First of all, it is not good to have an over-concentration of power. It hinders the practice of socialist democracy and of the Party's democratic centralism, impedes the progress of socialist construction and prevents us from taking full advantage of collective wisdom. Over-concentration of power is liable to give rise to arbitrary rule by individuals at the expense of collective leadership, and it is an important cause of bureaucracy under the present circumstances.[44]

Following Kelsen, one might say that fragmentation of leadership is the key characteristic of democracy: "Of course the idea of leadership becomes obscured by the fact that the executive must be thought of as subordinate to a parliament with several hundred members; the power to rule shifts from a single leader to a multitude of persons, among whom the function of leadership, that is, of the creation of the ruling will, is divided".[45] Democracy is a political order that produces pluralism.

The communitarians' quarrel with liberal democrats is ultimately over the conception of human nature. This is clear when Bell remarks: "Competitive elections, instead of allowing for the flourishing of human goodness that underpins social harmony, almost counteracts [*sic*] human nature". The vision of human nature as seeking a flourishing of human goodness is appealing. But to argue that this is true of all Chinese, or of all people, is to express a wish, not a reality. We see here again a conflation of the ideal with the real: the human nature that Bell believes is counteracted by competitive elections is an ideal human nature, not an actual human nature. At the root of liberalism lies the belief that Hobbes had it right when he said: "[I]f we could suppose a great Multitude of men to consent in the observation of Justice, and other Lawes of Nature, without a common Power to keep them all in awe; we might as well suppose all Man-kind to do the same; and then there neither would be, nor need to be any Civill Government, or Common-wealth at all; because there would be Peace without subjection".[46]

The flaws of liberal democracy are real and require analysis. But those who praise China in order to improve liberal democracy are playing a dangerous game. The leading authoritarian regimes have for their own reasons mounted attacks on democracy, arguing that their systems give better service to the people. Those who give credence to such claims are, like the travelers to socialist utopias in the Cold War era described by Paul Hollander in his classic book, *Political Pilgrims*, "rather harsh on their own societies, and surprisingly indulgent of […] others".[47]

[44] *On the Reform of the System of Party and State Leadership*, at: https://dengxiaoping-works.wordpress.com/2013/02/25/on-the-reform-of-the-system-of-party-and-state-leadership/ [accessed December 14, 2018].
[45] Hans Kelsen, *The Essence and Value of Democracy*, ed. Nadia Urbinati *et al.*, Rowman and Littlefield, Lanham (MD) 2013, p. 91.
[46] *Leviathan*, part II, ch. 17.
[47] Paul Hollander, *Political Pilgrims: Western Intellectuals In Search of the Good Society*, 4th ed., Transaction, New Brunswick 1998, p. 3.

Democracy and the "Non-Nation-State"

Sudipta Kaviraj

Democratic governments can face crises of two types – the first type can be brought on by tensions between different parts of a democratic constitution, or policy failures of successive democratic governments. A second kind of crisis can be brought on a society by political groups that want democracy itself to fail, so that it can then be plausibly replaced by less inclusive forms of rule, usually based on a thin electoral legitimacy. Few political forces in today's world challenge liberal democracy as a system of government frontally. They aspire to defeat and transform democracy by democracy itself – using and reinterpreting its own rules. In the gathering crisis of democracy across the world now, despite particularities of each country, this seems to be a common thread.

From the point of view of political theory, there is a remarkable pattern in the way democratically elected politicians have deliberately crafted crises for democratic systems to push towards incremental authoritarian control. This incrementalism itself is an interesting feature: these political forces do not propose – at least formally – a wholesale destruction, but a serial demolition in which specific institutions are selected and forced to submission. This makes the subversion less conspicuous; but its overall effect equally destructive. Undoubtedly, the historical backgrounds of democracies facing problems today were diverse. West Europe and the US had a history of constitutional-democratic government of two centuries. Germany and India have enjoyed democratic government since the end of the war; in Eastern Europe, Turkey it has had enjoyed a shorter and interruptive history. Despite the seeming normalcy of political processes – periodic elections, formation of government, making of policy in a relatively orderly fashion – the present crisis of Indian democracy is as serious as that under Emergency rule under Indira Gandhi – though its character is different. Technically, this crisis is not constitutional, but mobilizational: its instruments for restriction of rights are not primarily government agencies, but "the people". It is not engineered by using legal provisions of the constitution,[1] or explicit revisions

[1] Indira Gandhi's government used Article 364 of the Indian Constitution to suspend elections.

of institutional form. It is done by mobilizing popular forces in favor of a revision of the definition of the people-nation. Briefly, populist leaders in all these countries – and the title "populist" is crucial, because they speak in the name of "the people" in each case – use an implicit or explicit argument about the priority of "the people" to install and rationalize alterations in democratic government.

1. Nationalism against Democracy

Since my argument will be that the ideas of configuring nationalism play an important part in the present crisis of democracy, let me start with the historical shifts in the conceptions of Indian nationalism. The assault on democratic institutions is carried out in the name of a redefinition of the Indian *nation*.[2] A defining feature of this recent period has been the rise of movements which seek to restructure democratic constitutions in an undemocratic direction – using the legitimacy of electoral support – to deprive people of their rights "at their own request". Initially, it seems that a small minority are the targets of the restriction of rights – Maoists or Muslim terrorists: eventually, these alterations seek to make it impossible to challenge or question an incumbent government. The underlying political technique is simple but rhetorically forceful. After all, democracy is a system of government by the people by their own consent: therefore, in a rhetorical sense, the people have a logical priority: it must exist before democracy. In the mythical language of liberal constitutions, democracy is a governmental system or constitution the people give to themselves. If "the people" create the constitution, and "give it to themselves", what is more justified than consulting them about what kind of government they want to have? Interestingly, through their murky rhetoric populist politicians probe an important indeterminacy at the heart of liberal constitutional theory. "The people", after all, are an intertemporally discrete collectivity. The people are sovereign: but which people? The people who established the constitution, or the people of today? Are they content with the design that their forbears gave them? Do they want to change that design now? Implicitly, though rarely in an explicit form, this raises a question about the idea of pre-commitment – so central to constitutional theory. Even in the narrative metaphor of Ulysses and the sirens, it is a single subject – here taken in a collective sense – who does the act of pre-committing. But can one person/subject pre-commit another? Does the idea of pre-commitment retain its plausibility and binding force when this subject changes in time? Populist politics against liberal democracies tend to mobilize the idea of "the priority of 'the people'", a collective identity that predates and logically pre-figures the constitution itself. That is what, in their view, the "nation" is: the nation is the name of this pre-existing people – the subject of popular sovereignty. In all democracies which are currently in crisis we see an appeal to this pre-existing people, and a complaint that without consulting them, liberal democratic politics has

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[2] Clearly, this is not peculiar to India: in the cases of the US, Western Europe, Hungary, Turkey the ideological maneuvers of exclusionist nationalism are strikingly similar.

illegitimately allowed groups who are not part of this pre-existing nation, and therefore not legitimate participants in its constitutional covenant, to infiltrate the people, to reconstitute it, and effectively, with the help and encouragement of wily politicians and shortsighted bureaucracy, to take the originary people's rights away from them. To simply designate this as a crisis of democracy is inadequate. It is actually a crisis of the relation established between democracy and conceptions of nationalism – or the idea of the people which underlay these modern democratic systems. I shall start with a comparative analysis of modern nationalism in the West and in India.

2. Two Archetypes of the Nation

It is taken as self-evidently true that modern states are nation-states. Actually, it is hard to understand why analysts continue with this quasi-religious belief, because it is difficult to reconcile this description to our everyday experience of the life of real states. Only in one partial sense can this assertion be said to be true. A general pretense governs modern international law that all states are the same, and their equality consists in that they are all "sovereign" "nation"-states. It is easy to understand the reason behind such a portrayal of the present international order. This legal description puts all states on a footing of formal-legal equality, which, again, in imitation of liberal theory, treats each individual state "with equal respect". It is from this point of view that we can say that France, the US, Russia, Saudi Arabia, India and Somalia are all unproblematically "sovereign" "nation-states". However, this is plausible only because here we are speaking *a language of law*, not of *sociology*. The question here is: how should each state in this international order treat other states? The question is not: what kind of states are these? By contrast, if the nation-state is conceived *sociologically* – as a kind of state by virtue of its sociological composition, it becomes very hard to maintain the pretension that the world is full of sovereign nation-states, of a uniform sociological composition, that most states in world are sociologically of an identical form. The appellation nation-state in the standard sense fits only states in the West, broadly in Europe: for most other states that description, sociologically, is misleading. To understand the case of India, we must start with the rise of the European nation-states, and check to what extent India answers the criterial properties that can be extracted from the European model – which I shall call for the sake of argumentative clarity, the *first* model.

3. The European Nation-State

In longue durée history, the European nation-state is of relatively recent origin. After the establishment of the states of Renaissance sovereignty, European monarchies went through a critical transformation towards nationalism in successive steps. Two of these were of critical importance in trying to understand the contrast with state-forms in the rest of the world. The first

was the process, after Westphalia,[3] by which through the coercive use of state power – often state sanctioned social violence – these states, with increasingly stable boundaries, became states with "unified/singular" populations professing a single religious faith. Before the rise of this partial "international order" in Western Europe, states did not possess fixed boundaries, and did not have a fixed relation between territory and people, and consequently there was no pressure towards singularity of "a people". After Reformation, through a system of transactional violence and reciprocal acceptance of the Westphalian order, European states became single-people political societies in *religious* terms. Religion is not the only possible basis of collective identity; gradually, this singularization of "the people" was reinforced by other supplementary processes – like linguistic standardization,[4] or the creation, by the pressure of an industrial labor market, of a uniform schooling system.[5] As a consequence, over a period of about two hundred years, modern European states came to really "produce" – "peoples" with a pronounced singularity. Two great processes of political modernity – the rise of nationalism and the emergence of theories of popular sovereignty – the idea that there was a single identifiable "people" who constituted these states, and that legally, this people should find institutional ways of governing themselves – i.e., democracy – came to define the character of European states.[6] As the "international order" was primarily a settlement between the most powerful Western states after the Second World War,[7] not surprisingly, this form, or *model* was taken by the post war international order – to be the global *legal* norm. This, in turn, led to the legal pretense, at the base of the Bretton Woods settlement, of the world being composed of "nation-states" – of all states being bestowed, by an aggressive form of liberal civility, eagerly embraced by decolonizing peoples, the mandatory label of "nation-states".

4. A Non-Nation-State in India

It is important for analytical clarity to assess to what extent this socio-political model of a "nation-state" or the *first form* fits the case of India.

[3] Mahmood Mamdani in some current work suggests a change in the historical length of this process, and wants to start this process from the time of even earlier modernity the Catholic reunification of Spain and the simultaneous conquest of America: Mamdani, *Decolonizing: from the US to Israel*, Introduction, Harvard University Press, Cambridge (MA) 2020 Fall forthcoming.
[4] Analyzed famously in Eugen Weber, *Peasants into Frenchmen*, Stanford University Press, Palo Alto (CA) 1976, and Linda Colley, *Britons, Forging the Nation, 1707-1837*, Yale University Press, New Haven 2009.
[5] Analytically noticed by such diverse authors as Ernest Gellner, *Nations and Nationalism*, Blackwells, Oxford 1983, and Michel Foucault, *Discipline and Punish*, trans. A. Sheridan, Penguin Books, Harmondsworth 1977.
[6] For a highly instructive analysis of the specifically American case, Ira Katznelson, "As God Rules the Universe: Reflections on the state in Early America", Inaugural Pitt Lecture, Emmanuel College, Cambridge, January 25, 2018, especially the Hobbesian idea of authorization involved in the constitntion-forming processes.
[7] One historical fact is crucial in this analysis: in 1945 nearly no European colony had been de-colonized. When sovereign states were counted, there were legally few non-Western states. The legal situation in 1945 was utterly dissimilar from the present one reflected in UN membership.

First, we should clarify a point of intellectual history. The reason why the movement for independence from British rule was called the *national* movement was because purportedly the entire Indian people sought that freedom: as a consequence, the term "nationalism" in India came to acquire an essentially negatively defined, but immensely forceful, meaning as anti-imperialism. Anyone who thought that India should be independent from Britain and worked politically to realize that objective was, in this sense, called a nationalist. At the same time, two of India's most important "nationalist" thinkers – Rabindranath Tagore and Mahatma Gandhi – evinced deep mistrust towards the *positive* conception of "the nation" which they thought they saw in action in the behavior of European states in the interwar period.[8] Unsurprisingly, both were nationalists in the sense of being anti-imperialists, but anti-nationalists in the sense of opposing the creation amongst Indians of the recognizable sentiment that gave people license "to hate all peoples except their own". Both Tagore and Gandhi felt that this intense sense of singular internal solidarity with one's own "people" propelled Europeans towards hostility towards against others, including their own European neighbors. Nationalism, in this ironically "positive" sense, caused unending wars between European states and animated their colonial conquests by fueling racial contempt against their colonial subjects. Once India became independent, neither Tagore nor Gandhi wanted Indians to acquire "a love of their nation" in this positive sense. Central to their thought was a categorical rejection of what they saw as the European vision of nationalism.

4.1. Argument for Model 1

Apart from this intellectual argument,[9] there were other even more serious practical impediments in the path of free India becoming a European-style nation-state – a nation in the first model. Freedom remained initially an abstract and negative idea – just that India should be free of British rule, but as freedom approached widespread and intense debates began about what kind of state and society India should have after independence. Essentially, this debate was conducted between two arguments. The first maintained that becoming a state in the modern world meant becoming like modern European states – which were "nation-states" – a state of and for "the people" defined in a highly singularized fashion. After independence, India must follow the path of becoming a successful nation-state [Model 1]. This meant altering the critical conditions of political existence in the subcontinent. Jinnah, the leader of Pakistan, famously said that Hindus and Muslims were historically "two separate nations" which had lived parallel lives through centuries: therefore the state after independence should be based on a significant homogenous identity – on a singular self-recognizing people. Since, in the view of Muslim National-

[8] Ashis Nandy made this argument with characteristic provocation in *The Illegitimacy of Nationalism: Rabindranath Tagore and the Politics of the Self*, Oxford University Press, Delhi 1994, describing Tagore and Gandhi as "patriots', not nationalists.
[9] This argument was not restricted to Tagore and Gandhi. Others like Nehru, the Socialists and the Communists subscribed to this line of thinking.

ists like him, the Muslims were a single people in this sense, they must have a state of their own – for which they would constitute a European-style nation – a single, homogeneous Muslim "people". Nationalists on the Hindu side produced a mirroring argument – that Hindus would form the base of a similar singular homogeneous nation.[10] After partition conceded the demand for Pakistan, they believed that the force of their argument was reinforced. Although there could be an argument for diversity if no partition had happened, after it, India must become a Hindu state.[11] This will create a state in India that would replicate the structure of the European states – the only high road to success in the modern world order.

4.2. *Argument against Model 1 / Argument for Model 2*

Remarkably, despite the world wide dominance of the first model, in India at the time of independence and partition the opposing argument won the imaginative contest. Advanced by leaders like Nehru and Ambedkar, the other view pressed both an historical and a presentist case that, for India, adoption of a European style nation-state model [Model 1] would be a disaster. Historically, all great empires in Indian history – especially the two most recent, the Mughal and the British – were totally unlike Model 1 nation-states; these were messy and capacious containers of a vast mass of peoples held together by a state which did not demand or seek to create uniformity of identity. The post-independence state, therefore, must act like an empire-state in its accommodation of sociological diversity, though it was like a nation-state in having stable borders, and in considering itself, as the constitution declared, a state of "the people of India", and all groups were inseverable parts of a single history. The crucial point was that the people of India was not created by either ties of blood or of language or a homogeneous culture, but by the obvious and incontrovertible connection of people to land and the present time – their living in India. In addition to the historical case, they made a strong case for appropriateness of this Model 2 in the present. A European-state model would simply fail to work in India's political ecology of *convex* diversity. Convexity refers to the fact that Indian society is diverse on not one, but many levels. If we conceive of each identity attribute as applying to a single geometric plane, in India diversities exist on multiple planes – cross-cutting each other. An individual who is a member of a majority group on one plane – like religion – is likely to be a member of a minority on some other(s) – like language. This makes the actual achievement of singularity impossible, at least very hard. Driven by this consideration, these leaders directly rejected both the Pakistan demand and the Hindu nationalist proposal of a state based on religious identity – on the ground of convexity. Any conception of a singular, unitary people was bound to be a dangerous illusion. Considering religious identity alone, Hindus may appear a single people, but there were deep sectarian diversities amongst them. If we considered another plane of identity – like language, or caste – identities were irreducibly plural. Sociologically, simply to say India was diverse was inadequate: Indian diversity was convex – multiplanar. Imposing an institutional frame of the European-style nation-state on this society would fail simply because it would not contain sufficient legal devices to allow expression of pluralities – which democratic government must allow. Suppression of self-identities would inevitably fuel resentment. Finally, they argued, this was also the ethically preferable solution. The argument for a state-form which accommodated this kind of convex diversity – a Model 2 – made its case on three separate but mutually reinforcing grounds – historical, sociological and ethical. It won out in the political debates at the time of the making of the Indian constitution, at the foundational moment.[12]

5. The Structure of Model 2

The institutional frame fashioned in the Constituent Assembly answered this demand for expression of convex diversity. It adopted a federal constitution, associated rules based in ordinary law, and informal political practices modified the formal rules of majority by informal conventions of consensual/consociational practice.[13] Responding with democratic openness to convex diversity was the crucial institutional principle of the postcolonial Indian state. If we look closely at its institutional frame, legal design, informal conventions and intellectual justifications, it was nothing like the standard European nation-state. It was a non-"nation-state"[14] – which both academic and political opinion at the time hardly even admitted as a possibility, because of the underlying prejudice that a non-nation under modern conditions would necessarily be a non-state – a state that would inevitably fail. For purposes of comparative analysis, it is important to stress the high historical significance of this relatively new model – Model 2. In the political world before the Second World War the nation-state model in the strict sense was dominant in the West – with one great exception in the US, alongside small instances like Switzerland which were too small to disturb the tranquility of this axiom. India was vastly larger than these states of Western modernity; but more significantly, in the phase of decolonization, many new states were likely to be like India, because their societies evinced similar structures of sociological non-uniformity. Therefore, the dual experiment of Pakistan and India – the adoption of a strictly European-style model and a model that was strictly opposed to the European – Model 1 and Model 2 – was instructive for the whole world, not just of local interest. Pakistan and India were not just two nations; they displayed

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[10] Arguments between these two visions continued for a century – with immense internal variations, and are highly instructive for understanding the political possibilities in similar contexts. Jinnah's argument is presented in his famous speech for the Pakistan proposal to the Muslim League in 1940. For the classic Hindu argument, V.D. Savarkar, *The Essentials of Hindutva*, Hindi Sahitya Sadan, New Delhi 2003.

[11] Of course, in their vision, the Muslims should constitute a minority with lesser rights – as in Europe in the 18th and part of the 19th centuries.

[12] In political history, all periods are not of the same significance: foundational periods are of critical import.

[13] Arendt Lijphard, *The Puzzle of Indian Democracy: A Consociational Interpretation*, in "American Political Science Review", vol. 90, no. 2, June 1996.

[14] Tagore prophetically used this phrase in a lecture in Japan, Rabindranath Tagore, *Nationalism*, Macmillan, London 1918.

two entirely different conceptions of the nation-state. Comparatively, a society like Saudi Arabia might succeed with Model 1, but others like Iraq would be more suitable for Model 2; and the troubles of Turkey could be seen as a society that required Model 2 trying to work with Model 1.

6. Cross Pressures after Independence

Indian politics after independence shows two distinct historical periods. Politics in the first thirty years reflected a general acceptance of the intellectual justification of this second, alternate model, because, after all, India was ruled by leaders who were its authors. But the institutional and intellectual articulation of this model needed a clear grasp of its originality and its significance, and uninterrupted defense in public discourse.[15] However, the general dominance of Eurocentric thinking left an insidious and indirect imprint even on the Nehruvian leadership who devised this second model. Even while devising a new model sometimes in their own writing, and in their intellectual defense of their own alternative model they often remained prisoners of language of the first model and the political imaginary that went with it.[16] Paradoxically, to defend Model 2 they used the language of Model 1. This meant that they sometimes misdescribed their own acts and efforts. They consistently underestimated the significance of their innovation, and thought as if what they constructed was an *exception* to a universal rule, and they wrote often in a tone of embarrassed apology, as if they violated a universal law of state construction. Ironically, this implied that the universal rule consisted of what the first states in a small part of the earth did in the first stage of evolution of the modern state. But that was the common sense of intellectual commentary and academic analytics. After Nehru's death, with the passing of the leadership of the national movement, the vivid realization of its distinctiveness and the urgency of defending it intellectually slowly declined[17] – as from Indira Gandhi onwards, Indian politics came to be dominated by "pragmatic" leaders who had a less clear idea about the historical distinctiveness of this model. As the first model was generally dominant in world, they could be persuaded easily to view the distinctiveness of the second model as a weak realization of the first, and therefore a source of crucial weakness. With the rise of Modi's BJP, for the first time, the political elite around the government has expressed an explicit endorsement for Model 2.[18] No previous Indian leader declared a clear preference for Model

2 – the model behind the imagination of Pakistan – for India: to turn India into a successful Hindu mirror image of Pakistan. Against the three justifications – historic, practical and ethical – this is a project to return to the first, European-style model of the nation-state.

7. The Imaginative Decline of Pluralism

Congress under Indira Gandhi neglected the daily plebiscite in favor of Model 2 – pluralistic nationalism – on which the Indian state was initially formed. Several reasons combined to lead to its decline. Once a dominant form of nationalism settles down, and is reinforced and supported by pedagogic institutions of the state – like state media and the public schools system – it becomes easy to take it as eternal, totally invulnerable to political challenge. An unexpectedly precipitous decline of Hindu nationalism after freedom contributed to this complacency. Wide general acceptance of this nationalism had two attendant problems: first, it seemed eternal, instead of being contingent, won by a hard-fought ideological battle. Second, this also created an illusion that the idea of nationalism had only one content, instead of the truth that the content of nationalism – the idea of the nation in any country – tended to be indeterminate, and constantly contested and re-imagined. Third, Indian politicians and intellectuals certainly underestimated a subtler problem. Precisely because the Nehruvian form of Indian nationalism was so exceptional, and so different from the globally dominant European form – this difference itself might be perceived as a weakness, as too much of an idealistic exception. Although the period of Indira Gandhi's rule weakened the institutional structure in many ways, it is in the new century that the pluralist democratic imaginary has come to face a more decisive challenge.

8. India Not a Multicultural Society

At times the pluralistic conception of Indian nation-hood is defended as an instance of "multiculturalism", and cleavages in Indian politics are interpreted as *cultural*. That interpretation makes them appear similar to the troubles European states have had with their Islamic minorities, or to the culture wars in the US. Both these comparisons, in my view, are forced, if not false. Notably, Indian institutions were never described as "multicultural" before the currency of multicultural principles in Europe, especially in the UK.[19] Many Indian commentators subsequently claimed that the Indian system too was multicultural. In reality, the Western European and Indian cases on the question of religion difference are entirely distinct. In West European societies which had become largely secularized, entry of large groups of new Islamic citizens created a clash between two dissimilar cultures on some important questions. In case of the family, or

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[15] As Nehru ceased to be an author and became the prime minister, this task of intellectual justification gradually decayed. The political elites probably became complacent with the control of the state, and handed over the task of its everyday justification to bureaucratic institutions of the state.

[16] A language in this sense not merely describes what exists, but also contains an outline of limits of possibilities. To follow my argument here, the language in which they made their political construction tended to imply that such a construction was not possible.

[17] If there is a serious failing of Indian political theory, it is the neglect of the task of grasping this distinctiveness and providing a theoretical defense.

[18] Here there is a discernible distinction between the two BJP regimes of Vajpeyi and Modi.

[19] Traditionally, the favored conceptual description of India's culture was "unity in diversity", not multiculturalism. My claim is that both these concepts indicate diversity – but not in the same configuration.

ways of public dressing the cultural ideas of the majority and the Islamic minority were deeply dissimilar. Multiculturalism was an attempt to devise policies which dealt with this dissonance between cultural and moral ideals within the nation-state. No such deep divides existed between Indian Hindus and Muslims on cultural questions – like the family, or the role of women or the dress code. Real and deep religious differences did exist between the two faiths – for instance, between the exuberant imagic imagination of Hindus and the iconoclastic severity of Islam. But pre-modern Indian society had devised pluralistic conceptions of identity to resolve such differences much before the arrival of the modern state.[20] To conceive of the difference between Hindus and Muslims as comprehensively cultural in this sense is a mistake. That plays into the hands of the Hindu nationalist propaganda which still follows the old "two nations" theory on which the creation of Pakistan as a separate state was grounded, and which asserted that in all important matters the life-ideals of Hindus and Muslims were irreconcilable. In fact, very little differentiated Hindus and Muslims except their theological views – which are irrelevant for political life.

Additionally, it is impossible to mount a credible argument that Hindus need to fear Muslim domination in any field.[21] In the absence of this argument, the BJP has turned to criticisms of the Congress and other parties on the ground that in their excessive zeal to protect minorities, they have created a regime of legal discrimination against the Hindus; so that, although they are the majority, the Hindus suffer discrimination at the hand of the "secular" state in their own land. The secular state punishes only Hindus for their religiosity and rewards minorities for theirs, defying all principles of equal treatment.[22] Additionally, the BJP has cleverly reinterpreted the argument for pluralism and diversity as a justification of social fragmentation. It has attacked the long history of reservation politics as a systematic process through which citizens' affiliation to an idea of united India has been undermined. Reservation politics constantly presents caste or regional or religious identity of citizens as more immediate, more urgent, more deeply connected with their interests than the distant, abstract and vague ideal of an Indian nation. Groups which do not benefit from the reservation system have in reaction tended to coalesce as a political group supporting the BJP's subtle discouragement of reservation politics.[23]

We can also find in India a sociological trend observed in other democratic societies like the US. Mark Lilla has argued that liberal politics in the US has encouraged an asymmetric version of identity assertion – in which the identity of the White majority has been fiercely assailed, while identities of other, non-white groups have been encouraged on grounds of social justice.[24] Moral justifications for this kind of liberal politics can be persuasive, but it accompanied by unavoidable sociological effects. Identities are mutually and reciprocally defined and mobilized. Mobilizing the identity of minorities – purely on the grounds of self-assertion rather than justice – exacerbates the interactive sense of identity of the White majority: because it amounts to saying to the majority group that everyone should be proud of their identity, only they should be embarrassed for theirs. This is likely to bring forth an identity reaction from the majority. In India, two rather similar processes can be observed. First, the emphasis on *identity* rather than *justice* in case of reservations for a large number of intermediate castes has given rise to a politics that must appear strange to outsiders. All groups want a certificate of "backwardness" from the state, because then they can draw advantages of reservation – a bizarre politics of inverted privilege. This has created a cross-pressure on upper castes to seek to do a countervailing form of identity politics. Secondly, some lower castes politicians have often stoked a dangerous argument claiming that the groups they represent constitute "the majority of the people", and therefore their demands should be conceded by the state. Subtly, this has altered the character of the argument itself – changing it from a justice argument to a majoritarian one. Although they can make the claim on the basis of justice, often they choose to make it on the basis of identity majority. They forget that if ordinary citizens become used to the force of this argument – that a majority should be granted what they demand, because that is the spirit of democracy – other groups too can claim majority status. If the majority decides the nature of the state, that can be the Hindu majority as much as the majority of lower castes. A Hindu majority acting as a single voting bloc would be electorally invincible given the structure of Indian society. An argument often deployed by lower caste politicians has unwittingly paved the path for the BJP's doctrines.

9. A "Deep State" Argument in Favor of Democracy

The very idea of constitutionalism that is folded into modern democracies contains an implicit sense that democratic institutional mechanisms are vulnerable and fragile. Even early modern thought, e.g., in the *Federalist Papers*, implicitly recognized that successful functioning of democracy depends on a delicate and perpetually renegotiated balance between the forces of participation and the durability of procedures. Against theories which emphasized participation and popular mobilization exclusively, the Schumpeterian argument stressed the reliable stability of procedural regimes. His reflections were evidently colored by the dark experience of inter-war Europe.

Authoritarian leaders understand both the plasticity of institutions and the imaginative dominance of democracy in today's world. The only way to transform democratic systems into undemocratic substitutes is to pretend that it is an internal self-transformation of democracy in an even

[20] Just as the relation between Catholics and Protestants and between Christians and Jews were settled much before the migrations of the 1950s; and all segments of European societies had undergone a similar process of secularization.

[21] Perceptions of Muslim threat in India fall within the class of political arguments analyzed by Arjun Appadurai in his *Fear of Small Numbers: An Essay on the Geography of Anger*, Duke University Press, Durham (NC) 2006.

[22] In terms of political theory, such arguments are not unusual: in most instances, arguments for social justice run up against the claim that they infringe the general liberal postulate of non-discrimination and equal treatment.

[23] The BJP has not openly rejected reservations, and has selectively added new items to the list: but it is undoubtedly the primary beneficiary of upper caste resentment against state support for lower castes.

[24] Mark Lilla, *The Once and Future Liberal: After Identity Politics*, Harper, New York 2017.

more democratic direction. This can be done only by working through formal democratic procedures, or appealing to something that even democrats will concede is more fundamental than democracy itself. Democracy represents the will of the people: thus, anything the people desires must be democratic by definition. This is a plausible logic that can be used in two distinct but complementary ways. An obvious technique is to overstress the significance of the will of the people in the proximate election that these politicians have won. Demagogic leaders encourage the view that the "will of the people" in the last election is the final expression of their intention, as though earlier elections were not. Subtly, they seek to undermine the idea that there are different levels of " the voice of the people" or their "intention/will" represented by the stratifications implicit in a constitutional system – in which "we the people" often decide at a particular moment in history to put some principles or institutional rules beyond the reach of an ordinary election or legislation by embedding them at a deeper level beyond the reach of quotidian law-making. Constitutional theory has astutely presented this arrangement as a structure of "pre-commitment".[25] Populists regularly claim that a past "people" at a particular point in history might have intended to impose these pre-commitments, but at the moment that people has been replaced by another real "people" who should not be unfairly bound by the choices made by past forbears. Because that will mean that the real, present people – the only people that truly exists – cannot have a final say. This line of reasoning can be used to shake off constitutional rules in the name of a radical presentist self-assertion.

A second common maneuver by populist politicians deploys another deep intuition about democratic regimes. Constitutions standardly use a locution capturing a process that is difficult to conceptualize and express: these institutional systems are seen as being "given to themselves" by sovereign peoples. In many democracies, populist politicians are mobilizing fear that the very constitution of that "people" – who are in principle prior to everything else – is being infiltrated by impostors, by those who do not belong.[26] These newcomers are stealing their sovereignty, or infiltrating as illegitimate interlopers into the people's own process of self-determination.

In this regard, however, India's case is different from Western democracies. In Europe and the US the conservative alarm is regarding the cultural propensities of groups which have migrated into these states relatively recently. It is these groups which are seen to threaten or pollute the peoplehood of the primary nation.

In the recent history of Indian democracy there are no strictly parallel causal processes like migration and immense cultural divides. But there is a comparable shift in political discourse. Across the world, there has been a radical shift in the predominant meaning of the ideal of justice or rather of the wrongs of injustice. With the collapse of the radical socialist

imagination, the meaning of justice has become reinterpreted towards a radical liberal meaning. Injustice now resonates less as unjust economic distribution, more as discrimination and insult against collective identities. The shift from inequality to insult – accepted by both leftists and liberals – has played into the hands of rightwing populist forces across the world – including India. Hindu nationalist politics has made deft use of this idea of discrimination and insult to fuel hostility to both Muslims as a community, and the secular elites who are taken to the primary manufacturers of system permanently biased against the majority. The rhetoric deployed by Hindu nationalist politicians and Western populists is quite similar. Both groups have sought to make the typical conservative rhetorical move of claiming a threat of dissolution to the prior "people" standing behind democratic constitutions. In both cases, populists have sought to reverse the historical trend towards a more inclusive understanding of citizenship. In the India, this demand is more tenuous and indefensible than in the West, because India has not been subjected to a process by which its "people" is being remade.

10. Electoral Absolutism

Institutionalization of real democracy is made difficult in these settings because of a trend towards an absolutization of the electoral moment over the other moments of the democratic process. Democracy is a complex system of political rule with many tiers, many centers, many elements, many speeds – among which elections are the most visible, and apparently most originary. But democracy is not just a matter of *access* to political power, but of ending the oppressive character of the totality of a people's political experience: which involves altering the operation of power in the citizens' everyday experience – between elections. By obscuring the quotidian experience of power, and overemphasizing only the single question of access, populist politicians seek a revision in the meaning of democracy – re-engineering them into elective authoritarianism. In India, not only the BJP but other political parties have assisted this change – usually by making two claims. The first is that *access* to political office must be through elections, but once elected, the power of the executive should be untrammeled. Second, if elected executives are charged with corruption or misuse of their constitutional authority, they should not be subjected to regulatory supervision or to judicial scrutiny; instead they should be "tried in the court of the people" – i.e., by another election. Lower caste politicians like Lallu Prasad Yadav routinely used this argument to claim immunity from prosecution. BJP politicians in power during the massacre in Gujarat have effectively claimed similar immunity, as did the instigators inside the Congress Party of the 1984 massacre of Sikhs in Delhi. A major obstacle to a real deep-seated entrenchment of democratic institutions is this un-institutional, exclusively elective conception of democratic government.[27] An *institutional* conception of democracy conceives of it, to use

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[25] For the classic presentation of this view, Jon Elster, *Ulysses and the Sirens*, Cambridge University Press, Cambridge 1984.

[26] Fukuyama quotes Trump: "The only important thing is the unification of the people" because "the other people do not mean anything". Fukuyama, *Identity*, 159 quoting William A. Galston, *Anti-Pluralism: The Populist Threat to Liberal Democracy*, Yale University Press, New Haven 2018.

[27] The trouble with the idea of "illiberal democracies" is that it concedes this fallacious point.

Gramsci's imagery slightly differently, as an intricately designed arrangement of defense of basic norms and processes – as a fortress on a hill surrounded by moats and entrenchments – which would be hard for anti-democratic forces to overrun. Except that on one point this analogy is misleading: the defense is not against enemies from outside, but forces within. This means that democracy can be protected from populist takeovers by the creation of what could be called a Schumpeterian procedural "deep state" – a democracy that cannot be overthrown by elections.

11. Deep State. A Long Constitution an Attempt to Make the State Deep.

Political movements that install democratic constitutions are usually a result of processes of serious collective deliberation – though rarely do such movements have amanuenses like the *Federalists*[28] to write down every move of their collective thinking. Commonly, they are aware of potential dangers to democratic systems – from various directions. Adopting constitutions is the most powerful device to resist a recession into authoritarianism. We can usefully deploy a kind of "deep state" argument to clarify this process.[29] Constitutionalism creates a system of unequal distribution of fixity between different parts of the system of rules by which a government functions. Fundamental principles – regarded as defining features of democratic governance – are made much harder to alter by placing them beyond the ordinary legislative process: usually these are made subject to far more stringent amendment rules. Principles considered less profound for the system are left to ordinary legislation. Arrangements like these can be described as a kind of "deep state", differentiated from the frequently changing party governments. A simple electoral change in government, when a different party takes over executive and legislative office, does not lead to alterations at other levels of functioning of the "deeper" democratic state/regime. Most democratic systems possess such self-defense mechanisms. Observers often find the length and detail of the Indian constitution remarkable. Insertion of such juridical detail inside the constitution can be seen as a preemptive attempt by the framers to install such a "deep state" – which, because it is embedded in the constitutional document itself, could not easily dismantled.

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[28] Fortunately, in India, we have something that records the deliberations in their raw form – the *Constituent Assembly Debates* in thirteen volumes. *Constituent Assembly Debates: Official Reports*, reprinted, Lok Sabha Secretariat, New Delhi 1999.

[29] We are not using the idea of a deep state in Steve Bannon's sense – which is a vulgarized version of a prior Leninist vulgarization of an original Marxist idea. Leninism vulgarized Marxist thinking on the liberal state to claim that liberal institutionalism is a sham – to distract the workers from an understanding of their real domination by creating a "façade" of formal freedoms. In fact, in all democratic societies real power was wielded by a "power elite" drawing their dominance from socio-economic control; and they manipulated the decisions of the government, concealing the actual seat of political power. Bannon vulgarized this further to suggest that there are some members of the permanent bureaucracy in the vast executive of a modern democracy who sided perniciously with one political party and waged a continual war against the other side, hollowing out their electoral victories.

Political forces which seek to trim democracy instinctively understand this deep-state configuration of a layering of laws. Their own entry into power is accomplished by change at the easiest level – an electoral victory. Once in power, their expansive designs for political change come up against resistance from the second-tier institutions – like the judiciary, law enforcement authorities,[30] the education system, public bodies which are funded but not meant to be controlled by the state – a principle that populist leaders invariably find entirely unintelligible. After they feel entrenched in office, populist leaders chafe against institutional restrictions, and the second phase of their rule is often spent in trying to bend independent institutions to their "sovereign" will. Indian democracy has seen two serious spells of authoritarian modification – during the Emergency regime under Indira Gandhi and under the present Modi government. Attacks on the independence of what Tocqueville would have regarded as "intermediate" institutions" of civil society occurred during the Emergency as well – with formal intervention of the police, incarceration of opposition politicians, intimidation of officeholders of public bodies.[31] But the juridically "exceptional" nature of the Emergency alerted all sides to the dangers of an authoritarian revision of the political system. Under the Modi government, editing institutions to conform to directives from the executive – especially the Prime Minister's office – has been done without an exceptional constitutional declaration – which threatens to make such pressure towards obligatory conformity a matter of everyday practice, part of the normal functioning of democratic government. The current government has sought to undermine independence of the press, academic institutions like universities, the judiciary and public institutions like regulatory and monitoring bodies. A major juridical difference between India and the US is that under a parliamentary system the legislature cannot play a supervisory or countervailing role to the executive. There is some similarity between the US and India here – because the Trump administration has sought to pack regulatory bodies with officials who repudiate the fundamental principles behind these controls – like handing over the Environmental Protection Agency to figures who are skeptical of climate change. The media critical of Trump have concentrated on his "lies" which foregrounds moral condemnation of individual figures, and takes away from a more serious discussion about Trump's demonstration of how fragile intermediary institutions are even in societies with a long and successful history of democracy. But analysis of these intermediary spaces also shows a vast contrast between the two cases: the unrelenting ferocity with which the US mainstream media have confronted Trump, and the docility with which Indian media have acceded to the BJP's intimidation. Naturally, the BJP does not complain about a "deep state".

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[30] In India, unfortunately, the police have proven entirely pliable to elected governments at the Centre and in the states. The kind of legal opposition the Trump presidency has faced from the Department of Justice is unlikely in India.

[31] For recent fresh assessment of the Emergency, Gyan Prakash, *Emergency Chronicles: Indira Gandhi and Democracy's Turning Point*, Princeton University Press, Princeton (NJ) 2019.

12. Fallacies of Majoritarian Claims

Forcing compliance is usually done with the help of a misleading rhetoric of the "will of the majority". The Modi government got a majority of *seats* in parliament to form a government without a coalition.[32] The system of plurality voting in India allows great asymmetry between votes and seats, and the Modi government's seat majority (269/545 i.e., 49.3 per cent) was based on the support of 31 per cent of the votes. A clear majority of the electorate opposed this government at the time it came to power. Yet, in its rhetoric, the Modi government and its officials conflate the electoral majority of 31 per cent for the BJP government with the will of the nearly 80 per cent majority of Hindus in the Indian population. It illegitimately claims to represent, i.e., *speak for* the entire Hindu community, while clearly a majority of that majority did not vote in its favor – besides the fact that some sections of its own voters might not support more extreme or authoritarian measures directed against minorities. This sets in motion a perverse logic of numbers: an increasingly smaller elite speaks in the name of an increasingly larger section of the people travestying juridical rules of representation and authorization.

13. Crises in Two Senses

Two lines of crisis have to be analyzed in understanding the present condition of Indian democracy. First, populist politicians realize that crises are double edged things for them. If they fail to master them, crises can dramatically undermine their power; but crises offer an opportunity to augment their power, because by using that excuse executive power can try to shake off its juridical limitations. A crisis situation makes it more likely that ordinary citizens would ignore procedural violations and acquiesce in illegitimate extensions of power. Steven Levitsky and Daniel Ziblatt point out that politicians manufacture crisis with a long list of examples: Erdoğan in Turkey used the attempted coup to increase his powers; Orbán in Hungary manufactured a crisis over refugees, who were not intending to swamp his country, to create a panic of Islamic takeover in a European country with one of the lowest proportions of immigrants.[33] The Modi government in India gratuitously inflicted a financial crisis on the economy by a selective demonetization. The dual campaign of the Modi administration always keeps the threat of a violent internal conflict with Muslims in reserve to create a short-term crisis to influence Hindu supporters. Real potential for crises is abundant in the permanently explosive situation

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[32] Several previous administrations – since the 1990s – were all coalition governments: this the simple majority achieved by the BJP in 2014 could be interpreted as a surprisingly decisive mandate.

[33] Steven Levitsky and Daniel Ziblatt, *Why Autocrats Love Emergencies: Crises – Real and Imaginary – Loosen Normal Constitutional Constraints*, in "New York Times", January 12, 2019, mentions Indira Gandhi alongside Putin, Erdoğan and Trump. For their larger argument, *How Democracies Die: What History Reveals about Our Future*, Crown, New York 2018. Also the pithy and powerful: Timothy Snyder, *On Tyranny: Twenty Lessons from the Twentieth Century*, Tim Duggan Books, New York 2017.

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in Kashmir, the relations with Pakistan, and the volatility always implicit in the politics of identities and provocations. But the deeper, more underlying crisis is that after a long time a nationalism suited to the first form of the nation-state has imperiled the earlier pluralist form.

Nationalism and democracy exist in a strange historical relation. But as we observe by a comparative analysis of state forms and intellectual history, nationalism can have at least two distinct forms. Certainly in some cases, nationalism strengthens and assists the democratic principle.[34] Yet in others nationalism of the first form, when applied to a state of convex diversity, can become a substantial danger to democracy – by pushing some real people outside the conceptual boundary of its imaginary sovereign "people" – of the nation that stands behind and animates the state.

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[34] See for instance the argument in Liah Greenfeld, *Nationalism: Five Roads to Modernity*, Harvard University Press, Cambridge (MA) 1993, Introduction and ch. 1.