

1985

Book Review

Frank S. Bloch

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vjtl>



Part of the [Civil Rights and Discrimination Commons](#), and the [International Law Commons](#)

Recommended Citation

Frank S. Bloch, Book Review, 18 *Vanderbilt Law Review* 173 (2021)
Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol18/iss1/4>

This Book Review is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Journal of Transnational Law by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

BOOK REVIEW

COMPETING EQUALITIES: LAW AND THE BACKWARD CLASSES IN INDIA.
By Marc Galanter. Berkeley, Los Angeles, London: University of
California Press, 1984. Pp. 567.

*Reviewed by Frank S. Bloch**

Competing Equalities is a book that can be read and appreciated at several different levels, as well as for several different purposes, and which demonstrates both the richness of the subject—laws affording preferential treatment to backward classes in India—and the depth of the author's understanding of the material.¹ At the heart of this very impressive book, Professor Galanter examines India's constitutional policy of affirmative action for selected backward classes of citizens, or "compensatory discrimination"—its historical and constitutional origins; its implementation, with particular emphasis on the role of courts in establishing a doctrinal framework for this policy; and its value to Indian society. In setting the stage for his analysis of compensatory discrimination policy and in the course of the detailed discussion of relevant laws, cases, and policies, Galanter includes

* Associate Professor of Law and Director of Clinical Education, Vanderbilt University School of Law. B.A. 1966, Brandeis University; J.D. 1969 Columbia University; Ph.D. 1978, Brandeis University.

1. This book draws upon some of the author's extensive earlier work on the law of backward classes in India and the Indian legal system. See, e.g., Galanter, *Compensatory Discrimination in Political Representation: A Preliminary Assessment of India's Thirty-Year Experience with Reserved Seats in Legislatures*, 14 *ECON. & POL. WEEKLY* 437 (1979); Galanter, *Who Are the Other Backward Classes? An Introduction to a Constitutional Puzzle*, 13 *ECON. & POL. WEEKLY* 1812 (1978); Galanter, *The Abolition of Disabilities: Untouchability and the Law*, in *THE UNTOUCHABLES IN CONTEMPORARY INDIA* 227 (J. Mahar ed. 1972). In a recent article he examined India's legal system in the context of the disastrous gas leak in Bhopal. See Galanter, *Legal Torpor: Why So Little Has Happened in India After the Bhopal Tragedy*, 20 *TEX. INT'L L.J.* 273 (1985). Marc Galanter is a professor of law and a South Asia specialist at the University of Wisconsin-Madison.

highly informative general material on related topics of Indian law and culture that range from the role of "caste politics" in the development of social policy to the nature of the study of law and legal scholarship.

In India, many different types of laws and policies are designed to target identified groups in Indian society and to confer on them special preferences in several key areas of political and economic life, including representation in the legislature and access to education and employment. The need for a system of preferences in modern India can be traced directly to inequities in the treatment of and opportunities for various classes in traditional Indian society based primarily upon the disabilities inflicted by the caste system and by the notion and practices of untouchability.² That India has even attempted to put in place such a preference system is remarkable, in light of the seemingly limitless categories of people that make up its huge population. Because any system of preferences in India must be measured against constitutional guarantees of equality for all citizens—thus, the author's term for these laws and policies, compensatory *discrimination*—and because this system must stand the test of open, democratic political debate, the author's work is of particular interest to readers in the United States and other countries that are attempting to implement similar policies.³ Nonetheless, this is a book about compensatory discrimination policy in India; therefore it is the material and insights on the particulars of that policy and the underlying need and value of compensatory discrimination in India that distinguish this book.

The strongest elements of India's compensatory discrimination

2. The terms "caste" and "untouchables" are of relatively recent origin. Castes are variously defined groups—usually within the Hindu population—with more or less established criteria for membership. Untouchables are usually thought to be members of the lowest castes, meaning castes with the lowest ritual standing and economic position coupled with clear restrictions on allowable social and public activities. See generally M. Galanter, *COMPETING EQUALITIES: LAW AND THE BACKWARD CLASSES IN INDIA* 7-17, 121-53 (1984) [hereinafter cited as *COMPETING EQUALITIES*]. These terms are used in this book notwithstanding doubts as to their authenticity and precision of meaning because they have been incorporated so completely into modern discourse on Indian society.

3. Although the author makes only slight reference to the relevance of his work to affirmative action policy in the United States and similar policies in other countries such as Israel and Japan, the value of this book across national boundaries is obvious.

policy are various forms of reservations for identified groups which are either members of Scheduled Castes, Scheduled Tribes, or Other Backward Classes.⁴ Reservations—in essence, reserved places for identified beneficiaries—exist in three important categories: seats in the lower houses of the Parliament (the Lok Sabha) and the state legislatures (the Vidhan Sabhas); positions in government employment; and admission to academic institutions. In addition to reservations, members of preferred groups can benefit from remedial programs and grants, such as scholarship aid and special health care. In certain circumstances, preferred group members are protected particularly from exploitative or oppressive practices. Although programs and protections for backward classes are within the coverage of this book, the focus of the detailed discussion and analysis is on reservations.

The implementation of India's reservations policy calls for discrimination, pure and simple. An individual who is a member of an identified caste, tribe or other "backward class" is "preferred," under these policies, over another individual who is not a member of one of the preferred groups. Moreover, there is no room here for shading the thrust of the policy by seeking to achieve "goals," as opposed to mandating "quotas."⁵ The Constitution itself directs the reservation of a percentage of seats in the Lok Sabha and Vidhan Sabhas for members of the Scheduled Castes and Scheduled Tribes in proportion to their numbers in the general population, which in 1976 amounted to approximately fourteen percent for Scheduled Castes and seven percent for Scheduled Tribes.⁶ Thus, in selected constituencies, a citizen who is not a member of a caste or tribe included on the lists of Scheduled Castes and Scheduled Tribes cannot run for either of those offices. Similarly, the Constitution allows states and the central

4. Membership in these groups is a major issue in the law of compensatory discrimination. See *infra* text accompanying notes 8-10. Galanter uses the term "Other Backward Classes" to cover backward classes other than those included in the Scheduled Castes and Scheduled Tribes.

5. Current debate on affirmative action in the United States includes the question whether civil rights groups supporting affirmative action should disavow quotas, and whether the stating of goals can have any effect. See, e.g., Drinan, *Affirmative Action Under Attack*, 12 (2) HUM. RTS. at 14 (1984); Hook, *Rationalizations for Reverse Discrimination*, 17 (1) NEW PERS. at 9 (1985).

6. INDIA CONST. arts. 330, 332. These reservations were enacted originally to last ten years but have been extended by constitutional amendment in ten-year increments, most recently in 1980 to last until 1990. *Id.* amend. 45.

government to reserve positions in government service and elsewhere under various conditions for Scheduled Castes, Scheduled Tribes, and "backward class[es] of citizens."⁷ Although not mandated by the Constitution, these reservations, when authorized and implemented by the state or central government, have the same effect: a nondesignated citizen is denied a job or place at a university in favor of a member of one of the preferred groups.

It is apparent then, that the identification of beneficiaries is a key point in the process of establishing and vindicating rights relative to these compensatory discrimination policies. Accordingly, Galanter fully addresses the issues of identification. For these purposes, a distinction must be drawn between membership in the group of Scheduled Castes or Scheduled Tribes and membership in the group of Other Backward Classes. The designation of Scheduled Castes and Scheduled Tribes, while complex, flows from a fairly clear basis in traditional Indian Society: the Scheduled Castes were intended to cover those low-status castes whose members had been isolated and considered "untouchable" by at least the rest of the Hindu population; the Scheduled Tribes were intended to cover groups that lived as tribes both physically and culturally apart from the rest of the population. Laws that affected both of these groups were enacted during the British rule, and although the Constitution does not identify the affected castes and tribes, it does mandate a procedure for designating the beneficiaries of laws benefiting Scheduled Castes and Scheduled Tribes.⁸

The limits of India's compensatory discrimination policy have been tested in the Other Backward Classes category of beneficiaries. As compared to Scheduled Castes and Scheduled Tribes,

7. There are a series of constitutional provisions that together provide states and the central government with this authority. See, e.g., INDIA CONST. arts. 15(4), 16(4), 335. The relation among these and other constitutional provisions—some of which relate to some types of employment and not to others, and some of which address the status of only Scheduled Castes and Scheduled Tribes but not Other Backward Classes—is discussed at length by Galanter. See *COMPETING EQUALITIES*, *supra* note 2, at 368-76.

8. The British laws were far more extensive with respect to "untouchables" than with respect to tribes. From the early 1900s until Independence, there were many lists drawn up by various states attempting to identify the lowest castes. This history, as well as the details of the implementation of the constitutional mandate to identify the Scheduled Castes and the Scheduled Tribes, are discussed by Galanter. See *id.* at 121-53.

this group has far less identity in terms of traditional Indian society⁹ and, accordingly, has less claim, as a group, to preferential treatment. Although Other Backward Classes are included in the constitutional authorization for compensatory discrimination programs, the identification of beneficiaries is left almost exclusively to local authorities. Most of the programs themselves—including reservations—originate at the state or local level. As the various states have dealt with the issue of identifying membership in this group to receive preferential treatment, the tendency has been to use communal criteria, and in particular, selection based on caste. A wide variety of approaches, however, has emerged that includes both occupational and income criteria.¹⁰

The author's detailed discussion and analysis of judicial involvement in compensatory discrimination policy focuses on programs for the Other Backward Classes because the courts, rather than the central government, have been the "unifying and limiting influence" on state tendencies to overreach.¹¹ Several elements of these programs are identified as having been the subject of significant litigation, particularly the use of caste membership as a basis for inclusion. The author points out a source of confusion in the doctrinal development of this issue that arises from the failure of the Indian courts to distinguish between two related questions: "First, may castes or communities be used as the units or classes that are designated as backward?" and "Second, may the rank, standing, or prestige of a caste group be used as a measure or criterion of its backwardness?"¹² Analyzing a series of Supreme Court decisions that begin with the seminal case of *Balaji*

9. The author traces ten different denotations of "backward classes" prior to Independence, ranging from a synonym for untouchables to all communities or even noncommunal groups other than the most advanced groups in the society. *Id.* at 155, fig. 1. The term *Other Backward Classes* is used in this book to distinguish backward classes that are not among the Scheduled Castes and Scheduled Tribes. *See supra* note 2 and accompanying text.

10. The author identifies some interesting regional variations in approach, with the broadest group of beneficiaries and the greatest use of preferences for Other Backward Classes existing in the South. *COMPETING EQUALITIES, supra* note 2, at 181-84. Designations of Other Backward Classes are tabulated by state, showing significant variations in criteria used, percentage included, and preferences given. *Id.* at 182-83, Table 20.

11. *Id.* at 187.

12. *Id.* at 189. As the author points out, "The latter points to 'caste' as the measuring rod; the former points to 'castes' as the things to be measured." *Id.* at 189-90.

v. State of Mysore,¹³ Galanter discusses both the Court's discomfort with schemes that designate a group as backward based upon its caste and its continued unwillingness to prohibit the practice altogether.¹⁴

Galanter's discussion of *Balaji* and its progeny is particularly interesting in light of his observations, later in the book, on the highly formalistic nature of the approach to law in India and on the judiciary's lack of emphasis on questions of policy.¹⁵ His analysis of these cases, while clearly demonstrating Indian judges' preference for a close reading of legal text, portrays a judiciary that is deeply involved in policy and apparently well aware of its involvement. Galanter notes that in *Balaji* itself the Court's objections to the designation of backwardness by membership in a caste stemmed from the fact that the Court "deplores this use on policy grounds."¹⁶ More generally, he observes later that:

[C]ompensatory discrimination cases suggest that the formalistic style should not automatically be equated with an absence of policy concern on the part of judges. We find instances of judges smoothly blending the idiom of the formal style with reflective pursuit of substantive policy. We even find instances of tacit but incisive pursuit of policy by strict invocation of canons of formalism.¹⁷

Professor Galanter's discussion and analysis of these cases and others on related issues are clear and thorough. He uses a style of tracing doctrine that is familiar to readers of American law treatises and legal scholarship, including detailed accounts of separate opinions of individual judges. Interestingly, a concentration upon the reasoning of individual Supreme Court judges can have both a greater and a lesser meaning than such analysis has in the United States. For example, it may have a greater meaning because Indian lower courts are bound, not only by the actual hold-

13. 1963 A.I.R. (S.C.) 649.

14. *COMPETING EQUALITIES*, *supra* note 2, at 191-202.

15. *Id.* at 483-86. This approach to the law carries over to law study and legal scholarship in India. *Id.* at 485, 514-16.

16. *Id.* at 191.

17. *Id.* at 484. He also observes that "[c]ases involving compensatory discrimination have, at times, placed some strain on the judges because of the intense political and social controversy involved. This is an area in which judges' values, ideals, and perceptions of their society cannot but affect their reactions." *Id.* at 487.

ings of the Indian Supreme Court cases in accordance with the doctrine of *stare decisis*, but also by *obiter dictum* that is expressed by the Court.¹⁸ Concentration on the judges' reasoning, however, may have a lesser meaning because the Indian Supreme Court sits in benches that are composed of as few as two of the fourteen judges on the Court and because the average tenure of a judge on the Court has been just over five and one-half years.¹⁹ On balance, the author concedes that, in the context of compensatory discrimination doctrine, "the relative infrequency of such litigation, the system of sitting in benches, and rapid turnover on the courts have allowed few judges to sit in enough cases involving such schemes to articulate in their judgments an explicit and comprehensive point of view on compensatory discrimination."²⁰

Galanter's discussion of the law of India's system of preferential treatment for the backward classes goes well beyond organizing and explaining important threads of litigation in this area and providing doctrinal analysis of key cases. On its own, the detailed and perceptive organization and discussion of the litigation on reservation laws creates a whole understanding far greater than the sum of its parts. In addition, this book includes separate thoughts and material on the policy and politics of compensatory discrimination in India which are surrounded by and interspersed with the fascinating, if sometimes dry, recitation and analysis of substantive law and litigation. Two themes stand out as particularly important: first, the development and implementation of sound policy preferring one group of citizens over another requires the resolution, or at least attempted resolution, of competing concerns about fairness and equality; and second, the constitutional framework that allows compensatory discrimination can be understood and accepted only as a necessary and positive exception to general guarantees of freedom and equality. Together, these themes bring out the social tensions and uncertainties produced by the structure of "competing equalities" inherent in In-

18. The Constitution states that all courts are to apply the law as "declared by the Supreme Court." INDIA CONST. art. 141. This has been interpreted to mean that *obiter dictum* of the Court is to be followed as well as holdings of the Court. This and other aspects of the use of authority and precedent in India are discussed by the author. See COMPETING EQUALITIES, *supra* note 2, at 490-98.

19. A significant factor in this short average tenure is the dominant use of seniority in choosing judges in India. See generally COMPETING EQUALITIES, *supra* note 2, at 479-81.

20. *Id.* at 487-88.

dia's policy of compensatory discrimination.

The task of developing social policy for modern India, with its rich and complex colonial and precolonial society, had to include addressing the competition among many identified segments of the population for a fair, if not predominant, place in the new political and economic structure. Most obviously, there was the need to correct the inequities of opportunity for social and economic advancement brought about by the caste system, in general, and the practices of untouchability, in particular.²¹ Consequently, preferential treatment policies, including extensive reservations for identified members of Scheduled Castes, Scheduled Tribes, and Other Backward Classes, exist in a social and political setting in India where it is clearly understood that a simple pronouncement of formal equality for all citizens would not produce substantive equality.²² This does not mean, however, that the goals of preferential treatment policy are always so narrowly drawn or are achieved easily. Thus, Galanter points out that there are significant differences in the approach taken with regard to the treatment of Scheduled Castes and Other Backward Classes, where the elimination of differences and assimilation are the primary goals of the programs, as opposed to the approach taken with regard to the treatment of Scheduled Tribes, where separa-

21. The need to provide some form of preferential treatment is traced by the author through the period of British rule. Although there were advances in establishing formal rights and privileges for lower classes during British rule, the legal system did not provide for meaningful access. Thus, in a sense, the theoretical and formal development of rights without the parallel creation of the ability to enforce or benefit from these rights heightened the impact of disabilities and left the opening for the implementation of a comprehensive system of affirmative relief. *See id.* at 19-21. The author also points to early concerns of Muslims in the late 19th century about being dominated by the Hindu majority and calls for separate Muslim electorates as contributing to the idea of providing for a system of affirmative preference for identified groups. *See id.* at 25-26.

22. *See id.* at 378-79. The question of the general validity of this basic premise is at the center of current debate on whether specific evidence of past discrimination is needed to justify affirmative action programs in the United States. *See, e.g.,* Diamond, *The Anti-Caste Principle—Toward a Constitutional Standard for Review of Race Cases*, 30 WAYNE L. REV. 1 (1983); Jacobs, *Justice Out of Balance: Voluntary Race-Conscious Affirmative Action in State and Local Government*, 17 URB. LAW. 1 (1985); Marshall, *A Comment of the Nondiscriminatory Principle in a "Nation of Minorities"*, 93 YALE L.J. 1006 (1984). For a recent case on the issue of affirmative action plans and conflicts with seniority systems, see *Firefighters Local Union No. 1784 v. Stotts*, 104 S. Ct. 2576 (1984) (U.S. citation unavailable).

tion and the distinctiveness of the identified groups are specially valued.²³ Similarly, within the context of using caste to identify beneficiaries of compensatory discrimination programs, Galanter points out that pure secularism in Indian society—in the sense of secularism as castelessness—is undermined by these policies;²⁴ however, if one views secularism as consistent with the existence of communal groups that are components of a pluralistic society, then “compensatory discrimination policy contributes to secularism by reducing group disparities and blunting hierarchic distinctions.”²⁵ The author also raises the concern that new problems can result from the implementation of preference policies, such as the possibility that the least backward of the identified groups could receive the benefits if the selection of beneficiaries is based upon the backwardness of the group as opposed to the backwardness of the individual. Such an approach, he observes, will result in “the benefits flow[ing] to the most able and advantaged—the least backward, personally—within the backward group.”²⁶ He discusses a number of infrequently used and problematic solutions to this dilemma, including the breakup of larger groups of backward classes into component groups, which then allows separate reservations for the component groups and the designation of some subgroups for even greater preferences. Ultimately, Galanter concludes that “a single uncompartmented reservation for all the backward tends to reproduce within that group the same kind of unfairness that protective discrimination is designed to eliminate.”²⁷

Professor Galanter also looks at the resistance to the implementation of these policies. Not surprisingly, the greatest concerns appear to originate from the perceptions of unfairness held by those groups most likely to be displaced or held back.²⁸ Conse-

23. COMPETING EQUALITIES, *supra* note 2, at 152-53.

24. *Id.* at 559-62.

25. *Id.* at 561.

26. *Id.* at 205. In this context, the author notes that there can be a mix of criteria used to identify even members of Scheduled Castes “at least to the extent of applying economic and educational tests to de-schedule those groups which have allegedly been so benefitted that the correlation [of group membership to need] no longer holds.” *Id.* at 136. Generally, there has been greater concern about the use of caste- or community-based criteria for selecting membership in the Other Backward Classes. *See id.* at 172, 175.

27. *Id.* at 471. *See generally id.* at 463-72.

28. Thus, in the area of government employment, the author notes that res-

quently, Galanter discusses certain approaches that can temper these problems. Thus, he suggests that once compensatory discrimination programs begin to work and a sizable number of a preferred group begins to earn positions on merit, a relatively small percentage of positions be allocated by reservation for members of that group. Galanter, however, recommends that these reservations be available over and above the number of positions earned on merit.²⁹ Similarly, he proposes economic tests that cut off high-income individual members of targeted groups. Although the number of affected individuals may be small, the tests would be helpful: "in so far as such tests assuage the fears of other communities that well-off sections within the backward are the undeserving beneficiaries of preferences, such tests perform an important symbolic function—possibly their most important one."³⁰

On balance, Galanter rates compensatory discrimination policy "a partial and costly success" for the Scheduled Castes and Scheduled Tribes.³¹ With respect to the Other Backward Classes, however, he sees the effect of these policies, as practiced, in more negative terms: preferences for Other Backward Classes "borrow legitimacy from the national commitment to ameliorate the condition of the lowest. At the same time they undermine that commitment by broadcasting a picture of unrestrained preference for those who are not distinctly worse off than nonbeneficiaries, which attaches indiscriminately to all preferential treatment."³²

ervations seem to be the least effective at the middle and higher ranges of positions where groups most threatened by preferential treatment are most likely to be employed and when promotions, as opposed to initial appointments, are involved. *See id.* at 95, 101. Such perceptions of unfairness are contributors to the current unrest in Gujarat. *See infra* text accompanying notes 33-34.

29. COMPETING EQUALITIES, *supra* note 2, at 462. This approach would avoid the overuse of reservations that would result if a high percentage continued to be used over and above the positions earned on merit, but would still provide an opportunity for the remaining disadvantaged members of the preferred group.

30. *Id.* at 265. One particularly threatening policy, the "carry-over" rule that allowed the adding of previously unfilled reserved positions to current allocations and thus presented the possibility that eventually the nonpreferred population could be excluded entirely, was struck down by the Supreme Court. *See id.* at 404-13; *Devadasan v. Union of India*, 1964 A.I.R. (S.C.) 179.

31. COMPETING EQUALITIES, *supra* note 2, at 551.

32. *Id.* at 552. More generally, the author notes at another point that problems of definition and policy in this area have led to failures of discourse, which in turn have caused a discrediting of the entire policy. *Id.* at 356.

The extent of the hostility of various groups towards compensatory discrimination programs became apparent recently in rioting that occurred in response to proposals to increase the reservations in Gujarat, which followed similar rioting in that state in 1981. A study of the local and national factors that led to such extreme reactions to the reservations in Gujarat, which was not attempted by Galanter,³³ would be a natural and important follow-up to this work.³⁴

The law of compensatory discrimination policy in India, as Galanter insists, must be viewed as a constitutionally authorized exception to the general constitutional principle of equality: "In the Constitution, the compensatory theme appears juxtaposed with the theme of formal equality. The provisions for compensatory preference appear as exceptions within a framework of enforceable fundamental rights which attempt to curtail the significance of ascriptive groups and to guarantee equal treatment to the individual."³⁵ Thus, the two major constitutional provisions authorizing preferential treatment for the backward classes, articles 15(4) and 16(4), make the exceptional nature of the authority apparent: "nothing in [other relevant articles] shall prevent" the implementation of laws favoring these groups.³⁶ This constitutional structure provides what Galanter terms "leverage for judicial intervention" into the area of compensatory discrimination policy. The courts carry the obligation to assure that government policies in

33. The 1981 rioting was mentioned briefly as a "sanguinary expression to the widespread resentment of [compensatory discrimination] policies and their beneficiaries" only in the preface to this book because it occurred after the manuscript was completed. *See id.* at xx.

34. One Indian newspaper commentator suggested recently that antireservation agitation has been so intense in Gujarat because the middle class in that state is large, includes many castes that have progressed economically since Independence, and is particularly strong politically. Sadhu, *Gujarat Scene: An All-Inclusive War of Economics*, *The Statesman*, April 29, 1985, at 1, col. 5.

35. COMPETING EQUALITIES, *supra* note 2, at 364. The major antidiscrimination provisions of the Constitution of India are found in articles 15(1), 16(2), 23(2), 29(2), and 325. ("The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them"). Equal protection is guaranteed in article 14: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

36. The details of these provisions and others relevant to compensatory discrimination laws are discussed at length by the author. Reserved legislative seats are covered separately in Part XVI of the Constitution, articles 330-334.

this area do not extend beyond the limits allowed by the constitutional exceptions.³⁷ At the same time, it must be kept in mind that as Galanter says, these are “exceptions of a peculiar sort. They do not carve out an area in which the general principle of equality is inapplicable. Rather, they are specifically designed to implement and fulfill the general principle.”³⁸ Consequently, the reservations are valid only if used to enhance the position of the backward classes; they cannot be used to limit opportunities of a particular group, even though that certainly happens in practice. To that extent, the “reverse discrimination” problem so much in the forefront of debate over affirmative action policy in the United States has constitutional sanction in India, but only within the limits permitted by the exceptions. Thus, “the courts have been anxious to confine [the use of the exceptions] to those objectives, to prevent the expansion of group preferences into a general principle of operation, and to reconcile these exceptions with their context of general fundamental rights.”³⁹

The continuing effort in India to implement constitutional compensatory discrimination policies for the Scheduled Castes, Scheduled Tribes, and Other Backward Classes—sometimes helped and sometimes hindered by politicians and judges—is a courageous and important attempt by one country to provide meaningful, universal access to the benefits of modern society for all of its citizens, notwithstanding the risk of serious social and political disruptions such as those experienced in Gujarat. As expressed by Galanter, “[c]ompensatory discrimination embodies the brave hopes of India reborn that animated the freedom movement and was crystallized in the Constitution. If the reality has disappointed many fond hopes, the turn away from the older hierarchic model to a pluralistic participatory society has proved vigorous and enduring.”⁴⁰

37. See *COMPETING EQUALITIES*, *supra* note 2, at 53.

38. *Id.* at 378. See also *id.* at 561 (“The compensatory principle of substantive equality is added to the constitutional scheme of formal equality, but it does not displace it.”).

39. *Id.* at 220.

40. *Id.* at 562.