'Mass of Madness': Jurisprudence in E.M. Forster's A Passage to India

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Law-and-literature scholars have paid scant attention to E. M. Forster’s oeuvre, which abounds in legal information and which situates itself in a unique jurisprudential context. Of all his novels, *A Passage to India* (1924) interrogates the law most rigorously, especially as it implicates massive programs of ‘liberal’ imperialism and ‘humanitarian’ intervention, as well as less grand but equally dubious legal apparatuses—jail, bail, discovery, courtrooms—that police and pervert Chandrapore, the fictional Indian city in which the novel is set. The study of law in Anglo-India is particularly telling, if troubling, because India served as ‘a model for colonial legal policy elsewhere’ and because ‘the legal history of empire has been a relatively untouched field’ even though modern controversies are ‘notably bound up with these inescapable legal pasts.’ By scrutinising the legal architecture of the British imperial project, Passage not only stimulates critical theory about law but also subverts a wide range of actual legal practices, most notably colonial trial procedures. To the extent that modern controversies are bound up with these practices and procedures, the study of Anglo-Indian legal history is imperative. Far from comprehensive, my treatment of colonial law (like Forster’s) might offend specialists. My objective, however, is not to provide an exhaustive explanation of the legal system but to show how Forster’s more than superficial knowledge of colonial law allowed him to comment on socio-political realities in India that never quite went away.
Forster's depictions of law are not verisimilar. Nor could they be. When E. A. Horne, a worker in the Indian education service, criticised these depictions, Forster cursed his friend, the Indian lawyer Syeed Ross Masood, 'for not advising him better.' Even if the novel lacks accuracy, it deftly undermines British rule of law, a jurisprudence fraught with 'us versus them' rhetoric. It also recommends traditional Brahman Hindu philosophy as an alternate view capable of subsuming and replacing rule of law discourse, which insists on exclusionary binaries rather than on Brahman's inclusionary universalities. My use of the term 'Brahman Hindu' may seem like an odd construction because not all significations of Hinduism are Brahman in the novel (e.g., the 'meaningful' figure of a low caste man). One might also argue that Passage cannot endorse a Hindu perspective because it displays a consciousness of its own nescience, which extends to Hinduism, Islam and its heresies or deviations, and indeed to all epistemologies. But to argue along such lines would be to overlook Forster's fascination with Brahman and to ignore scholarship treating the novel as a Brahman magnum opus separated into three parts, each reflecting varying degrees of Hindu wisdom: Karmamarga (Path of Activity), Jnanamarga (Path of Knowledge), and Bhaktimarga (Path of Devotion).  

The time is ripe for a reconsideration of this early scholarship in light of jurisprudence, an oft-ignored subtext of Forster's writings generally and of Passage in particular.  

That law features prominently in Passage should come as no surprise. Diane Kirkby and Catharine Coleborne submit that '[l]aw, the rule of law, was at the heart of the English colonial enterprise' not just in India but in other settler colonies as well. Akhileshwar Pathak declares that law 'was the main means for ruling India', adding that the 'rule of law was not only a code for binding the ruler and the ruled but also for accountability of the different hierarchies within the state.' Pathak maintains that rule of law 'implied rule by law and not the whims and fancies of the alien administrators.' John M. MacKenzie echoes these arraignments of rule of law and contextualises them within the vast encroachment of Western culture on India and other former colonies:

Western concepts of law were deeply embedded in both the practice and the propaganda of imperialism. Empire's beneficent cargo included 'the rule of law,' and an early generation of imperial historians were interested in the high-flown principles of the globalization of western legal ideas and their application in international and constitutional notions, in legislation, and in the courts. Although the eighteenth century saw some efforts at creating legal syncretism in India, the
sub-continent became a significant location for the expression of English legal traditions, not least in the external expressions of the architecture of court houses and the garb of judges and lawyers. As the British Empire extended its reach, these distinctive characteristics of an organic English [...] inventing of legal conventions were extended throughout the so-called white dominions and the ‘dependent’ territories. Such manifestations remain one of the continuities of the post-colonial era.8

In light of these criticisms, it is no wonder that law is also at the heart of one of the best known English language novels that criticised colonial India.

During his excursions to India in 1912 and 1922, Forster received first-hand knowledge of the colonial legal regime. In 1906, he befriended Masood in England and later befriended Masood’s law student colleagues, with whom Forster renewed contact in 1922 while visiting India for the second time.9 During his 1912 trip, Forster learned about law as it functioned on the everyday level. He remained several days with Malcolm Darling, a magistrate in Lahore, and met with friends in the Indian Civil Service who ‘passed him on to other friends, so that he was given plenty of opportunity to observe the Raj at work and to listen to Anglo-Indian theories and prejudices about Indians and the British role in India.’10 One evening, an Indian barrister told Forster that he (the barrister) had defended a client who ‘bought a wife for 50 rupees from another man.’11 Days later, Forster heard Masood complain about a client who cut off his own ear, bottled it, and delivered it as evidence against his adversary.12 Forster also spent time with the increasingly disenchanted Rupert Smith, an assistant Magistrate in Allahabad. In short, Forster’s privileged access to the Raj’s micro-power structures allowed him to criticise the overall system in ways that most British observers could not.

Those who doubt the socio-cultural import of this novel might ask themselves why, as recently as 1987, a Maryland appeals court judge stated the following about the case before him:

I join in both the judgment and the opinion of the Court. I concur separately only to note an irrepressible observation about the universality of great literature. This case is E.M. Forster’s A Passage to India all over again. Something happened up there at the Marabar Caves. Was it an attempted rape? Was it some form of hysteria triggered by strongly ambivalent emotions imploding violently in a dark and isolated catacomb? Or was it some unmappable combination of the two as moods and signals shifted diametrically in mid-passage? The outside world will never know.13
This excerpt suggests that Passage has not lost its relevance simply by being bound to a particular period.

**Brahman Muddledom and Rule of Law**

*Passage* is in many ways about losing balance. Characters like Turton, Fielding, and Mrs. Moore represent centres of gravity, fixed between competing tensions and antagonistic binaries: reason and emotion, Indian and British, human and animal. Situated between the nested oppositions, Turton, Fielding and Mrs. Moore denote compromised identity, the reconcilability of two cultures; as middle-markers they refuse rigid categorisation and maintain symmetry in power relations. Instead of opening channels of communication and understanding, however, their mediating presence has tragic results: Turton goes crazy, Fielding loses hope and Mrs. Moore dies. These characters are necessary as fulcra; but when they align themselves with one binary or leave India altogether, they trouble the balance and stability of society writ large. In a strictly separatist microcosm, they occupy the geometric centre. When their positions shift, equilibrium breaks down: society becomes a mass of madness. The only go-between characters in the novel are English, suggesting that the story is a mirror held up to placate white guilt. The demise of these characters in particular, and of Anglo-Indian relations generally, turns on the overarching, structural antinomy between reason and emotion that comes to a head during the abortive kangaroo trial. An interrogation of this antinomy and its collapse into muddledom reveals how law and justice in Chandrapore bear a systematic and determinative relation to race and gender.

Rather than essentialise, Forster portrays the multiplicities of the people whom the British lump together as Indian. For all of his attention to Indian multiplicities, however, he generalises about British colonisers. Save for the fulcra characters (Turton, Fielding and Mrs. Moore) he lumps together the British as a monolithic, animalistic collective. This is not to say that he ignores the quotidian operations or domestic lives of colonisers; rather he portrays the colonisers (wrongly) as a homogenous community with common interests. Forster’s articulation of British identity represents a major false premise on which colonisers constructed authority: ‘the notion that Europeans in the colonies made up an easily identifiable and discrete biological and social entity – a ‘natural community of common class interests, racial attributes, political affinities, and superior culture.’”

For Ann Laura Stoler, such glib generalisations enable imperialist strategies. By (mis)characterising the British as homogenous, these
generalisations exaggerate the distance between Indian (both Hindu and Muslim) and British cultures in all of their multiplicities and thereby imply a certain superiority. Such generalisations encourage flattering self-perceptions. If Western readers are meant to pity or otherwise to sympathise with Indian characters, whether Hindu or Muslim, it is because Forster makes those Indian characters into exotic objects of Western communal mercy and tolerance.

Forster takes to task another false premise—‘that the boundaries separating coloniser from colonized were [...] self-evident and easily drawn’—by criticising racial criteria restricting membership in the ruling community to white men and regulating ‘the sexual, conjugal, and domestic life of both Europeans in the colonies and their colonized subjects.’ The incident between Aziz and Adela Quested illustrates this latter phenomenon, which is bound up with the ‘unlimited interest’ of colonial participants ‘in the sexual interface of the colonial encounter’, an interface that Stoler characterises as a ‘pornographic fantasy.’ The trial scene is the site for enacting exclusion policies whereby Victorian sexual mores define and control colonial relations. Forster is ahead of his time in questioning colonial sexual regulations and their relation to power structures, perhaps because, as a gay man, he knew first-hand what it was like for the state to police his body.

If Forster’s relationship to law was strained, his relationship to imperialism was even more so, for it depended on, indeed benefited from, the practices Forster despised—namely, colonial tourism and exploitative globetrotting. ‘The paradox, for Forster as for others’, explains Robert F. Aldrich, ‘was that the imperial enterprise, complete with the idea of bringing civilization to the wider world, provided opportunities for a sexual emancipation that countermanded the moral order at home.’ Just as Aziz and Adela Quested transgress sexual boundaries—or are believed to have transgressed those boundaries—Forster crosses the sex-race line by developing erotic liaisons with men of colour like Masood, who ‘could not physically respond in the way Forster hoped.’ Whether these liaisons signal a patriarchal fetishism—whether they ‘commodify’ the native subject—is of reasonable concern to critics. Suffice it to say here that Forster, like the well-meaning Fielding, implicates himself in the colonial enterprise that he seeks to destabilise. His depictions of Mrs. Moore and Fielding as failed cultural intermediaries recall his own failed cultural intermediation.

For all of his shortcomings as a cultural critic, Forster borrows from Brahman Hindu philosophy to invert and ultimately to deconstruct the binary oppositions (reason/emotion, Indian/British,
human/animal) that British characters (including the omniscient narrator) regard as metaphysical and structural absolutes. It has been argued that this Brahman philosophy has given Hinduism the ‘power to absorb in a spirit of creative synthesis the different streams of cultural influence that have poured into India in the course of the centuries’ and that it ‘makes Hinduism a kind of universal and eternal religion’, perhaps even ‘a religion of no-religion’ that insists on ‘the human spirit’s going beyond all doctrinal religions.’

A man whose reputation as a modernist is often challenged, Forster uses various significations of Brahman Hindu to deconstruct British meanings and to disrupt totalised understandings of British and Indian culture. Such an ‘indeterminable’ philosophy (Haridas Chaudhuri’s adjective, not mine) as Brahman Hinduism cannot entertain the unequivocal domination of one mode of discourse over another. The rigid dichotomies established by the presumably British narrator and the other British characters are purely notional. In the end, Forster praises and arguably endorses this Brahman philosophy that ‘is inaccessible to the relational way of thinking, or to our conceptual understanding.’

This does not mean that he avoids binary oppositions as a rhetorical strategy. He takes pains not only to establish binary oppositions but also to toy with those oppositions by inverting racial stereotypes. Although he explodes the overarching antinomy of reason/emotion, he preserves the antinomies of human/animal and Indian/British. One wonders whether Forster adopts a strategic essentialism to invest his novel with the ‘predicament of the need to interpret and of its constant frustration.’ Nothing if not complex, Passage is, like Brahman philosophy, beyond the ‘polarity of subject and object, knower and knowable.’ It is the irreducible echo in the Marabar caves. It is, in David Medalie’s words, ‘a work of nascent modernism.’

This modernism points to the British failure to secure meaning through text or through the technology of writing—hence the deferral of meaning in the echo in the caves—and suggests that the novel’s meaning resides in the orality of Indian Hindu spiritualism.

Forster associates the British with herd animals and the Indians with humans, thus reversing the conceptual privilege of Britishness. He explains, for instance, how Aziz’s joke (that the ‘so-called white races are really pinko-grey’) causes one Englishman to communicate ‘his sense of insecurity’ to the ‘rest of the herd’ (the other Englishmen). Having animalised or dehumanised Englishmen, Forster disables any empathy the reader might feel for them. His strategy is to flip the binaries: the Englishmen, cartoonish in their disdain for inferiors, are more subhuman than the Others whom...
they see as subhuman. That Forster depicts any group as subhuman is problematic, not to mention contrary to his liberal humanism; nevertheless, Forster’s aim is not merely to reinforce power structures by reversing who dominates whom but to articulate paradoxes underlying English assumptions of superiority. The animal attributions are a literary or rhetorical device, an anthropomorphism in reverse: they expose English behaviour as unreflective, if not impulsive and racist, but they do not privilege one community as more human than another. The novel’s liberal humanists, Mrs. Moore and Fielding, can transcend these brute instincts of ‘Englishness’ and can thus occupy a space between the Indian (human) and English (animal) binaries. Neither, however, completely bridges the gulf between cultures. Worse, their failure to do so means that whatever bridge had been erected no longer stands. The British and Indians cannot be friends, neither yet nor here.

Throughout the novel ‘the facts’ seem exclusive of ‘emotion’, the former reserved for human (read: rational) minds, the latter for animal (read: impulsive) minds. Inasmuch as the ability to reason distinguishes humans from animals, Forster’s choice of the word ‘herd’ evokes the familiar reason/emotion duality. To the extent that reason and emotion remain separate and distinct, the English occupy the emotion binary just as law and facts occupy the reason binary; after all, ‘[n]othing enrages Anglo-India more than the lantern of reason if it is exhibited for one moment after its extinction is decried’ (PI 148). The irrationality of the English has to do with the collective unconscious: the English put aside ‘their normal personalities’ and sink ‘themselves into their community’, filled with ‘pity’, ‘wrath’, and ‘heroism’, but unable to put ‘two and two together’ (PI 148). The English succumb to mob psychology and the contagious enthusiasm that accompanies it. They become a ‘herd.’ The English in India appear to lose their perception of good and evil, just and unjust, the more herd-like they become.

That Forster classifies the English as an unreasonable herd does not also mean that he extols reason over emotion. Indeed, he celebrates the rapturous festival of Gokul Astami, the ‘muddle’ that is not only ‘the approaching triumph of India’ but also ‘a frustration of reason and form’ (PI 258). During this festival, Godbole, a Brahman Hindu, togged up in ‘a pale blue turban,’ ‘clashing cymbals’ (PI 258) and dancing elatedly, detaches ‘the tiny reverberation that was his soul’ (PI 260). For Francis Singh, this moment reveals ‘a positive attitude toward chaos’ that is ‘completely un-Western.’27 Chaos here recalls Brahman Hindu philosophy, which blends dualities into a single state
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and renders all things inclusive or unified. Chaos here also reveals Forster’s commitment to modernist expression as he implicates the failure of British text to call forth meaning and celebrates Hinduism as the source of meaning that is constantly deferred in the text. Writing in 1907, Sitanath Tattvabhushan articulates this aspect of Brahman religion by claiming that ‘all mutually excluding things [...] imply an all-relating Unity.’ Likewise, Chaudhuri declares that, according to Brahman, ‘reality is, in its deepest essence, beyond all such polarities as one and many, infinite and finite, absolute and relative,’ because it consists of ‘the identity or creative unity of all polar opposites.’

The Brahman Hindu festival accordingly carries a plurality of meaning that denies immutable binaries or clear-cut categories, whether they be reason/emotion, human/animal, or Indian/British. It bears mentioning that Forster probably did not understand the meaning and import of Brahman Hinduism, but his misunderstanding only enhances his textual commitment to contingency as well as his themes about the limitations of British knowledge of Indian culture. Chaos is neither Western nor non-Western in the metaphysical sense but the celebration of chaos is distinctly Hindu. In this celebration we can sense Forster’s modernist scepticism and his growing detachment from Edwardian literary conventions. His insistence on a new form of jurisprudence aligns modernism and Brahman Hindu and veers toward the sublime. Even Forster’s syntax tends toward spontaneity and arbitrariness rather than toward the stuffy formalism that marked some of his earlier, less modernist works.

Singh is correct in claiming that ‘chaos is constructive’ at the Gokul Astami festival and possibly the ‘medium’ or ‘raison d’être for Indian independence’, provided that one also reads it as ‘[o]ne of the common arguments used by the British against granting independence to India.’ The Gokul Astami passage also suggests that Forster’s depiction of chaos or muddle is positive and that emotion is not *per se* wrong or malicious but merely part of the general oneness of things. This passage has to do with what Medalie calls ‘the intensification of the novel’s “prophetic” elements’, modernist touches that Forster added to later drafts of the novel. It seems that in early drafts Forster had stuck to his old motifs and conventions but later felt that those motifs and conventions were inadequate. He sought to criticise Anglo-India but became disenchanted with the critique. ‘In the movement from disappointment in what is to be commented upon’, Medalie explains, ‘to disappointment also within the commentary itself, lies the evolution of the novel from a work of incipient modernism to one of full modernist self-consciousness.’
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Writing his later drafts almost a decade after he had written earlier drafts, Forster mixed seemingly innovative forms and language into his manuscript so that the manuscript itself became a muddle, and muddle signifies the concept of Brahman, which dovetails with Forster’s recognition of the endless complexities of human experience.

For Singh, muddle represents and secures a resistant agency for Hindu celebrants because it subverts British rule of law, about which I will say more momentarily. For now, suffice it to say that rule of law does not represent a unanimous or monolithic vision of imperialism, which consisted of various networks, exchanges, flows, and processes. Rather, it represents a small component of a colonial machine that introduced British-style property laws, enforced the cultivation of export crops, and exploited local Indian laws while conscripting Indians into a London-centered global economy. Hence Kieran Dolin’s claim that Forster’s orientalism “is not the kind criticized by Edward W. Said, a Western discourse imposed on an Other called “the East” and often inseparable from political domination.”34 In Dolin’s words, “Forster often juxtaposes Indian and English norms with the effect of destabilizing the latter.”35

With Brahman, everything is contingent, variable and deferred. ‘The untranscendable diversity of India is a repeated refrain in the novel,’ Paul B. Armstrong declares, pointing to such Forsterian observations as the following: ‘No one is India’, ‘Nothing embraces the whole of India, nothing, nothing’, and ‘There is no such person in existence as the general Indian.’36 Armstrong argues that ‘Forster’s depiction of India as a multifarious country which defies totalization is not an attempt to render it exotic and mysterious.’37 He suggests, rather, that the ‘heterogeneity of India is a particular instance of a tendency toward internal diversity which can be found in many (perhaps all) cultures’.38 If this account is valid, then India, for Forster, is an endless chain of signifiers, a constant series of differences (a trace) epitomised by the Brahman festival, which sounds ‘the notes of concord and discord simultaneously.’39 India cannot and should not be essentialised because it is constitutionally muddled, lacking in any first cause and ordered by the disorder within. As such, it unsettles the binary oppositions Forster depicts as symbols of British control, exposing the dualities reason/emotion, Indian/British, and human/animal as constructed signifiers.

This muddle has jurisprudential significance. The British celebration of rule of law flies in the face of Brahman Hindu philosophy, especially since rule of law aims to eliminate arbitrariness and caprice, whereas Forster’s representation of Brahman Hindu
embraces arbitrariness and caprice as manifestations of a higher order. Rule of law is also exclusive of and discriminatory towards colonised groups, who have little say about what constitutes rule of law. Rule of law generally refers to the principle that all laws should apply equally, unconditionally and forcefully to all people to ensure consistency, order and control. Rule of law suggests a goal of modernisation, but actually rule of law is more about gradual development and compulsory incorporation. James Fitzjames Stephen contextualised rule of law in India by arguing that law was ‘an absolute government, founded not on consent but on conquest.’ Rule of law becomes highly problematic when it conforms to Stephen’s vision and implies a monolithic structure presiding over various groups that have no power to make or to change that structure.

Albert Venn Dicey (1835–1922), a British jurist and constitutional theorist, popularised the concept of rule of law, which for him meant three things above all: ‘the legislative sovereignty of Parliament’, ‘the universal rule or supremacy throughout the constitution of ordinary law’, and ‘the dependence in the last resort of the conventions upon the law of the constitution.’ These lofty aims suggest that rule of law was more than just a synonym for law and order. Rule of law became part of a highly politicised vocabulary, which was employed in such debates as Irish Home Rule. Its logic was that those who could not regulate themselves required regulation from the outside. Such regulation was said to be benevolent, not coercive.

Conceptually at odds with muddledom, rule of law was ‘probably the proudest achievement of the British raj.’ The British ‘believed that they had substituted legal security for disorder, predictability for uncertainty, and impartiality for whim and nepotism.’ The British perceived rule of law as containing or restraining India’s putatively anarchic impulses—epitomised by Brahman Hindu philosophy—and as necessary for securing order and stability. Thomas R. Metcalf suggests that because the British were determined ‘always to mark out the Raj as a moral, “civilized” and “civilizing regime” they implemented rule of law, which was “conceived of as the use of standardized impartial procedures for the settlement of disputes.”’ Clare Midgley also acknowledges the importance of rule of law as a tactic for achieving colonial hegemony, which ‘amounts to a reorganization of the civil society of the colonized […] through a diffusion of cultural-ideological constructions and moral regulations.’ She claims that although ‘this legitimation aspect of hegemony is present in most colonial enterprises to varying degrees depending on the nature of the enterprise, it is the case with India that British colonialism sought to
legitimate itself through self-characterization as rule of law and social reform. Similarly, rule of law in Forster’s fictional Chandrapore is depicted as a meaningless ideological strategy with no basis in fact or reality, whereas Brahman is presented as a philosophy that presents an alternate vision of justice.

In the years leading up to the publication of Passage, Forster repeatedly expressed indignation at imperialist law, which was backed by rule of law rhetoric and which Forster perceived as a fictive construct advancing oppressive programs at the expense of personal relationships. In 1919, he learned of the bogus arrest and conviction of his one-time lover, Mohammed el Adl, who, on trial in Egypt, remarked that he believed the English were just until ‘I found myself that I was about to make a great mistake.’ Also in 1919, Forster read about the Amritsar massacre wherein British soldiers violently put down an uprising in the Punjab. The uprising occurred after the passage of the Rowlatt Bill, which eliminated the rights of political prisoners to appeal cases and to have a trial by jury. The protestors’ efforts led to British imposition of martial law, as well as to the notorious crawling order requiring Indians who wished to cross the street where the missionary, Marcella Sherwood, was murdered, to do so by worming on their bellies. These orders epitomised the ruthlessness and arbitrariness of the colonial regime, which, according to rule of law, was not supposed to be arbitrary.

Forster may have seen in colonial law a moralistic tendency that, like British laws normalising or controlling his body, regulated ‘such intimate and private aspects of life as marriage, motherhood, [and] women’s relationship to their bodies.’ These laws ‘entailed the elaboration of colonial culture constructions and modes of moral regulation; they achieved the ‘process of colonial state formation in India by ascribing cultural-moral identities to the indigenous population which served in the capacity of ideology for ruling.’ In the early 1920s, before the publication of Passage, Forster publicly supported Indian independence. In 1922, he declared that although Indians had once looked to the English as supervisors, it was now ‘too late’ for that. British rule of law clashed with the Brahman philosophy that Forster celebrates in Passage. The British even looked to ‘lawless’ and ‘disordered’ Hindu attitudes as justification for their allegedly humanitarian and civilising missions. According to Dolin, ‘the “absolute government” of the English was distinguished by its officers from the “Oriental despotisms” it sought to replace. The latter were perceived as states of arbitrary if not tyrannical power, in contrast to British India, which enforced “rule of law.’ Dolin’s claim that
the colonisers’ ‘lack of a truly “local” knowledge probably enabled them to characterize the Indian legal system as threadbare and full of “gaps”’ also extends to the colonisers’ lack of knowledge about Brahman Hindu philosophy. A proper understanding of Brahman Hindu would appreciate the inherent unity of a seemingly implausible or incoherent order. Because Brahman was ‘at once indeterminable and self-determining,’ the ‘unity of freedom and creativity, time and eternity, ineffable silence and perpetual self-expression,’ the British needed to quash it and to establish their own hegemonic legal architecture. Like the British characters, the Muslim Aziz does not appreciate the complexities of Brahman Hindu and so cannot resolve his various problems.

To say that Brahman Hindu was the main catalyst for British imposition of rule of law in India would be hyperbolic. Nevertheless, besides racism and abstract rhetoric of empire, the catalyst was a perceived lack of unity and consistency in Indian law. Dolin refers to this lack as ‘gaps and interspaces’. In Passage these gaps and interspaces permeate India, signal Brahman Hindu philosophy and subvert any grand delusions of a monolithic, homogeneous rule of law.

Stephen authored the Indian Evidence Act (‘the Act’) that sought to consolidate rules of proof and invest them with legislative authority. The Act set in place instructions regarding the admissibility of evidence throughout the entire Indian colony. Before the passage of the Act in 1872, rules of evidence differed wildly from ethnic group to ethnic group, caste to caste, community to community, and region to region. For positive law theorists like Stephen, such legal diversity would not do. Anticipating rule of law rhetoric, perhaps even putting it in motion, Stephen aimed to do in India what Jeremy Bentham could not do in England or elsewhere, namely to promulgate a utilitarian code of law beginning with the rules of evidence.

An intellectual heir of Bentham with a ‘Benthamite enthusiasm for codification’ but without a Benthamite ‘penchant for satire’, Stephen mimicked Bentham’s methodology in his Introduction to the Act. This Introduction is a positivist tour de force, an explicit rejection of natural law principles. Sections 6 to 11 in particular are, in Stephen’s own words, ‘by far the most important, as they are the most original part of the Evidence Act, [and] as they affirm positively what facts may be proved, whereas English law assumes this to be known, and merely declares negatively that certain facts shall be proved. English evidentiary rules failed to spell out clear and logical steps to arrive at or otherwise discover facts and instead relied on intuition, common sense, or precedent, concepts only natural law thinkers would embrace.
On the contrary, the Act posited clear and instructive rules about evidence—what it is and how best to detect it.

Although Forster does not specifically refer to the Act in Passage, evidence is vital to Aziz’s trial because it is oddly missing; and it is oddly missing because of the British legal system’s insistence on race as a clarifying and determinative factor of guilt or innocence. Moreover, evidence about what happened in the Marabar Caves never materialises. ‘If the facts represented in a fair trial are indeed absent and unseen’, just as the facts in Aziz’s trial are absent and unseen, ‘the persons engaged in telling and reviewing the facts most certainly believe in the possibility of making them present and consequential.’

But the British characters engaged in telling and reviewing the facts in Passage never uncover the truth. Only the Indian courtroom, the Indian judge (Das), and the Hindu deification of Mrs. Moore (‘Esmis Esmoor’) produce the truth that Aziz was not in the cave. The justice system never fills what Dolin calls ‘gaps’ and ‘interspaces’ for truth to surface. Rather, these ‘gaps’ and ‘interspaces’ are tied to the indefinite muddle of Brahman Hindu; they bring about truth in ways that British rule of law cannot. Reading the courtroom deification of Mrs. Moore as both a spiritually aesthetic as well as a political moment resolves the tension between, on the one hand, modernist criticism seeking ‘to depoliticize [the novel] almost entirely in the course of associating it with definitively modernist exercises in ontological disillusionment, epistemological scepticism, or psychological introspection’, and on the other hand non-modernist criticism that reads ‘the text in nothing but political terms, as a document of gendered oppression, as an exercise in imperialist and modernist ideology, or as a doubly grievous farrago of the two.’ Such a resolution is consonant with Brian May’s attempt to yoke modernism and pragmatism together.

Forster renders the discursive clash between rule of law and Brahman muddledom in terms of the erection and subsequent demolition of binary oppositions. He is to that extent a partisan of Brahman Hindu philosophy against his country’s empty rule of law rhetoric. Forster’s more than passing knowledge of Hinduism, coupled with his fusing of Hinduism ‘into the development of the plot’, leads Michael Spencer to conclude that Passage is something of a Hindu manifesto. Hunt Hawkins describes Hinduism as the novel’s solution to Anglo-Indian political barriers. These comments might explain why the Muslim Aziz never becomes the hero readers might expect him to become. Spencer points out that ‘we can see Mohammedanism dismissed’ by Forster ‘with the comment that it, like Christianity, does not penetrate very far into the mysteries of reality.’ Aziz is anything
but gallant in the closing chapters. He is nearly pathetic when he fails to see the transcendent (dis)order of the world and the law(lessness) of Brahman.

For Forster, according to Spencer, Brahman 'anarchy' embodies the essential India.62 This confusion and ambiguity is a good thing, Forster seems to suggest. It is also the thing against which British rule of law is directed. Rather than embrace uncertainty, the British establish legal and cultural fictions that are cast in dualistic binaries. Better to order things in neat and easily understandable compartments, even if they are meaningless, socially constructed compartments, than to look for meaning and order where they cannot be found (so goes the British argument).63 Law in the novel is nothing but an imaginary construct. True law (that of Brahman Hindu) would resolve adverse dualities into a balanced, infinite muddle. But because British law fails to do so, it fails to be law in the ontological sense. Justice is served to some extent at the end of Aziz’s trial, but India remains deadlocked: Hindu versus Muslim, British versus Indian. Even Fielding and Aziz fail to reconcile their differences.

**Brahman in the Courtroom**

Forster met a munsif, or junior magistrate, during his first trip to India.64 During several outings with this man, Forster witnessed parts of a murder trial in a sub-judge’s court and also visited the local jail. These experiences familiarised Forster with trial procedure. ‘Forster had much trouble with the trial scenes’, P. N. Furbank explains; he was unsure, for example, ‘whether a case as important as that of Aziz would have been tried in a subordinate court.’65 Forster’s insecurities about Aziz’s trial were such that he wrote to Masood pleading for criticisms. All he received in reply was an unconstructive note: ‘It is magnificent. Do not alter a word.’66 Although it may not have been strictly accurate, Forster’s rendering of the trial subverted British rule of law and offered up Brahman as an idealised substitute.

The facts underlying Adela’s charge are as follows: ‘Aziz followed her into the cave and made insulting advances. She hit at him with her field glasses; he pulled at them and the strap broke, and that is how she got away. When we searched him just now, they were in his pocket’ (PL 150). These possibly imagined charges are relatively innocuous; they do not rise to the level of rape or, for that matter, sexual assault. Depending on their exact construal, they could amount to petty larceny (theft of the glasses) and nothing more. The glaring absence of any mention of incriminating data or of any other bases
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for Aziz’s prosecution is almost stupefying. Although Forster tells us that the ‘logic of the evidence said “Guilty,”’ he does not say of what. This ‘logic’ turns on the inconsequential fact that ‘the strap had been newly broken’ and ‘the eye-piece jammed’ (PI 150). The only unconsidered detail is intangible: the echo. When added to the already ambiguous and haphazard evidence, this elusive noise supposedly strengthens the prosecution’s case, which seems more and more fictive and also contingent on codes of white womanhood or, if not of white womanhood, then of ‘gender-specific requirements for colonial living [...] constructed on heavily racist evaluations that pivoted on the heightened sexuality of colonized men.’

The facts nevertheless convince McBryde of Aziz’s guilt. McBryde asserts that natives are criminal at heart because they are born south of latitude 30 (PI 149). His prejudice is so preposterous as to seem farcical. Indeed, McBryde’s claim that ‘I couldn’t worry her overmuch with questions’ (PI 150) seems like something out of Gilbert and Sullivan, for here is the head of police nonchalantly refusing to follow a lead in an otherwise leadless case. McBryde’s best chance of procuring evidence is interviewing Adela and Aziz. He does neither. To Fielding’s protest that ‘it’s impossible that, having attempted to assault her, [Aziz] would put her glasses into his pocket,’ McBryde replies, ‘When an Indian goes bad, he goes not only very bad, but queer’ (PI 151). McBryde’s entire case against Aziz is bound up with racial difference, objectification and English emotion but not with evidence. His so-called ‘evidence’ hinges on a xenophobic ideology that privileges Englishmen as inherently superior to their imperial subjects who McBryde insists are not like ‘us’ (the British) because ‘the psychology here is different’ (PI 151). McBryde relegates Indians to a subspecies, theorising crime along racial lines (PI 151). His racialist premises mean that he treats the distinction between innocent and guilty as superfluous: Indians do not share a human nature with the English and therefore Indian behaviour cannot conform to British codes of civility.

The English justice system is in Passage shown to be irrational—so irrational, in fact, that Aziz’s guilt turns on outrageous circumstantial evidence: broken glasses, a letter from a friend who keeps a brothel, and photographs of Aziz’s wife. McBryde implies that the English justice system ought to try Aziz’s character (which, in Chandrapore, is contingent on race or, more precisely, on racial construction) and not on facts, which seem strangely irrelevant. ‘It’ll have to be quoted in Court,’ says McBryde of Aziz’s letter from a brothel-owning friend, ‘as bearing on his morals. He was fixing up to see women at Calcutta’
Fielding protests against this demeaning strategy, but McBryde, ‘naively puzzled’ about ‘where the objection came in’, thinks it obvious ‘that any two sahibs ought to pool all they knew about any Indian’ (PI 152). For McBryde, who sees Indians as guilty unless proven innocent, the prosecution should amass all possible evidence, however shoddy. We are meant to be horrified not only by the complete invasion of Aziz’s privacy’, Michael R. Enos argues, ‘but with McBryde’s zeal in formulating the Anglo-Indian narrative of how Aziz allegedly planned to get Adela alone.’68 McBryde’s anything-goes tactic speaks volumes about his recklessness. It also exposes his bigotry. We are told that he and Fielding had both visited brothels when they were Aziz’s age (PI 152). Whereas they remained unpunished by law, this same law will likely punish Aziz for two crimes (engaging a prostitute and raping a woman) that he did not in fact commit. Forster depicts both McBryde and the legal system more broadly as hypocritical and unjust. This charade of a system purports to value evidence above all, but the pursuit of evidence and truth is more characteristic of Indian characters like Hamidullah. ‘Ah, ah, has some evidence come?’ replies Hamidullah after Fielding shouts, ‘It’s all a mistake’ (PI 155). Hamidullah is the ‘leading barrister of Chandrapore, with dignified manner and Cambridge degree’ (PI 155). Ever the lawyer, he prates ‘of “policy” and “evidence”’ in a way that saddens Fielding, in part because Fielding never completely sheds his British passions and in part because Hamidullah’s reasoning arrives at a tragic conclusion, which Fielding finds unpalatable, namely, that Aziz ‘was calumniated’ (PI 155). ‘It will come’, the resigned Fielding says of the evidence (PI 155). Here he lapses into emotionality, except that his divided identity favours the Indians over the English: ‘Aziz was innocent, and all action must be based on that, and the people who said he was guilty were wrong, and it was hopeless to try to propitiate them. At the moment when he was throwing in his lot with the Indians he realized the profundity of the gulf that divided him from them’ (PI 155). Nonetheless, inasmuch as Fielding sides with the Indians he can’t fully identify with them because he believes they ‘always do something disappointing’, even Hamidullah, who ‘temporized’ rather than ‘raging and denouncing’ (PI 155–6) the way a rash Englishman would. Hamidullah’s presence serves to countermand the quixotic possibility of any absolute nexus between coloniser and colonised. It foreshadows Fielding’s ultimate failure to connect with Aziz.

Hamidullah has three tactics for handling Aziz’s case: to marshal as many witnesses as possible, to retain a nonlocal Hindu defense
attorney, and to 'hit with all our strength' (PI 156). None of these strategies strikes Fielding as clever or valuable. Fielding, who hopes to avoid stirring up 'racial hatred,' naively maintains faith in the legal system, proclaiming: 'We're bound to win, there's nothing else we can do. She will never be able to substantiate the charge' (PI 156–7). It is possible that Fielding does not have faith in the system but would rather overlook the unpleasant, quotidian cruelties of a racist society. For someone who is plugged into both networks (British and Indian), and who seems aware of the pervasiveness of racism, Fielding's ignorance is suspect, bordering on connivance: rather than carve out a space for Indian agency, he turns his head the other way. Such contrived ignorance betrays a residual nativism to which Fielding usually seems immune. Like all British inhabitants of Chandrapore, however, he is unwittingly invested in the colonial project. His complicity has to do with his mediating social station: so long as Indians like Aziz trust in him, they risk submitting to his cultural paradigms, which include racial legalisms. Making matters worse, Fielding believes in the ability of British law to bring about justice, drawing Indians into his unthinking reliance on the system, which persecutes any Indian subject to it. Thus implicated in political and psychological oppression, Fielding reinscribes the colonial project in terms of miscarried liberalism; his freethinking deviations from British behaviour remain wedded to colonialist discourse and imperial domination.

The conflict between reason and emotion, Indian and English, culminates in Aziz's trial, a figurative recasting of Anglo-Indian relations generally. 'For the British community', Benton declares, 'the upcoming trial is about protecting an Englishwoman from the contaminating and “evil” contact with an Indian and is thus about marking and protecting the lines separating the British and Indian communities.'69 One cannot overlook the spatial significance of the courtroom, an enabling site wherein English authorities seek to articulate and solidify their dominance over Indians, who contest their enforced emplacement and alienation. These offsetting subversions simply perpetuate existing norms by neutralising the power-plays of both communities; they amplify the overall hostility even as they cancel each other out. For Benton, when they confront each other, the two sides 'are attentive to the details of public symbolism in the courtroom, arguing over the positioning of chairs in the courtroom and waging a battle for the soul of the Indian judge [Das], who represents for one side the decay of British power and to the other, the dangers (and the promise) of collaboration.'70 Thus read, Das's
courtroom is symbolic, a theatre for performative and antagonistic spectacle. Ostensibly a forum for the British to further their interests, it is also a counter-hegemonic mechanism used by the colonised to articulate their grievances and to invert power relations. Rather than project group distinctions based on imperial authority, it collapses stark divisions between coloniser and colonised and transfers politics into the hands of the Indians. It unsettles the uniform hostility of the British patrons, who increasingly identify with muddle, that most un-English and Brahman of virtues.

Insofar as Adela jettisons emotion and the Indians triumph, reason prevails in the courtroom, albeit in muddled fashion: Adela, in 'hard, prosaic tones,' withdraws her charges against Aziz, thereby renouncing her Englishness and merging with 'a mass of Indians' (PI 208). She evacuates all trace of virtue and chastity and 'without emotion' (PI 209–10) abandons her own people. It takes an Indian-controlled courtroom to shake her of her capricious disposition and to achieve formal resolution. Das, the Indian magistrate overseeing the trial, redeems the law by verifying its capacity to achieve justice. The suggestion at the end of the trial is that justice is not served unless Indians rather than Englishmen control the system, unless reason prevails over emotion or, to put it in Brahman terms, unless reason and emotion collapse into each other.

Be that as it may, the system itself is distinctly British. The laws and courtroom are British inventions subject ultimately to a British sovereign. Forster’s criticism, one might argue, lies not with the proceedings and mechanisms of the law but with their operators. As Benton states: 'Whether we like it or not, the truth has been revealed in the courtroom. Though Adela’s return to clarity is understood by Fielding as a “nervous breakdown,” the fact remains that she was under oath when she fully perceived, and uttered, the truth.' Benton apparently believes that Forster celebrates blind justice ensured by the system. 'The rule of law survives in the novel', he announces, ‘as Britain’s one true gift to India.' Benton’s position is that Adela ‘was kept from the truth when she was surrounded by other Englishmen and women who “disbelieved the Indians,”’ and that ‘Indians participating in the courtroom ritual understand that the rules of the court have made this outcome possible.’ For Benton, the trial is reducible to three simple themes: '[p]rocedural justice has produced real justice'; '[t]he court has plucked the truth out of the muddle of everyday sexual and cultural politics'; and '[t]he rule of law survives [...] as Britain’s one true gift to India.’ These themes, although redemptive of law, seem counter to a Brahman reading of the trial.
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Benton’s argument, though compelling, is ultimately unconvincing because Forster never celebrates rule of law. A better interpretation of the trial turns on Brahman Hindu, which destabilises British rule of law discourse and by extension the entire colonial legal regime. True to the Brahman refusal of exclusionary binaries, the trial fuses Hindu and Muslim interests. Brahman also surfaces at a pivotal moment in the trial when the courtroom sounds with the hypnotic Hindu chant, ‘Emiss Esmoor, Emiss Esmoor,’ which all but deifies Mrs. Moore, whose ship has already capsized (unbeknownst to those in the courtroom). Mrs. Moore is the English incarnation or martyr of Brahman Hindu:

She had come to that state where the horror of the universe and its smallness are both visible at the same time—the twilight of the double vision in which so many elderly people are involved. If this world is not to our taste, well, at all events there is Heaven, Hell, Annihilation—one or other of those large things, that huge scenic background of stars, fire, blue or black air. All heroic endeavor, and all that is known as art, assumes that there is such a background, just as all practical endeavor, when the world is to our taste, assumes that the world is all. But in the twilight of the double vision, a spiritual muddledom is set up for which no high-sounding words can be found; we can neither act nor refrain from action, we can neither ignore nor respect Infinity. Mrs. Moore had always inclined to resignation. As soon as she landed in India it seemed to her good, and when she saw the water flowing through the mosque-tank, or the Ganges, or the moon, caught in the shawl of night with all the other stars, it seemed a beautiful goal and an easy one. To be one with the universe! So dignified and simple. But there was always some little duty to be performed first, some new card to be turned up from the diminishing pack and placed, and while she was pottering about, the Marabar struck its gong. (PI 187, emphasis added)

Adela senses Mrs. Moore’s presence in the courtroom, despite Mrs. Moore’s glaring absence, thus signalling the Brahman notion that nothing is ever totally present or absent. Mrs. Moore never vanishes from the plot because she is this transcendent Brahman goddess.

The most important figure at the trial, more important than even Das or Mrs. Moore, is the Untouchable man who pulls the punkah. ‘Almost naked, and splendidly formed’, this punkah wallah ‘sat on a raised platform near the back, in the middle of the central gangway’ and ‘seemed to control the proceedings’ (PI 196). He is the first character Adela notices when she enters the courtroom. In rank and station, he is the polar opposite of Mrs. Moore, but
Brahman Hindu renders him as her deified equal because it is above and beyond inequalities. 'He had the strength and beauty that sometimes come to flower in Indians of low birth', the narrator explains, and when 'that strange race nears the dust and is condemned as untouchable, then nature remembers the physical perfection that she accomplished elsewhere, and throws out a god – not many, but one here and there, to prove to society how little its categories impress her' (PI 196). The punkah wallah embodies all that is Brahman Hindu: the natural rejection of clear-cut categories and the synthesis of competing dualities. Accordingly, the punkah wallah is a representation of the divine. He is not 'cultivated, self-conscious, and conscientious', like the assistant magistrate opposite him, because he does not represent the fictive and exclusionary rule of law but rather the universalist Brahman Hindu (PI 196). After the trial, spectators fly out of the courtroom, leaving the punkah wallah behind. This beautiful naked god 'continued to pull the cord of his punkah, to gaze at the empty dais and the overturned special chairs, and rhythmically to agitate the clouds of descending dust' (PI 209). In our final impression of law, a Brahman Hindu deity watches over the site and symbol of justice. Forster appears to have made Brahman Hindu into something convenient, but an Untouchable class would have been separate from someone Brahman within the caste system. Forster does something unique to his position as outsider. No Hindu would mistake the punkah wallah for a god, but Forster uses the punkah wallah in this way.

The Gokul Astami passage immediately follows, suggesting a spiritual rebirth for those who, like Godbole, embrace an inclusionary system that welcomes differences between peoples and embraces a common humanity. Combined with the trial scene and the pre-trial emphasis on polar oppositions, this passage may even suggest that a jurisprudential rebirth is in order – one that will collapse rather than reinforce stark divisions. Rule of law as an authoritative system cannot stand, Forster seems to suggest. It is too bound up with falsehood and conceit. Something better, something 'truer', something more Brahman is necessary.

Notes
Jurisprudence in Forster’s A Passage to India

7. Ibid.
10. Ibid.
12. Ibid. p. 246.
15. Ibid.
16. Ibid.
18. Ibid. p. 324.
20. Ibid. p. 48.
21. Ibid.
28. Ibid.
33. Ibid.
Modernist Cultures

35. Ibid.
37. Ibid.
38. Ibid.
39. Ibid. p. 378.
43. Ibid.
46. Ibid.
49. Ibid.
52. Ibid. p. 175.
62. Ibid. p. 287.
66. Ibid.
Jurisprudence in Forster’s A Passage to India


70. Ibid.

71. Benton, Law and Colonial Cultures, p. 130.

72. Ibid.

73. Ibid.

74. Ibid.