

'The Optimism of the Intellect': The Wor(l)ds of the Writerly Teacher

Upendra Baxi

Social Change

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U BAXI, A NARAIN, L LIANG, S KAKARALA, S CHAGANTI, *Of Law and Life: Upendra Baxi in Conversation With Arvind Narrain, Lawrence Liang, Sitharamam Kakarala, Sruti Chaganti*, Orient BlackSwan, 2024, xxii + 582 pp., ₹2310, ISBN 978-93-5442-304-8 (Hardcover).

U BAXI, *Towards a Sociology of Indian Law*, Law and Justice Publishing Company, 2024, xxix + 250 pp., ₹425, ISBN 978-81-19129-94-2 (Paperback).

Affectionate Conversations and Passions for Justice

'Every person's life ... is a struggle for peace and justice within this interregnum—the time and space between life and death—each of which is uniquely our own and no one else's. That which we call our uniquely own life, are not commodities in the market, but reflexively akin to a "well of loneliness", of an existential and ethical kind'. (Baxi, *Of Law and Life*, p. 48)

In a unique and splendid effort to encompass the life and work of Upendra Baxi, legal scholars Arvind Narrain, Lawrence Liang, Sitharamam Kakarala, and Sruti Chaganti present 'an affectionate conversation' with Baxi 'over shared concerns and themes', 'bringing together politics, activism, and philosophy' (Narrain & Kakarala, 2024, p. 3). In this conversation that begins with his early childhood in Rajkot and travels back and forth over eight decades, Baxi unravels ceaseless reflections on the personal and the political as co-constitutive. His humour that sets the most difficult moments free, and his ideas (interweaving suffering, empathy, and justice) that flow irrepressibly back and forth between past and present, between the self and the other, between wordsmiths and legal philosophy, between the home and the world, offer an array of insights into the politics of insurgent scholarship, pedagogy, and empathetic administration in higher education (especially during his two stints as vice chancellor of Delhi University and South Gujarat University).

It is impossible to convey the joy of reading *Of Law and Life* (hereafter *LL*) in a review. It is a unique experience that springs to life through a conversation between the reader and Baxi, calibrated by the thought-worlds of the reader, and commingling the two—'reading as manthan', a churning that draws forth the elixir (*LL*, p. 274), and the assembling of a 'fellowship of learning', which, as Baxi echoes Julius Stone 'is at all times a process of mutual unlearning' (*LL*, p. 192). For opening out this possibility, we owe a debt of gratitude to the editors. And for their stupendous

labours in enabling and nurturing Baxi's desire to live the optimism of the intellect, and in co-creating the archive that anchors this endeavour, we thank Prema, Pratiksha, and Viplav—the Baxi family.

The second work under review is his study for the Indian Council for Social Science Research (ICSSR), published in 1986 as *Towards a Sociology of Indian Law*. Long out of print and unavailable to students and early career scholars for decades, it has now been re-published with a brief new preface and an additional bibliography (hereafter *SIL*). For Baxi, social science research 'must remain socially responsible'. Part IV-A of the Constitution of India (the Directive Principles of State Policy), an extraordinary lodestar, 'represents fundamental moral, and ethical obligations of social science researchers addressing the concerns of a domain named sociology of Indian law' (*SIL*, p. viii).

In the process of arriving at this definitive position, Baxi's intense, at times contentious, conversations with Professor Julius Stone—which run through *LL* and to whom the new edition of *SIL* is dedicated—illuminate (among other things) the possibilities of an incipient discipline taking shape through interlocution, immersion, and deep critique:

Then comes a question, how to do a sociology of law? I had a huge difference of opinion with Julius Stone. Stone used to say you can have a study of law and social change...but you cannot have a science called sociology of law.... I won't go into the theoretical quarrel, but I was determined ... to create or contribute to a field called Sociology of Indian Law. And this is what I sought to do in that book. (*LL*, pp. 385–386)

Similarly, too, his question, 'What is Indian legal historiography and how did it emerge?' forces us to move beyond the colonial legal history archive and examine plural sources—Buddhist, Hindu, and indigenous—in piecing together a more complete legal history for India (*LL*, p. 380).

This review will briefly explore a small selection of themes in the work of Upendra Baxi presented in these two volumes—far from exhaustive—connecting the enduring concerns in *SIL* to some of the theoretical, philosophic, and pedagogic ruminations in *LL* that offer a panoramic view of the life of the mind, stretching from the 1960s to the first two decades of the 2000s.

'Reading as *Manthan*'

The 'motley collage of selves shaped by habits of slow, careful reading' (*LL*, pp. 55–56) began to take shape at age six or seven, and over years of 'reading almost every book there was' (*LL*, p. 55), it straddled wordsmiths and bards in both English and Gujarati (*LL*, pp. 55–56).

Accounts of 'obsessive reading' during adolescence are embedded in accounts of anger and hurt at the 'cultural malignancy' in the joint family that targeted Muktaben, Baxi's mother, who, as the eldest daughter-in-law, 'oversaw the kitchen' and 'worked like a galley slave'. It was also the time when he first registered the 'enforced temporary exile' women were subjected to, learning only much later the codes of ritual purity and uncleanness that segregated adult women

in his family routinely (LL, pp. 58–59)—a subject on which he dwells at length in the context of the Sabarimala proscriptions. Also, bearing witness to 'systematic injustice within the family', and the deep suffering and deep spirituality of his mother, developed in Baxi, 'a sense of just indignation and anger' (LL, p. 65):

... this might have something to do with my multiple senses of injustice, of understanding their sources, and their complexity, in kinship ties, local networks, local cultural mores, as so on. I developed early an attitude of critical empathy, solidarity, and compassion'. (LL, p. 65)

The churning is one that interweaves personal experience, sensibilities of justice, and the embodiments of suffering (that stretch from the home to the world) with impassioned reading, writing, teaching and petitioning—'What forms of languages may we bring to the world of suffering?' (LL, p. 192). This interillumination (to borrow a Bakhtinian expression) is critical to a comprehension of Upendra Baxi's oeuvre.

His recounting of conversations around books (with students, authors, and other readers), and his immersion in libraries—Rajkot, Bombay, Delhi, Berkeley, Sydney, to plot a few book-stops in the Upendra Baxi law and justice travelogue—fulfils the pedagogic purpose of mapping the streets and alleys and modalities of bibliophilic journeys. Through these travels, he is in enchanted and intimate conversation with people, their writing, and the languages and literatures of law (what is not about law, one might well ask)—Julius Stone, Roscoe Pound, Hans Kelsen, Angela Davis, Anthony Blackshield, Oliver Mendelsohn, Peter Fitzpatrick, Vasudha Dhagamwar, Lotika Sarkar, Giorgio Agamben, A. R. Desai, Marc Galanter...

SIL epitomises the effects of such churning:

I saw my function in *Sociology of Indian Law* as that of building bridges. One of the things I discovered was that ... not many historians/social theorists ... directly addressed law or even jurisprudence ... [L]aw ... is a lurking presence. I re-read some of these things I had read carefully, and asked, what would happen if the concern and engagement with law in a broad sense was made more explicit or grounded? (LL, p. 376)

The connections Baxi makes, drawing on his earlier work, are instructive: For instance, reflecting on his book *Marx, Law and Justice* (1993), he observes that Marx 'archived ways in which immiseration occurs and how it continuously reproduces itself'—he was concerned with the 'reproduction of suffering', which also preoccupied Mohandas Gandhi and B. R. Ambedkar 'but in very different accents and modes' (LL, p. 182). These distinct accents and modes come to a head in trying to decipher the delicate difference between speaking *for* others and speaking *with* others. How might we understand this distinction in thinking about Gandhi's satyagraha, which challenged ideas of purity (among other things), and Ambedkar's first satyagraha in Mahad demanding access to drinking water from the village well? One also understands that the ascription of primordial identities is exclusionary and static, violating people's right to choose practices of self-identification—'the untouchable'. Instead, one may better understand identity as a category as 'nothing but a set of practices of identification [which] provides agency against history ... [T]he right to identity gives one a repertoire to challenge

history, to challenge primordially. This is what you learn from Babasaheb Ambedkar, but also differently from Freud, Jung or Lacan' (LL, pp. 198–199). Baxi argues further that it is important to compare 'today's Western thinkers with Indian thinkers who first envisioned ancient truths about biopower' (LL, p. 368). And so, when Giorgio Agamben asked Baxi where he ought to begin in order to understand Indian legal history, Baxi said to him, 'go to Ambedkar if you want to understand the link between biopolitics and the *nomos*. Ambedkar was among the first theorists of biopolitics. What did Ambedkar talk about in relation to the Atisudras excepting biopower and biopolitics? And even about the macro-politics of the "lawless law"?' (LL, p. 368).

Of his lifelong habit of diving into the deep waters of libraries and soaking in the warmth of their inner recesses, one reflection stands out in the story it tells of Baxi's intellectual quest:

I was privileged to read in the College library some classics in jurisprudence and political theory that were borrowed and read by Professor, later Principal, Dr. B.R. Ambedkar. He was not just an avid reader and a good bibliophile, but my later reading of his oceanic collected works brought me his implicit and incipient theory of creative reading—reading like an untouchable. Reading was a creative act of suffering which also furnished a resilient way of overcoming the 'frustration' experienced by the Untouchables as '*frustration forever*', '*unrelieved by space or time*' ... [F]or Dr. Ambedkar, reading was not only resistance, but also delineated future histories of emancipation. (LL, p. 80)

Radical Empathy as Pedagogic Practice

A foundational question in India is, how might we speak of a 'constitutionally desired social order' without simultaneously speaking about the 'desire of/for justice'? Can we speak of desire while ousting a consideration of its complex relationship to violence, especially marking the context in which the constitution was framed? (LL, p. 73). The aporias in constitutional law that erase or silence the history of Partition violence from the teaching and learning of the constitution are ones that Baxi finds particularly troubling in Indian legal scholarship:

It is of great importance for me to continue to say till my dying day that the greatest contribution of Indian feminism has to do with Indian Partition. Constitutional lawyers do not talk about Partition. H.M. Seervai being the sole exception ...

The importance of feminizing the narrative of Partition is not confined to that period of time in history; *it invites continual attention to the recurrence of Partition-type violence, which ... is reiterative violence*. (LL, pp. 244–245, emphasis added)

Shifting focus to the teaching of American constitutional law, Baxi wonders why it has taken so long for American law teachers to discover that the decision of the US Supreme Court in *Dred Scott v. Sandford* must be the starting point in the teaching of American constitutional law (LL, p. 74). Similarly too, during his early Sydney days, his decision to teach Henry Sumner Maine and Friedrich Carl von Savigny via a debate on self-determination in Papua New Guinea (LL, p. 119)

reflects this approach. For him, the law is best grasped through 'the modes of production of desires and passions for justice within and beyond law and sovereignty' (*LL*, p. 74).

In Australia, the presence of the first-ever student from Papua New Guinea—whose several unsuccessful attempts to clear the paper on the law of succession and death duties led to a discussion on the importance of cultural empathy in crafting a curriculum. Countering the argument that knowledge of death duties was essential to practice in the New South Wales Bar, Baxi argued forcefully that death was understood very differently by the highland tribes of New Guinea and had no property connotations, and 'the idea of a State charging death duties, and lawyers fighting over it, is culturally incomprehensible to him ... not because he has a low IQ, but because there is a cultural barrier', going a step further by asserting that the withholding of the degree on this basis would be a clear case of racial discrimination. The student in the eye of the storm, Bernard Narokobi went on to become the Attorney General of Papua New Guinea and later a judge (*LL*, pp. 120–121; see also Dobrin & Golob, 2020). Around this time, Baxi, initially with Tony Blackshield, conceptualised a course on the rights of indigenous people, which he taught, inaugurating a curricular trend that spread across other Australian law schools subsequently (*LL*, p. 123). Following the Australian experience, upon his return to India, his deep interest in indigenous legal cosmologies and adjudication systems saw Upendra Baxi inaugurate trends in scholarly engagements with communities-in-struggle and movements seeking autonomy that remain unparalleled and will be discussed briefly in the following section. Importantly, it is the interweaving of the wisdom that the 'running brook' (*LL*, p. 162) carries forth with the passionate reading of the constitution that translates into radical empathy in the classroom, of which we have a rich repertoire of stories, too many to dwell on here. These are stories that narrate the kinship between law, life, desire, affect, justice, and learning.

'Justice as Care'

My favourite quote is from Justice Dwivedi in *Kesavananda Bharati*, 'the constitution is not intended to be the arena of legal quibbling for men with long purses' ... It is a heritage or a possession, and it should be the object of your love. The idea that Constitutions can be considered worthy of citizens' affection is very strong with me now. (*LL*, p. 346)

The idea of ownership for Baxi has to do with caring for the constitution and living within it by nourishing and protecting 'enclaves of justice' (a Julius Stone metaphor) (*LL*, p. 347). There are several registers in which we may glean elaborations of the idea of 'justice as care' (*LL*, p. 71)—I will attempt to convey the tactility of this care, and its embodiments, through snapshots of some writing, interventions, conversations, and petitions.

Speaking of Article 17 wrongs, untouchability offences, as early as the 1970s, Baxi maps shifts in attitudes and practices around untouchability—from Marc Galanter's 'imaginative analysis of available enforcement data' and his stark reminder that the abolition of untouchability requires educational, employment, and legislative

reservations and effective penal provisions, to I. P. Desai's work on access to water, and Baxi's own work on what he calls 'two moralities in enforcement', that is, the provision by some states of 'separate water facilities to untouchables, thus condoning and acquiescing in the wholesale violation of the [Protection of Civil Rights] Act' (*SIL*, p. 90). He speaks in his other writing on legislative reservations for the scheduled castes and tribes, and the problems and potential of the short-term remedial provision of double member constituencies (Baxi, 2025).

The close empirical examination of the relationship and disjunctures between national and local law ways—state legal systems (SLS) and non-state legal systems (NSLS)—has been an enduring interest for Upendra Baxi. What accounts for the persistence of and shifts within NSLS? To what extent are they tied to local dominance? What is the relative incidence of 'standardless use of force' (or 'lynch justice')? What is the impact of NSLS on the developmental objectives of the wider community, i.e., the state? (*SIL*, pp. 120–121). His participation in (and writing on) the Rangpur Lok Adalat is well known, and his interactions with Bhoomi Sena are a source of delight, where Kaluram Dhodade (1936–2024) asks him to tell them in six months 'how the same law which oppresses us can be peacefully turned against the oppressors' (*LL*, p. 151; see Dhodade, n.d.); yet, extremely sobering is his disappointment over the fact that:

IP imageries and practices of the Lok Adalats ... were not known at all, even [to] progressive judges of the Gujarat High Court ... Nor did justices from other regions know much about similar experiments ... Indeed, these began almost simultaneously with the Indian constitution and therefore deserved a greater dignity of juristic and juridical attention'. (*LL*, p. 147)

His interventions through social action litigation and epistolary petitioning—in the case of Mathura, the Agra women's home, the Chamars of Kanpur, the Surat textile workers, those displaced by the Narmada dam, and the Bhopal catastrophe—involved research, legal strategies, deep reflection, and deliberation on 'the ethic of speaking *with*' survivors and communities suffering profound injustice. The fundamental questions before Baxi both in terms of strategy and research revolved around 'ethical reflexivity'—'understanding the existence or situation of the people you are trying to help' (*LL*, p. 407).

Baxi's ruminations on collective democidal violence (Gujarat 2002), state terror, and various aspects of the Emergency of 1975–1977 open out the realms and layers of 'human rights' infinitely. On the Emergency, his critique of the 42nd Amendment and his sharp criticism of Indira Gandhi at the time; his classroom teaching of Jayaprakash Narayan's (JP's) jurisprudence with local police 'posing as LLM students' in the classroom (*LL*, p. 218); his 'prediction', rather accurate anticipation, of the judgment of the Allahabad High Court (*LL*, p. 209); and his reflections on judicial populism and accountability especially (but not only) in times of 'commissariat dictatorship' (a Schmittian formulation he applies to the Emergency) (*LL*, pp. 230–240), require a separate review. His insights on the Emergency, his accounts of conversations, criticisms and the suspension of ethics in collegiality, and his own travails during that period, appear in print for the first

time and make poignant reading. This could not have been better timed, poised as we are on the threshold of 50 years since 1975.

In Lieu of a Conclusion ...

Raising the sails of the memory-ship (a phrase I borrow from Fatima Mernissi) and voyaging back with Upendra Baxi, *Law and Life* spins into view an entire era of intercontinental legal debate and scholarship deliberated on in classrooms and convivial gatherings around the world—India, US, Australia, Canada, UK; and *Sociology of Indian Law* serves as a way-finder to explore and expand the limits of the now burgeoning field—the two together securing a rich future for pedagogic practice, insurgent scholarship, and grounded histories of the lives of law.

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ORCID ID

Kalpana Kannabiran  <https://orcid.org/0000-0002-3753-9793>

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Kalpana Kannabiran 

Council for Social Development, New Delhi, India
kalpana@csdindia.org