

Stages of Capital: Law, Culture, and Market Governance in Late Colonial India

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Author:

Ritu Birla

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G Balachandran

Historical and anthropological encounters between culture and capital are conventionally staged in India, as elsewhere in Asia and parts of Europe such as Italy, as encounters between relationships and practices defined as cultural, and some set of definitional meanings, logics, institutions, and practices associated with capitalism and the market. Though few serious scholars now view 'culture' as ever fully formed, fixed, or unchanging, the modular stability of the relationships that are understood to constitute culture, and its habitations, meanings, deployments, and boundaries, have largely remained unshaken. This stability mirrors in turn the stability of the 'economy' as a domain of reason and calculation whose constitution and structure obey capital's compelling logic. In recent years the economy's seeming given-ness has been challenged in different ways by anthropologists, critical philosophers, and postcolonial theorists, all however emphasising what Susan Buck-Morss enunciates as its logical significance as a 'fundament of collective life' attendant on the constitution of the market as the 'null point of the social community'. *Stages of Capital* astutely picks its way through 'culture' and 'community' to map their mobile redoubts, expressions, relationships, power arrangements and boundaries in relation to the correlative constitution of the market as an object of regulation and governance, and to trace the mutual yet incomplete 'disembedding', as it were, of 'market' and 'culture'.

The raft of fiscal and business legislation passed in colonial India between c.1870 and 1920 provides the historical archive for this work. Pertaining to taxation, succession, commercial and securities transactions, 'company affairs', and charities and charitable donations, these laws represented an assertion of colonial sovereignty and its will for dominance over indigenous political and social geographies of exchange

characterized by more plural and layered sovereignty arrangements. Ideological and cultural sites for 'staging capital as modernity', the new laws also aimed to produce the 'economic agent' as a subject of colonial governance.

Embedded in kinship-based forms of commerce and enterprise, this likely agent ranged across spaces the new laws sought to carve up and constitute as public, viz. the market which was framed as a legitimate object of sovereign regulation to assure the free circulation of capital, and private, viewed as capital's dark hole and the refuge where 'culture' found expression. Producing the economic agent, standardizing market norms and practices, and resolving fluid and informal liability obligations into contractually enforceable lien therefore involved negotiating and stabilizing the boundaries of family and kinship, of family firms and private partnerships implicated in various degrees of co-parcenary relationships, and of corporate ownership, management (especially after the emergence of managing agencies), and liability.

Thus the new laws sought to regulate the sway of mercantile and social groups over commercial enterprises as well as charitable and philanthropic ventures run for public benefit. Laws to establish modern fiduciary norms delegitimized vernacular capitalist practices as grounded in closed networks of kinship and clan. In general colonial legislative attempts to transplant 'universal' models for market practices disrupted or reconfigured the extensive negotiability between material and symbolic capital, and market and corporate forms of exchange, characteristic of vernacular capitalism. The new laws constrained the ability of kinship-based commercial networks to function as fluid and flexibly linked entities realizing, circulating, and managing capital, and promoted their entrenchment as a 'rarefied cultural formation' vertically in 'joint families' that became objects of regulation through personal law, itself premised on the assumption of joint families being 'ancient cultural institutions' that trapped capital in complicated rules of succession.

Stages of Capital offers a nuanced account of the sources and constitution of market norms and ethics, and their elisions, ambiguities, and compromises in colonial India. An important emphasis here is on the reordering of mercantile conventions and practices through the *operations* of colonial law, and contestations and debates they provoked largely among Marwari commercial groups in Calcutta. Clearly, as the chapters dealing with the working of joint-stock legislation and debates over the application of gambling laws to wagering demonstrate, notions of legitimacy and legality were imbued with politics. Between il/legitimacy and il/legality also fell the shadow of colonial prejudice. The framework for fiscal and mercantile laws in late-19th century India drew on templates ported from Britain to fashion circuits for the free circulation and reproduction of capital. However, the monograph also suggests a genealogy that renders the laws and their operations endogenous to negotiations about indigenous institutions, practices, and conventions. As instanced by the ban on informal options and futures trades on the basis of allegations that they were opaque and vulnerable to rigging, laws and regulations were also shaped by opportunistic interventions by British businesses in India confronted with indigenous market practices. The moral anxieties of a native middle class and colonial concerns also helped delegitimize indigenous betting trades, such as on rains or opium prices as a form of gambling, and banished them from the public realm of the market to a private realm.

Indigenous actors challenged the standardizing claims of colonial law and its attempts to delegitimize their mercantile practices by coding and regulating them as 'culture'. Yet they also translated indigenous idioms and practices into the language and categories of law, and learnt to manipulate the cultural categories regulating them. Confronting capital and colonial power with community and convention and translating values, norms, and practices continually between them, these and similar negotiations mutually reshaped and aligned expressions and 'idioms of *gemeinshaft*' and the prevailing 'politics of *gesellschaft*'. Staged on the scale of the nation they served as a platform for Marwari groups to generalize their practices as 'native commerce', represent themselves as 'native commercial classes', and demand to speak for their interests in the market, these claims and performances hinging in turn on secluding and fortifying the joint family as the habitation of an orthodox and patriarchal 'Hindu' culture.

The three chapters of the first part of the monograph explore the constitution of Marwari commercial groups and actors as economic subjects. The first chapter studies three pieces of legislation dating to the 1880s, viz. the Negotiable Instruments Act, the Companies Act, and the Income Tax Act, to uncover the construction of

a public market in opposition to the 'kinship-based' exchange relationships of vernacular capitalism. Interestingly, while the latter two pieces of legislation promoted the constitution of the Hindu Undivided Family (HUF) as an economic entity fenced in as a cultural institution, debates over the negotiable instruments act mobilized both tropes of difference and similarity to justify subordinating local usages conditionally to practices and conventions familiar to British businesses in India. The residual sovereignty the negotiable instruments act claimed over indigenous securities transactions subject to contested jurisdiction under customary laws grew expansive as courts, decreeing the latter, unlike other indigenous conventions and institutions, to be 'progressive and flexible', increasingly interpreted newer customs and usages as superseding those deemed more ancient! The second chapter explores the evolution of judicial precedents shaping the law on mortmain and property conferred or held in perpetuity. As well as limiting the continuity of ancestral property, new laws and jurisprudence recoded most aspects of customary gifting as religious, and suppressed fluid negotiations between charitable and profitable gifting (and material and symbolic capital) by enforcing distinctions between public religious and charitable trusts on the one hand and private religious and family trusts on the other. The idea of a civic public evinced and reinforced the expression of colonial sovereignty as market governance and the contractual regulation of fiduciary relationships. With customary mercantile gifting and local sovereignty practices associated with them delegitimized (chapter three), the private family trust emerged as a vehicle for welfare gifting and cultural entrepreneurship.

The two chapters of the second part focus more directly on the negotiated nature of economic subject-making. Chapter four describes the mobilization of civil and criminal law to delegitimize indigenous speculative activities (including trading in cotton, jute, and opium futures), and suppress leisure pastimes of Marwari origin (such as 'rain gambling'). For a colonial government purporting to constitute modern economic subjects and establish written contracts as the sole basis for ethical market practice, both practices emblemized the opacity of vernacular capitalism and its appetite for seemingly unregulated risk. Informal commercial conventions came under renewed suspicion from shortly before the First World War as indigenous futures or *fatka* markets operated by Marwari traders began to dominate trade in jute and jute products and threaten the profits of British-owned jute mills. Confronted with a strong campaign against *fatka* and police harassment of cotton and jute traders on suspicions of gambling, Marwari business associations campaigned to distinguish legitimate speculative trades, which they argued resembled modern market practices found in commodity exchanges around the world, from gambling, and proposed laws to regulate them.

For Marwari businessmen in Calcutta, greater investment in new forms of philanthropic enterprise and configuring and claiming to represent a wider 'public' became a means to gain greater social respectability, contest the de-legitimization of indigenous commerce, and restore its public reputation. Reinventing the family firm as the HUF and privatizing it as an arena of cultural autonomy complemented and completed this contextual mode of negotiation. Chapter five revisits discussions about the status of the HUF in the context of proposals to legislate on partnership firms to subject them to the law of contract, and to treat joint families as corporate entities for income-tax purposes. Bridging histories of capitalism and social reform, it recounts reformers' efforts to mobilize notions of 'Hindu asceticism' to recode Marwari community ethics in the idioms of social progress, and debates within the community over laws to raise the age of consent and sanction marriage as a civil contract. Marwari reformers campaigning to cleanse community practices of taints of stagnation and backwardness were supportive of proposals to raise the age of consent. Viewing the joint family more exclusively as a basis for cultural autonomy rather than also as a source of a new public ethics, their orthodox opponents insisted on coding kinship and marriage rules as bastions of tradition beyond the purview of civil legislation. However social reform and cultural preservation were not exclusive strategies. For both progressives and their orthodox opponents, the joint family remained an unchallenged basis of social and economic organization, a fastness for shielding the family firm and the fluid kinship-based forms of commerce it represented, to be defended against the intrusion of contractual marriage laws and the threats they might portend for the co-parcenary property relations (i.e. the so-called *sapindaship*) of the joint family under Hindu law.

Stages of Capital is a historical study of law and legal arrangements, even much of it new and uncharted, and an illuminating account of colonial economic governance. With its imagination and success in drawing on critical, post-colonial, and feminist theories to read a wide range of historical materials, including privately-held papers of Marwari family businesses, it is also an important contribution to our understanding of the cultural politics of capitalism and political economy in colonial India.

However, reading this monograph merely as a history of a specific colonial modernity staged by capital would be to disregard the invitation to read it as a script about 'staging capital as modernity'. *Stages of Capital* brings to life the performance of modernity in the production of the market as a site for the sovereignty of capital. Though they did not enlist for the project with any great enthusiasm, vernacular capitalist groups in colonial India submitted to the hegemonic sovereignty of the market as complicit subjects. The idea of 'staging capital as modernity' however suggests a rich possibility of other stages and scripts of modernity, and other protagonists rehearsing in the wings. This is a rare and refreshing recognition in historical scholarship. Readers will not fail to note, however, that though it enmeshes them in an engrossing plot, sketches their characters with complex and unaccustomed nuance, dresses them in hybrid costumes, and lights up its darkened corners, this script only brings on stage the conventional protagonists of capitalist modernity in colonial India. The absence of other protagonists or hints about other possible scripts perhaps emblemizes the challenge facing critical and postcolonial historians confronted, much like vernacular capitalist subjects, with capital's power, now over the historical archive.

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