What's in a Name? Locating the Constitution as a Signifier

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Saul Kripke's anti-descriptivist theory of naming construes proper names as "rigid designators" of the objects to which they refer. Modern iterations of the word "Constitution" generally denote a system of checks and balances on the arbitrary exercise of state power, loosely understood as constitutionalism. However, what Kripke overlooks is the idea that the rigidity of a name also derives from a surplus of meaning, as argued by Slavoj Zizek in keeping with the Lacanian tradition. Here, I attempt to show how this surplus is created and realised in the life course of the Indian Constitution. My significant argument is that the signifier Constitution need not always signify constitutionalism. Although constitutionalism bears an indelible nexus with the foundations of the Indian Constitution, it does not share a one-to-one relationship of signification with the Constitution. Through an assessment of how the word Constitution has been treated in judicial pronouncements and popular expressions, I propose to perceive it as a master signifier: a signifier that points to itself, one that quilts the field of signifiers. This prompts me to show how the Constitution is sublimated to the level of what Lacan calls, borrowing the term from Freud, das Ding – the Thing. This kernel of desire, which is nothing but emptiness, must be continuously found and re-found, albeit it can never really be achieved. Thus, arises the need to proclaim the Constitution frequently as an affirmation of rights, promoter of justice or, broadly, the fabric of an imagined Indian society. In this process, the Constitution is raised to the "dignity of the Thing" through sublimation. This sublimation is predicated on silences that speak only through ideological anamorphosis: from the violence of the partition to the netherworld of the social unconscious where the promise of rights and liberties starts faltering. My aim here is to foreground the varied modalities of deciphering the Constitution, both semantic and affective. Public engagement with the Constitution, beyond and without the dictates of legal

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interpretation, finds meaning in ways that at once encompass and exceed modern constitutionalism.

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I. Introduction: Authoring The Reader's Experience

If the Constitution is an edifice, we must know "where we are going and what we intend building."[1] This was Jawaharlal Nehru's pitch while introducing the Objectives Resolution in the Constituent Assembly. Indeed, the task of constitution-making would have gone haywire without ascertaining its guiding principles and values. Yet Nehru's statement seems almost counterintuitive. We all have an idea about what a constitution ought to nurture, so much that any roadmap would only be a reiteration of these beliefs. Even Nehru was aware of this. He feared that the Constituent Assembly was diverging from what many had "wished it to be" and, thus, the Objectives Resolution was a return to its *a priori* foundations.[2] Rather than building a new edifice, so to speak, the Constitution was envisioned as a reaffirmation of the "fundamentals which [were] commonly held and [had] been accepted by the people."[3]

Authoring a people's "fundamental beliefs," however, occurs in a vortex of political contestations underlying the meaning-making process, where both the readers and authors of a text negotiate voices and silences to universalise their own interpretations in that discursive formation. This is a politics rooted in its time and becomes visible, Walter Benjamin writes, as the mute author transforms into an active producer of the text. Unlike authors who report as they see or think – and think rather deficiently indeed – Benjamin wants producers to be conscious actors inseparable from the class struggle of the industry in which they operate.[4] The shaping technique of the form and content of a text, while at once surpassing this dichotomy, highlights the political tendencies dictating its production.[5] In the debates surrounding the Objectives Resolution, disagreements around the word "Republic" reveal how the framers of the Constitution became

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1 Jawaharlal Nehru, 'Resolution Re: Aims and Objects', (*Constituent Assembly Debates*, vol I, 13 December 1946) <https://www.constitutionofindia.net/constitution_assembly_debates/volume/1/1946-12-13> accessed 4 November 2020.

2 ibid.

3 ibid.

4 Walter Benjamin, 'The Author as Producer' in Victor Burgin (ed), *Thinking Photography* (Palgrave 1982) 15.

5 *See* John Stopford, 'The Death of the Author (As Producer)' (1990) 23(3) Philosophy & Rhetoric 184.

active producers of the text in their determinate social and political climes. MR Jayakar contended that it was procedurally improper for India to become a republic in the absence of representation from the Muslim League and the princely states.[6] His argument anchored technique, construed as legal procedure, in the political matrix of representation. Ambedkar asserted that the true essence of a republic could only be realised in a "socialistic economy."[7] For Benjamin, Ambedkar would have diluted the line between the author and the reader by joining the proletariat in their class struggle.[8]

The author, as the producer, is given to establishing her dominance over the text. To dispel this authority, the reader must take over by killing the author – or so to speak through Barthes's metaphor.[9] The reader first receives the name Constitution and only then slips into its text through interpretation. The Constitution, therefore, does have meaning without being textually deciphered. This is, broadly, the question I problematise here: what does it mean for the Constitution to be a signifier?

My methods in this essay, though disciplinarily disparate, cogently complement each other. I use Freudian/Lacanian psychoanalysis to understand how the signifier Constitution enters the symbolic order to denote an imaginary object that cannot entirely be symbolised. This surplus of meaning institutes desire for the unknowable, unattainable Other. At this point, the text of the Constitution becomes a site for engaging with the subject's desires that are invested in the signifier from the unconscious.[10] Psychoanalytical literary criticism, in this way, enquires into both the subject-reader's agency in the text and the text's meaning in the reader's mind. Substantiating these insights with constitutional philosophy illuminates the interface between the life of the Constitution and the life of its subjects. In a certain sense, this essay restores the Constitution to its people by "recovering a repressed poetics of law."[11] Rohit De assails the settled notions about the Constitution being a prerogative of the state and civil society elites. The weft of constitutional imagination in India has historically included the "experience of ordinary Indians," constructing a normative world that drives "politics into the

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6 MR Jayakar, 'Resolution Re: Aims and Objects' (*Constituent Assembly Debates*, vol I, 16 December 1946) <https://www.constitutionofindia.net/constitution_assembly_debates/volume/1/1946-12-16> accessed 4 November 2020. ibid.

7 BR Ambedkar, 'Resolution Re: Aims and Objects' (Constituent Assembly Debates, vol I, 17 December 1946) <https://www.constitutionofindia.net/constitution_assembly_debates/volume/1/1946-12-17> accessed 4 November 2020. ibid.

8 Benjamin (n 4).

9 Roland Barthes, 'The Death of the Author' in Ronal Barthes (ed), *Image-Music-Text* (Hill and Wang 1977) 142.

10 *See* Elizabeth Wright, 'Another Look at Lacan and Literary Criticism' (1988) 19(3) New Literary History 617, 619.

11 Peter Goodrich, 'Introduction: Psychoanalysis and Law' in Peter Goodrich (ed), *Law and the Unconscious: A Legendre Reader* (Palgrave Macmillan 1997) 1, 4.

courts" from backroom negotiations and street rallies.[12] It is this everydayness which makes the province of constitutional law an interpretive activity on par with the other symbolisms that enable social and political life in India.

II. Constituting The State: A History Of Constitutionalism

Constitutional scholarship has long fostered an affinity with constitutionalism. The story claims its genesis in ancient Rome. The English word constitution derives its etymology from the Latin word *constitutio*, meaning some form of a decree or order. In imperial Rome, the emperor's legislations, his decrees and orders, were known by the technical term *constitutiones*. Both these words – *constitutio* and *constitutiones* – trace their roots to the word constituere, implying the act of setting up, establishing, arranging or erecting something.[13] When these three related words are thus contextualised, the word *constituere* refers to those decrees or orders which drew their legitimacy from an arrangement between the emperor and the republic. Roman law considered the emperor's legislations as lex. The will of the emperor, expressed in *constitutiones*, elicited obedience through the force of a lex. However, since lex originally emanated from the people, the emperor received his law-making powers from the subjects during his accession.[14] In this state order, *constitutiones* was an enabling instrument of state power. Although not as developed as a modern politico-legal framework, the Latin term *constitutio* does imply a rudimentary form of Roman constitutional consciousness articulating the state's relationship with its people.

The notion of constitution in medieval England repackaged the republican experience of constitutionalism in Rome and unfurled it in a new feudal setting.[15] While the Roman emperor's accession conferred on him the citizenry's submission, the English king's coronation served as a mandate to abide by the promises made during enthronement.[16] Even in pre-conquest Anglo-Saxon England, the king was supposed to have pledged good governance and protection from external invasion to justify his throne. The increasing currency of phrases like "all the people" in royal proclamations contributed to the creation of a body politic which legitimised the ruler's kingship in reciprocation to such promises.[17] The presence of these nascent constitutional values, Stenton remarks, "gave the character

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[12] Rohit De, A People's Constitution: The Everyday Life of Law in the Indian Republic (Princeton University Press 2018) 6.

[13] Graham Maddox, 'A Note on the Meaning of "Constitution" (1982) 76(4) The American Political Science Review 805, 806–807.

[14] Charles H McIlwain, *Constitutionalism: Ancient and Modern* (Liberty Fund 2008) 29–30.

[15] *See* Fritz Schulz, 'Bracton on Kingship' (1945) 60(237) The English Historical Review 136, 150–51 & 169.

[16] McIlwain (n 14) 44.

[17] James Campbell, 'The Anglo-Saxon Origins of English Constitutionalism' in Richard W Kaeuper (ed), *Law Governance and Justice: New Views of Medieval England* (Brill 2013) 15, 15–16.

of a constitutional monarchy to the Old English state."[18] In post-conquest feudal England, the relationship between the lord and the vassal was iterated as an exchange of guarantees. In the mind of the feudal lord, his position appeared contingent on his part of the exchange: so long as he remained capable of doing justice to the vassal, he had the concurrent right to coercively appropriate the surplus of the vassal's labour.[19] The ruthless success of the Norman conquests contrived a measure of national security by establishing a strong central government. In this atmosphere, it became possible for the monarch, mostly in theory, to disrupt the vassal's exclusive relationship with his immediate feudal overlord by featuring as the legal enforcer of their exchange.[20] This model of medieval constitutionalism finally chiselled out a more sophisticated system of liberties based on restricting the king's powers, usually seen as reaching its culmination with the Magna Carta.

Drawing on this historical background, the chronology in the conventional scholarship then makes a leap to modern constitutionalism in the West[21] – often hailed as the only form of constitutional government worthy of the platitude. A counter to this linear progression from medieval to modern constitutionalism is posed by the works of certain scholars like Harold Berman and Scott Gordon. They illustrate that the basic principles of constitutional governance were prevalent in the city-states of Germany and Italy centuries before America inherited the medieval-English structure of constitutionalism.[22] But the conflation of constitution with constitutionalism, even in the continental case, tends to trace an artificial continuity; one that is defined by constitutionalism becoming the hallmark of all constitutions. It is akin to saying that the Constitution, as a signifier, must signify constitutionalism.

For this proposition to hold true, we must be able to maintain that if a constitution fails to extol constitutionalism, it is not a constitution at all. In this scheme of things, the Constitution becomes a short-hand for its properties – constitutionalism being the most apparent one. Giovani Sartori shows how the pervasive model of constitutionalism in the modern Western world, mainly in the US and the UK, are more than mere restatements of the imperial Roman experiment and its medieval English adaptation. The mode of thinking about the Constitution as constitutionalism emerged about 150 years before World War II.[23]

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[18] Frank Stenton, *Anglo-Saxon England* (Oxford University Press 2001) 554.

[19] *See* Graham Maddox, 'The Feudal Origins of English Constitutionalism' (2008) 31(3) The Australian Journal of Politics & History 445, 446–47.

[20] ibid.

[21] *See* Brian M Downing, 'Medieval Origins of Constitutional Government in the West' (1989) 18(2) Theory and Society 213.

[22] *See* Harold J Berman, *Law and Revolution: The Formation of Western Legal Tradition* (Harvard University Press 1983) 356–399; Scott Gordon, *Controlling the State: Constitutionalism from Ancient Athens to Today* (Harvard University Press 2002) 129–162.

[23] Giovanni Sartori, 'Constitutionalism: A Preliminary Discussion' (1962) 56(4) The American Political Science Review 853, 855.

To conceive of the Constitution as a check on arbitrary state power, and thus an assurance of personal liberties, is particularly unique to the socio-political ruptures brought about by the advent of the modern state. What then does the name Constitution refer to, if not constitutionalism?

The answer, I propose, lies in Saul Kripke's anti-descriptivist theory of naming. For Kripke, certain names – like proper nouns – are rigid designators. That is, they denote the same thing in every possible situation in every possible world.[24] The rigidity of a name is ensured by a causal chain mediated through a community of speakers. For example, imagine someone in medieval England using for the first time the term Constitution to allude to a body of laws, conventions or norms which moderate the relationship between the monarch and his subjects. In Kripke's words, this would be the primordial dubbing ceremony, the christening of the referent Constitution. From then on, extending the causal chain, people would have embraced the term to denote the same symbolic object, using it to connote the rules or conventions of the power circuits between them and their political superiors. It could be the relationship of coercive exploitation between the serf and the lord or the social contract between the state and the citizen. At the symbolic order, the word constitution encapsulates the ideals of a polity, regardless of its historical and political specificity. In this way, a "chain of communication" is built and the name Constitution attains its rigidity. Even though the intrinsic properties of a constitution might change, it would still be called a constitution. For instance, although the Nazi Constitution served as a validator of unbridled state power,[25] even as German parliamentary government faced extinction,[26] it nonetheless gained credence as a constitution. Between 1789-1958, France had as many as sixteen constitutions[27] spanning over five republics.[28] Yet each was no less a constitution than the others, albeit they all varied in their commitment to constitutionalism. Here, the name Constitution is not contingent on the properties of the object. Constitution, as a rigid designator, as a signifier, is not just a function of its properties – constitutionalism to name one.

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[24] Saul Kripke, *Naming and Necessity* (Harvard University Press 1980) 22–71.

[25] *See* Karl Loewenstein, 'Dictatorship and the German Constitution: 1933–1937' (1937) 4(4) The University of Chicago Law Review 537.

[26] Roger B Myerson, 'Political Economics and the Weimar Disaster' (2004) 160(2) Journal of Institutional and Theoretical Economics 187.

[27] Louis Henkin, 'Revolutions and Constitutions' (1989) 49(5) Louisiana Law Review 1023, 1024.

[28] Lorraine Boissoneault, 'Why is France in its Fifth Republic?' (*Smithsonian*, 20 April 2017), <https://www.smithsonianmag.com/history/why-france-its-fifth-republic-180962983/> accessed 4 November 2020.

III. The Unwritten Constitution: The Latent Text And Desire

Upendra Baxi identifies the Constitution with its three "Cs" – namely, the text of the Constitution, constitutional law, and constitutionalism. "C1," more specifically, stands for "the word as the world, the site of initially formulated historic constitutional texts."[29] Missing, however, is an equally incisive formulation laying out how the word constitution, as a signifier, comes about to signify its interpretations. After all, it should be clear by the end of this essay that structural linguistics' initial fault of placing the signifier and the signified in a one-to-one differential relationship would not satisfy the multiple open-textured interpretations of the Constitution. The written text of the Constitution, unless interpreted, is a collection of uninterpreted syntactical symbols.[30] These symbols are so ordered that they logically satisfy the structural rules of language. In the exercise of law-making, the syntax of the text signals its conformity with the principles and processes of legal language, which linguists have identified as a separate genre with its own formal register.[31] The text, at this stage, does not speak authoritatively; for so long as it is not interpreted, it does not speak at all. Once interpreted, on the other hand, the text and its content begin to make sense semantically as well. This interpretation can be guided by the legalistic strictures of statutory interpretation or the everyday use of language. However, interpretation also constructs an unwritten text of the Constitution, distinct from the dormant uninterpreted text. The manifest content of the Constitution is contained in its uninterpreted text, the only written constitution possible.[32] No sooner we try to demystify the text that it enters the symbolic order. As such, the Constitution now has a latent text composed of the attributed meanings of its symbols.

This upsets the textualists' emphasis on a written constitution. Surely, then, the United Kingdom has a constitution comprising an assemblage of case law, statutes, and conventions which is intelligible as a latent text in the symbolic order when interpreted.[33] Conversely, it is equally sensible to hold that the United States has an unwritten constitution by means of interpreting the written text.[34] If so, the content of which text – the manifest or the latent – is necessary to

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[29] Upendra Baxi, 'Constitutionalism as a Site of State Formative Practices' (2000) 21 Cardozo Law Review 1183, 1188.

[30] Michael S Moore, 'Do we Have an Unwritten Constitution?' (1989) 63(1) Southern California Law Review 107, 115–16.

[31] K Haworth, 'Linguistics and the Law' in K Allen (ed), The *Routledge Handbook of Linguistics* (Routledge 2015) 532, 533–34.

[32] Moore (n 30) 117.

[33] Eric Barendt, 'Review: Is There a United Kingdom Constitution?' (1997) 17(1) Oxford Journal of Legal Studies 137, 145.

[34] Thomas C Grey, 'The Uses of an Unwritten Constitution' (1998) 64(1) Chicago-Kent Law Review 211.

understand what the signifier constitution signifies? The answer is neither. It is the poetics of the form taken by the latent text which reveals what is at the "hidden kernel"[35] of the object Constitution. The pertinent question to ask is, why has the manifest content of a constitution assumed the form of a latent text? Why has the reality been transposed to the symbolic?

Freud construes dreams as modes of wish fulfilment occasioned by "a chain of intelligible waking mental acts."[36] To realise the desire enshrouded by the text of a dream, the focus must be on why we dream the way we do, over what we actually dream. In short, the point is not to unmask the content behind the form of a dream, but to analyse the form itself. It is the form in which the manifest content of a dream enshrines the latent thought that directs us towards the hidden desire. Something similar happens in the case of constitutional interpretation: meaning is produced by the excess of symbols in the written text over their latent projections. Any act of legal interpretation presents itself as a pursuit of objectivity. The interpreter seeks to poise her understanding of the Constitution as transcending her positionality. The latent text aspires to a universal and impersonal standard – one whose correctness can be externally verified by deploying the established rules and procedures of hermeneutics.[37] Yet, the search for an objective form of the interpreted text is trapped in an illusion. The more the interpreter yearns for it, the more elusive it becomes.

The fault lines of objectivity in legal interpretation are agitated by two conundrums. First, the manifest content of a constitutional text can be interpreted in any number of ways, and privileging one interpretation over others is itself an instance of subjective decision making. This polysemic challenge to objectivism can, to some extent, be rebutted by arguing that the interpreters of a constitution do not belong to a variety of opposing schools, as in literary criticism, but they owe their allegiance to a single community of interpreters bound by the rule of law. As such, the rules of interpretation are objectively defined.[38] Judges, lawyers, theorists, and other expert interpreters operate within a specific discursive formation, within which meaning is produced by the calculus of power. This unity of meanings is forged at the locale of the discursive apparatus, which in turn is analytically related to the goals of the discourse and its orientation towards other discourses and the social formation at large. Power determines meaning. Yet, one might advance on the contrary that this determination may be objectively observed through "the critical use of linguistic methodologies."[39]

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[35] I will show in a moment how this hidden kernel can be understood as '*das Ding*.' But, provisionally, it will suffice to think of it as the determinant of the Constitution's signification, as something at the very heart of it that makes the Constitution what it is.

[36] Sigmund Freud, *The Interpretation of Dreams* (James Strachey tr, Basic Books 2010) 147.

[37] Owen M Fiss, 'Objectivity and Interpretation' (1982) 34(4) Stanford Law Review 739, 743–44.

[38] ibid 762–63.

[39] Peter Goodrich, 'The Role of Linguistics in Legal Analysis' (1984) 47(5) Modern Law Review 522, 530–31.

Again, we arrive at a point where objectivity of meaning is imparted by the strict rules of legal language. For this objectivity to hold ground, the person of the interpreter, say a judge, must be reduced to an *ideal-type* devoid of human traits and fallibility. As Foucault would say, juridical systems of power mould the subjectivity of their subjects.[40] In the case of objective legal interpretation, the routines that create this subjectivity are banally repetitive, thus producing different but largely homogenous embodiments of the same subjectivity. For example, a judge may have her biases as a human; but the performance of her judicial role circumscribes her subjectivity within jurisdictional rules and standards. Quite officiously, she is "put in place by the forms" of reason and legal rationality.[41] And this figure of the judge, though inhabited by the bodies of different persons, must be constructed similarly for every individual judge. Objectivity, in this sense, stems from a procedural commitment to the rule of law and the methods of legal interpretation. More importantly for us, this façade makes objectivity seem possible, even if it presides over the violent destruction of diverse subjectivities in the preserve of law.

The resolution of the first conundrum announces the second. Every interpretation of the constitutional text is a prescriptive attempt. Its authority borrows from the fact that the interpreters are not lay people but a select community of experts, conversant in the rules and precepts necessary to reproduce objectivity. However, this community after all is populated by humans. The fictional negation of their subjectivity insidiously extirpates individual will in the production of legal knowledge and imposes an "external will" that teleologically facilitates supra historical judgments[42] – enunciations whose sense of time is calculated by the architectonics of precedents. It demotes the existence of an interpreter to the essence of a legal actor, the unconscious of whose language is presumed to be internally shaped by the rules of legal interpretation. The more we try to objectively assess what is it to think like a judge, the further we move from the truth. In Nagel's terms, an external assessment of the judge's objectivity would undermine her own conscious thought process, especially in an endeavour that ultimately purports to grasp her interaction with the text.[43] Her experience of law,

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[40] Michel Foucault, 'Right of Death and Power over Life' in Robert Hurley (ed), *History of Sexuality* (Pantheon Book 1978) 133, 135–159.

[41] Pierre Legendre, 'The Judge amongst the Interpreters: Psychoanalysis and Legal Judgment' in Peter Goodrich (ed), *Law and the Unconscious: A Legendre Reader* (Palgrave Macmillan 1997) 164, 167.

[42] *See* Michel Foucault, 'Nietzsche, Genealogy, History' in Paul Rabinow (ed), *The Foucault Reader* (Penguin Books 1991) 76, 91–92.

[43] Thomas Nagel, 'What is it Like to Be a Bat?' (1974) 83(4) Philosophical Review 435. Nagel argues that an organism possesses consciousness only if there is something that it is like to *be* that organism. Consequently, subjective experience has a 'single point of view' and cannot be evaluated through objective means or reductive materialism. Even if humans manage to physically and behaviourally metamorphose into bats, they will still fail to occupy the *single point of view* of a bat's consciousness and mindset. This implies that the kind of reductionism that diminishes the

which informs the epistemological act of interpretation, is therefore deleted for the want of objectivity. Succinctly put, this is the paradox which disturbs the transmutation of the manifest content of the Constitution to the latent text in the symbolic order. The latent text takes a form which masquerades itself as objective. This objective form yearns for universality. But the more we try to disguise the latent text as objective and universal, the more hopelessly we realise the preponderance of subjectivity.

IV. The Sublimated Constitution: Emptiness, *Das Ding*, And Anamorphosis

There is thus a void, a perpetual emptiness, at the heart of what we ultimately wish to attain by interpreting the Constitution. This is what Lacan calls *das Ding* – or, the Thing.[44] A term borrowed from Freud, *das Ding* is a thing precisely because it is no thing at all. It is an emptiness which is the cause of all our desires. When a signifier signifies a thing, it is a representation of that object in the symbolic order. *Das Ding*, however, is the thing in its "dumb reality."[45] That is, the reality of *das Ding* cannot be signified. It is outside of language and the unconscious. We try to seek the Thing but our attempts are doomed to circumvent it. For it is not some substance; it is sheer emptiness. *Das Ding* is "characterised by the fact that it is impossible for us to imagine it."[46] The failure to achieve *das Ding* intensifies our desire to look for it. *Das Ding* must be *found and continuously re-found*, lest it be lost. It is that which cannot be symbolised, yet human action tends towards *das Ding*.

In a sense, *das Ding* demands pure objectivity. The interpretation of the symbols inscribed in a constitutional text tries to attain objectivity in form. This insistence on objectivity is not an end in itself. To say that an enterprise of legal interpretation ought to be objective for the sake of objectivity in and of itself, would be an awkward argument. Objectivity is merely a formal requirement which enables us to repeat the symbolisation of the Constitution in the same manner time and time again. In other words, the pattern of repetition hailed as objectivity helps us find *das Ding* once and once again. *Das Ding* itself is not an object. Rather, it is the radical alterity beyond the unconscious; the Other which resists signification. *Das ding* is the end,[47] while objectivity is both the means to achieve it and the consequence of this exploration.

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judge's subjectivity to an objective judicial role will always suffer from a failure to grasp her conscious state of mind.

[44] Jacques Lacan, *The Ethics of Psychoanalysis 1959–1960: The Seminar of Jacques Lacan,* Book VII, (Dennis Porter tr, Norton & Co 1992) 35–57.

[45] ibid 55.

[46] ibid 125.

[47] Here, *das Ding* being an end is relative to the idea of objectivity being a method of exploring its domain. This is merely an analytical formulation to understand the relationship between

Although the Constitution cannot be *das Ding*, it can however be raised to "the dignity of the Thing" through sublimation. Through this process, the emptiness of *das Ding* is ostensibly filled with substance through the symbolic object. Constitution, having been sublimated, comes to represent an imaginary representation of *das Ding*.[48] Lacan adduces the example of how something as mundane as a matchbox collection can be elevated to the status of the Thing.[49]

The relationship shared by the subject with the sublimated object exhibits certain key features. First, the impersonal otherness of *das Ding* is assuaged by forging an intimate link with the partial object. The radical alterity of *das Ding*, however, refuses to be symbolised. Larry Bass's behavioural study on political symbols perspicaciously drives home the point. The subject of his study idealises the Constitution and associates it with desirable objects such as "moral self," "father," and "mother."[50] A personalised connection with the Constitution has been established here. Yet, this relationship "makes her feel threatened and uncomfortable" all the same. "Vast, impersonal, faceless," the otherness of the Constitution implies an unknown residue that cannot be interpreted.[51] The desirability of the object, the Constitution, veils the emptiness of *das Ding*. At the same time, there is something remaining of the Other that has escaped symbolisation, and this remainder is closely reminiscent of *das Ding*.

Larry Bass's larger study with 324 subjects lends itself to the second feature. Sublimation paints a sublime, spiritually slick image of the object. In this context, one imagines the Constitution as a splendid creation with only ancillary flaws. This glorification masks the anxiety of penetrating through to *das Ding* and coming to terms with its depthless void. In the symbolising sequence, *das Ding* is circumvented, thus saving the subject from its trauma.[52] The Constitution, likewise, is fantasised as a sublime object. Bass's respondents proclaim the Constitution as a "masterpiece" "which should always be kept sacred." It is seen as a "protector and provider"; a "guardian of our rights." This blinding constitutional faith

objectivity and *das Ding*. If we think of *das Ding* as something regulated by jouissance, its negotiations with desire – as something that sparks desire and is also posited at the end of it – blurs the divide between ends and means.

48 The phrase 'represent a representation of *das Ding*' is not an inapt word play. Since *das Ding* cannot really be signified, an object can represent only a representation of *das Ding* that enters the symbolic order.

49 Lacan (n 44) 114.

50 Larry R Bass, 'The Constitution as Symbol: The Interpersonal Sources of Meaning of a Secondary Symbol' (1979) 23(1) The American Journal of Political Science 101, 108–113.

51 ibid 113.

52 For an illustration, imagine trying to reach the centre of a circle, only to circumvent it at the last moment. This is done in order to save the subject from the trauma of contacting *das Ding*. One cannot tolerate the extreme, inexplicable good fetched by *das Ding*. The poetics of this statement marks the futility of chasing one's desires; for the good that is sought is so incredible that it would, quite literally, drive us insane or psychotic. *See* Lacan (n 44) 73.

exalts the founding fathers to a god-like position.[53] In fact, from the moment of its inception, the American Constitution has been coloured with a symbolism and imagery fitting a civil religion.[54]

Slavoj Zizek explains this sublime quality of the unattainable object of desire as a function of anamorphosis.[55] In visual arts, anamorphosis is a distorted image that discloses its true form only when viewed from a specific vantage point. Holbein's *The Ambassadors* is a popular illustration of this art-form. In short, anamorphosis normalises a certain perspective of visualising the object organised around emptiness.[56] For the Constitution to become a sublime object, we must look at it from an awry perspective. This perspective chooses some particulars from the world of the object and structures them around emptiness, while suppressing and ignoring others. The removal of one such event from the cosmos of the Indian Constitution is the forgetting of the partition, enabled by its complete absence from the text. The silence of the partition in the constitutional text ensures that its symbolism cannot be invoked to vitalise the collective memory of violence. In our constitutional schema, it is only preserved through the post-colonial Indian state's official historiography. The trauma of the partition can be inferred collaterally from the provisions on citizenship, minority rights, and secularism.[57] To see what is not inscribed in the inventory of the Constitution, or the memorialisation of the partition, one has to view it anamorphically through a newborn state's gaze. This places the Constitution in the ideological field of state formation, where the horrors unleashed by the subcontinent's vivisection are stifled to cherish the higher values of national unity and planned development. Baxi invites us to think psychoanalytically about the state's mobilisation of its violent apparatus by using the term "surplus repression" to define it.[58] The rule of law is often used to justify the infliction of state-sponsored violence on subaltern populations, marking them out as unwanted elements in the sanctuary

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[53] Larry R Baas, 'The Constitution as Symbol' (1980) 8(2) American Politics Quarterly 237, 243.

[54] *See,* Sanford Levinson, 'The Constitution in American Civil Religion' in Sanford Levinson (ed), *Constitutional Faith* (Princeton University Press 2011) 9; Thomas C Grey, 'The Constitution as a Scripture' (1984) 37(1) Stanford Law Review 1.

[55] *See* Slavoj Zizek, 'Troubles with the Real: Lacan as a Viewer of Alien' in Slovaj Zizek (ed), *How to Read Lacan* (WW Norton & Co 2006) 61.

[56] Viviana M Saint-Cyr, 'Creating a Void or Emptiness in Lacan' (2012) 1(13) Association Recherches en Psychanalyse 15, 17–18.

[57] Kanika Gauba, 'Forgetting Partition: Constitutional Amnesia and Nationalism' (2016) 51(39) Economic and Political Weekly 41.

[58] Upendra Baxi, 'Law and State Regulated Capitalism in India: Some Preliminary Reflections' in Ghanshyam Shah (ed), *Capitalistic Development: Critical Essays* (Popular Prakashan 1990) 185. Although Baxi does not attribute it, the term 'surplus repression' was coined by the Frankfurt School philosopher Herbert Marcuse – and I am thankful to Oishik Sircar for helping me appreciate this borrowing. Surplus repression denotes the restrictions necessary for social domination, in addition to the basic modifications of the biological instincts required to sustain the Reality Principle at any given point in history. A joint reading of Baxi and Marcuse discloses the unmissable influence of the latter in Baxi's use of the concept. *See Herbert Marcuse, Eros and Civilization: A Philosophical Inquiry into Freud* (Beacon Press 1955) 36–37.

of the nation-state where law remains a sublime object. It is so sublime that the Constitution becomes a "spectacle of emancipation" that prompts the masses to repose their trust in law, while shrouding the state's oppressive acts behind this normalised gaze.[59]

V. The Unattainable Constitution: Surplus And Rigidity In Meaning

While ideological anamorphosis universalises one understanding of the Constitution as the only possible meaning, it also creates a unique subjecthood possessing the instrumentality to make such meaning. For, to view something from a skewed perspective, someone needs to be viewing in the first place. This is done by isolating the object Constitution from oneself as the absolute Other. Baxi's brief take on constitutional hegemony foregrounds my argument.[60] He describes *legisprudence* as the theory of legislation that eliminates the determination of politics from the Constitution's workings. This demarcates a closed ideological sphere, which is realised in various adjudicatory forums. To put in Althusser's language, *legisprudence* carves out the space for an Ideological State Apparatus (ISA) by propounding the principles of legislation – and, by extension, of interpretation – that wither the contingency of politics and create a unified sphere for the "cohesion and reproduction" of courtroom hierarchies.[61] *Jurisprudence* provides a theoretical foundation, thereby giving the ISA its ideological outlook. *Demosprudence* indicates the practices in courts which enhance dissent and democracy, thus allowing judges to speak to the people through the Constitution. For that matter, *demosprudence* details the material praxes of the ISA. The politics of courtroom talk, channelised through the *demosprudence* of legal hermeneutics, perpetuates narratives that preserve the power dynamics saturating the ideological bent of the ISA. These bodies of thought represent how

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[59] *See* Oishik Sircar, 'Spectacles of Emancipation: Reading Rights Differently in India's Legal Discourse' (2012) 49 Osgoode Hall Law Journal 527.

[60] Upendra Baxi, 'Law, Politics and Constitutional Hegemony' in Sujit Choudhury, Madhav Khosla and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (Oxford University Press 2016) 94.

[61] *See* Louis Althusser, 'Ideology and Ideological State Apparatuses' in Louis Althusser (ed), *Lenin and Philosophy and Other Essays* (New York University Press 2001) 85, 98. Althusser mentions courts as an example of Repressive State Apparatus, though 'there is no such thing as a purely repressive apparatus.' After all, we read with Cover that adjudication happens in a field of pain and death (*See* Robert M Cover, 'Violence and the Word' (1986) 95 The Yale Law Journal 1601). However, courts also have an ideological role of reproducing hierarchies through the discursive practices of judging, inasmuch as *legisprudence* offers courts the values of statutory interpretation that ensure their 'cohesion and reproduction.' The poetics of rendering a judgment, courtroom talks, sartorial politics, courtroom architecture, and judicial hermeneutics in general advance certain ideological narratives – not just juridically, but also as operations of productive, divisive, and classificatory power. Functionally through demosprudence, judges use constitutional interpretation as an avenue to project the ideological leanings of courts – as an ISA – onto legal subjects and the masses.

courts, as an ISA, generate consent through hegemony and interpellate individuals as subjects of the Indian Constitution. The Constitution entails a vocabulary of rights, giving the downtrodden a voice for their suffering. But for these rights to be materialised, first an individual subject must be constructed who feels pain and claims rights from the state. At the same time, this subject must subject herself to the Constitution, located as the Other that holds together the ideology of the ISA. In this positioning of the Constitution as the Other, it is approached as *objet petit a*.

Lacan developed the concept of *objet petit a* by expanding on *das Ding*, and though he never wanted the phrase to be translated, it roughly means the unattainable object of desire which we nevertheless seek. Lacan's example of the matchbox collection that demonstrates the workings of *das Ding* might be insightful here. When arranged in a collection with its own aesthetic aspects, an individual matchbox no longer has any definite utility. Nor is it abstracted to a metaphysical function.[62] It is as if the very act of curating a collection produces some sort of pleasure or enjoyment. There is a certain leftover, a surplus, which cannot be symbolised or given a semantic meaning. This surplus without any use value is fashioned as *objet petit a*. And the experience of this residue, the process of collecting matchboxes which exceeds the Real, concisely put, is surplus enjoyment.

We are now finally equipped to answer the question posed at the beginning: what does the Constitution signify? Gary Jacobsohn writes that the identity of a constitution is based on the text's interaction with the experiences of its subjects.[63] The dynamic identity of the Indian Constitution, therefore, is a testament to the multidimensional trajectories of the postcolonial state, marked by (pseudo) momentous breaks and contested divergences. A cherished value like secularism has been disputed in the electoral sphere,[64] rethought in the articles of faith,[65] yet disowned by populistic nationalism. From *Suresh Kumar Koushal*[66] to *Navtej Singh Johar*,[67] the idea of constitutional morality has risen over the prejudices embedded in our social commonsense to acknowledge an undeniable facet of human sexuality. And how can one deny the judiciary's novelty in its championing of Public Interest Litigation/Social Action Litigation to make room for the marginalised

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62 Lacan (n 44) 114.

63 Gary Jacobsohn, 'Constitutional Identity' in Sujit Choudhury, Madhav Khosla and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (Oxford University Press 2016) 110.

64 See *SR Bommai* v *Union of India* (1994) 3 SCC 1.

65 *See* Ronojoy Sen, 'Secularism and Religious Freedom: Introduction' in Sujit Choudhury, Madhav Khosla and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (Oxford University Press 2016) 885.

66 See *Suresh Kumar Koushal* v *Naz Foundation* (2014) 1 SCC 1.

67 See *Navtej Singh Johar* v *Union of India* (2018) 10 SCC 1. It is a valid criticism of *Navtej Singh Johar* that the text of the judgment does not illuminate much on an independent subjecthood for sexual subalterns and, therefore, operates within the same hegemonic structures.

masses in the life course of the Constitution?[68] However, these are all performative identities of the Constitution. It acts them out from time to time, but these values are not fixed points of reference to identify the Constitution.

Behind the grand narratives of these high constitutional values (secularism, constitutional morality, constitutionalism, etc.) lies the rigid designator "Constitution." As a signifier, it does not necessarily signify these identities. It is a master signifier; a signifier without a signified; one that refers to itself. It acts as a node around which the field of signifiers stabilises. As a master signifier, it quilts the free-floating elements and crafts a chain of signifiers.[69] It is around the master signifier "Constitution" that its diverse identities are fixed. The answer to the question what the name Constitution refers to, is this: the Constitution refers to itself. Meaning, in turn, is constituted in the field of this master signifier when values such as secularism and constitutionalism are symbolically attached to it. A constitution might seem like a signifier denoting a sense of legal and socio-political normativity. "Constitution signifies secularism, equality, democracy and fundamental rights," is a reasonable formulation on the face of it. But this does not explain why the word has survived through qualitatively and temporally differentiated historical phases. The correct formulation would be to invert the statement here: "secularism, equality, democracy and fundamental rights are dear to us because we associate them with the Constitution." The Constitution first designates itself in the symbolic order. Then, through the process of interpretation, by displacing the uninterpreted symbols of its manifest text to the interpreted latent text, we fix meaning around the master signifier. The by-product of this operation of quilting is a certain surplus.[70] This is the residue which cannot be interpreted; the part (or non-part) which resists symbolisation. At the kernel of this unknowable surplus is the cause of our desire to discover newer constitutional identities. This is the emptiness of *das Ding* that needs to be relentlessly internalised in the symbolic order and studded with meaning. *Das Ding* – and later *objet petit a*, the surplus – ensures that there is always something more to the Constitution than the meanings we assign. This gives the name Constitution its rigidity. Constitutionalism in India, for instance, might have undergone wide-ranging changes, but the unattainable surplus of the object Constitution has sustained the name through various counterfactual configurations of meaning and non-meaning.

As liberating as this vision of the Constitution sounds, its potentialities are inhibited by the juridico-deductive logic of law. We read with Cover how the narrativisation of legal texts produces a multiplicity of meanings, as is with the

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[68] Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' (1985) 4 Third World Legal Studies 107.

[69] *See* Slavoj Zizek, *The Sublime Object of Ideology* (Verso 2008) 95–96.

[70] ibid 106–08.

Constitution.[71] Yet, law attempts to suppress some of these meanings and impose a single legal order. The social organisation of law is premised upon an idea of coherence where certain meanings are retained and the contesting ones are either discarded or modified to suit the normative preferences of the legal system. The logic of law will always resist the identification of radically disruptive visions with the Constitution. Rahul Rao observes how imaginations of Adivasi homelands and Kashmiri self-determination can never fully incubate within the constitutional sphere.[72] Beyond the surplus produced while interpreting the constitutional text, there is another kind of excess that banishes the nation-state's opponents from this equation.

VI. Conclusion: Building The Constitution As The Other

While moving the Objectives Resolution in the Constituent Assembly, Nehru metaphorised constitution-making with building an edifice.[73] If I attempt to read between the lines, his speech hints at a lucid conclusion to this essay. Nehru began by pronouncing his wish to "erect the edifice of a constitution." Even before the framers started building the edifice, it had a definite name – the Constitution. Its foundations stood on the "strength of the people." Nehru seems to be making a straightforward point: that the meaning of the Constitution does not follow exclusively from its text, and that it is determined by the agency of its readers. The authors are constrained by politics acting as the "strength behind" the process of drafting.

Brick upon brick, the edifice had to be built with "mature consideration." The bricks – "justice," "equality," "freedom," etc. – could be arranged in a number of permutations, but the final structure remained the Constitution. As a master signifier, the Constitution held together the field of signifiers, fixed each brick at its place, and facilitated meaning out of them. The moment that one nail, the master signifier, would be removed, the whole building would collapse. Moreover, Nehru felt that the edifice of the Constitution was being built around a void – the absence of Gandhi. Thus, once erect, the building had to house his "ideals." In other words, the Constitution veiled the emptiness of *das Ding*. *Das Ding* is the Other – like the spirit of Gandhi away in a "far corner of India." Through sublimation, the Constitution could be made to represent the spirit's traces in the realm of the symbolic. There appeared to be a "hovering" presence of his "spirit" in the Assembly. Yet they circumvented direct contact with it – with *das Ding* – by reducing Gandhi to an essence of his "ideals," which helped in cultivating sublime spiritual guidance. The edifice was extolled as a symbol of the "passions

[71] Robert M Cover, 'Foreword: Nomos and Narrative' (1983) 97(4) Harvard Law Review 4.

[72] Rahul Rao, 'Nationalisms by, Against and Beyond the Indian State' (*Radical Philosophy*, 2020) <https://www.radicalphilosophy.com/commentary/nationalisms-by-against-and-beyond-the-indian-state> accessed 4 November 2020.

[73] Nehru (n 1).

in the hearts of the masses." The Constitution, accordingly, was imagined as *objet petit a*, the unattainable object of desire (rephrased as "passion") that produced a surplus which could not be symbolised. Nehru lamented that although the Assembly was entrusted with expressing the people's will, the conditions enforced by the British government restrained it from succeeding. The idea is to not get lost in the exact words and focus on the affect. Nehru's words evince a certain feeling of futility; for the Constitution, the *objet petit a*, could never be fully integrated in the symbolic archive of postcolonial development. This residue, eluding symbolisation, ensures that although the bricks of the edifice might be altered – and the values of the Constitution might morph according to changing times – the unknown surplus would forever fuel our desire for something beyond the text and context of the Constitution. Rigidity of the signifier Constitution would thus be achieved.

I cannot fathom a fairer end to this essay than a provocation to think more about the Constitution within the frames set here. If we now know that the Constitution means nothing but itself, it might be worthwhile to take this as the starting point in complicating the social, legal, and political modalities of the text. If the Constitution is posited as the Other, do we not owe an ethical responsibility to follow and care for it? As Levinas would argue, the Other, insofar as exceeding its idea in us,[74] itself is a subject around whom we organise our subjectivity; a subject to whom we owe the same ethical responsibility that we would like others to owe to us.[75] Does ideological anamorphosis imply that those marginalised and secluded from the normalised gaze can gain visibility only by abandoning the visualisation of the object Constitution altogether? In a nutshell, is the rejection of constitutional polity for anarchy the only way to realise the emancipatory benefits of values like equality, justice, and democracy? At the same time, will the master signifier Constitution also fix something so inconceivable as anarchy within its field?

[74] Emmanuel Levinas, *Totality and Infinity*: *An Essay on Exteriority* (Kluwer Academic Publishers 1991) 50-51.

[75] ibid 199–200.