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Ideas, Power, and Trade in India and Western Europe**

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Institutions and Historical State Formation: Ideas, Power, and Trade in India and Western Europe

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*I am grateful to professor Nelson Polsby for inviting me to IGS the spring semester 1995, during which time this text largely was written.

Introduction

Why are some countries richer and more developed than others?¹ This study is set within this broader question and framework. In recent years a growing number of economists, political scientists and economic historians have emphasized the policy environment or, more broadly, a society's institutions in explaining long-term development. Douglass North, one the most sophisticated defender of this theory, wants to assert a fundamental role for institutions: "they are the underlying determinant of the long-run performance of economies" (North 1990:107). The 'new institutionalism' emphasizes the formal and informal rules in society -- its institutions -- rather than individual choice or social structure² (Powell & DiMaggio 1991, Meier 1991, Olsen 19xx, Rothstein 199x). Institutions are humanly devised constraints that shape individuals' choices and interaction.

A state can be studied in the light of institutional theory. One question then becomes: How is the state affecting society? How do the rules, or institutions, of the administrative and judicial apparatus of the state shape economic and political behaviour? A central idea in neo-institutionalism and political economy, going back to Max Weber, is that a state *can* play a very decisive and positive economic role. The core of this argument is that a state able to enforce agreements (contracts) between citizens will promote development because it provides an environment of *predictability*. Predictability assumes enforcement of the state's laws and regulations, and enforcement is often treated in the literature as a given; either as perfect or as constantly imperfect.³

This book starts from a different angle, where the state is seen as the *dependent* variable and the *variation* in enforcement of public laws and regulations is placed in the centre of analysis. I will approach this question through a comparison of India and Northwestern Europe, more specifically England and Sweden. The question that I aim to contribute an answer to is this: Why are the contemporary states in England and Sweden more able to enforce its own rules compared with the state in India? The study has two purposes, one empirical and one theoretical. The empirical background is the wide discrepancies between many developed and developing countries in terms of rent-seeking or corruption: How can this difference be explained? Theoretically, the question is: What would make those persons who run a state, that by definition has coercive force, *not* to use that force in their own interest at the expense of the rest of society? How does one get the state to behave like an impartial third party? (North 1990:58). Economists have often assumed the state to solve collective-action problems arising from individuals' exchanges, but as Robert Bates (1988) and others have shown there is equally a 'prisoners' dilemma' in state action. Douglass North puts the problem in this way:

(T)he inability of societies to develop effective, low-cost enforcement of contracts is the most important source of both historical stagnation and contemporary underdevelopment in the Third World. ...

¹It is clear, by now, that however we measure 'development' -- in crude GNP per capita (World Bank 19xx) or in ways aiming to capture a 'quality of life' (UNDP 19xx) -- the discrepancies between the richest and the poorest are enormous.

²Perhaps those three -- institutions, choice and social structure -- ought to be the 'building blocks' in social theories. However, I do not think institutionalism ought to have imperialist claims, i.e. being able to explain all behaviour.

³The first is true of several studies of public policies and of development economics (Bardhan 1988, Killick 1976, Grindle 1991); the latter is true of most models of politics in public choice, where the state is often seen as an organization akin of the Mafia.

(A)chieving third-party enforcement is a major dilemma for economies that would engage in impersonal exchange. The development of credible commitment on the part of political bodies, such that one has assurances that political bodies will not violate contracts of parties or engage in conditions that will alter radically the wealth and income of parties, is always relative; even in the most highly developed countries we observe political entities altering the wealth of parties by all manner of changes in the price level or in rules that affect the well-being of individuals. Nevertheless, there is an immense difference in the degree to which we can rely upon contract enforcement between developed countries and Third World countries. (North 1990:54, 58f)

There are many terms in the literature trying to capture the difference, or the 'character' of many states in the Third World. Gunnar Myrdal (1968) talked about the Indian state as 'soft'; sociologists often describe it in terms of clientelism (Eisenstadt & Roniger 1984); economists in recent years have labelled it 'rent-seeking' (Krueger 1974) or 'predatory state' (Lal 1988). For other purposes, there are important differences between these concepts, but they overlap in viewing the state as not willing or able to enforce its own rules universalistically. Thus, the state is my dependent variable and my independent variable, for reasons I will discuss below, is historical trajectories. In other words, I will argue that the actions of the contemporary states -- their politicians and administrators -- are path dependent; i.e. that today's patterns of behaviour are structured by earlier patterns and institutions. The argument I am going to make means that history matters, but it is important already at this point to emphasize that it is *not* a story about inevitability. A simple metaphor can illustrate my figure-of-thought: If we were to find two tourists, A and B, in two completely different spots in a city, one way to explain this fact is to trace their different walks through the city. Probably both A and B made decisions in some street corners which way to proceed, in other corners they just continued without giving it much a thought. My point is that there is nothing inevitable about A and B being at those spots where we found them; at the same time *tracing* their walks through the city may be the best way to explain why A is now in spot x and B in spot y. The analogy also implies, crucially, that A can probably walk to y and B to x; the problems of changing organizational behaviour could metaphorically be compared with the problem for A or B of crossing a river, a mountain or some other structural impediment. Getting to x or y may not just be a matter of choice.

The argument I am going to make, elaborate on and give evidence for in this book is that the difference in degree of rule enforcement, or the difference between the 'universalistic' and the 'particularistic' state⁴, is best explained as a result of historical patterns in the two civilizations going back to the early modern and medieval period. My argument, or model, relies on three components: conceptions of political power, nature of power struggles and the importance of trade. In its very crudest, what I aim to show is that different conceptions of politics and power affected and had *reciprocal* effects on power struggles and trade and that this is a more persuasive explanation than others that have been suggested.

First, the conceptions or ideas. India had a highly particularistic religious and social cosmology in its caste system, whose basic idea is that men are unequal (Cohn 1959). The Christian ethic, on the other hand, is preaching equality and universalism. There was also an important difference in how the rulers sought legitimacy. Law was seen as central to the rhetoric of European kings, a tendency sharply accentuated after the Investiture struggle in the eleventh century (Berman 1983, Strayer 1970:20ff, Tierney 1983). A Hindu king was not defined legally, but by *raja-dharma*. And a king's duty, his dharma, was mainly the protection of the realm and to give gifts to his subjects (Lingat 1973:208, 224, Raheja 1988:514f, Appadurai 1981:71, Gonda 1966:2). Universalistic law was important not only for kings in western Europe, but for his subjects as well. The idea that even

⁴These concepts will be discussed below.

ordinary men had rights is a recurrent theme through the centuries. Considering Karl Wittfogel's and other's formulation of India as an 'oriental despotism' it is important already at this point to stress that such a model has been refuted by empirical research. What is argued here is *not* that Indian kings were all-powerful tyrants, but legislation was not central to his legitimacy nor to his actions (Lingat 1973:224). And he was bound by his *dharma* as well as strong castes. The third important conception separating India from the western Europe is the idea of a separation of powers between the sacred and the profane, between the church and the state. In India, religious ritual and political power was one and the same. "An investiture struggle would have been unthinkable in the context of Hindu kingdoms" says the German Indologist Herman Kulke (1982:247).

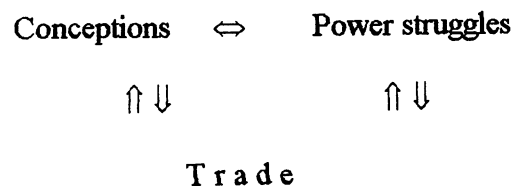
But ideas very seldom have a force of their own. The reason why these ideas of constitutionalism, rule-of-law and separation of powers assumed significance was because they were *used* as instruments to gain influence and power. The pope versus the emperor in the Investiture struggle from 1075 (Berman 1983); the magnates versus the English king at Runnemedede in 1215; the council aristocracy versus the Swedish king in the sixteenth and seventeenth centuries; the parliament versus the king in the English civil war. Specifically, I am going to show and emphasize how *both* sides in those and other conflicts attempted, and at times succeeded, to muster the law and the constitution to their own benefit. There are no historical heroes here to which we could point and say "They were on the side of the constitution all the time". No, my point is that especially since the Investiture struggle law came to be regarded as an important source of legitimacy. A 'political culture of law' (Nenner 1977) developed. To win a power struggle it was advisable to find legal counsel, and the further down the road the west European power contenders travelled the more ingrained this 'logic' became. In India, as I will show, such legalistic arguments hardly played any role at all in contentions over power. To this came in western Europe a corporate group with influence whose very training, *raison-detre*, and pride stemmed from law: the jurists and the royal administration.

More theoretically, what I intend to show is that the Western 'universalistic' state evolved as the result of what Sugden has called conventions of coordination, or what Carl Menger called organic institution (Bardhan 1989:1392). Conventions of coordination are, says Pranab Bardhan, "comparatively undesigned, and they evolve gradually as the unintended and unforeseeable result of the pursuit of individual interests" (*ibid*). The social technology, as Satish Saberwal has formulated it, of Roman law in a sense merely happened to be available to medieval European power-contenders. Only after a few hundred years did the actors, not least the traders and the aspiring bourgeoisie, become fully aware of the positive economic functions of the institution (of a legally bound political authority). Bardhan's examples of conventions of coordination include road rules, use of money, weights and measures, and languages. A convention in one sphere affects the interaction in *that* sphere. The argument here is that a convention gradually established in one sphere, mode of power struggle and political rethoric, affected *another* sphere, state action.

The third element in my model is trade. Below, on the basis of comparative Indian evidence, I am going to question those who have explained the 'universalistic state' with the growth of trade from the eleventh century following the reopening of the Mediterranean to European merchants. But obviously trade and merchants played an important part in the story to be told. But this is not a sufficient condition, as I think Indian data bears out; the conception of a legal code was also necessary for the particular west European path. The idea of separation of powers further strengthened the merchants and the burghers in the free towns of Europe. This idea also gave arguments to a fourth contender for power in western Europe: the nobility. The 'duality of structure' was the most obvious feature of west European society, writes Brian Tierney (1983:10).

"Ecclesiastical criticism diminished the aura of divine right surrounding kingship; royal power opposed the temporal claims of the papacy" (ibid). The separation of powers between state and church also meant that other loci of power could assert themselves. The nobility and the towns could appear on the West European scene and wrest crucial freedoms and privileges for themselves. This quadrangle of power elites -- the church, the king, the nobility and the burghers in the free towns -- later *in itself* was important for the development of constitutionalism and a 'legalistic' state (Downing 1992:chap. 2; Chirot 1985). Of these groups, particularly the merchants and traders had interest in supporting the law and legal institutions to enforce contracts especially in long-distance trade.

To sum up, what I aim to argue and demonstrate in the following, is that the growth of the 'universalistic state' in western Europe is best explained considering the *interplay* of three factors beginning in the eleventh century. The logic can be illustrated in a simple figure:



My method of showing this is to compare evidence in historical research on western Europe -- primarily England and Sweden -- with evidence from Indian history, mainly south India. It is important to stress, that this kind of historical explanation must be able to show a historical continuity; barely establishing factor x in the year 1100 and then again in the end of the twentieth century is not enough. Theoretically, the ideal is of course to follow a process decade by decade, but existing research and, most important, my own time and capacity do not allow that. The compromise intended here is to more thoroughly investigate the political process in England, Sweden and India during a few briefer periods, to be able to 'test' my hypothesis. I will also discuss and, in the light of Indian experience, attempt to refute the two most common and alternative explanations of the 'universalistic state', viz. trade or war-making. There are three criteria, I think, according to which a study like this ought to be judged: Is the argument or model theoretically convincing and consistent? Is the evidence true? Is the explanation better than (or at least as good as) earlier explanations?

Before doing that, I want to consider a few other and more immediate objections to this analysis. Firstly, of course, it can be questioned whether there is anything to be explained. In other words, *is* there a variation today in rule enforcement between different states? And, specifically, is there such a difference between northwestern Europe and India? Strange as this might sound to some readers, considering some of the literature already referred to, such a variation has been questioned. Naturally, it is important for this study to establish this variation and I will discuss it in chapter one.

Secondly, do we really have to go back to the eleventh century to explain this difference? Are there not other explanations more ready at hand? For the moment leaving aside the obviously difficult question of the proper moment in time of tearing apart the 'seamless web of history', I will briefly discuss a few other hypotheses. The most common explanation perhaps would be 'development' or mode of production. In other words, the more a country or economy develops the less corruption or rent-seeking we will find. Some marxists would make the same argument in

terms of the change from feudalism to capitalism. In many cases I think this explanation hinges on a tautology: the concepts of development or capitalism simply take for granted a high level of rule enforcement. More corruption and patronage implies, by definition, less development or capitalism. In this case we only have a terminological issue and not a different explanation. The substantive problem for this explanation is posed by some empirical examples. Capitalism and development in contemporary South Korea and Japan seem to thrive despite several corruption scandals in recent years. The same seem to be true of China in the last few years. Available evidence from the United States seem to indicate higher levels of corruption than in northern Europe. Historically, the comparison between England and Prussia in the seventeenth and eighteenth centuries is illustrating the point. Prussia,⁵ and Sweden, very early had a comparatively 'universalistic state' despite the fact they were both lagging behind Britain economically. And, as we will show below, it was *feudal* conceptions of rights and privileges of the nobility that were used against would-be absolutist kings in Sweden and England in the early modern period. Obviously, these examples take some edge of North's and others argument related above about the developmental importance of third-party enforcement. A rejoinder from North could perhaps argue that these countries have developed *despite* the corruption. If they were to enforce rules better the economic growth would be better still. Max Weber, in fact, thought that only a country as rich as the U.S. could *afford* a public administration dominated to such an extent by patronage and political machines. Another reply could be that the character of corruption and patronage in the cited countries are different and much less detrimental to the economy compared with some other countries.⁶ However that might be, the important bottom line here is that the purpose of this study is not to probe the relationship between state and economy but to explain the universalistic state.

Another explanation of corruption and rent-seeking is simply policy choice. Or, more accurately, the unintended consequences of policy choice. The Indian economist Jagdish Bhagwati explains the "indeed inherently arbitrary decisions" of the Indian industrial-cum-trade licensing system this way:

The origins of this bureaucratic nightmare lay, for sure, in the combination of two factors: first, the inability to trust the market when scarcities are acute and the tasks set are challenging; and second, the failure to understand that markets will generally work better than central planning as a resource-allocational device. (Bhagwati 1993:51)

The model Bhagwati seems to have in mind is that a public sector produces opportunities for graft; a large public sector produces thus many opportunities. This seems to be an example of the tendency in public choice and by many economists to see the state as constantly imperfect, and it disregards all the evidence we have by now that the public sector varies in this respect. And if that is true, we have to start looking for other explanations of rent-seeking than the simple answer that the opportunity exists since the public sector exists. It would be wrong to describe Bhagwati as a fundamentalist neo-liberal, and surely his wit colours his comparison of India and NIC: "It is not entirely wrong to agree with the cynical view that India's misfortune was to have brilliant economists: an affliction that the Far Eastern super-performers were spared" (ibid:54). But the object of his wit is significant, policy instruments instead of institutions.

Some have explained the lower levels of rule enforcement in the Third World by referring to the low salaries in the public sector. But as far as I know this explanation do not rest on any systematic research trying to relate levels of enforcement with wage levels. It is highly doubtful, I think, that low salaries can explain much of the corruption going on. On the contrary, evidence seems to show

⁵This was the state administration that Max Weber theorized in his writings and caused the envy of some American scholars at the turn of the last century (cf Wilson 18xx).

⁶For instance, to what extent e.g. bribes are predictable could be one such important difference.

that higher position in an administration, and assumedly a higher salary, the more you are able to rake off. Some notorious examples, and of course untypical in their scale, are the former president Marcos of the Philippines and the president of Zaire, Mobutu.

The last alternative explanation refers to India's, and other countries', colonial background. Again, this leaves unexplained the differences *among* former colonized countries. More importantly, this explanation totally fails to explain for differences in rule enforcement among countries that never were colonized; variations within Europe. And it cannot explain differences in the early modern period between England and the Netherlands, on one hand, and Spain and Norman Sicily, on the other (North & Thomas 1973). References to a colonial past cannot make sense either, I believe, of the historical research in India showing that many Indians under British rule saw politics and administration differently. This research will be discussed below, but what I am referring to is well formulated by the Indian historian and sociologist Satish Saberwal:

The Indian history stands in a remarkable contrast to the European experience (1985:203). Ancient Rome's idea of constructing legal codes was carried on by the Catholic church for a millenium, providing Europe's emerging nation-states with this particular social technology. Contrary to European experience, in India (kolla om dessa två meningar finns hos SS!) the ethic behind segmental confines has tended to be particular to the segment, not general or universal. ... Because the idea of extensively applicable imperative normative orders, effective down to the partiucular persons, is relatively alien to our historical process, we have had difficulties both with *devising* such normative orders ongoinglyt and with *enforcing* them institutionally (Saberwal 1983:204).

More theoretically one could also counter this argument by saying that it seems to rest on an assumption of linear historical development: 'Had India been left alone, it would have been like western Europe'. But I want to add that this is difficult terrain, since we are discussing contra-factuals. No one knows what would have happened if European powers had not dominated large parts of the world. There might, of course, be reasons to believe Irfan Habib's (ref!) argument about an *arrested* development in India because of British conquest. We also have interesting research on Naples, arguing that French (?) domination spurred clientelistic behaviour (ref.!). Supporting such an argument is also the fact that several of the countries in Europe's north-west corner have long histories of national independence -- not least the cases studied here, England and Sweden. But Norway and Finland are important counterexamples. However, an explanation built on colonial domination must account for the differences in rule enforcement found among former colonies. It must also make credible why another state formation would have taken place in the absence of colonialism, if we want to move on from linear and teleological theories of history.

But, someone may retort, is not the story told here a typical *orientalist construction*, and moreover, a 'whig interpretation of history'? Well, I suppose it is, if we do not define these terms strict enough. I think there are three important differences between a 'Whig interpretation' and the kind of historical explanation I am trying to make. The first is that I see no linear or necessary development from medieval constitutionalism to twentieth century universalistic states. There are no heroes and villains in this story.⁷ The motives of the victors were no purer than those of the defeated. Nothing in these countries' histories was 'bound to' happen; nothing ever is in history, I think. But the dice is often 'weighted' (have to check that word) so that some outcomes are more likely than others. A second contrast is that the explanation below will suggest a *mechanism* through which structures several centuries ago can help us to understand differences in government

⁷A good example is provided by Downing (1992:172) when he points out that the English Parliament in the 1640s, in order to win the Civil War, had to trample on the very liberties they set out to fight for. Such actions should be seen "not as contradictions, but as ironies that help better to appreciate the complexities of political development, then and now" (ibid:177).

today. The third difference is that I do not see this development as intentional. No idea of a superior vision of societal evolution is implied. If we could invent a time-machine and bring the baronage at Runnymede in 1215 to England in the 1990s I am quite sure they would be horrified by the discovery that ordinary, *the vulgar*, Englishman thinks he has rights and freedoms. And, if it was possible, they would probably like to go back to Runnymede to try to change the course of history. "Men make their own history, but they do not know which one", as the historian Francois Furet has pointed out. As a corollary, I see various kinds of institutions -- like raw materials or physical capital -- not as good or bad for development *per se*. But together with other structures and events they can produce good *synergies*. To take an illustrating example: oil as a resource was economically quite uninteresting until the invention of the combustion engine (kolla ordet!). Similarly, it can be hypothesized that the rule-governed state economically meant very little until the growth of long-distance trade and larger market economies. We can also hypothesize, admittedly on a more speculative note, that other institutions -- perhaps well-integrated, internationally dispersed kin -- could be much more advantegous economically in a future.

It has become very fashionable in recent years among some scholars to accuse others of merely 'constructing' reality. As an Indian historian, whose work I have learned a lot from and who I believe largely share this analysis, put it: "Orientalist is the nicest thing some Indian colleagues call me". I do not want to dispute the importance of mental constructions in human interaction. On the contrary, it is probably a central ingredient in politics and society. Dominating the understanding and interpretation of society ideologically or religiously, say, is a power resource which goes a long way in explaining why people invest so much time in such fights over 'mere ideas'. Indeed, the analysis presented in this book could be depicted as a study of mental history; the establishment of a 'legal political culture' and frame of mind in western Europe. Nor do I wish to dispute that mental constructs influence analyses in history and social sciences,⁸ and concepts that are necessary to interpret reality, even the most simple like 'table', are of course mentally constructed. But what I do dispute is a kind of 'Platonic absolutism' that permeates some writing and argumentation. For some so-called post-modernists it seems to be possible finish any argument or proposition about reality with the formula 'Who constructed that?'.⁹

Edward Said in his seminal work *Orientalism* (1979:5) writes, "as much as the West itself, the Orient is an idea".

My contention is that without examining Orientalism as a discourse one cannot possibly understand the enormously systematic discipline by which European culture was able to manage -- and even produce -- the Orient politically, sociologically, militarily, ideologically, scientifically, and imaginatively during the post-Enlightenment period. ... Orientalism can be discussed and analyzed ... as a Western style for dominating, restructuring, and having authority over the Orient. (1979:3)

Few scholars today would question that knowledge and ideas can be used hegemonically and I surely would not want to discredit studies of 'intellectual domination'. But how, if at all, does this Orientalism relate to reality in northern Africa and Asia? "To believe that the Orient was created", says Said (*ibid*:5), "and to believe that such things happen simply as a necessity of the imagination, is to be disingenous".

⁸A poignant example is provided by xx who argues that several English historians saw an 'aristocratic decline' in the seventeenth century, not because it happened then but because it happened to them, in the 1930s!

⁹Studies of 'The Invention of' or 'The Construction of' have become a growth industry; heterosexuality, pornography, America etc. are studied as 'constructions'. See the recent book by the philosopher John Searle (1995) for a trenchant critique of some of the worst philosophical mistakes and misunderstandings in (some, at least) 'post-modernism'.

There were -- and are -- cultures and nations whose location is in the East, and their lives, histories, and customs have a brute reality obviously greater than anything that could be said about them in the West. *About that fact this study of Orientalism has very little to contribute, except to acknowledge it tacitly.* But the phenomenon of Orientalism as I study it here deals principally, not with a correspondence between Orientalism and Orient, but with the internal consistency of Orientalism and its ideas about the Orient (the East as career) *despite or beyond any correspondence, or lack thereof, with a "real" Orient* (ibid).

Read this passage again, and especially the sentences I have italicized. What Said is saying, in effect, is that his study and critique of Orientalism can not inform us, and does not claim to inform us, about the "brute reality" of ~~these countries and cultures.~~ *It is no easy task to avoid the pitfalls of a "dominating restructuring" of India's past and I can not take for granted that the following discussion is free from orientalist distortions.* But I will not accept an argument maintaining that this analysis is wrong *simply* on the basis that it shares some understandings of the pre-colonial Indian polity with Orientalism. Such a debate is merely ideological, I think, and will lead our understanding of India's present and past nowhere.

An accusation, though, where I plead guilty is one of 'dichotomization'. A very large mass of writers, among them Aeschylus, Victor Hugo, Dante and Karl Marx, says Said, have accepted a basic distinction between East and West (ibid:2). Although this analysis does not deal with the whole of East and West, it posits a distinction, a dichotomy between western Europe and India. It can readily be admitted that this is a simplification. Obviously there have existed and exist today 'particularism' in western Europe and 'universalism' in India. But the argument is that these are exceptions to a general pattern of state action. And the whole point with the ideal types of 'universalistic' and 'particularistic' state¹⁰ is a dichotomization. For other purposes and other studies or comparisons these concepts ought to be deconstructed or refined. But the purpose here is aiming to explain, precisely, this distinction.

A problem in many discussions and analyses about the formerly colonized world is the blurring or confusion of two different dimensions, or questions. Considering the history of economic, political, cultural and intellectual domination by European and then American powers during the last few hundred years this blurring is quite understandable. *Positive* analyses of politics, economics etc are often, in various ways, mixed up with *normative* analyses and judgements of the politics and cultures in the so-called Third World. Orientalists in the nineteenth century saw India as different and *hence* inferior. The modernization school, trying to make up for this racial bias and fed by post-war optimism, saw the colonial world as basically similar to 'us' but politically and economically inferior; those countries were 'underdeveloped'. The post-68 generation saw the 'Third World' as morally and politically equal to the West, *therefore* basically similar politically to us. The position taken here sees India, and other countries in the South, as morally equal to us, but different. Politics in India does not represent pathologies or arrested developments of our historical trajectory. Instead, it must be understood in its own terms and historical circumstances. The different positions can be schematized in a four-fold table:

¹⁰The concepts will be defined in the next chapter.

Politically
Different Similar

"Morally"
Inferior
Equal

Orientalism	Modernization school
Manor (me)	Post-68 marxism

Chapter 1: Is the State in India Particularistic?

The subject matter of this book is the explanation of variations in rule enforcement between different states. The point of departure is the extensive discussion about the state in the Third World. A large number of authors have examined state action in countries in Asia, Africa and Latin America and noted that it differs considerably compared to many industrialized nations. Various vocabularies have been used to capture what I believe have a lot in common: the Third World state has low 'penetrative capacity' (LaPalombara in Horowitz 1989:201); is 'soft' (Myrdal 1968); is 'weak' (Migdal 1988); is 'clientelistic'; has lower "capacity to *insulate* economic management from the distributive demands of pork-barrel politics" (Bardhan 1988:66); is 'rent-seeking' (Krueger 1974); or even 'predatory' (Lal 1988). This is how Judith Tendler and Sara Freedheim depicts some of this research:

public officials and their workers pursue their own private interests rather than those of the public good; government spending and hiring is overextended; clientelistic practices are rampant, with workers being hired or fired for reasons of kinship and political loyalty rather than merit; workers are poorly trained, and receive little on-the-job training; and, tying it all together, badly conceived programs and policies create myriad opportunities for graft and other forms of "rent-seeking" (Tendler & Freedheim 1994:1771).¹

The most general, and at the same time most precise, way to talk about this problem is provided by Douglass North's (1989, 1990) discussion about differences in terms *rule enforcement*. Many states in the Third World are significantly less able, or willing, to enforce *their own* rules compared to many states in the industrialized world.

There are a few things that is important to bear in mind as we go along. North mainly discusses a state's capacity to enforce contracts, but I believe his discussion is consistent with what is discussed below, *viz.* the state's activity in any policy sector: human rights, agriculture, education, housing, health, police, social policies etc. (cf O'Donnell 1983). Although this study clearly is influenced by the call to 'bring the state back in' (Evans, Rueschemeyer & Skocpol 1985) it does not view the state neither as some 'essentialist' entity in a Hegelian spirit, nor as a unitary actor. Bates is right when he criticizes some economists when they posit the state or the government to have one will or preference. "To treat the state as an actor that maximizes some objective function is to anthropomorphize the state" (Bates 1991:265). Any reference to 'state' here, is just a shorthand for the sum of all the politicians, administrators and agencies that make up what we conventionally call a 'state'. In the end, of course, it is individuals who have preferences, desires, and wishes and who make choices. But this analysis rest on the assumption that one of the factors meaningfully constraining and enabling those desires and choices is 'the state'. This specification is even more important to take note of when we below make a dichotomization between a 'universalistic' and a 'particularistic' state. These concepts, or ideal types, are meant to be no more unitary or mystifying than many other concepts we use to distinguish broad categories: pluralism vs. corporatism, democracy vs. authoritarianism, state vs. market, or, even, honour vs. dishonour. All of these examples are, following John Searle, 'institutional facts' "because they require human institutions for their existence" (1995:2). To understand social reality we need concepts to capture the micro-level *and* the macro-level. It is only from the view-point of the 'universalistic state' that we perceive of a 'particularistic state', I believe, since it is the former that is different or the exception. We need much more nuanced analytical tools to grapple with the 'Third World state'; a state that many social

¹A seminal article in this research (whose generalizations are questioned by Tendler) is Krueger 1974. I find it very peculiar how research traditions, sometimes disciplines, can live parallel lives seemingly without any contact, or perhaps even knowledge of each other, despite claims of knowing the same topic.

scientists until recently thought of as rather uninteresting to theorize about;² but it is clearly beyond the present scope to enter that discussion.

'Bending the rules, seeking exceptions to generalized prescriptions, proffering bribes for special consideration, having a friend in city hall - these are *immensely important aspects of political participation in developing countries*', according to Merilee Grindle (1991:56, emphasis added). Many other authors as well have emphasized how political struggles in developing countries often are at the enforcement stage (Scott 1969, Grindle 1980, Forrester 1970, Wirsing 1977, Fox 1994). In this chapter I want to establish that this political pattern is the one dominating in India, and that it differs from contemporary politics in England and Sweden; that India has a 'particularistic state'.

Secondly, I will discuss more theoretically what is meant by 'particularistic' and 'universalistic' states.

The evidence from India I will present is of four different kinds. The first is macro-studies of Indian economy and politics, including the extensive Indian discussion and studies of the 'license raj'. Jagdish Bhagwati, one of the world's leading economists, in a recent book talks about how India's industrial-cum-trade licensing system 'degenerated into a series of arbitrary, indeed inherently arbitrary, decisions' (Bhagwati 1993:50). '(I)t seems eminently plausible that the "soft state" that Gunnar Myrdal feared may have arrived in the 1980s' (ibid, 72). 'Admittedly, many learnt to bribe, evade, avoid and generally live with the system' (ibid, 82). Bhagwati's political agenda is pro-market, but this analysis of the Indian state is also shared by his marxist colleague in Berkeley, Pranab Bardhan (1984, 1988). Atul Kohli, an Indian political scientist, has done detailed field-work in India and comes to the conclusion that politics and the state have de-institutionalised in the last two decades (Kohli 1991). Let me, at some length, quote how three authorities on Indian public administration describes the situation in an article summarizing administrative changes since 1947 (Dwivedi, Jain & Dua 1989:263ff):³

Basically, there has been a number of visible changes in the administrative system and style since the British times. ... Along with the decline of the district as a level of administration, there has been a simultaneous decline in the strength and morale of the main public service ... there is no aspect of public life that is free from corruption or blackmail. ... The increased authority for 'licensing' or 'control and regulating' has earned the government the nick-name of 'licence, permit, quota raj'. This has provided umpteen opportunities for corruption, bribery, and affluence through ill gotten wealth. ... corruption has almost become the way of life. A sort of cynicism seems to prevail that one has got to live with it. In the process, the one section of society that has suffered immensely is the poor citizen. ... the lubrication required in the form of payment to powerful political or bureaucratic functionaries to get the work done, have all become a part of the administrative culture of India.

To these academic analyses we can add the almost daily reports of corruption and patronage in the astonishingly free press in India; the bribery of high-ranking officials in the arms deal with the Swedish company Bofors being the most publicised and politicised in recent years. In Indian

²Partly because many were, and still are, unaware of its traits, and partly because many thought it would soon be like the state in their own country anyway.

³For further studies giving similar pictures of the Indian state, cf Moore 1984 on agricultural extension and the seminal article by Wade 1982, or Wade 1992, on irrigation. The sceptical reader is recommended an anthropological account of a locality in India like Wadley 1994, especially chapter 5. Wadley has visited this village in north India for more than 30 years, she has no intention to prove 'rent-seeking' behaviour but the description of public policies that emerge -- in land consolidation, irrigation, cooperative banking, rural development, police enforcement, primary education -- is one of particularistic implementation. Not all the time, but certainly often enough to make a universalistic model or understanding untenable.

politics this understanding was formulated in a polemical way by the late Prime Minister Rajiv Gandhi in 1985:

We (Congressmen) obey no discipline, no rule, follow no principle of public morality, display no sense of social awareness, show no concern for the public weal. Corruption is not only tolerated but even regarded as the hallmark of leadership. ... (The Congress party has) brokers of power and influence, who dispense patronage to convert a mass movement into a feudal hierarchy. (Quoted in *India Today*, 15 January 1986).

The second kind of evidence is Indian opinion polls. Almost every time Indians are asked about 'The most important problems facing the country' corruption is mentioned as one of the three most important (unemployment and inflation are usually seen as the two most important).⁴

My third piece of evidence is micro-studies politics in India, many times done by sociologists and anthropologists. Several studies of local politics in Madras -- by Marguerite Ross Barnett (1976), Joop de Wit (1986, 1987), Kristian Olesen (1984) -- confirm a picture of politics and political relations built not on ideologies and universalistic commitments, but on personal, particularistic networks where the distribution of patronage is an essential ingredient in political survival. One informant explained to de Wit (1987:21): 'We do not often go to such (housing) offices, we belong to the opposition party and the government will not listen to us'. In Paul Wiebe's unparalleled in-depth study of a slum area in Madras he writes:

(A) caste-like mentality and procedure governs political relations. Those who seek to accomplish things do so primarily through patronage. They seek to establish personalistic ties. Seldom, if ever, do they form associations in relation to ideological commitments. ... In their relationship with patrons, the people can seldom make demands on the basis of right or precedent. (Wiebe 1975:120f)

The Norwegian political scientist Ella Ghosh (1994) has studied the powers of local government in the policy areas of education, health and drinking water in Jaipur district in Rajasthan. She finds that the local panchayats 'have been eroded from the top and from the bottom' (1994:93) and many of their functions and resources taken over by state and central government. One of the reasons for taking away resources and decisions from local politicians 'is simply that the panchayats were corrupt. There was such largescale misuse of funds that many tasks had to be transferred to Central Government organisations' (ibid). Her story, her description of the administrative reality in Jaipur district is quite consistent with the accounts related above:

There was a striking lack of co-ordination of development projects in the area of the field study. ... 23 schools were said to exist, but were not being used as schools ... veterinary centres...stood empty ... there is a profusion of parallel and overlapping organisations...creating a total lack of organisational consistency ... organisations started by one party are not closed down by the next party. ... buildings stand empty and staff is missing for a clinic built with funds from an employment project in Rajiv Gandhi's time, while a half-built animal shelter is built as part of another almost identical State Government employment project initiated by the Bharatiya Janata Party. (p.101ff)

What might strike a foreign observer as an 'irrational chaos' has a clear political logic: 'Development programs are resources used to gain patronage, and are abandoned when they are not useful anymore' (ibid:103). One sarpanch (village headman) tells Ghosh that he and other local politicians sometimes even approach politicians on a higher level to 'stop the development in another village which is being handled by another party' (ibid). '(V)arious caste groups alternate in gaining and using the economic benefits of power positions' (ibid:105). And, interestingly: 'Though many of the villagers and politicians were very bitter about the long-lasting Congress/upper-class domination and about the corruption this had involved, it appeared as if the representatives of the tribal minorities were using the same means of patronage once they gained power' (ibid:105f). [This section will be expanded with further examples, including Wadley 1994]

⁴For someone questioning a difference in level of corruption between England/Sweden and India, this Indian opinion must be almost inexplicable.

Lastly, I want to consider my own earlier study of housing policy and its implementation in Madras (Blomkvist 1988). From a 'universalistic' view-point the housing politics in Tamil Nadu presents us with some puzzles. First, it is a bit strange that in the democratic, politically charged and comparatively open Indian society no organisation was established for the roughly *one third* of Madras' population living in hutments. Of course, they are poor, underprivileged and organisationally weak. But, then again, the curious thing is that they organise on a *local* basis.⁵ It is also strange to think of a state intent on enforcing its policies to have all the hutments in Madras remaining illegal *at the same time* as the hutment dwellers are allowed to stay. Why this inconsistency -- which is typical of many Third World cities -- has not attracted more analytical interest from housing experts seems very odd to me. Seen as a particularistic state this inconsistency becomes understandable: precisely the illegality of the poor people's housing can be used to get political loyalty by local power brokers and half-criminal 'goondas', which is exactly what is being reported from several Indian cities.

The most important puzzle in Madras housing politics was that there was no contention between the political parties, ADMK and DMK, on housing policy. Well, that happens in developed countries too, the reader might retort. A few facts make this answer less plausible. Remember, first, that we are talking about a sector which consumed about 30% of public expenditure; no small item. Second, the period I studied (1970-84) the housing approach in Madras was *drastically* changed; from a slum eradication and tenement building approach in the early 1970s to an abandoning of the tenement programme in favour of slum improvement after 1976. In other words, the difference in policy that was discussed in the international (and Indian) debate. Moreover, DMK who came to power in 1967 partly on an urban platform, associated themselves strongly with the tenement programme. The party's promise was to 'clear all the slums in Madras within a period of seven years', in other words to build an apartment for every family (quoted in Blomkvist 1988:126). Charged with this task was the powerful Tamil Nadu Slum Clearance Board, created in 1970, and headed by the important DMK politician Rama Arangannal. The change in approach came in 1976 when the World Bank sent a mission to India and Madras to negotiate a housing programme. The World Bank 'was looking for a clear demonstration of the feasibility of its theory and its superiority in practice, compared with the conventional "permanent construction" public housing approach'. But this had nothing to do 'at all with spontaneous calls for change' from the population of Madras says the insightful Paul Wiebe (1981:137). Despite this charged political background -- and this is my point -- there existed in the 1980s *no* policy differences between the two largest parties, ADMK and DMK, neither in documents nor in conversations with central politicians. Most observers would call that a bit puzzling, I think. To this can be added my own statistically based study of tenement construction in Madras 1970-81 (Blomkvist 1988:147-157). From this it is clear that the construction was skewed in some constituencies compared to need and that this can be explained politically: 'we find a correlation on the level of constituency between electoral success of the party in power and its building activity' (ibid, p.155). In some cases this connection was strong: 'During DMK's first period in power, more than half of the tenements were built in Mylapore, the constituency of the chairman of the Slum Clearance Board' (ibid, p.156).⁶

Together with other evidence my study of housing in Madras corroborates a picture of a 'particularistic' state which was operating in a political environment of patrons and clients, where abstract principles and policies -- important to the planners and the people from the World Bank --

⁵See studies quoted and related in Blomkvist 1988:107-111.

⁶To my knowledge, this kind of quantitative data has seldom been used to give a firmer empirical basis for arguments about particularistic or clientelistic politics; one reason is probably that such data are difficult to get.

made very little political sense to the poor or to the politicians. This argument also has a practical or political implication: if we want share in efforts to improve the (e.g. housing) conditions for the poor in India policy formulations should *not* be our main concern. Instead, within the scope of state action it is the administration and its political environment that ought to catch our attention. Many studies of various housing 'failures' in developing countries operate on the premise that something was wrong with the policy, the thinking or ideas behind the housing programme. To me, this is an excellent example where an understanding of the 'particularistic state' would lead the analysts in a different direction. There are, for instance, numerous studies questioning why huge resources are spent on building multi-storey tenements when the 'rational' and cost-effective policy is slum upgrading: if we see these tenements as potential patronage, the programmes are completely understandable. This argument parallels Tony Killick's early critique of the political and behavioural assumptions in some of the economics and development planning literature. 'Economists' conceptions of development planning are based on a view of politics so far removed from the realities as to vastly reduce the operational utility of the concept' (Killick 1976:178; cf also Bardhan 1988:63-66).⁷

Now is time to say a bit more precisely and theoretically what is meant by the ideal types of 'universalistic' and 'particularistic' state. Clearly inspired by Max Weber's classical discussion, the concepts are defined thus:⁸

- Universalistic state = A state whose actions are ordered by *rules*, i.e. laws or administrative regulations.
- Particularistic state = A state whose actions are ordered by something *other* than rules, e.g. the whims of the ruler, friendship or family relations, esteem, political connections or money (bribes).

As a way of discussing these concepts, I will present a critique by Ella Ghosh. Ghosh is critical of my interpretation, more specifically how I define the 'particularistic state'. Her moot point is this:

The particularistic state is supposed to be characterised by the absence of rules. At first glance, this does not seem to describe the situation in local politics and administration in Rajasthan at all. On the contrary: a number of sets of rules seem to govern both informal and formal relations. (p.97)

The same critique has been formulated by Pamela Price (1995b): 'Blomkvist appears to have assumed that rules are codes for conduct that are written and formal. In this scheme informal codes do not constitute systems of rules, but are personal impulses without ideological structure'.

I think two issues are involved in Ghosh's and Price's criticism. The first -- and most important -- is that I paid too little attention to all the rule systems that are in operation in Indian society; Ghosh mentions specifically the caste system (which is forbidden in the Indian Constitution!) and the tradition of the princely states in Rajasthan along with formal, written rules. I was not unaware of the problem.⁹ But I did neither focus, nor conceptualize how these 'multiple codes' -- in Satish

⁷The picture of the Indian state presented here is basically in agreement with a more general model of the 'Third World state' that Evans 1995 and other papers presented at a recent conference at the American Academy of Arts and Sciences, Cambridge, Massachusetts on 'Government Action, Social Capital Formation and Third World Development. Cf also O'Donnell 1993 who makes the same point.

⁸A more elaborate definition and discussion is in my dissertation Blomkvist 1988:177-220.

⁹Cf Blomkvist 1988:195: 'Obviously the political situation in India is not characterized by a state of anomie. It is not my point to say that moral or social rules do not exist in India. Clearly they do.'

Saberwal's (1985, 1986) terminology -- *aggregate*. Ghosh captures this aptly: 'Too many rules have much the same *effect* as a lack of rules; (t)he effect of an excess of rules is a form of lawlessness' (Ghosh 1994:106, 101, emphasis added). The importance of Ghosh's and Price's¹⁰ point is this: the particularistic state -- or personal rule, rent-seeking society, soft state etc -- is often not characterized by a lack of rules but a *multiplicity of rules*. Merilee Grindle senses this when she writes:

"Accommodation of interests," rather than corruption or rent-seeking, may more fully capture the dynamics of policy implementation because it draws attention to complex and intentional use of the process ... Again, although neoclassical political economy correctly describes a series of economic irrational policy outcomes, it is often making incorrect inferences about how those outcomes were generated. ... Without (a better understanding of process) the effort to change bad policy into better policy is a directionless enterprise (Grindle 1991:56f).

Therefore, in a sense, both the universalistic and the particularistic state is *governed by rules*.

This leads on to the second issue: at the bottom of this dispute is, as happens so often, a terminological question. I *defined* a 'rule' as a formal directive. 'By rule we shall mean a, usually written, law, administrative regulation, enactment or decree. These rules can be issued either by a parliament (or a ruler) or an administration. ... it is important to note that by "rule" we shall *not* have in mind an empirical or sociological regularity, a habit or a *pattern*, nor informal, social rules in the sense of "rules of the game"' (Blomkvist 1988:195).¹¹ Therefore, Ghosh's and Price's arguments about the caste system and other informal rules in India do not get at the core of my argument.

The same is true of Ghosh's claim: 'We can not describe Rajasthan as a state *without* rules' (Ghosh 1994:106, emphasis added). I never defined particularism in such a way. On the contrary I emphasized that 'as we are defining our concepts in terms of *actions* taken by states, it should be obvious that we are talking about rules that are *applied*, not the existence of rules as such. ... Evidently India has a constitution and a whole gamut of laws. (In the housing sector the Planning Commission) speaks about "a formidable array of rules and regulations"' (Blomkvist 1988:196f). And when Ghosh says that caste rules 'are not ... impersonal' (Ghosh 1994:98) she is making the same mistake as Talcott Parsons, and many others, *viz.* to confuse the concepts of 'universal' and 'general' (cf Hare 1972, Blomkvist 1988:190ff). *Adhering* to a rule is universalistic; if the rule applies to *all* it is general. A strictly enforced caste system would be *specific* rules applied *universalistically*. A more careful reading of my dissertation would have made these flaws in representing my position unnecessary. [This section on the ideal types will be expanded]

A less definitional way to describe the difference between universalistic and particularistic states is to say that in our (universalistic) part of the world the formal and central rule system has, over the centuries, been able to 'conquer' other rule systems. The profusion of formal and informal rules that are found to influence public administrators in India means that there seldom exists -- in practice -- a rule that *unambiguously* tells him/her what to do. The Constitution may say one thing, state legislation another, his administrative superior a third, his caste rules a fourth, his village custom a fifth etc.; the *context*¹² will often decide which rule he will follow. Such tensions may of course be experienced by a civil servant in Northwestern Europe too, of course. But the point is that in our tradition *the rules of the central political authority* -- kings, diets, courts and later

¹⁰Pamela Price has emphasized this in a number of our discussions.

¹¹There are, clearly, borderline cases of un-codified rules that have acquired the political force of 'rules' in the above sense of the word (cf Blomkvist 1988:195f).

¹²Cf Ramanujan's 1989 interesting discussion of the 'rule sensitiveness' of Europe compared with the 'context sensitiveness' of India.

democratically elected parliaments -- were able to establish a *dominance over other rule systems*. Royal courts and centrally formulated legislation was consciously used in the early modern period in several European countries to *quell* the modalities of regions, corporate groups and local traditions.¹³ In many important respects -- in wars, for instance -- the European princes were more powerful than Hindu *rajās*. Indeed, we could turn Karl Wittfogel on his head and talk about the existence of an *Occidental despotism*. But with a Hegelian ironic twist of history, the continental despotism resulting from Roman Law feared by the English 19th century legal scholar Stubbs never happened: instead 'the princes' law' was turned around and used, in the name of freedom and liberty, as a weapon *against* kings.

The sea change occurring in west European history some time between the early medieval period and the early modern period has also been noted in the history of ideas. The Norwegian historian Bjorn Qviller has emphasized the difference between the philosophies of Machiavelli and Hobbes, on the one hand, and of Aristotle and the Antiquity on the other. In the vocabulary presented above, we could say that Greece and Rome had 'particularistic states', but in the days of Machiavelli and Hobbes the 'universalistic state' had made some inprint on European society. Qviller wonderfully captures the different notions of particularism and universalism (Qviller 1993a:27): "While the idea of justice, according to Polybius, is constituted in *human interaction*, Machiavelli maintains that it is generated through the establishment of *legal codes*" (my emphasis). Antiquity does not make a clear distinction between the private and the public sphere: "Solidarity in the political life is treated in the same way as in private life" (ibid:21). Thus, "(t)he mixing up of friendship and the state is the reason why Aristotle does not have any theory of the importance of impartiality" (ibid:22). But that had changed in Machiavelli's Florence where "(j)ustice is no longer tied into human relations and in human interaction as it had been with Aristotle. Justice is now dealt with by an agency of the state" (ibid:46). Human interaction versus legal codes; friendship versus the state. The society of Florence was in important ways different from that of Athens 1800 years earlier.

The American historian Ramsay MacMullen's picture of political relationships in Ancient Rome has striking similarities with the contemporary Third World. "The ethics of officeholding permitted a very considerable amount of active or passive partiality. It was simply expected that a man would do favors for his friends and dependents ... Best of all, you might actually dine with the great man. That implied a special compliment to you" (MacMullen 1988:79, 64). Family connections were important to secure one's position (77). *Tabula patronatus*, plaques showing a person's important connections were on display in his atrium and was a sign of his power (82). MacMullen stresses the instrumentality of the friendships. "In fact, it was hard to draw the line between wishing to gain and express some measure of liking, and the wish to influence specific decisions" (126). He quotes a Roman source: "what could you ever be thought to lack? ... The emperor knows you, you have many friends in Rome" (247). "No indeed. Right and wrong had to yield to realities -- that is, to rank" (88). MacMullen indeed gives a very harsh picture of the informal relationships and friendships in Rome.

This transformation from a society built on friendship and informal personal alliances (patron-client relationships) to a society where the formal legal code and the state mattered much more is demonstrated in a profound and interesting way in Machiavelli's attitude towards generosity. "When it comes to monarchs and princes, he advises them not to be munificent, an advice", says

¹³An interesting hypothesis has been suggested by Pamela Price in discussions, viz. that this difference between Europe and India can be explained in terms of a historically weaker and more feeble kinship system in Europe, making penetration by the state easier.

Qviller (1993a:28), "which places him (Machiavelli) in the strongest possible contrast to the traditions of Antiquity and the Middle Ages". Why would Machiavelli be so suspicious of generosity? An apt answer to this question we can find, I think, in Qviller's article "Refleksjoner over grekernes symposier" (1993c). Here Qviller shows how symposia (originally meaning drinking party) in ancient Greece was used to fuse an otherwise segmented society. The symposium was an important institution. In one of his dialogues Socrates advises an Athenian gentleman: "Hence it is your duty to invite your citizens to a dinner and pour good deeds over them. If not, you will be without allies" (quoted in *ibid*:23; my transl.). Like the potlatch among the American Indians, like *largesse* in pre-colonial India (Price 1989) "such ceremonies were important reasons for the aristocracy to show its might and *mobilize support through generosity*" (*ibid*:16; my transl., my emphasis). The answer to the question above, about Machiavelli's attitude to generosity, then, is that *generosity breaches the logic of the legal code*. Generosity is one (important) way to get power within, especially, a 'particularistic' political system. It is crucial, I think, to make such a 'realist' interpretation of the gift; there is nothing innocent in a gift. Indeed, as Marcel Mauss (1980) pointed out, there is a linguistic relationship between 'gift' and the Scandinavian and German word *gift*, meaning poison. The Eskimos say that "Gifts create slaves, just like whips create dogs" (Sahlins quoted in Gustafsson 1989:100). The Icelandic author Halldor Laxness in one of his novels writes: "Since I am a poor man, says Steinar on Hlidar, I can't afford to receive gifts. Only rich men can do that" (quoted in *ibid*:93).¹⁴ In the tradition of Marcel Mauss, Qviller says that "the primitive analogy to the 'societal treaty' (*samfunnspakten*) was the gift, and not the state" (Qviller 1993c:24; my transl.).

¹⁴ Bo Gustafsson (1989) derives the origin of class-society from the institution of the gift. He sees the gift as a primitive insurance-system and a cement in society, but also as something that constituted a prerequisite for social stratification: the more generous a person is, the higher social status will he acquire. And status that can be 'converted' into power. Gustafsson quotes Thomas Lindkvist: "The basis of power (in Medieval Sweden) depended on the possibilities to establish connections and dependencies with followers" (*ibid*:111; my transl.). The logic of the gift demands reciprocity, but if the gift is big enough it cannot be reciprocated. "The main point is", says Gustafsson, "that the gift, and not the mechanical seizure of power through violence constitutes the endogenous mechanism in the transformation to a stratified society with unequal distribution of resources" (*ibid*:103; my transl.).

Chapter 2: Medieval Origins: Church and State in Western Europe

In the late eleventh and early twelfth centuries the West European elites were witnessing an intense power struggle that would prove to have the effects of a nuclear fission in the European civilization: the Investiture Conflict. In December 1075 Hildebrand as Pope Gregory VII sent a letter to the Emperor Henry IV of Saxony in which he demanded the subordination of the emperor and the imperial bishops to Rome. In reply, in January 1076, Henry began his letter: "Henry, king not through usurpation but through the holy ordination of God, to Hildebrand, at present not pope but false monk" (Berman 1983:96). In response Gregory excommunicated and deposed Henry. In January 1077 Henry had to give up and journeyed as a humble penitent to the Pope in Canossa where he waited three days to present himself barefoot in the snow and to confess his sins and declare his contrition.

The conflict resurged, however, in 1078 and resulted in the Wars of Investiture. In 1080 Henry moved across the Alps and occupied Rome (1084). The immediate issue was not settled until the Concordat of Worms in 1122. And the conflict would have consequences for a long time to come.

The direct background of the conflict was whether emperors and kings should have the power to *invest* bishops and other clergy with the insignia of their offices (ibid:97). Previously the emperor or king, as the deputy of Christ, had invested the bishops with their insignia. Now the pope, Gregory VII, turned this on its head and claimed to be the sole deputy of Christ. Gregory broke with the orthodox doctrine that had prevailed for centuries, and contended that the emperor was a layman whose election as emperor had to be confirmed by the pope, not vice versa.

The pope's claim left emperors and kings with no basis for legitimacy, "*for the idea of a secular state, that is, a state without ecclesiastical functions, had not yet been – indeed, was only then just being – born*" argues Harold Berman convincingly (98; emphasis added). Called by some "the beginning of the modern age"¹, the "Papal Revolution" *separated* the profane and the sacred, the *Regnum* and the *Sacerdotium*.

This separation had two important, unforeseen, consequences: it led to a *separation of powers* between state and church, and by defining their spheres of influence legally, *law* came to be seen in European history as an important source of legitimacy (cf Strayer 1970:20ff). The most obviously distinctive feature of West European medieval society was, writes Brian Tierney (1983:10), "an unusual duality of structure". The ecclesiastical and the secular was

always jealous of each other's authority, always preventing medieval society from congealing into a single monolithic theocracy. Ecclesiastical criticism diminished the aura of divine right surrounding kingship; royal power opposed the temporal claims of the papacy. Each hierarchy limited the authority of the other. It is not difficult to see that such a situation could be conducive to a growth of human freedom, and the fact has often been pointed out. Lord Acton long ago wrote, 'To that conflict of four hundred years we owe the rise of civil liberty'. (ibid)

Of course, this argument turns most social science theories on its head. The bourgeoisie did not create law; the law created the bourgeoisie. "The notion that liberal democracy was the political consequence of economic changes and the rise of the middle classes is deeply ingrained in many social theories", says Brian Downing (1992:18). But *growth* of constitutionalism should not be confounded with its *origins*.

Struggles over institutions, rights and ideas marked much of the political history of medieval Europe and helped to shape the modern world. ... The principle of royal subordination to law was reasserted at Runnymede and elsewhere. The critical institutional groundwork upon which liberal democracy was

¹The idea of the Investiture Conflict as the first "great revolution" in Europe was, according to Berman, pioneered by Eugen Rosenstock-Huessy; cf the long fn 1, Berman 574ff.

built predates the commercialization of agriculture, the general crisis, the rise of the bourgeoisie, any appreciable level of per capita income, and anything that can be meaningfully called modernization (ibid:18f).

On both these accounts political power in India was altogether different.² If the Church and the Emperor were two distinct powers in Europe after the Papal Revolution, they were living in *symbiosis* in India.³ "An investiture struggle would have been unthinkable in the context of Hindu kingdoms" writes Herman Kulke (1982:247). Religious ritual and political power seems to have been one and the same (cf ibid:254). In an important article Gloria Goodwin Raheja argues that Max Weber's and Louis Dumont's view of the caste system, with the Brahmin at its apex, as the basic Hindu institution is fundamentally mistaken. The "radical separation of Brahmanic 'religious' status and royal 'secular' power is a *dichotomization alien to Indian social thought*" (Raheja 1988:518; emphasis added). Instead, the relationship between the Brahman and the king is enacted principally through a ritual elaborate system of giving and receiving (cf also Appadurai 1981:68ff).

Christianity raised a problem the ancient world had not known, according to George Sabine (1973:181), "the problem of church and state".⁴ European rulers sought legitimacy in legal terms, "a people's allegiance to its ruler is therefore a pledge to support him in his lawful undertakings and is *ipso facto* void in the case of a tyrant" (ibid:229).

But the Indian kings were not tyrants, as varieties of Orientalism since at least Montesquieu would have it. But law was not central to the definition or legitimacy of an Indian king. Instead, *raja-dharma* was the defining feature of a king. And *raja-dharma*, the king's duty, included two important aspects: protection of the realm and endowments (Raheja 1988:514f; Appadurai 1981:71; Gonda 1966:2, 13f; Lingat 1973:211ff). "The peculiar *dharma* of the king is the protection of his subjects", says Robert Lingat (211). "Kings are enjoined," says Raheja (1988:515), "in the textual traditions, to give gifts if they wish to enjoy sovereignty; and to give is seen as an inherent part of the royal code-for-conduct, *raja-dharma*".

The king is not defined *legally* in the *dharma-sastras*. "The *dharma-sastras* take the arrival of the king for granted and do not concern themselves with the manner in which he came to the throne" (Lingat 1973:208). Finally the destiny of the king depends on the way in which he has been able to protect his subjects, not whether he has acted *legally*. If we want to capture the two different political traditions in neat dichotomies the appropriate is not despotism vs democracy, but *amorphous codes vs sharply defined codes*. We should not have a cruel despot in mind, but rather a benevolent patriarch; a head of a family who takes care of his dependents unhindered by any specified rules. When the medieval European theory emphasized legality, classical law in India emphasized authority (ibid:258). Around 1140 the Bolognese monk Gratian was one of the very first to argue that "princes are bound by and shall live according to their law" (Berman 1983:145). "Whatever the king does is justified: such is the rule", says Narada, the author of one of the classical *dharma-sastras* (quoted in Lingat 1973:214f).

But the Indian king is bound by the *results* of his rule. He is *raja* "because he pleases his subjects" (ibid:215). "A king without protecting power are but a wooden elephant", says

²My understanding of pre-colonial India has benefitted a great deal from many discussions with Pamela Price, Oslo University.

³Much like they had done in Germanic Europe before 1000; cf Chapter 1 and Chaney 1970.

⁴One may hypothesize that this difference with Ancient Europe and India had to do with the fact that Christianity originally was an alien, non-European, non-Roman, non-elitist religion.

Mahabahrata (quoted in Gonda 1966:3). A king who cannot protect his subjects and add to the prosperity of his people is a contradiction in terms.

Somewhat anachronistically I think it would be fair, and illuminating, to say that according to the classical doctrines, the restriction on the European prince was *rule-of-law* and the restriction on the Indian prince was *efficiency*. In A.M. Hocart's terms, where Europe emphasized law India emphasized life and material prosperity.⁵ An interesting parallel between the *raja-dharma* to give and the similar basis for legitimate kingship in western Europe before the 'Papal revolution' is provided by a recent archeological finding from the oldest town in Sweden, Sigtuna. On a piece of rib from the twelfth century, the following is written in runic characters: "The King is liberal with food, he is the richest, he is generous" (Tesch 1992:19).⁶ "The king builds his power on generosity", Sten Tesch comments (*ibid*).

⁵Interestingly, Otto von Friesen (1932) argues that kingship in Scandinavia had sacral origins. He traces the Scandinavian word 'konung' (king) and argues that it originally meant 'the husband of the fertility goddess' (ought to be a boon for feminists!). The family of the Norwegian king Harald Hårfagre tried "with zeal" to trace his descent from the old Uppsala-kings (!). "Intet kunde för folket i gemen vara angelägnare än att stå under hägnet av en hövding som redan genom sin börd (från gudarna) hade särskilda förutsättningar att av himmelens och jordens äringsmakter utverka människornas, boskapens och grödans trifsels och förökning" (*ibid*:34) ("Nothing could be more precious for people in common to be under a chief that already through his descent (from the gods) had special qualifications to cater to the comfort and propagation of men and cattle").

⁶I wish to thank Dr Karl-Göran Algotsson for this reference.

Chapter 3: Power Struggles in the Early Modern Period: England, Sweden, South India Compared

The purpose of the following two chapters is to demonstrate during two periods the difference in mode of power struggles between our cases that was suggested in the Introduction, *viz.* that constitutional and legal arguments figured prominently in Sweden and England whereas they were conspicuous by their absence in south India. In this chapter the early modern period will be analysed, or more precisely in the European cases, the seventeenth century. Ideally, we would follow contentions over power from the eleventh century to the present day in the three countries as closely as present research allows but, needless to say, that is beyond my capacity. Rather than doing this in a superficial way for the whole era I have chosen to concentrate on two periods, the early modern period and the nineteenth century. To give a more accurate and detailed idea of how power was pursued in the three cases, a more thorough study will also be done of one particular struggle in each of the three countries; the Forced Loan in England 1626-28, the Form of Government in Sweden in 1634, and xx in Vijaynagar. The reasons for choosing the seventeenth century, or in the case of the Indian kingdom of Vijaynagar a longer period, are three. First, I want to study a period when, in Indian political history, the European powers had not started their penetration and domination. Second, this is, in the European case, an important period in the process of state formation (Tilly 1975). It is also, thirdly, a period which is thoroughly studied in English and Swedish history.

It is important to keep in mind what I do not intend to show. The aim is not to show the existence of constitutional government or rule of law in England and Sweden at this time; clearly it would be easy to find violations of the rule of law, especially in the state's dealings with lower social strata. Neither is my aim to explain political development and events in Sweden and England during the 17th century with the importance of constitutional conflict. This should be stressed against the background of the intense historiographical battles over, precisely, that issue. My burden of proof in this chapter is lighter. What will be shown is that medieval ideas of rule-of-law mattered and played a significant role in political struggles in Western Europe¹ during the century. To repeat, my claim is not that West European politics was clearly constitutional in the early modern period, but that constitutional arguments were used and mobilized for political, and sometimes very selfish, purposes. But in this process constitutional ideas gradually carried more and more political weight. If you could find a viable legal or constitutional argument in your favour, you were more likely to mobilize a coalition and disarm your enemy and win the political struggle. And in the next "round" of struggle precisely these arguments could be turned against yourself. The institutional end result -- a state largely bound by legal restrictions -- was the unintended outcome of this process.

Power in seventeenth century England

The seventeenth century is a much studied and discussed period in west European history, and for good reasons. This is the age of the Thirty Years War, the 'military revolution', intensified state-building and absolutism, tug-of-war between monarchs and parliaments, and the rise of European

¹Albeit my case studies will be limited to England and Sweden, I believe the relevant geographical or political unit when studying the development of the 'universalistic state' is Western Europe. I will attempt to "cover" the discrepancy between my two countries and the rest of Western Europe by referring to other literature. For the importance of constitutionalism in early modern Brandenburg-Prussia, France, Poland, and the Dutch Republic, see Downing 1992.

powers in other regions of the world. It is also a time of intense contentions over power, in England leading up to the revolutions in 1641 and 1688. Moreover, the eventful era has invited numerous scholarly disputes. "Historians of the seventeenth century are not famous for their concordance", says Kevin Sharpe (1978:1) wryly.

The conflict in early Stuart England leading up to the Civil War² 1642-46, has ever since that day been explained within competing frameworks (Pocock 1980). The constitutional explanation sees the war arising out of a controversy over the King's exercise of his authority. For the 'Whig' historians, who were especially dominating in the nineteenth century:

the Civil War was a constitutional and political struggle between authoritarian, arbitrary monarchy and the rule of law, the property rights and liberties (or even 'liberty' in some modern sense) of individuals. An 'opposition' based particularly in the House of Commons stood for laws and liberties, and also for a staunch English Protestantism against the superstitious, unpatriotic, near popish religious tendencies espoused by Charles I. (Cust & Hughes 1989:2)

James Harrington, in 1656, had suggested another interpretation. The power of the King had rested on feudal tenures, and as these had decayed the *ancien regime* was impossible. This, in our eyes, conspicuously modern social change explanation, attracted several brilliant English historians in the mid-twentieth century. R.H. Tawney in his famous article "The Rise of the Gentry" (1941) argued that the landowning gentry together with the urban merchants had become a class "that grasped at increased political power and the conduct of government in ways better suited to their interests" (Pocock 1980:8). Christopher Hill and Lawrence Stone are other historians who basically share a 'social change' explanation of the Revolution. This framework, including its marxist varieties, has been under formidable attack in the last two decades. One of the leading 'revisionist' historians is Conrad Russell and his explanation, like Clarendon's in 1702, is that the war was caused by accidents and human error. The war arose out of a "state of chronic misunderstanding, terror and distrust" (quoted in Cust & Hughes 1989:3). Other prominent 'revisionists' are John Morrill, Mark Kishlansky and Kevin Sharpe. The revisionists emphasize that a number of factors together with mismanagement provoked the war: friction between the centre and the locality, religious conflicts including the rise of Arminianism under Charles and Archbishop Laud and bureaucratic and financial weaknesses of the Crown.

An arbitrary monarch vs. a constitutional opposition in the House of Commons, an aristocracy in crisis in alliance with the king vs. a rising gentry in alliance with merchants which underlying cause was a changing social and economic structure, or the result of "England's administrative inability to fight a war" (Russell 1979:64). What I intend to establish below is that, despite other strong disagreements, none of these interpretations deny the role played by common law and the Ancient constitution in the conflict leading up to the civil war in 1642. For the nineteenth century historians like S. R. Gardiner, G. M. Trevelyan or M this is the heart of the matter. To historians emphasizing social change, the law was mainly a "slogan" and "a bulwark of property" (Stone 1972:137) used against the King. To Russell (1990:142), "(b)oth sides in 1642 wanted to appropriate the Petition of Rights to their cause, but it seems", he goes on to say, "that neither side had a better claim to do so than the other".

J. H. Hexter, if not a 'whig' historian, explains early Stuart history largely in terms of struggles over rights and liberties. "Interpretations of the Revolution that disregard or minimize the political are in trouble", Hexter (1978:12) says in a characteristically polemical style.

²Whether it was a civil war or a revolution is a debated issue; since this has little relevance to my question, I will not probe this issue. I will use the two terms interchangeably, referring to the armed fights 1642-46.

Why has the matter of liberty and rule of law on one hand and lawless rule and despotism or tyranny on the other slipped out of focus in the cleverest writing of the past fifty years about the causes of the English Revolution? Briefly, it slipped out of focus some time before the First World War when advanced historians as well as other advanced people assumed that all political traits of a society such as liberty and law merely reflected its socioeconomic substructure; therefore to find the "real causes" of any large upheaval in a society one must first look at the socioeconomic substructure. In the English-speaking world such people were so habituated to the rule of law that they had ceased to set a value on it (Hexter 1978:48).

Brian Downing makes a similar argument about the importance of the constitutional issues *per se*: the sanctity of the Common Law and the sovereign's subordination to it were such that the mightiest Tudor or Stuart could not attempt to place himself or herself above it without suffering consequences ranging from a vociferous Parliament to a march to the scaffold (Downing 1992:158).³

Hexter points out (quoting Stone!) that Charles II was executed charged with high treason for violation of "the fundamental constitutions of this Kingdom" (Hexter 1978:13). The revisionists⁴ fail to take note of "a few gross facts" leading up to the civil war. First, that it was precipitated by a clash between a hereditary monarch and a representative body. In the *Form of Apology and Satisfaction*, prepared in the House of Commons for presentation to James I in 1604,⁵ the House claimed for itself certain rights as one of England's three-part corporate legislative body. "Our privileges and liberties are our right and due inheritance no less than our very lands and goods" the *Apology* asserts (quoted in *ibid*:35). The King had been misinformed, that House said, that "we held not our privileges of right, but of grace only, received every Parliament by way of donative [i.e. gift] on petition and so limitid" (quoted in *ibid*). The *Apology* goes on to say, "The prerogatives of princes may easily and daily do grow; the privileges of the subject are for the most part at an everlasting stand. They may by good providence and care be preserved, but being once lost are not recovered but with much disquiet" (quoted in *ibid*:37).

Several other examples of debates in the Commons over liberty of the subject, their privilege of free speech, and lawful right to property are quoted by Hexter. The king did not take these claims lightly. In 1621 James I asserted that "he could not permit 'the style' of the Commons in calling their privileges an 'ancient and undoubted right and inheritance' but wished, rather, that they had said their 'privileges were derived from the the grace and permission of our ancestors and us ... rather a toleration than an inheritance'" (quoted in Hexter 1978:42). The members in the House of Commons did not tolerate this and again in the Great Protestation of 1621 asserted that it had its privileges by law and not by the grace of the king. And Hexter sees a continuity: "Again the royal prerogative had clashed with what the House of Commons conceived to be the liberties of the subjecty" (*ibid*). "(O)ur privileges are part of our being and substance", said Phelips, one of the leading members of parliament (quoted in *ibid*:43).

In June 1628 the Parliament formulated the Petition of Rights, seen by many historians as "the first of those great constitutional documents since Magna Carta" (Holdsworth 1938:118) safeguarding the liberties and the law. The most important background to the Petition, in Hexter's view, was the king's demand of the English freemen to pay a levy to which they had given no prior

³See also Sayer's (1992) argument about the unintended long-term consequences of Common Law, and its consequences for the rise of capitalism in England.

⁴Hexter specifically discusses Conrad Russell, Paul Christianson, Mark Kishlansky and Farnell.

⁵G. R. Elton has questioned if the *Apology* reflects the views of the House since it was never formally presented by the House to the king. Hexter (1978:32) argues that there are other "quite intelligible" reasons for this, and that the House later showed that "it meant exactly what was said in the *Apology* of 1604".

consent in Parliament; the Forced Loan, a matter to which we will return in a moment. Parliamentary leaders in the opposition were Sir Robert Phelips and Sir Edward Coke, the latter according to William Holdsworth the most important person in England's legal history (ibid:113). "By 1628, not fools and fanatics but every Englishman who was not sleepwalking or an interested party associated the king and extended prerogative with lawless rule, Parliament and its privileges with the rule of law" (Hexter 1978:46). To Hexter there is no conflict between appearance and the actual subject-matter of the controversy leading up to the civil war, it obviously was over liberty and the rule of law. Trying to explain the English Revolution without realizing this truth, is like being "in a dark house at midnight looking for a black cat that is not there" (ibid:47). And what is more, he sees the Petition of Right rooted in a view of politics going back to the Middle Ages.⁶

According to Hexter, then, it is clear that the representatives of English freemen in the House of commons saw the *law* as central in their argumentation with the Stuart kings. The House also saw itself as a sovereign court; it had certain autonomy vis-a-vis the king. In Hexter's view, then, the two factors posited in the Introduction existed in Stuart England. This is also the judgement of Theodore Rabb and Derek Hirst. The revisionists provide an important corrective to Gardiner's and Notestein's simplifications but they indulge in overkill, according to Rabb. He doubts that any scholar fits Conrad Russell's description of a pre-revolutionary English politics as "a deliberate opposition with constitutional aims", "with long term constitutional objectives about the power of parliament" (quoted in Rabb 1981:65). H. G. Koenigsberger, who in a way had provided the starting-shot (Koenigsberger 1975) to revisionism, noted that the struggle between monarchs and parliaments was "a fundamental aspect of European political and intellectual life in the seventeenth century" (quoted in Rabb 1981:66). And the debaters in various diets "did have a solid and pragmatic idea of what good government was", Rabb (ibid) says. The disputes in England were uniquely prominent examples of this confrontation. Allies could shift, intellectual consistency may have varied, economic issues were certainly involved; yes, but the parliamentary dissent "rested on a coherent view of traditional liberties, restraints, and the importance of law and consent" Rabb (ibid:69) emphasizes.

Anticipating the discussion in Chapter six, Rabb points out that the effects of war were central to European, and English, politics. Warfare, because it crucially involved the two aspects of early modern government -- administration and finances -- exaggerated more general problems. England's wars in the 1620s,

gave an added dimension to the formulation, in the Commons, of assessments of the nation's best interests that differed sharply from the judgements by which royal policy was determined (Rabb 1981:69).

The wars caused severe financial and administrative stress on the English government, but the political expression the response from the parliamentary opposition took was *structured* by ideas about rights, privileges, and rule of law. That these conceptions had medieval origins was often acknowledged, sometimes bombastically, by contemporary actors: "We are the last monarchy in Christendom that yet retain our ancient rights and liberties", exclaimed the parliamentary leader Sir Robert Phelips (quoted in Zaller 1980:212). The comparison with India will show that this complex of ideas, consciously used to defend interests represented in the House of Commons, was a *necessary* factor in the ensuing state formation. Medieval ideas were there; they were used; they had repercussions.

Summing up, Rabb argues that 1604 marked a rift in political developments, but religion, expenses of war, and the mistakes of Buckingham and Charles I exacerbated the conflict in the 1620s. Answering to revisionists' claims that the men opposing the king were mainly motivated by

⁶Medieval origins of Coke's ideas are also stressed by Holdsworth (1938:112f) and Maitland, quoted in ibid.

factional ambitions of their superiors among the peers and within court as well as the needs of local politics, Rabb retorts: "They may have been wrong or right, petty or high-minded, but their ideas were their own, parliament was their forum, and they did not rely on the initiatives of others to make their case" (Rabb 1981:78). The issues and the mistrust created heightened in the early 1640s and erupted in the civil war.

This is also the position of Derek Hirst. "Long-running disagreements about the nature of the constitution did play a significant part in ... the origins of the civil war" (Hirst 1981:81). In 1606 the Lord Chancellor, in response to Edward Coke, had argued that "Before Magna Carta was, the prerogative was; for Magna Carta is but a declaration of or manifestation thereof". Similarly, four years later, the earl of Huntingdon said "The King will not acknowledge his prerogative to be inferior to law" (quoted in *ibid*:87, 88). Also the diary of the Commons' proceedings show the alertness of some members to the theoretical issues, and how they could sway opinion in the House, Hirst contends. The Petition of Right was printed and disseminated. Charles I attempted to manipulate the printed copy which suggests, "that Charles, unlike the revisionists, thought that important issues of principle were at stake" (*ibid*:93). Hirst's argument is not that constitutionalist issues were the stuff of politics, but that political issues like Ship Money, customs, and arrests of leading members of the House were fitted into a constitutionalist framework.

Let me now turn to some historians who are likely to put the hypothesis about the importance of a constitutionalist argumentation in early Stuart England to a harder test. Christopher Hill's explanation of the Revolution is, like Harrington's, the breakdown of the old society. Neither the wishes of the bourgeoisie, nor the leaders of the Long Parliament, but a considerable development of capitalism caused the war.

(B) By 1640 the social forces let loose by or accompanying the rise of capitalism, especially in agriculture, could no longer be contained within the old political framework except by means of a violent repression of which Charles's government proved incapable (Hill 1980:112)

Capitalist development and population growth caused 'the crisis of the seventeenth century' all over western Europe, but the political outcomes differed. In Spain, France and elsewhere the absolutist monarchies survived, but in England the result was a revolution since the king lacked two crucial resources: a standing army and an his own administration. The consequence of the revolution was to further facilitate development of capitalism. Hill stresses several changes which in the vocabulary of this book are synonymous with a higher degree of rule enforcement. "After 1640 arbitrary government interference with due legal process was made impossible; and due legal process meant the law as developed by Sir Edward Coke" (*ibid*:118). Landowners were set free to trade in land, and thus long-term capital investment in agriculture was facilitated. From this "every other difference in English society stemmed" Hill quotes H. J. Perkin saying (*ibid*:116). But this formulation, we may note, take a high degree of rule enforcement for granted; the buying, selling and mortgaging of land is assumed to take place without much collusion going on. The understanding is that the state administration and the courts act like a 'third party enforcer'. My argument is not that Hill is unaware of this, but that he takes this political and legal trait too much for granted. To be sure, in disclaiming an imputation of a conscious bourgeois will in explaining the revolution, Hill emphasizes collusion between merchants and the 'particularistic state' during the reign of Charles I. "Businessmen naturally always want the greatest possible profits; such profits were best obtained in Charles I's England by establishing close links with the government in return for monopoly privileges" (*ibid*:128). This symbiosis worked to the advantage of both parties, as Ashton has described, until the crash in 1640. This is a paradigmatic example of the logic of collective action, already described by Marx but in other words. The general and long-term interest of the English merchants was a 'universalistic state', but their individual and short-term interest was a monopoly (for themselves). How was this prisoners' dilemma overcome? All too often, I believe,

this problem is neglected in economic history. If it is not neglected it is often explained functionally -- "capitalism needed legal reform" -- or subsumed under a blanket explanation of 'development'. But by now we have an ample theoretical literature on the logic of collective action and a considerable literature and journalistic descriptions of the 'particularistic state' to make us marvel over this development in western Europe. Why did it ever come about? The explanation argued here, to repeat, is that the heritage of ideas and political practices from Magna Carta on was a necessary factor. Hill touches on this explanation when he writes:

To recognize (the English gentry's) dependence on capitalist relations of production is not to deny the specific way in which it adapted the institutions of the old society, from parliament and common law downward, to its own needs (Hill 1980:130).

My argument is that this adaption of "the institutions of the old society" was crucial. Both the king and the Commons wanted "the traditional constitution work" says Hill (1981:109). The gentry was in possession of an important resource: they constituted the state, in a manner of speaking. It was the landowning gentry, the local elite, who in the absence of an administration directly employed by the king upheld order as Justices of Peace and collected taxes. Moreover, it was often the same gentry who in Parliament argued passionately against Ship Money and forced loans. The king of France had his own bureaucracy to collect taxes, the English king had not. This gave a leverage to the opposition in the Commons which it was not late to use.

The gentry suspected Charles I of intending to replace them as J.P.s with clergy, according to Russell. In this context Hill sees the opposition to Arminianism and Archbishop Laud. Laud attempted to reverse the rise of local oligarchies by using the church instead of the gentry, and the gentry feared absolute monarchy which asserted itself elsewhere in Europe. And absolutism "was precisely what the Petition of Right was intended to avert -- arbitrary taxation enforced by arbitrary imprisonment and by a mercenary army out of control of the natural rulers", says Hill (1981:123). (Below the text is of a much more preliminary character)

Lawrence Stone sees four elements of prime importance in explaining the English Revolution. The failure of the English Crown to acquire two key instruments of power -- a standing army and a paid, reliable local bureaucracy -- puritanism, the rise of the gentry, the decline of the aristocracy and the concomitant social unrest, together with a growing crisis in confidence in the integrity and moral worth of the holders of high administrative office explain the conflict (Stone 1972:58-117).

In the Long Parliament in 1640 king Charles found himself isolated against a temporary coalition of enemies: gentry, nobles, lawyers and ministers. Inspired by jingoistic nationalism, local particularism, religious and moral Puritanism and constitutional legalism the opposition arrived at Westminster full of talk of a Reformed Church, a Godly Commonwealth, Magna Charta, the Ancient Constitution, and the Country. But these were slogans rather than a concrete programme, and it would be foolish to suggest that the opposition in 1640 had much more in mind than a desire to preserve and increase the political influence of Parliament, to establish the supremacy of the common law as a bulwark of property, to rid the church of the popish innovations introduced by Laud, to put domestic and foreign policy on a forthrightly Protestant track, and to reduce the political influence of bishops. (ibid:137)

The quote from Stone makes two things clear about his view of the Parliamentary opposition to king Charles in 1640. The reasons for joining the opposition differed, but among them we find constitutional grievances. Several actions by the Crown had provoked opposition and accusations of arbitrary rule: taxation, granting of industrial and commercial monopolies, arrest without trial, the Forced Loan in 1626-7, the Ship Money in the 1630s (ibid:123, 136f; North & Weingast 1989). Despite the restoration in 1688 there "survived ideas about ... limitations on the power of the central executive to interfere with personal liberty of the propertied classes ... ideas (that) reappear in the writings of John Locke" (Stone 1972:147).

Revisionism: Rabb 1981:59 i punkter; Russel's expl. i ibid:75f

Derek Hirst's (1981:78) description is that they "deny the existence of conflict over issues of principle, rather than personality and policy". Russell's *deus ex machina* explaining the disputes is, instead, war (ibid:83).

The Forced Loan 1626-28: A Power Struggle in England

This analysis of local politics is intended to show that constitutional ideas and conceptions about rights were not only the world of the Parliament in London, but also had an influence in the counties and among fairly ordinary social strata. My choice of the Forced Loan is guided partly by the fact that it played an important role in Early Stuart politics, and partly by the fact that we have an excellent study of it in Richard Cust's book *The Forced Loan and English Politics 1626-1628*. But several references in the literature indicate that the legalistic argumentation among (fairly) ordinary⁷ Englishmen is not a unique phenomenon. A. Hassell Smith and M. E. James have recorded legalist debates in localities in north England in the sixteenth century (quoted in Hirst 1981:84f).

cf Hexter 1978:13

Lest the reader think I have chosen a remarkable century in English history, singular in its legalistic preoccupations, let me quote David Lieberman, professor of law at University of California, Berkeley:

The eighteenth century, according to its current historians, was England's century of law. As E. P. Thompson has put it, "'The Law' (was) elevated during this century to a role more prominent than at any other period" of English history. The culture of law, it is increasingly observed, extended throughout the social fabric, conditioning popular protest as much as formal public debate (Lieberman 1989:1)

Power in seventeenth century Sweden

In 1845 Anders Fryxell published the polemical pamphlet "Om aristokratfördömandet i svenska historien" ("On Anti-Aristocratic Prejudice in Swedish History"). In it he strongly argues against the view of the historian Erik Gustaf Geijer that "Sweden's history is the history of her kings". Geijer's view -- "prejudice" according to Carl Arvid Hessler (1943:265) -- was that king and commoners had throughout Swedish history formed a strong bond against the egoistic separatism of the aristocracy. Fryxell, on the other hand, saw the aristocracy as the strongest defender of rule-of-law and constitutionalism against a king tending towards despotism. This debate raged in Swedish historiography until the late 1950s (Sjödell 1965). Fredrik Lagerroth's dissertation in 1915, arguing along similar lines as Fryxell, strongly influenced later conceptions.⁸ Today, in the words of Michael Roberts,

⁷Of course, we should not make any pretensions that the attitudes of the poorest, and especially the illiterate, were well recorded.

⁸"When the aristocracy had given up its last position in Swedish politics, the anti-aristocratic tendency in historiography also gradually disappeared" Hessler (1943:266) writes in an interesting sociological interpretation.

There is no denying that for some four hundred years much of the inner tension of Swedish history is provided by the clash of crown and nobility; that the nobility did aspire to set bounds on the power of the monarchy, by devices which make it plausible to think of them as the proponents of something which may be very loosely termed a constitutional programme (Roberts 1967:15).

The fundamental document in Swedish constitutional history is Magnus Eriksson's Land Law from (about) 1350. The Land Law laid it down that the monarchy was to be elective; in a coronation oath the monarch had to promise that no subject should suffer loss of life, liberty or property save by due process of law and that no new law should be made without the consent of the commonality (ibid). Already in the Land Law a council of the realm (*riksråd*) is defined; but it is not the king's council, its responsibility is to the community of the realm. And this fact is at the heart of the tradition of 'council-constitutionalism' (*rådskonstitutionalism*) in Swedish history. The recess of Kalmar in 1483 was "the most extreme statement of council-constitutionalism ever to be formulated" (ibid:17). The rule of Gustav Vasa and his sons in the sixteenth century seemed to mark the end of aristocratic constitutionalism. (But even Gustav Vasa thought it politically expedient to seek legal sanction, not in the council but in the *Riksdag*).

Aristocratic constitutionalism was reinvigorated in the late sixteenth century by Erik Sparre and Hogenskild Bielke in a programme that was to herald the administrative reforms of 1634.⁹ Their programme was a plea for modern administration:

Sparre wanted an administration which should be properly articulated, specialized, regularly paid, and above all national, as opposed to the domestic, cameral, *ad hoc* methods which had been good enough for the first Vasas (ibid:21).

The implementation of the Form of Government of 1634 meant a concentration of power in the hands of the council aristocracy, *nota bene* in the hands of Axel Oxenstierna and his family. At no time during the regency (1632-44) were there less than three members, out of five, of the Oxenstierna family in the council; towards the end of it there were four. "Axel Oxenstierna's policy is clear and consequent. His goal is power. The Form of Government is the means. It is out of the question to see the policy only as an expression of the aims of the council aristocracy", writes Sven A. Nilsson (1937:37, my transl.).

Power was advanced with constitutional and legal means and claims. The same point is made by Göran Rystad (1963:164) in reference to council aristocratic demands for greater influence on appointment of officials; a legal argument was sought.

If we very briefly turn to contemporary, seventeenth century, politics in south India the contrast is marked (Subrahmanyam & Shulman 1990; Subrahmanyam 1990b). Constitutional and legal arguments as means in power struggles are conspicuous by their absence. Access to the state was necessary for Persian and other traders and shipowners along the Coromandel coast (ibid), but left without such access, or patronage, they did not have the resource utilized by their colleagues in England: a tradition of rule-of-law. Instead of using constitutional arguments, political contenders in fights for political supremacy, according to Sanjay Subrahmanyam and David Shulman (1990), sought legitimacy through participation in court politics, marriage alliances and endowments to Brahmins. None of the methods unheard of in Western Europe (except for the fact that endowments to Churches and monasteries were more likely than to Brahmins). But the point is that the legal argument is lacking.

Summary

⁹See Strömberg-Back 1963 for a discussion of their programme and their constitutional ideas.

Historians of ideas have long warned us of the ill-advisedness of assuming that ideology played a merely functional role, that actors manipulated beliefs in order to legitimate their practical needs of the moment. This is not to say, conversely, that ideology had a life of its own, but it is to caution against any relegation of belief to the status of mere servant of interest. (Hirst 1981:85)

Good ref. to Skinner there!

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