementation of the recommendations. In 2003, the Supreme Court had to decide on an application for an order to implement the recommendations made by the Police Commission in 1980. These included withdrawing appointment and promotion policies from the direct control of home secretaries and instead handing them over to a committee consisting, among others, of members of the opposition and representatives of minority and human rights commissions. From such an increase in autonomy, the police hope for an increase in their potential to secure law and order, because it would mean they could not be made henchmen of the ruling classes by way of rewards or disciplinary transfers. The case has been adjourned by the Court.

successes which have results in more concrete ways, in that compensation is paid, an official is suspended or transferred, or a claim is granted and action is taken, such as in the case of the school building the slum colony fought for. All these small successes add up to a more profound transformation. In many ways the ideas about the relation between the citizen and the state have changed. Norms about what is normal or acceptable, what are reasonable expectations, and what is wrong or condemnable are changing. They adapt to state standards of legality, and of right and wrong. The many failures in some way contribute to this transformation as well. They are also symbolic affirmations of a particular understanding of rights and expectations; they highlight the discrepancy between the 'ought' and the 'is' and thereby stress what is considered the 'ought'. These changing norms also affect the actual relations and positions of bargaining between opponents. Moreover, they have a certain domino effect in that they change practices, at least those of claiming rights. First they do this only on a small level, and only when the power constellations in a specific moment are right. This is the case when, for example, a policeman who faces a complaint has no patron amongst influential politicians. But in the long run, when certain norms have been established as 'standards', it takes more and more effort to legitimate their transgressions, and the changes have an increasing effect on the political concerns of the transgressors.

Law and Politics

The political concerns of the transgressors have undergone a fundamental change in recent decades. Because of the 'democratisation of democracy' in India, i.e. the expansion of democratic participation and the pluralisation of the party system, politicians are firstly faced by more intense competition and secondly by an electorate that is increasingly willing to change allegiances if politicians do not 'perform'. The 'democratic revolution' (Hansen 1999) that has reconfigured Indian politics during the last three decades has seen a shift in democratic participation from urban to rural, from rich to poor, from high castes to low castes, from men to women (Yadav 2000). These newly democratically mobilised segments of the Indian population have made democratic procedures more and more their means of articulating political interests. This does not stop at participating in elections. More importantly, the political mobilisation of the poor and the rural population has seen the emergence of a wide array of new political parties, many of them based on caste. However, these new bodies of political representation have not necessarily led to a consolidation of voting blocks; the infamous anti-incumbency factor of Indian democracy – that is, the fact that those in government have a high chance of

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being voted out of power – has actually strengthened. Thus, the ‘democratisation of democracy’ has not only incorporated sections of the population into the democratic process who had for long been represented only in a paternalistic mode, but has also changed the relations between voters and representatives. The criteria of critical esteem change according to the type of election, matters of everyday living, such as infrastructure, services and prices, playing a more immediate role in local elections. But in the national elections of May 2004 there seems to have been a more general shift towards socio-economic issues and a partial departure from identity politics (of the Hindu-nationalist brand). Legality, or the appearance of it, can become an asset for popular support, too.

The adoption of state legal norms into the practices of the urban poor and generally those segments of the population whose living conditions have many aspects of ‘illegality’, therefore, runs parallel to the adoption of democracy by the same people as a means of political articulation. They are, moreover, also interconnected in various ways. Firstly, they are linked through the idea of citizenship and the rights associated with it - or rather, by the idea of being a member of the body politic and thus having a voice in it, which inspires both processes. Neither is confined to a formalistic practice. Nor are they necessarily accompanied by a ‘vernacularisation’ (Merry 2002; Michelutti 2003) in the sense of an infusion of democratic procedures into alternative political forms. Adoption and active use of the institutions of law and of democracy often are fairly ‘unexotic’. Rather, what is claimed here as to the use of state law has also been observed in the use of democratic institutions. It is evidence of a “genuinely philosophical grasp of democratic principles and good governance and ideas about rights and citizenship among rural voters” (Banerjee 1999: 6).

Secondly, legalism from below and democratisation are in some ways more practically linked through the cultural capital of legality that gives state legal norms a distinct role in the processes of democratic politics. The question of adherence to law and the widespread illegal practices within democratic politics have become a major issue in every election campaign. The so-called criminalisation of politics has led to a widespread sense of state crisis. The demand that candidates with criminal antecedents should not be permitted to compete in elections is widely supported. Anti-corruption crusaders (as they are often called), for example, are among the most popular public figures. The adherence to law – or at least the appearance of it – is thus an asset for popular support. It might often be outweighed by other factors such as the ability of a candidate to deliver services and goods, or simply his command over men who are ready to use their muscle

power to establish their leader's claims. Nonetheless, legality is important for the esteem of a candidate. It presents one form of cultural capital that he can bring to bear against (or in addition to) social and economic capital in a close competition.

Legalism from below might be a process often overlooked (and not specific to Indian cities or Mumbai alone). It does seem to be connected to specific conditions, such as competition in the political field, which are not found everywhere. Within such a constellation, state legality becomes a source of cultural capital. The cultural capital of legality works in a democratic setting where there is competition between political authorities and this competition is decided by popular support. Popular support is, of course, not solely dependent on the perception of the legality of a candidate or party. In India, it often strongly relates to the provision of services and the distribution of goods. However, the ideas of the 'good order', of good governance and of the 'sublime state' as evident in the appropriation of state law, also enter into the evaluation of the democratic process.

From Subjects to Citizens

Consequently, we see state law as a major and increasingly important instrument for (a) resisting the state, (b) shaping the norms that local governance is judged by and (c) determining rights and wrongs, just claims and the 'good order'.

In the analysis of state law in India, it has often been considered as alien to and aloof from the concerns of what in India was called 'the subalterns'. On the empirical level, the evident use of state law was put down to an instrumental 'manipulation'. In 1959, Cohn found with respect to civil law that "the Indians ... thought only of manipulating the new situation [created by the introduction of British procedural law] and did not use the courts to settle disputes but to further them" (Cohn 1959, 1987a: 569).⁶ He felt that this particular use was due to the fact that the British civil law was alien to Indian culture and its social values, at least as they had been in the 19th century. Four decades later and referring to the contemporary situation, Upendra Baxi, too, insists that: "recourse to the court system of SLS [state legal system] by Indians ... does not necessarily imply any acceptance of the value of SLS ... Court recourse may merely be a strategy for

⁶ Much has been written about the use of Indian courts as a weapon in conflicts (Baxi 1979; Cohn 1959; Kidder 1974: 31-32 on delaying tactics; also 34).

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conflict handling...” (Baxi 1992: 472). The infamous litigiousness that Indians are said to have displayed ever since the British introduced their colonial courts was considered evidence not of the acceptance and adoption of state law but rather of the aforesaid alien character of the western model of law. The persistence of legal pluralism in itself has been seen as a form of withdrawal from or resistance to the allegedly alien state law. Alternative legal norms, such as those employed by caste councils, were seen as an expression of authentic indigenous legal norms as well as a circumvention (Randeria 2003), a subversion or an outright rejection of state law.

On a different line, and more generally, the use of state law by those who live in conditions which are in many ways criminalised or at least marginalised by this same law has been interpreted as a mere expression of the hegemonic power of élite or state ideologies. As Partha Chatterjee puts it: “subaltern consciousness is contradictory; ... even at moments of rebellion, the subaltern classes remain dominated by the ideas propagated by their oppressors” (Chatterjee 2005: 547). In many discussions of subaltern politics, the latter are said to be shaped either by the hegemony of dominant ideas, or to form, in whatever way, a resistance to the modes of governance (and their governmentality). Resistance, these analyses admit, can take many forms. It can include the whole array of the ‘weapons of the weak’ that Scott (1985; 1990) once outlined, but can of course also mean more overt forms of rebellion. Using the tools provided by ‘the governing’, such as state law, in these analyses would constitute evidence of the hegemonic sway of the governmentality of the ruling classes.

Altogether, approaches to the status of law in India have up-held the distinction between an ‘official’ legal culture – allegedly aloof and normatively alien – and a popular legal sphere, a distinction which has shaped the analysis of many a post-colonial setting.

There are several problems with this approach, which concern both the analyses of the use of state law and that of legal pluralism in India. I will not deal with the discussion of the alleged litigiousness of Indians (Moog 1993; Wollschläger 1998; Galanter 1997: 19). However, both the analysis of state law as alien and aloof and the idea of law’s use as a ‘symptom’ of hegemony employ a restricted notion of behaviour. While there are manifold uses of state law employing it in a purely instrumental manner that actually runs counter to the norms even of those using it in this manner, there are just as many instances where state legal norms are evoked in a normative manner. State law is used not only for ‘winning’ but also for

expressing certain values (see also Hirsch and Lazarus-Black 1994: 16). This is the case even where the chances of winning are slim, and where the reference to state law is mainly of a symbolic nature, affirming certain values in contrast to prevailing practices that run counter to them. This is the motivation of many of the complaints at the various human rights commissions, anti corruption bureaus and courts the Indian state provides.

The material presented thus seems to suggest a more complex picture of normative ‘alienness’ and familiarity. The idea of all ‘unofficial’ legal orders being more ‘familiar’ to ‘the governed’, as Partha Chatterjee has recently called them, (Chatterjee 2004) is – especially in India – not tenable anymore. Firstly, state law has for several decades provided an instrument against traditional forms of oppression, particularly against various practices of castism. This is, of course, due to the substantive content of Indian law, especially its constitution. Law as an emancipatory instrument has been made use of with varying degrees of success, and its use in this manner has spread during the last decades. Secondly, in urban India state law today is apparently also providing an instrument against forms of oppression evolving from current structures of governance, and against the ‘unofficial’ rules these regimes of governance rely on and operate with. In relations with the state many Indians often operate with precisely the notion of a modern bureaucratic state guided by universalist norms in mind; in fact, they condemn deviations from these norms, even their own. As Jonathan Parry observed among the residents of the steel town of Bhilai, the ubiquitous perception of corruption and its condemnation is “as much product of a growing acceptance of universalistic bureaucratic norms as of its (corruption’s) actual increase” (Parry 2000: 52-53).

This practical use of state law by wide sections of the population also involves a normative adoption of the legal norms behind the rules employed. It invokes certain norms of governance and of the ‘good order’. Although it might offer few possibilities of combating the state and therefore little choice in the normative base for claims, the frequent use of law against the state also points towards the normative ideas of the state that people invoke. State legal norms are the reference points of rights and wrongs, of a good system and a bad one, and thus of a broader understanding of the ‘good order’. This specific idea of the state first formed during the independence struggle, when it was further popularised through mass mobilisation. It took a ‘bureaucratic turn’ during the Nehruvian developmentalism, which also reached into the farthest corners of the country through the Congress Party’s machinery. It was popularly voiced when the paternalist model of

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governance of the Congress Party gave way to the democratic mobilisation of the poor, the lower castes, the rural voters etc. from the 1980s onwards.

As mentioned above, the use of state legal norms is not merely about winning. It is often at the same time a form of protest – as in the case of the ice vendor and his complaint against the bribe the police demanded from him every day. The use of state legal norms by the urban poor is about putting forward an interpretation of rights as constituted by law.

Secondly, and more generally, the use of state law as demonstrated above seems to call for a more complex interpretation of subaltern politics. Firstly, the relations even of the poorer sections of Indian society to the state cannot be reduced to the dichotomy of either resistance or hegemonic submission. Next to various forms of resistance (that have to be rethought, as will be argued below), and evidence of hegemonic domination, there are active engagements with the state which put forward a specific idea of the state – especially since the democratisation of democracy has replaced paternalist modes of governance with the vociferous articulation of claims. These active engagements ‘create’ the state as much as the state is created by practices running counter to its official rules.

The reproduction of governing institutions in the practices of officials and citizens has been recognised (e.g. Fuller and Harriss 2001; Hansen and Stepputat 2001; Mitchell 1999; Schlichte 2005: 24). Gupta and Sharma, among others, highlight how the state is produced in the practices of state officials, and how these practices enter into the repertoire of citizens (and non-state organisations) through an adoption that is well-nigh mimetic (Gupta and Sharma n.d.). The insight into the making of the state, however, was usually limited to explaining the divergence of the actual, existing state from its ideal-typical Weberian model, or the production of ‘the state effect’ (Mitchell 1999) through the practices of bureaucrats (see also Hansen 2001; Hansen and Stepputat 2001; Schlichte 2005: 24). This is because, where government institutions are concerned, there appears to be a certain identification of disciplined practices with the reproduction of ‘the official’ and of practices of resistance with the diversion from the official in the discussions. The production of the state through civic practices⁷, or, even more, the production of the state as according to the ‘state idea’ against state practices is rarely considered.

⁷ But see also the study of the practical enactment of the Indian Emergency through citizens by Emma Tarlo 2003.

Following de Certeau (1988), popular practices are considered to run counter to official rules, and they are considered only then. Practices that act upon official rules, and run counter to other practices, or which invoke exactly the ideal-typical model of the state, have rarely been analysed in respect of their effects.

However, practices of resistance and those which reproduce the dominant order might not be so easily distinguished in the first place. Moreover, if government institutions might inadvertently be reproduced by practices that intend to resist them, as Sahlins has shown (Sahlins 1981), it is also possible to imagine these institutions being transformed and shaped by practices that make use of them.

“The struggle about the rule of law from within the rule of law” (Lazarus-Black 1994: 257) could be termed a form of ‘citizenship as resistance’. Gupta has highlighted how “the discourse of corruption ... acts to represent the rights of citizens to themselves” (Gupta 1995: 389). Here we see more than a representation of civic rights. There is an active assumption of citizenship. Gupta (1995) and Parry (2000) both describe what they see as evidence of the normative adoption of certain values encoded also in state law. They do not describe what results from this evaluation in practice. Considering that alongside the talk about corruption people also engage in corrupt practices all the time, one could conclude that their rights awareness, or their internalisation of bureaucratic norms, does not go beyond the verbal appeal to an ideal. However, this is not the case. People, as is evident, assume an active role and use the law available to them. Their normative judgements shape their practices. The idea of one’s rights and of the ‘proper state’ or the ‘sublime state’ as Thomas Hansen has termed it (Hansen 2001), actually informs practices and shapes behaviour – although they do not necessarily stop people from either breaking some of the laws they deem to be just or instrumentalising the extra-legal means of state agents in their own endeavours.

State legal norms thus become hegemonic by being used as a form of resistance against modes of governance that run counter to these norms. Modes of governance do not correspond with the governmentality that allegedly generates the adherence to the ‘ideas of their oppressors’. The norms people invoke are thus not necessarily transmitted via their experience of the state interacting with them. Although the law is, of course, also regularly invoked to discipline subalterns, everyday experiences of governance encounter different rules from those of state law. State legal norms are thus appropriated actively, and the invocation of the norms codified in state law seems to be a more active engagement with domination than merely the illusionary image of law’s objectivity and the belief that law is

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immutable, fixed and inevitable, as Felstiner and Sarat have held (Felstiner and Sarat 1989: 1664). Thus, more than simply being evidence of the hegemonic power of state norms, these practices seem to be a more active expression of the attempt to shape the 'good order'. They are creative in that they put forth specific interpretations of rights and entitlements and act upon them in order to shape institutions accordingly. They deserve further analysis in their own right as they actively use and thus contribute to the production of various state institutions in a creative manner.

Yngvesson posed the question whether and to what degree "the 'popular [legal culture]' is subtly constituted, and, ultimately, transformed by the 'official' (or vice versa)..." (Yngvesson 1989: 1689). She goes on "to argue that law is *both* shaped in local terms *and* produced by relations of power..." (Yngvesson 1989: 1690). These processes of the shaping of law (and other state institutions) are problematic. They seem to be more complex than the dichotomy of hegemony and resistance would imply, and certainly more varied than that between official rules and unofficial practices. Yngvesson points to the "local production of meaning and the centrality of power in the meaning making process" (Yngvesson 1989: 1689). This highlights the structured agency in local meaning making. Here, however, as in many discussions of the question, 'power' becomes coterminous with 'official rules'. Although power can and mostly does inhere in 'officiality', the two are not the same. The power inherent in 'officiality' can run counter to power that is constituted via different 'media' (Luhmann 1988) or capitals (Bourdieu 1979). In urban India, power based on 'officiality' and 'legality' is counteracted by power inherent in networks and money. State institutions are thus produced by the interactions of citizens with these institutions and their representatives, both through the practices that run counter to official rules and through those that invoke precisely these rules. Of course, not all are equally well equipped to shape institutions. But the outcome of such processes is not predetermined but dependent on the situational configuration of actors (Elias 1976: xiii, lxvii-lxx).

Secondly, therefore, resistance cannot be reduced to avoidance, withdrawal, subversion, circumvention or the instances of outright rebellion – all of which are, of course, also existent forms of resistance. Rather, there are everyday forms of resistance using the tools provided by state law. It is the manifold claims to the rights of citizens, the struggles for one's own citizenship, which constitute this repertoire of resistance – and which are, of course, deeply ingrained in the history of citizenship generally. They put forward visions of rights and entitlements and

ideas about the relations between the governing and the governed that run counter to everyday forms of domination.

Whether state legal means are indeed effective ‘weapons of the weak’ is a different question. However, this question can be rephrased in terms of the dilemma addressed by a practice theory of the dialectic between the reproduction and the transformation of systems in practices. This means that the active use of law, while reproducing the legality of the state, also entails opportunities for transformation; likewise, any attempt at transformation may also inadvertently generate the reproduction of the system. Changes might be small. They consist mainly of slow and sometimes contradictory changes to the norms of what is ‘normal’. These norms influence how practices are evaluated and reacted to. The slow and small transformations in the ideas about the acceptable and the right way of governing can add up to rather substantive changes in the relations of domination. This does not end the many forms of exploitation, injustice, oppression or cruelty that Indian society is still very much shaped by. But the employment of legal norms from below is one mode of standing against them. It is sometimes an additional tool and sometimes replaces other means of resistance. How it compares to other means employed in effectively changing structures of domination is hard to assess. As mentioned above, legalism from below seems to serve mainly the establishment of specific standards in the relationship between the governing and the governed – standards originally defined by the lawmakers but interpreted, used and connected to practices by the governed. Their adoption of state legal norms for the claim to rights turns subjects into citizens, to follow Mamdani’s dictum (Mamdani 1997).

Whither Legal Pluralism?

What happens to legal pluralism on the path from subject to citizen? One effect of the various attempts at legalism from below is that they can reduce legal pluralism even in a field where judicial pluralism persists and flourishes. Citizens’ practices of evoking state legal norms have the effect of reducing legal pluralism – at least on the normative level. There is firstly a certain degree of homogenisation of ideas of what is acceptable in ways of governing, what are legitimate expectations between the governing and the governed and what are breaches of norms replacing a possible plurality of such ideas. Secondly, this more uniform idea of the ‘good order’ is (at least among the urban poor) increasingly oriented towards an official version of good governance, of the ‘idea of India’ (Khilnani 1999). Practices that operate according to alternative rules persist, but they are widely considered norm

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violations. Thus, while practices might evolve various operational rules, there is a homogenisation on the normative level. The normative status of practices changes. This is especially the case with actions confronting the judicial and governmental pluralism that is constitutive of urban politics in India. Here, the normative claims of citizens directed at the various organisations involved in urban governance invoke certain ideas of the proper way of governing and of civic rights. They are all actively related to state law – not state law in general but specific rules and regulations that are considered to be just.

The altered normative status of certain practices in turn affects responses to these practices: the increasing de-legitimisation of specific practices brings forth further resistance against them. At the same time, the new normative status of certain practices does also involve a process of self-subjectivisation in a Foucaultian sense. People, rather than rebelling outright, enter into the rules of the game and hold these rules against those who officially represent them, resistance using channels of law with increasing frequency. This involves a certain degree of self-discipline inherent in the fact that these practices question not the substantive content of the law but merely its implementation. Since ‘citizenship as resistance’ entails a change in the normative status of practices, it also evolves new forms of self-binding, of subjecting one’s own practices to an evaluation according to one’s norms, and possibly of eschewing alternative modes of mediating the relations between the governing and the governed.

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