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The Ayodhya dispute: The absent mosque, state of emergency and the jural deity

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Abstract
The Ayodhya dispute is located neither solely within the institutions of the nation state, nor within networks of religious associations, but at the crossroads of secular and religious culture in India. At its heart lies the place of the Hindu god Rama, constituted in law as a jural person. How do we understand the emergence of this jural deity in the dispute? Focusing on appellate judgments that addressed the demolition of the Babri Mosque on 6 December 1992, the article argues that the legal evaluation of specific claims rested on a contest over asymmetric temporalities. Prior to the demolition, judicial accounts referred to the site as a 'disputed area' or the 'Ayodhya dispute'. After the demolition, this literature named the disputed area as the Babri Masjid. It was as if the Hindu deity, Rama, would fill in the space of the absent mosque. The author shows how the presence of the deity rested on an understanding of the sublime that was simultaneously political and religious.

Keywords
Article 356, Babri Masjid, jural deity, vesting

Situated in the district of Faizabad, in the state of Uttar Pradesh in north India, the temple town of Ayodhya is a place of pilgrimage for Vaishnavite Hindus, who believe that Ayodhya is the birthplace of the Hindu god Rama. A temple marks the birthplace, called *janmasthan*. Until December 1992 the birthplace was also the site of a mosque, known since the 1940s as the Babri Masjid.[1] From at least the middle of the 19th century, Ayodhya has witnessed longstanding and bitter violence between Hindus and Muslims regarding the exact status of this spot. This is because Hindus hold that the Babri Masjid,

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constructed in 1528 by the Mughal emperor Babur, took the place of the razed temple of the *janmasthan*. Beginning in the 1980s, a number of Hindu organizations, collectively known as the Sangh Parivar, advocated the destruction of the mosque and its replacement by a grand temple dedicated to Rama. Even before Hindu activism, we find a long history of litigation – since 1885, civil courts at various levels of the judicial hierarchy (Sessions Courts, District Courts, High Courts and the Supreme Court of India) have debated the status of the temple–mosque complex. This litigation is ongoing and there is nothing to suggest a resolution.[2] The judicial record names this complex as the Ayodhya dispute. Following prolonged political and religious mobilization beginning in the 1980s, the mosque was demolished by Hindus congregated at its site on 6 December 1992. The Liberhan Commission of Enquiry estimates that about 150,000 people had gathered around the temple–mosque complex on that day and that 150 *karsevaks* (religious workers) actually participated in its destruction.[3]

In civil jurisdiction, the Ayodhya dispute is one of the most influential in exposing the intractable contradictions that lie at the heart of the religious–secular debate in Indian democracy. The demolition precipitated a crisis that touched upon the contours of the Indian republic. Recurrent acts of violence, exemplified in the repeated attacks on the mosque (1934, 1990, 1992), undermined a peaceful resolution of the dispute, and indicated a range of political passions that could not be contained within a separation of the religious from the secular. Since at least 1949, the dispute has been riven by paradox as it can neither fully receive the heritage of secularism nor abandon its legacy altogether. This is because its moral and political language has continued to remain ambivalent, involving claims and adjudication around modes of worship, property rights and the legal status of the Rama deity.

Is this dispute, then, an instance of religious struggles, but one achieved in the shadow of the secular state (Dingwaney and Rajan, 2007)? Or is it an example of how the secular is wheedled within, rather than separated from, the religious (Dressler and Mandair, 2011). I suggest a different line of enquiry. Underlying the debate on religion and the secular in the dispute is the relatively unexplored dimension of time. Especially around the demolition, the legal literature (discussed later in the article) has dealt essentially with competing imaginations of temporality, its promises and its forms. Broadly, two temporal registers, asymmetric and incommensurate, are entangled with each other – historic time and mythic time. The first is based on rules of evidence drawn from empirical detail, while the second provides a kind of habit within which belief and faith are mobilised.[4] Much of this imagination has been activated through the presence and absence of the Babri Mosque. How, then, may one explain the entanglement of the mythic with the historic? This question is explored in this article.

In dealing with this question, I read the Ayodhya dispute in reference to the demolition of the mosque, the subsequent state implementation of Article 356 of the Indian constitution to declare an emergency and the juridical pronouncements on this contested plot.[5] I track the demolition of the mosque through three appellate judgments – the Bommai case (*AIR* 1994 SC 1918, henceforth *Bommai*), the Ismail Faruqui Case (*AIR* 1995 SC 605) – both heard in the Supreme Court of India, and the Allahabad High Court decision (*ADJ* 1, 2, 3 [Special FB], 2010). In providing a reading of these judgments, I show their intertextual features. By intertextual, I point to two tendencies – first, that the

demolition is framed within the court of law in such a way that law arrogates for itself full authorization in constituting this event. The specific historical circumstances that precipitated the demolition are important only to the extent that they enter the province of law. Second, this province has, with reference to the Ayodhya dispute, a developmental sequence built into it. If in *Bommai* we find a bracketing of Hindu modes of worship as outside historical time, in the Ismail Faruqui judgment, this bracketing enters the terrain of adjudication by implicitly acknowledging that a Hindu past has a future in law. By the time of the Allahabad High Court judgment of 2010 this future is given determinate shape through specific forms of worship, namely the installation of breath in the deity (*pran pratishta*), circumambulation of the sacred complex (*parikrama*) and the self-revelation (*swayambhu*) of the birthplace of the Hindu god Rama.[6]

These three modes of worship, as articulated in the Allahabad High Court Judgment crystallize, what Rancière (2011: 16) calls an 'aesthetic illusion'. As used in this article, the illusion refers to a specific sensory experience that promises both a renewed religiosity and a new life for individuals and the community of Hindu worshippers. Caricatured as this religiosity may be, neither the judgment nor the promise are ineffectual.[7] Ranciere's (2004: 10) elaboration of aesthetics is useful to the extent that it allows me to identify a specific regime by which the claims of the religious are essentially political. In outlining the features of this regime, I explore the temporalities implicit in the juridical pronouncements on the dispute, specifically the way in which a mythic past inflects judicial declarations. At stake here is the efficacy of Hindu modes of worship that have the potential of re-framing Indian polity. My aim in this article is to chart the movement towards this mode of worship in courts of law. It is my contention that such forms of worship cannot be understood without a consideration of how the Rama deity is thought to be a jural person.[8] I do not see the dispute as quartered within religious and secular epistemes, divided into competing and fixed ideologies. Instead I look to the animating anxiety that forms its core through the juridical readings of this site and the relatively unexplored dimension of time. It is, after all, secular law that attempts to incarnate the Rama temple. My attempt, here, is to set up scenes of dissensus (Rancière, 2011; a kind of disruptive sense event, see Jazeel and Mookerjee, introduction to this issue). The questions that I ask are both normative and factual. How can the notion of aesthetics, embodied in specific sensory experiences, emerge from prosaic legal judgments? How do such experiences offer a counter to rules of historical evidence?

But what of Muslim claims to the demolished mosque? Are such rights based on forms of prayer that will establish the site as Islamic? From a Sunni point of view, the dispute in legal and official literature has turned around establishing the title to property, not to modes of worship. This is understandable since Muslims have been prevented from offering prayers at the site of the mosque since 1949, when the deities of Rama and his brothers were surreptitiously installed inside its central dome.[9] Since at least 1992, the judicial record has admitted Muslim (specifically Sunni) claims to property, not to Islamic forms of prayer. One need only look at 'The Acquisition of certain area at Ayodhya Act, 1993', to read what was admitted in law courts. The Muslim claim, the Act says, concerned the disputed plots in 'Suit 4 of 1989 (Regular suit No. 12 of 1961 of Sunni Central Waqf Board). Revenue plots: 147, 159–160 [plots over which the Babri Masjid was situated], 162, 168, 169 … and 13 graveyards.'

Implicitly this site was evacuated of its specificity as a mosque and existed only as a title deed. The question, then, is how were Hindu forms of worship able to usurp the status of the mosque as mosque? The mobilization of the Hindu right together with the three appellate judgments show how modes of worship were recast. This article looks to the judgments to unravel the conditions under which the mosque was re-imagined as a temple. In the process, the Babri Mosque, absent as a material structure, acquired a renewed life in law.[10]

If the Babri Masjid does not exist as material structure, but only as an object of litigation, what rules of right does justice implement to produce the truth of this object and what is the nature of judicial power that underwrites it? I suggest that such questions allow us to think of the Babri Masjid as an unquiet absence, one that highlights an irresolvable tension between court adjudicated Hindu modes of worship and silenced Muslim forms of prayer. Nowhere is this sharper than in the debates around the jural deity and the jural birthplace in the Allahabad High Court decision of 2010. As an object that exists only in litigation, the Babri Masjid is enclosed by Hindu modes of worship as interpreted by the law courts. For this reason, the mosque is characterised by opacity – the distance between the material artifact of the mosque and its existence in law as procedure, file and decision – in the judgments.

These three judgments are literally and metaphorically a kind of thesaurus that locates the demolition in law. The two principal ordering elements of this thesaurus – time and reference – intersect, showing us the link between a temporal continuum and semantic categories. In the process, intertextuality reveals how judicial power is made. In a second sense, intertextuality across the three judgments refers, of course, to the relation between the deity (representing Hindu modes of worship) and its enunciation in law. The function of intertextuality across the three judgments is that it allows for the emergence of the Rama temple in law through a formulaic rendition of time. What, then, is this formula? More than a framework, the formula is a judicial performance where words lead to material operations.[11] The one fundamental operation in the three judgments establishes a transition from a mythic past to a present, that is, from a time that is beyond computation to one based on rules of evidence, but rules that are informed by Hindu modes of worship outlined earlier. The one text that allows for this transition is the *Ayodhya Mahatmya* (Testament to Ayodhya) translated from Sanskrit to English in 1875. The importance of this text lies in the fact that it was the guidebook used to map the city for the coronation of King Edward VII in 1902. The text was referred to in the lease deed executed between the Uttar Pradesh State government and the Rama Katha Park in 1986. The latter was entrusted with building a grand temple at the site of the mosque. Two judges of the three-bench Allahabad High Court made explicit references to the *Mahatmya* in delivering their decision in 2010.[12]

The Allahabad High Court verdict of 2010 attempted to provide a solution to the 125-year Ayodhya dispute by a threefold division of the property of the complex. The majority decision gave the litigants – two groups of Hindus and one of Muslim – an equal share. The Sunni Waqf Board, the Nirmohi Akhara and the Next Friends of the Deity were given an equal share, but the specific details would be worked out at a later date. The third judge ruled in favour of the Next Friends and the Nirmohi Akhara.[13] A year later the Supreme Court overturned this verdict. As it stands at the time of writing this

article, the four basic suits that make up the dispute in civil jurisdiction are being heard and argued in the Allahabad High Court sitting at Lucknow.

The temporal structure of the Ayodhya dispute has explored continuities, disruptions and upheavals around the mosque, marking in the process specific durations, histories and pasts. In effect, the three judgments describe a time that connects and runs through pronouncements and claims, and conjugates itself as past, present and future. Within the broad frame of mythic and historical time, we can isolate at least three notions of time in the judgments: first, the past is a given that is read and recreated as the present through material artifacts and testimony retained or gleaned from the past, hence citational; second, the past is the causal ground of the present, found in the Presidential reference to the Supreme Court asking whether a temple stood at the site of the mosque; third, the past is exemplary from which we learn lessons for an emerging future, vividly personified in the debates around the jural deity. As a material object the deity functions like an icon in these debates.[14] He presents to his worshipper a frame of ethical practices, through ritual oblations, bodily prostration and pilgrimages. The issue of the sacredness of this image falls within the terrain of law, specifically evidenced in the High Court judgment of 2010. The aesthetic dimension of this sacrality (Hindu modes of worship – *pran pratishta, swayambhu* and *parikrama*) rests on whether the present can mimic the past and, if so, the place of law in acceding to this past. In acknowledging this temporality, adjudication has effectively prevented the demolition from becoming fully visible.

The demolition

The demolition may be plotted on two distinct registers. Together, these registers provide the causes that led to the demolition and how it is imagined in law. The register of causality is framed within rules of evidence, while the register of imagination understands the dispute to be unresolved, allowing for further elaborations. The three judgments that I deal with operate between causality and imagination. If in *Bommai* the dispute was located within the rules of evidence, in the Allahabad High Court Judgment of 2010 the dispute acknowledged the legitimacy of Hindu modes of worship, without reference to evidence from history. In the first register, as the date – 6 December 1992 – of an event the demolition indicated an eruption, but the date itself resulted from a long build-up. Various public accounts have confirmed this detail. Accordingly the Bharatiya Janata Party's (BJP, which represents the interests of the Hindu right) *White Paper on Ayodhya* (1993), described the build-up to the demolition as a consequence of Hindu nationalism and revival: 'On 6th December 1992, in a sudden development the disputed structure was demolished by the *karsevaks* [religious workers], and Ramlala [child Rama] was re-installed in the very place where it had originally been installed' (p. 38).[15]

The Central Government responded to the installation of deities and the demolition by invoking Article 356 of the Indian Constitution. This invocation, discussed in *Bommai* (*AIR* 1994 SC 1918) in the Supreme Court, questioned the validity of President's Rule (see note 4) in various states after the demolition and reflected on the guarantees of Constitutional secularism. President's Rule suggested the use of exceptional provisions in law.[16] Following *Bommai*, a Presidential Reference to the Supreme Court – the Ismail Faruqui case – (*AIR* 1995 SC 605) asked two questions: whether the state was legally

justified in acquiring the Babri Mosque complex so as to absorb the effect of demolition, and whether a temple stood at the site prior to the demolition.[17] The two cases placed the demolition within the temporality of redress, but were unable or unwilling to imagine a form of time in which damage to the mosque could be thought of as an originary condition of the dispute.

The second register has envisioned the demolition as a form of damage that is yet to be elaborated in its totality. In this register, damage to the mosque emerged in fragments of legal judgments, pointing to historical time – in this case the construction of the mosque in 1527 – that framed the violence and sought to provide an explanation. In addressing this historicity, the judgments evaluated the morality of competing demands and claims. Perhaps the sharpest index of this competition is now found in how the demolished area is named. Prior to the demolition (at least from 1949 till 1993–1994) judicial and official accounts described the site as a 'disputed area', 'disputed structure', or the 'Ayodhya dispute', admitting that the dispute was over conflicting visions and versions of the past – as history, myth and tradition. From 1993–1994 onwards, official literature referred to the disputed area as the Babri Masjid. It seemed that the mosque could be embodied only in its absence, an empty space that had to be re-occupied. The most elaborate way of thinking of the demolition as damage was found in the Allahabad High Court Judgment of 2010 (*ADJ* 1, 2, 3 [Special FB]). What was highlighted was whether the 'idol' installed in the place of the mosque was a juristic person.[18] It was as if the absence of the mosque was the presence of the deity. This play – between presence and absence – could not have been accomplished without the intercession of secular law.

I now consider how the demolition entered into litigation. In the first instance, the demolition was linked to the Constitutional provisions that deal with emergency, and in the second, through a process of judicial 'vesting' the mosque became the property of the state. The article closes with showing how this property and the deity installed on it were considered jural persons. On the surface, views of demolition highlighted exemplary fraud and violence, but a second reading suggests that such views were part of an adversarial structure of litigation between three contending parties – factions of Hindus and Muslims and various state agencies.[19]

Emergency provisions and the law

Article 356 of the Indian Constitution imposes President's Rule in those states where governance is not in accord with the provisions of the Constitution. As far as the mosque is concerned, the most comprehensive discussion of President's Rule is found in *Bommai*, where the validity of imposing President's Rule in Rajasthan, Himachal Pradesh and Madhya Pradesh following the demolition, was upheld.[20] The proclamation of emergency was not contested in Uttar Pradesh. Various commentators (Cossman and Kapur, 1999: 24, 75–77, 125) have cited this case in discussions of secularism. What is curiously absent in these discussions are the contests that arise over executive power and judicial review and the way in which emergency drew the relation between law and sovereignty in *Bommai*.[21] In this section I undertake a reading of this case to argue that the demolition was framed as a breach of the secular. The problem was that the secular could only be reinstated through emergency provisions of the Indian Constitution, specifically Article 356.

Bommai noted that since the commencement of the Constitution, the President had invoked Article 356 on 'ninety or more occasions. Instead of remaining a "dead letter", it has proved to be the "death letter" of scores of State Government' (*Bommai*: point 77). In the case of the demolition, however, the judgment asserted that the country was faced with Constitutional breakdown – the President was 'as much bound to exercise this power in a situation contemplated by Article 356 as he is bound not to use it where such a situation has arisen' (point 50). Briefly, Article 356 states that if the President, on receiving a report from the governor of a state, is *satisfied* that a situation has risen where the government cannot be carried out in accord with the Constitution, he may assume all functions of government, dissolve state legislatures and suspend any provision of the Constitution, including holding elections. The proclamation, valid for six months, needs to be placed before Parliament within two months.

In *Bommai*, the Supreme Court order reflected on and recognized that Presidential 'satisfaction' could be challenged only on the ground that it was malicious or irrelevant. More generally, the order acknowledged that the power vested de-jure in the President under Article 356 had 'all the latent capacity to emasculate the two basic features (democracy and federalism) of the Constitution'. The order also aimed for an interpretation that would preserve the democratic form of government. Through judicial review the order rested on determining jurisdictional zones, acknowledging that while the state assumed powers by law (content of the Article), it also claimed sovereign immunity from law at the same time (the reference to Presidential 'satisfaction'). *Bommai* explicitly linked Constitutional secularism to Presidential satisfaction and obligation, which in turn was connected to the proclamation of emergency. The affirmation of obligation was tied to a morality that took the form of law and it was assumed that citizens would experience such law as a set of fixed rules. In its eyes, Presidential obligation was incontrovertible, informed as it was by Constitutional guarantee. The order quoted from the BJP white paper on Ayodhya:

> In their actions and utterances, the forces of pseudo-secularism convey the unmistakable impression of a deep repugnance for all things Hindu … it was always apparent that a vast majority of Hindus were totally committed to a grand temple for Lord Rama … (*Bommai*: 37).

In this way, the judgment was framed within a double coding of time – constitutional and chronological, in the secular case and normative and transcendental in the Hindu. The first rested on guarantees and rules; the second was based on the affective political agency of the *karsevak* and his leader, inserting a wrench in political time and putting into crisis the established codes of obligation and legitimacy. Through Presidential satisfaction and obligation, the demolition was given temporal depth – a Hindu past and secular present were folded into each other. But since only the secular present had a chronology and a historical position, it focused on the ordering of the secular – its violation in the demolition, the proclamation of emergency, its determinate life, its review. An undetermined Hindu past was unordered since it embodied a magnitude alien to law. The demands of the Hindu right, as seen in the BJP's *White Paper* were based on an ontological certainty. The High Court judgment of 2010 would embed this certainty in the deity, pointing in the process to a crust of active virtues. In turn, such virtues would be exalted

as worship. Available in nascent form in *Bommai*, by 2010 this mode of worship would be presented as the default way of being Hindu in Ayodhya, but more importantly, would become a mode by which duration itself was animated (see Ravaisson, 2008: 25–31, for a discussion of how habit is the terrain of both addiction and grace). Habit and temperament, so understood, challenged the certitudes of law and rules of evidence.

Considered in its entirety, *Bommai* highlighted the relation between President's rule and constitutional secularism as a response both to the demolition and the imagination of a normative future. This was best summed up by Justice Jeevan Reddy who linked the term constitutional secularism to 'social justice' (*Bommai*: point 261), 'equality of status and opportunity' and freedom to profess. Clearly, the paradox that embroidered this understanding of the secular – Article 356 maintains the rule of law even as it suspends the Constitution – would be resolved with the practice of secularism, which in the words of Justice Ramaswamy, operated 'as a bridge to cross over from tradition to modernity'.

Compelling as this argument is, it does not acknowledge that the proclamation of emergency, even when emergency is a structural feature of the modern state, pointed to an equivocation between juridical authority and government procedure. The insistence of judicial review of Article 356 stressed this ambiguity so that the finality of the proclamation circulated uncertainly between the government's stand and the appellate court. The sharpest example of this aporia was found in the debates about the status of the mosque. Was it a mosque or temple? Through what procedures could claims to ownership be established? In addressing this question we move from (Presidential) obligation to the material thing.

Temple or mosque? The Presidential reference

On 24 October 1994, a five-judge bench of the Supreme Court decided a special reference made by the President of India and considered the 'Acquisition of Certain Area at Ayodhya Act, 1993', according to which the central government would acquire the disputed complex. The acquisition and Presidential reference were heard in response to an application filed in the Court by Dr M Ismail Faruqui against the Union of India (*AIR* 1995 SC 605).

The Presidential reference was succinct. On 7 January 1993, the Supreme Court was asked to consider 'Whether a Hindu temple or any Hindu religious structure existed prior to the construction of the Ram Janmabhumi-Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area in which the structure stood?' Earlier, on 27 December 1992, the Government established two trusts on the acquired land to construct a Rama temple and a mosque. The Act acquiring 'certain areas in Ayodhya' that would be effective from 7 January 1993 included within its scope all 'assets, rights, leaseholds, powers, authority and privileges and all property, moveable and immovable'. Thus, acquisition rested on a bundle of property and rights to be managed by the central government or any other designated by it.

Justices Verma, Ahmadi and Bharucha provided written orders in their response. What linked the responses was the term 'vesting' (taking its meaning from 'contexts of usage' and hence of 'slippery import' [point 21 of the numbered paragraph of the judgement]), which explored the significance of the acquisition of land by the central

government around the temple–mosque complex and showed how Presidential obligation and satisfaction could be translated into a judgment on damaged property.

What, then, were the effects of vesting as enshrined in the Land Acquisition Act of 1993? In section 4 of the Act of 1993, vesting included within the area all 'assets and rights specified', and all such properties entrusted in the central government would be 'freed from all encumbrances'. The power of management of the central government was coupled with the duty

> to ensure that the position existing before the commencement of this Act 'in the area in which the structure (including the premises of the inner and outer courtyards of such structures), commonly known as the Ram Janmabhumi-Babri Masjid, stood' is maintained.

In so doing the Act linked vesting to area, duty and obligation.

At the Supreme Court hearing, the appellants argued that the real object of the reference was to 'take away a place of worship of the Muslims and give it away to the Hindus offending the basic feature of secularism' (point 15). In response, the Solicitor General of India argued that the Act as well as the Presidential reference aimed at 'maintaining public order and promoting communal harmony' (Ismail Faruqui: point 15). However, it said that the government was committed to constructing a Rama temple and a mosque but their location would be determined only after the Supreme Court had rendered its opinion (point 15). Furthermore, if the reference was answered in the affirmative – if a Hindu temple/structure existed prior to the construction of the demolished structure, the government would support the wishes of the Hindu community. If not, the government would support the wishes of the Muslim community. The inability to name the structure as a mosque (from the point of view of Muslims) is all too apparent.

In its order, the judgment argued that the worship of deities installed in the Rama Chabutra was performed without Muslims making objections 'even prior to the shifting of those idols from the Ram Chabutra into the disputed structure in December 1949' (point 51).[22] The judges held that a temple and mosque existed side by side and it was not for the Court to decide whether the mosque was built after destroying a temple. Given the above, the judgment dismissed the Presidential reference and held that all pending suits stood revived (point 88). This meant that the worship of 'idols' was allowed to Hindu devotees. The problem was that these 'idols' were now located inside the central dome of the mosque.

With the debate on vesting, the dispute became pregnant with the possibilities of the past. If *Bommai* bracketed the past as not part of the dispute, the Ismail Faruqui case acceded to the presence of the past in such a way that it became available for a reading of the future. Its view that Hindus be allowed their worship of the deity engendered a sacred action that was active rather than reactive. By this I mean that the past was given specific meaning, freed from disinterested interpretation, and invested with a dynamic potential. This dynamism, we will see, was fully realised in the debates over the jural deity. Here the deity continues to have a future, even as it has the past built into it.

The question, then, is what was the force built into this worship? Was it informed by a formulaic rendering of the legal personality of the deity? The final move in the Ayodhya dispute shifted the terrain from the mosque to the possibility of a future, marked by the

'formula' (Rancière, 2004: 146–164). The two major texts that illustrate this movement are Ram Narayan's *Ayodhya Mahatmya* and the Allahabad High Court ruling of 2010. Both drew their probative value from the sublime presence of the deity. The idea of the sublime here suggests a fundamental contrast between what was written and seen (the visible) and what was not seen (the hidden – both a mythic past and the absent mosque). I draw on Mbembe's essay here (2001: 143) – 'The Thing and its Doubles' – to suggest a fundamental contrast between what was written and seen (the visible) and what was not seen (the hidden – both a mythic past and the absent mosque). In writing of the political ontologies of violence, Mbembe focuses on the scriptural process in general, where this writing becomes the very foundation of experience and the primary form of knowledge. Recent calls for building the temple at Ayodhya draw their value from such scriptures, a value that emphasizes the unseen (a mythic past) and is blind to the visible, the material and until 1992, the architectural.

The future anterior – the *Ayodhya Mahatmya*, Ramalala and the *Asthan*

In Ayodhya, the most popular expressions of the link between the city and the deity are found in *Ayodhya Mahatmyas* guidebooks that outline the sacred geography and history of the temple town. Because they make a topographic location important by associating it with sacred texts, especially the epics, they provide the 'geographical equivalent of Sanskritization' (Eck, 1981: 36, quoted in Herman, 1998). The English translation of Ram Narayan's *Ayodhya Mahatmya* (1875) was the guidebook used in 1902 to mark the several places of worship in the city (Neville, 1905: 178). Neville's *District Gazetteer* mentions that a local committee, headed by Mahant Ram Manohar Pershad of the *Bara Asthan* (literally a big dwelling, supposedly the palace of Rama's father, King Dasharatha), was entrusted with the task of putting stone marks before all the religious places in Ayodhya, with the object of commemorating the coronation of King Edward VII. The committee selected 145 sacred places in Ayodhya. It started its task by putting up the first stone mark at the eastern entrance of the Babri Masjid. The mark read 'Shri Ramjanmabhoomi' (The birthplace of Lord Rama, see Neville, 1903: 163). The selected sacred places, imbued with religious significance, established the link that would in the future help groups of Hindus to relive and re-enact religious–national myths that juxtaposed on the very same land, ancient and modern time.

Ram Narayan's *Ayodhya Mahatmya* (1875: 130–173) is in the form of a question–answer dialogue between the Hindu deities Paravati and Mahadeva with Paravati wanting to know the special qualities of the city, its unique status as a pilgrimage centre and the significance of penances performed around various sacred zones. The answers elaborated Ayodhya's sacred geography and the blessings associated with offering prayers around significant sites. In the process, the text established the mythic origins of this city and its metamorphic power as an ensemble of sacral sites. To the extent that the *Mahatmya* was an act and effect of marking spaces and associating them with sacral power, it functioned as the already mentioned Rancière's formula – a judicial performance that shows how the word leads to material operations – that manifested the invisible qualities of Ayodhya. In effect, the stories in the *Mahatmya* rested on a formulaic act. The sacredness

encoded by the formula was the organization of the city of Ayodhya itself. Furthermore the formula discussed the connections between causes and effects, the behaviours and motivations of pilgrimage around select sites. This formula, then, was a kind of vast mimetic edifice where Rama was the most significant representation. The question is, what supported this edifice and what provided the measure and worth of the *Mahatmya*? The answer to this question takes two forms. In the first, the *Mahatmya* imagined Ayodhya as a hierophanic space where the city was represented, mediated and encountered in the person of Rama. Rama here was an image that corresponded to the presence of temples, kitchens, rivers, lakes, streets – in short, everything that embodied the city. The second answer shows the legal tractability of this image in the present and it is to this answer that I now turn.

The *Mahatmya* allowed for transforming Ayodhya into Ram *janmabhumi* (birthplace of Rama) in its architecture – it literally forged a space that was linked to modes of worship. From within the *Mahatmya*, we learn of how worship formed a network of repetition. The formula of this repetition may be understood in three distinct ways – a visual medium (*darshan*); the object worshipped (the institution of worship); the act of infusing the deity with breath (*pran paratishta*), and the self-revelation of the birthplace (*swayambhu*). The problem is to chart the movement from the *Mahatmya* to legal pronouncements, that is, to show how the *Mahatmya* is made up of an emerging present in which modes of worship are now charged with a new politics. Put more elaborately, how is the juristic personality of the deity framed within the backdrop of the demolition, and how do we find a place for gods in the adjudication around the dispute?

Deity and *Asthan*

An administrative example of the coming together of ancient and modern time, invested in the figure of the deity, was found in the lease deed executed between the UP State Government and the Shri Ramjanmabhoomi Trust in 1992. The object was to establish a religious theme park over state-acquired land, approximately 56 acres that surrounded the mosque and various Hindu temples. The lease mentions that the object of the park was to 'create experience of the cultural aspects emerging from the great epic Ramayana … The park should be integrated with the overall development of that Ayodhya mentioned in the great Mahatmyas.'

A state-appointed surveyor mapped, scheduled and delineated the red-boundaried plot of land over which the park would be built. It would be called the Ramkatha Park, reflecting ostensibly the relation between the Kingdom of Rama and the present. The lease announced the precise birthplace of Rama, known as the *janmasthan*, and Ayodhya the *janmabhoomi*. It would also function as the object of nationalist–religious pedagogy where inhabitants of the complex, dressed in Vedic period costume, would organize guided tours for school children. What was thus set in motion was a process of landscape interpretation, with the mosque as an ever-present eyesore. The lease deed, in the process, turned topography into a lush set enmeshed in scriptural signs that had to be read instead of being simply viewed. These signs imagined the park as a site of national regeneration and a pastoral landscape, an edited panorama, where the mosque could exist only between the visual registers of danger, Vedic authenticity and political invisibility.

In 1989, a suit was filed by three plaintiffs: Sri Ramalala Virajman, the Asthan Rama Janmabhumi, Ayodhya (OOS. No. 5 of 1989) and a Vaishnava Hindu who argued that the Rama deity, installed in the central dome of the mosque, and the place of birth were juridical persons. It also made a declaration that the entire premises of Sri Rama Janmabhumi at Ayodhya belong to the plaintiff deities; a perpetual injunction against the defendants (the Sunni Waqf Board, the Nirmohi Akhara, Gopal Singh Visharad and 24 others) prohibiting them from interfering with or raising objections to the construction of the new temple building at Sri Rama Janmabhumi, Ayodhya.

The Allahabad High Court split decision of 2010 attempted to resolve this suit and was of the view that both the place of birth and the deities installed in the central dome of the demolished mosque were juristic persons.[23] In arriving at this decision we find a slippage between legal language and one drawn from religious and ritual terms. Often the judges used the terms person and personality interchangeably and made their arguments by indexing particular terms of Hindu worship. In so doing they located the subject of legal rights and duties on a threshold where judicial decision was marked by a continuous emergence from a sacral past into the future. This opening into the future can be elaborated through three basic issues posed by the High Court. The first issue (Justice Khan) considered whether the deity was a perpetual minor and, if so, whether this minor was subject to the Limitation Act of 1963. The second matter (Justice Agarwal) dealt with the form of divinity and belief, specifically *swayambhu* (self-revealed image) and *pran pratistha* (infusion of breath into the deity). The third concern (Justice Sharma) was the link of the deity to the image.

As far as the status of the deity as a perpetual minor was concerned, Justice Khan considered whether the minor was entitled to the benefit of the Limitation Act of 1963. According to this Act, if a person entitled to institute a suit or make an application for the execution of a decree, is reckoned a 'minor, or insane or an idiot' (Vol. 1: 80), can this person institute the same suit or execute an application, after the disability has ceased? Analogically, the deity, in the position of a minor, was unable to make an application itself or institute a suit, since it suffered from the same infirmities. The Justice, however, argued that the minor status of the deity was confined only to the purpose of filing a suit – in all other instances, the deity was not a perpetual minor. Furthermore, as minor it could never be freed from this disability. This meant that if the deity were a perpetual minor then limitation would never come to an end. In his order, Justice Khan declared 'that the portion below the central dome where at present the idol is kept in a makeshift temple will be allotted to Hindus in final decree', thus pointing to the jural status of the Rama deity.

Just as Justice Khan recognized the legal status of the deity, Justice Agarwal argued that both the deity and its place of birth were jural persons. Citing Ram Janki Deity Vs. State of Bihar (1999 (5) SCC:50), the Justice held that the birthplace (*janmasthan* or *asthan*) was self-revealed (*swayambhu*), a product of infinite nature without beginning (*anadi*), and it was left to worshippers to simply discover its existence. Furthermore the *swayambhu* image did not require consecration (*pratistha*); the act of worship gave the place the essential features of a temple. Justice Dharam Veer Sharma developed this act of worship. For him, 'the deity is the image of supreme being' and the temple its home (3537, Vol. III). The classical legal literature of the Hindus, he said, sanctified such belief

and faith. By considering the oral testimonies of various residents of Ayodhya that dealt with *parikrama* (circumambulation), Justice Agarwal in the process marked the movement from birthplace (*janmasthan*) to land of birth (*janmabhumi*). For instance, Mohd Hashmi is quoted as having said, 'Hindus have been doing this parikrama for hundreds of years. There is also a parikrama known as "chaudah kosi" [fourteen kosi] in which this "panch kosi" [five kosi] parikrama also gets done' (1196, Vol. 2).[24]

What is this form of prayer and the self-revealed image that the Allahabad High Court Judgment tried to recover? Was it that the bench was so overpowered by the burden of the past that it was unable to liberate itself from the nostalgia of the Ramarajya? Far from being nostalgic, the decision imagined the past as the criterion of value and virtue. The insistence on recognizing worship as judicial truth, the power of self-revelation of the image and the careful delimitation of birthplace and land of birth all pointed to an underlying compound of values that were derived from testimony and texts. More significantly, it appears as if the past embodied in the jural person was a regulative cosmological principle of the disputed complex, which the High Court affirmed as its maximal intensification. This cosmological principle had two dimensions: the first was architectural and ontological – a coupling of materiality to the infinity of time. The second was an ethical and transvaluative process: ethical since it rested on an ideal of active practice rather than passive waiting, and transvaluative since it welcomed the future in which the past adjudicated what was to be affirmed. This temporality was the path that connected the worshipper to the deity.

In a paradoxical way, the decision of the High Court protected the incommensurability of the two ritual objects – temple and mosque – by emphasizing the efficacy of juridical time in arriving at a decision. The judgment treated the sublime – the fundamental contrast between what was written and seen (the visible) and what was not seen (the hidden – both a mythic past and the absent mosque) – in the sense of something that is ineffable and transcendent. It was something to be contained and in the process magnified the power of the court through the expansion of its boundaries. It also showed how modes of worship were incorporated into the terrain of law and how the mosque could be rendered as an absence. This was done in the following way. The demolition made available a Hindu past that did not exist as a material object. If anything, it was the mosque that existed, but it was almost as if the juridical gaze strove to see what it was not able to see, and in so doing this gaze pierced through to the past without any obstacle or limit. It did this to draw lessons for the future. In effect, the physical absence of the mosque remained real and visible and the High Court was unable to add anything new to the absent mosque, except to make this absence appear more visible. In trying to see what could not be seen (a mythic past), the judicial gaze was blinded to the historic presence of the mosque.

Conclusion

In detailing the temporal complexity of the Ayodhya dispute, I have argued that the adjudication around it has provided the thread that establishes a relation between past, present and future. If, in *Bommai* we see how the secular present is privileged over modes of worship that are historically beyond the scope of enumeration, in the Ismail Faruqui

case we witness almost an eruption of the past in the present. Common to the two cases is the back and forth movement of the dispute – the distance traversed from 1950 to 1994 and back again. The debates over the jural deity disrupt this movement by imagining a form of time that is infinite, but a form that is inexorably tied to an emerging future. In the three cases we do not see the temporality of the dispute providing a continuous historical narrative in which one case follows another. Nor can we argue that adjudication serves to function as a container for competing versions of time. Instead the temporality of the dispute is always doubled into a before and after – the time of the disputed structure and that of the absent or absented mosque. In usurping the place of the mosque, the jural deity and *asthan* gesture towards a kind of future where the regularities and norms that prevailed in the past become its resources, and one where the present is a mere path that facilitates the emergence of the past as future.

The three cases, taken together, allow us to understand the functions of adjudication in the dispute. The article has worked to show the aesthetic production of Hindu hegemony, in and through this space, via a demonstration of how sacred time has been folded into the secular, juridical and political. The legal regime traces order to exalt the mythic past and deplore the historical present. Especially in the 2010 judgment, the basis of a somewhat flattened mythic account allows for the emergence of the deity as a figurative presence and in this way tries to constitute the present as mimetic. In his discussion on the units of the aesthetic regime, Rancière (2004: 24–26) shows the false division between mimesis and realism (one could argue that the 2010 decision is based on mimesis and *Bommai* on realism) by arguing that the two together are two regimes of historicity. The future of the deity, its separation from the details of history, incessantly restages the past. Put another way, the future is already foretold in the past.

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Notes

1. In colonial times the mosque was often referred to as the *masjid-i-janmasthan* (literally, mosque of the birthplace).
2. In civil jurisdiction, four basic suits deal with the Ayodhya dispute in independent India. A Hindu resident of Ayodhya, who claimed his right to worship at the birthplace without hindrance, filed the first suit on 16 January 1950. The second suit (1959) was filed by the Nirmohi Akhara (cloister), claiming that it was the sole religious order charged with maintaining and

managing the birthplace. The third suit (1961), filed by the Sunni Waqf Board, sought a decree that the religious structure was a mosque to be handed over to the Board. The Next Friends of the Deity on behalf of the child god Rama filed the fourth suit in 1989. They claimed that both the deity and the birthplace were juristic persons. It was this suit that was taken up by the Allahabad High Court decision of 2010. I will discuss the judgment later in the article.

3. The Government of India constituted the Liberhan Enquiry Commission on 16 December 1992 to enquire into the circumstances of the destruction of the mosque and to establish criminal culpability. After several delays the report was tabled in the Indian parliament in 2009.
4. My understanding of habit is taken from Ravaisson (2008: 73, 75, 77) as a capacity that is prior to agency and will.
5. Article 356 belongs to the family of Articles 352–360, incorporated as 'emergency provisions'. Article 352 deals with the declaration of emergency during sovereign war or armed rebellion in all or part of India and Article 353 refers to the effect of the proclamation of emergency. Here the executive power of the Union overrides all other laws. Article 354 assigns power to the President to direct the distribution of revenue between the Union and the states, Article 355 casts a duty on the Union to protect states from external aggression and internal disturbance, and Article 356 refers to a situation where the government of the states cannot be carried out in accord with the Constitution. Articles 356 and 357 hold that it is the Constitutional obligation of the Union to protect the states, but this obligation cannot be wanton, arbitrary and unauthorized. Articles 358 and 359 refer to the suspension of fundamental rights during the period when Article 352 is in operation. Article 360 envisages the proclamation of financial emergency by the President.
6. I thank one of the referees for pointing out the correct meaning of *pran pratistha*.
7. Recent calls by prominent politicians of the Hindu Right for a large (vishal) temple at Ayodhya point to a future that is hopeful from one point of view and full of dread from another.
8. There is an extensive literature on constituting the deity as a jural person. I do not reference the intricate moves by which the jural deity changes its contours – from domestic disputes during the 1870s onwards, to its status in temples, or whether the mosque can be considered a jural person, or indeed, whether the *Granth Sahib*, the book of the Sikhs, is a jural person. I aim to show that, by the time of the 2010 judgment, the status of the jural deity, with reference to the Ayodhya dispute, changes – it now becomes a key player in owning property and is not, as Mukherjea (1952) says of the legal personality of the deity in general sense, a legal person only in the secondary sense.
9. In an earlier paper (Mehta, 2015: 273–287), I have discussed the time line of the dispute from 1885 to 1994. I have argued that the courts use the term 'status quo' to accommodate and domesticate social and political contingencies. Thus, the status quo, as used in 1885 is not the same as the status quo of 1949, or 1986, or indeed 1993. This gives the status quo a mobile quality, but it also becomes a way of postponing judicial decision. The demolition blows a hole in the status quo, showing in the process the violence that lies at the core of this dispute. Literally, the demolition constitutes a hollowed out space on which there was once a mosque. In addressing it, the three judgments make the mosque a material presence in law, even though it does not exist as an architectural structure. It is this distance that makes the mosque opaque. In this article I read the demolition by focusing on documentary interdiction, for it seems to me that judicial documents have a constitutive power over how the dispute will be resolved, if ever. In such documents, the dispute indexes written records and governmental procedures that demarcate the temple–mosque complex and differentiate it according to legal principles. The iconic type of document is the case generated by the judiciary where the arguments are invariably intertextual, invoking other cases and events. For a more elaborated

discussion on documents, see Feldman (2008), Hull (2012) and Vismann (2008: 71–101).

10. This article is part of a larger project of charting the afterlife of the mosque through a series of archival and ethnographic engagements. In doing fieldwork among local Muslim groups in eastern Uttar Pradesh, Delhi and Bombay, it seems to me that the Babri Masjid is the most significant mosque in India. But paradoxically it does not exist as a material structure.
11. See Rancière (2004: 146–164) for elaborating this idea of performance.
12. The NCC (New Catalogus Catalogorum, prepared by V Raghavan), an alphabetic register of Sanskrit and allied works, mentions 36 recensions of the Ayodhya Mahatmya, derived in turn from the *Skandapurana*, the *Padmapurana* or from no works at all. We also find Hindi translations, such as those of Panini Pandey and Suryakaladevi Pandey (Ayodhyamahatmya, Ayodhya 1975), Sriramagopala Pandey (Sriramajanmabhumi ka Romanchkari Itihas, 1954 Ayodhya), or paraphrases, such as those of Ram Narayan (1875). For an authoritative description of the three major recensions of the Ayodhya Mahatmya, see Bakker (1986, Vol. I, Vol. II).
13. The Next Friends of the Deity refers to the person or persons appointed by the state to oversee the interests of the deity and to maintain financial accounts accrued from oblations and offerings. The Next Friends are also charged with representing the interests of the deity. The Nirmohi Akhara is one of seven cloisters of the monastic orders in Ayodhya.
14. My understanding of the icon is taken from Peirce (1974, 4th edn) to refer to a material object that condenses time and tradition. As material object the icon establishes a resemblance between itself and that which is worshipped. Further, through this material object it is possible to access the invisible (see also Marion, 2004).
15. The BJP's White Paper followed the government's statement on Ayodhya. While this white paper provided a chronology of the events leading up to the destruction of the mosque, the former provided a justification (see Mehta, 2015: 282–283).
16. Outwardly *Bommai* supports Schmitt's (1985) claims of a continuum of exceptional situations – external war, famine, financial emergency and communal riots – where the legal order responds by annulling the law. But such claims do not recognize that a formal and procedural conception of the rule of law is appropriate for emergencies. One could argue that the moment of emergency exposed the existential nature of the political since it explicitly recognized the distinction between friend and foe. But this exposure was also marked by the presence of the Rama deity, a mark that showed how its worship became a fact of law and gave force to the Ayodhya dispute.
17. Sometimes, on pressing Constitutional problems, the President of India refers them to the Supreme Court for an opinion. In the Ayodhya dispute, the President asked the Supreme Court whether the state was justified in acquiring the land around the disputed complex.
18. This case is part of a complex genealogy regulating places of worship, where the status of particular sites of prayer has often been contested with reference to historical precedent. See, for example, the Masjid Shahid Ganj case (AIR, 1938 Lahore 369); also Anna Bigelow (2007: 158–172) for a discussion of a mosque built by the sixth Sikh Guru in the mid-17th century. See also Davis (1997) and Mukherjea (1952).
19. Scholars have referred to the demolition as a 'fascist spectacle' (Aijaz Ahmad. 2000: 167) or pointed out that judicial decisions reflected communal bias (Sara Ahmad, 1996: 320–350). While this might be the case, these prescriptive statements evacuate the Ayodhya dispute of specificity. Instead, being attentive to the long history of the dispute and to the procedures regarding particular decisions would reveal the implications and mobilisation of temporal aesthetics. I will return to this point shortly.
20. S.R. Bommai v. Union of India, AIR 1994 SC1918. The Chief Minister of Karnataka, who challenged the dismissal of his government and the dissolution of the legislative assembly by

the President of India in April 1989, filed the original appeal in the Karanataka High Court. The Court dismissed the writ petition. Bommai then filed a special leave petition before the Supreme Court. This case was heard together with the appeal challenging the dismissal of the state assemblies, following the demolition of the mosque.

21. In his discussion of emergency and modern law in the colony, Hussain (2003: 19–33) thinks of the emergency not merely as a regulative problem of periodic crises, but as a structural impasse inherent in the understanding of modern law and the state. More specifically, I would say it indexes a tension between state power and juridical pronouncement. I follow Calhoun's (2010: 31) argument on the 'emergency imaginary' particularly its characteristic of being sudden and unpredictable.
22. Prior to the destruction of the mosque, an elevated platform on its outer boundary was known as the Ram Chabutra – marking the location of the Rama temple.
23. A three-judge bench of the court, made up of Justices Khan, Agarwal and Sharma provided a judgment (based on decisions of earlier cases like Ram Janki Deity [1999] and the Gokul Nath Ji Mahraj [1953] case) that runs into approximately 10,000 pages.
24. One kose is approximately 2 miles.

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