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AND THE
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DESTRUCTION

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The *Trimurti*¹ of the State: state violence and the promises of order and destruction²

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Abstract

The paper traces the shifts in the moral economy of state violence that have occurred in recent years in connection with global reformulations of security and threat. There is a deep ambivalence towards state killing. It is perceived as promising order and is at once a sign of chaos. The paper traces the contradictory treatment of the so-called encounter killings in public debate, in conspiracy theories, in Bollywood films and in the self-depiction of the police. The violent state here is at once the vigilante, saving the nation from doom, and the outlaw who thrives on the destruction that threatens the nation. State killing is simultaneously perceived as the symptom of state crisis and it is longed for as rescue from that very decay.

The paper puts forward the thesis that the deeply ambivalent perception of the state and its violence is today being overcome through new ideologies of national welfare that focus on unity and security. New notions of order converge with new notions of the 'dangerous' other. Security and self-defense become primary in the justifications of state killing and are central to the legitimacy of rule. This revival of Hobbes and the new concentration of political legitimacy on security link into global discourses of security.

¹ The *trimurti* represents the three aspects of God, Brahma, Vishu and Shiva, who personify and control the three functions of creation, preservation and destruction.

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Introduction

There are many forms of state violence in India, differing in their public visibility, their every day nature or exceptionality, their relation to law and their methods and targets. This paper concentrates on the so-called encounter killings, those incidents of police shooting that are officially self-defence in shoot-outs between the police and alleged criminals or terrorists. Unlike the more clandestine types, ‘encounters’ are a rather public form of state violence. They bring to the fore ambivalent perceptions of different sections of society of the legitimacy, necessity and justness of state violence and its relation to the differing images of the state and its responsibilities. In their contradictory treatment in public debate, in conspiracy theories, in Bollywood films and in police lore we find the double life of the killing state: it is at once the vigilante, saving the nation from doom, and the outlaw who thrives on the destruction that threatens the nation. State killing, in its avatar of the encounter, is perceived as a symptom of state crisis, as the sign of the utter decay of public institutions; but at the same time it is valorised as the last resort for an embattled society, as salvation from that very decay. Encounter killings embody both the promise of security and the threat of the criminalisation of the state. They are perceived as symptom and solution.

The triple idea of the state in India as exercising rightful control and being responsible for security (particularly national security), as providing rights and entitlements and as a tool, an instrument in the murky dealings of power, produces a deep ambivalence towards state violence. State violence is considered the right and duty of the state as much as it is a sign of its decay. It is abhorred and it is demanded. It is perceived as promising order and signalling chaos.

Hobbes and Locke have both entered the public imagination of the Indian state, albeit via different routes. The Hobbes in the heads is often attributed to the legacies of the colonial state. However, as Hussain reminds us, we should not be surprised at this continuity: “To the extent that the concept of emergency is deeply inscribed into the legal condition of the modern state and its raison, the arrival of the nation – that is, the move from the colonial to the nation state – is hardly sufficient to escape its operational logic” (Hussain 2003: 140). Thus, the vision of the Hobbesian Leviathan is inherent in all legitimations of the state and of state-ness itself. At the same time, Locke is there in the heads as well – albeit not the liberal Locke of a minimalist state but a socialised one, in which the rights that citizens hold towards and against the state are manifold and encompassing. As many have stressed, the ‘idea of India’ is also an idea of rights and entitlements towards the state, a state that has to fulfil its function towards its people. “The state (...) was transformed from a distant, alien object into

one that aspired to infiltrate the everyday lives of Indians, proclaiming itself responsible for everything they could desire” (Khilnani 1999: 41). That idea was the founding myth of independent India and central to the anti-colonial project (Chatterjee 1995: 216). The expectations and norms of governance that accompanied the promise of state development, also entailed the legitimacy of the Lockean right to rebel. This was affirmed at the outset, through the mass mobilisation of the independence movement. Thus, the idea of the paternalist state which provides for its citizens is matched by that of the citizen who enjoys rights vis-à-vis the state, including the right to rebel if the state does not live up to its function as provider.

The legitimacy of this right to rebel was not borne out by legal regulations, however, these institutionalised the providing state as well as the Leviathan in a combination that Jalal terms “bureaucratic authoritarianism” (Jalal 1995: 18). However, the deepening of democracy and the proliferating rights discourse always kept alive the idea of the right to rebel – as much as they were, themselves, the result of an active assumption of this right.

The contradictions arising from the unfulfilled promises of the state as provider and the source of order bring to the fore the third idea (and experience) of the Indian state, that of the state as an instrument, a tool for furthering interests and power. This is the everyday experience of the state which Brass characterises as the (pre-Leviathan) “Hobbesian state of war” (Brass 1997: 273) in which there “are a set of formal rules and practices obeyed by few, a set of informal rules and practices followed by most and a lack of legitimacy attached to both because the first are known to be ineffective and partial while the second set no limits to extortion” (ibid.: 279).

The moral economy of state violence, this is the claim here, sways between these images, the benign, paternal and malign one. It is the *trimurti* of the Indian state that is destructive at the same time that it is creative and that it preserves.

The analysis of the perception of encounter killings also brings to the fore the relation between institutional, political and economic change and forms of state violence. The deeply ambivalent perception of the state and its violence is today being overcome through new ideologies of national welfare that trigger two shifts in the legitimacy of state violence. Firstly, due to the increasing predominance of security over development concerns, there is a shift from the socialised Locke to the Hobbesian Leviathan in the perception of the state and its duties. Secondly, due to the re-conceptualisation of the nation in Hindu nationalism as defined by culture rather than by territory, there is also a re-conceptualisation of citizenship and civic rights from a republican to a cultural-nationalist definition. New notions of order converge with new notions of the ‘dangerous other’, of the sources of crime and conflict and their

location outside the community. Security, self-defence and revenge become dominant in the justifications of state violence in general and state killing in particular. Security and defence are central to the legitimacy of rule. This new concentration of political legitimacy on security draws on global discourses of security. The perception of the killing state as the vigilante saviour is gaining ground in an international climate that valorises violent vigilance.

I. Legitimations

‘Encounter killing’ is the colloquial term for the (civilian) deaths that result from what, in official nomenclature, is termed an exchange of fire.⁴ Such encounters are frequent in India; they are very common in areas with insurgent militants, like Kashmir and the North East, but also in areas where there is a Naxalite presence, and they are very common in the cities, there targeting alleged terrorists and alleged members of criminal gangs. In 1999, official statistics (for what they are worth) count about 650 civilians who died in encounters (Crime in India 1999: 381).⁵ However, the National Bureau of Statistics does not clearly distinguish the different situations in which firearms are used by the police. All use of firearms falls into the broad categories of ‘riot control’, ‘anti-dacoity operations’, ‘against extremists and terrorists’ and ‘other events’. Encounters are often the mode of killing particularly in anti-dacoity operations and against suspected extremists or terrorists. The latter category accounts for 52.5% of the total deaths, the most frequent occasion for state killing (Crime in India 1999: 379).⁶ Among the cities, Bombay is the capital of encounters. In 1999, according to official numbers 83 people died from police bullets in the city. But 1999 was a quiet year: statistics from 2000 observe a 12 % rise in the need to use firearms by the police throughout India. This, the office explains, is due to the “growing violence by terrorists, insurgents and dacoits” (Crime in India 2000: 371). 102 people died in Bombay alone (Crime in India 2000: 373).⁷

Officially, the police shoot in self-defence. According to public statements and media accounts, they always shoot *back*. Usually when an encounter occurs the story goes that in the wee hours of the night a white Maruti drives up at a certain place where the police have laid a

⁴ In 2002 then Police Commissioner of Mumbai M.N. Singh changed the official expression to ‘operation’.

⁵ This seems a conservative estimate. The office counts 175 killed in the state of Andhra Pradesh, 135 killed in Jammu and Kashmir and 113 killed in Maharashtra.

⁶ Custodial deaths are also very frequent. Most occur in judicial custody rather than in police custody. Maharashtra with the highest rate of custodial deaths counted 104 deaths in judicial custody and 19 deaths in police custody in the year 1999-2000 (Menon 2002: 56).

⁷ Newsline published a comparison of the numbers of people killed in Bombay by the police, and those killed by the ‘underworld’ and came up with the following numbers: in 1998 52 people were shot in encounters by the police, 48 died of the bullets from the gangs; in 1999 the police killed 60 and the underworld killed 65; in 2000 the police got the upper hand again killing 49, while the underworld murdered only 15; in 2001 the police shot dead 98 persons while 35 fell victim to the bullets of the dons (The Sunday Newsline, 31.3.2002).

trap. The expected criminals or terrorists open fire when they discover that they are about to be arrested. The police ‘retaliate’. All alleged criminals die on the spot or on their way to hospital. The policemen involved are hardly ever even injured.⁸

However, beyond the right to self-defence guaranteed under Sec. 97, 100 and 103, the police refer to the clause 46.3 of the Indian Criminal Procedure Code (CrPC), which states, in a double negation, that policemen have *no* right to cause the death of a person who is “*not* accused of an offence punishable with death or imprisonment for life”; which they read as saying that if a person accused of a crime punishable by death or life imprisonment resists arrest or attempts to evade arrest then they do have the right to shoot to kill. They thereby claim not only the right to self-defence but also the duty to prevent those accused, or sometimes only suspected of a heinous crime, to escape their rightful punishment.

There is, on the one hand, the professional logic that requires a culprit for any crime so that the statistics of policing do not get unfavourably imbalanced. Crime control is at the heart of every policeman’s professional identity. Their professional duty is to protect society from the threats of crime and disorder. While a low crime rate is good for police image, a low crime solving rate is disastrous.

There is on the other hand, also the logic of ‘justice’ at work here. The guilty must be punished, lest they profit from their evil doing. No crime should go unpunished since that would be an injustice and open the door to the corrosion of society by crime. When the police refer to self-defence to explain and justify encounters they imply not just their personal self-defence but also the self-defence of society as a whole for which they take responsibility.

Policemen brag about the number of alleged criminals or alleged terrorists that they have arrested, exiled and ‘encountered’. Those who have fought crime effectively are the heroes of the corps. There are the so-called ‘super-cops’: Julio Ribeiro, who is attributed as having introduced ‘encounters’ into police practice in the early 1980s;⁹ K.P.S. Gill who squashed Khalistani terrorism in Punjab by introducing extremely harsh policing manners, and D. Shivanandan, whose efforts were eternalised in the Bollywood film ‘Company’, which deals with international networks of organised crime. Then there are the so-called ‘encounter specialists’, those that have the most shoot-outs to their credit. They inspire awe and envy within the corps. The media, too, pays homage to their achievements: “Sharma, 38, has an enviable track record in checking crime. He has been involved in 72 encounter killings and

⁸ Crime of India reports the death of 790 police personnel in the year of 2000; most of them died in anti-terrorist operations in the state of Jammu and Kashmir, as well as those states, like Bihar and Madhya Pradesh with a strong presence of Naxalite groups. In Maharashtra two were killed by “criminals”, and six by dacoits. In Bombay, despite 102 civilians killed in encounters, no policeman was killed (Crime in India 2000: 378).

⁹ Ribeiro today rejects encounters as a valid means of crime control. He openly criticised former deputy Chief Minister of Maharashtra, Gopinath Munde, for publically endorsing them.

has arrested 400 criminals in his 18-year career,” states *The Week*¹⁰ of Pradeep Sharma, one of the Bombay encounter specialists, for example. *The Times of India* describes the encounters of specialist Daya Nayak as “Nayak’s Big Hits”.¹¹

The media takes up the theme of protecting the public: “The fact is that encounters are not the problem but merely a symptom of the collapsing system of justice and of the public demand for quick solutions to the law and order problem (...) when the police take recourse to extra-legal tactics to make up for the deficiencies of law and legal procedures, they are trying to remedy the inadequacies that they did not create” tells us the *Statesman*¹² shortly after the infamous encounter at Ansal Plaza in South Delhi raised many questions.¹³ The justification of encounter killing by reference to the inefficiency of the criminal justice system in getting alleged criminals behind bars in a way confirms the open secret that encounter killings do not just occur out of an immediate need for self-defence, but also in the context of a larger conception of social (self-)defence.

Not the ‘fake’ nature of an encounter would necessarily make it less legitimate. The assumption is wide spread among the police that ‘the common man’ can only be protected by resorting to extra-legal means of combating crime. “It is better in the larger interest of society to eliminate a known criminal than to allow him to roam free and kill 100 innocent persons. ‘It is better to destroy evil than to allow it to nurture and spread in society’,” proclaimed police officer Satyapal Singh, acclaimed for many encounters in Bombay, citing the *Bhagawat Gita*.¹⁴ Until the National Human Rights Commission complained about the frequency of encounters in 1997,¹⁵ the police made no secret about ‘staging’ them if necessary. “Encounters are an effective way of dealing with criminals specially (sic) when the courts are unable to provide speedy justice,” a ‘top police official’ is quoted as saying.¹⁶

¹⁰ *The Week*, 10.2.2002: “Living on the edge.”

¹¹ *Times of India*, 15.2.2003.

¹² *The Statesman* 19.11.2002: “Police Encounters.”

¹³ The Ansal Plaza encounter became famous because of one doctor’s struggle to give testimony about the event. He claimed to have witnessed the encounter and stated that the victims had been unarmed, and that the shooting had been a fake encounter. The government and the police departments employed several strategies to undermine his testimony and his credibility.

¹⁴ Quoted in *Asian Age*, 15.3.1997. The *Bhagawat Gita* is, in short, that part of the Indian epic, the *Mahabharata*, in which Krishna talks to Arjuna of his Dharmic duty to go into battle.

¹⁵ The complaint by the National Human Rights Commission followed the death of two businessmen in Delhi who had been mistaken for criminals and shot point blank after being pulled from their car. In 1997, a peanut vendor, Abu Sayama, was abducted and killed by the police, again in a case of mistaken identity. These cases threw light on the methods of encounter killings and although the judge sitting in the writ petition against the policemen responsible for the death of Sayama set them free, the incidents sent a note of caution to police headquarters in terms of justifying the encounters. Public perception of the legitimacy of the encounters changed for some time.

¹⁶ *Times of India*, 18.4.1997.

Law, Delays and Crime

This critique of the judiciary is aimed at the criminal justice system, which is lamented as being far too inefficient, far too cumbersome and therefore inept at fulfilling its duties to protect the citizen from the dangers of crime and, increasingly, terrorism. “The system devised more than a century back has become ineffective; a large number of guilty go unpunished in a large number of cases; the system takes years to bring the guilty to justice; and has ceased to deter criminals. Crime is increasing rapidly every day and types of crimes are proliferating. The citizens live in constant fear” concludes the Malimath Committee (2003: 46) which was instituted to find strategies for the reform of the criminal justice system.¹⁷ Such estimations are frequent; there is widespread despondency about the state of the judicial system in India. Politicians, jurists and the police, all despair at what they see as a fundamental threat to the rule of law. In public perception too, the courts have lost the ability to ensure that the law prevails.

The Indian courts have always been held in high esteem. They are considered to be relatively independent and fair. In fact, they have often been attributed with a prominent and active role in achieving the promises of Independence. High hopes were pinned on law as an instrument for social transformation and the higher judiciary took up the challenge that arose from the severe inequalities in Indian society.¹⁸ However, at the same time the Indian courts are considered inefficient to a degree that they become irrelevant. In India many legal suits, civil as well as criminal, take years to be concluded. Ten years is the norm for any ordinary case. Procedural rules make frequent postponements and repeated appeals possible (Moog 1992). Partly due to the long duration of the cases, conviction rates are very low. They hover at around 6 % in cases regarding ‘heinous crimes’.¹⁹ Former Union Minister of Law, Arun

¹⁷ World Bank programmes have come up with suggestions for legal reforms that are to speed up adjudication in the spheres relevant to economic transactions. In the sphere of criminal law, express courts have been introduced and the Malimath Committee is suggesting measures to ease the persecution of crime.

¹⁸ On the history of the judiciary and its role for promises of development, welfare and justice in independent India see Baxi 1987; Sathe 2002.

¹⁹ The judiciary holds that their frequent acquittals of accused are due partly to shoddy investigations by the police that make it impossible to prove someone’s guilt ‘beyond reasonable doubt’ as law demands. The police counter that their investigation is hampered by the long duration of the trials, which means that their case against the accused is weakened: witnesses withdraw their statements simply to be rid of the endless duties at court; they move and are not to be found again, evidence material disappears or rots away in the humid air, but most dangerously they say, accused who are free on bail use the opportunity to destroy evidence, intimidate witnesses and force them to ‘turn hostile’ or pay the police, the judge or the witnesses to change their evidence. The police feel shortchanged by law itself: They detest the fact that confessions to the police are not admissible in court; they detest the rules of evidence and proof that to them seem to suggest distrust in their work and their integrity. Moreover, they detest the fact that, to their mind, ‘the common man’ suffers while those that corrode the social fabric with their criminal deeds enjoy the protection of the law in that their crimes have to be proven beyond reasonable doubt. The Malimath Committee, set up to suggest reforms of the criminal justice system, has largely adopted the reasoning of the police and has suggested, for example, that confessions to the police should be

Jaitly, pronounced that “the low rate of conviction leads us to the conclusion that crime in India is a very high profit and a low risk proposition. You commit a heinous crime and there is a 93.5 % possibility that you will get away with it.”²⁰

This perception of the impunity of crime and the profit to be made from it triggers fears of a society lost to crime and corruption. Where deterrence is perceived as failing because the institutions of deterrence are too slow, too ineffective or simply too cautious in terms of sticking to the principles of rule of law, society stands unguarded. The image of the law as aloof from the woes of the common man here gains yet another twist. The public perception of the inefficiency of the judicial system has time and again triggered public debates on the legitimacy of alternative methods of combating crime. Given the perception of a society corroded by crime, encounters won widespread public legitimacy. This was not restricted to the urban middle classes, who perceived their world as increasingly threatened by crime (rather than poverty, hunger and inequality that were, besides Pakistan, long considered to be the prime enemies of the Indian nation). In rural areas, too, where citizens are much more exposed to the other threats to life and welfare, encounters were considered a legitimate way of dealing with those who threatened the livelihood of the ‘common man’. As one Indian Police Service (IPS) officer who had been stationed in a rural district of Uttar Pradesh, recounted: “Villagers always asked me: ‘Why don’t you encounter them!’”²¹

The fear of crime is thus prevalent throughout society. The concrete fears, of course, differ and so do the experiences of crime. They depend on social class, caste, religious background and they also differ between the city and the countryside, as both face different forms of crime and violence. Social background and specific fears are related by the fact that different groups become victim to different types of crime. But group specific fears are also shaped by the different relations between media representations of crime and experiences of it that prevail in different social settings. One of the starkest differences lies in the perception whether the police is as much a threat as those categorised as criminals. Especially the poor, and all those living in slums will have encountered police violence in some form or another, or at least know of people that have become the victims of police violence. Members of minority communities, Muslims or Dalits, and among them particularly their young men, will face police harassment much more often than others. However, even those groups that will hardly ever become victims of police violence, such as the upper middle classes, consider the police

admissible as well as changing the conditions of evidence from ‘beyond reasonable doubt’ to one of the court being convinced of its truth (Malimath Committee Report 2003: 48).

²⁰ Arun Jaitly quoted in *The Hindu*, 10.11.2002 “Justice denied”.

²¹ Personal interview November 2002.

force one of brutality and corruption. But, perceptions of crime and of the role of the police depend not only on class but also on events of crime and police violence.²²

The belief in the law being a remedy is stratified in a contra-intuitive way: while the disdain for legal procedures is high among those classes that have rather easy access to the courts and can afford a lawyer, those social groups that need to defend themselves against the state, and particularly against the police, put the highest hope in legal means. 'We have no alternative'²³ they feel, since most other means (such as political patronage or money) are not at their disposal. However, their hope in law as a weapon stems from it being a weapon against state agencies itself rather than as a means of combating crime. There the perception that the system is failing is omnipresent.

Despite the social differentiation of these perceptions, in the urban context the use of extra-legal measures by state agents appeared as increasingly justified for the protection of society from the threats of crime and terrorism, lest the whole system should collapse. In *Satya*²⁴, a Bollywood film from 1998 that tells the tale of the battle between two gangs in Bombay, which was perceived by many viewers from the city as being 'so realistic!', this reasoning is expressed in a dialogue between the reluctant police commissioner and a desperate politician:

New Commissioner: What happens is that we arrest them and they get released later. If they get arrested then they will operate from inside the jail. And if they escape, they will operate from abroad! And we cannot do a thing. The amount of money we spend on their extradition is not even asked for extortion by them! And then there are people like Bhau who operate openly. Because they know very well how to break this system! Sir, I think there is no solution to this problem.

Politician: a law protector cannot have the attitude of a law breaker.

New Commissioner: Then don't blame us. They can do anything because they transgress the law. And we cannot do a thing because it is the same law that stops us! Simple.

Politician: I admit the law must have bound your hands many a times. But the fault does not lie with the law. The framework of our democracy is such. Democracy has given our citizens some basic fundamental rights. Men like Bhau violate these rights and mock democracy. But it's the limit now! Rampant squabbles, hooliganism, threats. The public is getting terrified now. Of what use is the law which cannot protect the citizens? Mr. Commissioner I give you a free hand. Do anything. But please, clean the city. (*Satya* 1998)

The police then go on to 'clean the city', shooting dead many a criminal until the criminal hero is vanquished and shot dead on the doorstep of his beloved.

²² Events of course also imply certain social divisions, for example, who is a victim of crime and who a potential victim of police violence.

²³ Interview with a member of a Muslim group organising legal advice for their neighbourhood.

²⁴ *Satya*, literally 'truth' is the name of the hero of the film as well as its title: *Satya - the other side of truth*.

The Nexus

It is not only the inefficiency of the judiciary, however, that is, in the perception of many policemen and their contemporaries, the enemy of the righteous but also certain provisions of rights for the accused. Above all it is 'politics'. "You cannot imagine under what pressure we work. Even when we arrest a local thug, there will be immense political pressure to release him," the 'encounter specialists' of the Bombay police force are quoted as saying.²⁵

India is a highly politicised society. For a growing number of Indian citizens, political organisation is a means for the articulation of interests. However, despite this active participation in the democratic process, particularly by those social groups which were, for long, excluded, such as the rural poor, women and lower castes, there is a widespread distrust of the political class. 'Politics corrupts even the best', feel many voters. The infamous 'criminalisation of politics', that is, the entering of well known personalities with criminal antecedents into the political game, as well as the increasing use of criminal means for political profit, is one of the favourite themes discussed from the tea stalls to the universities. What the public observes is the perversion of democratic procedures (Kothari 2000) the blatancy of corruption pervading all spheres of public life (Chowdhury 1996; Gill 1998; Visvanathan and Sethi 1998), the apparent increase in political violence (Kohli 1990) and the evident fact that the majority of the Indian population is still, after 50 years of independence, among the poorest in the world, without access to clean water, electricity, healthcare or education. It is a "failure of governance" (Sen Gupta 1996; Chopra 1996) that leads to the predatory use of public goods and public funds, of public office and of the state.

The disdain for the political class takes different forms. Apart from activist circles which engage in extra-parliamentarian oppositional politics, in large parts of the urban middle classes a generally anti-political attitude prevails that expresses itself also in the abstinence from voting or other forms of political engagement (see also Hasan 2003: 155, 162). The lower classes are highly politicised and very much in support of democracy as a system and their democratic rights, but they are at the same time highly sceptical of politicians, many feel that 'power corrupts even the best'²⁶ even though some politicians are adored in outright personality cults. In right wing Hindu nationalist circles there is a general opposition to democracy, which is seen as creating disorder and disagreement. Their political model is one of a harmonious organic body politic. They are, of course, engaged in the political sphere using the same methods and have therefore lost their image of 'purity' among their supporters.

²⁵ The Week, 10.2.2002: "Living on the edge."

²⁶ Interview with a Muslim doctor working in a slum in Bombay.

12 bomb blasts shook Bombay on March 13th, 1993 in the aftermath of (and as the Muslim led mafia gang retaliation for) the pogroms against Muslims that had ravaged the city the previous winter. After it became obvious that these had involved the collaboration of a diffuse network of criminal gangs, police and customs officials and their political patrons, a commission was instituted to investigate the so-called '*nexus*': the alliances between organised crime and politics. The report by N. N. Vohra, former Home Secretary of India, found such deep involvement by politicians in organised crime all over India that it was barred from publication. Only its general conclusions were made publicly available in 1996. Therein Vohra observes: "The various crime syndicates/Mafia organisations have developed significant muscle and money power and established linkages with governmental functionaries, political leaders and others to be able to operate with impunity" (Vohra Report 1996: 10).²⁷

The perception of the criminalisation of politics feeds into and is born of a sense of deep state crisis. The experience of state crisis is not new and has accompanied perceptions of the state for long time, certainly since Indira Gandhi changed the institutional fabric through her Emergency. It has always been experienced as acute, as a slide into the abyss, as a downward spiral that spins the body politic away from 'the good old times', a golden age of the Indian state. The historic location of the golden age differs according to political affinities but for many, the precise onset of decline is connected with the Emergency from 1975 to 1977. Although there are many who consider the years of authoritarian rule by Indira Gandhi as the time when 'the trains were running on time', others reflect that the centralisation of command and the abolition of party-internal democracy produced an increasing dependence of civil servants and the police on their direct political masters and the onset of corruption of many kinds.

In this situation, state killing is perceived as a stand against the murky networks of politics and crime, both for the police and in the understanding of many a 'common man'. In 2003 police officer Jogesh Pratab Singh published his angry novel 'Carnage by Angels', in which he asserts that corruption is the force of evil, the true killer in society and the true violator of human rights.²⁸ Against corruption, he implies, you have to be brutal – brutality and corruption here are opposites:

²⁷ On June 2nd, 2002 the Supreme Court of India passed a judgment granting the rule of the Election Commission, that election candidates had to declare their assets and assert their criminal convictions, if any, constitutional validity. All political parties protested against the ruling.

²⁸ He tells the story of a faithful wife who burns herself to death because her husband has even gambled away her jewels, to the profit of the gambling dens and the police who take their share.

He realized that the police had forfeited its brutish constitution for worldly expediences. For, many of its men had already gone into an easy life given to pleasure, with so much money coming from the vice dens (...). Physical abuse was not a paying undertaking (...) human rights activists would spur themselves to create a hype in the media, and even move the courts (...). Police knew that in torture was no money. But without it there was money all over. (Singh 2003: 46)

Brutality, as “an imperative to squelch discords” (ibid.) has given way to corruption and exposed society (and particularly its defenceless women) to the “death game” (ibid.). It is aided in this by the “featherbrained comprehension” (ibid.) of human rights activists who do not understand where the true forces of evil operate. His hero, IPS officer Raghu Kumar, however, is out to save society from the threats of corruption. He fails in the end, vanquished by the *nexus*.²⁹

Police brutality here acquires a vigilante role; it saves society and social order by breaking its laws. Such a vigilante role is also expressed by the police commissioner in *Satya*. He explains to his wife:

“Have you ever wondered where these people talking about Human Rights disappear when the mafia blatantly kills innocent people! Nobody holds placards then, saying policemen are murderers, butchers! Even a butcher slaughters a goat only because people eat it! Why do you point a finger to the butcher? And we do not enjoy slaying anybody! We do not make criminals, Jyoti, the system does. Until the system gets rectified, someone will have to clean this filth! And today, under the prevailing conditions, I am doing that Job. That’s it.” (*Satya* 1998)

II. Experiences

Due to the rather routine manner of encounter procedures, that is, the well-nigh identical sequence of events reported to the press every time, nearly every encounter killing is surrounded by the suspicion of being a *fake encounter*, one that has been staged and does not involve an exchange of fire or the genuine necessity of self-defence on the side of the police. The suspicion is that the police pick up a person whom they suspect to be a criminal and execute him either because they simply need a culprit for a crime, because they cannot provide enough evidence against an accused and fear that the judiciary will set him free or because the victim is a thorn in somebody’s side. Thus, the suspicion is – and depending on the public mood this suspicion sometimes becomes ‘public knowledge’ – that encounters

²⁹ The novel has such close similarities to living persons as to have warranted an angry letter of Maharashtra’s Home Minister Chhagan Bhujpal to Singh, who had already been sent to a ‘punishment posting’ in a training camp. Super cop Julio Ribeiro supported Singh in the publication. Muslim slum dwellers as well as left wing middle class activists called for people to support Singh in his bid to win a seat as an independent candidate in the national elections.

happen when the police need a culprit who, because he is dead, cannot be found innocent. This interpretation of encounter killings is wide spread; it is often held also by people who under certain conditions approve of them or consider them necessary. Not all hold such contradictory views; apart from human rights activists, also those who belong to a category of citizens that has a high share of victims of police violence, such as Muslims or Dalits, generally suspect police violence to be excessive and illegal. It is interesting that the interpretation of encounter killings as most possibly a fake encounter is also very prevalent among the police themselves. Thus, while there are many justificatory discourses, as outlined above, many policemen, asked about concrete cases of encounters, state that they are “all fake”.³⁰

Contract Killings?

Accordingly, as one member of an elite police unit felt, “the police have become contract killers for the politicians.”³¹ Police encounters in this interpretation are targeted killings of economic and sometimes political rivals of politicians and their networks in organised crime. The police are their hirelings, paid with posts and other favours.

The infamous ‘politicisation’ of the police is attributed to the provisions of the Indian Police Act (Section 3), which, by making the posting and sacking of police commissioners a matter entirely of the state government, encourages the use of postings as a tool for party politics. The motivations are usually the protection of networks and allies and their potentially illegal activities, be they political or economic. Granting immunity to either illegal economic or unconstitutional political endeavours by directing the police not to interfere is a pillar of political might. “All seek to bring the police under their own control, to oversee their recruitment, their posting and their behaviour to insure that they act on one’s behalf and not on the behalf of one’s enemies” (Brass 1997: 274; see also Vohra Report 1996: 9).

Politicians award policemen who operate according to the interests of their networks with prestigious, pleasant or lucrative posts in areas where there is money to be made from the *hafta*, the money that semi-legal or illegal enterprises pay to the police to be left in peace, protection money really. If policemen resist the demands of their political superiors they are often punished, transferred to posts that mean hardship for their families (particularly the schooling of their children), ineffective posts, where they cannot interfere, like police training posts, or posts that have no potential for additional revenue, so that the incumbent has no way

³⁰ Interview with a police inspector in 2001.

³¹ The interviewee demanded anonymity.

of accumulating the means to buy another posting.³² Punishment postings are for those police men who disturb the workings of the '*nexus*' the networks among politicians and organised crime, for policemen who uncover corrupt deals, or for those who work for rival factions.³³

Police blame such 'political interference' for the failure of their work, for inconclusive investigations, false allegations and corruption.³⁴ They put their hopes for rescue in the recommendations of the Police Commission of 1980. These recommended (among other things) a statutory tenure of police chiefs and

the constitution of a statutory Commission in each State which may be called the State Security Commission which shall have the State Minister in charge of police as the ex-officio Chairman and six others as Members. Two Members shall be chosen from the State Legislature, one from the ruling party and another from the opposition parties. They shall be appointed to this Commission on the advice of the Speaker of the State Legislature. The remaining four members of the Commission shall be appointed by the Chief Minister, subject to approval' by the State Legislature, from retired judges of the High Court, retired Government servants who had functioned in senior positions in the Government while in service, social scientists or academicians of public standing and eminence. (Report of the National Police Commission India 1980)

This commission would serve "as a forum of appeal for disposing of representations from any police officer of the rank of Superintendent of Police and above regarding his being subjected to illegal or irregular orders in the performance of his duties; (and) as a forum of appeal for disposing of representations from police officers regarding promotion" (Report of the National Police Commission India 1980). In the perception of many a policeman, the recommendations are all but a panacea for the ills that have befallen the force.³⁵ Their implementation would grant the police greater autonomy from political parties in power and in the eyes of many policemen greater autonomy would set things right. To them, the problem lies in the chain of command. Fear focuses on a 'politicised' police, one that is contaminated by all the murky stuff of interests, dealings and political interferences. For some policemen it is a matter of the rule of law, for others there is further the idea of the opposition of order and

³² Posts in the Indian Police Service (IPS) as well as in the Indian Administrative Service (IAS) are frequently sold. Cf. Wade 1982.

³³ Such punitive transfers have also been employed against police officers who intervened decisively and impartially against Hindu-Muslim riots. Three police officers who put down the anti-Muslim pogroms that ravaged Gujarat in 2002 in their wards were immediately transferred by the state government under BJP (Bharatiya Janata Party, the strongest Hindu nationalist party that led the coalition government of India from 1998 till 2004) chief minister Narendra Modi to posts where they could not disturb the violence (Communalism Combat Report 2003: 608-609).

³⁴ Increasingly, however, police officers question the apologetic reference of their colleagues to 'political interference'. Particularly after the unprecedented degree of police collusion in the Gujarat pogroms, police officers say that transfers are part of a police career and fear of transfers cannot be used as an excuse to act against one's legal duties.

³⁵ Retired police officers in 1996 therefore entered a writ petition at the Supreme Court (SC) of India to implement the recommendation of the Police Commission of 1980. They expected the SC to decide upon the matter in 2003 but nothing has as yet been decided (Oct. 2005). The hopes put on the implementation of the recommendations are evidence of the debate that rages within the police corps on the state of the service.

politics: For many ‘politics’ has gained a well-nigh synonymous connotation with corruption and dishonesty. Its ‘other’ is seen in a more authoritarian idea of order, of unambiguous decisions and clear cut solutions. It is also a vision of the purity of ‘disinterested’ violence, violence that only serves the production of order. An autonomous police would be a pure police. Its violence would likewise be pure rather than ‘politically contaminated’ and thus would serve the common good and common longing for order and security against the disorder of politics.

Encounter killings are considered to be one of the most drastic services the police provide to their patrons among politicians and organised crime. Conspiracy theories run widely of how particular targets of encounters were connected with the interests of political networks. When, in the summer of 1997, the entire leadership of the Arun Gowli gang was killed in encounters on the streets of Bombay, this was interpreted as resulting from a political feud between Gowli and his erstwhile patron, the Shivsena party, which had by then become the ruling party in the city and the state of Maharashtra. Arun Gowli was the local Don³⁶, the only one usually residing in Mumbai, in his infamous Dagdi chawl or in neighbouring prisons, which he once described as the place ‘where a person gets a chance to think clearly.’³⁷ When he aspired to turn his criminal fiefdom into political power by launching the Akhil Bharatiya Sena (ABS), a political party competing in local elections, he became a rival of the Shivsena and thus, urban lore tells, they annihilated his gang.³⁸

However, it is not only in the big gang wars that the police are suspected of partisan involvement, but also in more everyday encounters. Relatives of people who have died in encounters tell tales of how they saw the encounter being prepared by the police, logging allegations against the victims in the police register so that they would have a reason to claim that they had resisted arrest, for example. They often point towards recent conflicts between the victims and their rivals and allege that the police acted on behalf of the latter. Some of them tell how they had petitioned the local authorities and even written to the Prime Minister when they ‘saw the encounter coming’ and went to register this fear with the police itself, but to no avail. Others fear ‘being encountered’ and use various strategies to safeguard themselves – either by petitioning authorities they feel have an influence on police targeting, or by changing their behaviour, their routes through the city and their activities and by ‘lying low’.

³⁶ Don is the local term for the leaders of organised crime corporations.

³⁷ Mid Day, 18.2.1997.

³⁸ Arun Gowli’s lieutenant Sada Pawle was shot by encounter specialist Salaskar. In 1996, Salaskar shot Amar Naik, a Don assumed to be an affiliate of the Shivsena party. He thus was not associated with the Shivsena’s interests. The many witnesses that initially claimed that the shooting of Sada Pawle had been a staged encounter all turned hostile.

Thus, the encounters that are seen as a way out of the undermining of the body politic by corruption and crime are suddenly themselves a symptom of that very corruption, of the dissolution of public institutions and the sway of crime.

Ambiguity

The confusion and disquieting uncertainty about the nature of state violence, as salvation from or as symptom of pervasive crisis, produces deep ambivalence towards state killing and state violence in general. There is the idea that order is ensured by an authoritarian and paternalistic ‘strong hand’. There is, at the same time, a deep suspicion of politics and of the political class, in the highly politicised and politically active Indian society. Political activity, protest, organisation and the active assumption of rights run parallel with the longing for a strongman associated with ideas of clarity, order and the purity of force, rather than the ambiguities of democratic deliberation. This is also expressed in the many versions of the longing for a philosopher king, of *Ramraj*,³⁹ *Shivshahi*⁴⁰ or a ‘benevolent dictatorship’.⁴¹ They are competing visions of the Indian state: one of a state that provides rights and the other of a state that provides order.

These visions, and likewise the associated perception and judgement of state violence, are held situationally, that is, they relate to events and experiences. Of course, some experiences (like being threatened by police action) are much more likely to occur to you if you are poor, Muslim or live in a slum. Nonetheless, certain modes of perceiving and legitimating state violence cannot be attributed to specific social groups nor be restricted to either ‘the state’ or ‘society’. While certain explanations and justifications of state violence are more prominent amongst the police, others pervade public discourse. Likewise, the state speaks in many voices, as is evident from the conflicts between the police and the judiciary. But it is not only different state agencies, with their respective roles and self-perceptions, who speak different languages in respect to state violence. Even within these agencies, various different discourses are prevalent, used situationally or in accordance with individual predispositions that do not arise from one’s role within the state apparatus. Generation, for example, plays a role. This

³⁹ *Ramraj* is the rule of Ram, the god-like king from the epic Ramayana. Gandhi used the term to denote an independent India and a society free of exploitation. Today it is employed mainly by Hindu nationalist organisations to advocate a Hindu India.

⁴⁰ *Shivshahi* is the rule established by the legendary Maratha king Shivaji, who is considered by many the first nationalist of India for his successful fight against the Mogul armies.

⁴¹ Benevolent dictatorship is frequently advocated and offered by the Hindu nationalist leader Bal Thackeray (Eckert 2003a: 59-61).

was captured in the ideal type depiction of the dispute between the older police man and the younger in the scene in *Satya* (below).

Nevertheless, the triple idea of the Indian state: of the state that provides order, that which provides rights and entitlements, and that which is simply the weapon of power, pervades all perceptions of the state. This *trimurti* of the state is probably a phenomenon that coins state images all over the world. In India it is rooted in particular historical processes and experiences and takes its specific shape from there. What is of interest is how the relations between the three images shift; which takes precedence in particular understandings of the state and in legitimating its various forms of violence.

III. Killing for Civilization

The deep ambivalence towards state violence is today slowly giving way to a sense of the urgent need for self-defence not against corruption or crime but against terrorism. This tends to cloth state violence with an aura of purity, honesty and justness – at least for those parts of the Indian public who are not at risk of becoming its victims. This is so particularly in areas such as Bombay, which do not know any other form of terrorism than the recent Muslim perpetrated acts. Bombay has recently been the target of several terrorist attacks. Between December 2002 and August 2003 there were five bomb attacks in various public places, local trains, bazaars and train stations. “Encounter experts have reunion, set eyes on terrorists” announces the Mumbai Age on April 4th, 2003.

Terrorism is not new in India. But while it was for a long time connected to specific claims and demands (mostly territorial autonomy or independence), terrorism now is often of a different kind. It has no claims except for ‘justice’ or ‘revenge’ (Eckert 2003b) and it has entered the political and financial centres of the country. More importantly, public perception of it has changed. These recent incidents of terrorist violence in India, and their interpretations, have located this threat ‘outside’ society, as an external threat. Terrorism is seen here mainly as Muslim terrorism, funded by a hostile country and perpetrated by people allegedly disloyal to India. While these new perceptions of terrorism were initially specific to Muslim terrorism, they are being generalised to shape the perceptions of other kinds of terrorism and other forms of crime. Likewise, while these perceptions were probably initially specific to areas such as Bombay, they spread via media representations. This contributes to a new evaluation of state violence. State violence against an external (or, rather, externalised) threat is defence, whereas state violence against internal threats was seen as the reestablishment of order (through punishment and deterrence). It is not so much the state as the nation (and society as such) that

is deemed to be threatened by it. As an attack on the nation, terrorism is external to society to a new degree. Its causes and its relation to the society it targets are secondary. It comes to be perceived more and more as part of, and identical to, an unspecific but nonetheless concrete general global danger, the roots of which lie not so much in ‘causes’ but in ‘culture’ and essential enmity. The production of clarity by locating societal woes in a foe – who is without history or reason – potentially overcomes the deep ambivalence towards state killing. State violence against an externalised threat is portrayed as less arbitrary and more focused on a specific target, and thus creates a clearer distinction between those who might become its targets and those who can feel sure that they will not be perceived as being ‘public enemies’ – no matter how much this perceived distinction corresponds with actual state violence. Because of the externality of danger, combating a clearly identifiable, personified threat is less complex, although possibly technically more difficult, than combating the ills intrinsic to society.

The De-socialisation of Crime

The externalisation of the roots of crisis and crime is not confined to terrorism alone but generalised to the perception of crime. With the loss of faith in the promises of developmental ideology and its replacement by a new idea of how to save the nation, a new interpretation of the causes of crime has also arisen. Poverty, inequality and injustice are not its sources anymore, nor is it the lack of development, education and ‘a civilised existence’, as referred to by an older generation when developmental ideology still held sway. As the old police officer says to his young colleague in *Satya*:

“Encounters are not a solution. After all, we are officers. You are not a roadside ruffian. After all there has to be some difference between us and them. The problem is not of law and order, but of education. Ours is a huge country with a very vast population but the literacy level is so low! No, no, we must educate them. The problem will get solved on its own then. Very simple. What do you think?”

But the young one, belonging to a new generation of police men and equipped with a new interpretation of the ills that have befallen society answers simply: “No, Sir.”

This simple “no” seems to imply that crime is not to be explained or understood but simply to be vanquished. It has no sources any more that can be remedied by development. This is also the time when the gangsters in the films from Bollywood lose most traces of any Robin Hood aura. They also lose their personal histories of grievances and injustice. While their ancestors from the 1970s were ‘angry young men’, rebelling against social injustice or, in the 1980s,

godfathers setting up parallel states for those excluded from and maltreated by the 'system', Satya and his contemporaries of the 1990s kill for profit. While Nayakan⁴² was the son of a unionist who had been 'encountered' by the police, taking revenge for the killing of his father, Satya's history is shrouded in mystery, so that his decline into crime has no identifiable social reason. A new image of the criminal appears and with it a new role for the police. Now the encounter specialists of Bombay gathered in a fancy hall, brought their wives for the dance and the buffet and reconsidered their role.⁴³ The de-legitimisation of encounters that occurred in 1997, when too many innocents lost their lives now has given way to a renewed plausibility of their necessity and justification – particularly since the new prime enemies, the terrorists, seemed not only highly equipped and well connected but also determined unto death. "If you have foreigners armed to death being sent in by intelligence agencies of foreign countries what do you do?" answered K.P.S. Gill⁴⁴ to the question of whether encounters were the shortcuts of judicial verdicts.

These perceptions have not encompassed all forms of crime or criminals of all backgrounds. Interestingly, a 'socialised' perception, that is, the idea that criminal activities or 'terrorism' are caused by severe social problems, still holds sway, also among policemen particularly towards Naxalite groups. Generally, the de-socialisation of the understanding of crime is a tendency that can also be reversed. However, where it is prevalent, it is not punishment or deterrence but security and self-defence that are now foremost in the justifications of state killing. They are accompanied by a (Hindu nationalist) re-definition of the self that is to be protected: it is not the state and its territorial unity, but the nation and its assumed cultural essence that is at stake. This new definition of the self and the changed perception of what is at threat underlies new ideas of cultural citizenship and the implicit legitimisation of restrictions on civil rights. The threat is perceived and treated as external to the national self: on one level, it is 'foreigners' or persons who are foreign funded and loyal to other countries⁴⁵ that are assumed to be the threat. On another level, crime and criminals have lost their (causal) connection to the societal order; they have no history that is embedded in or connected to the

⁴² The film *Nayakan* (1987) is based on the life of the Don Vardarajan, who built a smuggling empire in the Tamil dominated enclaves of 'Asia's biggest slum', Dharavi in Bombay. In the film he flees to the city as a child after murdering the police killer of his father. He becomes a godfather of the maltreated. Nayakan's adversary from the police in the film concedes that "there is no difference between what you do and I do. Only that I wear a uniform," here referring to Nayakan's role as peacemaker and adjudicator and the one who ensures law and order for and amongst his dependents.

⁴³ Mumbai Age, 4.4.2003.

⁴⁴ Quoted in Hindustan Times, 10.11.2002.

⁴⁵ Hindu nationalism has always held that only those for whom India was not only the fatherland but also the holy land, that is those whose holy places lay on Indian soil were true and legitimate Indians. Christians and Muslims whose holy places lie elsewhere, therefore, only have a tolerated status of citizenship in this construction. Furthermore, Indian Muslims have been blamed for loyalties with Pakistan ever since the partition of the subcontinent in 1947.

history of society. Therefore, they lose, or forego, their rights as citizens in the nation that can bestow them.⁴⁶ Citizenship is then defined anew: while citizenship was never realised in an equal and universal manner in India (Jayal 2001: 249), the de-socialisation of crime and the de-politicisation of terrorism points towards new criteria of belonging and of legitimately claiming civic rights.

The Global Frame

These shifts in the local conceptions of crime, in the conception of citizenship and in the conception of the legitimacy of state violence are embedded in global changes affecting the economic, political and institutional order as well as ideas of rights and security.

The loss of the social connotations of crime seems to go hand in hand with the ideas of the neo-liberal economy and its conception of the individual and of society. New ideologies of how to bring forward the nation have emerged in India in the last decades. Against the old socialist developmentalism and Nehru's aspiration to India's leadership of the non-aligned countries stands the neo-liberal vision of his grandson, Rajiv Gandhi, of India as a global player of a different kind. The opening of the economy,⁴⁷ the propagation of a new Indian technological IT-identity, and the nuclear tests of the late 1990s reveal an aspiration to equal status amongst the nuclear powers just as much as it affirms India's ballistic strength against Pakistan, establishing India as a country to be counted with. The newly voiced (middle class) aspirations for membership in the global club (Hansen 1996, Hasan 2003: 164) involved a questioning of the images of 'authentic India' hitherto propagated as the rural and the traditional, and converged with fantasies of national unity (Hansen 1996). The conception of certain forms of crime as produced by social and economic injustice lost its hegemonic position with the increasing dominance of a concept of the individual as a self-made person among, at least, the urban middle classes⁴⁸ (e.g. Das 2003; Poggendorf-Kakar 2003: 137). The ideology of the self-made, self-reliable and responsible person, whose actions could not be accounted for in terms of social conditions, mirrored an increasingly legitimate urban middle

⁴⁶ Restrictions of civil rights in criminal procedures as suggested by the Malimath Committee, were already present in the anti-terrorism law POTA enacted in 2002 and repealed in 2004 by the Congress led government that came to power in that year. They are also entailed in the new regional laws for combating organised crime.

⁴⁷ Liberalisation legislation has restricted the opening of the Indian economy to foreign investment largely to the consumer goods sector, maintaining many of the protections of the industrial sector, the agricultural and the administrative sector. The consumer goods sector has expanded vastly, not only causing an explosion in the availability of such goods, but also business opportunities and jobs in the many joint venture projects initiated in the early 1990s. This sectoral economic growth, largely restricted to the emerging technology centres of Bombay (Mumbai), Ahmedabad, Hyderabad and Bangalore, has brought with it a relative increase in prosperity of the growing middle classes in these areas.

⁴⁸ Possibly, this was also a backlash against the proliferating arrangements against discrimination by means of caste quotas or, rather, an expression of the active denial of the social realities addressed by the quota policies.

class aspiration to shed the burden of responsibility for “Indian backwardness” (e.g. Varma 1998; Hasan 2003: 166-167) and present to the whole world their ‘shining India’.⁴⁹ Amitabh Bachhan, all-time Hindi film super star and one time supreme *Angry Young Man* asks in various BPL⁵⁰ advertisements of 1998, with the slogan “believe in the best”,

“Why do we never get mentioned for having the killer instinct? (...) Why do we feel so good when others say India has a potential? Why do we act as if having a potential is an achievement? Why are we so easily contented? Why do we blame our failures on fate? Why are we down here in the third world? When we all know we could easily be up there. Why don’t we believe we could do it? Why don’t we believe in ourselves?”

Here the question of self-reliance becomes a national one (see also Fernandes 2000).

The new values do not spread equally through all spheres of life, not even in the middle classes – which are in any case vastly heterogeneous. A tendency that was prevalent already in the 19th and early 20th century (Chatterjee 1989; Markovits 2003: 50) seems to be becoming relevant again, namely that the preservation of ‘tradition’ and ‘authenticity’, that is, of the ‘old values’, is relegated to the private realm, to the home and to women (and thus also to marriage patterns), while the public realm is shaped by new values of the individual (Hasan 2003: 158; Poggendorf-Kakar 2003). Varma, of course, connects the seemingly neo-liberal ideas of individual achievement to the highly individualistic soteriology of Hinduism and blames them for the indifference of the middle classes towards the fate of their compatriots (Varma 1998: 124).

The new notions of the self-reliant achieving citizen that curtail the social understanding of crime and individualise it go hand in hand with the new notion of the nation propagated by Hindu nationalism. This is at once the achieving nation, one among the global players, and the united and unitary nation. Ever since the democratic process was pluralised by the assertion of the lower castes in the 1980s, Hindu nationalism, politically represented by the BJP (Bharatiya Janata Party) and its urging for Hindu unity has gained more plausibility. *Hindutva*⁵¹ responded to the diversification of (organised) political claims with the call to unity on the grounds of its construction of an existential opposition of Hindus and Muslims as homogeneous groups of common interest. A republican vision of the nation and of ‘unity in

⁴⁹ Shining India was the electoral slogan of the BJP in the national elections of 2004.

⁵⁰ BPL is India’s biggest consumer electronics company that includes home entertainment, home appliances, soft energy, health care, components, multimedia products, networking and information technology, wireless, internet, broadband and technology solutions. It was founded in 1963 and claims that its brands are present in 18 million homes in India (<http://www.bplworld.com/group/welcome.asp>).

⁵¹ *Hindutva*, literally ‘Hindu-ness’, is the term for the campaign of Hindunationalist organisations such as the Rashtriya Swayamsevak Sangh [National Volunteers Corps] (RSS), the BJP or the Vishwa Hindu Parishad [World Hindu Council] (VHP). Under the banner of *Hindutva*, these organisations have propagated their claims to the preeminent rights of Hindus to India, and have ‘Hindu-ised’ various spheres of public life. This has also involved a canonisation of Hinduism.

diversity’ gave way to a more organic version of the nation and of ‘unity in diversity’. New notions of order – of a harmonious Hindu society overcoming its internal fissures – went along with new notions of threat that now lies primarily in the ‘dangerous other’.⁵²

Earlier, the ills of the system had been seen as something internal. They consumed society from within. The persistence of political forms that are governed by severe dependence and inequality, by violence ranging from electoral booth capturing, to the clashes of private and insurgent armies, caste violence, communal riots and pogroms that seem to ever increase in brutality, and by the predatory use of public goods and public funds, seemed to be rooted in the fact that modernity had not worked in India. Because Indian society stuck to its traditional modes of caste and kinship organisation, many assumed, the separation of private person from public office had failed (Gill 1998). “Somewhere in the nexus of state and family lie the problems of modern India” argued Visvanathan (Visvanathan and Sethi 1998: 38). However, others saw the root of the malaise in the unsuitability of modern secular institutions for the deeply spiritual society of India (Nandy 1990, Madan 1997). The perversions of the democratic process, as well as the ever increasing political violence, resulted from the homogenising force of the modern nation state (Nandy and Seth 1996). The (modern bureaucratic) state had been an alien project of a post-colonial elite that proceeded with the colonial endeavour of modernisation (Chatterjee 1995: 55, 74). All this was bound to fail. When the so-called Congress system (Kothari 1964) dissolved, modernist ideology showed its Janus face.

These (academic) conceptions of the root of the crisis and thus the impossibility of a modernist utopia were superseded by public perceptions (and political constructions) of a personified threat. Evil and danger have moved out of the system. The collusion between politics, corruption and organised crime, is no longer seen as the principal danger to the Indian nation, a symptom of political crisis and the decay of public institutions. Rather, it is now considered simply as the Achilles heel of the nation, opening doors to the prime threat, namely (Muslim) terrorism and its abettors.⁵³ Corruption, and the Congress Party’s ‘vote bank politics’, its alleged ‘pampering of minorities’ and sell-out of Hindu rights is now seen to have opened the door to the exploitation of the open Indian society and Hindu tolerance. Within the Hindu nationalist discourse, the “metaphorical femininity” (Inden 1990: 96), part

⁵² There appears to be a certain contradiction between the new individualism and the duties towards a collective implied by cultural nationalism. Likewise, the de-socialisation of crime seems to contradict the culturalist determinism that makes out Muslims as inherently aggressive. However, throughout the history of extreme nationalism it has paired well with the stress on individualism. More importantly, cultural determinism implies a de-socialisation of behaviour as it assumes instead of social or political causes quasi-natural predispositions based in culture.

⁵³ Both corruption and organised crime are potentially subsumed under those acts that further and support terrorism.

of the orientalist construction of spiritual India as the ‘other’ of the ‘rational’ West, turns into the incapacity of the tolerant Hindu to defend himself (and his nation, women and country) against those who are so utterly different, above all Muslims, whose religion is allegedly aggressive, hegemonial and intolerant. “The right to self-defence is bestowed upon every citizen by the constitution,”⁵⁴ claimed Bal Thackeray, leader of the Hindu nationalist Shivsena Party on the occasion of the riots in Bombay in the winter of 1993. “Fie upon the law which does not protect us (...). Why are police not given orders to shoot at sight? It is your duty to enforce law and order. Why should you be worried about the death of Muslims? The criminals of Pakistan and Bangladesh are dancing ferociously in front of the police, where is the authority and prestige of your law and order?”⁵⁵

This externalisation of threat fits into and gains from the international security discourse accompanying the US declared war on terror. India has entered the global war on terror with, as its political representatives’ claim, a specific knowledge of the threats to civilisation that arise from Islamic terrorism. They play out an Indian version of the Huntingtonian ‘clash of civilisations’ and are affirmed by the global discourse on the war on (Islamic) terror, of the distribution of good and evil in the world, and the need for the self-defence of ‘a civilisation’. Local state killing, as in encounters, therein becomes a part of ‘enduring freedom’.⁵⁶

The emerging institutional architecture of the global war on terror and the discourses of security that accompany it have intertwined with and focused the ways India deals with and re-perceives its domestic conflicts. They, as well as new economic models and class aspirations, have affirmed the re-conceptualisation of crime and of terrorism, the new criminologies that locate the sources of crime and evil outside the community. Ideas about the relationship between individual, national and global security have changed, and with them the ideas of and expectations towards the state. The state thereby moves its purpose away from the ‘utopia’ of development, distributive justice and individual rights to a heightened sense of security; social security is exchanged for national security as the prime political aspiration and basis for the legitimacy of rule. With the (public) conflation of individual security with national security, state killing gains a new legitimacy, and a new urgency.

The concerns with security affect institutional changes as new security provisions are implemented that change the relation between different state agencies. Most prominent among these was the anti-terrorism law, POTA (Prevention of Terrorism Act) that, through its

⁵⁴ Saamna 9.1.1993.

⁵⁵ Saamna 9.1.1993.

⁵⁶ The Indian government, headed by the BJP, opposed the war in Iraq. Hindu nationalist organisations, however, claimed that the way to Ayodhya (the site where Hindu nationalist organisation claim that Ram was born, because of which they destroyed the Babri mosque and plan to built a temple in its stead) went via Baghdad thus clearly aligning the *Hindutva* cause with bellicose US strategies, and assuming a common goal for both.

provisions for arrests and evidence, further sidelined the judiciary and increased police powers.⁵⁷ POTA followed onto its forerunners TADA (Terrorist and Disruptive Activities (Prevention) Act) and MISA (Maintenance of Internal Security Act) in a continuous line of extraordinary security (and emergency) measures. It was modelled on a series of new regional legislations concerning organised crime (e.g. MCOCA [Maharashtra Control of Organised Crime Act] in Maharashtra). Although it has been repealed by the government that came to power in May 2004, some of its provisions were kept as amendments to the Disruption and Dangerous Activities Act.

These legal instruments have the effect of legalising forms of state violence that were hitherto illegal, such as longer periods of detention without charge, and make legal complaints against, and judicial inquiries into, police abuses more difficult. What is interesting is the general trend in sidelining the judiciary that is also evident in the recommendations of the Malimath Committee for the improvement of the criminal justice system. Originally instituted to remedy the problems of the criminal justice system, like long delays and the human rights violations inherent in these problems, the Malimath Reports suggests further curtailing the rights of the accused, strengthening the powers of the police and lessening the controlling powers of the judiciary.

The institutional changes operate with different notions of citizenship not only in terms of civil rights (which are affected by various provisions) but also by implicitly including the new notion of the nation via the criminologies of crime and terrorism that underlie them.

Conclusion

The shifting attitudes towards encounter killings highlight the effect that institutional, political and economic change has on the perceptions of state violence and their legitimisation. It is evident that legitimations relate to different state images that can coexist side by side. Those are the visions of the state as responsible for providing order, and of the state as providing rights as well as the perception of the state as a tool of the malign dealings of power. They are each brought to the fore through public events or changing dominance of security- or rights-centred ideologies that evolve from global economic and political developments. Legitimisations are only to some degree specific to social groups (a matter that this paper has not dealt with), and cannot be neatly attributed to either the state or society. Rather, they often cut across different social groups as well as official pronouncements. At the same time, there

⁵⁷ A citizens' tribunal held in Delhi in March 2004 also established the use of threats of encounter killings and the involvement of encounter specialists in arrests under POTA.

are divisive differences in the image of the state and its responsibilities amongst different state agencies (as well as amongst different individual state representatives within these agencies) that relate to the differing roles and self-perceptions of these agencies, as well as to the hierarchy amongst them implied in the different ideas of the state. When order is perceived as the core function of the state, the police claims to be its main bearer; all other state agencies become secondary.

As we have seen, there is a basic legitimization of state violence that relates to the idea of the state as the source of order. The idea that the state should provide order is, in relation to the everyday experience of crime, very wide-spread. Order is regarded, in Hobbesian terms, as security and defence. It is often equated with justice, particularly in the idea that any breach of the law must be punished lest 'crime would pay'. Here, justice is synonymous with order in that only punishment can re-establish order. In this sense, order has no bounds in law. It is the principle and purpose of law and, thereby, above law when law apparently does not achieve order, or what in police parlance is often termed 'peace'. This relates to Taussig's point (himself referring to Benjamin's critique of violence) that any law needs the pre-legal force that upholds it; and that law, "the law of the police (...) is independent of the rest of the law" (Taussig 1996: 20). Therefore, within this Leviathan vision of the state, state violence that breaches the law is legitimate when it re-establishes order. It is a vigilante legitimization of state violence, founded in the idea of the state as first and foremost the provider of order. It is applied in India within the critique of the judicial system as ineffective and in the idea that state violence can stem the corrosion of public life that results from the corruption of politics. Within this discourse, the state's functions and its institutional heterogeneity are ordered in a new hierarchy, wherein the provision of order (and security) is the predominant duty. Thereby, the state agencies, too, are set in a new relation: the police (as well as the army) become the core institutions of the state, representing and protecting it in a fundamental way.

Moreover, the relation between politics and the state is re-conceptualised. In this vigilante legitimization of state violence, the state or, rather, the police as the agency responsible for that central function become the protector of society against 'politics'. The state and society join together to fend off politics deemed to corrode society.

Hence, within the different images of the state the relations between various state institutions as well as between state and politics are differently constructed. While in the Lockean state, society and politics would join hands against the Leviathan, and under the pre-Leviathan war of all against all or, as it is often called the 'law of the fishes' under which the big ones eat the small ones, borders between all spheres are dissolved, the vigilante version of the Leviathan dissolves the boundary between state and society, but constructs new

boundaries between the state and politics as well as between politics and society. Rather than simply questioning the reality of a distinction between state and society, the analysis of the legitimations of state violence thus draws attention to the different constructions of such boundaries – which have their reality in the ideas and (practical) claims of rights and duties that go along with them.

The opposition between state violence and politics (that not only policemen but also members of the public make) i.e. the idea that violence brings order and is disinterested and honest while ‘politics’ brings disorder, follows individual interests and is corrupt and dishonest, joins up in a paradoxical way with the idea of the state as provider of rights. It is, in some way, particularly the expectation towards the state as provider of rights and goods and the experience of its failure that produces the deep suspicion that it is ‘politics’ that undermines these rights. The “demand overload” (Rudolph and Rudolph 1987) and its disappointment produces, in a paradoxical way, the reduction of the idea of the state to the idea of order.

That does not mean that the Lockean idea of the right to rebel against an unjust state disappears completely. It shows up in the manifold writ petitions entered against the various state agencies in India; it shows up in the constant demonstrations that one sees on the streets of New Delhi; it also is evident in the active use of voters rights (and the infamous anti-incumbency factor) during Indian elections – maybe most dramatically in May 2004 when against all expectations the shining India campaign of the ruling BJP was rejected and the alliance under the leadership of the Congress party came to power. The Lockean idea of the right to rebel also shows up in glimpses of outrage when an innocent has been targeted. But there are fewer and fewer innocents in the climate of ‘permanent threat’ and the new conceptualisation of citizenship and civic rights that goes along with it. Civic rights are restricted in a new way, not by accessibility – as has long been and is still the case for the millions that are excluded from access to rights in the many ways that poverty, class and caste play themselves out, but now also in the ideas of the legitimate and illegitimate, worthy and unworthy, genuine and fake citizen. My contention is that this thorough re-conceptualisation of citizenship does not replace the longstanding gaps and holes of citizenship in India, namely its less than incomplete realisation, but adds to the old forms of exclusion new restrictive notions of citizenship and civic rights. I am not talking about minorities, namely Muslims alone, but a more general or fundamental re-conceptualisation of citizenship away from an unfulfilled notion of the concomitance of (territorial) citizenship (*Staatsangehörigkeit*) and civic rights to distinction between mere members of the state and genuine and legitimate citizens of the nation. The de-socialisation of crime and the de-politicisation of terrorism both

are signs of these re-conceptualisations. Moreover, civic rights are no longer only subordinated under development prerogatives, as has long been the claim against developmental notions of the greater common good; they are now furthermore subordinated under culturalist ideas of the nation and its welfare. In the confluence of neo-liberal ideas of the individual, Hindu nationalists ideas of the nation and a global security discourse, the Lockean right to rebel is restricted in a new manner (and with more legitimacy) and entitlements and exclusion are heightened in new conceptualisations of the legitimate and illegitimate citizen.

Legitimations of state violence appear, therefore, to be related to the predominance and plausibility of differing images and experiences of the state within both global and local ideologies and political and economic processes. Such ideologies legitimate state violence in terms of their specific models of society, the roots of social conflict and the nature of social order. They have an impact on institutional changes and criminologies of 'threat'. The de-socialisation of crime in connection with neo-liberal ideas of the self-reliant individual and the de-politicisation and culturalisation of terrorism in connection with global security discourses and ideas about a 'clash of civilisations', for example, trigger new forms of institutionalised state violence and legalise formerly illegal forms of state violence. Local interpretations of these global discourses embed the changing conceptions of threat and security, as well as the notions of order, in specific historical contexts. In India there is a new role for the idea of threat (as well as a new idea of threat) for the self-perception of the nation that makes plausible a new idea of state responsibility as lying in security and not (state induced) development.

Thus, the various strands that shape the moral economy of state violence, both in the legitimisation of the latter as also in the experience of it, are intertwined with and reconfigured by the global and local economic, political and institutional changes.

Bibliography

- Baxi, Upendra 1987: Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India, in: Neelam Tiruchalvam and Coomaraswami (ed.): *The Role of the Judiciary in Plural Societies*, London: Pinto, 32-60.
- Brass, Paul 1997: *Theft of an Idol: Text and Context in the Representation of Collective Violence*, Princeton: Princeton University Press.
- Chatterjee, Partha 1989: The Nationalist Resolution of the Women's Question, in: Kumkum Sangari and Sudesh Vaid (eds.): *Recasting women*. New Delhi: Kali for Women. 232-253.
- 1995: *The Nation and its Fragments*. Delhi: Oxford University Press.
- Chopra, Vir 1996: The Mirage of Good Governance, in: *Politics India*, November 1996, 24-28.
- Chowdhury, T.H. 1996: 420 Parties and Governments, in: *Politics India*, November 1996, 34-35.
- Combat Communalism Report 2003: in: Dayal, John (ed.): *Gujarat 2002: Untold and Retold Stories of the Hindutva Lab*, Delhi: Media House, 425-680.
- Crime in India 1999: *National Crime Records Bureau*, Delhi: Ministry of Home Affairs.
- 2000: *National Crime Records Bureau*, Delhi: Ministry of Home Affairs.
- Das, Gurcharan 2003: Middle Class Values and the Changing Indian Entrepreneur, in: Imtiaz Ahmad and Helmut Reifeld (eds.): *Middle Class Values in India and Western Europe*, New Delhi: Social Science Press, 194-211.
- Eckert, Julia 2003a: *Charisma of direct Action; Power, Politics and the Shivsena*, Delhi: Oxford University Press.
- 2003b: Rache und Nation, in: *Berliner Debatte Initial*, 14, 3, 28-36.
- Fernandes, Leela 2000: 'Nationalising the Global': Media Images, Economic Reform and the Middle Class in India, in: *Media, Culture and Society*, Vol. 22, No. 5, 611-628.
- Gill, S.S. 1998: *The Pathology of Corruption*, New Delhi: Harper Collins Publishers India.
- Hansen, Thomas Blom 1996: Becoming a Light onto Itself: Nationalist Phantasies in the Age of Globalisation, in: *Economic and Political Weekly*, No. 10, March 9, 603-616.
- Hasan, Zoya 2003: Changing Political Orientations of the Middle Classes in India, in: Imtiaz Ahmad and Helmut Reifeld (eds.): *Middle Class Values in India and Western Europe*, New Delhi: Social Science Press, 152-170.
- Hussain, Nasser 2003: *The Jurisprudence of Emergency: Colonialism and the Rule of Law*, Ann Arbor: University of Michigan Press.
- Inden, Ronald 1990: *Imagining India*, Cambridge, Massachusetts: Basil Blackwell.
- Jalal, Ayesha 1995: *Democracy and Authoritarianisms in South Asia: A Comparative and Historical Perspective*, Cambridge: Cambridge University Press.
- Jayal, Niraja Gopal 2001: *Democracy and the State*, Delhi: OUP.
- Khilnani, Sunil 1999: *The Idea of India*, Delhi: Penguin.
- Kohli, Atul 1990: *Democracy and Discontent*, Cambridge Massachusetts: Cambridge University Press.

- Kothari, Rajni 2000 (1983): The Crisis of the Moderate State and the Decline of Democracy, in: Zoya Hasan (ed.): *Politics and the State in India*, Delhi: Sage Publications, 177-205.
- Madan, T.N. 1997: Secularism in its Place, in: Sudipto Kaviraj (ed.): *Politics in India*, Delhi: Oxford University Press, 342-348.
- Mahmood, Cynthia Keppley 2000: Trials by fire: Dynamics of Terror in Punjab and Kashmir, in: Jeffrey Sluka (ed.): *Death Squad: the Anthropology of State Terror*, Philadelphia: The Pennsylvania University Press, 70-90.
- Malimath Committee Report 2003: in: *Combat Law*, Vol. 2, No. 2, 46-58.
- Markovits, Claude 2003: Merchants, Entrepreneurs and the Middle Classes in Twentieth Century India, in: Imtiaz Ahmad and Helmut Reifeld (eds.): *Middle Class Values in India and Western Europe*, New Delhi: Social Science Press, 42-55.
- Menon, Madhava (ed.) 2002: *Criminal Justice India Series*, Vol. 4, Maharashtra, New Delhi: Allied Publishers in collaboration with National University of Juridical Sciences Kolkata.
- Moog, Robert 1992: Delays in the Indian Courts: Why the Judges don't take Control, in: *The Justice System Journal*, Vol. 16, No. 1, 19-35.
- Nandy, Ashis 1990: The Politics of Secularism and the Recovery of Religious Tolerance, in: Veena Das (ed.): *Mirrors of Violence: Communities, Riots and Survivors in South Asia*, Delhi: Oxford University Press, 69-93.
- Nandy, Ashis and D. L. Sheth (eds.) 1996: *The Multiverse of Democracy*, New Delhi: SAGE.
- Poggendorf-Kakar, Katharina 2003: Middle Class Formation and the Cultural Construction of Gender in Urban India, in: Imtiaz Ahmad and Helmut Reifeld (eds.): *Middle Class Values in India and Western Europe*, New Delhi: Social Science Press, 125-140.
- Report of the National Police Commission 1980: published by the Ministry of the Interior, Government of India, available online under <http://www.geocities.com/npcreport>
- Rudolph, Lloyd and Susanne Hoeber Rudolph 1987: *In Pursuit of Lakshmi*, Chicago: Chicago University Press.
- Sathe, S.P. 2002: *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, Delhi: Oxford University Press.
- Sen Gupta, Bhabani 1996: *Problems of Governance*, New Delhi: Konark Publishers.
- Singh, Jogesh Pratab 2003: *Carnage by Angels*, Mumbai: Samarpushp Books.
- Taussig, Michael 1996: The Injustice of Policing: Prehistory and Rectitude, in: Austin Sarat and Thomas Kearns (eds.): *Justice and Injustice in Law and legal Theory*, Ann Arbor: the University of Michigan Press, 19-34.
- Varma, Pavan 1998: *The Great Indian Middle Class*, Delhi: Viking.
- Visvanathan, S. and H. Sethi 1998: *Foul Play: Chronicles of Corruption 1947-97*, New Delhi: Banyan Books.
- Vohra Committee Report 1996: *Manuscript*, Government of India, Ministry of Home Affairs.
- Wade, Robert 1982: The System of Administrative and Political Corruption: Canal Irrigation in South India, in: *Journal of Development Studies*, 18, 287-328.

Filmography:

- Satya: the other side of truth*, Bombay, 1998, directed by Ram Gopal Verma.
- Nayakan*, 1987, directed by Mani Ratnam.