



Law and crisis: Conjunctions, correlations, critiques

Arun Sagar¹

Accepted: 8 June 2022

© The Author(s), under exclusive licence to O.P. Jindal Global University (JGU) 2022

1 Law/crisis/critique

Crisis: a moment of decision, a judgement, a parting of ways. Or: a time of danger, a radical change. Or: a turning point in the evolution of a disease, of a life, of life. And *critique*: a questioning prior to a judgement; a throwing of things into crisis; a flash of light and of darkness. And *law*: a question with no answer; an answer without a question. What role, meaning, action of law in/and/as/of crisis, of crisis in/and/as/of law? What does critique have to do with law and crisis?

I connect *law* and *crisis* with a multiplicity of conjunctions and prepositions, each term operative with the other as both subject and object. The law is simultaneously opposed to crisis and dependent on it; crisis is simultaneously the foundation for the existence of law and the negation of law, simultaneously dependent on it for its definition and delimitation, its very constitution, and opposed to it; crisis is the crisis and the critique of law; law is the law and the critique of crisis.

This crisis of definition and meaning introduces a disruption in our sense of how the law/crisis of institutions, texts, interpretations, practices, the body, the mind, the planet, may be understood in terms of judgement, decision, evolution, danger, change. How may the life of the mind, the body's transformations, a disease sweeping the world, the language of art and of violence, the institutions and discourses of power, the text, the gun, the enormity of rain and sun and the changing seasons, be thought of in terms of these essential and constitutive and impossible conjunctions of law and crisis? The contributors to this issue of *JGLR* offer us some answers, perhaps, but more importantly, criteria, crises, critiques.

✉ Arun Sagar
asagar@jgu.edu.in

¹ OP Jindal Global University, Sonipat, India

2 The contributions

The COVID-19 pandemic—the very archetype, the perfect crisis that produces in turn a proliferation of crises—brings this interrelationship of law and crisis to the fore (*fore*: the front of something—of what?) in many ways. As always, the global manifests itself in the local, the local in the individual. Thus, the more individual, the more local a reflection on crisis, the greater its universal and paradigmatic significance. Two contributions in this issue discuss local Australian developments. Francine Rochford analyses a municipal ‘lockdown’ decision as well as the arrest of an individual who made a Facebook post encouraging the breach of restrictions. After unearthing the legal framework, Rochford shows how the government’s pronouncements and actions relied on a sophisticated manipulation of language and image to discursively produce the ‘crisis’, legitimating repressive state action: the law of the law and of language deployed, the law of power. Vincent Goding discusses Australia’s employer subsidy scheme while drawing on a philosophical exploration of the ‘exception’ in the works of Schmitt and of Agamben: the exception is the location for the ultimate assertion of the sovereignty of law; through becoming exception, crisis becomes the norm of the law. Goding shows how the scheme constituted an exceptional mechanism that was intended to restore and maintain the existing neoliberal order, despite the political narrative of an exceptional welfare policy that accompanied it.

The mutually constitutive nature of authority and disruption is also the subject of Aiste Janusiene’s contribution on the judicial institution in Lithuania. The author explores the cultural representation of judges after the corruption scandal of 2019, reflecting on the many ways in which the cultural imagination of authority interacts with the operation of judicial institutions, and on how the circulation of certain images in the media plays a role in the constitution of judicial authority. *Authority*, after all, is not in itself power but the image of power, its constitutive and self-constitutive presence in the minds of its interlocutors and subjects, who thus both construct it and are constructed *as subjects* by it.

The image in the service of law; art and/as/of power, power and/as/of art. In their contribution that disrupts classification and definition, both conceptual and practical (article? photo essay? multimedia project?), Gavin Keeney, Ishita Jain, and Harsh Bhavsar offer a deconstruction—if something not constructed except in the process of deconstruction can be deconstructed—of the law of art and the art of law, the rules of the ‘art-academic industrial complex’, the perpetual crisis—philosophical, corporeal, textual, imagined—in the artist’s experience of law.

I wrote earlier that the pandemic is the perfect crisis because it brings a proliferation of crises and because it perfectly constitutes the exception that constitutes the law. But it is perfectly archetypal and archetypally perfect in another sense too: it is the ultimate combination of the ‘natural’ and the ‘social’ (to maintain and rely on an artificial and indefensible distinction); who can say whether the broad range of its manifestations, disruptions, deprivations are due to nature or due to the human? A virus is born (how?), spreads (how?), multiplies (why?), diversifies (why?), disrupts (what?): each natural process is inevitable and artificial, each answer to each question

is social, economic, technological, historical, personal, political. Oxygen held in a metal cylinder, a dose of the virus held in a needle: natural, human, human, natural.

Human nature—a fortuitous conjunction of words (if such a thing can be *fortuitous*). Human nature in society: divisions, inequities, solidarities, hatred, love. Crises exacerbate these phenomena, or rather, reveal them, sharpen them, bring them into focus as through the lens of a camera. Sneha Krishnan turns this lens on another conjunction of the natural and the human/social, one where the separation of the two is apparently clearer: the manner in which floods and erosions associated with extreme rainfall in Assam have necessitated large scale migrations, and how the patterns and conditions of movement impact vulnerable groups, in particular, women.

The separation of rain and floods from the human is *apparently* clearer, but the study of climate change tells us how at a ‘macro’ level it may not be so. The great crisis of the planet both influences and is influenced by the multiplicity of social crises. Surabhi Singh’s review of Amitav Ghosh’s *The Nutmeg’s Curse* brings out the genealogy of the current crisis and of the attempts to mitigate it through fossil fuel restrictions and emissions targets, i.e., through law. This ‘history of the present’ shows how ‘Western’—but not solely Western—colonialism and capitalism, the continued extraction of profit from the earth and its people, combines with the hegemony of Western science and philosophy to produce the continual crisis of the social, the natural, indeed of the very opposition between the two. Singh enacts Ghosh’s critique and critiques it, gives it new life, through many examples of the local that both highlight and subvert the author’s method.

Enact, highlight, subvert. A book review is in itself a paradox for the reader, a crisis of authorship: two authors together in the text, inseparable, yet completely separate, one sometimes speaking for the other, through the other, sometimes opposed to the other; two voices speaking to each other in a dialogue that may often be unilateral in its internal experience but is a joint performance in its external manifestation. Our second book review—by Kanya Vishwanath of Jacqueline Rose’s *Mothers*—highlights motherhood as the ultimate crisis, because it is both a crisis of the body and the crisis of creation itself; the crisis without which there would be no other. Vishwanath combines Rose’s exploration of the psychological, physical, social, and institutional understanding of motherhood with illustrations from Indian law, to show how social and legal institutions and discourses constitute the non-physical crises of motherhood and parenthood, of the creation and sustenance of life.

If we may think of motherhood as a crisis of the body, we must also bring into our understanding of law and crisis the multitudinous (*multitude*: the masses, the population created by motherhood and fixed, maintained, sustained, held together and apart by law) ways in which law—not just state law but a myriad coercive normative frameworks—constitutes and regulates the so-called ‘private sphere’. Ajita Banerjee analyses a Kerala High Court decision which shows how the criminal justice system operates to maintain ‘heteropatriarchy and gender role conformity’. An act of resistance to these dominant social frameworks—e.g., an assertion of sexual agency by a daughter, especially if it transgresses caste or communal lines—is both a social crisis that the law must step in to manage, and a personal crisis towards which the law may take on the role of either saviour or oppressor, both of which are roles of justice, both embodied in *the* Justice, the judge.

Justice: balance through law, beyond law. To do justice to a person, a people, a moment, a text, all these texts. Is it possible? To *judge* a text, as reader, interpreter, editor? To write an editorial of this kind is to be both liberated and restricted, both free of the terror of *writing* and trapped by the terror of *rewriting*. In other words (others' words? one's own?) free of the burden of forming ideas, weighed down by the ideas of others. No matter how I try to re-form (*reform*?) them in my own structure and interpretation, to create a clear flow from one contribution to the next, identifying themes and connecting them, stepping from one statement to the next as if on a row of flat stones across a stream—each step a balancing act, a crisis averting a crisis—the texts resist interpretation, resist this ordering, protest against the indignity of summation and paraphrase. But even beyond this underlying impossibility of doing justice to the text, even the paraphrased and violently extracted themes resist my efforts at order and sequence. There is no order but in circles, repetitions, refrains.

And so we return to the refrain of the law constituting itself through the crisis/exception, the exceptional, through identifying exceptional circumstances and adopting exceptional measures to address them. Nowhere is this more evident than in the context of national security laws such as 'anti-terror' legislations. Radhika Chitkara looks at how anti-terror legislation in India sustains a permanent state of exception in which the usual procedural guarantees around arrest and trial are suspended. Chitkara delves into Indian jurisprudence to seek out a conceptual framework that might allow us to insist on fair trial as an essential check on state power even when confronted by the exceptional nature of these laws.

Anti-terror laws are only one of the elements of what Deepa Das Acevedo and the other participants of a round table (circularity? adjacency? contiguity?) on the crisis of constitutionalism and democracy have called 'autocratic legalism', i.e., the state (law, status, both institution and ontology) in which the law itself becomes not the framework that restricts the operation of political power, but rather one of the most important elements in the exercise and consolidation of power. The participants in this wide-ranging conversation explore how the law-enforcement machinery, the party system, the judicial system, indeed, the very language of the rule of law and of fundamental rights may be deployed in a multiplicity of ways towards the ends of consolidating power in a majoritarian polity. Despite this, however, these scholars retain a sense of optimism in the possibility of resistance through law; if 'law is politics', as the old slogan goes (the verb in the slogan bringing a particular identification of law and politics that no conjunction could evoke), then political processes of decentralised negotiation and grassroots mobilisation relying on the radical potentialities of legal discourse may still help unravel (*unravel* or *ravel*, a tangled web of meaning) or at least destabilise this crisis of the law, by the law, through the law.

The crisis of law, of the planet, of the social, of the natural and (human) nature, of justice, of the local, of the personal, of oppressions and violence and solidarity, of hope: my attempt to arrange these themes in sequence in the closed space of these few pages is doomed to failure, but there remains one last contribution to mention that will allow me to at least provide an illusion of closure and coherence, because it includes and encompasses each of them within the space of one text: Oishik Sircar's interview with Dean Spade, who explains (makes plain, justifies, gives a reason) that envisaging a society constructed on mutual aid and community engagement is the

only way to imagine a world where one may think of tackling ‘the ongoing crises caused by the way human lives are organised right now—imprisonment, border control, wage economies, hierarchies of valuation of human life, imperialism and war.’ Spade shows how these crises are endemic (*endemic*: the stage in which a disease is regularly and consistently present) to the nation-state form itself, as a vehicle for extractive social relations. These structural insights are essential, because an understanding of the causes of the conditions we live in is essential for us to be able to think about how to change them. And change them how? Through a continuous critique of the law, the languages, the images, the norms, the institutions, the violence that holds us in place, in constant crisis. And this process must be immediate, urgent, because justice, *doing* justice, is the precipitate moment of the end of a crisis, or at least of its replacement by another. To hesitate, to defer the critique is thus to sustain the crisis, to imagine the present moment as free of both past and future, instead of imagining both the past and the future as a succession of presents. As Spade tells us at the end, *as* the end, ‘there is nothing to wait for.’

Publisher's Note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.