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Presentation

1 What does the study of judicial cases and legal documents contribute to the understanding of society? How do courts shape social, economic, religious, or political issues? Throughout the world there is a widespread feeling that the role of courts of law is growing at the expense of other institutions; and that judicial processes are increasingly adjudicating and managing all aspects of human life, from global issues to intimate relationships—which a now abundant literature calls a process of "judicialization."[1] If developments in the legal sphere are generally linked to the rise of the modern state and capitalism (Comaroff and Comaroff 2006a), the more recent spate of "judicialization" has received marked impetus, which Comaroff and Comaroff (2000) attribute to globalization and to neoliberal ideology:

> The latter, because of its contractarian conception of human relations, property relations, and exchange relations, its commodification of almost everything, and its celebration of deregulated private exchange, all of which are heavily invested in a culture of legality. The former, because of the way in which it demands new institutional modes of regulation and arbitration to deal with new forms of property, practice, and possession (Comaroff and Comaroff 2000:329).[2]

The effects of this process have been diversely evaluated. The increasing role played by the courts and the growing and diffuse culture of legality have been held responsible for the tentative hegemony of political and social elites, but also for its contestation (Lazarus-Black and Hirsch 2010). The development of this legalistic logic has major implications in the way society is thought to be legitimately constituted, i.e. as a collection of individuals with equal rights rather than as a structured community. As a consequence, the social fabric itself is thoroughly reworked: "the language of the law … individuates the citizen and, by making cultural identity a private asset rather than a collective claim, transmutes difference into likeness" (Comaroff and Comaroff 2000:329–30). As the same authors point out,

> with the growing heterodoxy of the twenty-first-century polity, legal instruments appear to offer a ready means of commensuration … a repertoire of more or less standardized terms and practices that permit the negotiation of values, beliefs, ideals, and interests across otherwise impermeable lines of cleavage. Hence the displacement of so much politics into jurisprudence. Hence the flight into constitutionalism, which, in its postcolonial guise, embraces heterogeneity within the language of universal rights—thus dissolving *groups* of people with distinctive identities into *aggregates* of persons who may enjoy the same entitlements and enact their difference under the sovereignty of a shared Bill of Rights (Comaroff and Comaroff 2006b:32).

In India, the "judicialization" process is rooted in the period of British rule, especially in the religious realm where, in the second half of the nineteenth century, courts of law came to adjudicate conflicts concerning endowments and various temple issues. It has further expanded since Independence, not only in matters of religion where, as Upendra Baxi (2007:49) commented, the Supreme Court has acquired "a 'brooding omnipresence' that extends to ordinary legislation and even to the exercise of executive powers,"[3] but also in other domains as some of the following contributions clearly illustrate (e.g.

Bhuwania, Smadja). This power particularly increased from the 1980s onwards when judges from the Supreme Court, following precedents from the United States, developed a specific procedure that considerably broadened judicial initiatives and possibilities of intervention, and deeply impacted Indian society: the Public Interest Litigation (PIL).

2 The PIL's aim was to enable ordinary people in India, even the poorest citizens, to have easier access to justice as part of a democratization of the judicial process, and to counterweigh perceived maladministration (Sathe 2002; Sen 2012, 2015). However, the discourse on PILs and the practice of using them have evolved since then. While the PIL facilitated the procedure for filing a complaint made in the interest of the "public," it also provided the courts with a liberty that led them to assert their jurisdiction over other branches of government and the administration. Deva (2011:61–64) distinguishes three phases. In the 1980s, special attention was indeed given "to the rights of disadvantaged segments of society." The 1990s saw an increase in the role played by institutionalized actors, such as NGOs, so that the breadth of issues addressed "expanded tremendously—from the protection of the environment to corruption-free administration, right to education, sexual harassment at the workplace, relocation of industries, the rule of law, good governance and the general accountability of the government." The third and current phase "is a phase in which anyone can file a PIL case for almost anything." However, Deva argues, the support given to the government's policy of liberalization now differs from the "sympathetic response the rights and interests of impoverished and vulnerable sections of society ... received during the first phase." What is also worrying—and this has been regularly pointed out—is that through PILs, "the higher judiciary in India has not only legislated but also acted as an executive branch by monitoring the implementation of guidelines or recommendations issued by them. They have done so while adjudicating disputes, thus combining legislative, executive and judicial powers" (Deva 2011:65; see also Cassels 1989; Bhuwania and Smadja, in this issue, provide two examples). As a result, whether through the special PIL procedure or through the older standard Writ Petition, the Indian legal system has proved to be one of the most powerful instruments of governance in the country. As such, it certainly deserves close scrutiny by social scientists.

3 The following essays consider law as a social institution fully embedded in social life, contrary to the common perception that it is a separate domain, perhaps because of the discourse on the autonomy and technicality of the law. Indeed, as Conley and O'Barr remark, "when a dispute enters the legal system and becomes a 'case,' its expression is transformed. ... The lawyers reformulate the accounts selected to conform to the requirements of legal categories" (Conley and O'Barr 1990:168).[4] Besides, as Veena Das, writing about the victims of the Bhopal disaster, aptly pointed out, "in the judicial discourse ... every reference to victims and their suffering only served to reify 'suffering' while dissolving the real victims in order that they could be reconstituted into nothing more than verbal objects" (Das 1995:134). The transformation of events and persons into verbal objects, and the application of general, "rational" reasoning to legal categories correspond to a "universalizing attitude" of the language of the law (Bourdieu 1987) which has often been emphasized. Court cases do indeed combine this social construction of law as an abstract set of rules with the specific interests and motivations of the people involved (litigants as well as legal professionals), touching on a wide array of domains—from social and family relationships to issues such as criminality, environmental protection, natural resource management, religious practices, or human rights.

4 Indeed, while functioning as a "semi-autonomous social field" (Moore 1973), law does not lie outside society. Thus, since the 1950s, anthropologists have emphasized law as a process that cannot be isolated. Distinguishing a legal domain from a political one, for instance, seems highly problematic, as Comaroff and Roberts have previously suggested: for them, "legal" or "political" modes of dispute resolution do not merely coexist, they represent poles in a single continuum which are "*systematically* related" and are "transformations of a single logic" (Comaroff and Roberts 1981:244; see also Kirsch and Turner 2009 on law and religion). From a slightly different perspective, while writing about culture, Rosen (2006:xii) underlined the fact that "law is so deeply embedded in the particularities of each culture that carving it out as a separate domain and only later making note of its cultural connections distorts the nature of both law and culture."[5] This is not to say that legal professionals do not make efforts to construct the law as independent from culture: in India, for instance, cultural attitudes are seldom invoked as arguments by the parties during trials. However, this contrasts with the actual proliferation of cultural explanations for the same cases, expressed by the same protagonists, once outside the court.[6]

5 The possibilities that such an entanglement offers for the understanding of society and culture are not lost on social scientists, and historians in particular. Besides studies on the history of law, or quantitative approaches to crime and violence, historical research has long used judicial archives to access the "cultural grammar" of a society at a given time (Cerutti 2003:13). Following on from the work of C. Ginzburg on witchcraft trials, the school of "microhistory" in particular has regularly drawn on various legal documents to catch a glimpse of commonplace events, relationships and discourses which, being ordinary, are not mentioned in other sources. Such writings should be handled with caution as they usually reflect partisan views or self-interested tactics, and are framed by the constraints of the legal context. Nevertheless, they constitute one of the few ways by which many people living in societies of the past make themselves heard in present times (Farge 2009). Whatever the truthfulness of statements that are given to the police or in court, people refer to their environment, their social relationships, their material existence, their work, or their beliefs (Garnot 2006:10).[7] Court archives also make explicit the values and views of judges on society, which have been particularly valuable in scholarship on colonial rule: "[The colonial] legal discourse must be located in relation to both the more general discursive features of colonial discourse, and a cultural politics in which notions of adulthood, childhood, wifehood, masculinity, femininity, sexuality and effeminacy were of critical importance." (Lal 1999:165). As Freitag (1991:227) pointed out "Criminal law may be among the most revealing aspects of a social order."[8]

6 By comparison with historians, social anthropologists interested in normative systems in post-colonial societies have tended to show little if no interest in state courts and have, instead, focused on local "traditional" institutions of judgment or decision-making. According to Nader (2002:113) this might be because "anthropologists consistently underestimated (and still do) the role of legal ideologies in the construction or deconstruction of culture writ large." It might also be due to a widespread idea that, in the case of post-colonial societies, courts of law are of foreign origin, imposed by and inherited from colonial institutions; they are said to tell us nothing about the "indigenous" cultures with which the work of anthropologists has long been associated. This has been the opinion of many scholars who have written about India: "In attempting to introduce British procedural law into Indian courts the British confronted the Indians

with a situation in which there was a direct clash of the values of the two societies; and the Indians in response thought only of manipulating the new situation and did not use the courts to settle disputes but only to further them" (Cohn 1987:569). The "alien" character of modern law in India is also regularly denounced by critics of secularism. However, the boundaries between the "two societies" mentioned by Cohn, or between "modern law" and "traditional local culture" seem much more blurred than first assumed. As Das underlined,

> the experience of tradition in Indian society, as in most similar societies, is that it has a double entrenchment—one in institutions that may be considered traditional (such as caste or religion), and a second in institutions that may be considered modern (such as the bureaucracy and the law). An untainted traditional telos is as unavailable in contemporary Indian society as a modern institution, such as a law court, which has not been coloured by its location. ... This double articulation is the most important feature of both tradition and modernity in contemporary India (Das 1995:53).[9]

Similarly, when writing about the assumptions of discrepancy between modern law in India and religious conceptions, Fuller (1988:248) stressed "the continuities and ultimately indigenous character of the law of religion in modern India." And as Anderson (1990:172) remarked, "the distinction between 'indigenous' and 'alien' presupposes a sociocultural uniformity on either side of the dichotomy which probably does not exist. There are also good reasons to suspect that a kind of dissonance between state and community forms of authority ... amounts as much to a matter of political structure as one of cultural hiatus." Indeed, instead of sidelining modern law and courts as peripheral to the understanding of a society, an enormous wealth of research has been opened up by considering, just as Moore does (writing about a case in Tanzania), that

> analytically it would be a profound distortion to see this formally as the clash of two legal systems, state law and local law. It is a single working social system in which the two bodies of rules and institutions are completely intertwined in everyday life. They are both drawn on as resources as local people strategize their way through the maze of local competition and contestation (Moore 2015:173).

The following studies are to be seen in this light and similarly consider law as a sociocultural process—involving the power of the state and resistance to it—that allows for dispute resolution strategies. This perspective entails the possibility of studying how law professionals discuss issues filtered through the lens of the law, how people relate to the courts, or how court rulings actually shape politics as well as individual behavior. The "lens of the law" can thus be addressed according to various understandings, being both a vantage point over society and a filter, a perspective and a process. Before introducing the seven essays that have explored some of the facets of these problematics,[10] a glimpse of other previous studies on law and society in India may be useful. A few general orientations may be simply mentioned.

7 Apart from sociological and anthropological studies of legal professionals or of the court milieu,[11] a large number of studies by jurists and social scientists address questions of society with the eventual objective of reforming the legal system. These socially committed approaches, however, often have more to do with issues of law or of justice than with a reflection on society, as can be seen for instance in the debates on a unified civil code, the reservation policy, gender inequality, human rights, or environmental protection.[12] Yet another line of study concerns the cultural dimension of the law. Following classical works on Hindu law such as those of H. Maine in the nineteenth century or P.V. Kane in the 1950s, this question has been at the core of many recent

studies, some of them following a research agenda shared by scholars working on post-colonial societies and focusing on the interplay of multiple normative orders—in the case of India, how Sanskrit-based Hindu law, or Islamic legal systems, as well as local "customary" laws, constitute a multi-layered system and interact with state law.[13]

8 The importance of this scholarship hardly needs be stressed. However, the following essays are part of a different line of inquiry that has mainly been developed in recent years, and reflects on contemporary society through the use of various legal documents or/and a recourse to ethnography. Initially, such studies mainly focused on the content of judicial decisions and on the possible implications of these decisions from a juridical, or a sociological perspective, or from the point of view of political science. More recently, case studies have given full attention to the complex, long-term judicial story of the lawsuits, inside and outside the courtroom, and on the light they shed on social and political issues. [14] Although, as Nader notes (2002:97), the case method has been criticized in debates on the anthropology of law for being unduly restrictive, it offers the advantage of enabling a fine-grained approach similar to what can be done in other fields (see also Merry 1990, Good 2015). It especially provides a privileged opportunity to address simultaneously a situation—a conflict that brings to the surface relationships that may otherwise be barely apparent to an outsider—and discourses on the given situation. As Merry argues when analyzing cases brought before American lower courts,

> the process of disputing is one of quarrelling over interpretations of social relationships and events. Parties raise competing pictures of the way things are as each strives to establish his or her own portrayal of the situation as authoritative and binding. Third parties also struggle to control the meaning—and hence the consequences—of events through their distinctive forms of authority. Law represents an important set of symbolic meanings for this contest. ... I combine the analysis of microlevel interactions around moments of conflict developing over time—the approach we normally describe as the disputing process—with the analysis of interpretation and contest over the way things are understood, an enterprise which we normally associate with the study of ideology. The focus on dispute processes is attentive to social interactions and to the way the social world is revealed in moments of fight. The focus on ideology foregrounds meaning and the power inherent in establishing systems of meanings (Merry 1990:6–7).

India offers particularly vast, fertile ground for developing this research. First of all, as mentioned earlier, courts have become central to the governance of the country. India is under a Common Law legal system, in which judges have the authority to make decisions that complement the laws adopted by the legislature and the regulations adopted by the executive; in other words, they, too, make the law. What is more, the Constitution of India explicitly imposes a reformist agenda on the courts—which is particularly in evidence concerning Hindu religion, for which article 25 (2) (b) enjoins the State to provide for "social reform and welfare," a perspective that a former Chief Justice of India, N. Bhagwati, justified in terms of the necessity to lift "India out of medievalism, obscurantism, blind superstition and anti-social practices" (Bhagwati 2005:43). Implementing the agenda set out by the Constitution—the longest in the world—the action of the court is pervasive at all levels of society, from broad guidelines on the environment to the intimacy of family relationships (Mody 2008, Baxi 2014). This omnipresence of the state as a consequence of the action of the courts is underlined by Dhavan who, discussing the articulation between "public" and "private" arenas of life in India, and writing more specifically about the promotion by the upper judiciary of "public interest," points out that the latter produces

> highly intrusive agendas into the "private domain," the "personal spaces" of individuals and the day-to-day lives of the people. The discretion of the people to order their own lives grows smaller and smaller because in this new dispensation they are expected to be "fair," "just," and "egalitarian" in every aspect in relation to friends, children, well wishers, detractors, enemies, employers, employees, the work place, home and hearth (Dhavan 2003:163).

There is also the sheer size of the judiciary and the staggering number of cases that are filed in courts. In 2016, the number of lawyers in India was estimated at about 1.5 million, on a par with the USA (Nayar 2016).[15] This quantitative importance testifies to the "success" of the courts in having litigations brought before them. There is, however, a much lower number of sitting judges than would be required (11 or 12 per every million people),[16] entailing an enormous backlog of cases in courts at various levels: in 2009 there were an estimated 52,000 cases pending at the Supreme Court, four million at the various High Courts, and 27 million at district level (NDTV 2009). As a consequence, it can take years for cases to be decided. In 2009, newspapers were already echoing an alarming report issued by the Delhi High Court, stating that at least 629 civil cases and 17 criminal cases had been pending for more than 20 years, as of March 2008. All in all, as the Court's Chief Justice A.P. Shah admitted in the report, "it would take the court approximately 466 years" to clear the pending 2,300 criminal appeal cases alone (Associated Press 2009). If anything, the situation has not improved and, in 2013, the government's estimate rose to 65,000 for cases pending at the Supreme Court and to 4.4 million at High Court level nationwide (Hindustan Times 2013). It might be tempting to attribute the search for an agreement or compromise outside the court to this inordinate length of time before a case is adjudicated. However, the huge number of cases pending may merely accentuate a more general phenomenon that is not specific to India, and the search for an agreement usually results from various causes. Having recourse to state justice may be a move which, from the start, is part of the very strategy of bargaining, involving mediating or arbitrating instances at different levels. As Galanter observes (not specifically about India), "the work of courts is seen not primarily as the resolution of disputes in official settings but as the projection of bargaining and regulatory endowments into a world unevenly occupied by indigenous regulation, a world in which the influences that emanate from courts mingle with those from other sources" (Galanter 1983:123). In the field of anthropological studies on India, Srinivas (1964) has proposed the notion of "bi-legality" that enabled the villagers' strategy to use both "indigenous" and official law according to their needs (see also Cohn 1987). This may be part of a "forum-shopping" attitude (litigants look for the most favorable decision context) or part of an arm-twisting tactic that uses the courts to influence an ongoing bargain where local leaders, police officers, lawyers, as well as journalists and civil society activists may play a role (for instance, see Bordia 2015). As Galanter shows,

> Indeed, in most courts, most moves into the formal adjudicatory mode are for purposes other than securing an adjudicated outcome. The principal determinants of these processes must be sought in the goals, resources, and strategies of the parties (including, for this purpose, the court personnel). The 'law' and the courts, as institutions, are not therefore unimportant, for the parties' strategic options and resources and even goals are to some extent supplied by the law and the institutions that 'apply' it (Galanter 1983:119).

Reaching a settlement outside the court is one of the reasons behind an extremely frequent phenomenon in Indian courts: when prosecution witnesses deny their initial statement to the police and become in the legal jargon "hostile witnesses," often resulting in the acquittal of the accused, even in cases where everybody is aware of his/

her culpability (Berti 2010). The courts are perfectly conscious of this phenomenon, without usually having the possibility of acting upon it; a recent judgment by the Supreme Court summarizes the situation: "Witness turning hostile is a major disturbing factor faced by the criminal courts in India" (*Ramesh and Ors vs State of Haryana* 2016).[17] This is not only due to a possible out-of-court compromise, but may also be the result of threats that witnesses have received. As Krishnan et al. remark in their study of district courts,

> Intimidation is widespread; witnesses are frequently threatened or bribed by defendants, and judges report that some unscrupulous members of the bar perpetuate these practices by taking additional fees to coerce a settlement. Prosecutors—who are often confronted with state witnesses who can turn hostile out of fear of retribution—worried about inadequate security, particularly during criminal trials in the district courts. As part of the intimidation process, associates of criminal defendants often lurk around the courthouses or sit in the gallery during the trial itself. This type of threatening behavior faces little deterrence from court security, and prosecutors' demands for enhanced home security are routinely ignored (Krishnan et al. 2014:175).

And yet, paradoxically (and contrary to the idea that pendency would be the main reason for outside bargaining), despite huge delays, poor facilities, and widespread corruption at the judicial bureaucracy level,[18] courts often represent the main if not the only hope for many people, as the study conducted by Krishnan and his team of researchers shows. One example: even though a Himachali litigant challenging a local company's eviction efforts suffered great hardship at the court level due to the inefficiency of the administrative staff and to a ten-year delay in resolving his case, he nevertheless had no other alternative but to go to court, as neither local officials at the village level nor the police had been willing to hear his complaint (Krishnan et al. 2014:166–67) Litigants are certainly aware of the system's malfunction, but may go to court because no unofficial solution could be reached in the context of local relationships of power. As a matter of fact, socioeconomically disadvantaged claimants usually have limited institutional options for redressing their grievances about basic needs such as water, food, health care, sanitation, education, and safety. While local bodies like *panchayats* are supposed to be easily accessible, the concerns of these disadvantaged groups are actually routinely ignored. Members of the state legislative assemblies and national parliament are also seen as non-responsive, as well as caste-driven and caste-discriminating: "If there are disputes [with the government]," remarked a Himachali litigant, "there is no way to solve them ... [because] they will never get resolved or compromised at the village level. That is why these matters come to the court." (Krishnan et al. 2014:156–57) Indeed, whatever the litigants' reasons or strategies, the Courts' compound in any district headquarters is an area bustling with activity, where lawyers, typists and clients interact among a constant flow of town and village people, testifying to the vital role courts play in society as sites of power that affect every aspect of life therein.

9 *Through the Lens of the Law* offers a collection of essays that pertain to various academic disciplines: anthropology, ethnohistory, history of religion, legal anthropology, legal history, and political science. The first two contributions (Headley, Berti) reflect on how legal documents may shed light on aspects of social life for which there is little detailed information. Zoé Headley's *Adjudicating Social Death. Caste Exclusion, Civil Rights and the Colonial High Courts*, explores the evolving relationship between State law and caste society through the lens of the colonial courts' treatment of caste "excommunication." While the principle of caste autonomy from civil courts in matters of its own regulation

was initially established (including the right for a recognized internal authority to "excommunicate"), issues of caste excommunication nevertheless came before the courts, especially as part of the conflict between reformist and more conservative members of a caste (e.g. over issues of the remarriage of widows). In the early twentieth century, however, thanks to the growing influence of Hindu reformist movements, this autonomy implicitly became limited as judges began to express their doubts regarding the soundness of some of the decisions taken by caste authorities, questioning *de facto* their right to enforce social punishment. The arguments and counterarguments presented on these occasions and found in legal archives document the details of these intra-caste relationships that are otherwise barely known. For her part, Daniela Berti, in her paper *Suicide Notes*, proposes a reflection on a particular kind of document, the so-called "suicide notes" that are attributed to women who may have been subjected to domestic harassment and who meet a violent end (suicide or murder)—notes that may or may not become legal evidence in court if, as is often the case, the in-laws are accused of being responsible for the woman's death. The notes may or may not be genuine—forged by the natal family of the deceased or by the in-laws. Whatever the case, they combine both an appeal to emotions and to widely shared representations of women and marital life in India, and an awareness of the legal consequences of suicide and of writing the note. As a genre of alleged "self-writing"—whether authentic or not—the "suicide note" expresses tensions in the intimate life of a couple and a family, while at the same time aiming to become a public testimony.

10 A second set of papers (Tarabout, Dequen) explores how crucial dimensions of society (here religion or family) are framed by legal debates, blurring all distinctions between the judicial process and politics. In his contribution, *Ruling on Rituals: Courts of Law and Religious Practices in Contemporary Hinduism*, Gilles Tarabout argues that, beyond the judges' personal attitudes, which may vary, court rulings have had a deep and prolonged effect on Hinduism merely because they impose categories of a legal nature on religious practices and representations. While implementing an Indian version of secularism, as framed by the Constitution, judges in fact extensively define and redefine religion in general, and Hinduism in particular, down to the tiniest detail. Jean-Philippe Dequen's paper, *A Journey to the Brink of India's Legal Landscape: Jammu and Kashmir's Relationship with the Indian Union*, offers an illustration of how constitutional frameworks may shape disputes at a micro level—e.g. intra-familial relationships. Analyzing the specific status of Jammu and Kashmir (with its own Constitution) within India, which enables a "dual constitutional order," the author develops two case studies in order to show how people try, or are constrained, to navigate between two constitutional frameworks for every litigation—concerning "permanent residency," for instance, or the articulation of Islamic law with local customs in matters of succession.

11 Three contributions (Smadja, Bhuwania, Tawa Lama-Rewal) conclude the series of essays by focusing on procedures—in or outside the court—that bypass politicians or the administration or try to make them accountable for the management of social or environmental issues, with contrasted effects on democracy. The article by Joëlle Smadja, *Chronicle of Law Implementation in Environmental Conflicts: The Case of Kaziranga National Park in Assam (North-East India)*, underlines the role of the courts in furthering and managing environmental policies through writ petitions and PILs. The analysis of the conflicts generated by successive extensions to Kaziranga National Park (Assam) and its ultimate connection with Project Tiger shows how the court can act above the State and promote a

restrictive vision of ecology contrary to certain provisions of the Forest Rights Act (2006). In doing so, it responds positively to legal actions initiated by petitioners who have a clear political agenda and for whom evicting so-called "encroachers" (some of whom have, in reality, land titles) is in fact a way of fighting Bangladeshi migrants in the region. Anuj Bhuwania's paper, *The Case that Felled a City: Examining the Politics of Indian Public Interest Litigation through One Case*, underscores the fact that the procedural flexibility of PILs is not limited to the facilities that are provided to petitioners in order to approach the court, but that it also confers on the courts themselves extraordinary power to modify the issues at hand at will, to order its own enquiries, and to monitor the execution of its orders year after year without delivering a judgment. Bhuwania shows how judges decided and high-handedly managed a radical transformation of Delhi against opposition by civil society or the government, leading to large-scale deindustrialization: PILs clearly appear to be tools of social management that can be indefinitely prolonged, bypassing all elected powers and representative groups. The final contribution by Stéphanie Tawa Lama-Rewal, *Public Hearings as Social Performance: Addressing the Courts, Restoring Citizenship*, as a counterpoint to the two previously mentioned studies, focuses on a form of collective action organized by movements of civil society since the 1990s: Public Hearings that mirror court proceedings while critically addressing them. This move towards seeking public accountability parallels the initial inspiration for the introduction of PILs in the judicial system. However, these collective actions target the courts as well as the administration or politicians, as the gap widens between the (lack of) effectiveness in redressing popular grievances and a growing awareness of the rights to which people, as citizens, are entitled.

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NOTES

1. For instance, Handberg (1999), Shapiro and Stone Sweet (2002)—which includes a 1963 seminal essay by Shapiro—,Commaille and Kaluszynski (2007), Whittington, Kelemen and Caldeira (2008), Benda-Beckmann, Benda-Beckmann and Eckert (2009), Commaille, Dumoulin and Robert (2010), Dressel (2012), Sezgin and Künkler (2014).
2. Also, for India, see Randeria (2007a, 2007b).

3. Also Fuller (1988), Galanter (1989), Bhargava (1998), Dhavan (2001), Sen (2010), Berti, Tarabout and Voix (2016)—and Tarabout in the present issue. That courts in some countries may assume the role of a kind of "theological authority" is not limited to India, see Comaroff (2009).

4. "Law is full of magic. It conjures a world of its own and seeks to capture the 'real' world in its own image. Purporting to be a comprehensive statement on the relationships between persons, things, places and events, 'law' orchestrates its mastery over its empire by a mixture of ideology, ideas, rules, procedures, institutions and sanctions. ... The *ideas* of law take shape as 'legal concepts.' Before we know it, our lives are taken over by concepts like ownership, possession, enforceable promises (contracts), obligations, rights, wrongs, duties, trust and persons.' (Dhavan 2003:149).

5. "The values that are tested, changed, and consolidated in the law are not necessarily or even exclusively 'legal values.' They may be religious, aesthetic, or economic values" (Nader 2002:11). For instance, see the study by Chang (2004) on China, showing that the very process of questioning in a legal context takes on culture-specific forms and has culture-specific functions. For a general review, see Merry 1992.

6. References to a reified "Indian culture" may also be present in Upper Courts' rulings, especially in cases concerning aspects of social or family relationships which are now condemned by law.

7. For instance, court documents have been used to study how the body was perceived and how emotions were expressed by witnesses testifying before tribunals during the Inquisition in the thirteenth century; or to analyze the perception and the definition of incest in nineteenth-century France; or even to document unknown sleeping habits of members of the French working class in the eighteenth century—see the collection of studies in Albornoz Vasquez**,** Giuli and Seriu (2009).

8. Historians working on South Asia have regularly used judicial archives as an entry point to study social issues. See for instance Derrett (1968), Appadurai (1981), Yang (1985), Freitag (1991), Dube (1996), Chandra (1998), Singha (1998), Lal (1999), Bailkin (2006), Mukhopadhyay (2006), Kolsky (2010), Chatterjee (2011), De (2013).

9. This seems to be more largely the case in post-colonial societies, where, according to Benda-Beckmann (1981:170) the "indigenous organization has already been changed by government interference." Benton (2002) has shown that the very development of colonial states (including India) relied on pluralist views of the law: state-centered legal pluralism became the model of colonial governance, heightening an artificial division between "modern" and "traditional" spheres. See the discussion by Galanter (1972); also Halpérin (2010).

10. This collection of essays partly results from an international conference held in Paris in January 2013, "Through the Lens of Law: Power and Society in India," as part of a program funded by the French "Agence Nationale de la Recherche" (ANR 08-GOUV-064) entitled *Justice and Governance in Contemporary India and South Asia* ("Just-India," see http://www.just-india.net). Among the edited collections that have resulted from the program, see for instance Berti and Bordia (2015), Berti and Tarabout (2015), Berti, Good and Tarabout (2015), Berti, Tarabout and Voix (2016).

11. For instance, Galanter (1969), Deva (2005), Krishnan et al. (2014).

12. For instance, Baxi (1982), Menski (1998), Agnes (2001), Noorani (2002), Dhagamwar, (2006).

13. On Hinduism and law see, among others, Derrett (1957, 1968), Larson (2001), Menski (2003), Holden (2008), Lubin, Davis and Krishnan (2010). For a combination of different approaches, see Eberhard and Gupta (2005), Baird (2005); for a comparative historical perspective on "customary" law and colonial states, see Benton (2002).

14. Basu 1999, 2015, Mody 2008, Sundar 2009, Baxi 2014, Mathur 2016.

15. A 2010 report puts the number of lawyers at 1.2 million, with approximately 60,000 or 70,000 new law graduates joining the profession each year (Bar Council of India 2017). However, in proportion to the population, the ratio is still four times less in India than in the United States.
16. "India has roughly 12 judges per million in the population, as compared to America, which has 50 or 55 judges per million. And it is generally estimated that for large, developing countries, you need roughly 60 judges per million, which means India has one-fifth the number of judges it ought to have" (Gallo 2013).
17. The judgement proposes a typology of reasons that may cause witnesses to turn hostile.
18. See also Mody (2008:111–4). For an "ethnography of the state" through an analysis of discourses on corruption, Gupta (1995).

ABSTRACTS

For anthropologists as well as for historians, law practices and their discursive productions provide a way of studying interactions and decisions in a variety of domains of social and political life—from social and family relationships to issues such as criminality, environmental protection, natural resource management, religious practices, or human rights. The following studies deal with such issues by using the "lens of the law" as a vantage point over society, giving access to sometimes intimate situations otherwise difficult to document for an observer, as well as a filter through which social issues have to be shaped when evolving into court cases. Thus studying how law is used by people and how it impacts their lives is all the more important as, despite delays, poor facilities, and widespread corruption, courts often represent the main if not the only hope for many to redress their grievances. As a consequence the Courts are bustling with an activity that testifies to the vital role they play in society as sites of power that affect every aspect of life therein.

INDEX

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