REVOLUTION IN NEPAL: A CONSTITUTIONAL CASE STUDY

INTRODUCTION

Developing a theoretical basis for understanding a document like that of a constitution is a complex, three-dimensional process that calls upon multiple disciplines, lengthy document analysis, and often the meticulous sifting of personal correspondence. This is increasingly the case as constitutional conventions refine the constitution-making process, making it more democratic and thoughtful. This coupled with the challenges that each political scenario brings, makes a principled discussion about constitutionalism often illusive. Ground-work which explores constitutional design from its beginning through the varying developmental phases is essential to better clarify upon the theoretical work which follows. This is the rarely discussed side to constitutional affairs - those intimate affairs that make up the negotiation of constitutional language and principles. Finding a case study that offers a transparent and accessible view of a select country’s constitutional design process can be difficult; however, Nepal is ripe for research upon its constitutional design process because it is both current and emerging. Due to international pressure, the design process has an element of transparency to the extent of which is rarely observed. In fact, there could be no better time to examine the decision-making functions of a 21st century constitutional convention than by examining
Nepal today. As we will show, this geographic placement gives rise to a rich culture, ethnic, religious, and political diversity, and with it, a very complex set of political affairs. As a result, Nepal has struggled to draft and ratify a new constitution over the past decade. The Nepali constitutional experience can help us better understand the principles of modern constitutionalism. For example, how are ethnic minorities treated in a modern, constitutional convention? These issues and others are ones we will explore in this essay. Here, we will explore this through the work of Nepal and analyze their experience, detailing the historical and political reasons for discourse among those interested and involved in drafting a new constitution for Nepal. This essay will ultimately culminate to form a modern account of constitutionalism and constitutional principles.

HISTORY

“Nepal is a beautiful country of diverse types of racial, regional, linguistic and cultural identities” and, like many Asian cultures, has an overwhelming history dating back to 1000 BCE.¹ It was the birthplace of Buddha and as a result the birthplace of Buddhism. It remains an important human interpose between China and India. This history, though very rich and detail-intensive at all phases of time, is not all together the reason behind the current state of affairs in Nepal. Instead, we begin our detailed survey of Nepalese history in 1996, at the start the Maoist uprising.² Sometimes referred to as a “civil war”, Maoist aggression in 1996 forms

the beginnings of a movement which will ultimately culminating in a push to reform the government of Nepal.

At the outset of 1996, Maoist revolutionaries launches an armed attack against the Nepalese Monarch. Some of the Maoist participants were insurgents from neighboring Chinese and Bhutan borders but many were neighbors and distant cousins of Nepali Congress supporters. The attack was mostly homegrown and squarely centered on improving the quasi-caste system and other economic divides between the upper and lower classes. Because of the lack of political influence that Maoist immigrant were allotted, many Maoists are represented in the lower socio-economic demographics of Nepal during this time. This included the rural farmers. During the initial phases of the revolution, the Maoists seized power in several of the 82 districts in Nepal, declaring it independent and supplanting government leaders with those of its own. During the uprisings an internal fight broke out which led to the slaying of nine royal members before the assassin, a member of the royal family himself, took his own life. After this episode, support for the royal family declined and in 2005 the new king declared a state of emergency, suspending all legislative activity. Soon after, the king dismissed the entire parliament and under mounting political pressure, organized new elections. These elections were hotly debates as many participants were refused candidacy.

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3 The Nepali Congress was the largest political group of parliament prior to and after the Second Constituent Assembly.
5 *Ibid* (footnote 2).
6 *Ibid* (footnote 3).
The Kathmandu riots in 2006 led to the reinstatement of the old Nepali parliament. Under the new parliament, the king’s powers were diminished and eventually abolished.

Things finally settled down in 2008 and the First Constituent Assembly was formed. The First Constituent Assembly was to act as a temporary parliament while Nepal sorted out its affairs. These affairs include constructing a new constitution and administering the post-revolution economy. The First Constituent Assembly only accomplished a few small initiatives and was largely unsuccessful. Under mounting pressure to make drafting and economic deadlines, the First Constituent Assembly collapsed.

The election of 2013 saw a shift in political balance and several new initiative were proposed. The Second Constituent Assembly has promised to draft and complete a new constitution for Nepal. Almost as soon as new constituent assembly-members took office they began working to re-form the Constitutional Committee. Using strong rhetoric, the Constitutional Committee announced in 2013 that the Constitutional Assembly would labor until a draft was prepared which considered all of the input from each sub-committee.

**CLASS AND SOCIAL STRUCTURE**

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Describing Nepal as religiously and ethnically diverse is perhaps an understatement. Though Nepal proudly promotes itself as the world’s only “Hindu Kingdom,” a multitude of other religions including Buddhism, Christianity, and Muslims are openly embraced. In fact, Nepal is a world leader in religious tolerance. “Religious tolerance and harmony such as is found in Nepal, is perhaps a unique example to the world.” Nepal also features over 40 distinct ethnic groups – many of which are distinctly Asian (and its respective sub-parts), others, Caucasoid, and Terai (Northern India) (See Figure 1.1).

Fig. 1.1 - Atlas of Ethnic and Caste Groups (2006)

The Terai ethnic group in particular has a unique history that is a major contributor to the types of policy that Terai representatives advocate in the CA. The

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native people of the Terai region, though semi-nomadic, have inhabited the area for several hundred years. This group was largely undisturbed well into the 20th century due to high rates of malaria in the region (the Terai people are thought to have developed an immunity to the disease). In 1950, shortly after WWII and the successful deployment of DDT for controlling malaria, the disease was eradicated in the Terai region using DDT. Soon people from other regions began settling the area and deforestation proliferated. In 1970 the King of Nepal granted landownership to ex-military and political allies – they quickly began taking over large swaths of land in the Terai territory. Having been pushed out of their homeland, many Terai natives became low-paid agricultural workers. Terai quickly became and is still today, the most productive region in Nepal. The groups represented in Fig 1.1 under “Terai” are the distinct native groups of the Terai region. Because of the history of the Terai people, Terai representatives are seeking to distance themselves from government and other economic controls that have degraded Terai culture for the last 60 years.

Caucasoid and mongoloid groups are ethnic groups believed to have migrated to the area at various points in history. The Caucasoid group is a group primarily derived from the Middle East, spreading northerly into what is modern day Europe.

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11 *Ibid*


14 It is worth noting that “Dalits” mentioned throughout this essay, are primarily native Terai people in modern times.
Some of these Caucasoid groups settled in Nepal. They are predominately Muslim practitioners. The mongoloid group is derived from modern day Mongolia. These are the largest ethnic groups in Nepal and represent various Asian cultures. This group is primarily Hindu and Buddhist practicing and maintains distant cousins in surrounding China and the Tibet region.

This makes the class struggle in Nepal difficult to grasp outside of the economic implications already assumed by the quasi-caste system; which, only applies to the Indian, Hindu-practicing migrants and by force, the native Terai people.\(^\text{15}\) In the north, Tibetan migrants do not follow the caste system; rather, they live in a communal ownership system (monasteries). Also, Nepalese Buddhists do not follow the caste system – they are progressive Hindu’s and have since moved away from orthodox \textit{varna} classifications and other pre-modern sacraments.\(^\text{16}\) The differences between the two is not unlike that of Catholic and Lutheran followers of Christianity.\(^\text{17}\)

Even within Nepal’s Hindu-Indian population there exists some unique features which make its caste system different from that of India itself.\(^\text{18}\) For instance, caste practitioners have moved away from \textit{jāti} classifications and primarily focus on \textit{varna}, which increases the overall stratification of the caste system (though, economic stratification in the caste system like other caste systems

\(^{15}\) Commentary on why Nepal is a quasi-caste system v. a caste system

\(^{16}\) \textit{Varna} refers to the larger categories of the caste system which becomes divided into four distinct subcategories that describe the economic standing of caste members.

\(^{17}\) For an analysis of this see Chung, Paul. \textit{Martin Luther and Buddhism: The Aesthetics of Suffering}. (Wipf and Stock Publishers: 2002) Print.

is still rare). In summary the rich are placed in a high caste and given special privileges. The Thirteen original colonies in the U.S. shared some similarities with developing Nepal. For instance, these colonial holdings were distinct, sovereign nation-states, at least as far as domestic relations were concerned. Now imagine this same model, applied in the U.S. today. Assume that each state, independent of the crown would have chosen an economic and political model – sometimes similar to its neighbors – sometimes different. Now imagine that Utah chose a communal economy, with a parliamentary government. Nevada, its close neighbor, chose a capitalist economy with a democratic-representative government. What would the relationship between these two states be? Surely Nevada would need the agrarian advantages offered by Utah in order to keep the cost of food relatively low – but Utah, being communal – is unlikely to sell their food as they are producing enough food only to feed their own population. How do the two distinct political structures interact? Perhaps we add that Colorado is socialist and open to bartering with Utah but how does this relationship affect Nevada? This example demonstrates the complex interactions we see in Nepal under the tattered and ineffective central government.

Another major issue in Nepal is education. Rural farmers who make up the vast majority of the voting population are predominately illiterate. The lack of mandatory, public or private education has resulted in stagnation in educational advancement. Moreover, this barrier makes it difficult for political and economic

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19 Jāti concerns the family with which you are born.
consistency, as messaging to the majority of Nepali citizens is largely confused or incomprehensible. Specifically the Madhesa, Terai, and Dalits are among the poorest, least advantage groups in Nepal. Much of this has to do with a combination of immigration, a lack of social stratification, and a bar under the monarchy to political participation for these groups. “Nepal is overwhelmingly an agrarian economy” a Nepali author writes in the wake of the civil war.21 Nepal’s economy is 86% agrarian with 60% of Nepali citizens engaging in some kind of agrarian activity.22 This further complicates economic relations in Nepal as many of the Maoists and Terai people make up these farming communities. These same communities have been cut off from political power (prior to the uprising) and virtually remain cut off by their lack of education. Nepal is also a major tourism hub, it accounting for an additional 10% of the Nepalese economy. Nepal exports a number of products ranging from textile goods to coffee and tea. Over half of Nepal’s trade occurs between it and neighboring India.23 This has made the government of Nepal very interested in the economic affairs of India, while India’s interests are little more than paternal towards Nepal.24 Domestic economic activity within Nepal is quite complex. In this section we will discuss the interworking of Nepal’s domestic economy.

22 Ministry of Agriculture datasheet
23 Ibid (footnote 17)
As we have discussed Nepal largely operates an agrarian economy. Nepal’s domestic economy is complicated by its lack of incentive for local farmers to bring cash crops to the larger, urban market. In fact, Nepal completely lacks the internal infrastructure to effectively exchange domestic crops aside from the rare instance where a farmer takes the initiative to move his own crops by ox cart.\(^{25}\) Currently, Nepali residence rely on localized farmers markets and neighboring farming activity to serve its 30 Million residents. Urban areas like Katmandu are forced to rely exclusively on the farming activities of the rural areas surrounding it. This makes some cash crops more available and affordable in some places of Nepal but not others adding to the unstable market environment.\(^{26}\)

The socio-economic dynamic in Nepal play a considerable role in the on-going dispute over constitutional reform. As we have explained, Nepal operates three distinct economic models, while aside from that, has a predominately illiterate electorate who, only tentatively serve the interests of the urbanites. Because of this, the constitutional reformation in Nepal calls for a three dimensional approach, whereby both the theoretical and practical possibilities of each distinct Nepali group needs assessment and extensive consideration. This has proven a very difficult task for constitutional framers on the ground in Nepal. While the constitution-making process more often implicates political considerations, there are a number of religious, economic, and social pressures which have intensified the negotiations in Nepal. With regard to constitutionalism, this dynamic environment offers an

\(^{25}\) *Ibid* (footnote 17)  
\(^{26}\) *Ibid* (footnote 17).
important opportunity to test the viability of emerging and classic constitutional ideals.

**POLITICAL**

The political environment in Nepal is distinct from the other complex issues in Nepal but perhaps one of the largest contributors of the struggle to create a constitution and unify Nepal. There exists a number of divergent political groups – including some less-established splinter groups. In order to properly seat this paper we will focus on the groups that retain significant influence over the constitution-making process. Here we will focus on the three largest political groups: the Nepali Congress, the Communist-Maoists, and the Communist Marxist-Leninists.

**NEPALI CONGRESS**

The Nepali Congress Party was born out of a political merger between the Napali Nationalist Congress and the Nepali Democratic Congress. For this reason, the Nepali Congress Party is ethnically and religiously very diverse – its focus is primarily on Nepal as a nation-state and the preservation of democratic ideals. The Nepali Congress occupies the left-center of Nepal’s political spectrum. The Nepali Congress has remained very interested in maintaining a relationship with both allies in Western Europe and the United States. This is not to say that the Maoists are disinterested, rather, the Nepali Congress has maintained an active

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27 See Election Map of the Second Constituent Assembly from NepalNews.com
29 See the official website of the Nepali Congress Party.
and on-going effort to involve these parties in the affairs of Nepal. The Nepali Congress is interested in Nepal as a progressive, pro-democratic, parliamentarian government.Originally the NPC was a steadfast supporter of democratic socialism. Still today, tradition is peripheral to the Nepali Congress as the party has primarily focused its attention on installing a mixed economic model whereby both capitalist and socialist institutions are formed and administered by government agencies. The Nepali Congress has itself led a number of uprisings and has called for the preservation of national heritage sites. Because of the Nepali Congress’ openness to “western” economic principles, the Maoists maintain an oppositional platform, calling for strict socialism. Another distinct feature of the Nepali Congress Party is that it has long supported constitutional efforts. However, The Nepali Congress has been openly supportive, even sympathetic towards the ruling elite and, more specifically, the monarchy. After 2006 this became peripheral, though, the voting demographic may still be apprehensive toward the policy-making of the NPC for this reason. According to the NPC, “[The] Nepali Congress believes in plural democracy with liberal values. It is firmly committed to human rights and rule of law. It believes that sovereignty lies with the people and they are the source of state power. Like the European social democrats, Ideologically Nepali Congress represents a centrist philosophy. It is committed to

30 Ibid (footnote 25)
31 Ibid (footnote 25)
32 Ibid (footnote 25)
33 Ibid (footnote 25)
economic growth with social justice and equity.\textsuperscript{34} The messaging from the NPC has evolved over the years.

**MAOISTS**

In 2008 the Nepalese Maoists became the majority party in the Nepalese Constituent Assembly. It is also the youngest party in Nepal, forming in 1994 under the auspicious of the 1996 revolution. The Maoists platform is economic stability and independence for individual farmers.\textsuperscript{35} The Maoists occupy the right of Nepal’s political spectrum. The Maoists are primarily interested in communist ideals and though they tout a platform that protects the rights of local farmers, their willingness to compromise on this issue is a question of great inquiry. The Nepalese Maoists led an uprising against the monarchy that toppled the top classes in the caste system. It is important to note that Nepali Maoists share little in common with their Chinese and Bhutan counterparts. It is true that the Maoist ideology in all cases centers around nationalism, however, that nationalism takes on much different forms among these distinguished nations. For example, Nepali Maoist have no affinity for communism. In fact, one might argue that they are more passionate about democracy than their progressive cousins. In Bhutan, a more moderate view of political structure has taken hold and a mixed approached to monarchy and democracy has maintained a foothold. In China, Maoists strictly adhere to the communist principles that have dominated their culture since the reign of Mao Zedong in the 90s from where “Maoism” derives its moniker. This was

\textsuperscript{34} *Ibid* (footnote 25)
\textsuperscript{35} See the official website of the Unified Communist Party of Nepal at http://ucpnmaoist.org/Default.aspx
the primarily objective of the Maoist Party and since the dismantling of the caste system, several splinter groups have emerged out of the Nepalese Maoists.\textsuperscript{36} One such group is the Marxist Leninists Party.

\textit{Marxist-Leninists}

As of 2011 the Communist Party of Nepal (Unified Marxist-Leninist) is the second largest seat-holder at the Nepali constitutional convention. The CPN (UML) has worked collaboratively with the Nepali Congress to promote democracy; however, they depart significantly from the economic agenda of the Nepali Congress.\textsuperscript{37} They are also the medium by which the Maoists were able to gain influence in Nepal despite the waning and waxing working relationship between the two groups between 2006 and present. The Marxist-Leninists advocate for greater social programs and promote the emergence of direct socialism in Nepal. Though the platform of the CPN (UML) is not always clear, it is clear that they primarily appeal to lower class, urban Nepalese residents.\textsuperscript{38} These residents have been displaced since the overthrow of the monarch, particularly those who were (to-date) a part of the lowest economic caste in Nepal making it difficult for them to gain an economic foothold in Nepal.

\textbf{Conclusion}

The political differences in Nepal are directly tied to its unique class structure. Until 1996 the Maoists were all but outlawed in the national political

\textsuperscript{36} \textit{Ibid} (footnote 31)  
\textsuperscript{37} See the official website of the Unified Communist Party of Nepal at http://www.cpnunml.org/web/home.html  
\textsuperscript{38} \textit{Ibid} (footnote 33)
scene. In many ways, this exacerbated an already desperate economic situation for Moaist-Nepalese farmers, many of which struggled living under the policy-making of the Nepali Congress and under the Nepalese Monarchy. The pre-revolution conditions were not a product of racial discrimination or hatred, rather, a product of an already unstable economic and political scene in Nepal which created economic chaos. While the Nepali Congress struggled to hold onto their political power, the poor became second to receive help under NPC policy-making.

This is an important factor which led to the Nepali Revolution in 1996 but it remains an important factor with regard to the constitution-making struggle in Nepal. These two groups (in particular) still maintain resentment and distrust for each other, giving even the slightest touch a rippling effect. For example, the Constituent Assembly has had a substantial number of filibuster-style standoffs to prevent the passage of constitutional language. Though this ensures the most democratically endorsed constitution, these skirmishes have slowed the drafting process to a slow creep on important issues.

**INTER(im)-CONSTITUTION**

The Nepali Inter-constitution presents some unique insights into the policy views of both the NPC and the CPN. It is the first time in Nepalese history that pro-democratic progressives are working intimately with pro-communist Maoists. Their compromise, embodied in the Nepali Inter-constitution, provides indicators of the future of Nepal. Currently, the second constituent assembly is being led by a NPC

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39 *Ibid* (footnote 33)
majority and should, as time progresses, clarify their position and offer insight into
their willingness to compromise. Since that data is not yet available, here we will
focus on an analysis of the inter-constitution and the issues taken up by the First
Constituent Assembly led by a Maoist majority.
The First Constituent Assembly was formed in 2008 after the slow-down of aggression by Maoist protestors in 2006. The constituent assembly, by design, is parliamentary body and operates upon a sophisticated system of committees and assembly-wide debates. Since its founding, the Constituent Assembly has taken up a number of issues discussed in more detail here. It is important to note that there are 601 seats available in the Constituent Assembly for 20+ parties, 229 of which were held by members of the CPN during the First Constituent Assembly. This is 38% of the total representation of the assembly. To elect the Constituent Assembly, Nepal underwent a hybrid process whereby 240 members were elected by single seat constituency and 335 were elected by proportional representation.\textsuperscript{4041} The

\textsuperscript{40} Single seat constituency is the common method of election for large democracies. Single seat constituency is a process whereby officials are elected based on district outcomes.

\textsuperscript{41} Proportional representation is a national election process, common in parliamentary government systems. Proportional representation is an election method whereby parties are given seats equal to that of their national vote proportion. So if the “Wigs” receive 40% of the vote, and there is 100 seats available, the “Wigs” are allotted 40 seats for their party members.
Maoists won nearly half of the constituent seats but only about 30% of the proportional vote. As Fig. 1.2 shows (below), Nepal has 75 districts, all of which have a number of representatives proportional to the population of the district.

As the opening line suggests, the Inter-constitution was created in response to a “democratic mandate” by the people of Nepal.\(^4\) It is clear even from an initial reading of Nepal’s Inter-constitution that there are significant ethnic and cultural divides in Nepal. For example, in the opening lines the Inter-constitution declares Nepal a progressive state with a focus on equality and tolerance.\(^5\) In fact, by page 4 the multi-ethnic cultural environment of Nepal has been suggested more than 4 times. The Inter-constitution also grants citizenship to nearly every Nepali citizen.

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\(^5\) *Ibid* at pp. 2
in the borders of Nepal during the enactment of the Inter-constitution and after 1990.\textsuperscript{44} 1990 is significant because it is thought to be the early birth of Maoist tension and movement to be politically recognized. The Inter-constitution is also quick to define the national language (\textit{Devanagari} script), the flag of Nepal and the national anthem of Nepal.\textsuperscript{45} This suggests a firm commitment to national identity.

The opening parts of the Inter-constitution suggests both the importance of the work ahead, but also the apprehensive optimism of opposition leaders who, undoubtedly had a major hand in drafting and promulgating the Inter-constitution of Nepal. Part III of the Inter-constitution concerns fundamental rights which will be discussed in depth in the next section of this essay.

Part III of the Inter-constitution lays out several fundamental rights for Nepali citizens. It represents a progressive movement in constitution-making to expand the positive rights of citizens and to afford more \textit{descript} protections to inhabitants of the state.\textsuperscript{46} A selection of these rights includes:

\begin{itemize}
\item The Expansive Right to Freedom (including freedom to form political parties, unions, and to select job occupation)
\item The Right to Equality
\item The Right to Healthcare
\item The Right to Social Security and “Food Sovereignty.”
\item The Right against Gender Discrimination
\end{itemize}

\textsuperscript{44} \textit{Ibid} at pp 4-6  
\textsuperscript{45} \textit{Ibid} at pp. 3-4  
\textsuperscript{46} Positive rights are rights that are derived merely from the existence of a “state” and are administered by the state. Universal healthcare and welfare benefits are an examples of positive rights.
- The Right to Social Justice (defined by the following text: The economically, socially or educationally backward women, Dalits, indigenous peoples, Madhesi communities, oppressed classes, poor farmers and labors shall have the right to [participate] . . . ”)
- The Right against Preventative Detention
- The Right against Torture
- The Right to Access Public Records
- The Right to Privacy
- The Right against Exploitation
- The Right to Constitutional Remedy

It should be noted that several other rights are included all of which are rights also afforded under the U.S. Constitution. Already the ultra-progressive nature of the Nepali people is apparent. In fact, the Inter-constitution of Nepal is arguably the most progressive constitution ever promulgated (by 2007). Much of the fundamental rights secured in the IC (Inter-constitution) are a consequence of or suggestion that a number of socially oppressive tactics were deployed to alienate lower class Nepalese. The right to food sovereignty, the right against exploitation, and the right to social justice are just a few examples of the oppressive history of Nepal. The remaining rights listed above are a sign of the U.N. peacekeeping effort

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47 Ibid. at pp 7-15
48 There are constitutions like that of the South African Constitution that reflect a progressive tradition in constitution-making over the past 50-years. However, the Constitution of South Africa lacks several millennial policy considerations like that of universal healthcare.
in Nepal. Since the surge of aggression in 1996, western allies have pushed for a more democratic government in Nepal.49

In 2000 U.N. negotiators and peacekeepers were actively involved in isolating and, eventually, eliminating pockets of aggressors. For example, direct U.N. influence can be seen in the right against torture, the right to access public records, the right to equality and perhaps others. Despite there having been no reported incidents of torture in Nepal during the uprising, for example, these long-held global initiatives of the U.N. are openly embraced in the Nepali IC. Later we will discuss places in the IC where the U.N. is directly mentioned, but for now these subtle but telling indicators suggest heavy U.N. influence in the drafting of the IC. It should be noted that section VI primarily reiterates the states obligation to uphold the unconditional, fundamental rights of the people of Nepal and for the purpose of this essay will not be explored in detail.

The next several sections concern the procedure and administration of law, specifically the “rules of (political) engagement” for the newly formed Constituent Assembly (CA). These rules will only briefly be discussed here mainly because they conform to traditional standards of parliamentary procedure which is written about at length in other concerned literature. The president is elected through a vote in the CA. In form and function the president is a hybrid role between those of the Speaker of the Senate and the President in the U.S. The President of Nepal under the IC is tasked with “[t]he responsibility for issuing general directives and

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controlling and regulating the administration of Nepal. . . .

The President of Nepal does have the unique power under the IC to expediently create, with the approval of the Council of Ministers, local ordinances. This is distinguished by the U.S. who granted the administration of local governments primarily to states who defer their power to local city councils and mayors. This power is later checked by a legislative approval procedure. The President under the IC is directly answerable to the Council of Ministers and the Prime Minister of Nepal and the CA. Part VI describes the “Legislature-Parliament.”

The Chairperson of the CA retains the most active power in the Nepali government. The Chairperson is tasked with creating the order for the CA and recognizing speakers (in summary). In 2015 the chairperson was stormed by opposition leaders when he refused to recognize a Maoist politician who was attempting to block the passage of a constitutional bill. In form and function the Constituent Assembly of Nepal operates in the same manner as parliaments around the world. Part XVIII, XIV, and XXII respectively focus on the requirements of political party, the process of election – particularly the Election Commission of Nepal, and the commission tasked with developing the political borders of Nepal (this commission will be discussed in detail in a later section), specifically those that are to be used in deciding elections and electorate populations.

Part XVIII of the IC begins:

50 Ibid at pp. 28.
51 Ibid at section 88 pp. 52.
52 Ibid at section 88 (2a) pp. 52
53 For a near analogous outline of the rules and procedures that guide the Legislature-Parliament, see Robert’s Rules of Order.
“Persons who are committed to common political ideology, philosophy and program shall . . . be entitled to form and operate political parties of their choice and to generate, or cause to be generated, publicity in order to secure support and cooperation from the general public for their ideology, philosophy and program or to carry out any other activity for this purpose.\textsuperscript{54}"

This section of the IC is the most directly consequential of the Maoist Uprising of 1996. It provides several procedural layers in order to register a political organization for election purposes while maintain the freedom to do so for even minority political ideologies.\textsuperscript{55} It does this through the authority of and mandates to the Election Commission which will be discussed in the next section. The process for registering a political party in Nepal is known as recognition.\textsuperscript{56} Part XVIII of the IC also calls for full transparency in the fund-balance and origination of funds for each political party and requires that the organization of the political party be democratically operated.\textsuperscript{57} A political party must also seek by petition the approval of 10,000 people in order to become registered for elections.\textsuperscript{58}

Part XIV outlines:

\textsuperscript{54} Ibid at section 141 pp. 102
\textsuperscript{55} Ibid at pp. 102-104
\textsuperscript{56} Ibid
\textsuperscript{57} Ibid
\textsuperscript{58} Ibid
“The President shall, on the recommendation of the Constitutional Council, appoint the Chief Election Commissioner and other Election Commissioners.”

For several of the appointed leadership positions, including some already mentioned, a bachelor’s degree is required in order to seek and obtain appointment. Election Commissioners are one example of a position that maintains this criteria as a requirement for office. Unlike several other offices, “[a] person once appointed as the Chief Election Commissioner or the Election Commissioner shall not be eligible for appointment in other government service.” This is a unique feature of the Election Commission intended to insulate election officials from becoming influenced by the operatives of other political offices and parties. Like many of the executive commissions, commissioners must be in the age range of 45 to 65.

The last two commissions we will detail is the Election Constituency Delimitation Commission described in Part XXII and the Commission for the Investigation of Abuse of Authority described in Part XI. The Election Constituency Delimitation Commission has been at the forefront of heated debate in recent years. This commission is tasked with researching and creating the district boundaries in Nepal, prior to the ratification of the new constitution. The mandate of the ECDC is as follows:

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59 Ibid at section 128 (2) pp. 87
60 Ibid at section 128 (7) pp. 88
61 Ibid at section 154A pp. 113-116
62 Ibid at 113
“[The ECDC shall] determine the number of members to be elected from each district on the basis of the population of that district, by maintaining the proportionality, as far as practicable, between the population of such districts, and the number of members of the Constituent Assembly, and shall determine the number of election constituencies equal to such number, for the purpose of the election to the members of the Constituent Assembly. Due consideration shall be given to *inter alia*, the boundaries, geographical conditions, density of population, transportation facilities of each administrative district and communal and cultural aspects of the inhabitants in such district, on the basis of equal population and geographical specificity and congeniality.63”

In summary the ECDC is tasked with creating the most politically appropriate and proportionally fair political borders possible. The ECDC consists of a retired judge of the Supreme Court, a geographer, a sociologist or demographer, an administration or management expert, and a special class officer in the government of Nepal by IC mandate.64 The determinations of the ECDC are insulated from litigation and other outside practices.

Part XVII concerns the interactions in local politics and the importance of those interactions in a federal scheme. Part XVII begins:

“There shall be made progressive restructuring of the State with inclusive, democratic federal system of governance, by doing away with

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63 *Ibid* at 114
64 *Ibid*
the centralized and unitary structure of the State so as to end discriminations based on class, caste, language, gender, culture, religion and region.\textsuperscript{65}\textsuperscript{65}

Part XVII gives regions in Nepal the ability to form autonomous sections of land (known best in the U.S. as reservations) where indigenous and Madhesi people can make homestead should they choose too.\textsuperscript{66} These regions are not completely autonomous from higher levels of government, but are allowed to form their own local government how they choose.\textsuperscript{67} In order to be recognized as one of these groups who desires an autonomous region, a representative from that group must file and participate in the CA.\textsuperscript{68}

The Commission for the Investigation of Abuse of Authority is tasked with generating reports and following up complaints regarding government corruption and embezzlement. It functions in the same way as other commissions and is, like other commissions, appointed by the President. Much like the Auditor General described in a later part of this essay, this commission is charged with generating a yearly report of complaints and allegations concerning corruption. This report is to include cases which have been terminated. Interestingly, the commission retains the authority to file charges against government officials who, upon thorough investigation are discovered to have had participated in high government crimes.

\begin{itemize}
\item \textsuperscript{65} \textit{Ibid} at section 138 pp. 99
\item \textsuperscript{66} \textit{Ibid} at pp. 102
\item \textsuperscript{67} \textit{Ibid} at pp. 103
\item \textsuperscript{68} \textit{Ibid}
\end{itemize}
Part IX describes the financial obligations, criteria, and procedure of Nepal. Nepal operates its budget much in the same way other countries around the world do. This process is mostly political and for this reason we will ignore the pieces of Part IX that concern the budget-making process. The language of Part IX describes in detail, the process for creating financial reports, estimating revenue and expenses, and the process for levying taxes.69 This broad attribute has an element of uniqueness to it in the sense that constitutional documents rarely describe much of what Nepal has here and never so comprehensively. In general financial process is left to the legislature to create and implement with the suggestion and approval of executive entities where they exist equally and in tandem with other branches of government. It does give the Ministry of Finance broad powers to “bailout” and repay debts to local, micro economic systems devastated by natural or the political causes of the Uprising.70 Part XII describes the role of the auditor general. The auditor general is appointed by Presidential appointment and the confirmation of the Council of Ministers. A number of officials under administration of the President are subject to both an age minimum and an age maximum. Under the IC the auditor general can be no younger than 45 and no older than 65 to hold office. This is a unique fixture of the IC the development of which, will be important to follow closely. The duties of the auditor general are much like that of the treasurer in a corporate board structure. The auditor general tracks the government accounts of Nepal and supplies account information yearly and upon request.

69 Ibid at pp. 53-58
70 Ibid at section 97 pp. 57
The third arm of the Nepali Interim government is the judicial branch. The judicial branch will be described here in detail. Part X and XVI describe the courts and the Attorney General of Nepal. The IC mandates “[t]he Judiciary of Nepal shall remain committed to this Constitution by pursuing the concepts, norms and values of the independent judiciary and realizing the spirit of democracy and the people's movement.”71 The court is structured in the same way that they are here in the U.S. There is a Supreme Court, appellate courts, and district courts. The Supreme Court of Nepal has original jurisdiction in cases that arise from a constitutional question.72 It also has the power to self-regulate the power to discipline judges having been invested in the Supreme Court. In addition, membership of the Supreme Court is at the discretion of the Chief Justice. The Chief Justice is selected by the President of Nepal and his appointment is advised by the Constitutional Council. The Supreme Court judges enjoy life pension but not tenure. They are prohibited from holding office after the age of 65. In addition, the working conditions and salary of judges cannot be reduced.73 The Legislature-Parliament can, however, impeach a judge of they believe misconduct has occurred. Lastly, no judge of the Supreme Court of Nepal can hold a position other than judge after his term.74

Part X also grants expansive rights to petition the Supreme Court. It describes:

71 Ibid at section 100 (2) pp. 59
72 Ibid at pp. 59-62
73 Ibid
74 Ibid
“Any citizen of Nepal may file a petition in the Supreme Court to have any law or any part thereof declared void on the ground of inconsistency with this Constitution. . . .on any. . . .ground[s]; and the Supreme Court shall have extra-ordinary power to declare that law to be void either ab initio or from the date of its decision if it appears that the law in question is inconsistent with this Constitution.75”

This excerpt grants the Supreme Court of Nepal the express power of judicial review. This is a hotly debated feature of judiciaries around the world, with only about 50% of constitutional courts retaining the power of judicial review. The Court can also issue a number of orders and writs including: habeas corpus, mandamus, certiorari, prohibition and quo warranto.76 Unlike the United States, the court has the “extra-ordinary power” to seek out cases being litigated for review. In effect, the Supreme Court can legislate policy to prevent (exclusively) the non-enforcement or unduly restriction of fundamental rights under the constitution. The Supreme Court of Nepal is not subject to the principle of stare decisis.77 In fact, it can review its own decisions and reverse them on their own basis.78 It cannot, however, interfere with the work of the Legislature-Parliament.79

Lastly, the IC outlines a special court dedicated to resolving disputes arising out of the election of the CA. This court is titled, the “Constituent Assembly Court”

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75 Ibid at section 107 pp. 63
76 Ibid at pp. 63
77 Ibid at section 107 (4) pp. 64
78 Ibid
79 Ibid at pp. 63-64
and is tasked with ensuring justice in the CA.\textsuperscript{80} In 2012 the CAC was praised for declining to extend the term of the Constituent Assembly thus forcing a reelection that ultimately resulted in a change in majority.\textsuperscript{81} This special court is tasked with preventing the previous abuse of election process seen under the monarchy.

There are several small remaining features of the Interim Constitution of Nepal worth outlining in brief here. First off, the power to amend the constitution is invested in the Legislature-Parliament and requires a 2/3rds vote to pass. The IC also outlines expansive emergency powers invested in the President. Part XIX describes:

“\textquote{If a grave emergency arises in regard to the sovereignty or integrity of Nepal or the security of any part thereof, whether by war, external aggression, armed rebellion or extreme economic disarray, the President may, on the recommendation of the Government of Nepal Council of Ministers, declare, by proclamation or order, a state of emergency in respect of the whole of Nepal or of any specified part thereof.}\textsuperscript{82}”

This emergency power must be presented to the CA for approval within one month of it having been initiated. Any state of emergency declared by the President, if upheld by the Legislature-Parliament, remains in effect for no longer than 3 months after having been approved by the CA. There are several courses of action that can be taken if the state of emergency is declared in bad faith.

\begin{flushright}
\textsuperscript{80} \textit{Ibid}
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\textsuperscript{81} JHA, Prashant. \textit{Supreme Court stays CA extension plan}. (The Hindu: 2012). Print.
\end{flushright}

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\textsuperscript{82} \textit{Ibid} at Section 143 pp. 105
\end{flushright}
Nepal's relationship with the U.N. is expressed in Part XV and in the Compact between the government of Nepal and the Maoist revolutionaries. Here we will discuss Part XV. Part XV describes the creation of the National Human Right Commission tasked with being a government watchdog and ensuring compliance with U.N. human rights standards. The commission has largely operates much in the same way other commissions in Nepal do and the Constitutional Council is given oversight of the commission. In many ways, the NHRC acts as an investigative arm of the judicial branch. They are tasked, *inter alia*, with creating reports on the laws of Nepal and determining if they conform to international standards. Nepal having adopted such a progressive state stance benefits greatly from this commission's input.

**CONSTITUTION-MAKING**

The Nepalese constitution-making process is primarily spearheaded by the Constitutional Committee which was formed from the Constituent Assembly. As a result, this section primarily focuses on the detail work done in that committee and each of its thematic subcommittees. Though there have been a number of formed committees, 13 represent the principled tasks of the Constitutional Committee, 2 of which function to form procedure. Of the 11 non-procedural committees, 4 committee reports were accepted in 2010 in their entirety by the Constituent Assembly for incorporation into the draft constitution.\(^8\) The remaining 7 committee reports were...

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reports are disputed at different length, some for the same reason as others, and (in general) represent apprehensions to agree on about 10 distinct issues.

It is important to differentiate the recommendations of any given committee. For example, the judicial committee is concerned with the affairs of the federal government in Nepal, but in a much different way. For this reason we will examine these committee reports according to the branch and tier of government that they are responsible for researching and delivering constitutional language on.

Throughout this section we will briefly discuss the many areas of agreement between the diverse members of the CA. Then we will discuss and analyze a few of the areas of disagreement in the CA and attempt to derive from those issues, possible remedies for the CA to consider. The draft constitution is divided into 27 distinction sections. Contained in separate sections are the rights and definition of Nepali citizenship, the administration of government affairs, and a number of doctrines that protect minorities from harm in the enjoyment of everyday life. Religious and ethnic tolerance, central to Nepali life, is evenly enshrined in undisputed portions of several committee reports - with one exception, of course, the abolition of caste socio-economic modeling.

**Government Structure**

As with many modern constitution-making efforts, constitutional conventions undertake their drafting process with 500 years of constitutional history to consider. The development of constitutionalism, as both process and principle has illuminated the process of making government. One area in particular that has seen
considerable sophistication is in the conception and creation of government systems. Much of the world has, for a multitude of reasons, have begun adopting federal systems of governance. Nepal is no exception. The constitution-making reports of Nepal call for a federal, provincial, and local tiered government structure. The reports also indicate that there will be 14 autonomous states (provincial governments) to serve as a check against the central government. These states, in collaboration with the federal government, passively help to administer the affairs of local governments. As we will show, Nepal has developed a number of nuance concepts for implementation that make the case study of Nepal unique and insightful.

**Federal Government**

The federal government is divided into three branches: executive, legislative, and judicial. The executive branch operates similarly to that of the U.S. President with a few distinct features. As we will show, some of these features are disputed some are not. The legislature of Nepal is parliamentary and has a variety of specific roles. The legislative responsibility has been demarcated by the current model under the constituent assembly. For now it appears that the operational model, is and will be the prevailing model under the new constitution with one exception: it will consist of fewer representatives. The judicial branch is the perhaps the most controversial. A number of reports call for varied structure and purpose in judicial decision-making. Here we will examine these differences and analyze their strengths and weaknesses in contrast to the American experience. As we have
mentioned, the federal government has a procedural role in the affairs of local
government. However, the provincial government bears the greater tasks of
creating social and economic prosperity. In this model, the federal government
merely acts as a vanguard against abusive “state” governments.

**Legislative**

In some of the academic work on Nepal, the legislative body (and more
generally the government of Nepal) is described as a democratic-republic
parliament. Because of the existing complexities between the Constituent Assembly
of Nepal, and other government functions, Nepal has elected to (unlike a number of
other constitutional conventions) take a detail-intensive approach to solving the
country’s legislative needs. Additionally, Nepal has been operating a “test”
parliament since aggressions seized on 2008. This has added a lot of clarity and
agreement to the legislative arrangements, both now and in the future, in Nepal.

The new parliament will mirror that of the constituent assembly with few
exceptions: the representative body will be reduced from 500+ to a mere 162 to
reflect proportional representation in each province. The legislative branch in
Nepal will be tasked with creating law concerning national interests and large
economic considerations not unlike that of the U.S. Legislature. Because Nepal is
likely to adopt this model, it will remain a parliamentary, unicameral system with
specific legislative authority. The prime minister is likely to preside over the Nepali
Parliament and will have the authority to recognize representatives, bring forth
bills for consideration, and will help maintain order in the Nepali Parliament.

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84 Double check numbers
Interestingly enough there exists no specific language which authorized the prime minister and the prime minister alone to bring forth bills. It is expected that this may create some disorder in the Nepali Parliament.

**JUDICIAL**

According to the recommendations of the Nepali Committee on the Judicial System the Nepalese courts are to be organized in the following way:

(a) Federal Supreme Court,

(b) Provincial High Court, and

(c) District /Local Court

According to the Committee, special courts may be assembled for the following purposes:

- Family disputes
- Disputes related to domestic violence
- Child rights
- “Touchability”
- *Dalits*
- Customary practices
- Religious and cultural based disputes of special groups
- Military disputes/criminal hearings

The committee also recommended a 4-year term limit for Supreme Court justices. In addition, Judges in excess of 65 years of age are deemed disqualified.

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85 Touchability refers to the orthodox, caste jargon that describes the permissibility of interactions between distinct groups in the caste system.
from holding judgeship and are granted access to state pension programs. The Supreme Court of Nepal retains original jurisdiction in disputes between the federal government and provinces, disputes between provinces, disputes between the Constitutional Bodies, disputes related to national security, currency, and foreign affairs.

In the past 20 years the world has seen significant shifts in constitutional theory as it pertains to some of the highest courts in the world. For example, the dynamic between the European Court of Justice and member-state’s domestic courts have shifted from local-centered decision-making and enforcement to the supremacy of EU law over member-state’s domestic law. In the U.S. this is highlighted in the increasing reliance on foreign law to justify domestic judicial decision-making. Domestic affairs are becoming increasingly globalized. Nepal has recognized this to some extent in the drafting process. Distinguishing from its western counter-parts, the Supreme Court of Nepal is expected to have jurisdictional latitude as it is permitted to hear any case of “substantial public importance” rather than being confined to those arising out of constitutional disputes. Under the draft constitution, judges have an affirmative obligation to promote judicial economy in their province (for state courts). This is to ensure equal access to the court system. The executive branch also has an affirmative obligation to appoint judges proportionately from gender, ethnic, and religious backgrounds.86

One way that the draft papers distinguish from the IC is that they limit the

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Supreme Court in its ability to interfere in lower courts operation and decisions. The Supreme Court, outside of discipline of judges for bad behavior, no long retains direct oversight of the lower courts and is expected to all those courts to make its decision.87

Judges have a number of benefits under the committee recommendations. Judges pay and benefits cannot be reduced except if “the country has declared [a] financial emergency.”88 Judges are entitled to lifetime pension after their retirement from the court provided that they are not removed from office for any of the several criteria for impeachment. It is unclear whether or not the Supreme Court will have a selective docket. The promulgation of fundamental rights in the IC seem to indicate that the Court will be required to take cases in which a concern for fundamental rights has been raised. This leaves open the “selectability” of cases not concerning fundamental rights.

**EXECUTIVE**

Under the concept papers of the Committee on Determination of Forms of Governance of the State the executive branch is to be led by the President of Nepal. The President will serve a term of 5-years and cannot run for office more than twice.89 As is described in the IC, the President retains the power to draft and implement ordinances.90 The concept papers have also added several powers, including the ability for the President to task the army, conduct foreign affairs,

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87 Ibid
88 Ibid
90 Ibid at pp. 7
pardon prisoners, and to require of the federal legislature a contingency plan for a budgetary crisis. Much of the structure for the creation and implementation of the Council of Ministers and the commissions of the President have remained intact. The Delineation Commission is given continued mandate to assess political border for voting and to determine the attributes of the voting population.

**STATE/PROVINCIAL GOVERNMENT**

The state government is known throughout the reports as a provincial government but functions much in the same way that state governments in the U.S. do. “The identity, self-rule and autonomy of the indigenous people and indigenous nationalities living in the state, local unit and special structure shall be guaranteed.” This is perhaps the core function of the provincial government which is unique and delineates from its western correlative.

“There shall be autonomous areas and protected areas within the state as per Article 8 as special structure in addition to the main structure as per the sub-article (1).” “There shall be an elected council in the autonomous region formed in accordance with Sub-Article (4) with legislative, executive and judicial authority to be exercised under the regional laws as per the Appendix 7 of the constitution.”

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91 *Ibid* at pp. 8-9
92 *Ibid*
94 *Ibid* at pp. 15
95 In the committees notes the rationale for including autonomous regions is outlined: “The three main structures may not address the concerns of the people belonging to some regional, ethnic and lingual communities.”
The oversight and administration of these local and autonomous areas is a primary task of the provincial government. The concept papers further divide Nepal into 14 autonomous state-units as per the mandate to form a federal government structure.\textsuperscript{96} Provincial governments are given specific autonomy in administering local economy, naming the newly formed state, and determining a location for a capitol city.\textsuperscript{97} Accordingly, provincial governments are given specific authority and tasks, express in schedule 4 of the constitution. “the power of the province shall rest on the subjects mentioned in Schedule 4 of this Constitution. The Provincial Legislature can formulate laws on subjects outlined in Schedule 4 of this Constitution.\textsuperscript{98}” Since schedule 4 has not yet been drafted, the specific capabilities of the provincial governments remains a mystery. However, notes in the concept papers indicate that, “The powers outlined in Schedule 4 are not a matter of concern nationwide but that which could be administered and managed by the Province. . . .\textsuperscript{99}” The provincial governments also have a collective authority to compel the federal government to revise or abolish law in schedule 4. “If two or more province makes a request before the Federation Legislature to draft laws on areas mentioned in Schedule 4, the Federal Legislature shall draft necessary laws.\textsuperscript{100}” Consistent with a similar mandate given by the Fourteenth Amendment in the United States, provincial governments must, “provide the citizens of another state with equal

\textsuperscript{96} \textit{Ibid} at pp. 17  
\textsuperscript{97} \textit{Ibid} at pp. 25  
\textsuperscript{98} \textit{Ibid} at pp. 27  
\textsuperscript{99} \textit{Ibid}  
\textsuperscript{100} \textit{Ibid} at pp. 32
security and facility according to own laws.\textsuperscript{101} Affairs concerning intergovernmental entities against each other or against the federal government may be resolved by referendum. The process for referendum is outlined in a schedule of the constitution to be drafted. \textit{Madheshi}, \textit{Dalit}, and \textit{Terai} ethnic and caste groups are given specific mention in the papers on provincial government. These groups are seek as historically disadvantaged and the language of the draft papers demonstrates a firm commitment to levelling the inequality that these groups face. Provinces are expected to provide special educational, economic, and political rights to these groups in order to advance this constitutional policy.\textsuperscript{102} The recommendations of the Committee on Determination of Forms of Governance of the State indicate that the federal system, as it relates to provincial government will have much of the same features as India, and will in fact, be semi-federal through a series of policies that enforce collaboration between the federal government and states, and authority of the federal government to override provincial governments in specific instances.\textsuperscript{103}

\textit{LOCAL GOVERNMENT}

The local governments consist of a council and create ordinances not unlike that of a municipality here in the U.S. The existing village councils (\textit{gaon palika}) in Nepal (primarily in Tibetan communities) will assume the role of “local government” upon the passing of the new constitution. Interestingly, under the proposed model, the federal government retains a specific authority over the affairs

\begin{thebibliography}{9}
\bibitem{101} \textit{Ibid} at pp. 34
\bibitem{102} \textit{Ibid} at 44-45
\bibitem{103} \textit{Ibid} at Chapter II \textit{Restructuring of the State, Distribution of Power, and Federalism}.
\end{thebibliography}
of local government by retaining procedural authority over the affairs of municipal councils. Additionally, local governments are subordinate to provincial authority. The function of local government in Nepal is to administer local needs that are otherwise overlooked by provincial authorities.

**AUTONOMOUS GOVERNMENT**

One interesting feature of the Restructuring of the State and Distribution of State Power Committee’s report, is that it calls for autonomous regions in Nepal to support “splinter” political and socio-economically disadvantaged groups. “There shall be autonomous areas and protected areas within the state as per Article 8 as special structure in addition to the main structure as per the sub-article (1).”¹⁰⁴ In contrast, the United States has created fixed (and dissolving) Native American reservations. Under the Nepalese model, “reservations” would be compulsory rather than voluntary and the preservation, even expansion or modification (without reduction) of “special districts” inevitable. “The Provincial Government shall constitute a high-level Commission in order to recommend for the formation of any additional new, apart from the autonomous regions as provided for in the Schedule. The formation of the autonomous regions for the first time should be completed within one year of formation of the Provincial Government.” This means that the initial assignments of autonomous regions are permanent after their inception. Though autonomous regions are distinct in their ability to create policy, they are still answerable to the provincial government in as much as their activities are legal

¹⁰⁴ *Ibid* at pp. 40
under federal law. Disputes between states are resolved through an inter-state council consisting of federal, elected employees.

**CONCLUSION**

The Nepali constitutional experience can help us better understand a number of principles of modern constitutionalism. For one, generally speaking, constitutions are growing, both in length and in depth. This has only increased the importance of studying the ground-work as we have done here. The 162-page document that makes up the Interim-constitution of Nepal is a testament to the increase in length, and as it relates to depth, there has been a substantial increase in the incorporation of positive rights. Nepal is a testament to this increase. These rights, even from a constitutional standpoint, are increasingly represented in constitutions rather than merely an abstraction of the common law or code. For example, Nepal has integrated multi-cultural recognition and proscribed tolerance into its constitutional language. This is unique to Nepal and demonstrates an increased awareness and vigilance towards protecting positive rights. It guarantees education and healthcare to all Nepali citizens. Moreover, it demonstrates the expansion of positive rights from common law principle to constitutional doctrine.

Positive rights are not the only rights being advanced in Nepal. Negative rights have been enhanced through a more sophisticated understanding of the relationship between government and citizens.\textsuperscript{105} For example, our understanding of voting schemes and different structural components of democracy has been the

\textsuperscript{105} Negative rights are rights derived from natural law. It is thought that some rights do not spring from the government, rather, these rights are inherit in all people by virtue of being a sentient being.
subject of significant scholarly debate in the past 50 years, the content of this ongoing debate is clearly reflected in the changing practice of constitution-making.\textsuperscript{106} The Nepali constitution reflects an interest in making democracies more participatory and allowing for a minority voice.

Through the IC we see several developments that make changes to how governments have operated around the world. One example of this is the age requirements placed on a number of government officials. Many government officials must be between the age of 45 and 65 to be considered for office. In application to judges particularly, this is a unique take on the continued debate over life tenure for judges throughout the world.

Also unique to the Nepali constitutional experience is the ordering and power allocation concerning local governments. In the IC, ordinances are promulgated by the President of Nepal. Under the concept papers it appears that this power will be transferred to local government founded in and after the interim with direct oversight by the Federal government. In addition, the powers placed upon autonomous regions are unprecedented and represent a willingness of the Nepalese to let people live as they so choose as long as that lifestyle is peaceful.

The most interesting development in constitutionalism seen through Nepal is the inclusion of additional and new fundamental rights. The IC as well as the concept papers indicate that Nepal will have free, universal healthcare, a

\textsuperscript{106} For an example of modern, evolutionary democratic theory see, Habermas, Jurgen. \textit{Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy} (1992) where the theory of deliberative democracy is discussed at length through Habermas’ criticism of the modern administration of democracy.
guaranteed commitment to social justice and equality, mandated government transparency, all of the “western” rights concerning freedom, liberty, and property as well as all of the rights afforded under the Universal Declaration of Human Rights.\textsuperscript{107} The constitutional work in Nepal to-date indicates that the Constitutional of Nepal, once ratified, will feature the most comprehensive list of rights and protections ever promulgated by a government. In addition, it is likely to be historically thought of as having the greatest protection for minorities and tolerance of opposing viewpoints.

The Nepali vision also uniquely accounts for emergencies in a way not yet seen in constitution-making. These are situations that are unfathomable and unaccounted for in constitutional design. The CA has demonstrated an interest in allowing the executive branch to operate, in extralegal situations, beyond the language of the constitution. These circumstances are uniquely defined with specificity so as to guarantee the ethical, limited, and brief suspension of constitutional principles upon the occurrence of a national emergency.

**The Passing of the Constitution**

On September 20\textsuperscript{th}, 2015, as this essay was being drafted, Nepal ratified a new constitution.\textsuperscript{108} Though the new constitution is telling, we will reserve discussion on the contents of that constitution for a later date. The fundamental purpose of this essay is not defeated merely by the creation of a constitution. For we


\textsuperscript{*The Constitution of Nepal was approved on September 16\textsuperscript{th} but came into effect on the 20\textsuperscript{th} of September.*}
must spend more time considering the conversation that underscores the final passing of constitutional reform in hopes of truly understanding why we pick the language and principles we do before we take those finals steps to making a new body of supreme law.

The new constitution is, however, ripe for a critical look and many news commentators have already taken to the onslaught. There exists some emerging discussion about the workability of the provincial system (the CA decided to resolve a long standing debate over the 14 province model by cutting it to 7) and the fairness of electoral boundaries particularly in southern regions where more than 20 distinct groups call home. India has been aggressively opposing the new constitution mainly due to having been little included in the making process and implication it might have on economic transactions between the two countries. It is worth studying these issues and others that might stem from the uniqueness of Nepal’s new constitution which incorporates much of what we have discussed here in this essay.