Premature Imitation and India's Flailing State

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> There is the same contrast even between people; between the few highly westernized, trousered, natives educated in western universities, speaking western languages, and glorifying in Beethoven, Mill, Marx or Einstein, and the great mass of their countrymen who live in quite other worlds.
>
> —W. Arthur Lewis, "Economic Development with Unlimited Supplies of Labour"

Lant Pritchett (2009) has called India a *flailing state*. A flailing state is what happens when the principal cannot control its agents. The flailing state cannot implement its own plans and may have its plans actively subverted when its agents work at cross-purposes. The Indian state flails because it is simultaneously too large and too small: too large because the Indian government attempts to legislate and regulate every aspect of citizens' lives and too small because it lacks the resources and personnel to rule according to its ambitions. To explain the mismatch between the Indian state's ambitions and its abilities, we point to the premature demands by Indian elite for policies more appropriate to a developed country. We illustrate with four case studies on maternity leave, housing policy, open defecation, and education policy. We then conclude by discussing how the problem of limited state capacity

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The Independent Review, v. 24, n. 2, Fall 2019, ISSN 1086–1653, Copyright © 2019, pp. 165–186.

points to presumptive laissez-faire as a preferred governing and learning environment for developing countries.

Matt Andrews, Lant Pritchett, and Michael Woolcock (2017) point to one explanation for India's flailing state. In order to satisfy external actors, the Indian state and other recipients of foreign funding often take on tasks that overwhelm state capacity, leading to premature load bearing. As these authors put it, "By starting off with unrealistic expectations of the range, complexity, scale, and speed with which organizational capability can be built, external actors set both themselves and (more importantly) the governments they are attempting to assist to fail" (62).

The expectations of external actors are only one source of imitation, however. Who people read, listen to, admire, learn from, and wish to emulate is also key. We argue that another factor driving inappropriate imitation is that the Indian intelligentsia—the top people involved in politics, the bureaucracy, universities, think tanks, foundations, and so forth—are closely connected with Anglo-American elites, sometimes even more closely than they are to the Indian populace. As a result, the Indian elite initiates and supports policies that appear to it to be normal even though such policies may have little relevance to the Indian population as a whole and may be wildly at odds with Indian state capacity.

This kind of mimicry of what appear to be the best Western policies and practices is not necessarily ill intentioned. It might not be pursued to pacify external or internal actors, and it is not a deliberate attempt to exclude the majority of citizens from the democratic policy-making process. It is simply one by-product of the background within which the Indian intellectual class operates. The Indian elites are more likely, because of their background, to engage with global experts in policy dialogues that have little relevance to the commoner in India.

In the next sections, we discuss the flailing state and the demographics of the Indian elite. We then illustrate with case studies on maternity leave, housing policy, open defecation, and right-to-education policy how India passes laws and policies that make sense to the elite but are neither relevant nor beneficial to the vast majority of Indians. We conclude with a discussion of the optimal governing and learning environment when state capacity is limited.

The Flailing State

In India, corruption often takes the form of circumventing the law. Some 30 percent of driver's licenses are estimated to be fake (PTI 2016). Of the licenses that aren't fake, a large number of drivers manage to avoid taking the driver's test, which leads to unqualified drivers and more accidents on the roads (Bertrand et al. 2007). It's possible to tell a story in which these outcomes are a design from the top, but it's more realistic to see them as a consequence of agents who do not obey principals—a flailing state. In China, this kind of corruption leads to executions. The executions don't happen in India, one feature or bug of democracy, but that shouldn't be taken to imply acquiescence, let alone approval. Despite some of its own problems with corruption, India's

top-level bureaucracy is of very high quality. The rot in India usually does not come from the head (Vaishnav and Khosla 2016).

Part of the problem is a simple lack of personnel. India, for example, has surprisingly few government workers—about one-fifth as many per capita as the United States. The number of police per capita, for example, is only 135 per 100,000, one of the lowest rates in the world and far below the median (318) or mean (333) of police officers per 100,000 capita in the rest of the world (UN Office on Drugs and Crime 2017). Moreover, a significant number of the police are assigned to VIPs rather than to protecting the public at large (Vaishnav 2017). The number of judges per capita (12 per million) is far below the U.S. rate (108 per million), which helps to explain India's enormous backlog of 32 million cases, millions of which have been in process for more than a decade (Joshi 2017).

Although most of India's governance problems can find links to the lack of manpower in state services, there is also the problem of regulatory overload. The top levels of government impose a massive regulatory burden that is increasing each year, with little attention paid to personnel and state capacity. Many regulatory and civil offenses are increasingly categorized as criminal offenses and arbitrarily enforced (Rajagopalan 2017).

India has essentially all the inspections, regulations, and laws a developed country such as the United States has, but at approximately $235 of federal spending per capita the Indian government simply cannot accomplish all the tasks it has assumed.[1] Consider: U.S. federal government spending per capita was five times higher in 1902 than Indian federal government spending per capita in 2006 (Andrews, Pritchett, and Woolcock 2017, 58). Yet the Indian government circa 2006 was attempting to do much more than the U.S. government did in 1902.

The lack of state capacity (relative to ambition) doesn't simply mean the government does everything at a proportionately smaller scale. The lack of capacity creates diseconomies and problems, such as corruption, that reduce capacity even more than resources. Consider New York City's system of A, B, and C rankings for restaurant hygiene. Even though there are peculiarities in the data, such as bunching, that suggest ratings are somewhat manipulated, the system works tolerably well. Why? The incentives on both the inspector side and the restaurant side generate a stable, low-evasion equilibrium.

Inspectors, for example, are paid up to $37 an hour (Salary.com 2018), which is likely higher than their next-best wage. Thus, health inspectors earn a rent. Because the wage-rent would be lost if the inspectors lost their jobs, inspectors have an incentive to follow the rules even when the probability that they might be caught accepting a bribe is

1. In 2016–17, spending in the Union government budget was 1,975,194 crore rupees (Union Budget 2016–17), or approximately U.S.$304 billion per year. With an Indian population of 1.29 billion, this is equivalent to U.S.$235 per capita. Converting to a purchasing-power-parity equivalent would raise these numbers somewhat without altering our point. See also the text for real resource comparisons.

low (Becker and Stigler 1974). The wage-rent earned by inspectors is only part of the solution, however, because if many restaurant owners offered bribes, the wage would have to be extremely high to make bribe taking unprofitable—so high that the system would be rendered uneconomic. But most restaurant owners don't offer bribes because offering a bribe to an honest inspector could lead to a worse outcome (jail) than accepting the rating.

Thus, most inspectors don't take bribes, in part because there aren't enough bribe givers to make bribe taking profitable given the inspectors' wage-rent. And most restaurants don't offer bribes because there aren't enough inspectors willing to take bribes to make bribe offering cheaper than fixing the hygiene problem. Thus, health inspectors maximize utility by being honest given the actions of restaurant owners, and restaurant owners maximize utility by being honest given the actions of health inspectors. The system is in equilibrium (Kleiman 1993; Tabarrok 1997).

The low-bribery equilibrium, however, is not the only possible equilibrium. Suppose we begin with a situation in which bribery is more common, perhaps because of differences in culture, such as tribal connections, that increase the cost to inspectors for not taking bribes. In this case, the same wage may not be enough to incentivize honesty on the part of health inspectors. With more restaurants offering bribes, it's more profitable to accept bribes. Moreover, inspectors' chance of being caught may decline as the number of bribes increases—what Mark Kleiman (1993) calls "enforcement swamping." At a low level of bribe taking, a small enforcement squad can capture most bribe takers; but the probability of being caught can decline as bribe taking increases. Compare this situation to vandalism and theft. Because the probability of capture is usually high, most people don't routinely smash store windows and run off with television sets. But if lots of people smash store windows and run off with television sets, then the probability of capture declines, and so more people do likewise—thus setting off a riot (Tabarrok 1997).

Establishing a restaurant inspection system in a developing country can be like trying to create law and order during a riot. Given lots of potential bribe givers, wages can't be set high enough (economically) to prevent bribe taking. Given plenty of bribe takers, it's cheaper for bribe givers to offer bribes than to fix their hygiene problems. A more extensive regulatory system can simply make the problem worse by increasing the incentives to offer and take bribes.

India fits this model. In Mumbai, the inspection system for restaurants is at least as strong as the system in the United States. (Indeed, we have been told that it would be difficult for any restaurant to operate if it had to meet all the requirements.) Inspectors' wages, however, are far lower. The ratio of inspectors to restaurants is low. Moreover, on the margin, a regulated coffee shop, for example, has to compete with the many unregulated chai wallahs and coffee wallahs. The net effect is that there may be more corruption and more unhygienic restaurants than would be the case with less regulation.

Andrews, Pritchett, and Woolcock give another example of enforcement swamping. One can compare actual tariff revenues with predicted tariff revenues, given tariff rates and import levels. At low tariff rates, actual revenues increase with predicted revenues, but beyond a certain level the relationship collapses as higher rates simply create tariff evasion (2017, 60). Other research shows that as tariff rates increase, the gap increases between what one country says it imports and what other countries say they export (Bhagwati 1964; Fisman and Wei 2004).

The lesson is that by doing more the government can often end up accomplishing less.

The Indian Elite

Elites' ruling for their own benefit is a traditional public-choice explanation for many laws that fail to meet their stated goals. We argue, however, that another explanation is elite imitation of foreign policies that are inappropriate given the level of domestic development. The Indian elites live at a standard of living comparable to that in developed countries and participate in the cultural and intellectual conversations in the United States, Britain, and Europe. But it is not just their economic status that sets them apart. We identify three additional characteristics of the Indian elite, especially of those formulating policy: language, caste, and education at institutions outside of India.

Almost all of the Indian elite are urban and English speaking and enjoy a standard of living far above the national average. The use of English, one of India's official languages, is notable because almost all policy discussion is in English despite the fact that English is forty-fourth on the list of languages with the most native speakers in India. According to the India Human Development Survey 2005, only 16 percent of Indians can converse a little in English, and only 4 percent can do so fluently (Desai, Vanneman, and National Council of Applied Economic Research 2005).

Despite the fact that most Indians do not use English, the country is administered at the top mainly using English. The Supreme Court and the state high courts use English to hear arguments and write judgments. India's Economic Survey (similar to the Economic Report of the President) is in English.[2] Think tanks hold policy debates in English. Universities and medical and technical schools teach in English, and even street signs warning of dangers are often in English. The budget speech is usually made in English before Parliament, with the finance minister making a bilingual speech for the first time in 2018. Though India has a vibrant vernacular press covering most news and opinion, academic and policy work almost exclusively appears in English-language journals.

2. The latest survey, 2017, can be found at http://indiabudget.nic.in/e_hsurvey.asp. We could not find a Hindi version or one in any other language.

Sahith Aula writes with only slight exaggeration:

> Imagine living in a nation where you, a member of the majority, are unable to read the label of the medicine you must give your child, the menu at a local restaurant or even the warning signs of the road; a place where you are unable to comprehend the government document officiating your driver's license, tax filing or marriage. This is the world that hundreds of millions of Indians live in simply because the elite prefer English. This discrimination has become so systemic that the elite and middle classes send their children to English private schools while the vast poor send theirs to the government schools of their mother tongue. . . . Therefore, a person's socioeconomic status in Indian society is approximately in line with his or her fluency in the language. (2014)

There are both historical and economic reasons for this capture by the English-speaking elite, starting with the policies of the East India Company and the British Crown. Though the East India Company colonized vast parts of the subcontinent as early as 1757, it was not until 1835 that British officials endorsed English education in India. Thomas Babington Macaulay summarized the reason for this endorsement in his infamous Minute on Education in 1835:

> We must at present do our best to form a class who may be interpreters between us and the millions whom we govern; a class of persons, Indian in blood and colour, but English in taste, in opinions, in morals, and in intellect. To that class we may leave it to refine the vernacular dialects of the country, to enrich those dialects with terms of science borrowed from the Western nomenclature, and to render them by degrees fit vehicles for conveying knowledge to the great mass of the population.

The Macaulay Committee, which gave India its first modern civil service in 1853, recommended that the East India Company's patronage-based system should be replaced by a permanent civil service based on a merit system through competitive entry examinations (*Macaulay Committee Report* [1853] 1975). Thus, one reason for Indians to acquire a British education was to attempt the examination for admittance to the Indian Civil Services. By 1855, "Open Competitive Exams" to recruit officers for the Indian Civil Services were held—in London.

Even the earliest meetings and presidential addresses of the Indian National Congress were in English. It was the common language for the agitators coming together from different linguistic backgrounds within the subcontinent, and the purpose of the meetings was to send a powerful message to the British, which would be received only if it were in English. For instance, Dadabhai Naoroji published his critique of the colonial fiscal policy in English and lectured extensively in England to explain to

the British government and British citizens the impact of oppressive colonial policies in India.[3]

Indeed, most of the founding members and prominent leaders of the Indian National Congress were educated in Britain. They were mostly upper caste, English speaking, and trained in law, and they had the ability to negotiate with the British government (Austin 1966, appendix). Most famously, Jawaharlal Nehru was educated at Harrow and Cambridge and remarked to John Kenneth Galbraith that he was "the last Englishman to rule India." Nehru was wrong only in thinking that he was the last.

After independence, Indian elites continued to function as if they were governing an English-speaking country. The main reason for this was linguistic fractionalization. It was simply too costly to have many official languages, and choosing only one or two was politically infeasible. India experienced this problem during the linguistic reorganization of states in the early 1960s. The divide between the North and the South deepened, and there were significant fears of "Hindi domination" among South Indians who spoke other languages. It also helped that the Indian civil service was already running the country in English. English remained both a device to reduce transaction costs and the politically neutral option. Almost the entire central administration was run using English, with states concurrently using English and the majority vernacular language.

This preference for using English for administration and international trade created a demand for English speakers. Those who spoke English had access to better jobs, both in government and in the private sector, and this wage premium continues to this day.[4] Therefore, even though the colonial masters left seventy years ago, Indian elites hold on to English as a means to better jobs, higher wages, and access to power and as a method of administering a linguistically fractionalized nation in a centralized fashion.

Over these seven decades, a small and powerful urban, English-speaking elite has emerged. Among those elites, children can sometimes even grow up speaking only English (Joseph 2014). Especially with the arrival of the internet it has become possible to be located in India but for many practical purposes to live in a bubble and consume only American and British entertainment and writing. One author has described this new Indian elite minority as "Indo-Anglians," who are about 1.4 million in number across an estimated 440,000

3. Dadabhai Naoroji (1825–1917) was an Indian liberal intellectual who was a professor of mathematics, science, and Gujarati. Though a native Gujarati speaker, he wrote, lectured, and published extensively in English. His book *Poverty and Un-British Rule in India* (1901) was the first major critique of the colonial government. He became the first Indian to win a seat in the House of Commons and eventually led the Indian National Congress.

4. In a study in the state of West Bengal, Tanika Chakraborty and Shilpi Kapur Bakshi (2016) estimate the impact of a policy established in 1983 that eliminated English as the medium of instruction in primary schools. They found that switching from English to Bengali as the medium of instruction significantly reduced wages. They also found that English-medium schooling raised wages about 15 percent in the 2000s. These returns may be even higher in urban pockets with high levels of productivity. In a study of Dadar—a vibrant urban area in Mumbai, Maharashtra—Kaivan Munshi and Mark Rosenzweig (2006) show that attending an English-medium school increased both women and men's income by about 25 percent in 2000.

households (Pai 2018). This group tends to be socially and economically forward and work mostly in the formal sector of the economy, high-level government or private-sector jobs.

Caste matters, too. There are large differences within social groups, as Mehtabul Azam, Aimee Chin, and Nishith Prakash (2013) have found using data from the India Human Development Survey of 2005. Whereas 7.6 percent of the upper castes speak English fluently, only 1.5 percent of Scheduled Castes and 2.5 percent of Scheduled Tribes do. About 33.6 percent of upper castes have some English-speaking ability, but that number is only 12.9 percent for Scheduled Castes and 10.9 percent for Scheduled Tribes. Compared to Dalits,[5] upper castes, with greater access to high-quality schooling, are more likely to speak English fluently, and this gives upper castes tremendous advantages in reaching positions from which to dominate the economy and politics.

Ankita Aggarwal, Jean Drèze, and Aashish Gupta (2015) find that in Uttar Pradesh, for example, high castes dominate education, business, and politics far out of proportion to their percentage of the population. Lower castes and Dalits are overrepresented among unskilled workers (see table 1). Aggarwal, Drèze, and Gupta estimate that in the large northern city of Allahabad 75 percent of the persons in positions of power are high caste compared to 21 percent in the population. Most notably, 86 percent of bar association members, 83 percent of publishers, and 76 percent of the Allahabad faculty are upper caste (47–48).

Moreover, upper castes continue to dominate the elite, and Dalits hold only a tiny minority of top positions despite numerous reservation programs (Drèze and Sen 2015). In 2006, the Centre for the Study of Developing Societies surveyed forty national media organizations and found that 71 percent of all key decision-making jobs were occupied by upper-caste Hindu men. Scheduled Castes and Scheduled Tribes occupied none of these jobs (Sethi 2007). In a detailed analysis of Supreme Court justices, George Gadbois (2011) finds that they are predominantly upper-caste men from across the nation.

Though Dalits are increasing their influence in politics, bureaucracy, and policy making, they still have a long way to go before they can break the upper castes' stronghold on political decision making. One of the reasons for the persistence of caste is marriage endogamy. Marrying within one's own caste is both the strongest restriction of the caste system and the most important reason for the persistence of

5. The name "Dalit" comes from the Sanskrit root *dal* and means "broken," "ground down," "downtrodden," or "oppressed." There is a list of historically oppressed castes and tribes in the Constitution of India—who are also known as Scheduled Castes and Scheduled Tribes but who prefer the name "Dalit" to identify themselves. Therefore, in this paper we use "Dalit" interchangeably with "Scheduled Castes" and "Scheduled Tribes" to describe these castes and tribes. However, there is a larger group of individuals who converted out of Hinduism to other religions to exit the caste system but who also identify as Dalits because caste oppression does not disappear by changing religion. They identify as Dalit Christians, Dalit Muslims, Dalit Sikhs, and Dalit Buddhists. This paper mainly discusses the data for Scheduled Castes and Tribes when referring to Dalits.

Table 1
Share of Major Social Groups in Different Occupations in Uttar Pradesh, 2004–2005

Occupation	Group's Share in Occupation (%)				
	High Caste	OBC	Muslim	Dalit	Others
Managers in Private Firms	74	26	0	0	0
Engineers, Scientists, Doctors	63	21	10	5	1
Clerks and Clerical Assistants	47	26	14	9	4
Lawyers, Teachers, Accountants	42	32	12	12	2
Police	32	46	6	13	3
Technical Workers	24	37	18	18	3
Drivers	19	27	36	17	1
Cleaners and Waiters	10	38	13	38	1
Skilled Manual Workers	7	31	31	28	3
Unskilled Manual Workers	6	35	15	42	2
Agricultural Laborers	3	36	11	48	2
All Occupations (i.e., share of each group in the total population)	21	37	19	22	1

Note: OBC = Other Backward Class. Others = Adivasi, Sikh, Jain, Christian, etc. Figures apply to persons ages eighteen to sixty. Row entries add up to 100.
Source: Reproduced from Aggarawal, Drèze, and Gupta 2015, which reports results based on Indian Human Development Survey Data (2004–5).

caste inequalities in India. Among the English-speaking elite in India, more than 90 percent of all marriages are within caste (Goli, Singh, and Sekher 2013).

In addition to language and caste, the third characteristic of the Indian elite is access to high-quality education, especially higher education. Even among the upper caste, there is an elite crust of intellectuals who have the most influential voices in policy making. These voices typically belong to foreign-trained intellectuals and academics.

Since the time of Mohandas Gandhi, Muhammed Ali Jinnah, and Jawaharlal Nehru, there has been a trend for a small group of English-speaking upper-caste men to be trained in foreign universities. Very few Dalits, B. R. Ambedkar being a notable exception, have managed to access the kind of educational opportunities that can gain them entry to foreign universities. During the colonial and postindependence eras in India, the relatively wealthy Indians went to British universities. As the Indian National Congress generation died out, the Indian elite became less Anglicized but more American. Because of unfriendly American immigration laws until 1965, Indians preferred the United Kingdom and other countries for higher education and eventual emigration. But after 1965, the Indian immigration wave to America started, and it got a boost because of the technology boom starting in the 1990s (Chakravorty,

Kapur, and Singh 2016). Since the 1990s, Indian students have come in large numbers to American universities.

Among Indian elites, education abroad continues to be common, as do working and even living abroad. Since 1980, for example, only two of the eleven governors of the Reserve Bank of India were fully educated in India, whereas the remainder had British or U.S. graduate degrees. Many had extensive experience living and working abroad, including Raghuram Rajan at the University of Chicago and I. G. Patel, who later became the director of the London School of Economics. Similarly, since 1980, 100 percent of India's chief economic advisers have had foreign graduate degrees.

Perhaps most remarkably, it's not unusual in India for its policy experts to live in other countries. When Arvind Panagariya, head of the Indian government think tank NITI Aayog, left India in 2017, it wasn't considered surprising that "the Columbia University professor will return to the US to rejoin academia" (*The Quint* 2017).[6] Similarly, when Raghuram Rajan, first the chief economic adviser to the government of India and then governor of the Reserve Bank of India, left the latter job, he returned to academics in the United States. When Arvind Subramanian, Rajan's successor as chief economic adviser, ended his successful term, it was reported, "On his final day, he completed formalities and held an informal meeting with his colleagues at his North Block office before catching his flight to the US later [th]at night" (NDTV 2018).

These kinds of connections and movements are not uncommon, but they have become somewhat controversial in recent years. Rajiv Kumar, who took over as head of NITI Aayog after Panagariya left, wrote of Panagariya and Rajan that, "in their place, we may see experts being posted who understand India's ground realities in a much better manner" (Express News Service 2017).

Thus, policy at the top, both in terms of discourse and often in terms of execution, is conducted mostly by English-speaking, upper-caste, foreign-educated Indians. Elites' education, worldview, and international orientation have important consequences for policy decisions. Imported experts may mimic the policy debates and issues that belong to a different environment, usually one with higher state capacity. These policy debates often have little relevance to the immediate problems of the average Indian, and "expert import" may burden an already weak state, further exacerbating the problem of executing existing policies. We turn to four case studies.

Maternity Leave in India

As an example of a law that appeals to the elite rather than to the masses, consider India's maternity-leave bill, which passed in 2017. The bill requires that firms of ten or more workers provide women with twenty-six weeks of paid maternity leave, up from the twelve weeks mandated earlier. India now requires firms to pay for more

6. Rajan's successor at the Reserve Bank of India was Urjit Patel. Patel went to Oxford and the London School of Economics and was T. N. Srinivasan's student at Yale.

weeks of maternity leave than the United States or France. In fact, only Canada and Norway—with a gross domestic product (GDP) per capita that is twenty-seven and forty-seven times higher, respectively, than India's—have longer required paid maternity leaves.[7]

The issue with the maternity law is not simply that it is generous by world standards, especially for a poor country, but that it has so little applicability to the great bulk of the Indian female population. Most women in India are not in the labor force (70 percent). Moreover, most of the people in the labor force work in the unorganized sector, either for themselves or for firms with fewer than ten workers, to which the law doesn't apply (84 percent). Even within the organized sector (16 percent), a majority of the employment is informal (58 percent), so the law again will not apply. If we assume that 30 percent of the workers in the organized, formal sector (6.7 percent) are female, then perhaps 2 percent of the labor force are potential beneficiaries of the law. If we assume more realistically that only 20 percent of the workers in the organized, formal sector are female, then the law potentially applies to 1.3 percent of the labor force or less than 1 percent of all females.[8] In practice, the law will also be widely ignored even in the organized, formal sector.

India's maternity-leave bill is relevant to only a tiny share of the Indian population and is likely to have negative effects for the economy and women overall if only because it will contribute to the general ignoring of Indian law and further pressure an Indian bureaucracy that cannot administer current law.[9] The maternity bill is an example of what Antony Allott called "phantom legislation": "the passing of laws which do not have, and most probably cannot have the desired effect. The illusion of progress, of doing something, is given, but the reality is far different. Such legislation is an expression, not of power but of the impotence of power" (1968, 52).

Why, then, was the law passed? To the extent that the law has beneficiaries, the beneficiaries are, of course, likely to come from the elite. Elites everywhere demand laws that benefit themselves. But the naked public-choice explanation is likely incomplete. There are better ways of transferring wealth to elites than a maternity-leave law. The law, however, has an ideological dimension. It's part of what the Indian elite thinks is good, just, and prestigious in the international community. Thus, when the law passed the Lok

7. India already has some of the most restrictive and inflexible labor laws in the world (Organization for Economic Cooperation and Development 2007; Joshi 2017). The Industrial Disputes Act of 1947, as amended in 1976 and 1982, for example, makes it compulsory for any firm with one hundred or more workers to obtain the state government's authorization before closing down or laying off any of its employees. Section 9A of the act requires that for any rearrangement of tasks, the firm must give three weeks' notice, which the workers can then dispute (Joshi 2017).

8. The assumption is more realistic because the female share of the labor force decreases with status. Using slightly different divisions of the labor force, the International Labor Organization finds 20 percent of salaried workers are female (2014).

9. In addition, to the extent that the maternity-leave bill is not ignored, it is likely to push even more firms into the unorganized sector, where firms are inefficiently small and unproductive.

Sahba, the labor minister, called it "a gift on International Women's Day" and proudly noted that Indian women will get more maternity leave than what is provided in developed countries such as Japan, Germany, the United Kingdom, and South Korea (PTI 2017). India's maternity-leave law was thus a point of national pride similar to its mission to Mars.

Housing Regulation

Housing regulation is another area where what seems normal and appropriate to the policy elite may be quite different from what is needed by the masses. The problem of affordable housing in India is extreme. India has the largest slum population in the world, with about 24 percent of the urban population living in slums (Parekh et al. 2008). In Mumbai, the price-to-income ratio is so high that the average living space is just forty-eight square feet per person. In comparison, the U.S. government mandates a minimum of fifty square feet per prisoner for prison cells (*The Economist* 2012).

The need for affordable housing is extreme, yet housing regulations in cities such as Ahmedabad and Surat include requirements for such matters as rainwater harvesting, solar water heating, and graywater recycling—a list that would no doubt be approved in Berkeley, California, but is far from the concerns of most people living on average Indian incomes (Patel, Byahut, and Bhatha 2018). Other requirements specifying minimum sizes for rooms, staircases, lot sizes, and road widths as well as maximum levels on the Floor Space Index, building heights, elevators, setbacks, open spaces, and so forth are common and can greatly raise costs.

Consider, for example, parking requirements. Parking requirements may seem like a sensible and natural requirement to the policy elite, but most people in India do not own cars.[10] They use either public transportation or two-wheelers. Land set aside for parking in affordable-housing complexes is wasted, but, more importantly, if there were less space for parking, more units could be built, spreading the cost of the land more widely and reducing rents. Further reductions in rent are possible by reducing road widths, which can be done while still satisfying requirements for emergency vehicles. Reduced road width also increases pedestrian safety. In a careful and informed analysis, Bimal Patel, Sweta Byahut, and Brijesh Bhatha (2018) show that lifting a handful of the costliest requirements would reduce housing costs by 34 percent and increase supply by as much as 75 percent without any reduction in safety or quality of building materials.

Why, then, have these regulations? Patel, Byahut, and Bhatha write: "Regulations in India are also a relic from its colonial past, derived from spacious British standards that are irrelevant for popular housing today because they specify lot sizes and land uses that the majority of the poor cannot afford." (2018, 178, summarizing Mehta, Mitra, and Nientied 1989).

10. India is near the bottom of the world rankings at 50 vehicles per 1,000 persons (the U.S. rate for comparison purposes is 910 per 1,000) (*Wikipedia* n.d.).

The regulations began in the colonial period but have been continued by India's policy elite, who stepped into colonial shoes. Barjor Mehta, Banashree C. Mitra, and Peter Nientied show how little has changed. In 1989, they wrote: "In India the Town Planning Acts of the colonial period and even town planning efforts after Independence have tended to reflect the professional values of the middle and upper socioeconomic classes. Not surprisingly, the majority of people who cannot afford either the high standards set by the legal system or the artificially inflated costs of land, are forced to seek solutions on their own and live in settlements that have come to be labelled as 'unplanned', 'unintended', 'uncontrolled' or 'unauthorized'" (51).

Mehta, Mitra, and Nientied described not only how the regulations led to expensive housing that the masses could not afford but also how this problem created incentives to ignore the law and build slums—that is, premature load bearing that led to system collapse: "When local governments are unable to provide affordable plots and minimal basic infrastructure, squatting is the only option left for a large number of households. In such a context, the violation of zoning and building regulations can be traced to failing housing policy" (1989, 54).

Caste, Latrines, and the Problem of Open Defecation

The separation between the policy elite and the mass of the people can lead to errors of omission as well as to errors of commission. India has extreme inequalities in the provision of basic goods. It fares poorly even compared to Bangladesh—for example, in the proportion of households practicing open defecation (55 percent versus 8.4 percent), the proportion of children ages twelve to twenty-three months who have been fully immunized (44 percent to 82 percent), and the proportion of children ages nine to fifty-nine months who receive vitamin A supplements (18 percent to 88 percent) (Drèze and Sen 2013, using data circa 2005–7). As Jean Drèze and Amartya Sen note, inequality in India has a special nature—"a huge deficiency of the basic requirements for a minimally acceptable life for the underdogs of society" (2013, 280)—that is not captured in income statistics and Gini coefficients.

For example, India has far more open defecation than other countries at the same level of GDP per capita. Open defecation sickens and kills children, stunts their growth, and lowers their IQ, thus reducing the productivity of the future workforce (Coffey and Spears 2017). It is hard not to think that one reason this practice continues is that the divisions of caste make it a predominantly lower-caste problem of little concern to the elite. Drèze and Sen argue that open defecation isn't the cause of much shame or consternation among the policy elite: "The possibility of space missions seems to capture the imagination of the privileged far more than flush toilets, which could liberate half the citizens of modern India from this peculiarly nasty form of inequality" (2013, 280–81).

The dangers of open defecation are clear. Yet some half a billion people still do not use latrines. Why not? Drèze and Sen offer a typical explanation: "In 2011 half of all

Indian households did not have access to toilets, forcing them to resort to open defecation on a daily basis" (2013, 280). From this perspective, the solution seems obvious: provide access. After all, if you or I were to have access to latrines, we would use them; so if someone else isn't using latrines, it must be because they don't have access. A bit of thought, however, dispels this notion.

Latrines are not expensive. Many people in countries poorer than India build their own latrines. If access is not the problem, then building latrines may not be the solution. Indeed, India's campaigns to build latrines have been far less successful than one might imagine based on the access theory. Quite often, latrines are built and not used. Sometimes this is due to poor construction or location, but the latrines are often perfectly serviceable. In fact, surveys indicate that 40 percent of households that have a working latrine also still have at least one person who regularly defecates in the open (Coffey and Spears 2017).

For many people in India, open defecation is preferred to latrine use (Coffey and Spears 2017), usually for reasons related to issues of ritual purity and caste. Latrines in or near homes are considered polluting, not in a physical sense so much as in a spiritual or ritual sense. Latrine cleaning is also associated with the Dalit caste, in itself a polluting category (hence the term *untouchable*). That is, the impurity of defecation and caste are mutually reinforcing. As a result, using or, even worse, cleaning latrines is considered a ritual impurity. The problem of open defecation is thus intimately tied up with Hindu notions of purity and caste, which many do not want to discuss, let alone condemn.

In the villages, the idea of open defecation is also associated with clean air, exercise, and health. Even many women prefer open defecation if only because it gives them a chance to get out of the house and have some freedom of movement. Sadly, men sometimes build latrines for their daughters and wives to reduce their freedom of movement. Government programs that stress that it's unmanly for men to allow their wives and daughters to defecate in the open implicitly reinforce patriarchal sentiments and don't do much to reduce the transmission of germs when the men don't also use the latrines.

The concept of isomorphic mimicry and pressures from external actors may also play a role in India's latrine campaign. Elites living in urban areas take the preference for having a toilet over open defecation as a given because they take for granted a modern system of plumbing connected to waste-management systems. But most villagers and even most city dwellers don't have a waste-management system, and using toilets often means having to deal with the waste manually. In the absence of these sewage systems, open defecation is preferred.

To get around the problem of perceptions of ritual purity, it has been suggested that local governments be encouraged and enabled to construct sewage and waste-management systems (Rajagopalan 2018). A toilet that is not connected to a functional waste-management or sewage system through modern plumbing needs to be pumped and the waste transported, which runs counter to perceptions of ritual purity. A toilet that flushes away human waste into the sewage and waste-management system solves

the problem. If there is a functional network of pipes linked to waste-management and sewage systems, the cost for households to build a toilet in every home connected to the network is relatively low. At the current levels of development in India, a much smaller proportion of the population would need a government subsidy to construct a toilet. However, it is far more difficult to create sewage and waste-management systems across the villages and cities in India than to build latrines.[11]

The Indian government counts the number of latrines built (an input), which makes it easy to report growth and success perhaps to the world but also to urban elites. But the government doesn't measure what is actually important, the extent of open defecation, despite the fact that it could do so at relatively low cost. As Diane Coffey and Dean Spears (2017) remark, sometimes seeing like a state means looking away.

In short, the policy elites don't suffer from the problem of open defecation, and they misunderstand the problem. They believe toilets are universally preferred over open defecation. But only toilets that flush the waste away into a waste-management system are preferred over open defecation. When the elites do understand the problem of open defecation as linked to ritual purity, many don't want to attack the causes, such as Hindu beliefs and the caste system, or to bear the costs when the benefits may be far in the future. As a result, the problem of open defecation remains unsolved.

The Right to Education

Almost all developed countries have an extensive public-education system. From the beginning of independent India, the Indian elite have hoped for a similar system for India. The Constitution of India, adopted in 1950, promised that the "state shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years." More than seventy years later, the state still has not fulfilled this promise. At a centralized level, the government does not evaluate learning outcomes but instead pats itself on the back by using literacy as a measure—almost entirely self-reported in census surveys—or by using enrollment numbers in all schools (public and private) as a measure of success. When one looks to outputs, not inputs, however, it is clear that public schools are failing to produce education. In the Pratham Educational Foundation's *Annual Status of Education Report* surveys of learning outcomes among ten- to eleven-year-olds in rural India in 2014, for example, only 41 percent of the students in public schools could read a simple text in the local language, and only 21 percent could divide a three-digit number by a one-digit number (Pratham Educational Foundation 2015, 17).

11. Standard public-choice arguments apply. Disgruntled citizens and voters complain now about the digging in neighborhoods over several years, causing much nuisance to their daily lives. Far into the future, a different politician may reap the benefits of better health outcomes. So this is also a problem of immediate costs and distant benefits. It is much easier to build free toilets than waste-management systems.

The failure to educate is not surprising when one notes that teacher absenteeism in the public schools is notoriously high. Studies find that on a typical day 25 percent of teachers are absent, and those who are present are often not teaching (Chaudhury et al. 2006, 92). Teachers in the public schools are paid salaries well higher than the national mean, and unions and political clout prevent them from being fired (Tabarrok 2013; Joshi 2017). Given the absence of teachers, it's not surprising that the students are often absent as well, which obviously makes learning difficult.

As the government school system has failed, however, a remarkably vibrant and extensive private-school system for poor children has arisen. India today has the largest private-school system in the world, with about 50 percent of students in urban areas attending private schools and more than 30 percent of primary-age students attending private schools overall (Tabarrok 2013; Joshi 2017; Kingdon 2017). In some Indian states, a majority of students attend private schools. Private schools achieve modestly better outcomes than public schools but at significantly lower cost (Tabarrok 2013; Muralidharan and Sundararaman 2015; Joshi 2017). The private-school system continues to grow relative to the public-school system. Over the four-year period 2010–11 to 2014–15, total enrollment in government schools *decreased* by 11.1 million, whereas enrollment in private schools increased by 16 million. This fall in enrollment in government schools happened despite a 4.3 percent increase in the population of primary-school age children over the same period (Kingdon 2017, 22).

It's important to note that these private schools are for the poor—they could not be otherwise given how many students attend these schools. The median private-school fee in urban India in this period was 500 rupees per month (U.S.$7–8 in 2018) and in rural India 275 rupees per month. Nationally, private schools' mean fees are around 9.2 percent of the state's per capita income (Kingdon 2017, 18–20). The bottom line is that poor parents in India would rather pay to educate their children at a private school than send them to a government school for free. It would be difficult to find more damning and explicit evidence of the failure of the government education system.

In a sensible world, a system that educates millions of poor students at low cost would be lauded and supported, but the Indian elite looks askance at these private schools and tries to expand the failing public system often at the expense of the relatively successful private system. Primary education became a fundamental right in India after the Eighty-Sixth Amendment to the Constitution was passed in 2002. To translate this fundamental right into action, the Indian government crafted the Right of Children to Free and Compulsory Education Act (also known as the Right to Education Act, or the RTE) of 2009, which came into force in 2010. This statute and rules crafted under it form the current framework of primary-education policy in India.

The RTE is a classic example of elitist thinking and "isomorphic mimicry," or trying to establish measurable norms and standards borrowed from the developed world, which have little to no meaning in India and which foster little to no learning in school (Pritchett 2014). The RTE statute is essentially a laundry list of mandated inputs with no mention of learning outcomes, let alone standards for monitoring and

evaluating those outcomes. The schedule to the RTE lists seven categories of norms and standards: (1) teacher–student ratio, (2) building specifications, (3) minimum prescribed instructional hours, (4) minimum working hours for teachers, (5) provision for teaching and learning equipment, (6) library facilities, and (7) play material, games, and sports equipment. Within each category, there are specific requirements. For instance, under the category of "building," the act specifies requirements such as separate toilets for boys and girls, a kitchen for midday meals, office space for teachers, fencing, and playgrounds. These are the elements required for a school to be recognized by the RTE.

Any school that does not meet this laundry list loses its recognition and may be forced to shut down. The RTE penalizes low-budget private schools. Thus, an urban private school that may not have a fenced playground is forced to shut down even when parents have chosen that school over a free public school. Moreover, the RTE penalizes private schools for paying a market wage to teachers instead of the excessively high wage paid by government schools.

Data on school closures are difficult to find because the states do not keep a record of all private schools and because most of these private schools are operating under the radar for violating dozens of regulations and licensing requirements. A quick survey of news reports suggests anywhere between ten thousand and one hundred thousand private-school closures since the adoption of the RTE. A second, even more troubling trend is that the RTE creates numerous opportunities to threaten to close functioning private schools. The threat power has spurred a business of side payments to the bureaucracy and potentially raised the cost of entry to and functioning of low-budget private schools that cater to the poor.

Nowhere in the RTE is there any mention of measuring or evaluating learning outcomes. In fact, some provisions in the RTE discourage such evaluation. Among these provisions is the requirement that no child shall be held back, expelled, or required to pass a board examination until the completion of elementary education (that is, until eighth grade).

A framework that rewards the public schools the children are fleeing and punishes the private schools that have met a market test is a recipe for disaster. But the Indian elite take for granted that well-stocked libraries, playgrounds, and low teacher–student ratios are measures of quality, and they apply these standards universally. After all, these standards are used the world over in public education. Schools not conforming to these world standards are assumed to be cheating the poor of their hard-earned money and should therefore be shut down. In the developed world, these rules of thumb work well enough because of the contextual background within which it can be assumed, to give just one example, that teachers will actually show up to teach. As Lant Pritchett puts it, the narrow focus on inputs is due to the "isomorphic approach to schooling that considers only those elements that are 'thin' and hence can be bureaucratically monitored, tracked and, in principle, regulated" (2014, 22). Actual education, as opposed to measures of inputs, is a "thick," contextual endeavor. But the focus on inputs makes sense to the Indian elite and also works well for the Indian bureaucracy,

which benefits from input-heavy measures as well as from increased power over the fate of private schools.

Conclusion: Limited State Capacity Calls for Presumptive Laissez-Faire

The Indian state does not have enough capacity to implement all the rules and regulations that elites, trying to imitate the policies of developed economies, desire. The result is premature load bearing and a further breakdown in state capacity. It doesn't follow that rule by nonelites would be better. It could be worse. Nevertheless, there are some lessons about what kinds of things can and cannot be done with limited state capacity. States with limited capacity have great difficulty implementing tasks with performance goals that are difficult to measure and contested. In any bureaucracy, the agents involved ask themselves whether to perform according to the bureaucracy's goals or to their own. Incentives can ideally be structured so that goals align. But when states have limited capacity and performance goals are difficult to state or measure, it becomes easier for agents to act in their own interests.

At the broadest level, this suggests that states with limited capacity should rely more on markets even when markets are imperfect—presumptive laissez-faire. The market test isn't perfect, but it is a test. Markets are the most salient alternative to state action, so when the cost of state action increases, markets should be used more often. Imagine, for example, that U.S. government spending had to be cut by a factor of ten. Would it make sense to cut all programs by 90 percent? Unlikely. Some programs and policies are of great value, but others should be undertaken only when state capacity and GDP per capita are higher. As Edward Glaeser quips, "A country that cannot provide clean water for its citizens should not be in the business of regulating film dialogue" (2011). A U.S. government funded at one-tenth the current level would optimally do many fewer things. So why doesn't the Indian government do many fewer things?

Indeed, when we look across time, we see governments providing more programs as average incomes rise. Over the past two hundred years, for example, the U.S. government has grown larger and taken on more tasks as U.S. average incomes have increased. But when we look across countries today, we do not see this pattern. Poor countries do not have notably smaller governments than rich countries. Indeed, poor countries often regulate more than rich countries (Djankov et al. 2002).

The differing patterns make sense from the perspective of the folk wisdom of much development economics. From this perspective, the fact that the developed economies might have started out more laissez-faire is an irrelevant historical observation. In fact, according to this view, because the developed economies have already evidently learned that laissez-faire led to inefficiencies, business-cycle instabilities, and environmental, distributional, and other ethical problems, it makes sense for the less-developed economies to skip the laissez-faire stage. Thus, the folk wisdom of development

economics holds that what a developing economy learns from the history of developed economies is to avoid the mistakes of relative laissez-faire and begin with greater regulation.

In the alternative view put forward here, relative laissez-faire is a step to development, perhaps even a necessary step, even if the ultimate desired end point of development is a regulated, mixed economy. Presumptive laissez-faire is the optimal form of government for states with limited capacity and also the optimal learning environment for states to grow capacity. Under laissez-faire, wealth, education, trade, and trust can grow, which in turn will allow for greater regulation.

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Acknowledgments: We thank the editors and referees for valuable comments.

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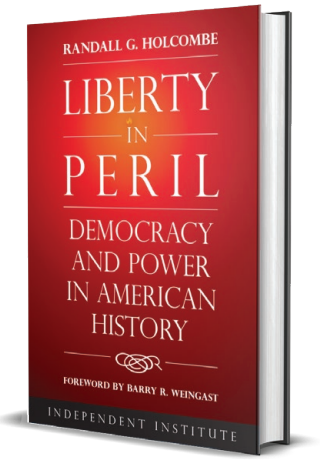

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