FROM THE COLONIAL TO THE POSTCOLONIAL

India and Pakistan in Transition

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Election Law and the 'People' in Colonial and Postcolonial India

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No concept has been more central to modern notions of democracy than the concept of the 'people' and the idea of the people's sovereignty. Yet few concepts have been so ill-defined. The concept is, of course, on one level a utopian fantasy, a fiction, as many theorists have realized. But, as Edmund Morgan has written, it is a fiction that has had powerful political implications: 'From its inception in the England of the 1640s the sovereignty of the people has been filled with surprises for those who invoked it.'[1]

The concept of the 'people', which has taken many forms and has many genealogies, has played a central role in the universalist imaginings of modernity. It is a concept closely aligned to that of the 'nation'. At its root, as Benedict Anderson has argued, was the notion of a fundamental equality of imagining, an imagining through the press and through literature of a community of equal human beings living in what Anderson calls 'homogeneous empty time'.[2] But to understand the meaning of the 'people' in more concrete historical terms (and the 're-presentation of the people', to use the catch-phrase employed by both Britain and India to title their major legislative enactments on voting), we must look concretely at two arenas to whose imaginative resonances Anderson gives very little attention—the law and the vote.

In fact, surprisingly few theorists have carefully examined the actual operations of elections (and of voting) as a clue for understanding the underlying structural meaning of the 'people' (or the nation) in the history of modern India. My argument is that the law of elections and voting in India was predicated on a tripartite distinction that came to

be central to India's imagining of democracy. This was a conceptual distinction between state, society, and the people. The conceptual origins of this distinction lay in eighteenth- and nineteenth-century Britain. While the state and society alike were structured by power and influence, and thus open to sociological analysis as Marx, Weber, and Durkheim made clear, the 'people' was a concept defined by the intrinsic autonomy, freedom, and reason inhering in each individual. As a collectivity, the 'people' were thus an imagined entity, a utopian ideal, incapable of sociological definition. The people were, as Morgan has noted, a fiction. But it was through the act of voting that the 'people' were given substantiation. It was voting that brought the people into the realm of sociology—the realm of social structure and influence. Yet, as part of a political process, the tension between the people as a sociological construct at the time of elections and as an ineffable utopian ideal nevertheless remained critical to the structuring of sovereignty. Only by standing apart from both state and society, could the people serve as sovereign. And yet, only by making their voice heard through elections, could the people rule.

There is no better place to begin this analysis than with an examination of the history and development of India's election law, of the connection between law and the vote. Election law embodies some of the most basic theoretical contradictions in modern democracies. As in Britain, election law in India had strong universalist roots. India's election law celebrates the legal status of the individual, not as the bearer of a particularistic culture, but as a universal vessel of free will and legal rights. That an official, legally recognized 'voter' is a rational, autonomous actor is the conceit that justifies government by consent—and that defines the people. Yet, as part of a political process, elections in India as elsewhere have always been deeply—and inevitably—grounded in the particularities of culture. Within the context of electoral campaigning, voters are not simply individuals defined by the universalistic claims of law, but cultural beings, defined by the fluid, particularistic, and often highly affective bonds and prejudices, linking them to particular identities and particular leaders. The tension between the universal and the particular embodied in the law will thus be the focus of this essay. I will begin with a discussion of the background to the principles of election law and voting introduced by the British into India at the time of the 1919 Montagu-Chelmsford reforms. I will then analyse some of the contradictions in election law and its interpretation, concluding with a discussion of how these contradictions played out following the passage of India's Representation of the People Act in 1951.

BRITAIN AND INDIA'S ELECTION LAW

To understand the tensions inherent in India's electoral system, it is critical to look back to the history of elections and electoral law in Britain, for the major contradictions that marked India's electoral system were not primarily a product of the collision of European and Indian ideas; rather they were a product of tensions intrinsic to the electoral process as it had developed in England itself. What was imported to India in 1919 was not a set of 'Western' values, but rather a set of tensions, which were brought to India full-blown, and subsequently played out in India in distinctive ways.

The backdrop to the early twentieth-century introduction of elections into India was, of course, the long and charged history of electoral reform in Britain in the nineteenth century. Though England was not the first country to adopt universal suffrage, its history has often provided a paradigm for narratives of democracy for it ultimately adopted universal suffrage within a non-revolutionary context—a context within which the old regime of influence and status survived and (many would say) even flourished in interaction with the operation of a reformed electoral system. This is not to deny that electoral reform was marked by sometimes bitter political conflict. However, electoral reform was also a major mechanism by which an emerging regime of legal egalitarianism and mass citizenship was reconciled with a continuing politics of inequality and influence.[3]

In fact, the history of British electoral law shows clearly the tensions inherent in this process. No term focused attention more acutely on the underlying contradictions that this involved than the concept of 'corruption'. The word 'corruption', of course, was not just a descriptive term in England in the eighteenth and nineteenth centuries, but a critical, bitterly contested concept, suggesting the ongoing argument over the changing character of power. Many have seen the history of corruption as rooted in the tension between private advantage and public power. But such a definition sidesteps the most critical question shaping the historically changing meanings of corruption: namely, how and why was it that the 'private' came to be perceived as 'corrupting' of

the 'public' realm? It is the argument here that to find the key to this question, we need to chart the developing notion of a public responsibility shaped by free personal conscience and rational choice. Underneath the tension between private and public—and the debates on corruption—in fact lay a larger clash between competing visions of the body politic—a clash, to put it in the starkest possible (and therefore overstated) terms, between a vision of society as defined by structures of influence (whether official, kin-based, aristocratic, or wealth-based, and a public shaped by the voices of free men.[4]

To trace the emergence of such conflicting visions of the body politic in Britain, politics would of course require a far more fine-grained discussion of British history than can be attempted here. Universalist visions of autonomous individuals legally constituted as 'free men' had their roots in long and complex—and in some ways highly particular—British historical processes.[5] However, the universalist vision of a people defined by individual freedom of thought ultimately implied the drawing of conceptual lines between state, society, and the people in new ways. Signalling a moral claim that parliament represented a popular or national interest (of free men), independent of the government, charges of political 'corruption' referred preeminently in the years before 1800 to the susceptibility of elected representatives—and parliament—to government manipulation. Debates in the late eighteenth century on corruption thus helped to define new conceptual lines separating the state from the exercise of an autonomous 'public' voice. But ironically, arguments over corruption in these years also pointed to an emerging conceptual separation between the 'public' (or the people) and society as well. After all, the freedom of a public voice in elections, defined by the uncoerced voices of 'free men', could be compromised just as much by the exercise of coercive aristocratic influence in the country, as it could by the influence of the state. In 1801, the House of Commons thus passed a resolution declaring it 'a high infringement of the liberties and privileges of the Commons' for peers or prelates to interfere in the elections of members of the House of Commons.[6] Though this had little immediate impact, the Commons was, in effect, defining such interference as a form of corruption that threatened to compromise the ability of the Commons to represent an independent public voice separate from *both* the state *and* from a society defined by webs of connection and domination.

These new conceptual separations were critical in gradually vesting a new, sovereign public voice in 'the people', the electorate. However,

this hardly meant that, in practice, the voice of the electorate could be separated from the operation of influence in society. Few, in fact, even sought such a separation. With the passage of the Great Reform Bill of 1832, debate focused not on whether 'influence' could be eliminated in elections, but on how 'corrupt' influence could be distinguished from 'legitimate' influence within this conceptual order. As even many of the champions of reform acknowledged, the influence of men of 'wealth and status' was an inescapable and even necessary part of the reformed political order. Men of station wielded what Lord Grey, the great champion of reform, described as 'natural influence', which implied influence rooted not in coercion, which might compromise free conscience, but in respect and reciprocity. Far from being 'corrupt', the operation of this sort of influence, linking superior with inferior and protection with gratitude, suggested virtue on the one side and freely given support on the other. It was 'that which honourable men of large property always possess in the neighborhoods in which they live'.[7] Only in such a framework was the reconciliation of free uncoerced choice with hereditary personal influence possible.

Yet the line between the operation of traditional influence and the coercion of the individual's free choice remained a very fine one. Problems of coercion had, of course, long provided a justification for excluding from the franchise—and from the definition of the people—those who were most widely perceived as lacking in autonomy and thus most susceptible to *coercive* domination: children, women, and the propertyless. In the eighteenth century, the linking of property and individual autonomy had been most famously articulated by Blackstone.[8] But charges of 'corrupt' influence proliferated in mid-Victorian Britain even within the reformed property-holding electorate defined by the Great Reform Bill, suggesting the tensions built into electoral politics as the franchise expanded.

Elections between 1832 and 1867 thus witnessed a record number of petitions challenging the validity of elections on the grounds of various forms of 'undue' influence, including 'treating' and outright bribery by men of wealth and status. The very expansion of the electorate led to a considerable growth in expenditures for purchasing votes.[9] Even those who strongly supported gentlemanly influence in English elections were forced increasingly to confront the difficulties that unrestrained influence created in the operation of free elections. 'I speak it with shame and sorrow', Lord Palmerston told the Commons at mid-century, 'but I verily believe the extent to which bribery and corruption

was carried at the last election has exceeded anything that has ever been stated within these walls'.[10] Yet bright legal lines between corrupt and legitimate influence continued to be difficult to draw. Concrete efforts to control corruption repeatedly ran up against the common feeling among members of parliament that 'there but for the grace of God go I'.[11] It was only in 1883 that comprehensive legislation was finally passed that officially criminalized a list of corrupt electoral practices—including bribery, treating and 'undue influence'—and, perhaps equally importantly, set limits on election expenditures and required the keeping of strict, open campaign accounts.[12]

In the wake of the passage of this Act, British election challenges based on corruption declined significantly. But the Act hardly ended corruption or removed the tensions that were intrinsic to the electoral system. Whatever the conceptual and legal foundations of a free, 'public' electorate, composed of autonomous, self-contained electors capable of exercising free choice, the reality of electoral campaigning inevitably involved tapping into the influence of the men who controlled the networks of interconnections that composed society, whether based on hereditary status or newly acquired wealth. Separating the sovereign voice of the 'people' from the corrupting webs of 'society' was not an easy undertaking.

Nor was it so in India. Indeed, the pattern of electoral reform in twentieth-century India in some ways mirrored the process of nineteenth-century electoral reform in Britain, as electoral reform in India was based, after 1919, on the gradual extension of the vote to a property-based franchise. However, the problem of writing electoral rules to both legitimize and constrain the operation of traditional influence, while defining the voice of the 'people', was no less severe in India than in England. Though the British officials who first framed India's electoral rules wrote of their concerns to prevent in India that 'wholesale debauchery of the electorate' that had once marked England itself,[13] they were as deeply concerned as nineteenth-century British reformers had been to use elections to legitimize the operation of influence—and government power—in Indian society in new ways.

A good example of the debate this engendered was the early discussion of rules on 'treating', or the feeding and entertaining of voters at the polls, a debate that occurred when, in the wake of the Montagu-Chelmsford reforms, the first attempts to systematize Indian electoral law occurred in 1920. Treating had been clearly defined as a corrupt practice in Britain. In India however, as Sir Harcourt Butler who was

the Governor of the United Provinces, wrote to the committee drafting the Indian electoral rules, to follow this English precedent would be to ignore actual Indian 'conditions of life'. In the rural areas of the United Provinces, hospitality was 'almost a religious duty', he wrote. 'Distances are great, there are no inns by the wayside; sustenance has to be provided.'[14] As Sir Laurie Hammond, one of the architects of India's electoral law, noted:

> to the Indian candidate, with traditions of Eastern hospitality behind him, it may be a shameful thing that he may not give a glass of sherbet to an elector who has come a long distance through the heat of the day to record his vote.[15]

However, whatever the cultural particularities of 'eastern hospitality', it was on universalist assumptions that British officials ultimately grounded the bulk of the law of electoral corruption. As the Reforms Advisory Committee noted with respect to treating, to remove it from the list of corrupt practices would 'throw open the door to wholesale corruption and would go far to frustrate the whole purpose of the rules', whatever the particularities of Indian culture. Indeed, at the heart of India's laws of electoral corruption—which, with some minor variations, were imported wholesale from Britain—remained a utopian vision of the uncoerced individual as the bedrock of the 'people', a concept that the framers of India's electoral laws apparently thought was intrinsic to the legitimizing political function that elections offered.[16]

THE PEOPLE AND THE STATE

Yet the relationship between the people and the state that was embodied in elections was also contradictory. At one level, conceptual opposition between the people and the state lay at the heart of election law. As the history of election law in the United Kingdom suggested, independence from official coercion and interference had been at the very heart of efforts to establish an elected House of Commons as a free voice of the 'people'. And yet, the introduction of elections and the gradual extension of the franchise, were also undertaken in India, perhaps just as much as in Britain, to legitimize the power of an increasingly intrusive state. The tensions inherent in the emerging concept of the 'people', as embodied in Indian election law were thus complex. Even as the state defined an electoral system predicated in law on the existence of the free, autonomous voter, it asserted at the same time a

strong governmental interest in maintaining and extending, through elections, the stabilizing structures of authority in society that were critical to the state's power.

The key to the efforts of colonial state's efforts to balance these imperatives was, of course, the concept of the 'rule of law'. This was the conceit that allowed the colonial state to administer elections even as it sought to morally separate itself from the outcomes—and from the 'free choice' of the voters. In practice of course maintaining this separation was no easy task, and was hardly always attempted. By 1920, the British state had developed powerful relationships with Indian elites, which they had used to manipulate and control Indian society. By giving titles and honours to Indian notables, the British had long sought to recognize and legitimize, within the framework of their rule, the men they saw as the 'natural' leaders and representatives of Indian society, men who—much like aristocratic leaders in England—embodied particularistic ideas of legitimate status and authority. It is no surprise that many officials saw the introduction of elections as a mechanism for further strengthening and legitimizing this structure of representation, particularly in the face of challenges from the Congress.

Questions about the influence of the state, and its relationship to the voice of the 'people' thus preoccupied many of the election petitions generated by elections in India after 1920. These petition cases were decided in the years before 1947 by three-judge provincial tribunals. The degree to which the judges themselves were in fact independent of state influence is of course impossible to say. But the ways that these conflicts were framed and decided upon suggest the tensions inherent in the law's framing. Many election petition cases revolved around the administrative technicalities of elections (including the filing of nomination papers, preparing of voter rolls, marking of ballots, et cetera) and the limitations that the law placed on administrative discretion in these matters. However, others dealt more directly with state influence in processes of candidate selection and electioneering, and the contradictions that these embodied.

The bedrock of the law defining the conceptual separation between the state and the people lay in the rules banning 'government officials' from contesting elections. A representative of the 'people', after all, could hardly exercise autonomy if he were on the official payroll. But defining the meaning of an 'official' in this context was no easy matter.

Under the 'Non-Official (Definition) Rules' framed in 1920, no one was to be counted as an official unless he was a 'whole-time servant of Government' and remunerated by salary or fees. But was, for example, the Chairman of the Calcutta Corporation an 'official', as was contended in an election petition seeking to overturn his election to the Calcutta South (Non-Muhammadan Urban) Bengal Legislative Council seat in 1923? In this case, an election tribunal held that since a vote of the Commissioners was critical to his removal, he was not an official, even though he otherwise met the criteria.[17] Even more problematic were the numerous 'semi-officials', such as Honorary Magistrates, who were undoubtedly linked to the government, but who in general did not, as most tribunals decided, meet the criteria for exclusion from contesting. Their positions in fact dramatized the innumerable semi-formal mechanisms through which the colonial state had long tried to extend its influence into society, thus suggesting the particular problems in India of clearly separating the people and the state in the way imagined by election law.

Such considerations also arose in election cases focused on government interference in the actual processes of election campaigning so as 'to interfere with the free exercise' of a voter's electoral right. This was clearly defined in the new electoral rules as 'undue influence', and thus a form of corruption.[18] But once again, defining precisely what qualified as undue government influence was problematic. In some cases, election tribunals found that official action calculated to aid particular candidates during elections carried with it, in its very nature, a high potential for coercion. In a case arising from the first provincial council elections in 1920, for example, an election tribunal saw official pressure on shopkeepers in Simla as evidence of coercion and grounds to throw out an election entirely and require a re-vote. Such shopkeepers, they declared, 'would naturally be subject to the influence of Municipal officials', and such potentially coercive official influence struck, in their view, at the very heart of voter freedom.[19] Others took a narrower view, and argued, as did a tribunal reviewing an election in Bengal in 1937, that in spite of evidence of electioneering by government officials, it had to be shown that the 'free will of the voter' had been directly or indirectly compromised before an election could be thrown out.[20] Whatever the final decisions, these cases show clearly that many tribunals did take seriously the notion of a 'freedom of the franchise', as one tribunal put it, that at least in part was defined through the

juxtaposition of the image of the free, uncoerced voter against that of the power of the state.

However, this was hardly the case in all election tribunal decisions. Quite to the contrary, many election tribunals were also eager to use the frameworks provided by election law to justify and legitimize the power of the state in new ways. In these decisions, it was the very intertwining of state and popular influence that in fact justified the state's direct influence in elections in India. This was illustrated by a 1924 case from Mathura, in which a Congress election petition challenged the election of a pro-government local notable. This petition charged that the District Collector had corruptly strengthened the victorious candidate's position in the run-up to the United Provinces Council elections with appointments and honours intended to guarantee his election. In the eyes of the petitioners, this amounted to undue influence, as the government had in effect used the state's influence to anoint a particular candidate, and thus corrupt the free choice of the people. But the tribunal found that the Collector's actions fell well within the normal parameters of the operation of influence in Indian society. Close relations between government and important men were, as they saw it, so intimate and inevitable a part of Indian social relations that they could in no way be seen to violate the principle of free elections. After all, the tribunal wrote, if it were illegitimate for the government to show support for men of influence, then 'the recommendation for or bestowal of a title [by the government] on a prospective candidate' could itself be viewed as a form of 'undue influence', which was clearly absurd. Government influence, they implied, was not incompatible with freedom of choice if it was firmly grounded in ongoing social relations and distinctive Indian traditions. 'The law does not strike at the existence of influence,' they declared. To the contrary, 'a candidate is entitled to the legitimate influence of his position and status,'[21] which clearly included, in a case such as this, the perquisites of government backing.

The relation between the state and the people as defined in India's early election law was thus a highly ambiguous one. Clearly, in the Mathura case, the British saw elections as a way to maintain older systems of representation within the new structures elections provided, and in this case an election tribunal was only too happy to endorse this view. And yet, even here, the assumptions shaping India's new electoral law had an important impact on the terms in which power and influence were discussed and justified. The underlying vision of

the free voter, which was inevitably in potential tension with the state, was a powerful presence even in cases like that in Mathura, where the decision supported a benign view of government influence.

THE PEOPLE AND SOCIETY

Indeed, as the Mathura case suggested, the tensions at the heart of election law did not just have to do with the relationship between the people and the state, but also with the relationship between the people and society. The justification for a non-coercive view of the power of the state in that case was that the state's influence was embedded in the larger norms and workings of Indian society, which, in the tribunal's view, made it 'legitimate', even within the terms the new election law defined. However, the debate over what constituted 'legitimate' influence in elections, which was a very old one in Britain itself, was complex, and hardly one confined to the influence of the state. As in the case of the tension between the state and the people, the tension between society and the people hinged largely on the meaning of coercion. The underlying issue was whether influence arising from entrenched forms of authority and influence in society could be compatible with elections based on the uncoerced free will of the electorate. Election cases relating to various forms of corrupt coercion by powerful men in Indian society were thus numerous in the years after 1920, more numerous, in fact, than those focusing on the coercion of the state. These ranged from cases focusing on overt forms of violence and intimidation, to those dealing with bribery and vote-buying, to those having to do with corrupt deals made by powerful men to force rival candidates to withdraw. As in their decisions relating to the activities of the state, election tribunals took many different approaches to these cases, and some were far more ready to find evidence of coercion than others.

However, the most difficult issues that tribunals had to face in deciding such cases concerned the relationship between coercion and the particularistic forms of culture that defined influence in Indian society. Based as they were on universalistic nineteenth-century assumptions about free will and individual autonomy, the electoral rules made no mention of the particularities of culture as a justification for particular forms of influence. Indeed, as we have seen, this was debated and explicitly rejected, at least in the case of treating, when India's

electoral rules were framed. But it was perhaps inevitable that in practice election tribunals would look to popular expectations and customary practices for guidelines in trying to determine the degree to which particular acts of influence crossed the line into coercion. This was particularly true in that questions of intent were inevitably a part of the interpretation of the law. If corrupt intent were a critical element in interpreting the law, then it was inevitable also that questions of normal practice and customary expectations would have to come into play. And, indeed, these issues did come to loom large in the interpretations of many election tribunals. Nowhere was this clearer than in cases that focused on the operation of patronage in Indian society and its roles in election campaigns. Patronage was, of course, a form of influence with deep roots not only in India, but in England as well, and there was thus a considerable English case law on the nature of 'legitimate' versus 'illegitimate' patronage that predated the establishment of India's electoral rules. Cases in India built on this while elaborating on the distinctive cultural features of Indian patronage. A clear example is the issue of treating, which, as we have seen, was declared to be a corrupt electoral practice in spite of the concerns of some officials about its roots in the particularisms of Indian culture. Some election tribunals were clearly prepared to look past cultural particularities in ruling on the corruption that treating entailed. This was evidenced by a remarkable case from Farrukhabad district in 1926, in which a charge of treating focused not just on 'getting at voters through their mouths and stomachs', as treating normally did, but on a performance of *nautanki*, a popular form of street theatre. Though 'consisting of singing and dancing, accompanied by music', rather than feeding, nautanki was viewed by the election tribunal in this case as a form of 'entertainment', and thus a mechanism by which a candidate tried 'to induce the voters to vote for him'.[22] That this performance might have a particular place in cultural relations between patrons and followers, even helping, as Kathryn Hansen has noted, to define 'the nature of moral virtue [and] the proper exercise of political authority',[23] did not give the tribunal pause. Indeed, they followed up their discussion of nautanki with a discussion of this candidate's pre-election donations to a local Ram Lila committee as well. Here too, whatever its potentially legitimizing cultural implications, they saw such 'charity' during an election campaign as nothing more than a thinly disguised attempt to corruptly influence the voters. 'It is sometimes difficult in connection with corrupt practices', they conceded, 'to state when charity ends and bribery begins'. However, in this case, the candidate 'gave this donation during the election campaign and this generosity cannot be the outcome of any other object but to gain voters for himself'.[24] Such corruption was, in fact, grounds for voiding the election.

Other tribunals, however, were far more ready to make allowances for the cultural expectations embedded in patronage, even when it was exercised at election time. In a case from the Punjab in 1937, for example, a tribunal was asked to rule on charges by a losing Akali candidate that the victorious Khalsa National Party candidate had not only widely treated voters at the polls, but had corruptly promised to construct a new school hall in return for votes. Relying in this case on the victorious candidate's family standing and history of patronage in the locality, they decided to take no action on this charge.[25] Another example comes from a petition challenging the 1923 Bihar and Orissa Council election for the Saran South (Non-Muhammadan Rural) constituency. Among many charges in that case, one was that the victorious candidate had engaged in corrupt 'treating' by distributing food in connection with flood relief work and then using this in election pamphlets to claim 'votes on the ground of his generous expenditure during the flood'. The charge here, as in the claims relating to the Ram Lila contributions in Farrukhabad, was that self-interested political motives had, in the process of electioneering, turned seemingly benevolent patronly acts into morally corrupt and coercive ones. But the tribunal's decision in this case made clear that the process of elections was not enough, in and of itself, to make actions that were embedded in popular expectations coercive. Generosity to the community in times of need is what a good patron provided. When rooted in the culture of the community, 'innocent benevolence' could thus become a perfectly valid and non-coercive basis for laying claim to the gratitude and support of the people—even in the context of trying to win their votes.[26]

Such decisions suggested the complexity in determining where the boundaries of 'legitimate' influence ended and those of 'corrupt' influence began. Many tribunals attempted to balance the theoretical protection offered by the law of the uncoerced free voter against the legitimizing claims of popular expectations and cultural particularity in their decisions. But as these cases suggested, the legal quest to draw a conceptual line between the 'people' (as defined by individual free will) and 'society' (as defined by networks of particularistic influence) remained highly problematic.

FREE WILL AND RELIGION

Nowhere, however, were the contradictions between the legal protection of free will of the voter and the cultural demands of Indian society more evident than in matters of religion. Tensions in the relationship between religion and individual autonomy went back, of course, to Britain as well. On one level, the very notion of an individual defined by free conscience was one with deep roots in seventeenth- and eighteenth-century British religious thinking. Though electoral law in the nineteenth century cast this image in secular terms, the notion of a voter defined by 'free conscience' nevertheless remained one with important religious resonances. Yet, at the same time, nineteenth century electoral law in the United Kingdom recognized religious authority as one of the most serious potential challenges to free voter will, a challenge perhaps most clearly embodied by the Catholic Church and its influence in Ireland.

This was the same tension that marked the introduction of elections in India. In this case it was in Gandhian thinking (with all its simultaneously religious and universalistic overtones) that the image of the free and autonomous individual as the foundation for the 'people', found its greatest resonances. Though this is a subject for considerably more research, it can be plausibly argued that Gandhi's vision of free individual conscience, with its roots in the bhakti tradition, and its legalistic framing, played a critical role in grounding the utopian vision of an autonomous 'people' on Indian soil. However, if this resonated with the history of the 'free conscience' in Britain, most British officials viewed religion in India as preeminently a *threat* to free conscience, much like the Irish Catholic church. Indian religion represented, in fact, the quintessential particularism; it was the form of received authority that most clearly held the minds of Indians in thrall.

Cases involving 'spiritual undue influence' were thus many and were among the most difficult that tribunals had to deal with. According to electoral rules, it was generally a corrupt practice to induce or attempt to induce 'a candidate or voter to believe that he or any person in whom he is interested will become or be rendered an object of divine displeasure or spiritual censure'. Such charges appeared in the earliest elections after 1919. A good example of the legal thinking that these cases involved comes from the Shahabad (Muhammadan Rural) contest for the Bihar Legislative Assembly in 1946. In that case, a petition

had challenged the election of a Muslim League candidate on the ground, among others, that he had deployed spiritual 'undue influence' on his behalf. While recognizing that, by itself, 'an appeal to religious prejudice does not amount to undue influence', the tribunal nevertheless ruled that the winning candidate had associated himself with Muslim religious leaders (*pirs*) who 'have disciples in parts of this district' and who spoke at public meetings in terms 'that were likely to make ignorant and superstitious persons believe that they would be objects of divine displeasure if they voted for the petitioner'. They further cited testimony that voters were deterred from voting for the petitioner on these grounds. In such a case they had little hesitation in ordering a new election based on this corrupt influence.[27]

Not all political appeals by religious leaders, of course, fell under this view of corruption. After all, if religious leadership were a normal part of society, then to restrict the abilities of religious leaders to tell their followers their views would itself be to restrict free choice. As one tribunal thus noted with respect to a published '*firman*' from the head of the Ahmadiyah community announcing his support for the Muslim League, such a statement could not be held to comprise illegitimate influence, as it could not be the case that 'a man taking the role of a high priest ceases to be a citizen or ceases to be clothed with all the privileges and rights of a citizen'.[28] Nor could it be deemed corrupt, as another tribunal noted, when threats of divine displeasure were used by lay persons to try to win votes. A tribunal thus ruled in a case from the North Gaya (General) constituency in 1946 that a public statement by the INA hero, Captain Shah Nawaz, to the effect that 'persons voting against the Congress candidate would go to hell', could not be considered corrupt. It was, they said, 'only in the case of heads of religious orders, Gurus and Pirs, who had an extraordinary influence over their disciples, that their interference in voting amounted to undue influence'. Since Shah Nawaz did not 'belong to any of these categories', nor indeed, have any particular competency 'to convince voters about the path to hell', it could not be the case that he had committed a corrupt act.[29]

But the potential scope for spiritual 'undue influence' was nevertheless wide in Indian elections, and was all the more so given British assumptions about the importance of religion in Indian society and its capacity to sway voters. As early as 1921, one election tribunal went out of its way to warn religious leaders that they needed to be very

careful in their election rhetoric to steer clear of this charge.[30] Given British assumptions about the ubiquity of religious influence in Indian society, it was little wonder that these charges were frequent.

And yet, for all the similarities between the application of election law in Britain and that in India, there were also critical differences, rooted in colonial assumptions about the role of religion in constituting the very structure of society in India. Even as they introduced electoral rules to constrain coercive religious rhetoric, the British also sought to use religious identities to structure Indian electoral constituencies, a policy that would have been unthinkable in Britain. The roots of separate electorates, of course, go back well before the Montagu-Chelmsford reforms of 1919; indeed, they had their origins in a very different tradition from that shaping the development of the law of electoral corruption. Separate electorates for different religious communities were in fact rooted in the traditions of categorization that had come to shape British administration in the late nineteenth century, traditions defined by the distinctive position of the British in India as alien colonial rulers. As many historians have suggested, the act of categorizing and counting was a method by which the British defined a structure of knowledge to support their position as colonial rulers.

The critical expansion of separate electorates as a foundation for electoral representation after 1919 must thus be seen in counterpoint to the rules defining electoral corruption and the universalist vision of the individual voter that shaped them. On one level this was of course contradictory. If religion was a potential source of coercion in Indian society, then it was perverse at best for the British to try to define constituencies in religious terms even as they sought to circumscribe religious rhetoric in elections. But on another level, these two policies can be seen as different sides of the same coin. By defining separate religious constituencies the British were, in effect, seeking to transform religion into the foundation for a representation of correspondence, a representation defined not by the *process* of voting (in which the individual will of the voter came into play), but by the fixed cultural boundaries used to draw constituencies.

This, of course, required giving religion a very distinctive—and highly essentialized—meaning. Colonial processes of essentialization have now come in for much attack from historians on a wide range of grounds. But it is important to note that in the context of electoral legal processes, cultural essentialization, and the definition of free individual choice, were closely linked. After all, within the context of

separate electorates, voters would continue to be represented by a member of their religious community, regardless of the individual choices they chose to make. By moving religion into an essentialized realm, separate electorates thus sought theoretically to make room within the electoral arena for *both* the operation of religious representation *and* for the expression of choices that would not be coercively determined by religious authority.[31]

In practice, of course, separating such related but competing visions of religion proved extremely difficult. Though census definitions provided the key to the drawing up of separate religious constituencies, it was theoretically open to individuals to legally challenge the boundaries that were used to demarcate separate electorates, and at times to appeal to individual belief in doing so. Several election petitions that challenged the grounds on which voters were classified in distinctive separate electorates highlighted this clearly. In a case from the Punjab in 1946, for example, an election petition hinged on whether a voter in a General (Hindu) constituency could be disqualified simply on the grounds that he was, to all outward appearances, not a Hindu but a Sikh. Outward appearances alone, the tribunal ruled, could never be enough to fix such identities. If a voter swore that he was a Hindu, and did not 'believe in the Ten Gurus . . . and the Guru Granth Sahib', then it was fully appropriate to record him on the General electoral role, no matter how others might label him, or whether, as the tribunal put it, he wore '*Keshas* and long beard'. But even belief here was reduced to a simple formula. The essentializing tendencies of the law in these matters remained clear, for in matters of separate electorates it was to a simple, fixed definition, theoretically applicable to all (and in which birth was primary), that tribunals normally turned.[32]

Most problematic for the longer term, however, was the fact that separate electorates could not (and, in practice, did not) prevent religious appeals in election campaigns from focussing on the nature of the very boundaries that separate electorates purported to define—thus removing these boundaries from an essentialized realm and bringing them directly into the moral competition for individual votes. The nature of the boundaries defining separate electorates of course occasionally came up for pointed constitutional debate (as in the question as to whether 'scheduled castes' should be included in Hindu constituencies). But far more critical to the operation of electoral law was the tendency for election contests in the 1930s, particularly among Muslims and Sikhs, to focus on efforts to label opposing candidates as

outside the pale of the community—even within the context of separate electorates—and thus to make the nature of religious boundaries themselves a matter of individual conscience.

A series of hotly contested Muslim elections in the Muslim-majority city of Amritsar in the 1930s illustrated this dramatically. Muslim candidates repeatedly labelled other Muslim candidates as '*kafirs*', or non-Muslims, on the grounds that they had publicly betrayed Islam's principles and interests. Targets of these challenges were of course quick to file petitions labelling such language corrupt, and a form of spiritual 'undue influence', thus suggesting how difficult it was to separate the essentialized (and supposedly non-problematic definition of community—and constituency—boundaries) from the issues of moral conscience that in theory defined individual votes. Twice in two years, election tribunals had to hear petition cases charging that victorious candidates had corruptly used oaths sworn on the Quran and had used impassioned speeches labelling their opponents as 'outside the pale of Islam', to try to win votes. The results of both these elections suggested how problematic the strategy had become of officially defining—and essentializing—the boundaries of the moral communities that comprised society in order to create space for the operation of individual conscience.[33]

Indeed, such elections pointed toward the more general crisis in the law of elections that came with the 1946 elections and the demand for Pakistan. These elections were, in fact, critical to the foundation of the new states that were formed in 1947, for the elections led to the sweeping triumph of the Congress in most of the areas that were to go to India, and to significant victories for the Muslim League in most of the areas that were eventually to go to Pakistan. As several historians have noted, it was these elections that provided popular legitimacy for the territorial division of the subcontinent that was to follow.

Yet no elections brought forth such a flood of legal challenges to the basic principles of voting as these. In the Punjab, almost half of all the Muslim seats contested were challenged by election petitions alleging the corrupt practice of undue spiritual influence. Indeed, the use of rhetoric (by *pirs*, *ulama*, and lay Muslims alike) alleging that those who opposed Pakistan were in fact opposing Islam was so widespread that it was officially brought to the attention of the government in advance of the election, and led to the issuing of instructions to local officials warning them about the dangers of electoral corruption. But many Muslim League leaders responded to this by now calling into

question the basic legitimacy of election law itself. As Malik Firoz Khan Noon, a leader of the Punjab Muslim League (and later Prime Minister of Pakistan) declared, it is 'intolerable that tiny little bureaucrats . . . should now be permitted to decide how far a Muslim speaking to Muslims will be allowed to talk of Islam'. Others called on Muslims to openly defy the regime's electoral laws.[34] After all, if the very boundaries and survival of the community itself were at stake, what grounds could there be for not invoking spiritual censure on those who might use their votes for other purposes? It was only the freedom of the community that made the law legitimate and the free will of the individual possible.

Such arguments dramatized the critical importance of the legal structure of elections—and the concept of the rule of law—for sustaining the image of the free individual as the bedrock of the electoral process. As never before, the elections of 1946 dramatized how problematic was the task of defining the critical distinction between society, state, and people (on which the legitimacy of popular sovereignty was theoretically based) when the fundamental parameters of society and state—the inevitable framers of elections—were themselves open to question. If the concept of the 'people' relied on universal principles, then the boundaries of society (and the nation) required external markers. But with the legal parameters of state and society open to question, in what way could the legal structure come to allow that utopian entity—the people—to find expression?

FROM COLONIAL TO INDEPENDENT STATE: 'THE REPRESENTATION OF THE PEOPLE'

In fact, the need to balance universal principles with the bounding of the nation was a lesson that was not lost on the framers of India's constitution and election laws in the wake of Independence in 1947. The importance of elections to the concept of the sovereignty of the people was one that was deeply ingrained in many Congress leaders by 1947. Though the legal principles defining the image of the free, uncoerced voter had developed within the context of eighteenth and nineteenth-century British history—and in some ways been reinforced by the principles of Gandhi—they had been cast by the British as universal principles and were widely viewed in this light by Congress leaders. Indeed, many Congress leaders had long embraced these principles as

a stick with which to challenge the British, who had sought for their own political purposes to embed the free voter within electoral structures adapted to a fundamental British vision of Indian society as particularistic, culturally fragmented, and hierarchical. Congress leaders thus used the concept of the 'people', with its critical resonances in the law of electoral corruption, as a position from which to assert a simultaneously universalist and nationalist identity transcending the cultural boundaries and structures of colonialism. As early as the 1920s, leaders of the Congress such as Nehru had called for a system of universal adult suffrage in India as a statement of commitment to an image of the people as both free and culturally unified. This was connected also with a fundamental mistrust of particularistic constituencies (such as separate electorates), a mistrust that was often muted by the need for political compromise, but was nevertheless a mistrust held deeply by Nehru. The events that led to India's partition and the creation of Pakistan only reinforced these beliefs. An image of the people as united required a legal structure for framing elections that did not do violence to this image. From this perspective it is not hard to understand why the framers of India's constitution not only abandoned separate electorates, but also established universal adult franchise. Central to this was the concern to create, above all, an image of both freedom and popular unity. Even if the 'people' were a fiction (indeed, particularly *because* they were a fiction), it was necessary to frame the concept of the people with an image of Indian society—at least as embodied in a legally structured electorate—that was a clearly bounded and united one.[35]

But such an image hardly did away with the contradictions that had marked colonial electoral law (and, indeed, that had marked electoral law in Britain as well). This was evident in the ways that the framers of India's new constitutional system defined the law of electoral corruption as embodied in the Representation of the People Act of 1951. In many respects, India's new electoral law lifted wholesale the underlying principles of colonial (and British) electoral law, right down to the title of the legislation. But the tensions within that law were given new meaning when juxtaposed against India's simultaneous moves toward universal adult franchise and away from the particularism of separate, culturally defined electorates. The protection of the free, uncoerced voter continued to lie at the heart of these rules. Appeals for votes were thus outlawed, just as they had been in colonial India, if they were based on 'undue influence', which included threats of spiritual censure. However, the problem was now exacerbated by the fact that

the rules were no longer tempered by an exclusion from the franchise of those adults who were (theoretically) most susceptible to coercive influence, or by any attempt to channel India's cultural divisions (and thus the potentially coercive character of appeals to religion) into separate electorates. The very language of the rules thus underscored the heightened dangers of coercion that the individual voter now faced. Indeed, with the potential threat of coercion greater than ever, the rules became all the more detailed and specific. Rules focused on the control of corrupt 'undue influence' were thus now supplemented by rules banning as corrupt 'the systematic appeal to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious and national symbols, such as the National Flag and the National Emblem, for the furtherance of the prospects of a candidate's election'.[36] Within the framework of the electoral arena, the theoretical legal protection of the voice of the free individual was thus critical even when it came to issues of 'national' unity. National unity was now embodied, of course, in the very structure of the electoral arena, for the purposes of which universal suffrage and a fully territorially based electorate had proven critical. The constitutional establishment of a central, semi-independent Election Commission, to administer both state and federal elections, reinforced this image.[37] But if the imagined 'nation' now framed both society and state, it remained the case that the protection of an image of the 'people' required that the individual conscience be theoretically protected from coercion, even when it came to 'national' appeals.

In practice, of course, the operation of such a framework for election law proved virtually impossible to work. As a range of election cases after Independence suggested, the contradictions between the utopian image of the free voter, which defined the 'people', and the reality of the influences shaping identity and power in 'society,' remained in almost ubiquitous tension. Once again, many cases hinged on balancing coercion against 'legitimate influence'.[38] But as an early election tribunal from Bombay city noted in 1952, a literal reading of the language on corruption in the Representation of the People Act made finding such a balance extremely difficult. Beyond the problem of legitimate influence, the law's strong restrictions on appeals to religion, caste, or community seemingly contravened the fundamental rights of freedom of speech and religious practice that were also guaranteed in the constitution. Given these contradictions, the only possible construction one could put on these rules, the judges argued, was to see them as barring election appeals based *solely* on these considerations,

which was, they opined, a way to prevent elected representatives from becoming nothing more than religious or caste or communally based spokesmen.[39] But as they realized themselves, this was hardly a fully satisfactory interpretation.

Some courts, reading the Act more narrowly, showed themselves more willing to throw out elections to uphold the literal language of the law.[40] In a case before the High Court of Madhya Pradesh in the 1960s, for example, the court adjudged the election of a Jan Sangh candidate nullified on the grounds that he had labelled his Congress opponent a member of a 'cow-killing party', and thus less of a Hindu than candidates of the Jan Sangh.[41] In another case, the Patna High Court held that an appeal for votes by the agent of a Bhumihar Brahman candidate on the basis of caste (and on the grounds that caste unity was of paramount importance in the election) was a clear form of corruption and required a revote. '"Caste" has not yet lost the root from the Indian soil', the Court wrote,

> and at the time of elections often votes are sought to be secured on the ground of 'caste' . . . In a democratic country where people's representatives are chosen by the process of adult franchise, right persons cannot be returned if the election is allowed to be interfered with in this fashion. Purity of election must be maintained at all costs.[42]

And yet, the meaning of electoral 'purity' (that is, presumably, free conscience) in a context such as Bihar, where appeals to caste were legion, remained an open question.

These irresolvable contradictions were perhaps made most manifest in the best known election case in India's history, the challenge in the 1970s that threatened the unseating of the Prime Minister, Indira Gandhi, following the 1971 elections and led to the eventual declaration of the Emergency. In that case, Indira Gandhi was convicted of electoral corruption largely on the grounds that she had deployed undue governmental influence in her election campaign, thus breaching the line between the influence of the state and the free choice of the people. But the response of her government made clear the limitations of the law. Acting first to maintain her power by initiating the Emergency in 1975, Gandhi then gained parliamentary passage of a retroactive amendment to the Representation of the People Act defining away her election offenses. But even beyond this, she pushed through parliament the Thirty-ninth Amendment to the Constitution, which removed from

judicial jurisdiction altogether election offenses relating to the President, the Vice President, the Prime Minister and the Speaker of the Lok Sabha. When the Supreme Court then heard this case on appeal, they produced a long and tortured series of arguments dealing not only with Gandhi's initial conviction of electoral corruption but also with parliament's actions. Their arguments made clear that they saw no choice but to back away from the constitutional crisis that this case had engendered by upholding the retroactive amendments to the Representation of the People Act and overturning Gandhi's conviction on these grounds, thus making clear that in practice courts could only be constrained by the political realities they faced. So long as elections were conducted in society, and overseen by the state, it was impossible, as this case made amply clear, to imagine that a simple reference to the law could protect the image of an electorate that was wholly free from coercion.[43]

But if this case dramatized the deep contradictions inherent in India's election law more clearly than any other, the Supreme Court's decision also underscored—and reinforced—the underlying structural assumptions about the 'people' that lay behind India's electoral machinery. At the heart of India's electoral regime lay the image of the 'people' as a powerful, sovereign fiction, and this the court, in effect, continued to insist upon. Even as they overturned Gandhi's conviction and bowed to the realities of political power, the majority of the court struck down key portions of the Thirty-ninth Amendment as unconstitutional (or, as violative of the constitution's 'basic structure'). To bar the courts from jurisdiction over certain elections, as Justice H.R. Khanna put it, would be to put elections beyond 'the rule of law'. 'Election laws lay down a code of conduct in election matters and prescribe what may be called rules of electoral morality'.[44] This required that elections be subject to a standard that transcended the political world in which they were contested. Even a raw exercise of parliamentary power, the court implied, could not remove this critical need.[45]

Courts themselves were, of course, always subject to political influence—as no case illustrated more clearly than Indira Gandhi's. But the notion of a world of law that stood apart, at least in theory, from the pressures of both state and society, remained central to the courts' *raison d'etre*. Indeed, from this perspective it was the very fact that the enforcement of electoral law was not fully possible in the rough and tumble of elections that was most significant. The 'people' (defined

by the free will of the individual) conceptually stood apart from—and in conflict with—the corrupting influences of both state and society. In this sense, it could not have been otherwise than that the mobilization of the people's free voice in elections would be impossible to reconcile with the actual operation of influence and identity within the conduct of elections. The law itself was, in this sense, as much a fiction as the concept of the 'people'. And yet the image of the 'people' embodied in election law was absolutely essential to the workings of democracy. As the Supreme Court put it in a case appealed from Andhra Pradesh not long after Indira Gandhi's case:

> In a democracy such as ours the purity and sanctity of elections, the sacrosanct and sacred nature of the electoral process must be preserved and maintained.[46]

This was not an appeal to sanctity in the sense of religion, but an appeal to the notion that sovereign authority must conceptually stand in a space outside both state and society (that is, in a 'sacred' space). In India's election law, which was adapted initially from Britain, this space was found in the universalist image of the free conscience and free will of the individual voter, which alone defined the presence of the 'people'. Whatever the contradictions in the application of election law in India—and these have been legion—this remains at the heart of India's electoral system.

NOTES

1. Edmund Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America*, New York: Norton (1988), p. 306.
2. Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London: Verso (1991). Anderson borrows this phrase from Benjamin.
3. For an overview, see Eric J. Evans, *Parliamentary Reform, c. 1770–1918*, Longman (2000), pp. 1–6.
4. This was perhaps put most baldly by Tom Paine in *The Rights of Man*. Hereditary influence, Paine argued, was illegitimate. 'Every age and generation must be free to act for itself in all cases as the ages and generations which preceded it.' Central to a just society, in other words, was universal freedom of choice. Quoted in Evans, *Parliamentary Reform*, p. 96.
5. There is, again, a large body of literature on this. Much focuses on British intellectual history during this period. That ideas of 'free men' were not simply the concerns of intellectual theorists but were deeply culturally rooted in popular ideas among certain groups in England has perhaps been most persuasively argued by E.P. Thompson, *The Making of the English Working Class* (1963).

6. Alan Heesom, '"Legitimate" *versus* "Illegitimate" Influences: Aristocratic Electioneering in Mid-Victorian Britain', *Parliamentary History*, vol. 7, pt. 2 (1988), pp. 282–3. The backdrop to this resolution was the Act of Union with Ireland.
7. Heesom, '"Legitimate" *versus* "Illegitimate" Influences', pp. 285–9, 302.
8. 'The true reason of requiring any qualification, with regard to property, in voters, is to exclude such persons as are in so mean a situation that they are esteemed to have no will of their own. If these persons had votes, they would be tempted to dispose of them under some undue influence or other.' Sir William Blackstone, *Commentaries on the Laws of England*, Buffalo: William S. Hein (1992), reprint of the first edition (1765), vol. 1, p. 165.
9. K. Theodore Hoppen, 'Roads to Democracy: Electioneering and Corruption in Nineteenth-Century England and Ireland', *History*, vol. 91 (1996), pp. 558–61; Evans, *Parliamentary Reform*, pp. 65–6.
10. Quoted in Evans, *Parliamentary Reform*, p. 65.
11. Hoppen, 'Roads to Democracy', p. 568.
12. The main points of the Corrupt and Illegal Practices Prevention Act 1883 are listed in Evans, *Parliamentary Reform*, p. 133. In fact, there were a number of earlier, though less comprehensive—and less effective—acts to limit and control electoral corruption that were consolidated in this Act.
13. E.L.L. Hammond, *The Indian Candidate and Returning Officer: A Manual Giving the Law and Procedure of Elections in British India and Burma*, Oxford: Oxford University Press (1923), pp. 124–5.
14. Report of the Reforms Advisory Committee, Chaired by Lord Chelmsford, 6 May 1920 (Indian Office Library and Records (IOL), File L/P&J/9/24A).
15. Hammond, *The Indian Candidate*, p. 133. Such views were strongly supported by some prominent Indians as well. As Sir Bahram Khan Mazari put it to the Punjab Advisory Committee on the reforms: 'In villages entertainment would not be regarded as bribery or a corrupt practice; if treating is not allowed in Dera Ghazi Khan, where it is customary for important landowners to entertain all who come to see them, considerable discontent will arise.' Proceedings of the Punjab Advisory Committee on Reforms, 7 April 1920 (IOL File L/P&J/9/24A).
16. 'We are convinced that it would be a serious mistake', they wrote, 'to start with a low standard of electoral morality in the hope that public opinion may hereafter insist on raising it.' Report of the Reforms Advisory Committee, 6 May 1920 (IOL File L/P&J/9/24A).
17. Hammond, *Reports of the Indian Election Petitions*, vol. II, pp. 87–91. Serious problems also arose with respect to government ministers, who, as one tribunal noted, acted in both 'official' and 'political' capacities. See, for example, the 1924 case from the Habiganj South (Non-Muhammadan Rural) constituency of Assam. Hammond, *Reports of the Indian Election Petitions*, vol. II, pp. 141–53.
18. 'Undue influence' was defined as 'any direct or indirect interference or attempt to interfere on the part of a candidate or his agent or any other person with the

connivance of the candidate or his agent with the free exercise of any electoral right', which included subjecting voters to any sort of threat, or 'injury of any kind', to win their votes. Krishna Swarup, *The Punjab Elections Manual*, Lahore: Upper India Scientific Works (1936), p. 50.

19. Hammond, *Reports of the Indian Election Petitions*, vol. I, pp. 165–75. The case hinged on personation (or fraudulent voting) carried out by shopkeepers on behalf of one of the candidates, apparently under the influence of municipal officials.
20. Sudhansu Bhusan Sen and Madan Gopal Poddar, *Indian Election Cases, 1935–1951*, Bombay: N.M. Tripathi (1951), pp. 802–21. This was the case of Nawab Sir K.G.M. Faroqui, a government minister and Muslim League candidate from the Tipperah North Muhammadan Rural constituency for the Bengal Legislative Assembly. In that case, the charge was that the Nawab, whose portfolio had included the Cooperative Department, had 'abused his position by employing officials under him for electioneering purposes'. But the tribunal found that although this abuse was proved, it was impossible to prove that this electioneering had amounted to coercion.
21. Hammond, *Reports of the Indian Election Petitions*, vol. II, pp. 191–7.
22. Ibid., vol. III, pp. 134–5.
23. Kathryn Hansen, *Grounds for Play: The Nautanki Theatre of North India*. Berkeley: University of California Press (1992), p. 117.
24. Hammond, *Reports of the Indian Election Petitions*, vol. III, pp. 135–6.
25. *Punjab Gazette*, 26 August 1938, Part I, pp. 1094–6 (Sardar Harnam Singh and another v. Sardar Uttam Singh, North-West Punjab Sikh Constituency).
26. Hammond, *Reports of the Indian Election Petitions*, vol. II, pp. 254–5. Similar logic was in fact followed in another part of the Farrukhabad decision. Though finding the Ram Lila donations corrupt, the tribunal in that case dismissed another charge involving the same candidate's contribution to a defense fund set up for Hindu prisoners following a Hindu-Muslim riot. This seemed less plausibly and directly tied to the election. 'A calamity had fallen on some of the Hindus', they wrote, 'and a man of the respondent's position must contribute'. Ibid., vol. III, p. 137. Similar arguments prevailed in a 1937 case from the Amritsar and Sialkot (General Rural) constituency. There a tribunal ruled that a candidate's contribution of Rs 1000 and 10 *marlas* of land in November 1936 for a Brahman Bhawan at Sialkot, could not be found corrupt simply because of its proximity to the upcoming elections. 'It is not disputed that he is by far the most prominent and wealthy member of the Brahman community in Sialkot. His contribution towards the construction of the proposed Brahman Bhawan had to be commensurate with his position in the community.' *Punjab Gazette*, 4 March 1938, Part I, pp. 285–6.
27. Sen and Poddar, *Indian Election Cases*, pp. 752–3. The tribunal also ruled corrupt a pamphlet of the Bihar Muslim League election committee that declared (in the official translation), 'If you do not vote for the Muslim League candidate, God will be exasperated.'

28. Ibid., pp. 900–1.
29. Ibid., p. 644. But see, for a counter-example in which statements by lay community leaders could be held corrupt on these grounds, the Amritsar example in note 34.
30. *Punjab Gazette*, 10 June 1921, Part I, p. 439 (M. Barkat Ali v. M. Muharram Ali Chishti, Lahore City, Muhammadan, Constituency). Though doubting that most voters were 'over-credulous' enough to be swayed by the pressure of pirs at election time, this tribunal nevertheless added a warning: 'We think that candidates should exercise great caution in invoking the aid of spiritual leaders to assist their candidature, and that spiritual leaders themselves, before addressing their followers, should weigh very carefully the effect which their words would have upon each and every section of such followers.'
31. Perhaps the best discussion of the forms of representation embodied in separate electorates is in Farzana Shaikh, *Community and Consensus in Islam: Muslim Representation in Colonial India, 1860–1947*, Cambridge: Cambridge University Press (1989). As she puts it, separate electorates were based on a theory of 'descriptive' representation (as opposed to 'substantive' representation).
32. Sen and Poddar, *Indian Election Cases*, pp. 865–70. In quoting an earlier tribunal, this tribunal underscored the degree to which, generally speaking (and barring an overt conversion), birth trumped other markers: 'A person who is born a Hindu or Sikh does not cease to be so merely by adopting a certain heterodox practice.'
33. Ibid., pp. 28–57. These elections involved contests between the Congress (Saifuddin Kitchlew) and the Unionist Party/Muslim League (Muhammad Sadiq). Interestingly, the tribunals in both these decisions held that undue spiritual influence did not require that threats of divine displeasure come only from religious leaders. Laymen could also be guilty of this corrupt practice, though statements by a layman, one tribunal noted, could be 'considered sufficiently strong to interfere with the exercise of free will only if the community concerned has great regards for his opinions, or if what he says has the sanction of some religious book, whose authority is admitted by the community in question'. For a fuller analysis of these Amritsar cases, see David Gilmartin, '"Divine Displeasure" and Muslim Elections: The Shaping of Community in Twentieth-Century Punjab', in D.A. Low, ed., *The Political Inheritance of Pakistan*, London: Macmillan (1991), pp. 119–22.
34. See *Dawn* (Delhi), 23 January 1946; *Eastern Times* (Lahore), 27 January 1946.
35. The importance of the image of unity to the move toward universal adult suffrage was persuasively argued many years ago by Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, Oxford: Clarendon Press (1966), pp. 144–56.
36. Grounds of 'language' were subsequently added to this clause in 1961. Added to this list of corrupt practices in 1988 was 'the propagation of the practice or the commission of sati or its glorification by a candidate or his agent . . .'.

Election Commission of India, *Manual of Election Law*, New Delhi: Election Commission (1997), pp. 103–4.

37. Ujjwal Kumar Singh, *Institutions and Democratic Governance: A Study of the Election Commission and Electoral Governance in India*, New Delhi: Nehru Memorial Museum and Library (2004), pp. 6–17.
38. And legitimacy continued to depend in many cases on customary practice. In a 1953 case on treating, for example, a tribunal held that 'where the entertainment does not exceed the limits of customary hospitality', it cannot 'constitute bribery', and was therefore legitimate. A.N. Aiyar, ed., *Election Law Reports*, Daulat Ram v. Maharaja Anand Chand and others, vol. VI (1953), p. 98.
39. *Election Law Reports*, Moinuuddin B. Harris vs. B.P. Divgi, vol. III (1953), pp. 248–80. Given a literal reading of the law, they noted, 'electioneering in India' would become from a legal point of view, 'an extremely hazardous operation'.
40. Election petition cases continued to be heard initially by election tribunals after Independence, but in 1966 a constitutional amendment abolished such tribunals and brought cases directly to the provincial high courts (and to the Supreme Court on appeal).
41. R.K.P. Shankardass, ed., *Election Law Reports*, Jagjivan Joshi v. Virendra Kumar Saklecha, vol. XLIII (1973), pp. 32–99. An extensive discussion and analysis of the Indian courts' attitudes on corrupt religious influence (though one that does not give adequate weight to the British antecedents of the Indian law on 'spiritual undue influence') is in Gary Jacobsohn, *The Wheel of Law: India's Secularism in Comparative Constitutional Context*, Princeton: Princeton University Press (2003), pp. 161–88.
42. *Election Law Reports*, Sachidanand Singh v. Biswanath Rai, vol. XLIII (1973), pp. 316–38.
43. For a background, see Henry C. Hart, *Indira Gandhi's India: A Political System Reappraised*, Boulder: Westview (1976), pp. 1–30. See also, *Election Law Reports*, vol. LVII (1981), pp. 162–397. Smt Indira Nehru Gandhi v. Sri Raj Narain (Supreme Court Appeal).
44. *Election Law Reports*, vol. LVII (1981), pp. 223–5.
45. In this, of course, the distinction between parliament and the ineffable 'people' was central. As Nani Palkhivala, one of India's leading lawyers put it in describing the logic of this case: 'As regards constitutional amendments, Parliament's will is certainly not the people's will. To equate Parliament with the people is to betray complete confusion of thought.' Quoted in Arun Shourie, 'Protector of the Democratic Citizen', *The Indian Express*, 20 January 2005.
46. *Election Law Reports*, D. Venkata Reddy v. R. Sultan and others (Supreme Court Appeal), vol. LVIII (1981), pp. 196–235. They also quoted from an earlier judgment of Justice Krishna Iyer: 'An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency.'

PART II

Minority Imaginings