

TRANSCRIPT:

The transformative possibilities of a Constitution: Dr Joel Modiri and Gautam Bhatia

Christy Callaway-Gale (0:11): You're listening to RightsUp, the podcast from the Oxford Human Rights Hub. Today's episode is a conversation that took place on the 18th of November 2019 between Oxford DPhil student Gautam Bhatia and Joel Modiri, Senior Lecturer in the Department of Jurisprudence at the University of Pretoria. In this episode Gautam and Joel speak about the transformative possibilities of Constitutions, specifically in the context of India and South Africa.

Constitutions are the legal bedrock of many countries, but they're also political, and are produced within a specific socio-historical context, much like any text. As much as Constitutions are there to protect citizens, they can also exclude certain groups of people. And when a Constitution doesn't work for all, how do we best address this? To what extent can we reinterpret a Constitution so it's more inclusive? And when do we need to start again, from scratch? In this episode, Gautam and Joel discuss these questions in the context of India and South Africa.¹

Gautam Bhatia (1:27): My name is Gautam, I'm presently a DPhil student here in Oxford. Before I came here, I spent four years in India, where I'm from, as a practising lawyer, and my engagement with— my serious engagement with Indian constitutional law, for me, began on a night in 2013, December. I was in the US, and so I was many hours behind Indian time, and there was a judgment that was going to be pronounced on the criminalisation of same sex relations in India — that was morning in India, it was night in the US, where I was. Everyone expected a good outcome. The Delhi High Court had a few years ago decriminalised same sex relations. The Indian State had not appealed, but some fringe religious groups that appealed that decision, and the Supreme Court was going to give a final verdict.

To everyone's, or at least, to many people's shock, horror, dismay and despair, the Supreme Court reversed that decision and re-criminalised same sex relations. I remember being unable to sleep that night, and wondering how this could happen, because like many other Indian— young Indian law students, I had been brought up in law school to believe that the Indian Supreme Court was largely, with some blips, a progressive and humane institution. That vision of the Supreme Court just did not square with a court that could do this. And so I began to think, and rethink, the stuff I had been taught.

And what I realised after retracing my journey through Indian constitutional law was that, actually, this judgment was more part of the course than an exception; so, in its history, the Supreme Court had more often than not been a rather conservative and deferential institution, and not the ardent rights protector that we've been led to believe.

But the deeper I went into Indian constitutional law, a journey that I conducted along with being involved in constitutional cases in India at the same time, I realised that there was this dominant history of the Indian Supreme Court, in the fashion I've just described, but there were also judgments that took a very different view, judgments that understood the Indian Constitution as being a deeply transformative document that sought to both transform Indians from "subjects" to "citizens", and also to democratise Indian life beyond the public sphere and have social equality within what we

¹ Indian Constitution is available at: <https://www.india.gov.in/my-government/constitution-india/constitution-india-full-text> and the South African Constitution is available at: <https://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>.

understand as the "private sphere". And these judgments formed what I now like to call a "contrapuntal canon", borrowing from Edward Said,² that they are this private voice, this underlying voice, that always dissents against the dominant register. And so, I wrote a book on "The Transformative Constitution"³ that focused on these kinds of judgments from the Indian Supreme Court, from the High Courts in various Indian states. And I tried to argue that this vision was truer, is truer, is more faithful to the Constitution's transformative purpose and the Indian Constitution is a far more radical document than its interpretation would have us believe. This book was published in March of this year, at a time when there was a degree of hope around the Constitution and the Supreme Court, because the Supreme Court had recently gone back upon its 2013 judgment and finally decriminalised same sex relations.⁴

I guess I'm coming to this as someone who is maybe moving towards more and more scepticism about the potential of constitutionalism to actually be radical, although I still retain some kind of faith, because it's hard once you've invested so much emotion, so much time, it's hard to let go.

Joel Modiri (5:20): Thank you Gautam. My name is Joel Modiri, I'm a Senior Lecturer at the University of Pretoria, Department of Jurisprudence. My research started out, in the beginning, as research into the field of critical race theory. To biographise it, just slightly, I grew up in a township in South Africa that was established just before the middle of the 20th century, in 1939 — Atteridgeville — and it was predominantly part of the spatial project of the colonial regime, which was to place black people in really what were "reserve" or ghetto-like environments. And I think that shaped my political thinking about race and law.

So the work I'm trying to do is to draw from the historical archive of the Black freedom struggle — specifically, now, my current research might be called the Black Consciousness Pan-Africanist tradition in South Africa, but with all of its roots into the rest of the Black world, particularly the triffecta of Anton Lembede, but Anton Lembede also working with Asby Mda, Robert Sobukwe and Steve Biko, that generation of intellectuals from the 1940s to 1970s, which, in my view elaborated a completely different concept of law, of politics, of political community, of justice, of freedom, of futurity. And these were the ideas I have argued that were neglected, and even, in a way, suppressed in the making of the post-1994 Constitution.

So unlike you, I didn't start with any hope in the Constitution. I already started with a worry that the Constitution of the "new" South Africa, as a political project of nation building, and as a political project of overcoming historical injustice, was blind to, ignorant of, closed out from rather, a much more radical tradition of Black thought. And my argument is that rather than critiquing the Constitution on the basis of its immanent failures, or to argue that the Constitution's failures are merely external to it, that the problems are interpretation, legal culture, political will of the State, and I think that's also true, it's part of the story, but I'm actually suggesting that to the extent that the Constitution is a textual representation of a particular political imaginary, and of a particular political moment, was always, already going to fail at producing a liberated society.

Gautam Bhatia (8:00): So I guess I have a couple of comments and a couple of questions. Given that the Constitution remains framed in abstract terms, it embodies what it claims to be "universal values". Don't you think that it's possible to take this radical Black intellectual tradition you have been talking about, and say that, "Look, it's actually possible to interpret [the] South African Constitution in a way that takes this forward, and the fault is of judges, the legal culture, and so on"?

² Edward Said. *Culture and Imperialism* (1993).

³ Gautam Bhatia. *The Transformative Constitution: A Radical Biography in Nine Acts* (2019).

⁴ *Navej Singh Johar and Ors. v Union of India thr. Secretary Ministry of Law and Justice* (Writ Petition (Criminal) No. 76 of 2016) (2018), available at: <https://indiankanoon.org/doc/168671544/>.

Joel Modiri (8:25): Yeah, so I'm trying to move us away from the immanent critique, right? Well— and there are a few ways to get at this. So the antinomy here, the contradiction, the major difference, was (if it were to be boiled down to this) that the ANC's [African National Conference], let's call it either the Chartist or the Congress traditions' vision of change did not imagine the abolition of a colonial state — it imagined the democratisation of a colonial state. It was a tradition that consistently— even though it had, sort of, radical movements and elements within it— consistently sought a place within the colonial order. But the Africanist tradition's starting point, though, is completely the inverse — it is that South Africa was not simply made without the native, because that you can correct; it was made against the native. And because of that, the argument of the Africanists was that any attempted reform would be a dead end.

Now, to answer your question about the Constitution and its interpretive possibilities. Well, the first point is, because of the Africanist starting point, of the illegitimacy of the founding of the South African order, and therefore the illegitimacy of any Constitutions that evolve from it, rather than that mark a revolutionary break from it, that the Constitution is therefore not the starting point, right? So your project works for someone who thinks that the origins of the Constitution are untainted, or who thinks origins don't matter that much. And I know people who say, "Let's forget about the origins, let's just see what we can do with this now". And this is not good history, good scholarship, and it's not even, I think, a sensible way to approach this.

And the second point for me is that I agree completely, and I think it's important and worthwhile work to be doing the work of transformative interpretation, of working with what you have, in order to ameliorate the harshest conditions of inequalities in human suffering. But I do think words have limits. I mean, in other words, I don't think the meanings of texts are as elastic as one makes them — there [are] certain constraints. We know this in South Africa under the socio-economic rights clauses — they have an immediate limitation because they have the condition of "available resources", and so that's just a limitation, that's just— People have tried to read it in very different ways, and so forth, but it's clearly a constrained element of the Constitution. So I think we can only go so far with interpretation.

And then the third point, which is the point I am trying to really think about substantively now, is that I— you— a Constitution cannot be read in abstraction, right? Even though it has abstract terms, it can be interpreted openly, but the Constitution itself can't be read in the abstract. In other words, you can't read our Constitution of South Africa outside of the negotiated settlement and outside of the attempt to preserve White capital and the secret negotiations that the ANC entered into with White capital. You can't read the Constitution outside of the Eurocentric order of power and knowledge, and the ways in which the global waves of liberal democracy and westernisation of African post-colonies was part of this Imperial project. You can't read the Constitution— So, even though in the practical day-to-day struggles of say, a community fighting for water rights, that looks very distant, it looks very, in a way, esoteric to mention "imperialism" — like, they don't care, they just want water. I think it does, because ultimately the whole Constitution represents an entire political imaginary formed by, first, the language that it has, but also by what I would call the internal and external determinants. And I would say Eurocentrism, liberal capitalism, neo-liberalism — those are determinants of a Constitution's meaning, they are determinants of a Constitution's potentiality, and they are reason enough to overwhelm and render a Constitution hollow.

Gautam Bhatia (12:20): I understand exactly what your argument is, and I think I have two things to say based on the Indian historical experience. The first is that, I think that— I mean, I guess I don't yet quite agree that a Constitution or any text is embedded in its origins to an extent that it can never liberate itself from that, from the origin. I have two examples in mind.

The first is that— first is the history of liberalism. Liberalism, as it arose alongside the Enlightenment in Western Europe, was exclusionary in its very design, because Enlightenment depended upon refusing to extend what it claimed on behalf of White people to non-White people. Emmanuel Kant was a thoroughgoing racist, like, we all know that, right? And as were— John Stuart Mill, right, strongly believed that the colonised countries were Savage, they were not ready for self-government— that whole argument about the "Waiting-Room of History".⁵ Except that, once these liberal philosophers, including John Stuart Mill, had framed their argument in the language of universalism, it went beyond their control, and there is a fascinating history where, in India, John Stuart Mill's "The Subjection of Women"⁶ became a canonical feminist text that Indian women used to make claims against Indian men. So John Stuart Mill never intended that his arguments on the rights of women could ever be used by non-White women against non-White men, right? There was of course the whole saviour complex of White men going to save Brown woman, that was one thing, but he didn't think that his arguments would have any purchase in non-White countries, because the whole project was that, "Look, White people have this autonomy, this dignity, they're able to do all this, whereas the rest of them don't". But once you have those arguments down there, then you "authorise"— to use the whole Malthusian-like argument⁷ — and you lose control over how others will interpret what you said.

And the second point is, again, broadly similar, which is that I think there's a distinction to be drawn between what you can secure through constitutional litigation, and what a Constitution does not prevent a State from doing. So you're talking about the disjunct between the vision of society that the South African Constitution talks about, and the reality of continuing racism, inequality, dominance over property in South Africa. Now I think that that goes to, for me at least, a slightly different distinction, which is that you cannot revolutionise society and bring about substantive material equality through constitutional litigation — that's going to court and imposing rights, and the limitations of that are well documented, and we both know that.

I think the key question is that were, tomorrow, a Government to come to power that subscribed to your radical Black intellectual tradition, or that subscribed to Ambedkar's "Annihilation of Caste"⁸ — would the Constitution (a) stand in the way of it coming into power, and (b) once it came to power, would it stand in the way of it implementing its radical manifesto? Now if you look at the US, right, the way they've interpreted the Constitution, and there's actually, right now, a big debate if a Bernie Sanders or Elizabeth Warren was to come to power in the US— Even their mild social democratic reforms would be stalled by a US Supreme Court that would read the Constitution to prevent any kind of redistribution.

And I think that for South Africa, I guess that question will be debated once you have your debates about, you know, whether [there is] land redistribution or not. In India, in the beginning, that was the case, the first 20 years. But at least now, it seems unlikely that if you had a Government that was able to come to power on a radical manifesto, the Constitution wouldn't stand in its way when it implements that manifesto. So I think that it might be expecting too much of Constitutions to say, look, we can use Constitutions to reform society— except under— except when you have categorical rights of [a] certain kind— But I think that if, as long as Constitutions don't stand in the way of radical reform, that's about as much as you can expect from them, regardless of their origins. And that's they should be judged on, finally, these two criteria.

Joel Modiri (16:46): Yeah. Well, so— I mean, I partly agree, the problems are twofold. One, that argument only works if one takes the Constitution as a sort of eternal, fixed thing. I mean, you can just

⁵ Dipesh Chakrabarty. *Provincialising Europe: Postcolonial Thought and Historical Difference* (2000).

⁶ John Stuart Mill. *The Subjection of Women* (1869).

⁷ A reference to Thomas Malthus.

⁸ B.R. Ambedkar. *Annihilation of Caste* (1936).

scrap it and come up with another one, as the foundations of a society change. And the Abolitionist project is that we're going to need to do that, because when you're making a Constitution, you're not just drafting a legal document, as you're pointing out — you are reshaping the values and norms of a society. So that's why I think a Constitution is a particular kind of political project.

Gautam Bhatia (17:21): I'm sorry to interrupt you. Just a quick point on that — do you really think any document can be— can do what you're asking it do?

Joel Modiri (17:27): It's not that I'm asking it to do it — it does it. So in South Africa, the Constitution has massive force over public consciousness, a particular meaning of the Constitution, but the reason— So it's not even— So my critique is of Constitutional worship, is of thinking that Constitutions can do that, but it's also, the written text is simply the written version of a much more foundational political reordering in a society. So for me, it's not that the Constitution "does it", it's that the Constitution ought to reflect it, a Constitution ought to reflect a certain value system, it ought to reflect that ideology. So I would expect a socialist Constitution to look very different to the one in the US. Even if you can push a socialist project through the current Constitution, I would expect— because you're reconstituting a society and then you draft the Constitution. So, I'm not asking this Constitution or any Constitution to do the work of political justice and liberation — that's just asking too much. I am asking for a Constitution to reflect that aspiration more clearly, more directly, in the appropriate language and cultural imaginaries.

Now, the South African Constitution, and Western Constitutionalism in colonial context, faces a much bigger critique, which I'm also elaborating, which is a cultural one — spending more time on a Western document means you're not even thinking— you've in fact surrendered the idea of an African law, for example. You're simply saying, "Listen, it's over, let's just work with what we have". There are people who try to say you could read this whole thing completely differently, but why waste that time if what you need to be doing is asking a much deeper political question: What kind of society do you want to live in?

Gautam Bhatia (18:55): Yeah, I think I'll take up the last thing you said. So there's actually a lot of fascinating historical work on how the Abolitionists in the US in the 1850s actually argued, before a 13th Amendment,⁹ before a 14th Amendment,¹⁰ that this Constitution prohibits slavery, which you think is bizarre because the American Constitution was founded in slavery and the constitutional text talked about "three fifths", you know, like a Black person counting as "three fifths" of a White person for apportionment purposes.

Scholars will argue and historians will show that the American labour movement in the 1910s-1920s pegged their radical labour claims on the Constitution — a tradition of "labour Republicanism" is what they call it. And I think that what's important, and to answer the question which we ended on — Why waste that time? — is exactly that, given that the Constitution plays a legitimising role in society, pegging your claim to the Constitutional manner that is convincing, gets you, at the present time, further than it would get you to reimagine the entire order through a political struggle. And also given the way that the balance of political forces operate at any given time in a society, I think history shows us it's a struggle that, you know, the Left, so to say, tends to lose, right? That's the core of history. So in that sense, the Constitution ends up playing a defensive role, in that if you're able to ground your claims within the Constitution, you're able to attain a position of strength — which of course is not

⁹ The 13th Amendment provides: "*Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.*"

¹⁰ The 14th Amendment provides: "*No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*"

going to be enough, but at least it's something — in a way that you would be unable to if you were to descend into the political arena, given how it's actually rigged against— already against equality and freedom in different ways. And so that's why, to answer the question, you need to spend time to do that work, given the role that Constitutions, as you say, play in society. Unless you're— and this could be a country by country thing— So unless actually in a position where you can implement the constitutional vision that you think is a good one, you have to use the Constitution to preserve what you have, and which is in danger of being swept away, which is, I think— at least presents some kind of danger in India right now.

Second point is, and just to take on from that, is that I think implicit in your argument is the premise that there's something negative about a compromise, a compromise settlement. And I think that need not always be the case, which is why again, I'm interested in how you can resuscitate certain readings after the fact.

So, in 1947, in India, given the balance of power, a compromise was the only way you get anything done, and in which Ambedkar could actually accept the role as chief Draftsman of the Constitution. I think there is a case to be made that, at the time our Constitution was framed, the negotiated political settlement, the compromise, was the only way you could have even got to that point. That moment has now passed. And now is the time to reimagine that Constitution in a way that liberates itself, as I said earlier, from the compromised origins of its coming into being.

Joel Modiri (22:18): But that would be a gradualist project. Because what would make that project different to the remaking of a society is the fact that you argue that using the vocabulary of a Constitution grants the argument greater legitimacy and you can do quite a bit of work with it. So I think one of the things is, you're right that in countries now, confronted by powerful, totalitarian right-wing regimes, the defensive role of a Constitution cannot be understated, and particularly the defensive power of a radical interpretation of that Constitution. But that Constitution alone, if it's not tied, as I'm saying, to a larger political project, firstly, and that Constitution, when it has overwhelmed the political space, won't be able to resist those developments.

I mean, what's happening for example, with reproductive rights in the United States, for example — one interpretation of the Constitution in one way in a different period of history and then— So for me, it also has to do with, where does the power over a Constitution lie? It has to lie in the political community that authorises it. In South Africa, we've had what I've called "Constitutional worship" and "Constitutional optimism", where the Constitution is deified in this way. And so the argument that we've been trying to make is that, the Constitution cannot be the centre of the political anymore, in the way that it used to be.

And that goes beyond the argument merely about the Constitution being limited, that we know. But it also means you've got to probe what a Con— I mean, sometimes the Constitution gets captured by meanings that are not part of its original vocabulary, for example. But it is actualised by those powers of discourse. So I guess I'm merely contesting — well, I'm not "merely" contesting that — but I'm contesting the distinction between a sort pure Constitution and an external world. I'm saying it's already imbricated in its meanings. But you're very right that this has to do with sort of questions of a political history and what one can do with a Constitution. I think we need to be doing multiple projects, political projects at once. I think we need to be seeing what the possibilities are of a Constitution to safeguard against particularly the State power, but I do think we are now at a moment, not where we want to save liberal democracy (because I think that's a mistake), but where we actually are in a position, the world is in a position, where the world has to be remade, if it is to survive, politically, ecologically, you know?

So that's where I would think that the limits of a Constitution are, but I also want the Constitution to move away from the experts and the lawyers and the limited framing of political life in terms of judicial decisions and court debate. The new wave in South Africa of Constitutional discourse is this discussion of particular advocates and judges and how they reason, and that's important and good, but I think if we're going to think about proper constitutional scholarship, we've got to integrate deeper political imaginaries into the conversation. And it also means asking, "What are the silences of a Constitution? What does a Constitution not allow us to even talk about?" And we need to insert those conversations, both in the constitutional scholarship, and we also need to displace the centrality of a Constitution so that those conversations can happen.

But I think we also shouldn't deny that Constitutions also represent fixed interests. So just the point about compromises — a compromise, among other things in the context of South Africa, means that the old order was not defeated, and the dangers of overvaluing the Constitution, claiming it's transformative and not being honest about its political limits, like I think [inaudible] failed to do in the beginning, gives a— frames the discourse of constitutionalism in a very problematic way. It's no coincidence that the critique, the most (in my view) radical critique of the Constitution now is gaining visibility 20 or something years after— well, almost three decades into the New South— the Second New South Africa, as I call it, and that's because there was a hegemonic meaning of a Constitution that is faltering, both on its own terms, and because of the world it's in. And I think that's part of what the Constitution is. So for me, the ontology of a Constitution is also the external world that actualises it. If that makes sense?

Gautam Bhatia (26:38): I think that definitely makes sense. I think what we at least agree on is that the Constitution cannot and should not be the preserve of, you know, lawyers and judges. And I'm reminded of a fascinating, ongoing story, where a village in India, Adivasi, indigenous people whose lands were being taken over, basically imprinted Constitutional provisions on stone slabs, to make their claims and 10,000 of them have now been booked for sedition. So on that pessimistic note, we could talk about this for a long time, but we have to close out— I'll just end by asking you like one— two questions, I think for people who may be listening to this podcast and don't come from South Africa, which is that, if you were to recommend two books that would encapsulate what your vision of constitutionalism or abolitionism is, what would those two books be? And if you were in charge of drafting a Constitution, one provision that you would have [to] draft, what would it look like?

Joel Modiri (27:34): Well, I'd say we should start by reading Steve Biko's "I Write What I Like",¹¹ and then from there, it really gets hard. I think, maybe not books, but I think if you want to understand abolitionist politics, I would say that one needs to read Marcus Garvey, DuBois the Pan-Africanist, the Haitian Constitution, the Ghana Constitution of 1960. I think one needs to read Robert Sobukwe, I think one needs to read Malcolm X, and I think one needs to read Cedric Robinson's "Black Marxism",¹² oh, I think that's really important. I think one needs to read a book by Joy James called "Shadow Boxing",¹³ which is about, sort of, Black feminist politics. That's the one thing.

As to a particular provision. I can't think of one but I can tell you which two I think should be removed from the current Constitution, or three. The first one is Constitutional supremacy — it has to go. The second one is non-racialism, it has to be taken up, not because— it's precisely because it's a regressive conception of race, it actually affirms the existence of races rather than works towards dismantling them. And the property clause. But that's only if I thought this Constitution could be saved, which I don't.

¹¹ Steve Biko. *I Write What I Like: Selected Writings* (1978).

¹² Cedric Robinson. *Black Marxism: The Making of the Black Radical Tradition* (1983).

¹³ Joy James. *Shadow Boxing: Representations of Black Feminist Politics* (1999).

But also, before we close, um, my deep interest is in Ambedkar, and is in his thinking on annihilation of caste, and maybe this is how we'll close, so you can have the last word. Just if you could briefly say a few things about Ambedkar's differences from Gandhi — because Gandhi is a much more popular figure, both in South Africa and elsewhere — and also what it is about Ambedkar's ideas, aside from his role— pivotal role in the Indian freedom struggles, what about Ambedkar lives on today?

Gautam Bhatia (29:30): That's a very difficult question. I'll try to be brief. I'll begin by saying— I'll begin by identifying my own location in this debate. I am an upper caste Indian, like, you know... upper caste Indian. So I belong to the social group that Ambedkar rightly held responsible for the many centuries long structural oppression of his people. So whatever I say needs to be taken into account, given my location in this debate.

Ambedkar's difference with Gandhi? A good source, a book called "The Flaming Feet".¹⁴ In summary, Gandhi believed in accommodation, in the sense that the Hindu society was one and united, and at that time, the Depressed Classes, which later became known as the Scheduled Castes, the Dalits, could be brought within that fold, and his method of doing that was to effectively play up their oppression as being something that is noble. For example, he called them "Harijans", which means "Children of God", and he said that the work that they were assigned in the caste hierarchy, you know, works [including] cleaning and so on was actually very noble and he would have public demonstrations of himself, you know, doing that kind of work and say, "Okay, look, this is actually— they're doing very noble work." And so his idea was that, look, if you can— you can basically paper over the contradictions through a spirit of benevolence, a degree of sacrifice, a public sacrifice, and that you can have unity.

Ambedkar, on the other hand, believed that the only way to break caste oppression was by ensuring that there was political and social power that was given to Dalits, and so he began by asking— he asked many things. He had movements for access to temples, access to water bodies, and so on, but he very interestingly asked [for] separate electorates. So he said, look, they should— Scheduled Castes should be able to vote for their own representatives in Parliament, and Gandhi— for Gandhi that doesn't [inaudible] because that actually meant that you were treating Scheduled Castes as not being Hindus but as being, like, a different group. And Ambedkar was like, "Yes, actually, we are a nation, we are a separate nation." He said, "I have no homeland" once.

And so Gandhi basically then decided to go to— to start fasting to death, and he said, if these separate electorates are granted by the British, then I will basically fast until I die. And Gandhi's popularity, of course, was such that when Ambedkar was told that Gandhi's death will be on your hands, this is in 1932, Gandhi's death will be on your hands, he had no choice but to withdraw his demand for separate electorates and that left a long, long term effect on him. And the best source for all of this is this book Ambedkar wrote, called "What Congress and Gandhi have done to the untouchables",¹⁵ and in that he excoriates the role of the Indian National Congress and of Gandhi. And another work of his called "Jinnah, Ranade and Gandhi",¹⁶ he talks about like these liberal reformers, and it's a critique of liberalism as well. And so I think these—if you read these works, primary works by Ambedkar, and the book "The Flaming Feet", you will get a good sense of the different perspectives that they were coming from.

¹⁴ D. R Nagaraj. *The Flaming Feet and Other Essays: The Dalit Movement in India* (2011).

¹⁵ B.R Ambedkar. *What Congress and Gandhi have done to the untouchables* (1945).

¹⁶ B.R Ambedkar. *Ranade, Gandhi and Jinnah. Address Delivered on the 101st Birthday Celebration of Mahadev Govind Ranade, Held on the 18th January 1943 in the Gokhale Memorial Hall, Poona* (1943)

And the final point — Ambedkar's relevance and role today. This is the interesting thing — Ambedkar has become such an important figure that even political parties that you would otherwise think are opposed to his vision, nonetheless, in public, have to embrace him as the Founder of the Indian Constitution, as a representative of Dalits, and so on. So in the public domain, actually, he has attained the kind of transcendent importance that even at this point of time goes beyond Gandhi, because Gandhi's legacy itself is under threat, not just from radical critique, but also from the right-wing. So Ambedkar, ironically, perhaps, has actually become an even more universal figure, in the public domain, than Gandhi right now.

More practically speaking — You'll see statues of him in Indian villages with a copy of the Constitution under his arm and so on. Dalit leaders have come to the fore recently, like a young leader called Jignesh Mevani, have publicly said, this is Ambedkar's Constitution, that's why, you know, it's important to us and we're going to try to implement Ambedkar's vision.

So I think that he's definitely there, as a presence. And among the Dalits, there's also a very sharp understanding of his politics and what he wanted. I think the problem, and a point that you've made repeatedly, is that in the context of race, that it's that White people have to confront racism in their communities. I think similarly, it is actually the task of upper caste individuals in India to understand and to carefully read Ambedkar's work and to understand what it is that he was talking about, how the things he pointed out still exist today, and what the Constitution— what the constitutional role can be to realise his understanding of what a casteless, classless, equal society actually meant in practice.

Christy Callaway-Gale (34:58): RightsUp is brought to you by the Oxford Human Rights Hub. The Executive Producer is Kira Allmann. This episode was produced and edited by me Christy Callaway-Gale, and was recorded by Nomfundo Ramalekana. Music for this series is by Rosemary Allmann and Show Notes for this episode have been written by Sarah Dobbie. Subscribe to this podcast wherever you like to listen to your favourite podcasts.