

BOOK REVIEWS

THE JUDICIAL WORLD OF A MULTI-SPLENDoured GENIUS: SIR ASUTOSH MOOKERJEE (2014). By V. Sudhish Pai, Universal Law Publishing Company, Pp. 16+ 206. Price Rs. 525/- & SIR ASUTOSH MOOKERJEE'S JUDICIAL WORLD THROUGH JUDGMENTS: A SECOND VOLUME (2015). By V. Sudhish Pai, Universal Law Publishing Company, Pp. 83+ 920. Price Rs. 1350/-

WE LIVE in an era of massacre of ancestors; indeed, it is considered a public virtue, and a sign of worldly progress, to eliminate practices of ancestor worship. It would aggravate the saga of suffering caused by anthropogenic harm now upon us¹ to disregard ancestral truths.² Even so, I do not advocate any devotion of blind faith in what has been, and accept that we all have a finite life on this planet consumed by the contingent present. But, I also think that collective amnesia of what happened in the past is not an estimable virtue, particularly when cultivated, as Shakespeare said, by: “Man, proud man, drest in a little brief authority, most ignorant of what he’s most assured, glassy essence, like an angry ape, plays such fantastic tricks before high heaven, as make the angels weep.”³

Without living in the past, its recall is important and for its uncannily presaging a future. Understanding social action for transformation is a precious antidote to the arrogance of the present. Thinking and quest for justice does not begin when one

- 1 Upendra Baxi, “Towards Climate Change Justice” 7 *Journal of Human Rights and Environment* 7-31 (2016).
- 2 I do not refer to ancestral truths as constituting one mode of doing genealogy but as the notion is developed in epistemology and ontology of infinity. See Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority* (Alphonso Lingis, Trans., Duquesne University Press, Pittsburgh, 1969); Rudy Rucker, *Infinity and the Mind: The Science and Philosophy of the Infinite* (Princeton University Press, Princeton, 2004). See especially, Quentin Meillassoux, *After Finitude: An Essay on the Neutrality of Contingency* (R. Brassier, Trans., Continuum, New York/London, 2008). Meillassoux describes ancestral truths as only those constituting “any reality anterior to the emergence of the human species - or even anterior to every recognized form of life on earth” (see, for a more extended description, ch. 1 of the book). While Sir Asutosh (had His Lordship been with us today) would have taken delight in the philosophy/mathematical theory of Meillassoux, I here invoke the term ‘ancestral’ less rigorously as meaning merely the species ancestors—those who happened when human life, language, and knowledge began. There seems ample evidence that Sir Asutosh appreciated this sense when he turned to law and education.
- 3 *Measure for Measure*, Isabella - act II, scene 1, line 110.

begins to think; epistemic humility rather than epistemicide is indeed a virtue.⁴ We look to the legal past as much for its continuities as discontinuities. The breaks, fissures, tensions, and even contradictions are crucial for understanding the dynamics of both justice *according* to the law - justice lying beneath and beside the law - and justice *above and beyond* and often *despite* the law.⁵ It remains important for us to acknowledge that collisions among law, power, and justice are ever present as constant in the flux that we name as 'history', and are not unique to the pressing present, as we tend often to think. But rather than urging a kind of quietism in the face of evil, history educates us in understating the different paths of resistance and struggle. It is on this register that the law's three Cs (as I call them) - courage, craft and contention- are born and reborn in each generation.⁶ Finally, even as one concedes that vast changes surround us on each side of histories of events and thoughts, there is some truth in the French adage: *Plus ça change, plus c'est la même chose* (the more things change, the more they stay the same).

A great festival of memory took place, on June 29, 2014, to mark the 150th birth anniversary of Sir Asutosh Mookerjee and it culminated with the publication in 2014-15 of two volumes (by the Universal Law Publishing Co.) entitled *The Judicial World of a Multi-Splendoured Genius: Sir Asutosh Mookerjee* and *Sir Asutosh Mookerjee's Judicial World through Judgments: A Second Volume*. M.N. Venkatachaliah J, former Chief Justice of India and Chittatosh Mookerjee J, former Chief Justice of High Court of Calcutta (and grandson of Sir Asutosh Mookerjee) have contributed a foreword and introduction respectively to both the volumes. Manish Arora (Universal Law Publishing) deserves warm appreciation for making this important publication, beyond commercial calculation of gain. Our debt to Chittatosh Mookerjee J remains immense as, but for him, this rich recall would not have been possible.

Sudhish Pai has done a stupendous job of conceiving and editing the volumes.⁷ Some formidable labors of retrieval were involved in culling decisional law Sir Asutosh

4 Boaventura de Sousa Santos, *Epistemologies of the South: Justice against Epistemicide* (Routledge, London, 2014); David Harvey, *Seventeen Contradictions and the End of Capitalism* (Profile Books, London, 2014).

5 Richard Beardsworth, *Derrida and the Political* (Francis and Taylor, London 1996); students of judicial process have a great deal to learn from his analysis of 'Indecidability'. See also, Costas Douzinas and Ronnie Warrington, *Justice Miscarried: Ethics, Aesthetics and the Law* (Prentice Hall, London, 1995).

6 See Upendra Baxi, *Courage, Craft, and Contention: The Indian Supreme Court in the Mid-Eighties* (N.M.Tripathi Pvt. Ltd., Bombay, 1985).

7 Of course, V. Sudhish Pai has contributed an anthology on the fourth Chief Justice of India entitled, *A Judge Nonpareil- a BK Mukherjee Reader* (Universal Law Publishing Co., New Delhi, 2016). This also carries a valuable foreword by Venkatachaliah J and testifies richly to immense labor of love Pai can perform.

(elevated as judge of Calcutta High Court in June 1904 from which he retired on December 31, 1923) delivered; in the little less than 19 years that he was on the bench, he delivered about 2000 judgments,⁸ of which about 58 judgments are given in full, with editorial notes; the rest of the volume contains additional materials from excerpted judgments and ‘nuggets’,⁹ concluding with just three pages¹⁰ of his Lordship’s ‘extra curial utterances’. Of the 58 full judgments here recorded, the bulk from three areas (civil law 15; property law 11; Hindu law 10; and the rest from below five; four each on contracts, interpretation of statutes, and public law, and two each with counsel and comment, with only one decision pertaining to Mohammedan law). The qualities of head and heart for which Sir Asutosh was recalled by his contemporaries (and still being remembered by a few cognoscente of judicial power and process) come alive in reading these judgments.¹¹ However, this bouquet of decisions should be read alongside the entire corpus to get a true measure of the judge as a master craftsman.

Pai has charted path less travelled by fellow lawyers, most of who blithely remain busy with acts of day-to-day lawyering, and all too often fail to pay homage to great justices, except on the rituals of the farewell functions and ceremonies for retired justices. He has shown that with dedication not only the great and gifted justices can be rescued from oblivion but also how their enduring relevance can be demonstrated.

The judgments

Sir Asutosh was not merely a great judge and jurist but also a gifted Vice Chancellor of Calcutta University, which he served with distinction from 1906-1914. His first love was not law but mathematics and he is known internationally for ‘Mookerjee theorems’.¹²

8 The exact number of judgments delivered by Sir Asutosh is yet to be finally ascertained. Venkachaliah J estimates (in his “Foreword” at v) these as 2500; Pai (in his notes from the General Editor’s Desk “Asutosh Mookerjee” at 14) estimates it as 2000.

9 V. Sudhish Pai (ed.), *Sir Asutosh Mookerjee’s Judicial World through Judgments: A Second Volume* 734-918 (Universal Law Publishing Co., New Delhi, 2015).

10 *Id.* at 918-20.

11 In his speech introducing the work at the book release function at The Indian Law Institute, New Delhi on May 5, 2015, Pai stated as follows: “On the eve of Asutosh’s retirement in Dec 1923, the then officiating Advocate General of India B.L. Mitter, later Sir Brijendra, Advocate General of India said: ‘No junior felt embarrassed in your court where good law was well administered. In the maze and labyrinth of adjudged cases you ever walked with a firm step holding aloft the torch of justice.’ This represents the best and the most ideal in a judge. No judge could have aspired for any greater encomium.”

12 V. Sudhish Pai (ed.), *The Judicial World of a Multi-Splendoured Genius: Sir Asutosh Mookerjee* 3 (Universal Law Publishing Co., New Delhi, 2014).

There are very few lawyers and justices with such academic background but his was a unique blend. The relationship between law and mathematics (and science generally) is broadly established by disciplined articulation. Sir Asutosh wrote chiseled judicial prose. He was (being a good scientist) constantly in quest for the “first principles that lie at the foundation of our system of jurisprudence.”¹³ In these heady days of ‘postmodernism’ one may well balk at the talk of ‘first principles’ and ‘foundations’ but Sir Asutosh well recognized that these were not set in stone but liable to be constantly revisited.

To illustrate the sagacity of Sir Asutosh, we may here recall a few instances. As far back as in 1913, he dismissed a contempt petition which alleged criminal contempt in a series of articles in *Amrita Bazar Patrika* that adversely commented on matters such as house searches, the ‘dramatic’ mode of arrest, the severe and harsh treatment of arrestees, and even of the employment of *gurkha* soldiers. All these comments were said to have the tendency of influencing the course of justice. In a robust decision, Sir Asutosh did not merely negative the factual contentions but also cited some ‘respectable antiquity’. He referred, *inter alia*, to the Theodosian Code which expressly declared that “slanderers of Majesty should be unpunished, for if it proceeded from levity, it was to be despised; if from madness, it was to be pitied; and if from malice, it was to be forgiven, for all such sayings were to be regarded according to the weight they bore.”¹⁴

Not too many justices, past or present, know about the Theodosian Code but Sir Asutosh did because he was a good and true bibliophile.¹⁵ What was distinctive about him was that he wore his learning lightly; he believed that knowledge must be used gracefully and deftly with a view not to rule over but to persuade laypersons and lawpersons to rise above narrow, and very often unreasoned, views.

His views on the conflict between procedure and justice were also very firmly and articulately held. For example, he held¹⁶ that “procedure is but the machinery of

13 *Id.* at 7. Thus, ended his Tagore Law Lectures, 1868, on the Law of Perpetuities in British India. Lecture 1 is published in *supra* note 12 at 96-110 and gives ample foretaste of the vast learning, and a masterly grasp of changing social and economic contexts of the law.

14 *Supra* note 9 at 135. *Codex Theodosianus* was a fifth century AD compilation of most authoritative form of Roman law in western Europe emanating from the eastern Roman Emperor, Theodosius II.

15 He had a large collection of books, estimated to be around 75,000 which he ordered from the world’s reputed booksellers and publishers. Many libraries in Calcutta are beneficiaries of the bequest of his books, which include science, literature, history, philosophy and law. The breadth of his reading was an incomparable asset to Sir Asutosh both as a judge and Vice Chancellor.

16 Following Lord Penzance in *Kendell v. Hamilton* (1879) 4 AC 504 at 523.

law”; it is the “channel and the means whereby the law is administered and justice reached”; it is “not made to govern where it ought to subserve.” Never should procedure “obstruct and even extinguish legal rights”; it must always observe its prime task of ‘facilitating’ social and legal action.¹⁷ This pre-constitutional message now animates the life of new constitutionalism of India and the heart of contemporary social litigation in India.¹⁸

Similarly, in a brief judgment that ultimately accepted the authority of a Privy Council opinion in *Chajju Ram v. Neki*,¹⁹ Sir Asutosh subtly articulated the difference of opinion of what constituted ‘sufficient reason’ and who was competent to decide on this under order 44, rule 1 of the Code of Civil Procedure, 1908. He has later been vindicated in his view that the ‘analogy’ between “the new and important matter or evidence” and “some mistake or error apparent on the face of the record” is best left open for judicial construction and not “rigidly circumscribed” by the code.²⁰

The aspect of judicial creativity, within the contexts provided by rules of interpretation, came to fore in *Chandra Benede Kundu v. Shaik Ali Bux*.²¹ The High Court of Calcutta overruled a precedent of two decades requiring the sole consent of the landlord for transfer of *ryotwari* lands. It preferred instead the view that the consent of the occupancy *ryot* was essential for the transfer and interpreted the legislative intention to so mean. Judicial overruling of prior decisions (by special benches of the full high court decisions and as the court wryly noted by their lordships in the Privy Council overruling the special bench) was routine, not extraordinary. In any event, the court explicitly ruled that the “authority of long established decided cases” does not generate rules of precedent “manifestly... of universal application”.²² This was a bold and beautiful departure from the view that the doctrine of *stare decisis* governs judicial outcomes and reasoning.²³

17 See *Mahomed Akbar Zaman Khan v. Sukdeo Pande*. *supra* note 9 at 67. See also, the decision in *Ashtosh Goswami v. Upendra Prasad Misra*, AIR CLJ 467 (1916), *supra* note 9 at 84, 91.

18 Upendra Baxi, “Demosprudence and Socially Responsible/Responsible Criticism: The NJAC Decision and Beyond” 9(3-4) *NUJS National Law Review* 219-238 (2016). See also, Upendra Baxi, “Farewell to Adjudicatory Leadership?: Some Thoughts on Anuj Bhuvania’s *Courting the People: Public Interest Litigation in Post-Emergency India*” 4 *NLUD Student Journal* (forthcoming, 2017).

19 (1922) 24 Bom LR 1238.

20 *Supra* note 9 at 116.

21 *Id.* at 226.

22 *Id.* at 227.

23 *Id.* at 248-249.

[O]ur decision will not embarrass trade or commerce, nor will it affect transactions which may have been adjusted, rights which may have been determined, titles which may have been obtained, or personal status which have been acquired. Decree-holders will find that they possess a power which has hitherto been denied to them. No doubt, the judgment-debtors... will no longer be able to escape payment of their just liabilities.

One wonders, what else is it, if this is not a resort to the judicial technique of prospective overruling? Of course, the difference is that while *Golak Nath*²⁴ and its normative progeny were about the power to amend the Constitution under article 368, the issues that concern the High Court of Calcutta were confined merely to aspects of statutory interpretation. But the statement that the theory of precedent does not form the universal tradition of justicing in modern law is a major observation and so is the invocation of the doctrine (in substance) of prospective overruling.²⁵

I have cited just a few illustrative situations and observations which animate a high colonial adjudication. The two chief instruments that were available to a colonial justice were: rules and methods of statutory interpretation and the foundational principles of common law. Using these as weapons for thwarting pure acts of legislative and executive will, judicial interpretation contributed a great deal towards limited government. Sir Asutosh variously illustrated the importance of legal reasoning, or even strict legalism, to combat governmental supremacy and executive lawlessness. His is a formidable and an enduring legacy.

The world of education

It seems that Sir Asutosh took to heart the great contribution of the founders of classical western theory; namely that there exist only three means of social control and social change: religion, law and education. They discovered that the law was a central property of social structure and gave it commendable salience in construction of theory of society. But they also emphasized the equal importance of religion and education as well. I have always maintained this integral position and perspective when understanding Indian society and emphasized that over-accentuating of the law, almost to the exclusion of two other main agencies of social change and control is illusory and even dangerous, if not downright fatal.²⁶ I have often begun my work on the

24 *I.C. Golaknath v. State of Punjab* 1967 SCR (2) 762.

25 See A.R. Blackshield, "Fundamental Rights and Economic Viability of Indian Nation, Part III: Prospective Overruling" 10(2) *JILI* 183 (1968). See also, W.S. Hooker, "Prospective overruling in India: Golaknath and after" 9 *Journal of Indian Law Institute* 596 (1967).

26 Upendra Baxi, *The Crisis of Indian Legal System* ch. 1 (Vikas Publication House, Delhi 1980).

sociology of Indian law with a quote from one of the founders of the discipline, Georges Gurvitch, who once said that if ‘too little’ law takes you away from sociology, ‘too much’ of it leads you back to it.²⁷

Sir Asutosh almost intuitively realized the connection and the continuum between law and education. A considerable fear of the colonial masters was remarkably expressed by Ellenborough who believed that “education will be fatal to British rule” and by Charles Wood who articulated the apprehension that if the Indians “become intelligent through education, they become dangerous”.²⁸ And Bamfuyde Fuller was to say (in 1906, urging disaffiliation of schools in Bengal owing to participation by some pupils against the partition of Bengal) that to “withdraw from our position” would be to yield to “those people in Calcutta who have been striving to make my government impossible.”²⁹ Making colonial governance “impossible” was the dream of every freedom fighter and Sir Asutosh deployed both law and education as arenas of constant struggle.

Modern university education was thus born out of the appearance of autonomy and reality of state control. How to “discourage the idea” (as home secretary wrote commending the appointment of Sir Asutosh as the Vice Chancellor of University of Calcutta) “that the sole purpose of the Universities Act was to tighten official control over the Universities”³⁰ was the central anxiety of the executive. The watchword of the government was not so much that Sir Asutosh was a ‘distinguished’ Indian but also someone who can be ‘trusted’ by the government. And Sir Asutosh repaid this ‘trust’ in considerable measure: he was to ask some 50,000 school students to return to education (following the anti-partition protests), insisting that some lines must be drawn “between obsequiousness and intransigence”.³¹

How did Sir Asutosh draw, time and again, this bright line between appearance and reality would offer a fascinating study, but we know its bare outline. The baseline was the autonomy of the university, not politics of the state. Freedom, he was to say, “is the very life blood, the condition of its strength, the secret of its success” and that entails a constant fight— “a fight for the most sacred and impalpable of national privileges.”³² Although contexts have vastly changed to necessitate the re-consideration

27 Upendra Baxi, *Towards A Sociology of Indian Law* (ICSSR/Satvahan Publications, Delhi 1985).

28 *Supra* note 12 at 83.

29 *Id.* at 86.

30 *Ibid.*

31 *Id.* at 87.

32 *Ibid.*

of governmental 'trust', Sir Asutosh's stirring words remain agonizingly relevant today. If university autonomy is a sacred trust that invites constant struggle with the state, it is time that the terms of this trust are renegotiated as trust with the coming generations of future people.

I do not wish to burden this review essay any further with the considerable achievements of Sir Asutosh. These stand relatively well-documented.³³ But I will acknowledge three further things. *First*, he regarded the function of the university to "know the truth", which would 'set free' both the teacher and the taught "from bondage of superstition and the slavish regard for authority."³⁴ *Second*, and even so, one may not ignore the fact that universities are instruments of state,³⁵ thus presciently anticipating Louis Althusser's notions about ideological apparatuses of state³⁶ and Michel Foucault's notion of 'credential or certificatory sovereignty' as the foremost functions of a modern sovereign state formation.³⁷ *Third*, the state impacts knowledge-formation but the reverse is also true and this furnishes the *sine qua non* of the freedom of a university, and that freedom may never be harnessed to hagiography, sycophancy, worship: rather than relive the 'glory' of a 'defeated past', education offers us ways of "conquering the future".³⁸ We do not have to endorse the acerbity of Nani Palkhivala's concluding observation to accept the kernel of truth: "It is a measure of the sick and anemic condition of our education today that lives and thoughts of men like Asutosh are not prescribed studies in our schools and colleges which are calculated to turn out ethical blockheads."³⁹ That was said at the 125th birth anniversary of Sir Asutosh; unfortunately, despite the

33 *Id.* at 20. The way he invited stellar faculty, including Sir C.V. Raman, S. Radhakrishnan; the solicitous regard for university autonomy; the conversion of accrediting site into a centre of learning, research, and intellectual ferment, and co-equal emphasis on discipline, hard work, and creativity. As Lord Lytton said: "For many years Sir Asutosh was in fact the university, and the university was Sir Asutosh."

34 *Supra* note 12 at 78.

35 *Ibid.*

36 Louis Althusser, *For Marx* (Ben Brewster, Trans., Verso Books, London, 1985). See also, Upendra Baxi, *Marx, Law, and Justice: Indian Perspectives* 95-135 (N.M.Tripathi, Bombay, 1994).

37 Michel Foucault did not develop this insight but I regard it as precious not just in the context of Sir Asutosh's experiences and exhortations but on Independent India's management and governance of the Indian Universities. See Michel Foucault, 3 *Power: Essential Works of Michel Foucault: 1954-1984*, 177-200, 326-364 (James U. Faubion (ed.), Robert Hurley *et al* Trans., Penguin, United Kingdom, 2002); Graham Burchell, Colin Gordon and Peter Miller (eds.), *The Foucault Effect: Studies in Governmentality* (Chicago University Press; 1991).

38 *Supra* note 12 at 79.

39 *Ibid.*

laggard renaissance of Mohandas Gandhi's '*swaraj* in ideas',⁴⁰ Nani's observation rings even more true in these heady days of runaway hyper-globalization.

In lieu of a conclusion

This sort of writing can never in principle 'conclude' because its larger history—jural, political, and cultural – is yet to be fully explored. Larger questions loom: how would emphasis on the first principles of the common law tradition chime with the wholesale denial of colonial legality? What spaces of individual and collective freedom were opened by the colonial judicial process? What did the administration of justice do to help the emergence of modern human rights norms and standards? What was the rate of compliance by the colonial bureaucracy and what was the general impact on colonial governance of the imperial colonial adjudication? How does one identify the distinction between 'procedure' and 'substance' in law? And, how may we trace juristic learning curve from the 'colonial' to the 'postcolonial? Or, in other words, trace the histories of power, freedom, and resistance? And, how does one install 'reverence' of, and for law', in a society brought to freedom by the virtue, and technology, of ethical disobedience? A whole lot may be said about all this but certainly Sir Asutosh, in his time, came very close to Michel Foucault who expressed a mighty wrath against the "politics of inverted commas," and which resorted evasion tactics "by putting inverted commas, whether damning or ironic..."⁴¹

40 *Id.* at 144. The concept of *swaraj* in ideas, first enunciated by M.K. Gandhi as decolonization of the intellect and the mind was elaborated by philosopher Krishna Chandra Bhattacharya in Oct. 1931. Bhattacharya elaborated the notion of 'cultural subjection' of an 'unconscious character' which 'implies slavery from the very start'. He distinguished it from cultural assimilation, which "may be positively necessary for healthy progress and in any case it does not mean a lapse of freedom." See K.C. Bhattacharya, "Swaraj in ideas" 20 *Vishvabharati Quarterly* 103-114 (1954). K.T. Shah later established a journal by that name and Daya Krishna elaborated this notion further in understanding the role of public and campus intellectuals and philosophers in India.

41 Colin Gordon (ed.), *Michel Foucault, Power/Knowledge: Selected Interviews and Other Writings, 1972-1977* (The Harvester Press, Sussex, 1980). Whether or not, Sir Asutosh would have embraced the Foucauldian principle of 'meta power' is difficult to say with precision but certainly his insistence on foundational principles of the common law warrants some comparison with Foucault's notion which he described as follows (and the long quote is necessary here):

I don't want to say that the State isn't important; what I want to say is that relations of power, and hence the analysis that must be made of them, necessarily extend beyond the limits of the State. In two senses: first of all because the State, for all the omnipotence of its apparatuses, is far from being able to occupy the whole field of actual power relations, and further because the State can only operate on the basis of other, already existing power relations. The State is superstructural in relation to a whole series of power networks that invest the

But to recall here his vision of legal education and research in India, we turn to his address on the occasion of the inauguration of the Department of Legal Studies in the Banaras Hindu University; it serves well to distil the message of his lifework in law and remains pertinent. Sir Asutosh there speaks of the “natural opposition to absolute power” which in ‘full motion’ makes “the lawyer an object of dread to the class known as persons in authority”;⁴² lawyers as a class should further cultivate this disposition so that “the forces of good government should be maintained everywhere in full and constant motion.”⁴³ It is a good counsel to would-be lawyers that obedience to laws, until they are repealed, is a “paramount duty of a lawyer”, though to go further and insist with Sir Asutosh that “reverence for law” offers a “political religion of every progressive nation” would be contested as placing the law laid by legislature beyond any question. For Sir Asutosh, “law is neither a trade nor a solemn jugglery but a true and living science and it is open to each and every one... to love law as a science.”⁴⁴ For him:⁴⁵

body, sexuality, the family, kinship, knowledge, technology and so forth. True, these networks stand in a conditioning-conditioned relationship to a kind of ‘meta-power’ which is structured essentially round a certain number of great prohibition functions; but this meta-power with its prohibitions can only take hold and secure its footing where it is rooted in a whole series of multiple and indefinite power relations that supply the necessary basis for the great negative forms of power (at 122).

But Foucault also strove to maintain:

that there are no relations of power without resistances; the latter are all the more real and effective because they are formed right at the point where relations of power are exercised; resistance to power does not have to come from elsewhere to be real, nor is it inexorably frustrated through being the compatriot of power. It exists all the more by being in the same place as power; hence, like power, resistance is multiple and can be integrated in global strategies (at 142).

Sir Asutosh believed that the sphere of education, more than the law, offered the opportunities and sites for free thinking. And he showed this exemplarily in his conduct as the Vice Chancellor of a great university.

42 *Supra* note 12 at 144.

43 *Ibid.*

44 *Id.* at 145.

45 *Id.* at 146.

[T]he study of law when rightly pursued, has the most liberalizing effect. It is calculated to call into existence the highest powers and capabilities of human mind; it is capable of that critical and historical treatment which is the glory of modern science. And surely it deserves a high rank in the curriculum of University studies along with political philosophy and sociology.

There is lots here to unpack - reverence for law, political religion, the ‘dread’ of law and the constitutional elites, good government as solely conceived by those who govern. On all this, and more, one may have considerable conversation and disagreement with Sir Asutosh but it cannot be gainsaid that law is an exacting task and demands “highest powers and capabilities of human mind” and no one illustrated this as well as Sir Asutosh, in the working of the indigenous and imperial legality which he showed were beset with lack of legitimacy (at least as going against the foundational principles of the common law tradition).

Overall, Rabindranath Tagore said all that needs to be said about Sir Asutosh. He had “the thundering voice to say what was needed shall be done”, a “magic voice of assurance” and “the courage to dream...power to fight and the confidence to win.”⁴⁶ It is this voice, assurance, courage, fight, and confidence that brought India to freedom; maintenance of the constitutional ideals and values demand *no less* from Indian citizens, justices, and legal professionals today.

*Upendra Baxi**

46 *Id.* at 40.

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