



Professor of pathos: Upendra Baxi's minor jurisprudence

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Abstract

What is Upendra Baxi's contribution to jurisprudence in India? Baxi's single-most important contribution to jurisprudence in India has been to infuse legal scholarship with pathos – the pathos of suffering, resistance, responsibility and care. An apocryphal reading of Baxi's work might make us consider his passionate heft as a sentimental inflection, but it will not necessarily lead us to consider this as a jurisprudence. Baxi's pathos endeavors to unmask law's violence and silence about the suffering of those on the margins (even as he has offered ways of working with law); and in turn Baxi's pathos has become marginal to the teaching and learning of jurisprudence in India. Indian legal education is marked by a simultaneous presence and absence of Baxi. His work is acclaimed for its rigorous content, but not necessarily for its innovative forms. While his politics is contingently celebrated, his aesthetics is considered removed from jurisprudential insight. It might be well accepted that Baxi writes with pathos, but does that pathos constitute a jurisprudence? In this essay, I offer some illustrations of Baxi's minor jurisprudence by looking at three particular forms of writings which don't get counted as part of his jurisprudential oeuvre: his lesser known works in the field of law, acknowledgements and footnotes that appear on the margins of major works, and tributes written by him on the passing of his mentors and comrades. My choice of the selected references has to do particularly with how these writings have helped me think through my own work as a law teacher and scholar.

Keywords Upendra Baxi · Minor Jurisprudence · Reparative Reading · Pathos · Aesthetics

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The minor... gets cast aside, overlooked, or forgotten in the interplay of major chords. This is the downside of the minor, but also its strength: that it does not have the full force of a preexisting status, of a given structure, of a predetermined metric, to keep it alive. It is out of time, untimely, rhythmically inventing its own pulse.

- Erin Manning¹

1 'Testimonial to a lack'

What is Upendra Baxi's contribution to jurisprudence in India? If one were to engage in a playful speculation about the ways in which lawyers will answer this question, what might some imaginative responses yield? If you are a practicing lawyer – I am not, so this is a hazardous guess – he will be considered a respected legal academic who has written a lot on the Constitution and the Supreme Court, but hopelessly theoretical for a practitioner's use. If you are a judge (am I bordering on contempt?) – his stature would invite the salutation "brother", but he will also be considered too much of a polemicist who will tear through the myth of judicial propriety. If you are a practicing lawyer of the human rights kind – which also I am not, but can risk a more favorable guess – he is a key figure who extolls the power of social action litigation, and has encouraged many law students (who have been either taught by him or have read or heard him) to not go down the path of taking up a corporate law job and dedicate themselves to litigating against the impunity with which the state and corporations perpetuate violence against the poor, despised and suffering. If you are an activist (which I have been in a past life with some remaining traces, so can speak with contingent authority), Baxi's own activism offers strategies for how law can be used by lawyers and people's movements for social transformation, while you continue to subject law to ethical interrogation.

If you are a legal academic (which is the skin that I have lived in for a fair bit of time now) he is a Dumbledore-esque figure² for those few in India who engage in what can broadly be called critical legal scholarship or legal theory on the left or activist scholarship. This is because within the discipline of law in India, the practice of interdisciplinary, self-reflexive, feminist and anti-capitalist scholarship that questions orthodoxy and dogmatism, speaks truth to power, and foregrounds the

¹ ERIN MANNING, *THE MINOR GESTURE* 1-2 (2016).

² J.K. GIBSON-GRAHAM, *A POSTCAPITALIST POLITICS* xxxi-xxxii (2006). See generally Torbjorn L. Knutsen, *Dumbledore's Pedagogy: Knowledge and Virtue at Hogwarts*, in *HARRY POTTER AND INTERNATIONAL RELATIONS* 197-212 (Daniel H. Nexon & Iver B. Neumann eds., 2006). It so happened that I was watching the Harry Potter series of films during the time of writing this piece. The character of Albus Dumbledore, the headmaster of the Hogwarts School of Witchcraft and Wizardry, seemed like an apposite fictional embodiment of Baxi – at once sagacious and pragmatic, caring and responsible, scholarly and activist. Dumbledore, as the creator of the series J.K. Rowling had revealed, was also queer. Baxi remains a vintage figure in Indian legal scholarship whose commitment to practices of queering jurisprudence have been unprecedented and inspirational. Here, I understand queering, following Gibson-Graham, as a method of '... reading for difference rather than dominance'.

social, continues to be marginalized at best and dismissed as not scholarly enough at worst. For the more doctrinal and analytically oriented amongst us, who I feel are in a majority within Indian law schools and colleges, Baxi's works on the Indian legal system, the Supreme Court, rule of law in India and Indian constitutionalism are considered worthy of citation.³ However, his sustained engagements with postmodernism and psychoanalysis,⁴ and his intellectual and political self-positioning that defies easy ideological pigeonholing (being equally critical of conservatives, liberals and progressives) has been a cause for some discomfort.⁵

I have never been taught by Upendra Baxi in person, but it would not be an exaggeration to say that I've been a student of his thought, conduct and writing for a long time now. I had not met him until after completing my first law degree. My interactions with him since that brief first encounter at the Critical Legal Conference in Hyderabad in 2006 (I was able to gather enough courage to go up and say hello and mumble something about the discontents of suffering-talk) have been mostly fleeting. Yet, through the years of my law education and afterward, Baxi has had an indelible presence in the way I have shaped my persona as a feminist, law teacher and jurisprudent.⁶

One of the regular ways in which such a presence can be thought of as possible is through reading his works as part of my courses. But I went to ILS Law College in Pune from 1999 to 2004 that had not introduced teaching methods like the breed of the national law schools. We were taught courses in a mode in which we did not necessarily read beyond a set textbook (actually borrowed or photocopied notes or flimsy guidebooks) for a subject.⁷ I first heard about Baxi and his work from the constitutional law scholar S.P. Sathe, who had taught Baxi during his law degree at the University of Bombay in the early 1960s. A senior professor referring to the work of a former student was in itself a pedagogical gesture that was unprecedented

³ See UPENDRA BAXI, *THE CRISIS OF THE INDIAN LEGAL SYSTEM* (1982); UPENDRA BAXI, *COURAGE, CRAFT AND CONTENTION: THE INDIAN SUPREME COURT IN THE EIGHTIES* (1985); Upendra Baxi, *The Rule of Law in India*, 4 SUR: INT'L J. HUM. RTS. 7, 7-21 (2007); Upendra Baxi, *The (Im)possibility of Constitutional Justice: Seismographic Notes on Indian Constitutionalism*, in *INDIA'S LIVING CONSTITUTION: IDEAS, PRACTICES, CONTROVERSIES* 31-63 (Zoya Hasan, et al., eds., 2002).

⁴ See Upendra Baxi, *HUMAN RIGHTS IN A POSTHUMAN WORLD: CRITICAL ESSAYS* (2009).

⁵ See *HUMAN RIGHTS, SOUTHERN VOICES*: FRANCIS DENG, ABDULLAHI AN'NAIM, YASH GHAI AND UPENDRA BAXI 157–210 (William Twining ed., 2009).

⁶ See Oishik Sircar, *Doing and Undoing Feminism: A Jurisdictional Journey*, in *MEN AND FEMINISM IN INDIA* 73-99 (Romit Chowdhury & Zaid Al Baset eds., 2018).

⁷ See S.P. Sathe, *Is a National Law School Necessary?* 9 ECON. POL. WKLY. 1643, 1643-1645 (1974). For a recent analysis of the diversity quotient at the National Law School of India University, Bangalore, see Chirayu Jain et al., *Accessibility and Inclusivity at National Law School*, 53 ECON. POL. WKLY. 72, 72-78 (2018). During my years at ILS Law College, learning the law (and its many conflicting meanings) was owed more to my interactions with the diversity of the student population which comprised a large number from rural Maharashtra. ILS was certainly less cosmopolitan than the neighboring Symbiosis Law School, and non-elite compared to the national law schools elsewhere in India. One of the key learnings in such a scenario for me was the revelation of a false relationship between cosmopolitanism, progressivism and modernity. While the national law schools claimed to have modernized legal education in India, such modernization was accompanied by a class and caste homogenization of the student populace. S.P. Sathe was a strong critic of the national law school proposition of the Bar Council of India that Baxi, in its initial days, was a proponent of.

for me. Sathe had offered a fond introduction to his work – Baxi was teaching at the University of Warwick at that time and had just published *The Future of Human Rights* (2002) – calling it something akin to essential and dense (these are my forgetful approximations).

During a lecture on judicial activism, on which Sathe has written a lot,⁸ he referred us to Baxi's now classic 1985 article "Taking Suffering Seriously".⁹ The article was not discussed in class in any great detail except for some remarks about what is at stake in shifting the language of judicial activism from "public" to "social". My attempts at trying to find the article online failed. It was available behind the paywall of a journal database, and I had no institutional access. For me though, that the word suffering was invoked in the context of learning the law, left a subliminal impression whose import I would come to realize only later.¹⁰

The second instance when Baxi's name came up in class was during my law of crimes course. This was a reference to "An Open Letter to the Chief Justice of India" that he had co-authored in 1979 with three other law professors to register a protest against the Supreme Court's acquittal of the accused in what has come to be known as the Mathura rape case. Again, this was a mere reference in class. What struck me was the action involved – the collective writing of a letter addressed directly to the Chief Justice as a way of demonstrating public dissent as lawyers within the bounds of the Constitution's mandate. I found the "Open Letter" in the pages of a *Supreme Court Cases* volume in the library.¹¹ It was unlike any piece of legal writing that I had read in law college. Instead of legalese, the language was imbued with outrage. It was a passionate piece of writing that taught its readers about the larger context of patriarchal and caste oppression within which practices of adjudication and justice delivery operated. This might sound too obvious a connection – but it was more than revelatory for me as a law student, and tragically requires repeated emphasis to many of the students who I've been teaching law to. Those were fledgling days of my political consciousness taking shape, and reading more of Baxi's writings – it was (and continues to be) an exciting struggle working through his language – opened up a whole new way to imagine the law, and re-imagine my role as a lawyer beyond litigating or working with a firm. Learning that activism and writing could very well be worthy pursuits that I can use my legal training to do was what has led me to doing what I have done so far.¹²

The "Open Letter", although co-authored, bore the hallmark of a distinctive voice in which Baxi wrote that I have come to identify him with – what might be called a voice of pathos – one that distinguished him from any other legal academic in India,

⁸ See S.P. SATHE, *JUDICIAL ACTIVISM IN INDIA: TRANSGRESSING BORDERS AND ENFORCING LIMITS* (2003).

⁹ Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*, 4 *THIRD WORLD LEGAL STUD.* 107, 107–132 (1985).

¹⁰ I wonder whether I should credit Sathe or Baxi for this invocation. Maybe both.

¹¹ Upendra Baxi, Lotika Sarkar, Vasudha Dhagamwar, Raghunath Kelkar, *An Open Letter to the Chief Justice of India*, (1979) 4 *SCC* (Jour) 17.

¹² See Interview by Oishik Sircar with Ratna Kapur & Brenda Cossman, *The Fraught Terrain of Law and Feminism: 20 Years of Subversive Sites*, 12(1) *SOCIO-LEGAL REV.* 133, 133–163 (2016). Alongside Baxi, I had also begun reading feminist legal works that strongly influenced my political consciousness.

especially among his contemporaries. Pathos, in everyday terms, can be understood as the practice of emotional appeal through language. It is a mode of address that lends aesthetic intensity to the tragedy of human suffering when conveyed to an audience. Pathos constitutes not only the content of speech, text or image, but also a style: the tone, the use of vocabulary, the deployment of metaphors, the form of delivery. Pathos, though, is not completely synonymous with emotion. While emotion is understood to be connected to the faculty of the mind which interprets experiences to offer socially intelligible responses, pathos is ‘intense emotion involving the whole body’¹³ that generates ‘affective relationalities’.¹⁴ It breaks down logocentric¹⁵ dualities like mind/ body, reason/ sentiment, strength/ vulnerability, public/ private, lawful/ lawless, to produce ‘exalted passion’.¹⁶ Baxi’s writings – strongly aligned with a de-colonial and de-brahminising commitment¹⁷ – are embedded in pathos as well as kindles pathos in the reader.

If I had to answer the question that I opened this essay with, my response would be that Baxi’s single-most important contribution to jurisprudence in India has been to infuse legal scholarship with pathos – the pathos of suffering, resistance, responsibility and care. An apocryphal reading of Baxi’s work might make us consider his passionate heft as a sentimental inflection, but it will not necessarily lead us to consider this as a jurisprudence.¹⁸ It might be well accepted that Baxi writes with pathos, but does that pathos constitute a jurisprudence?¹⁹ If we understand jurisprudence as ‘a practice, a craft, and a virtue: a way of attending to and taking responsibility for the full range of techniques by which [lawyers] [...] make the world amenable to judgement’,²⁰ then pathos would be inseparable from ‘the *phronesis* of *jus* [...], law’s consciousness and conscience’.²¹

However, if we take the apocryph seriously,²² in Baxi’s jurisprudence we will find an equally rigorous attachment to the prosaic, procedural, political and poetic in law – it is a rare demonstration that combines the material with the metaphysical. However, a plain reading of Baxi might not make us see this – which is why I have heard evaluations like “abstract” or “polemical”, with reference to his work from

¹³ JEAN-MICHEL RABATÉ, *THE PATHOS OF DISTANCE: AFFECTS OF THE MODERNS* 8 (2016).

¹⁴ YASMEEN ARIF, *LIFE, EMERGENT: THE SOCIAL IN THE AFTERLIVES OF VIOLENCE* 22 (2016).

¹⁵ Michael Harrison, *Logocentrism*, *THE CHICAGO SCHOOL OF MEDIA THEORY*, <https://lucian.uchicago.edu/blogs/mediatheory/keywords/logocentrism/>.

¹⁶ RABATÉ, *supra* note 13.

¹⁷ See generally WALTER D. MIGNOLO & CATHERINE E. WALSH, *ON DECOLONIALITY: CONCEPTS, ANALYTICS, PRAXIS* (2018); BRAJ RANJAN MANI, *DEBRAHMINISING HISTORY: DOMINANCE AND RESISTANCE IN INDIAN SOCIETY* (2005).

¹⁸ See generally Gerry Simpson, *The Sentimental Life of International Law*, 3 *LONDON REV. OF INT’L L.* 3, 3–29 (2015).

¹⁹ On jurisprudence’s longstanding uneasy relationship with passion and its vicissitudes in emotion, see generally *THE PASSIONS OF LAW* (Susan A. Bandes ed., 2001); MARTHA C. NUSSBAUM, *POLITICAL EMOTIONS: WHY LOVE MATTERS FOR JUSTICE* (2013).

²⁰ JAMES PARKER, *ACOUSTIC JURISPRUDENCE: LISTENING TO THE TRIAL OF SIMON BIKINDI* 39 (2015).

²¹ COSTAS DOUZINAS & ADAM GEAREY, *CRITICAL JURISPRUDENCE: THE POLITICAL PHILOSOPHY OF JUSTICE* 3 (2005) [emphasis in original].

²² See generally Desmond Manderson, *Apocryphal Jurisprudence*, 26 *A. J. OF LEGAL PHIL.* 27, 27–59 (2001).

many students and colleagues. Which is also why Baxi might not feature in the core syllabus of a Jurisprudence or Constitutional Law course in India, unless perhaps as a supplementary reading. He will still be part of the Law and Social Transformation or Human Rights Law course, or the “Open Letter” might feature in a Criminal Law course’s module on rape – given the direct connect one would make between the subject and the content of his writings, but not because of the aesthetics of the writing and the emotional investments and ethical imperatives that are conveyed through the voice of the author.²³

So, in many ways, there seems to be a strange contradiction emerging: Baxi’s pathos endeavors to unmask law’s violence and silence about the suffering of those on the margins (even as he has offered ways of working with law); and in turn, Baxi’s pathos has become marginal to the teaching and learning of jurisprudence in India. Indian legal education is marked by a simultaneous presence and absence of Baxi. His work is acclaimed for its rigorous content, but not necessarily for its innovative forms. While his politics is contingently celebrated, his aesthetics is considered removed from jurisprudential insight. I do not intend to overstate this form/content divide – but it is the task of paying attention to their relationship in Baxi’s style of writing that I wish to undertake in this essay.²⁴ To mark B.R. Ambedkar’s centenary year in 1995, Baxi had lamented how the ‘Indian social science landscape has disarticulated Babasaheb Ambedkar by studious theoretical silence’.²⁵ My contention is that legal research and teaching in India has extended a similar theoretical silence towards the aesthetics in and of Baxi’s jurisprudence.²⁶

Pathos is discernible in the major jurisprudential themes of suffering and violence in the lives of subaltern peoples that Baxi has written about, and is well known for. That is a corpus that I do not need to re-state for readers acquainted with his work.

²³ See generally Nigel Duncan, *Addressing Emotions in Preparing Ethical Lawyers*, in AFFECT AND LEGAL EDUCATION: EMOTION IN LEARNING AND TEACHING THE LAW 257–282 (Paul Maharg & Caroline Maughan eds., 2011). This observation is not an empirically deduced one. I am basing this claim through a survey of course manuals for some of the mentioned subjects that are taught at the Jindal Global Law School. My hunch is, however, that it would possibly be the case in other law schools as well in some varying degrees. There is generally a tendency to avoid teaching literature that gets referred to as “theory heavy” or “too interdisciplinary” in law schools in India. This theory aversion is both promoted by faculty and administration, as well as demanded by students in a legal education scenario where technocratic training is considered the hallmark of excellence. Such a training also generates an understanding of law as a body of knowledge devoid of passion and emotion.

²⁴ For a sophisticated demonstration of such an engagement with the form and style of Duncan Kennedy’s work, see Vasuki Nesiah, *Sexy Dressing, Gender and Legal Theory: A Style of Political Engagement*, 5 TRANSNATIONAL LEGAL THEORY 640, 640–648 (2014).

²⁵ Upendra Baxi, *Emancipation as Justice: Babasaheb Ambedkar’s Legacy and Vision*, in CRISIS AND CHANGE IN CONTEMPORARY INDIA 122–49 (Upendra Baxi & Bhikhu Parekh eds., 1995).

²⁶ For an illustration of this see CHALLENGING THE RULE(S) OF LAW: COLONIALISM, CRIMINOLOGY AND HUMAN RIGHTS IN INDIA (Kalpana Kannabiran & Ranbir Singh eds., 2008). This book, which brings together a well-known group of feminist and critical legal scholars and activists, is dedicated to Upendra Baxi. My reading of the introduction makes clear that that the engagement with Baxi’s work is limited to his politics. The exceptions are the articles in this special issue of the *Jindal Global Law Review* by Adil Hasan Khan, Debolina Dutta, Brinda Bose and Arun Sagar.

In this essay,²⁷ I intend to offer some fragments of what I would call Baxi's 'minor jurisprudence'.²⁸ Minor would not necessarily mean the opposite of major, or lesser and insignificant. A plain language approximation might mean it to be the sub-text that comes to the fore only when you look for pathos on the margins of Baxi's writings, or in his marginal writings, or read his major works against the grain. They will show a consistent engagement with an ethic of responsibility exercised in the practice of jurisprudential knowledge production and holding the office of the jurist-prudent.²⁹ As feminist law professors Amita Dhanda and Archana Parashar, whose own works have been strongly influenced by Baxi's, have written:

While the knowledge and power nexus is now well established, it is equally important to make explicit the nexus of power and responsibility. Legal scholars who theorize the law have the power to constitute valid legal knowledge. Necessarily, they ought to take responsibility for the consequences that flow from their theories.³⁰

As I will indicate in what follows, the normative call in this quote is already embodied in Baxi's minor jurisprudence and can provide insights into a practice of jurisprudence that can interrogate the status of modern law as the 'state's emissary'³¹ or a stooge of the powerful, along with a self-reflexive account of the jurist-prudent's own entanglements with networks of power and privilege.³²

²⁷ I have chosen to write this piece as an essay (and not an article or paper) because of Baxi's own experimentation with the form. As Brian Dillon writes:

The essay is diverse and several – it teems. But of course it also *tries* – and gives up. [...] But here arises a conflict inside the essay as form: it aspires to express the quintessence or crux of its matter, thus to a sort of polish and integrity and it wants at the same time to insist that its purview is partial, that being incomplete is a value in itself for it better reflects the brave and curious but faltering nature of the writing mind.

BRIAN DILLON, *ESSAYISM* 17–18 (2017) [emphasis in original].

²⁸ See generally Mark Antaki, *Making Sense of Minor Jurisprudence*, 21 *LAW TEXT CULTURE* 54, 54–75 (2017); Shaun McVeigh, *Afterword: Office and Conduct of the Minor Jurisprudent*, 5 *UC IRVINE L. REV.* 499, 499–511 (2015).

²⁹ See generally Shaun McVeigh, *Law As (More or Less) Itself: On Some Not Very Reflective Elements of Law*, 4 *UC IRVINE L. REV.* 471, 471–491 (2014); Shaunnagh Dorsett & Shaun McVeigh, *Conduct of Laws: Native Title, Responsibility and Some Limits of Jurisdictional Thinking*, 36 *MELBOURNE UNIVERSITY L. REV.* 470, 470–493 (2012).

³⁰ Amita Dhanda & Archana Parashar, *Decolonisation of Legal Knowledge: Whose Responsibility?*, in *DECOLONISATION OF LEGAL KNOWLEDGE* xii (Amita Dhanda & Archana Parashar eds., 2009).

³¹ Upendra Baxi, 'The State's Emissary': *The Place of Law in Subaltern Studies*, in *SUBALTERN STUDIES VII* 247–264 (Partha Chatterjee & Gyanendra Pandey eds., 1992).

³² See Margaret Davies, *Ethics and Methodology in Legal Theory: A (Personal) Research Anti-Manifesto*, 6 *LAW TEXT CULTURE* 7, 7–26 (2002). See also Oishik Sircar, *Of Complicity and Contamination in the Neoliberal Academy*, *KAFILA* (2013), <https://kafila.online/2013/01/30/of-complicity-and-contamination-in-the-neoliberal-academy-oishik-sircar/>. In this context, Baxi had used the expression 'auto-critique' (*id.* at 254) as a way to foreground his disagreements with his own positions and revising them in the light of new insights and inspiration. The small corpus of writings on law that I have published, and my orientation towards critical jurisprudence has been one that aims to take auto-critique seriously as an ethical method in scholarly knowledge production.

2 Minor affects

The expression minor jurisprudence draws on what French philosophers Gilles Deleuze and Felix Guattari have called ‘minor literature’.³³ I had first encountered their names in a not so well-known 1991 piece by Baxi titled “Complicity and Struggle: Theory and Society” which offered an impassioned provocation: the ‘complicitous relation of social theory with the noological Indian state’.³⁴ Following up on that reference inaugurated for me a rival trajectory in the French intellectual tradition with a strong psychoanalytic bent that added more layers to Michel Foucault’s theorization of power and government.³⁵

In this section I will do two things: first, offer a brief understanding of why I have chosen to use the idea of minor jurisprudence to think about Baxi’s work. Second, I will illustrate Baxi’s minor jurisprudence as a practice of ‘affective labour’³⁶: care work that takes ‘immaterial’³⁷ forms in nurturing ‘socially engaged theoretical labourers’³⁸ who will be able to interrogate their own complicity in ‘the charmed circle of cognitive entrepreneurs operating grids of globalized knowledge systems’.³⁹

Two key characteristics of minor literature are: first, ‘everything in them is political’ and second, ‘everything takes on a collective value’.⁴⁰ As Laurie and Khan point out:

... minor literatures should not form canons anchored to Masters... The minor is not the achievement of individual heroes: it describes a multiplicity. Minor literatures make visible all the collective forces required for liberalism to produce its myths of the autonomous individual. For this reason, there is no moral hierarchy between minor and major works.⁴¹

Minor jurisprudence,⁴² thus, displaces canonical understandings of law that are traced back almost singularly to Euro-American traditions comprising the works of all white men. Yet, in offering an anti-colonial perspective, minor jurisprudence will

³³ Gilles Deleuze & Felix Guattari, *What is a Minor Literature?*, 11 MISSISSIPPI REV. 13, 13-33 (Winter/Spring 1983).

³⁴ Drawing on the work of Deleuze and Guattari, Baxi writes: ‘Noology is distinct from ideology and describes ways in which the modern state, with all its carnal and bloody nature of orders of desire which constitute the fantasy of *imperium*, provides and inspires the ‘very images of thought’.’ Upendra Baxi, *Complicity and Struggle: Theory and Society*, 19 SOCIAL SCIENTIST 21 (Oct-Nov 1991) [emphasis in original].

³⁵ Mathias Schönher, *Deleuze, a split with Foucault*, 1 LE FOUCALDIEN, 1-12 (2015).

³⁶ Michael Hardt, *Affective Labor*, 26 BOUNDARY 2 89, 89-100 (1999).

³⁷ Maurizio Lazzarato, *Immaterial Labor*, in RADICAL THOUGHT IN ITALY: A POTENTIAL POLITICS 133-146 (Paolo Virno & Michael Hardt eds., 2006).

³⁸ Baxi, *supra* note 25.

³⁹ *Id.*

⁴⁰ GILLES DELEUZE AND FELIX GUATTARI, KAFKA: TOWARD A MINOR LITERATURE 17 (Dana Polan trans., 1986).

⁴¹ Timothy Laurie & Rimi Khan, *The Concept of Minority for the Study of Culture*, 31 CONTINUUM: J. MEDIA COMM. S. 3, 1-12 (2017).

⁴² Minor jurisprudence itself does not have a settled definition. While I have distilled it for my purposes in this essay, for an expansive discussion see Christopher Tomlins, *Law As...IV: Minor Jurisprudence in Historical Key: An Introduction*, 21 LAW TEXT CULTURE 1, 1-29 (2017).

not engage in a nativist counter-position that again favours specific individuals or civilizations as the sole repositories of Southern legal knowledge. In making visible the machinations of the collective forces in sovereignty, constitutions, rights and citizenship, minor jurisprudence reveals how the production of the autonomous individual is intrinsic to ‘state formative practices’⁴³ under liberalism and imperialism. Minor jurisprudence foregrounds the possibility of a co-habitation of a multitude of laws that do not work with a foundational law of authority like Kelsen’s ‘grundnorm’⁴⁴ or Hart’s ‘Rule of Recognition’.⁴⁵ Minor jurisprudence is not a romantic category of resistance to the hegemonic laws of colonialism, apartheid, occupation, capitalism, racism, casteism, patriarchy or heteronormativity, but an active and ethical practice of legal scholarship that repeatedly challenges, in the words of Peter Goodrich, ‘the dominance of any singular system of legal norms’ and ‘neither aspires nor pretends to be the only law or universal jurisprudence’.⁴⁶

We can see such a working of minor jurisprudence in Baxi’s argument in favor of a distinct ‘postcolonial legality’⁴⁷ that challenges ‘epistemic legal racism’⁴⁸ while at the same time troubling the idea of the postcolonial itself as ‘a hegemonic term of art’.⁴⁹ Baxi has described constitutions as a ‘will to stateness’, which is a ‘totalizing formation’ in which legal recognition of communities and rights postures as the *telos* of justice-seeking enterprises within liberalism.⁵⁰ Alongside, he has also kept alive a ‘dark hope’⁵¹ in the Constitution of India and by extension the Supreme Court. This is what can be called Baxi’s faith in ‘demosprudence’: ‘judicial review process and power that enhances life under a constitutional democracy’.⁵² In a similar vein, while on the one hand he has called out the neoliberal co-optation and ‘repressive’ potential of human rights (‘trade-related market-friendly human rights’), he has also re-imagined human rights futures that ‘engage in a discourse of suffering that moves the world’.⁵³ Baxi’s philosophical inheritances – from Gandhi to Marx to Ambedkar to Gramsci to Foucault to Derrida to Rawls to Sen to Nussbaum – demonstrate a committed attempt to not eulogize any singular heroic figure, but an acknowledgement of a multitudinous bricolage of traditions, which is constituted also by his learnings from the struggles of people’s movements. In his approach to legal

⁴³ Upendra Baxi, *Constitutionalism as a Site of State Formative Practices*, 21 CARDOZO L. REV. 1183, 1183-1210 (1999-2000).

⁴⁴ HANS KELSEN, *PURE THEORY OF LAW* (1967).

⁴⁵ H.L.A. HART, *THE CONCEPT OF LAW* (2012).

⁴⁶ PETER GOODRICH, *LAW IN THE COURTS OF LOVE: LITERATURE AND OTHER MINOR JURISPRUDENCES 2* (1996).

⁴⁷ Upendra Baxi, *Postcolonial Legality: A Postscript from India*, 45 VERFASSUNG UND RECHT IN UBERSEE/LAW AND POLITICS IN AFRICA, ASIA AND LATIN AMERICA 178, 178-194 (2012).

⁴⁸ Deleuze & Guattari, *supra* note 33.

⁴⁹ Lazzarato, *supra* note 37.

⁵⁰ Baxi, *The (Im)possibility of Constitutional Justice: Seismographic Notes on Indian Constitutionalism*, *supra* note 3.

⁵¹ DAVID SHULMAN, *DARK HOPE: WORKING FOR PEACE IN ISRAEL AND PALESTINE* (2007).

⁵² Upendra Baxi, *Demosprudence versus Jurisprudence: The Indian Judicial Experience in the Context of Comparative Constitutional Studies*, 14 MACQUARIE L. J. 6, 3-23 (2014).

⁵³ *Supra* note 5. See also Upendra Baxi, *Voices of Suffering and the future of human rights*, 8 TRANSLATIONAL LAW AND CONTEMPORARY PROBLEMS 125, 125-169 (1998).

research and teaching, while Baxi has found home in what he has called the ‘hedonist approach’ of ‘rebellious pedagogies’,⁵⁴ he has also sounded caution about the production of exclusionist ‘elite theories’ by a new generation of law institutes and scholars whose claim to criticality lie in berating doctrinal legal analysis, but not foregrounding their complicity with structures of oppression in the way higher education in general and in law is being privatized and depoliticized in India.⁵⁵

If postcolonial subjectivity is characterized by what Gayatri Spivak has called a condition of a ‘double-bind’,⁵⁶ Baxi’s work has been a performative embodiment of that. At the heart of this double-bind lies pathos. As Baxi has commented on pedagogy, research and scholarship in India:

... our espousal of transformative causes has not kept pace with the need to renovate our practices of theoretical labour... I have a feeling, at least for myself, that much of our social engagement does not inform our academic being. Even if there is a grain of truth in this perception, we must acknowledge the ‘germ gnawing at the heart of conviction’. And this should goad us, perhaps to proceed beyond the merger of heroic activism with tearful accountability.⁵⁷

Thus, the task of pathos in Baxi’s minor jurisprudence, as I read it, is one of affective labor: a form of unrecognized work that engages in an ethic of care and responsibility but does not carry exchange-value in material terms of being considered legal knowledge. Feminists have long characterized women’s domestic work as caregivers, and professional work by sex workers as affective or immaterial labor because it remains unrecognized as legitimate work, resulting in the exacerbation of gendered exploitation under capitalism.⁵⁸ Drawing on the work of Michael Hardt, affective labor can be understood as ‘the labor of human contact and interaction, which involves the production and manipulation of affects’.⁵⁹ Under neoliberal conditions of production, affective labour does not remain restricted to the private sphere alone. Johanna Oksala writes:

As the marketization and commodification of everyday life expands, people have increasingly come to rely on the affective services that they buy and that they used to receive from their families and communities... Affective labor is increasingly outsourced, and the domestic, private realm is marketized.⁶⁰

⁵⁴ Upendra Baxi, *Teaching as Provocation*, in *ON BEING A TEACHER* 150-158 (Amrik Singh ed., 1990).

⁵⁵ Upendra Baxi, *Enculturing Law? Some Unphilosophic Remarks*, in *ENCULTURING LAW: NEW AGENDAS FOR LEGAL PEDAGOGY* 3-21 (Mathew John & Sitharaman Kakarala eds., 2007).

⁵⁶ Spivak understands double-bind as a training in ‘learning to live with contradictory inheritances’. GAYATRI CHAKRAVORTY SPIVAK, *AN AESTHETIC EDUCATION IN THE ERA OF GLOBALIZATION* 3 (2012).

⁵⁷ Baxi, *supra* note 34, at 26.

⁵⁸ See generally SILVIA FEDERICI, *REVOLUTION AT POINT ZERO: HOUSEWORK, REPRODUCTION, AND FEMINIST STRUGGLE* (2012); JAYATI GHOSH, *NEVER DONE AND POORLY PAID: WOMEN’S WORK IN GLOBALISING INDIA* (2009); PRABHA KOTISWARAN, *DANGEROUS SEX, INVISIBLE LABOUR: SEX WORK AND THE LAW IN INDIA* (2011).

⁵⁹ Johanna Oksala, *Affective Labour and Feminist Politics*, 41 *SIGNS: JOURNAL OF WOMEN IN CULTURE AND SOCIETY* 284, 281-203 (2016).

⁶⁰ *Id.*

The affective labour of Baxi's minor jurisprudence stands unrecognized because it offers gestures of care and responsibility that fall outside of the conventional interpretive frames through which most legal scholarship is written and read in India. As long as they pertain to theorizing law with a capital L, works can claim to qualify as jurisprudential. There is a strong inflection of an instrumental orientation in such practices of reading and writing jurisprudence in the Indian legal academy where training is directed to turn students into technocrats who will serve the demands of an industrious new India.

To consider the affective labour invested in Baxi's minor jurisprudence gains particular significance in times of the consolidation of the academic-military-industrial complex that individuates academic labor, rewards intellectual depoliticization, managerialises academic relationships through metric-based evaluations, and securitizes university spaces.⁶¹ This trend has been particularly acute in the discipline of law globally for many decades,⁶² and as Baxi has pointed out time and again, in the case of post-liberalized legal education in India.⁶³

In the rest of this section, I will offer some illustrations of Baxi's minor jurisprudence by looking at three particular forms of writings which do not get counted as part of his jurisprudential oeuvre: his lesser known works in the field of law, acknowledgements and footnotes that appear on the margins of major works, and tributes written by him on the passing of his mentors and comrades. My choice of the selected references has to do particularly with how these writings have helped me think through my own work as a law teacher and scholar. I do not offer a chronological or comprehensive overview because a claim of that nature in itself will render the idea of minor jurisprudence redundant.

The fragmented nature of my survey is motivated by a practice of what Eve Sedgwick has called 'reparative reading'⁶⁴: reading 'texts and semiotic practices [...] in terms of their empowering, productive as well as renewing potential to promote semantic innovation, personal healing and social change'.⁶⁵ Further, reparative reading can be understood as 'a mode of critical theory that embraces the "privilege of unknowing" and that provides theorists, readers, and scholars with a way to think about texts that does not always already, even before reading, imagine a potential outcome—a possible reading, indeed, that does not imagine a potential as even necessary'.⁶⁶ Reparative reading, thus, enables an attachment with the text through the

⁶¹ See generally Eyal Weizman, *Lethal Theory*, *LOG* 7 53, 53-77 (Winter/Spring 2006); JENNIFER DOYLE, *CAMPUS SEX, CAMPUS SECURITY* (2015); STEFAN COLLINI, *SPEAKING OF UNIVERSITIES* (2017); *WHAT THE NATION REALLY NEEDS TO KNOW: THE JNU NATIONALISM LECTURES* (Rohit Azad et al. eds., 2017).

⁶² See generally MARGARET THORNTON, *PRIVATIZING THE PUBLIC UNIVERSITY: THE CASE OF LAW* (2012).

⁶³ Upendra Baxi, *Notes Towards a Socially Relevant Legal Education: A Working Paper for the UGC Regional Workshop in Law 1975-1976*, 5 *J. BAR COUNCIL OF INDIA* 1-3, 1-33 (1976); Upendra Baxi, *On judicial activism, legal education and research in a globalizing India*, *ANNUAL CAPITAL FOUNDATION LECTURE* (1996); BAXI, *supra* note 47.

⁶⁴ EVE KOSOFSKY SEDGWICK, *TOUCHING, FEELING: AFFECT, PEDAGOGY, PERFORMATIVITY* 123 (2003).

⁶⁵ Katrin Roder, *Reparative Reading, Post-structuralist Hermeneutics and T. S. Eliot's Four Quartets*, 132: 1 *ANGLIA*, 58-59 (2014).

⁶⁶ Jonathan A. Allan, *The Paranoid Anus*, *ZED BOOKS BLOG* (Aug. 9, 2016), <https://www.zedbooks.net/blog/posts/the-paranoid-anus/>.

foregrounding of interpretive vulnerability rather than interpretive supremacy.⁶⁷ The register of vulnerability invokes pathos in the way a reader cares for a text and its author, and in that ethic of care lies the task of affective labor.

In 1990, at the dawn of India's liberalization era, Baxi wrote a short contemplative piece titled "Teaching as Provocation" that compellingly foretold how the privatization of higher education in India would solidify knowledge as a 'Brahmanic preserve' and reduce the 'teacher-taught' relation into one between 'producers' and 'consumers' of knowledge'.⁶⁸ The piece was a frank insight to Baxi's teaching philosophy, and since the time of my discovery of it, it has remained with me as a manifesto that has inspired my own pedagogical pursuits. I teach this piece as part of my Jurisprudence course to emphasize that jurisprudence is not just a pre-existing and distant corpus of knowledge to be mastered, but whose appreciation and reception are intrinsically connected to the ethical imperatives attended to in its teaching. Despite its brevity, this is a piece with enormous depth. I will hold on some key thoughts from it here as an illustration of Baxi's minor jurisprudence of legal pedagogy.

Drawing from his teaching experience at the University of Sydney (which was his first teaching job after completing his doctorate in USA), Baxi suggests 'a profound inversion of roles' to unsettle the hierarchical structure and ideology through which knowledge is arranged within a classroom.⁶⁹ This inversion requires that 'the teacher has to be taught and the taught in turn teaches something to the teacher, the receivers of knowledge are the givers and the givers receivers'.⁷⁰ The jurisprudential lesson in this for me lies in its critique of authority as embodied in the figure of the teacher. The call for collaboration between the teacher and students in a classroom is an acknowledgement of the teacher's 'scholarly finitude'.⁷¹ This acknowledgement is not a tacit one, but what Baxi calls a 'confessional activity': 'Every time I bite at the fruit of knowledge, I have to say, I realize the core of my ignorance'.⁷² The confession is not metaphorical. In response to the question 'What are you good for?' that Baxi was asked by his students, he replied:

Do not merely look at what I say; look at *what I do with what I say*. I simply cannot carry conviction about what I say to young minds unless they see that I mean what I say about the rule of law, human rights, human dignity.⁷³

This quote sets up Baxi's own struggle with knowing and doing, or praxis: 'we... are the bearers of the very modes of repression we seek to combat through scholarship...'.⁷⁴ Teaching as an exhibition of the prowess of knowledge is a demonstration

⁶⁷ See generally SUSAN SONTAG, *AGAINST INTERPRETATION AND OTHER ESSAYS* 3-4 (1966).

⁶⁸ Baxi, *supra* note 54.

⁶⁹ *Id.* at 152.

⁷⁰ *Id.*

⁷¹ *Id.* at 155.

⁷² *Id.* at 154.

⁷³ *Id.* [emphasis added].

⁷⁴ Upendra Baxi, *Towards a Liberation of Women's Studies*, in *INHUMAN WRONGS AND HUMAN RIGHTS: UNCONVENTIONAL ESSAYS*, 58 (1994).

of ‘specialization’ that according to Baxi ‘reinforces the authority of the knowledge makers and givers’.⁷⁵ In this, praxis becomes Baxi’s life practice for subjecting knowledge practices to an ethical interrogation for the role they play in reproducing the ‘tyranny, injustice and exploitation enacted before our own eyes even as we ‘teach’ and ‘learn’’.⁷⁶

It is this ‘dichotomy between discourse and praxis’⁷⁷ in Indian social sciences that prompted Baxi in 1987 to offer ‘an interrogation of the wildfire spread of women’s studies in India’.⁷⁸ As the chairperson of the Indian Council for Social Science Research Committee on Women’s Studies, Baxi had raised concerns about how the institutionalization of women’s studies in Indian universities can lead to it becoming a depoliticized specialization. As he wrote: ‘Suffering women are our true social scientists, not we for whom *their* suffering provides material for nurturing our careers and building institutions focused on ‘women’s studies’.’⁷⁹

Since its inception in the mid-1970s, born in the wake of the historic 1974 *Towards Equality* report on the status of women in India,⁸⁰ Women’s Studies has emerged as a critical interdisciplinary field that combines research, pedagogy and activism, with close ties to women’s movements in India.⁸¹ Alongside my law education, I had completed a postgraduate certificate from the Women’s Studies Centre at Pune University.⁸² Under the tutelage of feminist sociologist Sharmila Rege, this course trained me in feminist theory and thought from a socialist and anti-caste perspective, and introduced me to a new vocabulary of politics and scholarship to engage with both the teaching and learning of jurisprudence.⁸³ So, when I read Baxi’s concerns many years after its publication, it seemed a little alarmist and the tone carried a tinge of what might today be called ‘mansplaining’.⁸⁴ Expressing what I read as doubt laced with humour, Baxi himself noted that with the piece he had aimed at ‘shocking sisters’,⁸⁵ and admitted in an endnote that the questions raised by him were met with ‘appropriate silence’,⁸⁶ by the women scholars who were pioneering Women’s Studies at that time. Contrary to Baxi’s position of doubt, it is because of the critical nature of the feminist scholarship being produced by Women’s Studies Centres at public universities, there have been repeated attempts by the University Grants Commission to reign them in – once by trying to rechristen

⁷⁵ Baxi, *supra* note 54 at 155.

⁷⁶ *Id.* at 154.

⁷⁷ Baxi, *supra* note 74.

⁷⁸ *Id.* at 69.

⁷⁹ *Id.* at 59 [emphasis in original].

⁸⁰ TOWARDS EQUALITY: COMMITTEE ON THE STATUS OF WOMEN IN INDIA (Kumud Sharma and K.P. Sujaya eds., 2011).

⁸¹ Mary E. John, *Introduction, in WOMEN’S STUDIES IN INDIA: A READER 1*, 1-22 (Mary E. John ed. 2008).

⁸² Now called the Savitribai Phule Pune University.

⁸³ See Sharmila Rege, *Education as Trutiya Ratna: Towards Phule-Ambedkarite Feminist Pedagogical Practice*, 45 ECON. POL. WKLY 88, 88-89 (Oct. 2010)

⁸⁴ See REBECCA SOLNIT, *MEN EXPLAIN THINGS TO ME AND OTHER ESSAYS* (2015).

⁸⁵ BAXI, *supra* note 74 at 69.

⁸⁶ *Id.* at 68.

them as Women and Family Studies Centres, and more recently through a threat of ending funding.⁸⁷

However, a reparative reading allows me to appreciate a broader political motivation behind his interrogation that becomes relevant for our current times. Baxi's caution offers two lessons that speak to the pursuit of 'emancipatory knowledge',⁸⁸ in the neoliberal university. First, his position can be read as one about the problematic consequences of institutionalizing movement politics into academic disciplines of expertise that end up severing critique from collective action.⁸⁹ Second, is a related argument against reducing the experiences of suffering of others into discourses of academic specialization for a select few. This is a concern with what can be called academic ventriloquism: potential for violent appropriation that research continues to perform by capitalizing on the voices of the subaltern and then marketing it for consumption as critical scholarship.⁹⁰ This has, in fact, been a sustained concern for Baxi with regard to the relationship between scholarly expertise and social transformation:

... there is no prospect for an empowering sphere of studies and action within the existing conceptions of uni- and multi-disciplinarity. [...] Versatility, not mere specialization, is what the birth of emancipatory knowledge calls forth [...] ... at no stage can it become authentic without praxis.⁹¹

This observation has also found amplification in his concerns with the teaching of law as a specialist field, with particular regard to post-liberalization legal education in India which saw the burgeoning of the five-year LLB program and the growth of the national law school prototypes. As Baxi asserts: '... most 'encultured' law products of the National Law School prototypes now serve better the causes of globalized lawyering than the future of human rights in a globalizing India'.⁹² I have a palpable sense of this teaching law in India at a university founded by a philanthropic grant

⁸⁷ See T.K. Rajalakshmi, *Shifting Emphasis*, FRONTLINE (Sept.-Oct. 2003), <http://www.frontline.in/static/html/fl2020/stories/20031010002108100.htm>; Shilpa Phadke, *Why is the government threatened by women's studies centres in Indian universities?* THE INDIAN EXPRESS, June 15, 2017, <http://indianexpress.com/article/education/why-is-the-government-threatened-by-womens-studies-centres-in-indian-universities/>.

⁸⁸ Baxi, *supra* note 74, at 68.

⁸⁹ See generally Vivek Chibber, *On the decline of Class Analysis in South Asian Studies*, 38: 4 CRITICAL ASIAN STUDIES, 357-387, (2006); Costas Douzinas, *Oubliez Critique*, 16 LAW AND CRITIQUE, 47-69 (2006); NANCY FRASER, FORTUNES OF FEMINISM: FROM STATE-MANAGED CAPITALISM TO NEOLIBERAL CRISIS (2013).

⁹⁰ See generally Patrick Wolfe, *Should the Subaltern Dream? "Australian Aborigines" and the Problem of Ethnographic Ventriloquism*, in CULTURES OF SCHOLARSHIP, 57 (S.C. Humphreys Ed. 1997); Arthur Klienman and Joan Klienman, *The Appeal of Experience; The Dismay of Images: Cultural Appropriations of Suffering in Our Times*, 125: 1 DAEDALUS 1-23 (1996); Oishik Sircar and Debolina Dutta, *Beyond Compassion: Children of Sex Workers in Kolkata's Sonagachi*, 18: 3 CHILDHOOD, 333-349 (2012).

⁹¹ Baxi, *supra* note 74, at 67-68.

⁹² BAXI, *supra* note 55, at 17.

from a steel mining company that has been involved in a major case of corporate corruption and in the exploitation of India's adivasis.⁹³

Building on the eleventh thesis of Marx's "Theses on Feuerbach",⁹⁴ praxis for Baxi brings together knowing (interpretation) and doing (transformation) in many ways. A minor jurisprudential dimension of this can be seen at the margins of some of his texts. When being trained as lawyers, seldom are we taught to look at the acknowledgements section of a book, or the footnotes of a major work to be constitutive of the philosophical orientation of the jurisperit, or how citational practices reproduce knowledge hegemonies.⁹⁵ These components remain mostly extraneous to the work in question and are understood merely as functional conventions, unless being mined for data retrieval or questioning veracity.

In the acknowledgements section of many of his books, Baxi has remained attentive to the domestic economies of affective labor and the experiences of subaltern suffering and struggles that enables and inspires him to produce his scholarship. In *The Crisis of the Indian Legal System*, learning from an argument by Australian feminist Anne Summers, Baxi had commented on how the gesture of dedicating a book to one's wife is a manifestation of patriarchy and sexism.⁹⁶ The same was repeated in *Human Rights in a Posthuman World*.⁹⁷ The wording of two key portions in the acknowledgements in *The Future of Human Rights*, carry important minor jurisprudential insights:

While conventional protocols require acknowledgement of my authorship of this work, it remains a composite creation. The heavily silent burdens of the labour of this writing have been graciously as ever borne by my wife Prema...⁹⁸

[...]

I need to say that the work in your hand owes, in many ways beyond traditional labours of authorial acknowledgement, to the *real authors*. If there is anything creative to this work, it owes to three decades old association with social action struggle for the human rights of subordinated peoples at diverse sites, within and outside India and in particular to the heroic struggle of over 200,000 women, children and men afflicted by 47 tonnes of MIC, in the Union Carbide orchestrated largest archetypal peacetime industrial disaster. From them, and the geographies of injustice constituted by the 'organized irresponsibility' and 'organized impunity' of global corporations, I have learnt more

⁹³ See Bibhuti Pati, *Steel plant bludgeons tribals in a brutal barter*, TEHELKA MAGAZINE (Feb. 25, 2012), http://archive.tehelka.com/story_main51.asp?filename=Ne250212Odisa.asp; Aruna Chandrasekhar, *A Successful Protest Against a Chhattisgarh Mine Highlights the Failure of India's Coal Auctions*, THE WIRE (Oct. 10, 2017), <https://thewire.in/175055/chhattisgarh-mine-protest-coal-auctions/>.

⁹⁴ 'The philosophers have only interpreted the world, in various ways; the point is to change it'. Karl Marx, *Theses on Feuerbach*, <https://www.marxists.org/archive/marx/works/1845/theses/theses.htm>.

⁹⁵ See Sara Ahmed, *White Men*, FEMINISTKILLJOYS (Nov. 4, 2014), <https://feministkilljoys.com/2014/11/04/white-men/>.

⁹⁶ UPENDRA BAXI, *THE CRISIS OF THE INDIAN LEGAL SYSTEM* xiii. (1982).

⁹⁷ UPENDRA BAXI, *HUMAN RIGHTS IN A POSTHUMAN WORLD: CRITICAL ESSAYS* xvi (2007).

⁹⁸ UPENDRA BAXI, *THE FUTURE OF HUMAN RIGHTS* xi (2nd ed., 2006).

about human violation and suffering than the work in your hands can possibly ever convey. I accordingly also dedicate this work to the *suffering of the just*, by no means an abstract ‘category’.⁹⁹

In a similar vein, in a footnote to Chapter 1 in the same book, as an apologia for his use of the word ‘human’, Baxi wrote:

I use the term ‘human’ as an act of communicational courtesy. Human stands marked by the presence of ‘man’, and person by a ‘son’. My preferred non-sexist version is, therefore, a combination of the first letters of both words: ‘huper’. I await the day when the word ‘huper’ will replace the word ‘human’.¹⁰⁰

As a semiotic practice of pathos, the sharing of authorship with a people’s movement, acknowledging the contradiction in dedicating a book to one’s partner, and explaining the patriarchal structuring and limitations in the English language, are crucial to a critique of authority in jurisprudence. If we read these as Baxi’s affective labor, they offer a training in reading with care and responsibility that make it difficult to respond to acknowledgements and footnotes with ‘facile gestures’¹⁰¹ and reformulates the writing of jurisprudence as ‘above all theory which is reflective about the positioning of subjects in the construction of knowledge’.¹⁰²

An articulation of the scholar’s self-positioning in the practices of the production of knowledge also ‘creates specific relationalities that generate assemblies of social relations’.¹⁰³ The above instances have pointed at Baxi’s acknowledgement of his affective ties with his wife and his engagement with subaltern peoples’ struggles.¹⁰⁴ A deep account of such relationalities can also be found in the many tributes that Baxi has written about his mentors and comrades on their passing.

When I had heard about Baxi from S.P. Sathe in the early 2000s, I had no inkling of the fact that as a student at the University of Bombay, Baxi had ‘rebelled against [Sathe’s] ways of teaching’ in class.¹⁰⁵ This I learnt on reading “Adieu, Satyaranjan Sathe”, Baxi’s tribute to his former teacher. As Baxi recalled:

Of course, he was outraged at my interlocution of his pedagogic authority. However, what eventually mattered for both of us were the ways in which Satyaranjan converted this contestation into a resource for vastly improved methods of law teaching and his reiterated public acknowledgement of this episode as providing further lessons and messages for innovating critical pedagogy. In thus continually recalling with warm affection my acts of rebellion, Sat-

⁹⁹ *Id.* at xii [emphasis in original].

¹⁰⁰ *Id.* at 1.

¹⁰¹ Michel Foucault, *Practicing Criticism, in POLITICS, PHILOSOPHY, CULTURE: INTERVIEWS AND OTHER WRITINGS, 1977-1984*, 152-58 (L.D. Kritzman ed., Alan Sheridan, et. al. trans, 1998.)

¹⁰² Davies, *supra* note 32, at 22.

¹⁰³ ARIF, *supra* note 14, at 20.

¹⁰⁴ Dutta, *supra* note 25. Debolina Dutta’s doctoral research on the production of feminist jurisprudence in India (being carried out at the Melbourne Law School) directed me to the relational dimensions of Baxi’s scholarship.

¹⁰⁵ Upendra Baxi, *Adieu, Satyaranjan Sathe*, 41: 31 ECON. POL. WKLY., 3356 (Aug. 5-11, 2006).

waranjan thus sought to nourish *dialogical*, rather than *authoritarian*, modes of intergenerational transmission of knowledges. This, I believe, constitutes an enduring Sathe legacy...¹⁰⁶

The sole surviving signatory to the “Open Letter”, in 2014 Baxi delivered the 1st Lotika Sarkar Memorial Lecture titled “Unlearning the Law with Lotika Sarkar”. In a tribute laced with humour, sadness, and gratitude, Baxi said:

... as her students they first learnt the two, and true, meanings of academic freedom: the freedom to teach and the freedom to learn. She emphasized the latter with students and the former with Deans and Heads! And Lot encouraged the students to learn the law as they wished; for her, the syllabus never cast in stone was but a mere opportunity to *co-learn*...¹⁰⁷

[...]

In a sense I was her student...¹⁰⁸

Both tributes are not hagiographical, but rather what can be called jurisographical: an account of the ‘duties that attach to the persona of jurisographer... to take care of the many forms and sources of writing of *jurisprudence* the jurisographer inherits...’¹⁰⁹ In keeping alive the legacies of Sathe and Sarkar and Baxi’s inheritances of them, the tributes continue a dialogue infused with disagreements, reminisces, revisits, and absences.¹¹⁰ The tributes mark an exemplary demonstration of a minor ‘jurisprudence of generosity’.¹¹¹

3 A tragic celebration?

The *festschrift* is a curious artefact and event of academic writing. It honors the work of a veteran scholar (on most occasions a man¹¹²) at a particular time in her life through the self-aggrandizement of the contributors. It curates a community of inheritors who stake claim to a legacy of (waning?) greatness. The community shares the inherited glory through the individual attachment to the repertoire of the

¹⁰⁶ *Id.* [emphasis in original].

¹⁰⁷ Upendra Baxi, *Unlearning the Law with Lotika Sarkar at The 1st Lotika Sarkar Memorial Lecture in Campus Law Centre, University of Delhi* (Feb. 22, 2014) 2, <https://www.academia.edu/8360054/2014>.

¹⁰⁸ *Id.* at 12.

¹⁰⁹ Ann Genovese, *About Libraries: A Jurisographer’s Notes on Lives Lived with Law*, 20 LAW TEXT CULTURE, 37 (2016).

¹¹⁰ I do not have space to attend to it in this essay, but reading Baxi’s article on keeping alive the legacy of the almost forgotten jurisprudence of Chhatrapati Singh is another exemplary demonstration of jurisography. See Upendra Baxi, *Chhatrapati Singh and the Idea of a Legal Theory*, 56 JOURNAL OF THE INDIAN LAW INSTITUTE 5-24, (2014).

¹¹¹ Karin Van Marle, *Laughter, Refusal, Friendship: Thoughts on a “Jurisprudence of Generosity”*, 1 STELLENBOSCH LAW REVIEW 194,194-206 (2007).

¹¹² A search on Google Scholar for the word “festschrift” throws up pages after pages of references to volumes in honor of male academics. See https://scholar.google.co.in/scholar?hl=en&as_sdt=0%2C5&q=festschrift&btnG.

honored scholar, and yet each member of the community competes for authentic proximity as the most deserving inheritor. The pieces that constitute the *festschrift* maintain fidelity to the thoughts of the scholar being honored, while bringing in subjective insights (both as valorization and disagreements) into her life and works. It claims coherence of convention, but remains inconsistent in treatment.¹¹³

There are two motivational questions that ought to be responded to while putting together a *festschrift*. In the case of the instant volume, these are: “Why Baxi?” and “Why Now?” The first one is less controversial of the two. The massive influence of Baxi’s work in jurisprudence in India and globally, and also on social theory in general, is more or less settled. There might be a debate about the nature of the influence, but few would disagree that he is a towering figure in Indian (critical) legal scholarship. The second question can have an easy answer, and then a very difficult one. 2018 marks Baxi’s 80th birthday – a worthy occasion to honor the person, his life and works. That is the easy and happy response. Baxi’s work has continuously made us confront the ‘dark times’¹¹⁴ that we have been living with, inheriting, and bequeathing. In trying to answer “why now?” a confrontation with this dark side cannot be wished away. In both honoring Baxi and confronting the horrors of human suffering that his life’s work bears witness to, this *festschrift* becomes at once a celebration and a tragedy. This sense of tragedy is further exacerbated in the banality of violence that we see around us, and live with, even as we honor Baxi.

In the dual characterization of this *festschrift* as a tragic celebration, I am struggling with a set of contradictions. What does it mean to read Baxi’s minor jurisprudence in a volume honoring him as a major figure in Indian jurisprudence? In casting myself as a successor of the Baxian legacy, might I be (unwillingly) reifying the law of the father? As Austin Sarat writes: ‘fatherhood is one term through which law is mythologized and through which fantasies and anxieties about law are expressed’.¹¹⁵ The *festschrift* form lends itself to an ‘agonistic intimacy’¹¹⁶ between my fantasy of staking claim to Baxi’s legacy, and my anxieties about mythologizing him. It is a performance of a citational captivity – you are meant to repeat references to the (male) persona of scholarly prowess that you are honoring, even as you desist deification. A ‘citational relation’, points out Sara Ahmed, ‘is often paternal’¹¹⁷. In attending to Baxi’s minor jurisprudence thus, I as the reader, and Baxi as the author,

¹¹³ See generally David Schleicher, *From Here All-The-Way-Down, Or How to Write a Festschrift Piece*, 48 TULSA L. R., 401-425, (2013); Michael Taggart, *Gardens or Graveyards of Scholarship? Festschriften in the Literature of the Common Law*, 22: 2 OXFORD JOURNAL OF LEGAL STUDIES, 227-252 (2002); Ricki Lewis, *Festschriften Honor Exceptional Scientific Careers, Scholarly Influences*, THE SCIENTIST (Sept. 2, 1996), <https://www.the-scientist.com/?articles.view/articleNo/18041/title/Festschriften-Honor-Exceptional-Scientific-Careers--Scholarly-Influences/>.

¹¹⁴ See generally HANNAH ARENDT, *MEN IN DARK TIMES*, (1968); JACQUELINE ROSE, *WOMEN IN DARK TIMES*, (2013).

¹¹⁵ Austin Sarat, *Imagining the Law of the Father: Loss, Dread and Mourning in “The Sweet Hereafter”*, 34:1 L. & SOC. R., 9 (2000).

¹¹⁶ Bhri Gupta Singh, *Agonistic Intimacy and Moral Aspiration in Popular Hinduism: A Study in the Political Theology of the Neighbor*, 38:3 AMERICAN ETHNOLOGIST, 430-450 (August 2011).

¹¹⁷ AHMED, *supra* note 61 [emphasis in original].

are both rendered fractured,¹¹⁸ joined through a relationship of transversal vulnerability¹¹⁹ that is trying hard to disavow paranoid fraternity and embrace an ‘ethic of listening’.¹²⁰ I would not like to romanticize and exceptionalise Baxi’s minor jurisprudence; yet in his practice of ‘ordinary ethics’¹²¹ he emerges as an extraordinary figure of wisdom and foresight.

Baxi’s own negotiations with this authority-vulnerability continuum has been expressed thus: ‘how is it that *power* of some people becomes the *fate* of innumerable others?’¹²² All of Baxi’s writing, teaching and activism has been a struggle with finding answers to this question, taking seriously the ethical imperative related to authorizing oneself to be able to ask and answer this question, and thinking about the repeating conditions that offer no escape from the tragedy of this question. This struggle features in the pathos with which Baxi’s writings have engaged a range of ‘critical events’¹²³ and issues, from aboriginal land rights in Australia to the Emergency to the Bhopal gas leak, violence against women, modern gulags, the war on and of terror, the Gujarat pogrom, caste atrocity, human rights, to name just a few.

My attempt in this essay has been to reparatively read the minor gestures in Baxi’s jurisprudence. These gestures, of which I have offered a fragmented survey, can provide affective resources that can help us, at the least, to narrate accounts of the failure that the co-habitation of celebration and tragedy – a ‘negative moment’¹²⁴ – presents. Upendra Baxi’s minor jurisprudence can teach us the responsibilities that are incumbent upon us as jurists in these times of extreme flux: one marked by a perverse coexistence of acute precarity and spectacular affluence. Baxi’s minor jurisprudence can train legal academics to be affective laborers and reparative readers who, instead of appropriating the vulnerability of the suffering and claiming interpretive supremacy, will build relationships through their shared experiences of vulnerability.

¹¹⁸ *Notes on Nationalism: In this Democracy, We Must Not Distrust or Suspect Dissent, Or Disagree with It*, THE CARAVAN (April 24, 2016), <http://www.caravanmagazine.in/vantage/democracy-must-not-distrust-suspect-dissent-disagree>. Baxi’s vulnerability in age and health took on a corporeal dimension when he suffered a stroke a few years back. As he said in an interview: ‘We went through a very, very bad time. It’s my second life. Thanks to my wife and children, their constant care and nurture allowed the resumption of normal life. I know concretely now how much care-givers have to sacrifice. I know how difficult life could be. I could not do almost anything by myself. I lost languages, handwriting, computer and mechanical memory, some physical movements; had to undergo a lot of physiotherapy and movement...’.

¹¹⁹ See VULNERABILITY IN RESISTANCE (Judith Butler et. al. eds., 2016).

¹²⁰ See generally Lisbeth Lipari, *Listening Otherwise: The Voice of Ethics*, 23 INTERNATIONAL JOURNAL OF LISTENING 1, 44-59 (2009).

¹²¹ Veena Das, *Ordinary Ethics*, in A COMPANION TO MORAL ANTHROPOLOGY, 133-149 (Didier Fassin ed., 2012)

¹²² Baxi, *supra* note 34 [emphasis in original].

¹²³ VEENA DAS, CRITICAL EVENTS: AN ANTHROPOLOGICAL PERSPECTIVE ON CONTEMPORARY INDIA (1996).

¹²⁴ Achille Mbembe, *Decolonizing Knowledge and the Question of the Archive*, WISER WITS, (2015) <https://wiser.wits.ac.za/system/files/Achille%20Mbembe%20%20Decolonizing%20Knowledge%20and%20the%20Question%20of%20the%20Archive.pdf>.

I will force an ‘inconcludable’¹²⁵ end on this essay with a quote by Baxi that infuses pathos in these pathetic times. For those of us who teach law and are struggling with our own double-binds between knowing and doing, complicity and contamination, celebration and tragedy, this can be a talisman:

For me, being a teacher in India is to be a deeply fractured, deeply wounded being, constantly in throes of transition, forever being evicted from utopias and yet, forbidden by history from desisting from struggles here and now for whatever ‘justice’ against injustice.¹²⁶

A luta continua.

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¹²⁵ Baxi, *The (Im)possibility of Constitutional Justice: Seismographic Notes on Indian Constitutionalism*, *supra* note 3, at 54.

¹²⁶ BAXI, *supra* note 54, at 158.