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Constitutional *ImagiNations*: on the Imaginal Foundations of the Indian Constitution

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(Received 27 October 2023; revised 24 September 2024; accepted 20 November 2024)

Abstract

Even after seven decades since it came into force, examinations of the Indian Constitution remain partial and incomplete. It is not widely known that the original ratified copy of the Constitution also makes a visual argument through the opening pages of every part. These elaborately crafted artworks, which are entirely negated in Indian scholarship, are structured in the form of a teleological and linear narrative, encompassing a claim of an unbroken link to an immemorial civilisation. Based on archival research and a hermeneutic that combines imaginal analysis, literary theory, historical scholarship and constitutional jurisprudence, this article will demonstrate that these *constitutive* images are the aesthetic foundation that imaginally binds the constitutional subject and the collective citizenry, and this article will show how its negation is closely tied to a foundational ambivalence that endures in constitutional law.

Keywords: constitutional law; image studies; law and images; Indian Constitution; constituent power; nationalism.

‘Between this Indus Valley civilization and to-day in India there are many gaps and periods about which we know little. The links joining one period to another are not always evident, and a very great deal has of course happened, and innumerable changes have taken place. *But there is always an underlying sense of continuity, of an unbroken chain* which joins modern India to the far distant period of six or seven thousand years ago when the Indus Valley civilization probably began . . .’

– Jawaharlal Nehru (1946, 72; emphasis added)

Constitutions are structured by imaginations, enabled by visions of rule and often regulated by rules of vision.¹ Constitutions are not only technical documents that deal with rights, obligations and norms for governmental organisation, but are also parchments which express the imaginary foundations of a nation (Conklin 1989). As Skapska (2011, 5) has argued, ‘[c]onstitutions are not mere arrangements for the division of powers; they are understood as “public symbols” and “birth

¹‘The imagery of constitution/constitutionalism,’ as Baxi (2002, 31) underscored, ‘varies from the perspective of those who rule and those who are ruled and of the epistemic communities which develop empirical and normative theories/images of constitutions.’

certificates” of modern nations’. These formative laws are indicative of social imaginaries that provide subtle access to collective aspirations, potent ideologies, chequered pasts and repressed histories. They are more than mere formal-rational manuals for government and citizenry alike, and hold deep normative and symbolic, albeit ambivalent, significance for a nation.² They provide a traditional basis, whether written or unwritten, for a heterogenous polity³ to rally together around a shared identity, and act as the crucial coalescing catalyst for what Anderson (1991) notably called the imagined community.

The Indian Constitution is no different in this context and encapsulates a diverse array of visions within its text.⁴ It has been proclaimed (Parekh 2008, 46) as ‘the clearest statement of the country’s self-given identity’ and has, at various times in its history, been heralded as transformative, socially just, created by and true to the people’s aspirations and as radically emancipatory.⁵ Whether in the form of panegyrics and platitudes or censures and condemnations, examinations of the nature and the cultural and political significances of the Constitution have remained partial and incomplete. An important facet of the Constitution has not been afforded any serious consideration in scholarship: it has predominantly been viewed as a text alone, but it is not just a text. It is not widely known that the original ratified copy of the Constitution also makes a visual argument through the opening pages of every part. The Constitution contains vivid, elaborate and ornate images that invite the eyes to dance around the text, opening it to a counter-archive of imaginal foundations.⁶ These elaborate artworks – of totemic animals, sages, gods, religious teachers, sovereign rulers, freedom fighters, emblems, epic myths, mountains, sculptures and seas – are structured in the form of an evolutionary, teleological and linear narrative, encompassing a claim of an unbroken link to an immemorial civilisation, and they have been entirely negated in the scholarship on the Constitution, although it is precisely in these images that the play and dynamics of affect are most palpable.⁷ Anderson (1991, 6, emphasis added) has argued that the nation is an imagined community because ‘the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear them, yet *in the minds of each lives the image of their communion*’. What is uniquely presented in the Indian Constitution is the visible manifestation of this otherwise psychic image of communion, commonly rendered and perceived as abstract images of belonging and bonhomie, collectivity and community, fraternity and fellowship.

²As Blokker (2017, 168–69) elucidates, drawing from the sociological legacy of Cornelius Castoriadis and Claude Lefort, ‘the formal-rational dimension of constitutions is an essential but ultimately partial dimension of constitutional orders, as the latter are not reducible to a formal, universalistic rationality, but rather display important substantive dimensions, related to collective self-representation, and ideas of self-rule and emancipation’.

³Constitutions would be superfluous in entirely homogenous societies and make sense, as Rosenfeld (2009, 21) has elaborated, only ‘under conditions of pluralism. A purely homogeneous society marching forward in unison would not require a constitution, and it would make little sense for such a society to enter into any pact with itself. . . . Even an ethnically, culturally, religiously and ideologically homogeneous society can be sufficiently individualistically pluralistic to call for a polity subjected to constitutional rule.’

⁴Bhargava (2008), for instance, identifies five prominent, and competing, visionary strands in the Constitution: the social democratic vision of Jawaharlal Nehru, the liberal democratic vision of B.R. Ambedkar, the quasi-communitarian vision of M.K. Gandhi, the radical egalitarian vision of K.T. Shah and others and the Hindutva ideology of the Constitution. Even if one finds such a taxonomy unconvincing, it is hard to deny that the Constitution is not a monolithic document with a single, monocular vision but a dynamic and pluralistic document with diverging, and at times contradictory, strains of thought and ideology embedded within.

⁵For two recent predominantly positive accounts of the Constitution, see De (2018) and Bhatia (2019). For two recent works that are critical of the Constitution, see Sengupta (2023) and John (2023).

⁶Lytard (2011, 9) elaborates on how painting provokes the dancing and ambulant eye. On the notion of the counter-archive as it relates to the law, see Motha and van Rijswijk (2016).

⁷The entire manuscript of the original Constitution, comprising the artworks, can be found here: <https://archive.org/details/the-constitution-of-india-original-1950-manuscript> (accessed 24 September 2024).

On the affective dimension of nationalist forms, see Berlant (1991, 4), who argues that ‘national subjects already share not just a history, or a political allegiance, but a set of forms and the affect that makes these forms meaningful’.

There exists an unusual silence in India, across the spectrum from scholars of constitutional law and legal historians to historians of art and cultural theorists, on the images, and when engaged with on the rare occasion, the default move is one of negation, to claim that the images bear no relationship to the text and are irrelevant to constitutional law and practice – and if they are at all of significance, it is as ornaments and mere decorative embellishments that are only marginally indicative of complex narratives of the nation.⁸ When the images were apprehended by the judiciary, in two isolated instances by the same judge, the aspiration was an avowedly political one with a myopic and monocular vision: the Allahabad High Court resorted to the image of Lord Ram in Part III to establish that Ram is a ‘constitutional entity’.⁹ Whereas a trend has recently burgeoned in the studies of modern constitutions, predominantly in the West, that explores and investigates constitutional imaginations and social imaginaries of constitutional texts, practices and the so-called spirit in an abstract manner, Indian scholars, whose Constitution is the only one in the modern world that contains such elaborate artwork, negate any role for the images, the visual harbingers that frame the gaze of the Constitution and, quite literally, enact a constitutional *imagination*.¹⁰ Nor has the emergence of a ‘visual turn’ in legal theory (Douzinas and Nead 1999; Goodrich 2017; Mulcahy 2017; Sherwin 2018a), which analyses the role of visible, tangible and material images in the foundation and functioning of the law, had any bearing on examinations of the Indian Constitution. There exists an abyss in existing literature insofar as the extravagant and highly baroque images of the founding document is concerned, and this article takes it as its target.

This article engages with the question of whether these images, as argued by others, are indeed irrelevant for an understanding of the Constitution, merely fringe embellishments and marginal

⁸What little has been written on these images is almost entirely in the forms of popular writing such as blogs, newspaper columns, opinion pieces and published transcripts of lectures and interviews. I am not aware of any academic or scholarly text that has engaged with the images. For instance, Ghazala Jamil, an academic, argues that ‘the images have nothing to do with the constitutional text in the first place’, and art historian and critic Siva Kumar echoes this sentiment. Lawyer and researcher Shreyas Narla takes this a notch ahead and argues that the ‘art, while beautiful, is quite literally in the periphery of the document. But that too is beside the point. Constitutional interpretation is always text-based, and no rule of modern statutory, including constitutional, interpretation relies on images. This is because modern law sees language as rational and unambiguous, and therefore best suited to exercise social control. Images, on the other hand, are primitive and decorative.’ Mustafi S (2022) In Conversation with Dr Ghazala Jamil: ‘Images speak a thousand words: Imagining the Indian Constitution’. *Sahapedia* January. Available at: <https://map.sahapedia.org/article/In-Conversation-with-Dr-Ghazala-Jamil:-%E2%80%9CImages-speak-a-thousand-words:-Imagining-the-Indian-constitution/11542> (accessed 24 September 2024). Kumar S (2019) Nandal Bose and the Nationalist Project, 5th Annual History for Peace Conference on ‘The Idea of the Indian Constitution’. Available at: <https://www.historyforpeace.pw/post/from-swadeshi-to-the-constitution-nandalal-bose-and-the-nationalist-project> (accessed 24 September 2024). Narla S (2021) Indians Should Stop Reading Too Much into the Artwork on the Constitution and Instead Heed Its Words. *Scroll* January. Available at: <https://scroll.in/article/984978/indians-should-stop-reading-too-much-into-the-artwork-on-the-constitution-and-instead-heed-its-words> (accessed 24 September 2024).

⁹Justice Tilhari – in deciding whether Hindu devotees had a right to enter the locked premises of the Babri Mosque, post demolition, to worship Ram – ascertained, based on the figure in Part III, that ‘Rama, when we adopted him, and his life, as a part of our constitutional theme to depict certain ideal, he became a constitutional entity, admittedly a reality of our National Culture and Fabric and not a myth’. The alarmed response to this, as elaborated above, from the academy as well as the bar is one of negation of the images. In a crucial sense, this article seeks to posit that it is possible to discern the significant role played by the images in constitutional law and libidinal legitimacy (see Pottage, n 32 below) and yet not give in to a monocular and restrictive enforcement of them. Images, like text, are open to multiple interpretations and plurality of perspectives, a diversity of vision, or, in the words of Goodrich (2023, 13), a ‘retinal justice’ that can account for ‘the heterotopia of the visual’. *Vishwa Hindu Adhivakta Sangh v. Union of India* WP 5314 (1992). Available at: <https://www.casemine.com/judgement/in/56b49169607dba348ffbfdb> (accessed 24 September 2024). Justice Tilhari subsequently moved to the Karnataka High Court, where he relied on the images yet again to claim that the term ‘Hindu’ conveys the length and breadth of Indian civilisation and culture and is not just limited to a mythological or theological category, and that it is this civilisational spirit of Hinduism that the images embody. *Dattatraya Ganesh Bhat v. S Surender Kumari* CRP 2356 (1995). Available at: <https://www.casemine.com/judgement/in/56b494c6607dba348f00ed5c> (accessed 24 September 2024).

¹⁰For a representation of this emerging trend, see Manderson (2021, 322), who has evocatively argued that ‘[t]he idea of a wider “constitutional imagination” . . . might encourage a more resilient and holistic vision of the law’. See also Blokker (2019) and Bartl (2023).

drawings, and answers in the negative. The images play a foundational role in the visual economy (Sherwin 2018b) of the Constitution, by constructing an imaginal identity for the constitutional subject and libidinally tying the collective to a historical narrative. This ignored imaginal foundation (Bottici 2014, 55) is ‘the conceptual ground encompassing the totality of what pertains to images’ that structures, regulates and ‘makes the *imaginative* possible in the first place’. The images produced a visual history of nationhood for India at the precarious time of its origin. It is the images, in other words, that impel and lay the foundation for the imagination of the constitutional subject and the imaginaries of the polity. As such, the imaginal here is accorded a methodological precedence over imagination and imaginary. Despite their apparent distance from scholarly discourse and negation in popular writings, the images play a centripetal role in ushering and authenticating identity, collectivity and historicity. They legitimise from a distance, assure from the margins and, despite being occluded and foreclosed, invigorate a sense of constitutional subjectivity based on a historical national identity. What we witness in the Indian Constitution are not only abstract and a priori performances of imaginations and imaginaries, but also visceral, sensible, affective and moving images that require direct attention to elicit their function *from within*. Images stir our bodies and move our emotions; they ‘seduce the senses and corrupt the mind’ and require an *intrinsic* analysis to track and expose these affections (Douzinas 2000, 814). This is precisely how Chiara Bottici frames the methodology of an imaginal analysis, which is ultimately the most relevant for the current study given the ontological nature of the images under investigation. Based on archival research and a hermeneutic that combines imaginal analysis, literary theory, historical scholarship and constitutional jurisprudence, this article will demonstrate that these *constitutive* images adopt the function of representing and, more importantly, legitimising a symbolic construction of national identity and historical subjectivity, inducing fantasy and affective attachments to a mythically projected nation. It is these images that stage and frame the constitutional text, enact a scopic regime (Jay 1988; Metz 1982) and open our eye to an anarchic ambulation, inviting attention yet dispelling interrogation, demanding vision and at the same time banishing consideration. This article will argue, contrary to the undermining of their role in popular discourse, that the images are not insignificant and merely decorative marginal accoutrements but are the aesthetic and imaginal foundations of the Constitution. More than abstract imaginations, the images, as visible *imagoes*, imaginally set up the nation at a time when it needed an identity. They are the Indian Constitution’s *ImagiNations*.

The argument will proceed as follows: the first section will adumbrate the role of preambles in constituting collective identities and how the aesthetic features of the Preamble to the Indian Constitution achieve this function in exemplary form. The following section will engage with how the images in the first two parts of the Constitution already orientate the viewer to a fictive and distorted historical continuity of the nation, emplacing the constitutional collective in a long civilisational lineage. The last section, before the conclusion, will explain the crucial role of the images in visually legitimising the Constitution, forming its affective substrate, and in binding the historically delineated collective to the Constitution. Together, the article’s sections will demonstrate how the images of the Constitution perform three incremental gestures of binding: the collective bind, the historical bind and the imaginal bind.

The collective bind

The preamble to a constitution is conventionally perceived as an introductory note, as a concise abstract or as an elaborate indication of political identity, and performs many gestures.¹¹

¹¹As Addis (2018, 136) notes, preambles also exceed the function of being a summary and abstract in many jurisdictions. ‘The intense debates in various parts of the world revolving around the drafting of preambles indicated that the issue was not about how to draft an introductory statement to the constitution, but rather how the very identity of the political community should be conceived and narrated.’

Preambles usually state what the constitution hopes to achieve, its functional objectives ('a more perfect union', 'a Christian nation', 'the Islamic Ummah', 'a sovereign, socialist, secular, democratic republic'), the aspirations of the constitution and the nation that it founds ('promote common good', 'justice', 'equality', 'liberty', 'fraternity') and its source/s of authority ('the Most Holy Trinity', 'Almighty Allah', 'We the People', 'the Emir').¹² The objectives and aspirations of the constitution are captured and relayed right at the beginning, enabling the perception of the constitution as 'no more than one massive footnote to the preamble' (Baxi 1978, 124). 'We the People' is the agency of popular sovereignty that inaugurates and authorises most contemporary constitutions, inspired by the US Constitution.¹³

In the Indian Constitution, the Preamble contains vividly designed borders, the most intricately crafted of all the frames that are present in the visual document (Figure 1). The wide, thick and detailed borders contain an elaborate network of flowers, vines, leaves and plants, and are interspersed with four extensively and exotically crafted depictions of animals in each corner.¹⁴ There is a representation of what appears to be an elegantly decorated cow or bull in the top-left corner, an embellished elephant in the top right, a charging and geared warhorse in the bottom left and a pouncing tiger in the bottom right. One enters the Preamble through the frame of the primal. The inaugural gaze is mediated by and oriented with an aura of exoticism and a sylvan grandeur, arguably delineating the marked difference and singularity of India.

In addition to the title of 'The Constitution of India' – which is engulfed by floating vines and spatially divided from the remaining text through the figure of a lotus, the designated national flower – the first two letters of the Preamble, 'WE', are enclosed by the botanical intervention, with the first letter overpowering and almost occluding the second. Whereas the title of the Constitution has vines running around it, but not through any of the letters, vines menacingly grasp and clutch the letters 'WE' from inside as well as outside. The personal pronoun is already interpellated by and intermeshed with the scene from which it emerges. The 'W' stands boldly, the largest letter on the page, and announces its inflated presence to the extent that the word 'Preamble' to its left is marginalised and almost ignored. As Norton (1988) has noted in the context of the US Constitution, but which is more apposite here, the differentiated marking of the

¹²A more perfect union' is contained in the Preamble to the US Constitution, 'Promote common good' and 'the Most Holy Trinity' in the Irish Constitution, 'a Christian Nation' in the Zambian Constitution, 'the Islamic Ummah' in the Iranian Constitution and 'Almighty Allah' in the Constitution of Pakistan. The 'Emir' is identified as the source of authority in the Constitution of Bahrain, while 'Amir' performs this function in the Constitution of Kuwait. The words 'justice', 'equality', 'liberty' and 'fraternity' are found in various constitutions, including in India, individually or severally. 'A sovereign, socialist, secular, democratic republic' is contained in the Preamble to the Indian Constitution. The words 'socialist' and 'secular' were added to the Preamble through the 42nd Amendment in 1976.

¹³The US Constitution was the first national constitution to contain a preamble, and the accompanying phrase 'We the People'. It has been claimed (Ginsburg *et al.* 2014, 313) that '[a]fter the adoption of the U.S. Constitution, it became somewhat standard for constitutions to include preambles, and over eighty percent of all historical constitutions have one'.

¹⁴From what little archival material is available on the details of production of the original manuscript, it can be discerned that Prime Minister Jawaharlal Nehru played an active role in this aesthetic project. He was in correspondence with Nandlal Bose, the chief artist of the project, especially on the borders, and Bose concurred with most of Nehru's suggestions. Nehru is even recorded as having visited Shantiniketan, located near Calcutta, on 23 December 1949, and inspecting the parchments. One hundred sheets with illuminated borders were first prepared and then sent to the calligraphist, Prem Behari Raizada Narain, for inscribing the text of the Constitution by hand. The calligraphist was informed to leave about a quarter of the space blank at the top of the opening pages of every part to accommodate the artworks. The calligraphed sheets were then sent back to the illuminators to engrave the artworks, and the entire operation was co-ordinated by the Secretariat of the Constituent Assembly (Choudhury 1988, 355–57). The borders, therefore, were inscribed first on the pages of the original manuscript, albeit the contents of the constitutional text were, for all practical purposes, decided upon by this time, and the frames were summoned and assembled to embellish and adorn the pages prior to the text. This is crucial given the role of frontispieces and frames in the history of legal emblems (Goodrich 2018, 65): 'The face and frame of textual governance . . . the opening image of the book of law, the titular depiction' inscribed the *modus vivendi* of the law and enabled and enacted the subject's opening to it. The vividness of the titular image, especially in the frame that takes the place of the window into the interior, stages the *ius imaginum* that enforces the inaugural binding of the legal subject.

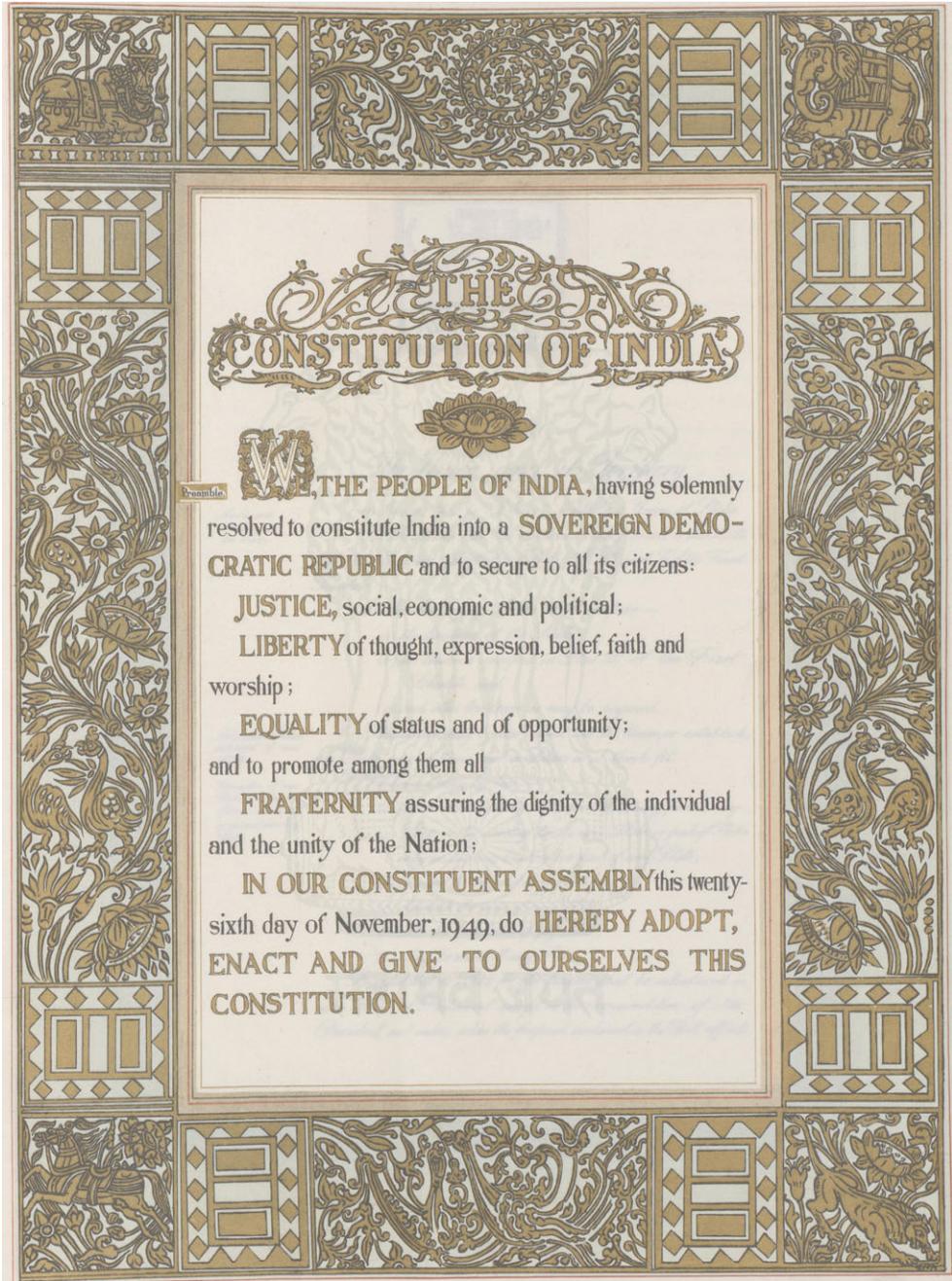


Figure 1. Image of the Preamble in the original manuscript.
 (Retrieved from the Library of Congress, available with Open Access.)

personal pronoun of the collective is a peculiar strategy by which authority is announced and acclaimed. ‘The shape of the letters, the form of the text as well as its content, invests the assumption of authority with particular importance’ (Norton 1988, 459). In other words, it is a clarion call for attention, proclaiming the emergence and entrance of the collective into the world. In being possessed by the vines, it is also a message that the collective has always already been a

part of the scene that surrounds the Constitution, and it is merely being accorded formal recognition now. In the legal emblematic tradition, vines, as in Alciato's (1534, 12) *Amicitia*, 'tells us to seek friends of such a sort that not even our final day will uncouple them from the bond of friendship' and are fittingly used here to bind the constitutive collective in a presumably everlasting grasp.¹⁵

A question which arises directly from this, and which has generated much writing in constitutional theory as well as jurisprudence, is when this constitutive entity of 'We the People' is constituted? When does 'I', or multiple groupings of 'us', become a pronounced, differentiated and positive 'We'? Is the 'People' a representation of a pre-political collective – with a 'pre-established, unified will' – whose decision sets the wheels in motion, as Schmitt (2004, 65) has argued?¹⁶ Or perhaps it is an attribution of empowerment that is retroactively ordained, as Kelsen (1960/1970) would have it? Alternatively, could it be a notion that is produced in a performative utterance *at the moment* of the Constitution's founding, what has been referred to as an autobiographical self-declaration (de Ville 2023)?¹⁷ How should this notion of 'the People' be perceived? Should 'the People' be presupposed as an entity, or as retroactively empowered, or as incarnated, as a 'twin sibling' (Addis 2018 176), along with the Constitution? Where does this collective come from?

The images in the Indian Constitution, through their productive relaying of a distinct nationalist teleological linearity, are fundamentally tied to this precise undecidability at the heart of the Constitution's founding; what has been variously termed as ambivalence, paradox and tension, and has generated much debate and disagreement in the study of constituent and

¹⁵The English translation provided here is borrowed from the transcription from *Alciato at Glasgow*. Available at <https://www.emblems.arts.gla.ac.uk/alciato/emblem.php?id=A34a012> (accessed 24 September 2024).

¹⁶It could be argued that such a line of thinking, especially as it concerns constitutional law, was effectively adopted in India even *before* the constituent assembly officially convened for business. For instance, when the Muslim League announced that it would not participate in the proceedings of the Constituent Assembly, a dilemma arose as to whether the other members of the assembly, predominantly from the Congress, should go ahead and meet on the opening date (9 December 1946), as scheduled, or if the meeting should be postponed *sine die*. While the constitutional advisor to the assembly, B.N. Rau, referring to Halsbury's *Laws of England* and analogising the body of the assembly to that of a corporation, advised that since a major part of the assembly will not be present at the first sitting, 'a valid meeting . . . would become impossible', K.M. Munshi's contrary position, which was eventually adhered to, stressed that 'the Constituent Assembly was not a body of delegates representing different communities, but an organ of the sovereign people', implying thereby that the people were not only a corporeal sovereign body in a Hobbesian sense, but also that they were, in the Schmittian sense, a pre-political collective, with a 'pre-established, unified will'. The Constituent Assembly did convene on 9 December, without the members of the Muslim League (Rao 1968, 76–77). Note, however, that this position too is not without ambivalence. For, as Rao (1968, 92) rightly notes, the Constituent Assembly became a 'truly sovereign body, free from all external control' only after the passing of the Indian Independence Act of 1947 (especially by virtue of its section 8, which granted temporary dominion status to the Assembly) on 18 July. The Assembly as an organ of the already existing sovereign people, in the sense in which Munshi argued in December 1946, therefore, is at odds with the literal interpretation of the 1947 Act, exemplifying the intractability of the ambivalence associated with the act of founding the Constitution.

¹⁷The underlying reference, to state the obvious, is to Wittgensteinian speech-acts. Derrida (1986, 10), for instance, notes that 'this people does not exist. They do *not* exist as an entity, it does *not* exist, *before* this declaration, *not as such*. If it gives birth to itself, as free and independent subject, as possible signer, this can hold only in the act of the signature. The signature invents the signer.' Addis also has adeptly argued, by developing a hermeneutic based on the theory of performative utterance and through an extensive comparative study of the constitutions 'of all countries currently in existence', that the preamble to a constitution is more than just a summary or introduction to the document. Preambles are performative and 'constitute "the people" as they simultaneously declare that the people are their authors'. In other words, the preamble is the site of a dialectical performance, where a certain agency is at once designated as the source and the byproduct, and in doing so the preamble 'imagine[s] the identity of the political community' and 'narrate[s] a history of the people' (Addis 2018, 142). Scholarship on preambles — comparatively, functionally and philosophically — have only burgeoned in the last decade and is still developing. Some of the most prominent recent works include Orgad (2010), Levinson (2011) and Ginsburg *et al.* (2014). For a doctrinal examination of the Preamble to the Indian Constitution, see Lahoti (2004). Unsurprisingly, the author, a former Chief Justice of the Indian Supreme Court, does not engage with, or even mention, the visual and aesthetic aspects of the Preamble.

constituted powers, *potentia* and *potestas*, political power generation and legal power distribution.¹⁸ The ambivalence in the constituting of the inaugural law is related to a founding ambivalence that characterises nations and modern nation-states.¹⁹ Engagements with this paradox have run the gamut from a decisionistic claim (Schmitt 2004) that ‘the People’ is a pre-political, established, collective to a normative claim (Lindahl 2007 and Lindahl 2015) that the foundational authority is derived from an originary transposition; from claims (Loughlin 2014 and Loughlin 2015) that the tension between the constituted and the constituent powers are suspended in a constant dialectic to claims (Norton 1988) that there occurs a transubstantiation at the founding moment. Some have argued (Christodoulidis 2007) for the productive irresolution of this antinomy and that the constituent power is the irreducible, irritating supplement that needs to persist and challenge forms of constituted powers, and some have even gone so far as to claim (Dyzenhaus 2012) that this entire mode of questioning and analysis – of ambivalences, tensions and paradoxes as it relates to constituent and constituted powers – is immaterial and irrelevant to the field of law given that law’s authority is *intrinsically* derived. Evidently, there is an abundance of engagements on the question of constitutional founding.²⁰

Addis (2018, 130, 147) has argued that preambles imagine and ‘paint a picture’ of the identity of ‘the People’, and some preambles even go so far as to narrate long, tumultuous and ‘unbroken’ histories that have led to the moment of the unified, singular people giving to themselves a constitution. The Preamble to the Indian Constitution, unlike the constitutions of Algeria, Croatia, China, Cuba, Egypt, Iran and Iraq, does not contain an elaborate ‘history of the people that is taken to be centrally constitutive of their identity (their stability as a subject) . . . tying together the past, the present and the future’ (Addis 2018, 147). The Preamble is ‘terse’, as characterised by Orgad (2010, 718, n. 17), but in visually emblazing and inaugurating the ‘We’ with the emblematic imprimatur of amicable vines, the constitutional subject is already orientated to the production of a collective identity. What is supposedly performatively enforced in the texts of other constitutions is imaginably bound up in the vision of the Indian Constitution. The inaugural page of the Constitution, through its vines and frames, exotic beasts and venerated cattle, stylistic calligraphy and foliaceous outbursts, opens the interiority of the subject to a firmly held collective bind within a native scene. In disclosing the personal pronoun as already woven up in a unitary foliage, the Preamble relays to the subject a sense of a concrete and intricate binding. This is a visually stunning representation of what is otherwise implicit in the very understanding of a *constitution*. For, as Finer (1950) has pointed out, especially with reference to the German terms for a constitution, *Grundgesetz* and *Verfassung*, ‘a Constitution involves a certain grasping, a holding together, the bringing about of coherence, and a fastening’ of the collective (de Ville 2023, 5). The aesthetic features of the Preamble to the Indian Constitution, in grand visual form, introduce this sense of such a grasping, of an inextricable collective bind, to the interiority of the constitutional subject. If

¹⁸For Derrida (1986, 9–10), ‘[o]ne cannot decide – and that’s the interesting thing, the force and the coup of force of such a declarative act – whether independence is stated or produced by this utterance . . . This obscurity, this undecidability between, let’s say, a performative structure and a constative structure, is *required* in order to produce the sought-after effect. It is essential to the very positing or position of a right as such, whether one is speaking here of hypocrisy, of equivocation, of undecidability, or of fiction.’

¹⁹As Bhabha (1990, 1) indicates, this primordial ambivalence ‘haunts’ the very ‘idea of a nation’ and ‘the lives of those who live it’. Similarly, as Tom Nairn (1977, 348) points out, ‘it is an exact (not a rhetorical) statement about nationalism to say that it is by nature ambivalent’. Nairn insists that the ambivalence is symptomatically evinced in the ‘Janus-face’ of nationalism, embedded simultaneously in friendliness and community as well as in bellicosity and authoritarianism.

²⁰I note the three terms separately, and not synonymously, to indicate the various frames through which the question of the relationship between constituent powers and constituted powers has been viewed. It is also worthwhile noting that there have been considerable, and contentious, judicial and scholarly writings in India that have engaged with the question of limitations on Parliament’s power to amend the Constitution. Such a power has been perceived by some judges as a constituent power which recreates the Parliament as ‘a perpetual constituent assembly’. While this contentious judicial history is also certainly relatable to the function of the images in the Constitution, a detailed engagement with this will have to be saved for another occasion. For a good overview and noteworthy reflections on this history, see Baxi (1978).

the Preamble to the Indian Constitution, unlike the other constitutions mentioned above, does not contain an elaborate history of the collective identity, the function of narrating an unbroken history – beginning with a mythic provenance and traversing theophanic manifestations – rendering an identity and unity of ‘the People’ with a stable subjectivity, is displaced from the Preamble and dispersed through the medium of the images throughout the Constitution. As will be evinced in the next section, subsequent images in the text entrench the collective bind of the Preamble into a historical bind, whereby the collective, in the imaginal depiction, is not just performatively produced but historically constituted through an unbroken chain.

The historical bind

Part One of the Indian Constitution, which deals with the name of the nation and a brief statement of its federal nature, features a deceptively simple image (Figure 2) of a Mohenjo- Daro seal depicting a humped zebu bull accompanied by inscriptions, based on the Harappan excavations.²¹ The naming clause begins with a totemic symbol. A totem, especially as it is represented in an animal, holds significant value in standing metonymically for the origin of law.²² In depicting the totem here as the inaugural image of Part I, the viewer is already being orientated to transmissions of origin and narratives of unilinear heritage.²³ It is displayed in the form of an official seal, an emblem, staying true to its original inspiration. In its emblematic form, it is apposite for inaugurating the first part, as the ‘image speaks of origin and so designates place’, which is a formulation derived from the emblematic genealogy of law, the *mens emblematica*, where the emblem takes hold as the primordial ‘sign or insignia of lineage’ (Goodrich 1991, 245).²⁴

Crucial to the task of curating a nation and weaving a firm sense of nationhood, as Goswami (2004, 1) affirms in the Indian context, is to make ‘the nation appear natural’, as a monadic and singular unit. Despite affirmations of intrinsic diversity being germane to Indian history, the foundational catchphrase of ‘unity in diversity’ assigned unity as functionally preceding diversity (Nehru 1946). ‘India, that is Bharat . . .’, as Article 1 proclaims, emerged from a sustained effort at a singularity that never existed organically, and syncretised diverse elements into a unicity, while simultaneously obviating putatively recalcitrant elements in favour of an ostensible harmony. As Goswami (2004, 188) has adeptly demonstrated, early iterations of Indian nationalism, especially in the late nineteenth century, emerged from a twin function of, first, a ‘historicization of territory’, whereby the territory of India, contrived as a fixed geographical unit, was sacralised and

²¹It appears that the artist had other plans initially for the image that would adorn the opening page of Part I. As Siva Kumar notes, ‘the typed list says “Mohenjo-daro seals” and a rough sheet of scribbles that has survived shows a three-part oblong image with the Mohenjo-Daro statuette of the Priest/King flanked by the bull and unicorn seals. However, only a single seal with a left facing bull was finally used.’ Note that the proposed priest/king does not appear in the original Mohenjo-Daro seals that were excavated. Siva Kumar, *supra* note 8.

²²In the Freudian parable, the totemic animal is a displaced representation of the primary patricide that inaugurates the first taboos of the society. The body of the animal is substituted for the body of the father and in annually sacrificing the totemic animal, and enjoying the sacrificial feast, the primal patricide is re-enacted and the guilt equally dispersed and shared by the horde of the primal brothers (Freud 1913–14). More to the point, the Harappa Archaeological Research Project in its analysis of the seal directly refers to the totemic value of the animal either as a metonymic displacement of the leader or as a sacrificial animal, thereby making the Freudian resonance all the more pertinent. As the project states, ‘the zebu bull may symbolize the leader of the herd, whose strength and virility protects the herd and ensures the procreation of the species or it stands for a sacrificial animal. When carved in stone, the zebu bull probably represents the most powerful clan or top officials of Mohenjo-daro and Harappa.’ ‘Bull Seal: Harappa’. Available at: <https://www.harappa.com/indus/27.html> (accessed 24 September 2024). The website is maintained, and its materials are curated, by leading archaeological scholars on the Indus Valley civilisation.

²³There is some precedence for constitutions themselves to be viewed as totemic. Lerner (1937, 1294), for instance, speaking on the US Constitution in 1937, held that ‘[e]very tribe needs its totem and its fetish, and the Constitution is ours’.

²⁴For exhaustive genealogical explorations of legal emblems, see Hayaert (2008), Goodrich (2015) and Goodrich and Hayaert (2015).

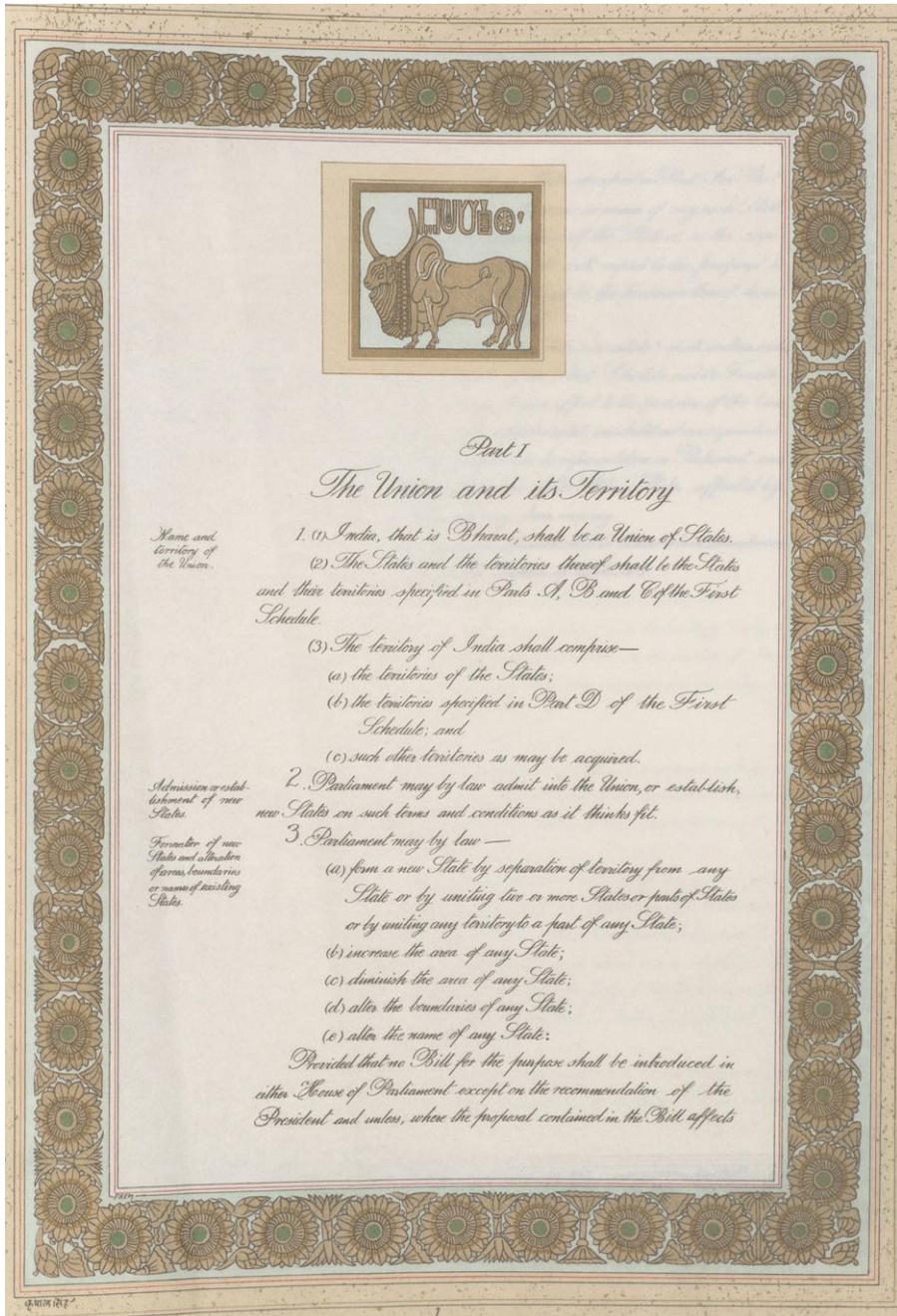


Figure 2. Image of zebu bull adorning Part I of the Indian Constitution. (Retrieved from the Library of Congress, available with Open Access.)

accredited with a unilinear history, and, second, a ‘territorialisation of history’, which aimed to confine a unified interpretation of Indian history within the circumscribed territory, and, in effect, ‘pushed aside and severed historical interrelations among various social groups’. ‘Bharat’, a loaded term in Hindu mythology and standing as a synecdoche for both functions simultaneously, was introduced into the constitutional text, in its inaugural article, after much controversy

surrounding its usage and theological import (Singh 2005, 911). While this formed one strand of nationalist politics – in its exclusive manifestation, which has resurged more forcefully today in India – it was opposed by an avowedly secular outlook to nationhood and constitutionalism. However, despite occupying polarised camps, both the communitarian and the secular iterations of nationalism unanimously embraced a faith in a unilinear historicity, implicitly inheriting the dual functionality that it entailed. It is this unilinearity that the images visually legitimised, precisely at a time when it was still a tentative proposition.

The creation of a nation is often dependent on an arbitrary circumscription of origin, of a necessary demarcation of birth at a particular time. As Debray (1977, 27) has argued, the possibility of any societal formation, even more so for a national formation, is predicated upon ‘a delimitation in time, or the assignation of origins . . . This means that society does not derive from an infinite regression of cause and effect. A point of origin is fixed, the mythic birth of the *Polis*, the birth of Civilization . . . This zero point or starting point is what allows ritual repetition, the ritualization of memory, celebration, commemoration – in short, all those forms of magical behaviour signifying defeat of the irreversibility of time.’ The Mohenjo-Daro seal stands as a representation of the Indus Valley civilisation, which, in the imaginal staging within the Constitution, is perceived as the historical origin of Indian civilisation, the primogenitor of a long, unbroken and continuing lineage. Historical continuity is not necessarily a matter of self-evident truth, for such lineages of continuity are often convoked to satiate and conform to political predilections and aspirations that arise much later (Jacobsohn 2010, 134). As Hobsbawm (1983, 7) has argued, in the context of national formations, ‘even historic continuity had to be invented, for example by creating an ancient past beyond effective historical continuity either by semi-fiction . . . or by forgery’. While the general veracity of Hobsbawm’s claim may be open to scrutiny, it particularly holds weight for the seal that adorns Part I of the Indian Constitution, as the inclusion of the Indus Valley as the inaugural point in the unbroken history betrays a notorious political chicanery.

Since the nineteenth century, Indian historiography, including Indologists such as Max Mueller, have perceived the Vedic period as the foundational point of Indian civilisation and history. In the twentieth century, this linear narrative faced the prospect of a devastating blow with the discovery of the antecedent Indus Valley civilisation; a civilisation which, according to the interpretation of most archaeologists, was clearly pre-Vedic temporally and non-Vedic essentially. This discovery threatened the continued possibility of isolating and demarcating the point of origin in the Vedic age as the determined progenitor of a unilinear Indian civilisation. The solution adopted to reconcile with this threat was one of appropriation. As Thapar (2000, 597) elucidates, ‘what were they to do with this negation of an “unbroken” linear historical descent? . . . [It] required that Vedic civilization must be taken back in time and identified with the Indus civilization. And that is the attempt that is now being made – to describe the Indus civilization as essentially identical with the Vedic culture, in order that their claim to a linear unbroken ancestry which goes back to Vedic sources remains intact.’²⁵ Faced with the prospect of an alien origin – evidence that points to an unconnected and detached predecessor – preceding the hitherto confirmed originary point of nationalist history, the nationalist imperative was to appropriate the past and couch it in a temporality that reconfigures it in a national time.²⁶ The Indian Constitution

²⁵See also Etter (2020, 186), who asserts that ‘[v]ery shortly after Marshall announced the discovery of the Indus Valley Civilization in 1924, it was integrated into Indian, Tamil, and Hindu nationalists’ narratives, encouraging a racialized quest for founders’, and Ramaswamy (2001) and Humes (2012). Thapar (2014) further expands the analysis of how history is constructed and identities are projected into the past based on contemporary demands and circumstances.

²⁶In a crucial sense, this confirms Anderson’s claim (1991, 26) that nations predicate their existence upon what Walter Benjamin characterised as the notion of ‘homogenous and empty time’. For Anderson, ‘[t]he idea of a sociological organism moving calendrically through homogenous, empty time is a precise analogue of the idea of the nation, which also is conceived as a solid community moving *steadily* down (or up) history’ (emphasis added). See also Benjamin (1940/1969), specifically thesis XIII.

makes use of a revisionist history to resettle and conform to the already projected narrative arc that frames the temporal rhetoric of the text (Lazar 2019). History gets constituted and reconstituted under the constraining frame of the nationalist imperative, generating the foundational desire to exhibit the imaginal lineage that remains tethered to the present and stable in its course.

It is in this context that the chronology of the image that succeeds the Mohenjo-Daro seal can be perceived as part of this fictive narration of the nation's linear continuity. The arbitrary periodisation, as Siva Kumar states, 'is borrowed from nationalist history' even if the style of the images themselves express the artist's 'eclectic sensibilities',²⁷ as the image that follows in Part II – of an ancient gurukul, an ashram, representing the Vedic age (Figure 3) – is now, to borrow from Thapar, neatly representative of the 'unbroken' civilisational linearity. An imaginal chain links the Indus to the Vedic, exemplifying the imaginary historical continuity. The figure in Part II that depicts a gurukul, where Vedic sages are engaged in ritualistic practices in the foreground of what appears to be a forested area, neatly conforms to the dominant, if distorted, historical narrative of the Vedic age directly succeeding, if not considered to be the same as, the Indus Valley civilisation.²⁸ A nationalist linearity is reconstructed, entrenched and legitimised through constitutional visualisation. A unitary and unilinear image of the nation enables the Constitution to project a history – as Jawaharlal Nehru stated in his famous 'Tryst with Destiny' speech, delivered in the Constituent Assembly when India attained independence from British rule – of the nation as having traversed from 'the dawn of history' in an 'unending quest' through 'trackless centuries'.²⁹

The images in the Constitution, too many to include visually in this article, continue the narration of the unilinear nation, and betray the desire of a nationalist temporality characterised by an unbroken historical continuity. This function of enabling and entrenching a nationalist history, because it can be most directly discerned in the images, confirms and conforms to Fitzpatrick's analysis (1992, 113) that '[w]hether recent and abrupt or immemorally regressive, national histories were constructed or reconstructed which, far from pursuing fraternal connections with other people in a universal project, told rather of exclusive origins and identity, of distinct community and a unique spirit'. The productive formation of the collective bind that we witnessed in the Preamble soon gets imaginally buttressed with a historical force that renders this collective with an idiosyncratic identity and scintillating spirit, enabling the collective bind to be reproduced as a historical bind of the collective. Precisely to circumvent any indication of a performative utterance of the personal pronoun, the imaginal foundation pervades the

²⁷Siva Kumar, *supra* note 8.

²⁸For confirmation of the image in Part II as representing the Vedic age, one need not look any further than the illuminated Constitution itself, where the last page contains an appendix provided by the artist enumerating a list of descriptions of the illustrations, and the figure of Part II is described as 'Scene from Vedic Ashram (Gurukul)'.

²⁹Constituent Assembly Debates, Volume 5, 36, ¶ 13 (14 August 1947). Nehru elaborates on this purported unbroken linearity and sustained stability of Indian civilisation in his monumental *Discovery of India*, as noted in the epigraph to this article. Where a potential discontinuity is engaged with (1946/1989, 73), it is quickly sidestepped. For instance, in chapter four of his text, where he engages with the continuity thesis between the Indus and the Vedic civilisations, he mentions in a particular paragraph that '[w]hile there is a definite sense of continuity between the Indus Valley civilization and later periods, there is also a kind of break or a gap, not only in point of time but also in the kind of civilization that came next' (73) – a welcome admission, but one which is quickly covered over in the paragraph that immediately follows, which underplays the gap and foregrounds the narrative of absorption and continuity: '[w]e might say that the first great cultural synthesis and fusion took place between the incoming Aryans and the Dravidians, who were probably the representatives of the Indus Valley civilization'. Whether by absorption or by fusion, the continuity thesis is buttressed at the cost of the disjuncture thesis, and it remains a position that is maintained in the rest of the book. In fact, later in the same chapter (79), there is a subtle equalisation of the Indus and the Vedic periods. The civilisational rupture, if any, is brushed aside. What prevails is the 'underlying sense of continuity, of an unbroken chain' that connects the Indus to Modern India. Even the Mughal influence is not seen as an aberration or different in this appropriative narrative, which syncretises everything within the central motion of continuity and an unbroken linearity.

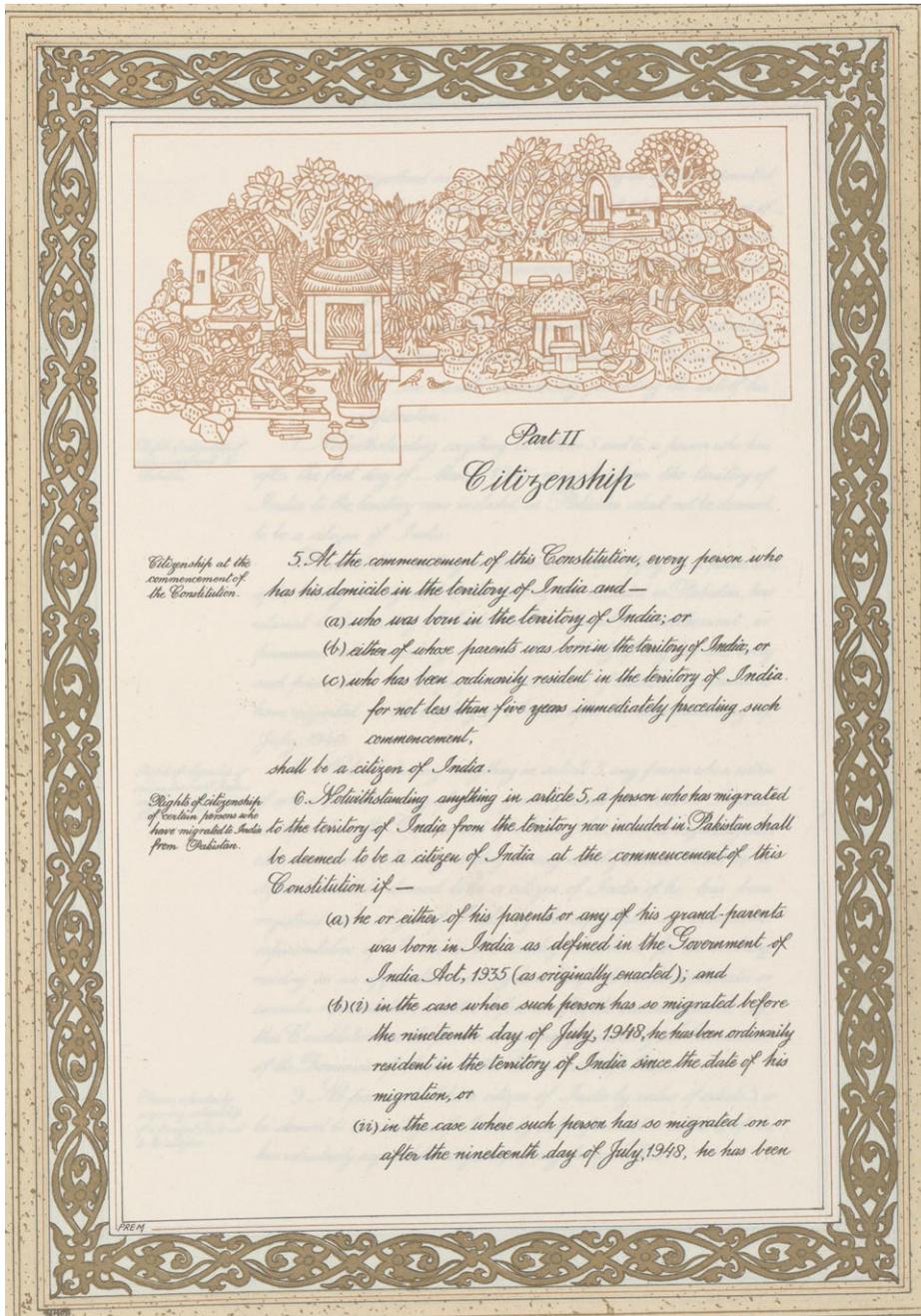


Figure 3. Image of a gurukul (Vedic ashram) adorning Part II of the Indian Constitution, on citizenship. (Retrieved from the Library of Congress, available with Open Access.)

Constitution with a historical and civilisational lineage that remains fixed, tethered and unable to be shirked. The national unit accretes a grandiose historical narrative which is afforded a visual stamp of constitutional legitimacy through the images. This replication, resonance and (re) construction of a history that is linearly tied to a distorted origin, emboldening the notion of a commonality of the 'people' with a stable and historical subjectivity is, as indicated earlier,

critically tied to the foundational ambivalence that closely, if obscurely, tails constitutional law. It is the imaginal bind that steps up as a *deus ex machina* to visually resolve an irresolvable and enduring quagmire.

The imaginal bind

The term ‘constituent power’ in its French variant – *pouvoir constituant* – was first conceptualised by Abbe Sieyès’s revolutionary discourse, where he claimed that ‘the people’, who were already in his account ‘the nation’, possessed the necessary power for political establishment (Loughlin 2014, 220). This line of argument has been buttressed and repeated often, including, as adumbrated earlier, in Carl Schmitt’s constitutional theory. But, on the contrary, the notion of ‘the people’, and the nation even more, is perpetually ascertained and (re)constructed. As opposed to being a signifier for a fixed product, it is a process that is always already at work. Nations are receptive, either through appropriation or adaptation, to ‘infinite diversity of purposes, histories, ideologies and sustaining myths’ (Fitzpatrick 2001, 113) and are capable even of shifting in time (Hobsbawm 1983, 11). Nationalism, as Gellner (1964, 169) posited, does not imply the awakening of a nation and its people, but rather ‘it invents nations where they do not exist’. In its appropriative avatar, it aspires to coalesce and fold the dangers it encounters, such as the Indus threat for the Indian nationalist narrative, in a neat linearity, (re)constructing the nation in a cohering testimony of time. In a crucial sense, then, as opposed to the view that the nation and the nationalist history culminate in the production of the Constitution, as argued by Nehru, it is the Constitution that affords a stamp of legitimacy to the nationalist linearity being invoked. It could be construed that this became an exasperated imperative to respond to the chaos and cataclysm that was the partition that surrounded the birth of the nation.³⁰ As Lazar (2019, 1) has contended, promulgating constitutions, because they are ‘contentious events’, requires a selling of the constitution to an often ‘sceptical or fractured citizenry’. This is often achieved through tropes ranging from rhetoric to myth, pride to prejudice, trauma to guilt. The constitution, in other words, requires a supplemental, but in no way incidental, kernel to form its affective substrate that binds the citizenry to the law, which goes on to constitute what Heritier has termed the necessary liturgical and aesthetic foundations of positive law (Heritier 2014). ‘The people as a collective body, therefore, is formed not only by the *demos*, an assembly with a deliberative function that votes and elects its representatives, where everyone acts rationally by definition, but also always in parallel to the *laos* (the Greek etymological origin of “liturgy”)’ (Heritier 2014, 143–44).

The ambivalence at the heart of constitutional law, of whether the people, or the nation, are constitutive or constituted, inheres in an irresolution in the lifeline of all constitutional polities.³¹ It persists because of the modernist negation (Wall and Matthews 2024) of the aesthetic and liturgical element that lives immanently within the body of the law and which libidinally ties (Sherwin, 2018b) the body of the national citizenry, the constitutional subjects, to the body of the juridical, fusing the *corpus iuris* with the *corpus mysticum*.³² Imagining, projecting and creating nations, and constitutions that fix and define such nations in time and space, necessarily entails a transcendental kernel – whether of a civil religiosity,³³ a repressed mythology (Fitzpatrick 1992), a

³⁰This ties in with Brennan’s observation (1990, 51), following Debray (1977, 27), that the construction of the nation is a response to ‘the twin threats of disorder and death confronting all societies’. For an examination of how the partition affected the making of the Indian Constitution, see Suresh (2024).

³¹For two engagements with this ambivalence as a perpetual irresolution, see Christodoulidis (2007) and Fitzpatrick (2001, 129–30).

³²In Pottage’s (1994: 134) diagnosis, ‘[t]he bonds of law are quintessentially erotic in the sense that they elaborate a libidinal “idea” of the body; in other words, they too are a product of the “erotogenicity” of the body . . . [L]aw captures the desiring bodies of its subjects . . . [and] attach subject to text and subject to subject’.

³³Coined by Rousseau in book 4, chapter 8 of *The Social Contract* (1893, 202–21), ‘civil religion’ has become a prominent moniker to signify the religious aspects that undergird even avowedly secular nations. Robert Bellah (1967) popularised the

(re)framing of universal rights in a transcendental legality³⁴ or in a historical narration and imaginal depiction of civilisational continuity – that allures the subject to a binding relationship with the law. This transcendental kernel often performs its function of binding through the medium of aesthetic forms, which allows the law to bind, and ‘it binds deceptively, it binds unconsciously, and it binds affectively’ (Goodrich, 1990, 9). While ‘every society, in every period, in fact, tends to sacralise – that is, to detract from criticism and dogmatise – its social binding function and represent it symbolically in the form of images, in order to exalt its power’ (Heritier 2014, 149), the Indian Constitution exemplarily demonstrates how images foundationally enact and represent such a binding. The visual economy of presence (Sherwin 2018b), much more than any rational notions of deliberative reason, is what enables the image of a historical collective to be interwoven with and bound up into a constitutional subjectivity. Richard Sherwin claims that erstwhile forms of visual attachment, as manifested in the ‘visual economy of the Incarnation’ (2018b, 335), were displaced in political modernity into a secular rationality. ‘[O]ver time, what began as a transcendental, symbolic visual economy devolved into something far different: a secular legal positivism, the modern semiotic economy of signs and definitions’ (Sherwin 2018b, 335). However, images *continue* to proliferate, bind, attach and move the interiority of the subject and the history of the collective in increasingly mobile forms. The ‘ghost’ (Sherwin 2018b, 335) that remains in ‘the secular machinery of positive law’ is not necessarily ‘unrepresentable’ or ‘inconceivable’ but all too visual, visible, sensible and affective, at least as witnessed in the context of the images in the Indian Constitution. These images visually mediate and exemplarily perform the binding that occasions the founding of nations and constitutions.

Predicated not only on reason, but on the idea of an actual or ‘a widely accepted myth of actual agreement’, the people become a central aspect of the legitimacy of the constitution (Rosenfeld 2009, 25). The founding people are specifically invested in a greater burden as their document becomes performatively authoritative not just for them but for their posterity as well. To borrow from Norton (1988), there is a double transubstantiation that takes place in the dialectic between constituent and constituted powers. The flesh of the founding people, with its attendant strategies and rhetoric of a coalesced identity, is transubstantiated into the word of ‘the people’ in the constitution, and the now verbal notion of the people returns to transubstantiate into future citizens in its self-image.³⁵ This is a demanding process. To be tied to the word is an ensuing and insipid struggle if left to itself and requires a transcendent, aesthetic and liturgical element to inscribe the people with a cohering identity that can be libidinally attached, worth fighting and even dying for. Whether one views this as ‘temporal imperialism’ (Norton 1988 460) or as a ‘transtemporal authorship’ (Michelman 2009, 717), the notion of ‘We the People’ requires a sufficiently strong resonance for all of posterity to heed and value in this cohering impulse.

The images in the Indian Constitution depict a civilisational justification for the linearity of a historical people, progressively destined to constitutional commonality of purpose and action. In its very form and aspiration, the notion of a singular people echoes a transcendental manifestation of an entity, with the function of God now transposed to the function of the people, ‘the ontological productivity of divine making... transposed into the ontological productivity of

phrase in the USA by elaborating on the notion of an American civil religion and terming the Constitution and the Declaration of Independence as its ‘sacred scriptures’. The concept as such has been in vogue for quite some time and has even been engaged with in constitutional discourse (Levinson 1988), although it is yet to sufficiently develop as a critical tool of analysis in the Indian constitutional context. A partial exception to this is the text of Pritam Singh (2005) that attempts to uncover the Hindu undertow that is dispersed across the Constitution. It is not hard to decipher that the concept of a civil religion is closely associated, at least in its functional aspects, with studies of ‘political theology’. Although this genre is traceable to Augustine and Aquinas, its most famous rendition in modern times is by Carl Schmitt, who argued that ‘all significant concepts of the modern theory of the state are secularised theological concepts’ (Schmitt 1985, 36).

³⁴See, for instance, Corwin (1928, 153), who has argued that ‘the legality of the Constitution, its supremacy, and its claim to be worshipped, alike find common standing ground on the belief in a law superior to the will of human governors’.

³⁵For a more elaborate treatment of this theme, see Santner (2011).

human law-making' (Lindahl 2007, 165).³⁶ Modernity, as has been rehearsed time and again since Nietzsche's observation, may have well done away with the need for God, but the empty place still remains, filled with many substitutes and chain of associations. The images in the Indian Constitution invoke deities (Ram, Krishna, Shiva, Sita), spiritual figures (Buddha, Mahavira, Gobind Singh), deified leaders (Gandhi, Bose), monarchs and warriors (Ashoka, Vikramaditya, Akbar, Shivaji, Laxmibai, Tipu Sultan) and the myth of a single strand which connects all of them to an arcane origin and the modern national citizen. Thereby, the images powerfully function as a counter-archive of the historical collective and libidinally binds it to this transcendental lineage, and as such provide the historically constructed identity of the national collective with a constitutionally visualised legitimation. The historical bind is further entrenched and affixed through an imaginal bind. The negation of these images and its function in the cohering and coalescing enterprise only ignores the persisting force with which Indian nationalist politics continues to perceive itself in civilisational and ordained terms. Jawaharlal Nehru viewed 'the People' as having persistently traversed through 'trackless centuries', and it is echoed up to the present in the same terms, with a recent Government of India booklet claiming that 'the view or the will of the people in governance has been the central part of life since earliest recorded history'.³⁷ Whereas the Nehruvian government entrenched a civilisational perspective in more secular terms, the incumbent Modi government performs this gesture in more explicitly theological terms, as evinced in the Prime Minister's recent reference to the image of Ram in the Constitution.³⁸ Despite the gulf of secularity and religious communitarianism that separates these two epochs and ideological wings, the narrative arc of a civilisational continuity with an unbroken chain has remained a powerful and affective trope across the political spectrum. It is this stability of the people as a civilisational entity and the sustenance of a singular and uninterrupted subjectivity that is upheld and buttressed by the images which provide the introductory annunciation and acclamation in the Preamble with an imaginal foundation and visual meaning. The images are the Indian Constitution's internal *mnemotechnique* (Berlant 1991) of remembering (which is to say documentarily constructing and simultaneously legitimising) a nationalist history, with a stable subjectivity and an unbroken linearity. The collective that is constructed in the Preamble gains a historical force suffused with a civilisational lineage and is imaginably bound and tied to the Constitution through an otherwise banished visual economy.

Conclusion

The constitutive images of the Indian Constitution play a crucial and critical role in the aesthetics of legitimation as well as the binding of the constitutional subject, enabling the formation of a collective, in the name of 'We the People', that is suffused with a historical force and a civilisational lineage. The function of popular sovereignty is in many ways invested in visual, theatrical and liturgical forms, which is what enables habits of obedience and legal subjectivity (Wall and Matthews 2024). This article, in examining ignored and otherwise marginalised images, has demonstrated how these foundational *imagoes* imaginably perform three incremental gestures of

³⁶This idea of a divine transposition is Schmitt's, from *Political Theology* (1985). In his analysis of constituent power, Martin Loughlin (2014, 228) makes the same observation: 'The transfer of authority from prince to people in modernity also brings about a profound change in the order of symbolic representation. The transcendent belief in divine authority might be effaced but that space remains. The transcendent figure of the sovereign is lost, but the space of sovereignty is retained.'

³⁷The booklet also symbolically reverses Article 1's phraseology to 'Bharat, that is India . . .' instead of the other way around, and makes the exclusionary claim that 'Bharat is the official name of the country', pitting Bharat above India in priority. The Government of India (2023) Bharat: The Mother of Democracy: G20 Booklet. Available at: https://www.indiaculture.gov.in/sites/default/files/Bharat_Mother_of_Democracy_English_Brochure.pdf (accessed 24 September 2024).

³⁸Dek A (2024) Was Ram Really a 'Source of Inspiration' for the Constitution as Modi claims? Scroll. Available at <https://scroll.in/article/1062975/was-ram-really-a-source-of-inspiration-for-the-constitution-as-modi-claims> (accessed on 24 September 2025).

binding: the collective bind, the historical bind and the imaginal bind. In visually constructing the notion of a people as a collective that has been marching together since the dawn of civilisation, the images libidinally and affectively allure the constitutional subjects to become a historical collective that can be attached to the interiority of the Constitution through the medium of the imaginal bind. The grip of ideology is usually most effective from a distance, when its forces are least felt, and these negated imaginal accoutrements set up the aperture through which the legal subject can enter into the soul of the Constitution, enacting thereby a tripartite binding: first, they enact the binds of the people, the lines of amity, sociability and community; second, through the imaginal trope of a powerful civilisational heritage and a fabricated unbroken continuity, the bound collective is set in motion, present and moving, animated and ambulant, desiring and destined; and, third, through the very medium of images, the former, the community of people already bound together, is libidinally and affectively attached and bound up with the latter, the narrative arc, the theme of tradition, civilisation and temporisation. In other words, the people are bound together in the performative act and subsequently also bound up with the narrative arc that acts as a libidinal adhesive to legitimise the constitutive entity as well as the constituting document. Through the collective bind, the historical bind and the imaginal bind, the images elevate and transform an otherwise disparate mass of people into an already historically constituted nation, in Sieyès's sense, and perform the role of constitutional *ImagiNations*. While Gary Jacobsohn (2010) has eruditely demonstrated that constitutional identity, in many historical and comparative contexts, is constantly fashioned and refashioned, it is pertinent to remember that the dialogic operations of constitutional identity is not just restricted to political and legal dialectics, but also to imaginal foundations and binds, liturgical acclamations and annunciations, aesthetical margins and movements, theatrical performances and proliferations, transcendental tropes and tribulations and a plethora of vibrant visual economies that fuel and structure libidinal attachments – what is otherwise construed as legitimacy and constitutional subjectivity. While the past is not necessarily 'immutable' (Jacobsohn 2010, 134), it remains a force to be reckoned with insofar as its affective and rhetorical powers are concerned. Transformation can begin only with a recognition of the extent and ways in which the past and its attendant strategies return or are manipulated and distorted to return. The forms of this exceed mere discourse and rhetoric and are deeply steeped in aesthetics and visual foundations, and, as such, understanding the visual affects and libidinal tropes with which constitutional history is concerned requires a plurality of vision and diverse visual methodologies to begin with. The images of the Indian Constitution, given the lack of scholarship on it, have been offered here as an exemplary site for such methodologies.

Acknowledgements. Peter Goodrich and Andrew Halpin engaged critically with earlier drafts and pushed me to clearly articulate and clarify the stakes of the images in the founding document. Latika Vashist and Rashmi Raman kindly read earlier versions of the manuscript and shared encouraging feedback. Adeel Hussain and Kevin Tan commented historically and pointed out crucial gaps to be filled. Benjamin Goh and Helena Whalen-Bridge read successive drafts and provided exhaustive feedback on multiple occasions. Conversations with Desmond Manderson, Piyel Haldar and Maksymilian Del Mar helped in refining different aspects of the argument. Earlier versions of this paper were presented at a Centre for Legal Theory Seminar at the National University of Singapore Faculty of Law, the 'In the Thick of Images' conference at the University of Lucerne and the 'Historicising Jurisprudence' workshop at the Institute for Advanced Legal Studies, London, and I would like to thank all the participants who attended and closely engaged with this work. I would also like to thank the two anonymous reviewers for their critical engagement and constructive suggestions. All mistakes and omissions remain mine.

Competing interests. No conflict of interest.

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Cite this article: Suresh S (2025). Constitutional *ImagiNations*: on the Imaginal Foundations of the Indian Constitution. *International Journal of Law in Context*, 1–19. <https://doi.org/10.1017/S1744552324000454>