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The Locus of Sovereign Authority in Nepal

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ABSTRACT

The present paper investigates in a historical perspective the articulation of the concept of internal state sovereignty in modern Nepal's constitutional domain by juxtaposing an analysis of the country's various constitutional forms with a reading of the physical architectural structures hosting the main central state institutions (the capitol) in Kathmandu. The emphasis on the internal notion of state sovereignty with a focus on the formation of the modern nation-state seeks to illuminate the tensions underlying the transformation of the relationship between the state and the people in Nepal and the repeated failure to respond adequately to democratic aspirations and demands for inclusion.

This Chapter investigates in a historical perspective the articulation of the concept of internal state sovereignty in modern Nepal's constitutional domain by juxtaposing an analysis of the country's various constitutional forms with a reading of the physical architectural structures hosting the main central state institutions (the capitol) in Kathmandu. The essay deploys the concept of 'articulation' as elaborated in Cultural Studies (Hall 1980, 1986; Grossberg: 1992; Slack 2005). By emphasizing the internal notion of state sovereignty with a focus on the formation of the modern nation-state, it seeks to illuminate the tensions underlying the transformation of the relationship between the state and the people in Nepal and the repeated failure to respond adequately to democratic aspirations and demands for inclusion throughout the country's various constitutional configurations. Six historical periods are analysed: the Shah period (1769-1846), the autocratic Rana era (1846-1951), the first democratic interlude (1951-1960), the Panchayat monarchical autocracy decades (1960-1990), the years after the re-democratisation of 1990 (1990-2007), and the post-conflict period under the currently in force Interim Constitution (post-2007).

By combining the approach of Historical Institutionalism with a cultural study of both constitutional law and architectural forms, the Chapter seeks to unearth the historical stratification of the constitutional structures that express the powers and identity of the Nepali people. It argues that the construction, refurbishment, and shifts in the use and function of Kathmandu's capitol buildings are coterminous with the transformations in the enunciation of state sovereignty throughout Nepal's constitutions. In short, Kathmandu's capitol structures articulate in physical form Nepal's constitutional framing of the concept of state sovereignty through various historical periods. Four main sites corresponding to the three branches of government (executive, legislature, and judiciary) are examined to illustrate the relationship between political modernisation, constitutional architecture, and 'the people' in Nepal. First, the office of the Head of State, from the old Royal Palace in Basantapur (1769-1896) to the new Royal Palace of Narayanithi (1896-2008, but completely renovated in the early 1960s), now the Residence of the President of the Republic in the Shital Niwas Darbar (from 2008 onwards). Second, the Office of the Prime Minister within the Singha Darbar compound (from 1906 onwards). Third, the seat of the legislature, from Parliament Building or Gallery Baithak (1959-2008) and Rashtra Sabha Bhawan (1991-2007) within the Singha Darbar

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compound to the 1993 Chinese-built International Convention Centre, which hosted the Constituent Assembly (2008-2012); and, finally, the Supreme Court building (from 1963 onwards).

The core argument is that the instability and repeated failures of Nepal's various constitutional settlements derive from the country's historical difficulties in secularising political authority and entrenching the doctrine of popular sovereignty at the constitutional level due to the country's modalities of state formation and nation-building. These failings result from the motives and influences of both Nepali and foreign political actors and have directly affected Nepal's constitutional arrangements over the years in two distinct but complementary ways.

First, the constitutional drafting modalities, form of state, and frame of government formally adopted and/or informally developed in Nepal over the years relegated the directly representative element of government, i.e. the legislature representing 'the people', to an inferior position – a particularly pernicious outcome in a country that has adopted a parliamentary system of government since the early 1950s. This inferior position is reflected in the buildings used to house the legislature. Over the years, a high degree of executive dominance and unaccountability to parliament, by both monarch and Cabinet, have been progressively entrenched in Nepal. The 'constitutionalisation' of the Shah monarchy was defective both in the drafting and actualisation of the 1951, 1959 and 1990 Constitutions, which were expected to institutionalise a democratic form of government. The British constitutional principles that 'the king reigns but does not rule' and that the sovereign owes his position not only to hereditary right, but also to the consent of parliament, and that his position could be taken away if he misgoverned (Bogdanor 1995: 1-8), never fully took root in Nepal. Moreover, even during democratic periods, the executive branch of government often escaped the accountability mechanism of Cabinet and ministerial responsibility to Parliament – often because no legislature was in place (1951-1959; 2002-2006; May 2012-November 2013), but also at times when a directly elected legislative body was operational (1959-1960; 1991-2002).

Second, a monolithic, top-down version of the Nepali nation revolving around historically hegemonic Parbatiya high caste Hindu narratives was entrenched in Nepal's constitutional texts, which used unequivocal ethno-cultural terms revolving around the historical prominence of the Pahari Hindu Shah monarchy, and thereby excluded the majority of the Nepali people. As a result, the various bouts of institutionalisation of Nepal's frequent regime changes failed to respond adequately to both the democratic aspirations and the demands for non-discrimination and/or recognition of an ever increasing number of individuals and groups within Nepali society, thus leading to demands for radical state restructuring yet again through constitutional change. These relations of dominance and subordination are as well reflected in Kathmandu's institutional architecture.

Juxtaposing the analysis of Nepal's constitutional edifice with a reading of the architecture of Kathmandu's capitol documents the historical sedimentation of autochthonous institutional arrangements characterised by path dependent continuities, rather than sudden changes at critical junctures institutionalised by a 'constitutional moment' (Ackerman 1993). This approach also reveals the emergence of a distinctively Nepali constitutional praxis over the years anchored in a specifically Nepali version of the state, the organisation of government, and the articulation of sovereign authority. While modern sovereignty 'is vested neither in the ruler, nor the office of government, nor in the people' but is expressed in a relationship, it establishes the rightful authority of government by political right and, through the operations of political right, the unlimited competence to govern by way of positive law (Loughlin 2010: 186). The key issue that this Chapter seeks to illuminate are the historical tensions in Nepal between political actors over what constitutes 'rightful' political authority in the public sphere and the institutional articulation of such authority in specific constitutional forms.

Thus, the shifts in the organisation and meaning of Kathmandu's capitol – a form of cultural production – are integral to the pursuit, reproduction, and contestation of power in Nepal (Duncan 2005: 3), and its articulation in constitutional form.

The Nation-State, Modern Sovereignty, and Secularisation

According to Martin Loughlin (2004; 2010), sovereignty is a facet of the modern nation-state and a foundational concept of public law. The term 'sovereignty' was already used in medieval times, but it was understood as 'suzerainty' and identified only the feudal powers of lordship and patrimonial rights of monarchs (Loughlin 2004: 74). The modern concept, instead, designates the relationship between the state and the people (Loughlin 2004: 84) and originated with political modernisation in Europe and the formation of nation-states. The concept of 'public law' itself is a 'western invention', whose origins can be traced back to the attempts of medieval jurists to grapple with the question of the authority of the governing power (Loughlin 2010: 6). I have discussed elsewhere how the model of the nation-state travelled to Nepal starting in the early nineteenth century with the imposition of a fixed linear border delimiting mutually exclusive state sovereignty by the British colonial power following Nepal's military defeat (Malagodi 2013: 33-34). Similarly, modern constitutionalism entered Nepal at the twilight of the Indian anti-colonial struggle. After India's independence the work of the Indian Constituent Assembly (1946-1949) propelled demands for constitutional guarantees in Nepal. This resulted in the drafting of the 1948 Rana Constitution, which was however never implemented. Nepal's experiments with constitutional democracy effectively began only with the overthrowing of the Rana autocracy in 1951.

Distinctions should be drawn among the key terms: state, government, sovereignty and the people, and their relationship one to another. First, the state is the institutional entity distinct and autonomous from the sovereign (the ruler) and comprises territory, people, and institutional form (Loughlin 2010: 208).[2] Second, modern government identifies the de-personalised office of the sovereign exercising sovereign powers of rule. The office of the sovereign can be divided into separate branches as illustrated by the institutional organisation of constitutional bodies in conformity with the doctrine of the separation of powers according to their executive, legislative, and judicial functions (i.e. the frame of government). Hobbes defines the government as the 'representative of the person of the state' and in this respect Loughlin (2004: 59) describes it as constituted power.[3] The institutionalisation of the office of the sovereign is well attested by the British institutional devices of King-in-Parliament, King-in-Council, and the like, by which various branches of the government exercise power on behalf of the state and do so legitimately through the mechanism of political representation of the people. Third, the concept of sovereignty has both legal and political connotations. On the one hand, it indicates the absolute legal authority of the ruling power over the governed within a given territory – the modern nation-state – and such authority cannot be divided. The legal connotation of sovereignty can be described as 'legislative competence' (i.e. supreme law-making authority within a given state territory) and is illustrated by the British doctrine of parliamentary sovereignty (Loughlin 2004: 66).

[2] 'The state does not exist at all before its representative [the sovereign] is set in place […] it is entirely created by the act of representation. The state is not created as a result of the operation of law since the state and its representative [the sovereign] are instituted precisely for the purpose of creating law. The state stands alone as a fictitious person' (Loughlin 2004: 59).

[3] 'The sovereign holds an office impressed with public responsibilities and for the realisation of which he is vested with absolute sovereign authority. This authority is exercised mainly through the power of law-making. And although these laws are enacted by the sovereign, the sovereign is a representative acting in the name of the state' (Loughlin 2004: 59).

On the other hand, the political connotation of sovereignty is well attested by Carl Schmitt's famous statement: 'sovereign is he who decides on the exception'; it indicates the notion of 'political capacity', i.e. constituent power.[4] Fourth, the concept of 'the people' indicates 'the governed'. The term 'nation' is also frequently used interchangeably to signify 'the people' (Yack 2001: 520), but Bernard Yack's argues persuasively that the terms illustrate two distinct ways of representing the imagined political community that inhabits the territory of the state. The people and the nation contribute to legitimate political authority, although in different ways. (This distinction is discussed in the following section.)

Nepal's political modernisation occurred in a different manner from other South Asian jurisdictions since Nepal was never colonised. State-formation preceded the process of nation-building, which was essentially a state-framed phenomenon (Brubaker 1999: 98). For two reasons the analysis in this Chapter deploys the notion of sovereignty as a prism through which to investigate the nature of the relationship between the state and the people to explain Nepal's constitutional instability. First, modern state formation in Nepal began in the late eighteenth under the aegis of an autochthonous political force – the Shah Hindu monarchy – which was pivotal to the institutional organisation of the Nepali state. The monarchy was central to the country's frame of government and instrumental to its nation-building process. Significantly, the Shah Kings remained continuously in power from the late eighteenth century until 2008. Second, Nepal's military defeat at the hand of the British East India Company in 1816 resulted in the imposition of a modern linear state border, which ignited the process of modern external state formation by introducing the Himalayan kingdom to the notion of mutually exclusive state sovereignty understood as 'external state sovereignty' under Public International Law (Malanczuk 1997: 17). The Anglo-Nepali War did not, however, result in Nepal's subjugation by a European colonial power. In fact, Nepal's complete independence from Britain was recognised even by way of Treaty in 1923. Nepal represents an important case study to analyse both the modalities of political modernisation in a South Asian country that was never colonised, and the exercise of state-building through various attempts to establish and maintain a stable constitutional form.

European political modernisation took place through the four processes of institutionalisation, internal differentiation, corporatisation, and secularisation of the office of the sovereign within the nation-state (Loughlin 2010: 184-5); it is argued that Nepal underwent a similar process. First, the idealisation of the King's office entailed that the King's image was magnified so that kingship could take on the character of an ideal office. With the onset of the Rana regime in the mid-nineteenth century the Shah Kings were stripped of effective power, but the Hindu Shah monarchy was retained as the living symbol of the unity of the Nepali state. Second, the process of internal differentiation of governmental functions meant that sovereign powers of government no longer inhered directly in the person of the monarch, but were exercised in his name by the Rana Prime Minister. Third, through the process of corporatisation of the office of the sovereign, sovereignty came to mean the absolute legal authority of the ruling power in its corporate capacity. Unsurprisingly, in 1854 Jang Bahadur Rana promulgated the Muluki Ain ('Country Code') – a legal document aimed at codifying traditional social conditions and imposing the Parbatiya Hindu caste rules on the various ethno-linguistic groups living in the territory of the Nepali state. In this respect, historian M.C. Regmi (1975: 110) argues that the Code had a constitutional value because it imposed homogeneous socio-legal norms on the entire

[4] 'Sovereign authority does not rest in any particular locus; it is the product of the relationship between the people and the state. Political power is a complex phenomenon: it is rooted in the division between governors and governed, it rests on the principle of representation, and it underpins the concept of sovereignty' Loughlin (2004: 63).

population under Nepali sovereignty and thereby introduced a degree of legal uniformity within the state territory through positivist law. As a result, the Code was pivotal to the processes of state and nation-building under the Ranas. Finally, the process of secularisation entails the acceptance that the sovereign right is not bestowed from above by God, but is conferred from below by the people. Significantly, Nepal became constitutionally secular only in 2007 with the promulgation of the Interim Constitution. The democratic 1990 Constitution – in force until 2007 – featured instead a Preamble in which the King 'promulgates and enforces' the Constitution while recognising that the people (*janatā*) are the source of state power (*rājyashakti*), in line with Article 3, which vested state sovereignty (*sārvabhaumsattā*) in the people (*janatā*). The 1990 Constitution also defined both the state (*adhirājya*) and the King (*rājā*) as Hindu. On a symbolical level, it is only with the promulgation of the 2007 Constitution that the Preamble starts, in line with the American and Indian traditions of popular sovereignty, with the expression 'We, the People of Nepal, in exercise of the sovereign powers and state authority inherent in us' (*hāmī sārvabhaumsattā ra rājkīyasattā sampanna nepālī janatā*), and any explicit reference to Hinduism is removed from the constitutional text.

The core argument here is that the instability and repeated failures of Nepal's constitutional configurations derive from the difficulty in accomplishing the fourth step in modernisation, i.e. the secularisation of political authority. The difficulties in achieving secularisation led to the tensions amongst various political actors about the basis of rightful political authority in the country, i.e. the divine top-down authority of the monarchy or the democratic bottom-up authority of the people. The process of secularisation is sanctioned by the virtual device of the social contract made by 'the people', which underpins the establishment of modern constitutional forms. Thus, the difficulties of constitutionalism in taking root in Nepal are explained in light of the country's repeated failures to embrace in its various constitutional forms one of the doctrine's core tenets – popular sovereignty – and its corollaries of political representation, legitimate government, and democratic accountability.

Constitutional Identity, Popular Sovereignty, and 'The People'

The articulation of the relationship between the state and the people in any constitutional form explains the configuration of a country's constitutional identity in two significant ways. First, the investigation of the concept of sovereignty deployed in a constitutional system sheds light on the nature and workings of the form of government adopted. Second, the focus on sovereignty as a relational concept linking the state to the people illuminates the way in which a constitution defines the people and connects such definition to the institutionalised constitutional representation of the nation. I adopt the approach of Historical Institutionalism – with its focus on history and institutions structuring political outcomes (Steinmo 2008: 118) – to analyse Nepal's constitutional identity as both the factor requiring an explanation (dependent variable) and the factor explaining Nepal's constitutional instability (independent variable).

The expression 'constitutional identity' encompasses both dimensions of power articulated by modern constitutionalism: constituted power and constituent power. Gary Jacobsohn (2006: 361) defines 'constitutional identity' as 'the body of textual and historical materials from which [fundamental constitutional] norms are to be extracted and by which their application is to be guided […] representing a mix of aspirations and commitments expressive of a nation's past, constitutional identity also evolves in ongoing political and interpretive activities occurring in courts, legislatures, and other public and private domains' (2006: 361). Therefore, by adopting the Historical Institutionalist concept of path-dependence, we can analyse Nepal's constitutional identity for each historical period in which a particular regime is institutionalised by a specific constitutional

settlement, while bearing in mind that that the outcomes in each period are the product of outcomes during previous periods (Lieberman 2001: 1014). These self-reinforcing mechanisms of persistence are pivotal to the explanation of both the institutional continuities throughout regimes changes and the historical difficulties in establishing constitutional controls over arbitrary executive power, in constitutionalising Nepal's national monarchy, and in framing an inclusive constitutional definition of the nation. Ultimately, the investigation into the articulation of state sovereignty throughout Nepali constitutional history aims to explore the modalities and limitations of 'the conferral of authority and legitimacy on modern governmental ordering' in Nepal throughout its constitutional history (Loughlin 2010: 1).

The doctrine of popular sovereignty places the notion of 'the people' at the core of modern constitutionalism. The constitutional understanding of 'the people' is polysemic: 'the people' are both the source of legitimate political authority mediated by representation, which reflects the political sovereignty of the people encapsulating the democratic principle, and the object of constitutionally-limited political authority, which is expressed by the legal connotation of sovereignty. Constitutions vest sovereignty in 'the people', while the government (the sovereign) exercises sovereign powers in the name of the people within a given territory – the nation-state. Thus, the modern conceptualisation of the 'people' is the central interface of the so-called 'paradox of constituent power' in which the essentially political notion of the people's unlimited and absolute constituent power is reconciled with the notion of a rule-bound legal constitutional order through the exercise of representative politics (Loughlin and Walker 2007: 1). Thus, if modern sovereignty is characterised as the absolute legal authority of the ruling power over the governed, whose basis of political legitimacy is located in the people, and modern constitutions give institutional form to the relationship between state and people expressed in terms of sovereignty, it follows that modern constitutions also define and institutionalise the very notion of 'the people' within a nation-state.[5] This understanding of constitutionalism as political right reveals that public law functions as 'a power-generating phenomenon' through constitutional checks and balances. In Nepal, the relegation of the people to a subordinate position within the organisation of the country's frame of government as well as the conflation of the concept of 'the Nepali people' with an exclusionary ethno-cultural definition of 'the Nepali nation' ultimately undermined the legitimacy of political authority in the country and destabilised its constitutional edifice. These two processes are analysed below.

First, investigating the articulation of sovereignty within a constitutional system sheds light on the form of government adopted and its operation. In Nepal, repeated attempts have been made since the 1950s to institutionalise a constitutional monarchy and a parliamentary form of government. The concept of sovereignty is a useful prism through which the modalities of 'constituted power' and the effectiveness of constitutional limitations on arbitrary executive power can be assessed because doing so reveals the position of the people in the country's constitutional architecture – not solely in a metaphorical manner. The modern notion of popular sovereignty, which is based on the principle of political representation of the people, replaced the traditional ancient Greek concept of direct popular rule within the polis (Yack 2001: 519). This transition to modern 'indirect sovereignty' of the people is not necessarily linked with democratisation: 'popular sovereignty arguments […] have lent legitimacy to constitutional monarchies and even dictatorships in which leaders or parties claim to embody the people's deep but unspoken will' (Ibid. 519). Therefore, it is of paramount importance to

[5] 'With the adoption of modern republican constitutions, constitutions that initially presented themselves as contracts amongst a prior existing group of people to establish a framework of government expand to fill the entire political space. The constitution ends up constructing 'the people' in whose name the established governmental authority acts' (Loughlin 2010: 285).

investigate the institutionalisation and operalisation of the mechanism of political representation within the constitutional edifice in order to understand the nature and effectiveness of the checks and balances imposed on executive power.

In Nepal, the investigation of the historical articulation of sovereignty through, on the one hand, the relationship between the Crown and the people and, on the other hand, and the position of the legislature vis-à-vis the executive reveals the constitutional positioning of 'the people' over time. As late as 1990, the kind of democracy that the new Constitution sought to establish was defined in Nepali as *prajātantra* (Article 4). The term *prajā* (people) retains a sense of subject-hood: there cannot be a *prajā* unless there is a *rājā* (King). So, the 1990 Constitution, while establishing fundamental rights for all Nepali citizens and formally vesting sovereignty in the people, implicitly still made them the King's subjects. Similarly, Article 4 also employed the term *adhirājya* to define the Kingdom; such term is also etymologically linked with *rājā* and it is used to define the state. Hence, as with *prajātantra*, it is difficult to conceive of an *adhirājya* without a *rājā*. The *rājā* is a Hindu ruler whose authority stems from the traditional notion of Hindu kingship. It follows that political authority in Nepal maintained a 'legitimation from above' as late as 2007. The behaviour of both King Birendra Shah and King Gyanendra Shah between 1990 and 2007 demonstrates that constitutional checks on monarchical power were at best ineffective. Moreover, the directly elected lower house of parliament (pratinidhi sabha) has been perceived and treated over the decades as an expendable institution since the 1950s. In 1994, 1999 and 2002 different Prime Ministers dissolved the lower house as a way of keeping in check rebellious factions within their own parties and the opposition.[6] Unconstitutional monarchical behaviour and unaccountable executive dominance plunged the country into deeper political instability amidst a violent civil war (1996-2006). In fact, between 2002 and 2006 Nepal was ruled by a string of Cabinets without a lower house in place and often under the direct rule of the King. In these circumstances Cabinet members were not appointed on the basis of direct universal elections, but were either directly appointed by the King or appointed on the basis of intra or inter-political compromises completely outside the legislative forum.[7] Most importantly, these Cabinets – devoid of a legislative basis – have been unburdened by the pressure of retaining parliamentary confidence through responsible good governance. Moreover, since the dissolution of the Constituent Assembly in May 2012 Nepal has been yet again ruled by a government while no legislature is in place. As a result, the country has been bereft of its only directly representative constitutional body, which is deputed to embody the foundation of legitimate constitutional government in a parliamentary frame of government.

Second, the focus on sovereignty as a relational concept illuminates the way in which a constitutional system articulates the relationship between the notion of the people and the representation of the nation institutionalised at the constitutional level. In this regard, the political understanding of sovereignty as 'constituent power' also draws attention to the ancient aspect of constitutionalism by which the constitution is antecedent to government and the political constituting act takes place when a people constitutes itself as a state (Loughlin 2004: 120-121).[8] As Daniel Lee pointed out, the notion

[6] Hari Prasad Nepal v Prime Minister NKP 2052/1994 Vol. 37 N.1 p. 88; Ravi Raj Bhandari v Prime Minister SAB 2052/1995 Vol. 4 N.1 Bhadra p. 16; House Dissolution (N.3) Case SAB 2055/1998 Vol. 6 N.1 Māgh p. 16; Supreme Court's judgement on 2002 dissolution of the House of Representatives rendered on 6 August 2002 (6 Saūn 2059 BS).

[7] On a similar note, no local elections have been held in Nepal since 1997.

[8] 'Once the constitution has established general authority, 'the people' that provided the source of the legitimacy of government become a concept constructed within the same political space. Governments act in the name of and for the benefit of the people, and a variety of institutional devices are established to ensure that governments act in 'the public interest'. But since the government establishes its authority through its ability to control and

of sovereignty is not relevant to the concept of 'the people' if 'the people' are understood in a Hobbesian sense as 'the multitude', but only if the people are conceptualised in a Rousseauian way as 'a unity out of a plurality'.[9] The latter notion of 'the governed' as a political community is at the heart of modern constitutionalism. As illustrated by Rousseau (1762/1994: 54), 'the multitude' transforms into 'the people' only after entering into the social contract, which is based on the fictional concept of the unified 'general will of the people'. The act of association by individuals transforms them into a collective body characterised by its unity, common self-life, and will.[10]

With the rise of the modern nation-state, the notion of the people has often been conflated with that of the nation, but these terms indicate different ways of imagining the political community that inhabits the territory of the state. Yack (2001: 520-521) draws the following distinction: 'the people' present an image of community over space by portraying all individuals within the given boundaries of the state as members of a community from which the state derives legitimate authority; 'the nation' presents an image of community over time through a shared heritage passed from one generation to another. As a result, while the two terms are indeed distinct, their conflation has been identified as crucial to the rise of nationalism (Yack 2001: 519-520).

> Since popular sovereignty […] is indirect or mediated sovereignty, something other than the structure of political institutions or the exercise of ruling and being ruled must define the people who exercise it. For is the people precede the establishment and survive the dissolution of political authority, then they must share something beyond a relationship to that authority […] For the nation provides precisely that what is lacking in the concept of the people: a sense of where to look for the prepolitical basis of political community (Yack 2001: 524).

In Nepal, the equation of the people with the nation at the constitutional level has been particularly problematic because the civic egalitarian notion of 'the Nepali people' – understood as both 'the governed' and 'the citizenry' – is in fact significantly broader and more inclusive than the ethno-cultural notion of 'the Nepali nation'. The image of the Nepali nation has been manufactured over the centuries around the ethno-cultural narratives of Hinduism, the Shah monarchy and the Nepali language of the dominant Parbatiya Hindu castes. Such national narratives exclude, or at least place in a subordinate position, by virtue of social, cultural, linguistic, religious, caste, gender connotations a significant number of Nepali social groups and/or single individuals that instead form part of the people by virtue of their equal political affiliation to the Nepali state.

Nepal's failure to fully embrace – even after the re-democratisation of 1990 – the concept of 'sovereignty from below' through effective mechanisms of political representation and checks on executive power translated not only into constitutional drafting modalities, form of state, and a frame of government that did not respond adequately to the democratic aspirations of many Nepalis, but also into a monolithic, top-down, hegemonic institutionalisation of the Nepali nation in ethno-cultural terms, which excluded the majority of Nepali society (Malagodi 2013). Unsurprisingly, only six years

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manage the people, this concept of 'the people' is increasingly shaped by these very same institutional arrangements' (Loughlin 2010: 285).

[9] Daniel Lee, 'Delegating Sovereignty: Jean Bodin on Imperium, Iurisdictio and the Right of Magistracy'. Seminar held at the London School of Economics and Political Science, 13 March 2013.

[10] Rousseau (1762/1994: 56) explains the modern transformation of the relationship between the governors and the governed in these terms: 'the public person that is formed in this way by the union of all the others once bore the name city, and now bears that of republic or body politic; its members call it the state when it is passive, the sovereign when it is active, and a power when comparing it to its like. As regards to associates they collectively take the name of people, and are individually called citizens as being participants in the sovereign authority, and subjects as being bound by the laws of the state'.

after the promulgation of the 1990 Constitution, an armed Maoist insurgency was launched in the name of the people – the People's War, Jan Yuddha – against Kathmandu's central government. Key Maoist demands since the outset of the conflict (1996-2006) were the abrogation of the 1990 Constitution and the promulgation of a new one drafted by an elected Constituent Assembly, and invoked themes of identity politics that were reflected in the constitutional settlement of 1990: demands for secularism, for a republic, for the removal of caste-based discrimination, for the equal treatment of all the many languages spoken in Nepal; for equal property rights of women. In fact, the notion of 'the people' has been pivotal to Nepal's demands for state restructuring and recognition by constitutional means since the country's first democratisation in the early 1950s.

Nepal's Architecture of Power, Constitutionalism, and Identity Formation

The constitutional positioning of the people and the representation of the nation are investigated here within the physical architectural structures hosting Nepal's main state institutions and the country's various constitutional texts. While the relationship between architecture and national identity has been amply examined in academic writing (Vale 1992; Wang and Heath 2008; Goodstein 2009; Huang 2011; Quek 2012; etc.), the connection between physical architecture of the capitol and constitutional identity has remained virtually unexplored. The theory and method of articulation are deployed to create such a connection (Slack 2005: 115). Recent academic works have, however, concentrated on the manner in which the architectural design and structure of courthouses express, construct, reproduce, and disseminate key principles of the legal system, such as due process (Mulcahy 2011) and justice in democratic societies (Resnik and Curtis 2011), indirectly addressing fundamental tenets of constitutionalism. This essay seeks to render manifest the connection between the architectural structures of central state institutions in Kathmandu, Nepal's capital, and the way in which the relationship between the Nepali state and the Nepali people has been articulated in different historical periods in the country's various constitutional configurations and in Kathmandu's government buildings. The analysis builds on the architectural metaphor, which has been deployed over the centuries by many scholars – from Bodin to Hobbes, from Descartes to Bagehot – to provide a visual representation of the structure and functioning of public law. It is a helpful reminder that, while there is no single standard constitutional template, governmental arrangements indeed reflect the historical stratification of earlier regimes (Loughlin 2010: 101-102).

In this respect, the present analysis suggests that the historical modalities in which Kathmandu's physical 'architecture of power' was constructed, transformed, and re-appropriated reflect both Nepal's processes of state-formation and nation-building, and the country's engagement with discourses of modernity and constitutionalism over the centuries. Nepal's political architectural production is investigated by deploying Lawrence Vale's elaboration of the concept of the capitol: 'commonly confused with capital – meaning a city housing the administration of state or national government – capitol with an o usually refers to the building that houses the government's lawmakers' (Vale 1992: 11). Both the capital and the capitol are of paramount symbolic importance because they are designed and promoted as emblematic centres of political authority; they not only mirrors dynamics of constitutional working and identity construction, they are also constitutive of such processes. In a manner akin to Clifford Geertz's analysis of the Balinese pre-colonial state in his monograph Negara: The Theatre State in Nineteenth-Century Bali (Geertz 1981), I contend that Kathmandu's architecture of power is constitutive of Nepal's theatre state and of the performance of constitutional politics. In this regard, the architecture of the capitol is not unlike theatrical scenography: they are both ways of creating and orchestrating a performance environment that is an

integral part of any theatrical act. For instance, any given production of Verdi's La Traviata is characterised as much by the performance of the soprano as by the director's choices pertaining to the opera's settings and costumes. Similarly, in the political domain, ceremonial rituals and the spaces in which they are performed are also constitutive of the substance, connotations and articulation of political power. Articulation is deployed in this analysis to create a connection between capitol architecture and constitutional politics, and to foreground the structure and play of power that entail in relations of dominance and subordination in Nepal (Slack 2005: 113). With specific reference to constitutional workings, Walter Bagehot (1867/2001: 5-9) distinguished between the 'dignified' and 'efficient' parts of the British Constitution. The dignified part invests the symbolic capacity of the Crown with its theatrical connotations: an exciting and mystical display of power designed to elicit both admiration and obedience – key functions of a constitutional settlement. Thus, a detailed analysis of the ceremonial aspects of the state and the spatial organisation of its 'stage' as constitutive of political power illuminates the ways in which political authority is conceptualised, legitimised, and exercised; it also furthers the understanding of the manner in which constitutions are designed and how their 'efficient' part operate. Vale (1992: 275) perceptively summarises the endeavour of juxtaposing political with architectural analysis: 'to judge a public building, one must understand something about the public as well as the building'.

The analysis of Nepal's physical architecture of power reveals a complex interplay of tradition and modernity in the construction of architectural structures and, indirectly, in the manufacturing of the collective political identities represented by capitol buildings. This material process features a startling resemblance with the process of engineering the country's constitutional framework and its representation of the nation's past. In this regard, it is important to problematise the long-standing taxonomies deployed to classify typologies of architectural production (Blier 2006: 231). Such approaches categorise forms of architectural production on a more or less complex spectrum ranging from, at one end, 'vernacular architecture' – identifying autochthonous, grass-root, subaltern forms – to, at the opposite end, 'modern architecture' – identifying imported, Western, colonial, elite forms. Architectural production is, however, far more nuanced with its array of visual registers and complex multi-factorial explanations are better placed to provide credible accounts of the meaning of architectural structures and their transformations over time.

Unveiling the essentially politicised nature of this binary search for the 'authenticity' of traditional elements and for the 'alienation' brought by modern components within the processes of both architectural production and constitutional design sheds light on the complex interaction between the pursuit of internationally recognised standards and the quest for identifiably 'national' symbols. Starting from the construction of postcolonial capitol complexes, the ultimate goal is 'to find a balance between cultural self-determination and international modernity' (Vale 1992: 53). Designers of postcolonial capitol buildings, expected to symbolise a country both to the world and to itself, negotiate their architectural choices on a spectrum ranging from an ultrainternationalist position to an infralocal one: 'in confronting the twin pull of the international and the local, each architect looks first at one and then back to the other' (Vale 1992: 272-273). However, the dichotomies traditional/modern, local/international, have been transcended through architectural cross-pollination produced by cultural flows, the internationalisation of markets, political transformations and the movements of people across the border of the nation-state – in a manner not dissimilar to patterns of 'constitutional migrations'. These considerations illuminate the rationale behind the construction of the capitol and the design of constitutions as both architectural and legal structures play a pivotal role in organising the government, legitimising political authority, and constructing a common identity of the people. On the one hand, 'government buildings […] are an attempt to build governments and to

support specific regimes. More than mere homes for government leaders, they serve as symbols of the state' (Vale 1992: 3). On the other hand, 'constitutions are not merely expected to establish the institutional structure of government and regulate the balance of power. Constitutions also play a foundational role by expressing the common identity and norms of the nation. Constitutions serve as the state's charter of identity. By delineating the commonly held core societal norms and aspirations of the people, constitutions provide the citizenry with a sense of ownership and authorship, a sense that 'We the People' includes me' (Lerner 2010: 69).

The connection between capitol architecture and constitutional politics in Nepal rests on three key considerations. First, at the moment of architectural production different 'meanings' and 'intentions' are inscribed within the same architectural form; the messages about the state, the government, and the people that politicians wish to encode in the new buildings hosting key state institutions are translated, more or less accurately, by the vision/professional identity of the architects commissioned to design such buildings, together with the limitations of resources, time and space at the time of construction (Vale 1992: 52). In fact, 'capitol complexes are produced by ascendant groups who wish to give evidence of ascendant political institutions' (Vale 1992: 274). Second, the question of the use of capitol buildings ought to account also for the fact that often such buildings undertake more or less radical permutations after a regime change'; their functions and meaning are re-defined by political transformation. As a result, the way in which buildings are either left unchanged, have been adapted, abandoned, or destroyed, becomes a component of their symbolism over time and contributes to (or detracts from) the perceived legitimacy of the government, or even of the state overall. Third, the issue of 'consumption of the building' has a two-dimensional element of relativity, which generates a plurality of meanings. On the one hand, the meaning of the capitol depends on the position within the socio-political hierarchy of the person 'using' the building, i.e. the King, the Prime Minister, a judge, a civil servant, a defendant in criminal proceedings, a mere visitor, a foreign statesman, or a spectator who is not granted access. This focus on the 'positionality' of the observer points to the inherent power structures and hierarchies that capitol buildings embody, re-construct, and perpetuate. On the other hand, there is also a temporal element of relativity attached to the process of encoding/decoding. The meaning of buildings changes over time through their continuous unaltered use, partial modification, or outright subversion, while still being shaped by meanings assigned or created in previous periods – in line with the understanding of periodisation of institutional outcomes in Historical Institutionalist scholarship. For instance, encoding/decoding the meaning of today's Narayanhithi Palace – the previous residence of the Shah King transformed in 2008 into a National Museum – would be a completely different exercise from 2005, at a peak of monarchical autocracy; moreover, it is an exercise that is of course conditional on the point of view of the observer at a given time.

In this perspective, 'material culture can be viewed as the raw material for the creation of narratives, re-contextualised and redeployed as agents continuously change their use of material culture in the creation of narrative expressions of identity' (Buchli 1995: 186). Thus, a key concern is to preserve and illuminate the centrality of human agency in both the construction, deconstruction, and reconstruction of the multiplicity of meanings within a given text – whether architectural or constitutional – without falling down the postmodern rabbit hole of the 'impossibility of meaning' or 'complete openness of meaning'. This analysis maintains that there exists a range of multiple meanings, but that such interpretative range is constrained by the underlying structures of the text.[11]

[11] Lez Moran, 'Whose Biography? The Challenge of Researching the Judicial Image'. Paper presented at the conference Legal Biography: A National Training Day, Institute of Advanced Legal Studies, University of London, 15 May 2013.

This is the key methodological premise necessary to undertake a study of the articulation of internal state sovereignty in Nepal by juxtaposing the country's various constitutional documents with the buildings that have come to form Kathmandu's capitol over the centuries.

Shah Period (1769-1846)

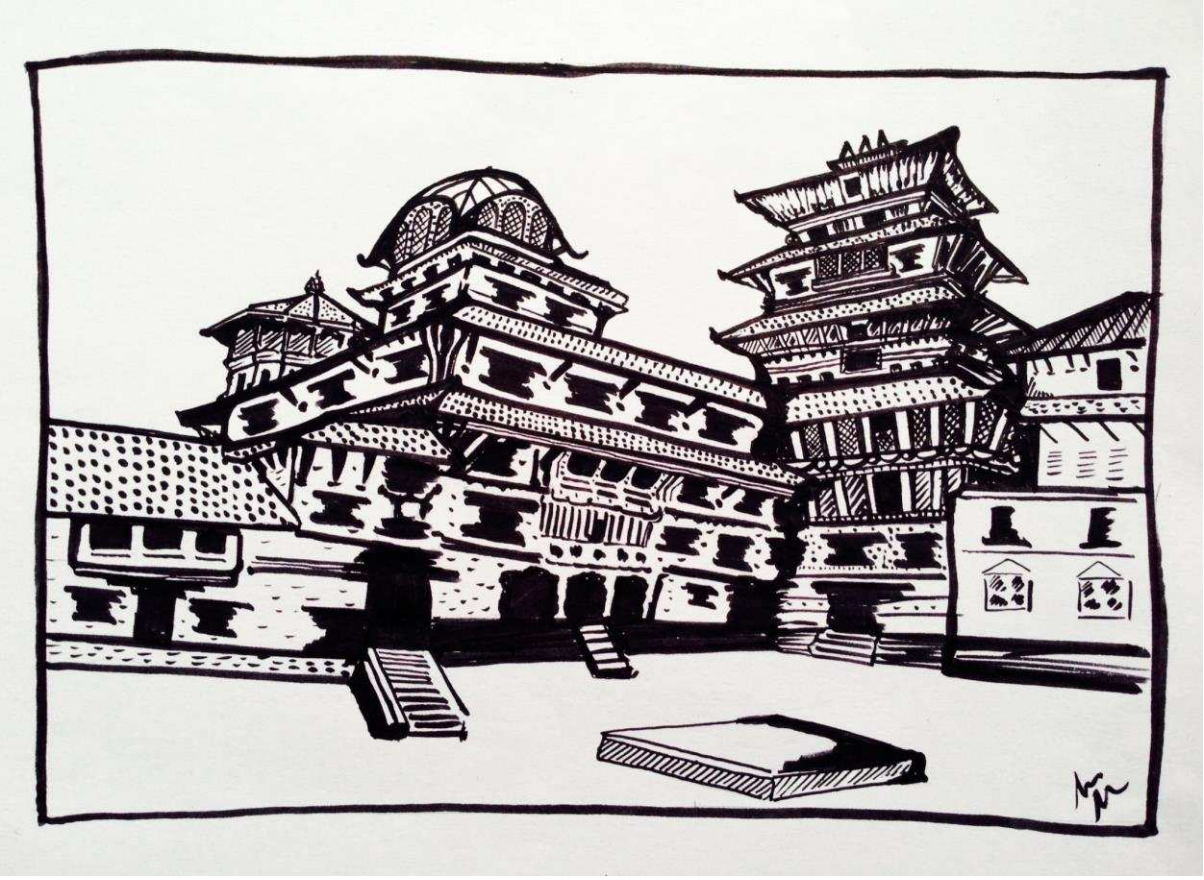
Modern Nepal, as the state entity we know today, was created by the military campaigns launched in 1744 by King Prithvi Narayan Shah of Gorkha – a small kingdom in the hills westward of the Kathmandu Valley – in the name of building a true Hindu Kingdom (*asli hindusthān*) by claiming Rajput origins and distinguishing it from India termed as 'Mughlana', at the time under a Muslim ruler. The Gorkhali expansion led to the annexation of many small principalities in the central Himalayan range; in the early 19th century the Gorkhali kingdom extended from the Kangra Valley in the West to Sikkim in the East, but its territorial extension was reduced with the defeat in the Anglo-Nepalese War (1814-1816). The Treaty of Sagauli in 1816 fixed the Gorkhali southern border with the territories of the East India Company approximately as it is nowadays; this process had a crucial influence on the political modernisation of the Nepali state with regard to the formation of its territorial structure and the development of mutually exclusive external state sovereignty (Burghart 1996: 227). The Shah Kings remained at the helm of the Nepali government until 1846, amidst internal instability and factional politics. Significantly, during the Shah period the key coordinates of Nepal's processes of state formation and nation-building were established (Malagodi 2013: 66-74).

The symbolic centrality of the Kathmandu Valley in Nepali statecraft is well attested by the fact that the history of modern Nepal is conventionally set to start at the time of the Valley's subjugation by the Gorkhalis and by the fact that Prithvi Narayan Shah moved the capital of his kingdom from Gorkha to Kathmandu as early as 1769. As highlighted by Joshi and Rose (1966: 485), 'the transfer added emphasis to the nationwide scope of the new political system'. Kathmandu fits the category of 'evolved capitals' elaborated by Vale (1992: 17) – like London, Paris, Vienna, and Berlin. These are capital cities with long, complex histories, for which no simple model of spatial organisation is likely to be usefully descriptive. It is possible to identify and trace the locus of government, but it is difficult to explain the relation of the capitol to the larger city. This kind of capital is polycentric, with a great multiformity of nodes, both sacred and secular (Vale 1992: 17). In fact, since the 6th century AD the Kathmandu Valley was described as *Nepālmandala*, a term which indicates a cosmological representation of the realm as a sacred space delimited by religious structures at the cardinal points of the Valley and embodying the cosmic all-encompassing sovereignty of the king (Slusser 1988). 'Magnetized by the presence of a monarch or a religious institution, the capital container grew around this capitol center, designed for ritual and devoted to ceremony' (Vale 1992: 13).

Prithvi Narayan assimilated the non-Brahmanic elements of the cult of the Newar-Malla Kings of the Valley, whom he had militarily defeated. The most relevant example is that of the Kumari: 'Gorkha forces entered Kathmandu whilst the inhabitants were celebrating the festival of Indra Jatra, during which the king received tilak from the Kumari Devi, or "Living Goddess", who was regarded as earthly embodiment of Taleju, the isthadevata [personal deity] of the Newar monarchs. Prithvi Narayan at once ascended the platform erected for the ceremony in the Malla Royal Palace of Basantapur and received the Kumari's recognition, whilst the defeated ruler, Jay Prakash Malla, was in flight to the neighbouring city of Patan' (Whelpton 1991: 8). Thus, it was crucial for all the new rulers of the Valley – from Prithvi Narayan Shah's times onwards – to secure a sense of continuity

with the past to conjure a religious and dynastic aura of legitimation of the newly established political power and its institutions.

Figure 1 – The Newar-Malla Royal Palace in Basantapur, old city, Kathmandu[12]



Unsurprisingly, Prithvi Narayan Shah elected as his residence in Kathmandu the Royal Palace of the Newar-Malla Kings in Basantapur/Hanuman Dhoka (Figure 1), in what is today known as the old part of the city. The Old Palace, however, retained a ceremonial centrality in royal rituals as exemplified by the fact that the coronation of both King Birendra (1975) and King Gyanendra (2001) took place there. Archaeological excavations attest that Basantapur had been the site of royal palaces since the Licchavi era (300-800 AD). Nowadays the Palace is a heterogeneous complex comprising nine internal courtyards with quadrangle buildings mounted by towers and a series of temples. The Palace features a stratification of buildings commissioned between the mid-16th and early 20th centuries (Hutt 1994: 77), whose predominant architectural style derives from the Newar canon of square brick buildings with elaborate wood carving inserts and pagoda-style multi-tiered roofs. This is the architectural style that has been deemed as 'indigenous' and 'truly Nepali' – and as such worth preserving as world heritage. All the Malla and Shah Kings lived with their court in the Hanuman Dhoka palace until 1896 when King Prithvi Bir Bikram Shah was relocated in the renovated Rana stucco palace of Narayanhiti outside the old city.

Joshi and Rose (1966: 485) describe the political system under Shah and Rana rule as 'traditional', because the unification of over sixty independent small principalities into a single political entity did not bring about a radical transformation of the internal organisation of the Nepali state: 'the political

[12] Source: Mara Malagodi 2015 ©.

system, like the social system at large, continued to be a highly segmented, pyramidal structure dominated by a handful of families belonging primarily to two castes – the Brahmans and the Kshatriyas'. This paper, instead, contends that it was already during the early years of the Rana regime that the seeds of the political modernisation of Nepali state structures were sawn.

Rana Period (1846-1951)

In 1846 a young aristocrat, Jang Bahadur Kunwar, put an end to the period of political instability that followed the death of Prithvi Narayan Shah in 1775. He staged a coup, neutralised the power of the Shah King and the aristocratic elites by making the office of Prime Minister hereditary within his family, and progressively assumed absolute powers. However, the institution of the Shah monarchy was retained – although divested of effective power – as the living symbol of the unity of the Nepali state vis-à-vis the internal diversity of the people under Gorkhali sovereignty. This arrangement lasted until 1951. Most capitol buildings of contemporary Nepal were erected during the Rana period as private palaces of the Rana aristocracy and later converted into public buildings. Significantly, because Rana palaces are considered as mere copies of European architectural structures, they have not been preserved as national monuments and are today in an overall state of disrepair; they, however, represent the Nepali version of European architectural production and an important cultural legacy of a crucial period of Nepal's history worth analysing (Hutt 1994: 61-63).

Jang Bahadur Rana, as he became by tracing his lineage to Rajput aristocracy to elevate his caste status and open the way to marriages with the Shah royal family, realised that an alliance with the British East India Company was crucial – both internally for his survival as supreme political leader, and externally for the preservation of Nepal's independence. In 1850, he undertook a journey to England and France as the ambassador of the King. The power and wealth of the European countries made a lasting impression on him and he brought back from Europe a printing press and the instruments of legal codification. In 1854, Jang Bahadur promulgated the Muluki Ain (lit. 'Country Code') – a legal document aiming to codify traditional social conditions, subsume the various ethnic groups within the Parbatiya Hindu caste hierarchy and impose on them its rules. According to Andras Höfer (1979: 41), the sources of the first Nepalese legal code were the *dharmashāstra* (the traditional Hindu legal texts), the *Arthashāstra*, Mughal legislation and possibly Anglo-Indian law. The provisions of the Muluki Ain were more or less limited to the fields of personal and administrative law (Höfer 1979: 40). However, the scope of the Muluki Ain went beyond the attempt to simply impose homogeneous socio-legal norms on the entire population under Gorkhali sovereignty; this codification had a political rationale. It was an attempt to legitimise the identity of the Gorkhali polity by depicting it as culturally distinct, and to motivate the solidarity of the population towards the state. It was a way of reinforcing traditional autochthonous loyalties, hegemonies and hierarchies by modern institutional means.

In this regard, Mark Liechty (1997: 6) suggests that 'from the late Malla period, through the period of state consolidation, to the Rana era, Nepali elites experimented with a policy of selective exclusion whereby they sought to harness the shifting and volatile powers of foreignness, while attempting to keep those powers out of the hands (and minds) of their political subordinates'. A salient feature of the century under Rana rule, alongside legal codification, was the construction of a vast number of neoclassical white stucco European-style palaces across the Kathmandu Valley. As Liechty puts it:

> The Ranas were not simply imitating North Indian "native" elites, but had actually elevated their ostentation to another level […] the Rana elites adhered strictly to a "pure" European

> neo-classical style. I am inclined to agree with Joel Isaacson who suggests that Rana insistence on a "pure" neoclassicism was a way of distancing the "Rana Raj" from both the Princely States and the British Government in India itself. By this line of reasoning, just as Jang Bahadur had sought to bypass the British Viceroy by going directly to Buckingham Palace, the continuing tradition of Rana neo-classicism (and slavish consumption of English distinctive goods) was a way for the Nepali elites to at least imagine a direct link (noble to noble and therefore superior) with the "real" imperial power (Isaacson 1990: 73), a link that would distinguish them from their "native" brethren in India' (Liechty 1997: 46).

Sabina Tandukar reflects on the imposing nature and symbolism of Rana stucco palaces: 'The palaces maintained axial configurations and scale which dominated the human proportions, and stood almost at the centre of the vast expanse of the landscaped areas, adding to much of its grandeur and monumentality. These palaces, unanimously known as 'white elephants', have given visual dominance over the medieval architecture of the valley. This might be the intentional character given by those builders to flaunt their superiority among the commoners or please their British counterparts'.[13]

Significantly, Rana stucco palaces have not been considered by either Nepalis or foreigners as examples of 'vernacular architecture' worth preserving. As Liechty (1997: 6) astutely concludes, 'stories of Nepal's relationship with foreign goods and cultural practices before 1951 have been—like the Rana palaces and the foreign objects themselves—at best neglected as irrelevant, and at worst actively reviled as instances of cultural contamination'. The reason for such an aversion to Rana cultural and architectural productions amongst Nepalis is to be found in the meaning assigned to European-style architecture during the Rana regime. The Rana elites appropriated, displayed and deployed foreign goods and aesthetics as the visual manifestation of their social and political hegemony – to the point that they restricted the usage and consumption of 'foreign-ness' by law. 'The Ranas spent staggering amounts of money and man power on imported luxury goods and monumental architecture. They further guaranteed their privilege through a variety of sumptuary laws […] no one but the Rana elites were permitted to ride in motorized vehicles or wear European dress (Leuchtag 1958: 63). Only with special permission could one build a stucco house or erect a tile roof (Isaacson 1990: 68). Foreigners who made it into the valley during this period repeatedly echo Morris's observation that "The court and the people are two entirely different entities" (1963: 26)' (Liechty 1997: 41).

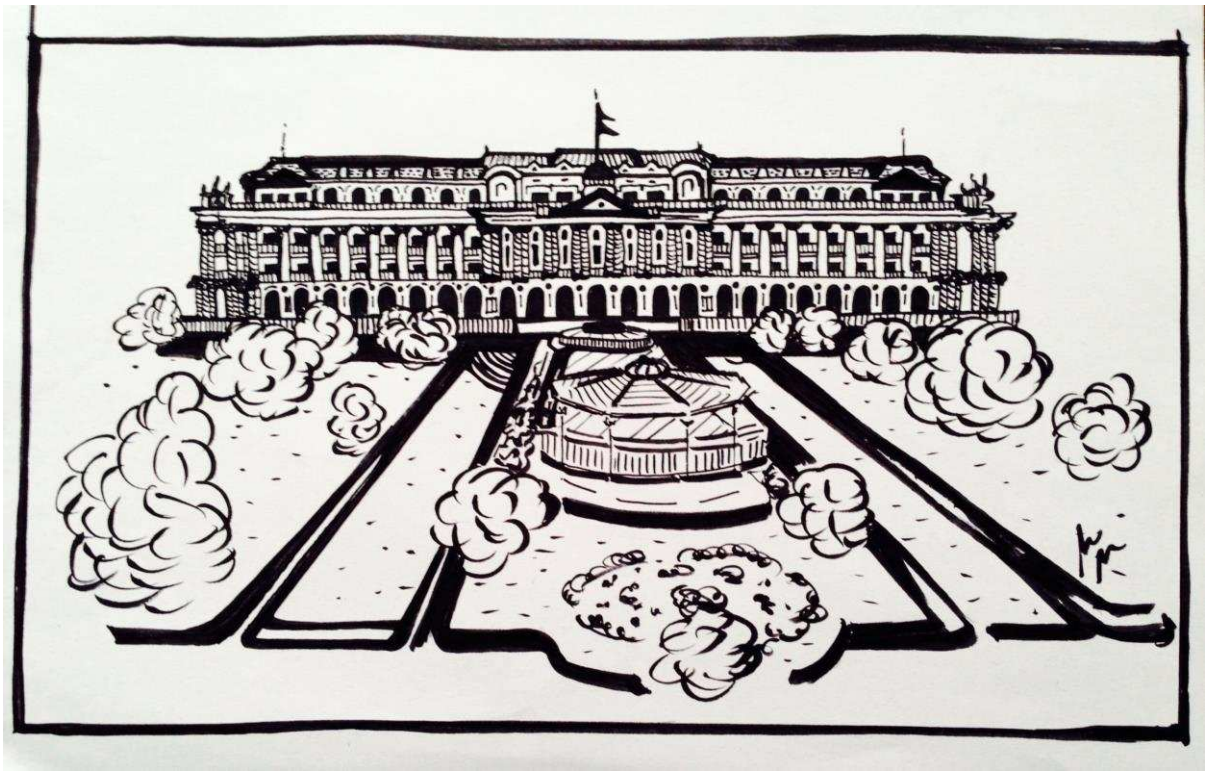
In 1886, Prime Minister Bir Shamsher Rana had his predecessor's private palace at Narayanhiti completely demolished and employed architect Joglal Sthapit, also known as Bhajuman, to construct a new palace in that very location on the outskirt of the old city. After completion in 1896, the Shah royal family was moved out of the old Newar-Malla Palace in Basantapur and Narayanhiti Darbar became the official residence of the then King Prithivi Bir Bikram Shah. The reason behind the Prime Minister's decision to relocate the Royal Family remains unclear.[14]

[13] Source: http://www.spacesnepal.com/2013D10.php [Last accessed 21/05/2013].

[14] As reported in Spaces Magazine, 'Narayanhiti palace underwent a lot of transformation in the latter period of its construction. The trend of regularly renovating the palace with flashy interiors and extravagant exterior elements was quite popular among the rulers then. After the 1934 earthquake, King Tribhuvan employed engineer Surya Jung Thapa to add a huge bifurcated staircase in the main portico. This addition on the southern side of the palace, which was also the front façade, added a remarkable order of grandeur to the building as a whole'. See: http://www.spacesnepal.com/archives/nov_dec09/2009KL2.php [Last accessed 20/05/2013].

In 1901 Chandra Shamsher Rana became the Prime Minister of Nepal and remained in power until 1929. In 1903, Chandra Shamsher commissioned architects Kumar Narsingh Rana and Kishore Narsingh Rana for the construction of the monumental complex of Singha Darbar, literally the 'Lion's palace' (Figure 2), which upon completion became his private residence. Built in only three years on fifty hectares of land and featuring 1,700 rooms, seven courtyards and a private theatre ('Gallery Baithak', to become Parliament Building in 1959) for the cost of five million Nepali rupees, the Palace was regarded as one of the most luxurious in Asia (Gutschow 2011: 858). Katharina Weiler (2009: 129-130) describes the Palace as such: 'It was accessible through a neoclassical gate. Its magnificent four-storey façade, a veneer of arcades on the ground-floor level and colonnades that soar over the first and second floor – in each case set in front of the windows – gives an exquisite sense of space. The protruding central portico is carried by double Corinthian colonnades with twisted column shafts. Its interior decoration exhibited Italian Carrara-marble, European furniture reflecting Victorian taste, European chandeliers, Venetian mirrors and an elevator imported from Scotland'.

Figure 2 – Singha Darbar complex (built in 1903)[15]



Chandra Shamsher, after living in Singha Darbar for a few years, sold it to the Nepali state for twenty million Nepali rupees and declared it the official residence of all the Prime Ministers of Nepal after him. With the profit made from the sale, he then built nine more palaces in the Kathmandu Valley for his sons. Singha Darbar remained occupied by successive Rana Prime Ministers until 1951.[16] The Singha Darbar complex, however, had not been commissioned and constructed with the intention to serve as a public building and an emblem of the Nepali state. It was not a structure built in the name of the people to house the people's representatives; it was the symbol of the autocratic rule of an unrepresentative elite and of an extractive state, whose political authority was legitimised on the basis

[15] Source: Mara Malagodi 2015 ©.

[16] See: http://www.spacesnepal.com/2013D10.php [Last accessed 21/05/2013].

of both traditionalist blood ties with the 'national' Shah Hindu monarchy and claims of a political and cultural hegemony manifested through modern foreign aesthetics and instruments.

The political, institutional, and ideological structures established under Jang Bahadur's reign (1846-1877) led to the consolidation of the Rana regime, and until its displacement in 1951 few changes within the Nepali political system occurred. The British departure from the subcontinent in 1947 and the emergence of India as an independent democracy marked a watershed in Nepal's political history. The rhetoric employed by the Nepali state also changed significantly: the ideas of equality and democracy made persuasive by the Indian anticolonial struggle could no longer be ignored in Nepal if the Rana elites were to retain political power in the country. Prime Minister Padma Shamsher Rana understood this and on 1 April 1948 he announced Nepal's first Constitution. The 1948 Constitution, however, was never implemented due to the fact that Padma Shamsher resigned from the office of Prime Minister shortly after the Constitution was drafted. However, the 1948 document marked the entry of debates about modern constitutionalism and democracy into Nepal's official political discourse.

First Democratic Experiment (1951-1960)

Between 1950 and 1951 an alliance between King Tribhuvan and the newly created Nepali political parties succeeded in toppling the Rana regime with independent India's support. In 1951 an agreement known as the 'Delhi compromise' led to the establishment of a Rana-Congress government to transition Nepal to democracy. The years until the first general elections of 1959 were characterised by transitional politics and great instability, exacerbated by tensions between the political parties and the monarchy, bitter inter-party disputes and the succession of a long string of Cabinets alternated by periods of direct monarchical rule.

In his Royal Proclamation of 18 February 1951, King Tribhuvan declared: 'hereafter our subjects shall be governed in accordance with a democratic constitution to be framed by the Constituent Assembly elected by the people' (Tripathi 2002:25). On 11 April 1951, the King promulgated the Interim Government of Nepal Act, 1951, the first constitution ever enforced in the Himalayan kingdom – a provisional document to govern the country until a definitive one was drafted. The Interim Constitution introduced a parliamentary system with the Shah King as the head of state. Political parties operating on a mass scale were to be legitimate vehicles for political action. The text made no explicit reference to Hinduism and left the issue of the place of Hinduism to the permanent constitution. Executive powers were vested in the King and the Council of Ministers, an Advisory Assembly General enjoyed limited legislative functions, and an independent judiciary was established. Article 17 defined the Fundamental Principles of Law guaranteeing basic fundamental rights to all Nepali citizens, with the notable exception of freedom of worship. Fundamental Rights were not given a separate section, but were incorporated into the part on the Directive Principles of State Policy, making them non-justiciable (Tripathi 2003: 28).

The death of King Tribhuvan in 1955 and the coronation of his son Mahendra led to a more active role of the Shah monarchy in the conduct of Nepal's turbulent political affairs. According to one analysis, King Mahendra 'aspired to exercise an active leadership in accordance with Hindu traditions and these aspirations were manifested by his refusal to hold elections for a Constituent Assembly, and the desire to write the constitution himself with no sovereignty being vested in the people' (Dhungel et al. 1998: 24). In March 1958 – ignoring continued demands for the creation of a Constituent Assembly after general elections had been postponed twice – King Mahendra invited the British

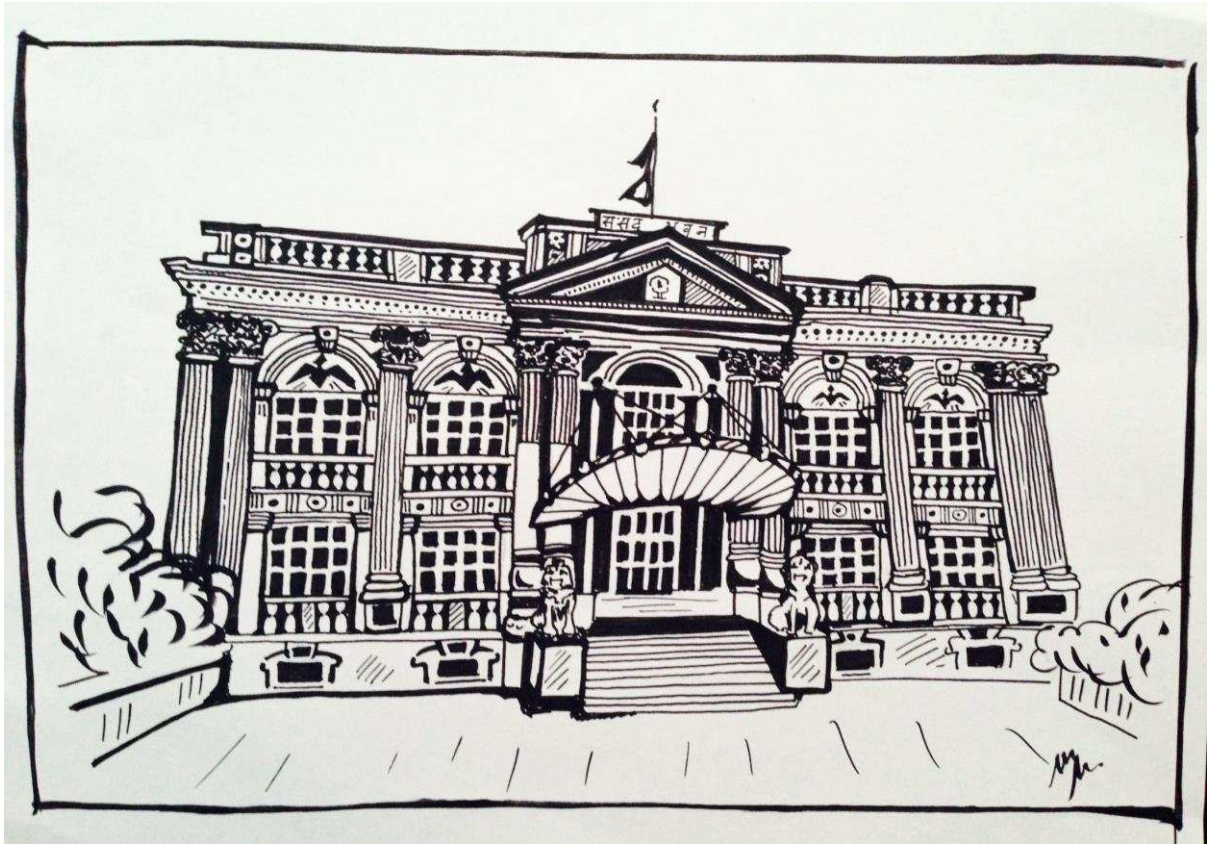
constitutional expert Sir Ivor Jennings to guide the impending constitution-making process and independently appointed a Commission to draft the new constitution. Jennings was convinced that a modified Westminster model could be transplanted in Nepal and thus engineered a document whose identity was centred on the Crown as he willingly marginalised the representative element of government. On 12 February 1959, the King promulgated the new Constitution, which established a democratically elected parliamentary system under a nominally constitutional monarchy, while the King retained ultimate sovereignty, as stated in the Preamble.[17] The monarch enjoyed wide discretionary powers and was granted residuary and emergency powers. Executive powers were also vested in the King, although the Constitution created a Cabinet responsible to Parliament to aid His Majesty in performing the executive functions. The section on Fundamental Rights featured the right to equality before the law without discrimination on the grounds of religion, sex, race, caste or tribe in Article 4, and the right to religion in Article 5. However, the right to religion – for the first time in Nepali history – was limited and defined religion 'as handed down from ancient times', implicitly referring to Hinduism. It also 'provided that no person shall be entitled to convert another person to his religion'. Nepali history and traditions acquired a paramount position in the 1959 Constitution. The Preamble defined His Majesty, for the first time, as 'a descendant of the illustrious King Prithvi Narayan Shah, adherent of the Aryan Culture and Hindu religion' and stated that the sovereign powers of the Kingdom of Nepal were vested in the King 'in accordance with the traditions and customs of our country and which devolved on Us from Our August and Respected Forefathers'.

In February 1959, only a week after the promulgation of the new Constitution, the Nepali Congress won the country's first general elections and its leader, Bishweshwar Prasad Koirala, was installed as Prime Minister. Gallery Hall – the former Rana-built private theatre within the Singha Darbar complex (Figure 3) – was converted into Nepal's first Parliament Building to host the 109-member lower house ('Pratinidhi Sabha', House of Representatives).[18] It remains unclear, however, where the 36-member Senate (Maha Sabha) used to meet.

A pragmatic argument can certainly be made with regard to the decision of converting Gallery Baithak into the seat of the newly created Parliament both in terms of its proximity to the Offices of the Prime Minister/Cabinet and the fact that it was readily available for occupancy and cost-free. Nonetheless, the argument is persuasive only in explaining the immediate aftermath of the promulgation of the 1959 Constitution. In my view, it remains of highly symbolic significance that Nepal's first directly elected legislature – the constitutional body deputed to represent the Nepali people – was hosted in what it once was Chandra Shamsher Rana's neoclassical private theatre located within the Singha Darbar compound, the historical seat of Nepal's de facto executive government. Moreover, emphasising the fact that the first proposal for a new purpose-built Parliament building was made in Nepal as late as 2001[19] does not aim to recount 'the history of an absence' as it has been suggested,[20] but to highlight the marginal position of Nepal's legislature vis-à-vis the other branches of government in both architectural and constitutional terms.

[17] 'I, King Mahendra Bir Bikram Shah Dev in the exercise of the sovereign powers of the Kingdom of Nepal', Preamble, Constitution of Nepal, 1959.
[18] Parliament's lower house was elected through a first-past-the-post electoral system in single Member constituencies with tenure of five years. The Election Commission set up in 1951 completed the delimitation of the country into 109 constituencies in May 1958 (Joshi and Rose 2004: 283).
[19] See: http://nepalitimes.com/news.php?id=13211 [Last accessed 19/08/2013].
[20] Pratyoush Onta, Martin Chautari, Kathmandu, 14 July 2013.

Figure 3 – Parliament Building (Gallery Baithak) within the Singha Darbar compound (built 1903)[21]



A significant example of the marginalisation of Nepal's legislature is to be found in the provisions of the 1959 Constitution concerning royal assent to make Parliament's bills into legislation: while the British Crown's royal prerogative power of assenting to Bills was preserved and codified into the Nepali document, the 18th century constitutional convention by which the monarch shall not withhold assent under any circumstances was entirely obliterated.[22] The British principle of parliamentary sovereignty understood as unfettered legislative competence was subverted; the elected representatives of the people were not sovereign, but subjected to the authority of the unrepresentative hereditary element of the executive, the monarch. In this regard, the 1959 Constitution granted the monarch extensive discretionary and emergency powers disregarding the landscape of constitutional conventions that have been developed in Britain as the Nepali King was empowered to reject the Prime Minister's recommendations under Article 26 and retained exclusive control over the Army under Article 64. As a result, Nepal's government was placed in the difficult position of having to please two masters at the same time – the electorate and the Crown; of the two the Crown held final authority under the 1959 Constitution (Joshi and Rose 2004: 312).

In Britain constitutional developments emerged from the tensions between the monarchy and Parliament, whereas in Nepal the protagonists in the struggle over state sovereignty have been the monarchy and the Prime Minister. This is exemplified by the effective administrative diarchy between

[21] Source: Mara Malagodi 2015 ©.

[22] 1959 Constitution, Article 42 – (1) When a Bill is submitted for the assent of His Majesty in accordance with Article 41 His Majesty shall declare either that He assents to the Bill or that He withholds His assent there from. (2) His Majesty may consult the Council of State as to whether He should assent to a Bill […].

the Palace Secretariat in Narayanhiti and the Central Secretariat in Singha Darbar created by the various bouts of direct monarchical rule in the 1950s (Joshi and Rose 2004: 376). The fault line of political authority in Kathmandu run along the axis of the Royal Palace in Narayanhiti and the office of the Prime Minister in Singha Darbar. In this regard, after the 1951 revolution the main building of the Rana palace of Singha Darbar was retained as the seat of the offices of both the Prime Minister and the Cabinet. The symbolic importance of this decision is twofold: on the one hand, Nepal's democratic forces entered and appropriated the central locus of Rana's political authority in the name of the Nepali people; on the other hand, the permanence of Singha Darbar as a key centre of power in Kathmandu highlights the many continuities with the previous regime as many members of the Rana family retained key governmental and institutional posts in the Nepali state machinery. Finally, with the creation of an independent judiciary under the 1951 Interim Constitution and the corollary legislation, in 1955 engineer Gouri Nath Rimal was instructed to prepare the detailed plan of a new building for the Supreme Court on Ramshahpath – on the Eastern margin of the Singha Darbar's compound – and the foundation stone was laid on 10 March 1957. The building was inaugurated only during the Panchayat period.[23]

Nepal's first experiment with constitutional democracy was, however, short-lived. In December 1960, the Nepali Congress government was dismissed by King Mahendra and its leaders were either detained or driven into exile in India. The King assumed absolute powers claiming that Nepal's fragile democratic process failed to deliver political stability thus endangering national sovereignty.

Panchayat Regime (1960-1990)

In 1960 King Mahendra staged a "royal coup" by assuming emergency powers, banning all political parties and suspending the short-lived 1959 Constitution; he claimed that Nepal was unprepared to function according to the rules of Western-style parliamentary democracy. Instead, after holding absolute power for two years, the King sought to engineer through the promulgation of another Constitution on 16 December 1962 an essentially brand new political system called "Panchayat system" nominally based on Nepal's traditions as the country's alternative route to modernisation and development (Burghart 1993: 1).

The Panchayat Constitution resulted from the research of a four-member Committee under the chairmanship of Minister Rishikesh Shaha. The Committee had been appointed by the King to study the constitutional frameworks of Yugoslavia, Egypt, Pakistan, and Indonesia. The final outcome was an ingenious combination of various features of these countries' constitutions, adapted to devise a specifically Nepali text (Joshi and Rose 1966: 396). The 1962 Constitution vested state sovereignty exclusively in the King and established his involvement in every branch of government, making the principle of separation of powers enshrined in the Constitution entirely meaningless (Dhungel et al. 1998: 30). The active leadership of the King in the Panchayat system entailed a complete absence of political opposition, ensured by the outlawing of political parties. The plan was to "re-establish" the relationship between the King and his people, unmediated by any political actor.

The Constitution created a central unicameral legislative body, the National (Rashtriya) Panchayat, which enjoyed only advisory powers; its membership was partly nominated directly by the King and partly indirectly elected. The Panchayat system was constituted by four tiers of representative institutions elected at different levels. Direct popular elections with universal adult suffrage took place

[23] Personal communication with Nahakul Subedi, Registrar of the Supreme Court of Nepal, 12/05/2013.

only at village (gaum) and town (nagar) level. The elected representatives of these assemblies voted for the members of the 75 assemblies at district (jilla) level, who then elected the members of the 14 assemblies at zone (anchal) level, who finally voted for the elected representatives in the National Panchayat (Rose and Fisher 1970: 53). The system was a pyramidal structure in which only the lowest level was directly elected by the people, while the members of the higher assemblies were selected by and from amongst the representatives on the level immediately below. Gallery Baithak was retained as the seat of Nepal's central legislature; the marginal position of the Rashtriya Panchayat and its subordination to the monarchy in both the government apparatus and symbolism of the Nepali state during the Panchayat regime did not require the investment of public funds into the construction of a public building hosting Nepal's parliament.

The Panchayat Constitution was also Nepal's first constitutional document to precisely define and institutionalise the connotations of the country's national identity. Article 2 stated that 'the Nepalese People, irrespective of religion, race, caste or tribe, collectively constitute the Nation', while Article 3 declared Nepal as 'an independent, indivisible and sovereign monarchical Hindu state'. The Preamble vested in the King state sovereignty and powers, as a sort of royal prerogative defined 'in accordance to the constitutional law, custom and usage of Our country as handed down to Us by Our August and Revered Forefathers'. For the first time the 1962 Constitution legally made Nepal a Hindu Kingdom. However, the Constitution contained an extensive section on Fundamental Rights and Duties. Article 10 guaranteed equality before the law, and Article 14 the right to religion, although this was limited – as in the previous 1959 Constitution – to 'religion as handed down from ancient times' and to its practice 'with regard to traditions' and the ban on conversion was reiterated. The emphasis on "Nepali traditions" became part of the propagandistic rhetoric of the Panchayat system. The 1962 Constitution was also imbibed with the spirit of modern nation-building which was, King Mahendra believed, the ideal strategy to tighten his hold on power and create favourable circumstances for Nepal's socio-economic development and modernisation. The new constitution fixed the coordinates for the construction of a Nepali nationalistic discourse: Hinduism, the Shah monarchy and the Nepali language became the 'triumvirate of official Nepali national culture' (Onta 1996: 214).

The notion of "Panchayat system" was created to legitimise the central and preponderant role of the Shah monarchy in Nepal's constitutional edifice; the term 'Panchayat' first featured in the Royal Proclamation that accompanied the promulgation of the 1962 Constitution. King Mahendra then commissioned American architect Benjamin Polk to design the new Royal Palace for him; 'the reason behind employing a foreign architect was probably because he wanted a new definition for his palace. He had to transcend the conventional character of architecture that the previous rulers had borrowed from the Western world. He also wanted a new vocabulary to delineate his Kingship for addressing a modern Nepal'.[24] The old Rana palace in Narayanhiti was razed to the ground and the construction of the new Narayanhiti Palace began in 1963; the complex was completed in 1969 and inaugurated in 1970 with the wedding of the then Crown Prince Birendra.

The Palace within the Narayanhiti compound (Figure 4) is a syncretic structure: the modernist three-storey compact base features essentialist and simple horizontal lines; on this base a central vertical block is superimposed, which is itself covered by a pagoda-style roof reminiscent of the Newar canon, which hosts the throne room (Gaddi Baithak). Access to the Palace is granted through a central marble staircase at the front of the building leading into the main reception hall (Kaski). On the left side of the throne room block is located an even taller and leaner modernist-looking white tower that Polk (1993: 9) referred to as the 'Hindu temple tower'.

[24] See: http://www.spacesnepal.com/archives/nov_dec09/2009KL2.php [Last accessed 08/03/2013].

Figure 4 – The new Narayanithi Palace, Darbar Marg (re-built in the early 1960s)[25]

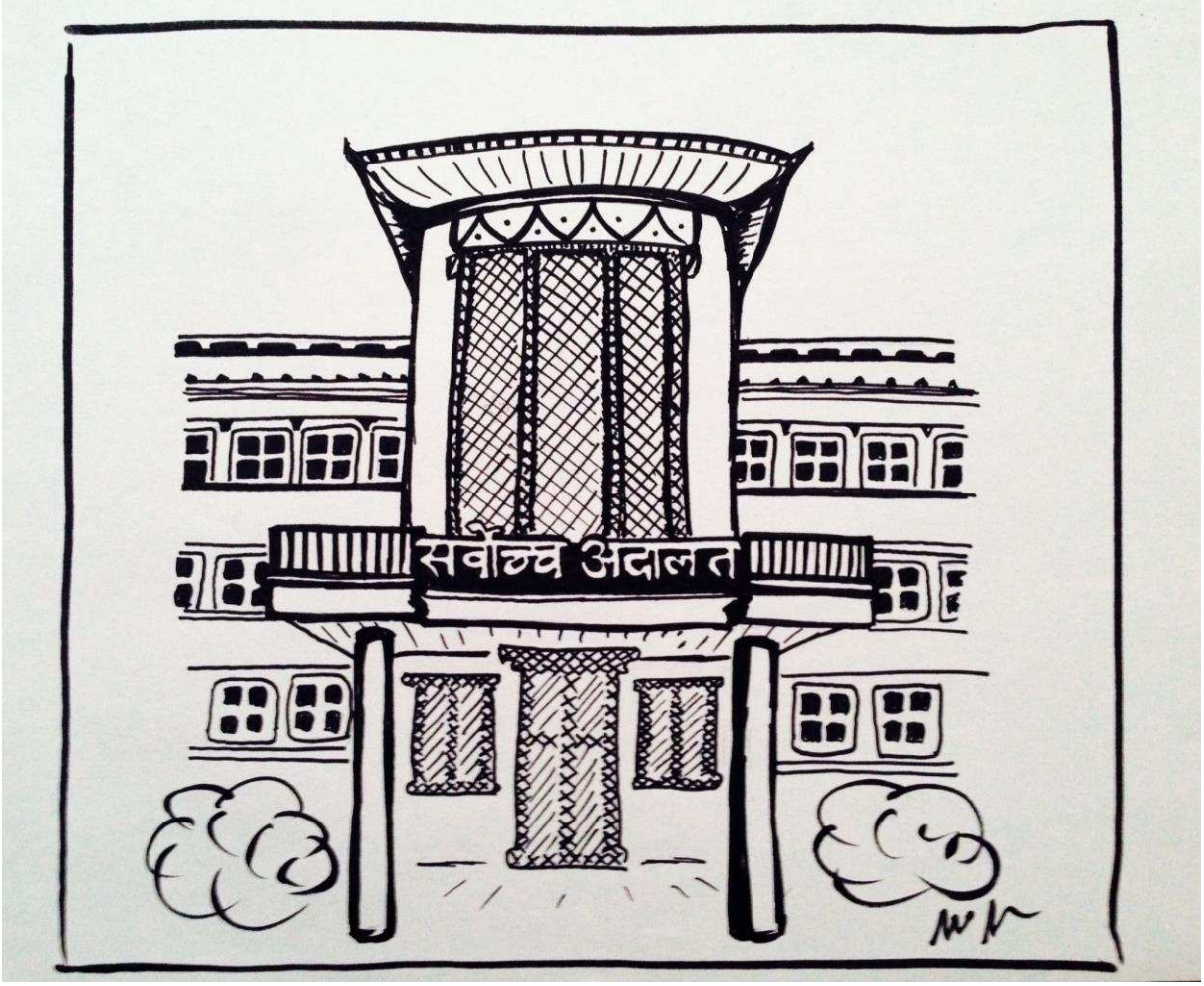
King Mahendra had commissioned Polk (1993: 7-9) to design a building that reflected his vision of the Nepali state by combining tradition and modernity: 'there was the tradition of the mighty Himalayas in slate and native marble, in carved wood and brass, in ornamental grilles and gilded finials, and the Palace was to be the first focus for the pride and culture of modern Nepal [...] a symbol by and for the people of Nepal [...] the Narayanhiti Palace in Kathmandu constitutes a "royal village" with its various purposes, and His Majesty immediately perceived in it the national symbolisms for Nepal's central government'. As Vale (1992: 275) highlights, 'capitol complexes must be judged together with the institutions they house [...] and their political pedigree is made manifest in the choice of site, in the relationship between capitol and capital, and in the often partisan iconography of the architectural form'. The new Narayanhiti Palace is both reflective and constitutive of Nepal's Panchayat state-framed nationalism constructed around the Shah Hindu monarchy. Both the 1962 Constitution and the new Royal Palace articulate the raison d'être of the Panchayat regime: a modern political endeavour cloaked in a traditionalist guise. Narayanhiti Darbar was the new fulcrum of political authority in Nepal and the central element of Kathmandu's capitol. As such any trace of the Rana legacy had to be erased from its grounds, whose renovation was the physical manifestation of the new era ushered in by King Mahendra. It is interesting to note the parallel with the construction of Pakistan's new Islamic capital of Islamabad in Punjab between 1959 and 1963 under General Ayub Khan's regime (1958-1969) and the promulgation in the same period of a new Constitution in 1962. Significantly, in Ayub's Islamabad – like in Panchayat-era Kathmandu – the fulcrum of the capitol and of political authority was the seat of the Head of State, the Presidential Palace and the Royal Palace respectively, in both architectural and constitutional terms.

On 1 February 1963, King Mahendra also inaugurated the Supreme Court building on Ramshahpath (Figure 5), an inconspicuous modernist linear three-storey structure to which three protruding units are superimposed at the centre and extremities; the middle structure is taller than the rest of the building and features a long vertical opening covered by a wood carved window. The Supreme Court

[25] Source: Mara Malagodi 2015 ©

building's architectural style is essentially modern but draws from the local Newar-Malla register in a similar manner to the new Narayanhiti Palace. With the promulgation of the 1962 Constitution the independence of the Nepali judiciary, however, was severely compromised as the King was empowered to appoint and remove judges, who were accountable to him; similarly the power of judicial review was taken away from the Supreme Court (Bhattarai 2006: 20). As a result, the Supreme Court building as well during the Panchayat period retained a peripheral position in Kathmandu's capitol centred on the Royal Palace. In fact, in 1963 King Mahendra drove the initiative of legislative reform and approved the enactment of a new Muluki Ain, which is still in force today.

Figure 5 – The Supreme Court building, Ramshahpath (built 1957-1963)[26]



Throughout the 1970s and 1980s the Panchayat system became progressively delegitimised. Moreover, with the death of King Mahendra in 1973, his son Birendra ascended to the throne and introduced a modicum of reforms, which were however insufficient to preserve its downfall.

Second Democratisation (1990-2006)

In early 1990, the underground political parties launched a pro-democracy movement and succeeded in toppling the Panchayat regime in April. In May the process of preparing a new Constitution –

[26] Source: Mara Malagodi 2015 ©.

Nepal's fifth – began; the drafting was however not carried out by an elected Constituent Assembly but by a small Commission, whose ten members were hand-picked by the King, the Nepali Congress and the United Left Front respectively, finalised by a Committee formed by three Ministers of the Interim Cabinet, and then promulgated by King Birendra on 9 November 1990 (Malagodi 2013: 112-127). The 1990 Constitution aimed to establish a constitutional monarchy and parliamentary democracy with an independent judiciary empowered to exercise its powers of judicial review and entertain Public Interest Litigation (PIL) petitions. Sovereignty was vested in the People in Article 3, but the Preamble stated that it was the King to promulgate the Constitution 'by virtue of the state authority exercised by Us'. In this regard, it is interesting to note the different way in which the terms *adhirājya* and *rājya* were used in the 1990 Constitution. Both terms can be translated as 'state', although *adhirājya* refers specifically to the notion of kingdom with an explicit association to the institution of the monarchy, and is solely employed in the definition of the Nepali state in Article 4 and in the Preamble. In the sections on Fundamental Rights and Directive Principles of State Policy, the more neutral term *rājya* is instead employed. It seems that the term *adhirājya* retains a connection with Nepal's historical process of state-formation in which the Shah monarchy played a central role. On the other hand, the term *rājya* presents more neutral connotations and it is in fact used to refer to the state as the institutional apparatus and legal entity without much emphasis on its historically-defined salient cultural features. In this regard, the 1990 Constitution was disseminated with ethno-cultural nationalist references to Nepali history as constructed around the Shah monarchy: the state was again defined as Hindu in Article 4; the King as a descendant of King Prithvi Narayan Shah and an adherent of Aryan culture and Hindu religion in Article 27; the right to religion was limited to protecting religion 'as handed down from ancient times and having due regard for traditions and the ban on conversion was reiterated in Article 19; and Nepali remained the only national and official language in Article 6. The triumvirate of official Panchayat nationalism had been preserved virtually intact in the 1990 document.

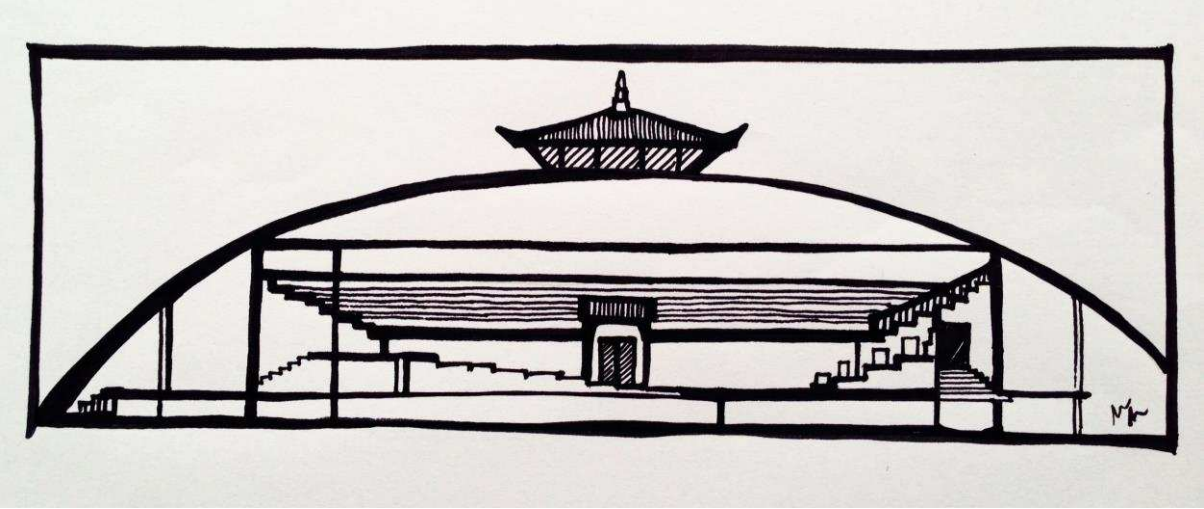
Nepal's second general elections in 1991 brought a Nepali Congress victory and marked the beginning of constitutional politics in the country. Two sets of difficulties led to growing political instability: on the one hand, there were tensions between the King and the elected government over the use of the extensive prerogative powers of the monarch as illustrated by the Ambassador appointment case;[27] on the other hand, there were tensions between parliament's lower house of parliament and various Prime Ministers who made a habit of dissolving parliament for short-term political gain.[28] Post-1990 the role and activism of Nepal's Supreme Court grew exponentially ,leading to the judiciary becoming an effective counter-balance to the executive. The Supreme Court building remained however marginal within Kathmandu's capitol. Talking about Washington D.C., Vale (1992: 62) argues: 'In retrospect, it is understandable why the Supreme Court, as a new institution possessing neither a distinguished history nor a large bureaucracy to legitimate a need for architectural largesse, did not gain a position of immediate urban privilege. All the same, ever since the controversial decision in Marbury v Madison (1803) established the principle of judicial review by declaring an Act of Congress unconstitutional, the Unites States Supreme Court has periodically played a more powerful role in constitutional government than even its contemporary urban (as opposed to architectural) presence would suggest'. In fact, the Court moved to its new building only in 1935. This argument well illustrates the Nepali case.

[27] Adv. Radheshyam Adhikari v. Council of Ministers NKP 2048/1992 Vol. 33 N. 12, p. 810.

[28] Hari Prasad Nepal v Prime Minister NKP 2052/1994 Vol. 37 N.1 p. 88; Ravi Raj Bhandari v Prime Minister SAB 2052/1995 Vol. 4 N.1 Bhadra p. 16; House Dissolution (N.3) Case SAB 2055/1998 Vol. 6 N.1 Māgh p. 16; Supreme Court's judgement on 2002 dissolution of the House of Representatives rendered on 6 August 2002 (6 Saūn 2059 BS).

Nepali politics became progressively more unstable with the 1994 mid-term elections producing a hung parliament and a string of coalition governments. The inability of the Nepali state to deliver either democratic inclusive participation or economic development led to a growing resentment across the country. Political and constitutional instability eventually led to the launching of the Maoist armed insurgency – 'the People's War' – in 1996 in mid-Western districts. Significantly, one of the Maoist's core demands was the abrogation of the 1990 Constitution and the promulgation of a new document 'drafted by the people's elected representatives'. The government, however, ignored the demands and dismissed the People's War as a slow burning insurgency confined to impoverished peripheral areas. Local elections – the last to this date – were then held in 1997. The focus of Nepali politics remained Kathmandu-centric and it is significant that the first proposal for a purpose-built Parliament Building in Nepali history was presented as late as 2001 (Figure 6).

Figure 6 – Plan for new Parliament Building (2001)[29]



'The new building is hemispherical in shape and echoes the designs of pagoda-style temples [and stupas]. There are six planned blocks: the House of Representatives, the National Assembly, libraries, offices of the various parties, offices of the secretariat, and other sections. The total capacity of the House of Representative would be 1,500 people with the National Assembly 1,000'; nothing ever came of the project due to budgetary constraints and mounting political instability.[30]

Following the Royal Massacre in 2001 and the intensification of the Maoist insurgency with the deployment of the Army in the battlefield and different bouts of emergency rule, state resources were diverted towards military initiatives. The House of Representatives elected in 1999 was dissolved in 2002 and Nepal was governed without a parliament until the end of the civil war; the peripheral position of the representative element of government in Nepal was as evident in Nepal's constitutional politics as in the architecture of Kathmandu's capitol. At the same time, the succession of King Gyanendra to the throne entailed a more active role of the Shah monarchy in Nepal's political affairs as the King assumed direct powers twice in both 2002 and 2005. The 1990 Constitution and its guarantees had become effectively defunct.

[29] Source: Mara Malagodi 2015 ©.

[30] 'A proposal for a new parliament building near Singha Darbar's Putali Bagaicha has been on the cards since 2001. At the request of the government the Singha Darbar Secretariat Reconstruction Committee submitted the proposal, complete with blueprints, and assessed a budget of Rs 2.15 billion for the project. The same year, the government allotted 7.5 hectares (150 ropanis) of land for the complex'. See: http://nepalitimes.com/news.php?id=13211 [Last accessed on 23/08/2013].

Post-Conflict Period (post-2006)

King Gyanendra's second bout of autocratic rule in February 2005 made him increasingly politically isolated; a few months later the Maoists and the mainstream political parties reached an anti-monarchical agreement in India. In April 2006, they launched a pro-democracy movement and succeeded in having the House of Representatives reinstated. It was the beginning of the peace process, which entailed two essential components: the integration of the Maoist combatants in the Nepal Army and a radical programme of constitutional change inspired by the mantra of building a new inclusive Nepal through state restructuring.

The reinstated House unanimously endorsed a proposal to hold elections for a Constituent Assembly with a mandate to draft a new Constitution. In May 2006, the House issued a Proclamation declaring Nepal a secular state, curtailing the powers of the King, and concentrating legislative powers in the hand of the Lower House, while the Upper House became defunct. Nepal's Parliament kept meeting in the Gallery Baithak, but with the effective removal of the King from constitutional politics important symbolic instruments of the principle of 'King in Parliament', such as the Royal Chair and the Royal Sceptre, fell into disuse. At the same time the number of representatives exponentially grew: 'there were only 109 seats when it was turned into a parliament building in 1959. Strength went up to 265 in 1990. We have now added 135 to seat additional numbers through the interim phase'.[31] The building, however, was in a state of disrepair and became entirely inadequate to host the country's legislature.[32]

Between June and December 2006 a small fifteen-member Commission comprising delegates from both the Maoists and the mainstream political parties drafted the Interim Constitution – Nepal's sixth and at the time of writing still in force – which was then promulgated in January 2007 to lead the country to the CA elections. Significantly, the Interim Constitution remained silent on the monarchy, toned down the rhetoric of 'constitutional nationalism', and deployed the expression *Nepāl rājya* dropping the term adh*irājya* entirely. For the first time in Nepali history, the Preamble started off with the American-style expression 'We the People of Nepal' and state sovereignty was entirely vested in the people. The CA elections were held in April 2008 and the Assembly's first meeting, which took place in the rented premises of 1993 Chinese-built International Convention Centre in Naya Baneshwar on 28 May 2008, declared Nepal a republic. This led to the transformation of Narayanhiti Palace into a National Museum (Figure 7), significantly altering the epicentre of Kathmandu's capitol. The Constituent Assembly, however, was dissolved in May 2012 without completing the new Constitution and Nepal remains to this date without a legislature in place, a Cabinet headed by the Chief Justice only on temporary leave from his judicial post, and hectic political manoeuvring around the impending elections for a second Constituent Assembly.

[31] Damaru Lal Bhandari and Rekha Shrestha 2006. 'Royal Chair in Parliament Going to Rack and Ruin' in Himalayan Times, published on 20 November 2006. Available at: www.ipcs.org/pdf_file/news_archive/nov_06_sanepal.pdf [Last accessed on 21/05/2013].

[32] 'The hall is icy in the winter and a cauldron in the summer, and damp year-round, due to leaks all over the building. The Royal Gallery of the current building is now used as a special wing for the special guests, foreign diplomats, and dignitaries. Unfortunately, the gallery proved to be anything but comfortable for the guests. It is served by a makeshift bucket toilet'. See: http://nepalitimes.com/news.php?id=13211 [Last accessed on 23/08/2013].

Figure 7 – The Narayanhithi Palace Museum, Darbar Marg (inaugurated in 2008)[33]

Conclusions

Capital cities are containers of capitol complexes whose architectural structures in turn host central government institutions. As such, capitol buildings are meaningful artefacts of culture that symbolise the government's authority and articulate the relationships of power within the polity. These public structures express in material form the country's constitutional identity in two fundamental ways: first, they physically represent the relationship between the various branches of the government and the relationship between the state and the people; second, they promote a discrete sense of national identity (Vale 1992: 15). On the same note, constitutions are texts that encode a range of cultural meanings pertaining to the nature and institutional organisation of political power in a given context. Thus, both public law and the architecture of public buildings can be regarded as signifying practices that create shared cultural meanings about the public political sphere. While constitutional law and the architecture of the capitol are different 'languages', they both articulate, through their own specific registers, the same cultural understanding of the nature and organisation of political power in the public domain. By simultaneously interrogating both constitutional praxis and capitol structures as practices constitutive of a particular political culture, this Chapter illustrates in a historical perspective the tensions amongst various Nepali political actors about the basis of rightful political authority in the country - and the impact of such tensions on political and constitutional stability in the country.

Nepal's architecture of power, in both its constitutional and architectural forms, provides a fitting metaphor for the articulation of state sovereignty understood as the relationship between the Nepali state and the Nepali people. First, with regard to the frame of government within Nepal's modified Westminster model, the representative element of politics embodied by the legislature has been consistently thwarted. In fact, the locus of sovereign authority has historically oscillated - both in constitutional and architectural terms - between the two arms of the executive, the Royal Palace and

[33] Source: Mara Malagodi 2010 ©

the office of the Prime Minister, relegating Parliament to a peripheral position vis-à-vis Nepal's dominant executive, whether in its hereditary or representative form. It remains to be seen whether Nepal's recent transformation into a republic and the growing influence of the Nepali Supreme Court could alter these dynamics in which the democratic principle of popular sovereignty has been historically undermined and subverted. As a result, the institution deputed to give voice to 'the people' has often been silenced, sidelined, or even suspended in the name of short-term political expediency, frequently depriving the country's political process of both constitutional legitimacy and popular mandate. As modern sovereignty articulates the constitutional relationship between the state and the people, the people ought to be active part of that dynamic for Nepal's political system to operate in a legitimate, constitutional and democratic manner.

Second, the high degree of socio-cultural diversity of Nepali society has not been adequately respected in the country's various constitutional configurations. In fact, Nepali constitutional praxis has privileged over the years an exclusionary definition of the nation anchored in the ethnocultural narrative of the hegemonic Pahari upper-caste Hindu groups: Hinduism, the Shah Hindu monarchy, and the Nepali language. This approach has resulted into the institutionalisation of a hierarchical and exclusionary notion of 'the Nepali nation' constructed on the basis of history (over time), which is at odds with the broader, horizontal, and inclusionary notion of 'the Nepali people' understood as the political community inhabiting the territory within the country's borders (over space). Kathmandu's capitol buildings are indeed representative of the primacy of these narratives as clearly seen in both the nationalist architecture of the Narayanhiti Royal Palace and the sumptuous, ivory tower-like style of former Rana palaces. The message that these buildings express (with the exception of the Supreme Court) is that the capitol does not belong to 'the people' and that the idea of the Nepali nation creates a hierarchy of belonging to Nepal. This discrepancy between 'the nation' and 'the people' within both the Constitution and the capitol constitutes a source of deep constitutional instability in Nepal. The ethnocultural definition of the nation has legitimised over the centuries social hierarchies within the polity and cemented relations of inequality, which have in turn led to conflict, disaffection, and mistrust in public institutions and actors. The analysis of Nepali constitutional praxis as well testifies to the 'selective exclusion' of and amongst the Nepali people. As a result, Nepal's historical tensions over what constitutes the 'rightful' political authority in the country and the institutional articulation of such authority in constitutional and architectural form have significantly contributed to Nepal's unstable cosntitutionalism.

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