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Review of 'Constitutional Nationalism and Legal Exclusion: Equality, Identity Politics, and Democracy in Nepal' by Mara Malagodi

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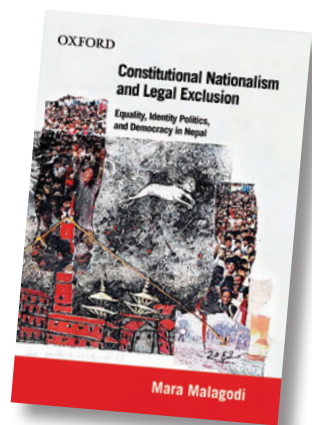
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volume offers important lessons for Nepali political leaders today. Moreover, this volume will likely be a valuable resource for those interested in the comparative study of revolutionary movements as well.

Ches Thurber is a Ph.D. candidate in International Relations at The Fletcher School of Law and Diplomacy, Tufts University. His current book project, Between Mao and Gandhi: Strategies of Violence and Nonviolence in Revolutionary Movements, examines the strategic decision-making of political movements in Nepal.

Constitutional Nationalism and Legal Exclusion: Equality, Identity Politics, and Democracy in Nepal

Mara Malagodi. New Delhi: Oxford University Press, 2013. 316 pages. ISBN 978-01-980-8291-0.

Reviewed by Dannah K. Dennis

In light of Nepal's recent elections for a Constituent Assembly to draft a new constitution, Mara Malagodi's book is a timely and relevant exploration of the political and legal dynamics surrounding the writing of Nepal's 1990 constitution, a key moment in Nepal's recent history which set the stage for the current constitutional drama. This interdisciplinary work is perhaps best described as a constitutional ethnography. It draws on an extensive analysis of primary sources and interviews with a wide range of key players in Nepali politics to answer two main research questions. First, "if the pro-democracy movement that led to the drafting and promulgation of a new constitution in 1990 seemed to have an interest in fostering the principle of equality amongst Nepalis, then why did the 1990 Constitution end up articulating a monolithic and exclusionary constitutional definition of the nation?" (p. 3). Second, how did the Articles of the 1990 constitution which defined the Nepali nation as a Hindu, Nepali-speaking monarchy result in *substantive* political exclusion, rather than merely *symbolic* exclusion?

In answering these questions, Malagodi takes an approach that she describes as path-dependent, meaning that she attends to the ways in which current options are necessarily limited by past choices and events. This analysis of historical contingency focuses on the role of institutions in defining the ethnocultural terms of Nepali national identity, while still recognizing the agency of individuals within that process. She provides a cogent historical summary of the development of the Nepali nation, demonstrating that Nepali national identity from the 18th century onward was constructed around the three pillars of the Shah monarchy, state Hinduism, and the Nepali language. Thus, the writers of the 1990 constitution were constrained by historical precedent in their formulation of Nepali national identity. While proclaiming a return to democracy and asserting as a first principle that all Nepali citizens are equal, the 1990 constitution retained many features of earlier Nepali constitutions that validated a system of social and legal exclusions on the basis of gender, ethnicity, caste, and language. The tension between these constitutional principles, combined with a rising tide of ethnic identity politics throughout the 1990's, contributed to the following two decades of political instability, Maoist insurgency, and royal autocratic takeovers that finally culminated, in 2008, with the expulsion of the last king of Nepal.

The heart of the book rests in Chapter 4, in which Malagodi analyzes key

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Dannah K. Dennis on *Constitutional Nationalism and Legal Exclusion: Equality, Identity Politics, and Democracy in Nepal*

passages of the 1990 constitution, article by article, in light of the interviews she conducted with an impressive array of politicians involved in the 1990 constitution and her extensive analysis of legal primary source documents. She highlights the lack of caste and gender inclusivity among the framers of the 1990 constitution as but one example of the system of exclusions that still operates in Nepali politics. She argues that the continuation of the Shah monarchy in the 1990 constitution was a crucial decision that ensured the official definition of the Nepali nation in "traditional" ethnocultural terms. Significantly, of all the issues under debate, the continuation of the monarchy was essentially taken for granted by the framers of the 1990 constitution. This failure to scrutinize the ontological and ideological foundations of the Nepali state resulted from a naïve belief in the power of law, as embodied by the new democratic constitution, to tame the entrenched authoritarian political power of the monarchy.

I agree with Malagodi's assessment that the anthropological and historical scholarship on Nepal is lacking "a general picture of Nepal's legal arrangements and its dynamics" (p. 25). While this book makes significant contributions toward filling that gap, particularly in Chapter 6 on the Supreme Court, a systematic overview of Nepal's legal institutions and governmental processes would be enormously helpful to scholars working in this field. I hope that Malagodi

will provide us with such a work in the future. In the meantime, this thorough and thoughtful book will be highly valuable to anthropologists, historians, and political scientists who are interested in contemporary social, legal, and political developments in Nepal. It will also be more broadly relevant to scholars interested in the role of nationalism and identity politics in the development of constitutions, particularly from the standpoint of historical institutionalism.

Dannah K. Dennis is a Ph.D. candidate in Anthropology at the University of Virginia. She is currently conducting research on changing concepts of citizenship and national identity in Nepal.

Looking at Development and Donors: Essays from Nepal

Devendra Raj Panday. Kathmandu, Nepal: Martin Chautari Press, 2011 (2067 V.S.). 419 pages. ISBN 978-99-378-3892-4.

Reviewed by Heather Hindman

It is challenging to review a text such as Devendra Raj Panday's *Looking at Development and Donors: Essays from Nepal*. Panday has been a front-line observer of the ups (and unfortunately many downs) of Nepal's sixty-plus year "experiment in democracy." Furthermore, of the essays contained in the book, all except the first have been previously published or written for other contexts and vary greatly in genre, time of authorship and audience. Yet it is this intimate experience of being on many sides of an issue - inside and very much outside the government - engaged in and turning away from international assistance - that gives this text its strength. Dr. Panday is a fluent speaker of the language of foreign aid and diplomacy, with all of its accompanying acronyms and shifting ideologies, as well as an astute observer and sometimes participant in the revolving door of Nepal's politics and economic priorities. One distinctive strength of this book, perhaps particularly in the first chapter, "Past, Present and Future of Development and Aid in Nepal," is its capacity to speak the language of international aid, with references to SAPs, MDGs and the Washington Consensus, and place