

Article

THE KING VERSUS THE PEOPLE: THE ABOLITION OF MONARCHY AND CONSTITUTION MAKING IN NEPAL

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Abstract

The abolition of the institution of monarchy on May 28, 2008 marks a turning point in the political and constitutional history of Nepal. This saga of constitutional development exemplifies the systemic conflict between people's aspirations for democracy and kings' ambitions for unlimited power. With the abolition of the monarchy, the process of making a new constitution for the Republic of Nepal has started under the auspices of the Constituent Assembly of Nepal. This paper primarily examines the reasons or causes behind the abolition of monarchy in Nepal. It analyzes the three main reasons for the abolition of monarchy. First, it argues that frequent slights and attacks to constitutionalism by the Nepalese kings had brought the institution of the monarchy to its end. The continuous failures of the early democratic government and the Supreme Court of Nepal in bringing the monarchy within the constitutional framework emphatically weakened the fledgling democracy, but these failures eventually became fatal to the monarchical institution itself. Second, it analyzes the indirect but crucial role of India in the abolition of monarchy. Third, it explains the ten-year-long Maoist insurgency and how the people's movement culminated with its final blow to the monarchy. Furthermore, this paper also analyzes why the peace and constitution writing process has yet to take concrete shape or make significant process, despite the abolition of the monarchy. Finally, it concludes by recapitulating the main arguments of the paper.

INTRODUCTION: THE KING VERSUS THE PEOPLE

For Plato, philosopher-kings were the best kind of rulers.¹⁾ His idea of monarchy was based on the assumptions that a monarchy could be the best institution to promote free will, rule of law, and institutionalize democracy on a non-partisan basis. Time and again, history has disproved these Platonic assumptions. Monarchies have often caused their own demise by assaulting the sovereignty of the people, ignoring democracy as a way of life, and disrespecting constitutionalism. The Nepalese case, the conflict between the King and the people, broadly reflects a similar pattern with a clash between the aspirations of

democracy and greed for unlimited power at its core. Thomas Hobbes,²⁾ who justified monarchy as the best possible form of governance, also warned that a monarchy could turn into tyranny. Throughout its history, Nepal has seen tyranny unbridled and fallen victim to its caprices, and therefore the Nepalese people solemnly decided to abolish the source of their oppression, the monarchy.

The constitutional development of Nepal is shaped by five separate conflicts. First, the conflict between the state of Gorkha and other states, which ended up with the integration and foundation of the modern Nepal. Before the unification of the modern Nepal, all states were almost like principalities. Second, the conflict between the Shah Dynasty (a dynasty of Kings) and the Rana Dynasty (a dynasty of prime ministers), which ended up with the abolition of the Rana Dynasty. Third, the conflict between the King and the people, which ended up with the abolition of monarchy on May 28, 2008. Fourth, the conflict between the Maoist and democratic political parties³⁾ — or, as it can be seen, between the ideologies of communism and democracy, which has drawn the country into a new landscape of socio-politico conflict. This conflict is expected to conclude with the formulation of a new democratic constitution that will assimilate the Maoists into a democratic framework. However, there are serious hurdles down the road: especially after 2006, from which a conflict of ethnic identity has emerged—the fifth and possibly most serious conflict. Perhaps this ethnic conflict will pose bigger challenges, requiring much deeper wisdom than ever before.

CONFLICT BETWEEN THE STATE OF GORKHA AND OTHER STATES: THE FIRST CONFLICT

Since the beginning of the process of the unification of Nepal by Prithivi Narayan Shah,⁴⁾ Nepal has experienced political tension emanating domestically from its various groups and provinces, as well as internationally from the political conflicts of the region. Nepal is a landlocked country situated between the two giants of Asia, with China to the north and India to the east, west, and south. With an area of 147,181 square kilometers (56,827 sq. miles), Nepal is almost 22 times smaller than India, and 65 times smaller than China. With a population of approximately 28 million, Nepal is the 41st most populous, and by land mass 93rd largest country in the world. Despite its size, Nepal has managed to survive its own political turmoil as well as that overflowing from the boundaries of its much larger neighbors.

The first conflict transpired between the Gorkha state and other states from 1743 to 1775, and culminated in the unification of modern Nepal. This unification consolidated Nepal's military strength and brought diverse cultures and ethnic groups together into a single state.⁵⁾ Since unification in 1769, Prithivi Narayan Shah's descendants ruled Nepal as kings until the Constituent Assembly of Nepal formally abolished the monarchy on May 28, 2008.⁶⁾ With this unified strength, Nepal fought a number of wars with China and British-India and successfully defended her independence and sovereignty. Besides having many negative consequences, those wars helped to build a sense of national pride, fraternity, harmony, and community, facilitating the peaceful coexistence of the diverse

cultural and ethnic groups in Nepal. Additionally, during its 240-year regime, the Shah dynasty used all available means to sustain this sense of community. However, the measures introduced by the Shah were built on domination and hierarchical structure, and thus were inherently fragile. The community maintained by the Shah dynasty was not built on freedom, respect, and a rights-based approach and, consequently, could erupt at any time into vicious conflict. Recently, it erupted into such a conflict. As a response to this, the major political parties have agreed to transform the unitary form of the Nepalese society into a federal structure but they have failed to write a new constitution. Consequently, on 27 May 2012 the Constituent Assembly (CA) has been terminated, without accomplishing its task.

CONFLICT BETWEEN THE SHAH AND RANA DYNASTIES: THE SECOND CONFLICT

One of the army commanders, Junga Bahadur Rana, who killed many supporters of the King and usurped the state power and prerogatives exercised by the Shah kings in 1846⁷⁾, became Prime Minister and Chief of the Army. Junga Bahadur made the position of prime minister a post to be inherited by his family members and successors alone. From that point on, the Ranas⁸⁾ ruled Nepal, placing the kings as titular head of the Kingdom, until 1950. Junga Bahadur was an extremely charismatic and powerful person. Once, he exiled the King and Queen to Banaras, India. He also charged King Rajendra of treason and kept him under house arrest, declaring Surendra, a son of King Rajendra, the King instead. In the history of Nepal, Junga Bahadur is considered the most powerful Prime Minister ever. The rise of Junga Bahadur deepened the conflict between the Kings and Ranas, which was settled only after 104 years of despotic rule by the Ranas, ending after the revolution in 1951.⁹⁾

Two important political developments occurred during the 1950s, both at the regional and domestic levels, that finally caused the end of Rana regime. First, the liberation movement in India inspired educated Nepalese youth to be organized and fight for the cause of democracy in Nepal. Thus, the first political party of Nepal was formed in Deharadun, India in 1927 and was called *Prachanda Gorkha*.¹⁰⁾ Being inspired by Mahatma Gandhi's Charka movement, in 1930, Tulsi Mehar launched the Charkha (spinning wheel) movement in Kathmandu Valley with a view to create employment, educate people, and develop labor skills in the populace, using local raw materials to produce cotton clothes at home. The Rana Prime Minister Bhim Shumsher arrested and imprisoned him on a charge of treason. In 1935, under the leadership of Tanka Prasad Achary, another political party named *Nepal Praja Parisad* was established for the avowed purpose of democracy.¹¹⁾ It was supported by King Tribhuvan and inspired popular activism in Kathmandu in 1940. The Ranas arrested the protesters and sentenced four of them to death. The King was also tried in a charge of supporting the movement against the Ranas. The Ranas found the King guilty, but they could not dethrone him because of imminent political risks.¹²⁾ Against this background, two major political parties of Nepal were established in India: The Nepali Congress was established in Calcutta, India on April

10, 1950¹³⁾, and on April 29, 1949, the Communist Party of Nepal was formed in Calcutta, India.¹⁴⁾

Second, after World War Two, India was liberated from British colonial rule. This conveyed a number of messages to the Nepalese people. First, with the end of British rule, the Ranas had lost their moral political support. Second, India's transformation from colonialism to democracy inspired the democratic aspirations of the Nepalese people. India offered a home for the establishment of Nepalese political parties and supported their cause for democracy outside the reach of the Nepalese government. Third, India was concerned about Chinese influence over Nepal and wanted allies in Nepal who could join with India in order to protect India's political security interests. Since the Ranas were close to the British colonial rulers, democratic India relied more on the monarchy and democratic forces in Nepal.¹⁵⁾ These Indian factors contributed immensely to the shaping of the political landscape in Nepal.

With these developments, the Nepali Congress launched a movement for democracy in Nepal supported by the Communist Party and the King.¹⁶⁾ The Nepali Congress announced that the fight was for the establishment of "full democracy" in Nepal conjoined with political and economic justice, constitutional monarchy, land reform, and land distribution. It also favored a policy of close friendship with India.¹⁷⁾ This movement, known as the People's Revolution of 1951, conclusively ended the autocratic rule of the Rana Dynasty.

In December 1950,¹⁸⁾ India procured an agreement between the Nepali Congress, the King, and the Ranas. The Ranas accepted the Indian proposal on January 8, 1951 followed by a cease-fire order by the Nepali Congress on January 16, 1951.¹⁹⁾ King Tribhuvan arrived in Kathmandu from Delhi on February 15, 1951 and made a proclamation on February 17, 1951 with a commitment that "the people be ruled by a democratic constitution framed by a constituent assembly elected by the people." This marked an end of the previous era and the beginning of a new era in the political and constitutional history of Nepal. The 1950s revolution emancipated the Kings from the domination of the Ranas, and helped the Shah Dynasty survive for another six decades until the monarchy was abolished on May 28, 2008. The political changes of 1950 and 1951 ended the conflict between the Shah and Rana dynasties in favor of the Shah Dynasty, but the King, did not keep his promise, eventually ushering in a profound conflict between the King and the people.

CONFLICT BETWEEN THE KING AND THE PEOPLE: THE THIRD CONFLICT

On March 30, 1951, following the 1950 revolution, King Tribhuvan promulgated an Interim Constitution of the Kingdom of Nepal²⁰⁾ on the advice of the Council of Ministers. The Interim Constitution came into force on April 11, 1951.²¹⁾ It was meant to be a constitution for an interim period until a republican constitution²²⁾ could be prepared by a Constituent Assembly.²³⁾ With these developments, the Ranas' dictatorship was theoretically ended, but the Ranas were still in power. Rana Prime Minister Mohan Shumsher was leading the government that had been formed on March 30, 1951.²⁴⁾

The Constitution was a compromise between the King, the Ranas, and the Nepali Congress. Eventually, constitutionalism was also compromised between these forces. The 1950 revolution was the starting point for the institutionalization of democracy in the country despite the serious challenges ahead. First, the Ranas were still dominating the political landscape of Nepal; removing them from power, no easy task, was the only way to end their political domination. Second, for the first time in a century, the King had an opportunity to enjoy state power and authority, inspiring him to seek out and wield even more. Since the Royal Nepal Army was loyal to the King, at any time the Monarch could step in to assume absolute power in his hands, posing a serious threat to the democratic aspirations of the people. Third, for centuries the country had been exploited by its rulers and desperately needed socio-economic transformation along with political change. These fragile institutions were in need of educated people, and inexperienced political leaders (the political parties and their activities were quite new for the Nepalese people, and leaders had never gained any experience of organizing political parties) lacked the skill to bring about the desired changes. Fourth, amidst these challenges, the Nepali Congress had the great responsibility of institutionalizing democracy while it was itself mired in internal conflict over party leadership and the lack of cooperation of almost three-dozen additional political parties,²⁵⁾ including the Communist Party of Nepal. The road ahead was risky and dangerous.

A. Conflict from 1951 to 1990

The first government composed of Ranas and the representatives of Nepali Congress got mired in opposing political cultures soon after its formation in March 1951. The Nepali Congress, led by B. P. Koirala, felt that the presence of the Ranas in the governance was both oppressive and irrelevant. Conflict between these factions sharpened severely.²⁶⁾ Both asked for Delhi's help in resolving the conflict. Delhi sympathized with both factions, and the parties returned to Nepal in the spirit of cooperation.²⁷⁾ However, it did not work out. B. P. Koirala and the Congress group resigned from the government on November 11, 1951, asking the King to exercise his power to form a new government of the Nepali Congress without any Rana participation. Since the Ranas were still powerful, the King would not dare to eliminate Ranas from government, as requested by B. P. Koirala. In the meantime, many other political parties had demanded an all-party government consisting of more than the Nepali Congress.²⁸⁾ In different scales and amplitude, political movements were burgeoning across the country. The Rana Prime Minister Mohan Shumsher, who had refused to resign in the beginning, suddenly tendered his resignation on November 13, 1951, perhaps sensing the fact that the Royal Nepal Army would not support the Ranas. He should have also felt that the spreading mass movement across the country could erupt at any time against the Ranas, compelling them to leave the country.

With the resignation of Prime Minister Mohan Shumsher, King Tribhuvan formed a government of the Nepali Congress under the leadership of Matrika Prasad Koirala, as B. P. had expressed his willingness to focus on the party's work. It was the first civilian government in the history of Nepal. With the establishment of this, the Ranas' rule was finally ended. Nonetheless, challenges ahead were no less than before. The Nepali National

Congress and the United Democratic Front had denounced the government as the new agent of capitalism and expressed their resentment of supporting the government. K. I. Singh was released from prison and announced that an insurrection against the government would take place, demanding an all-party government. The King declared a state of emergency.²⁹⁾ B. P. Koirala and Matrika Prasad Koirala also got entangled in the power rivalry, finally forcing Matrika to resign on August 10, 1952. The rivalry between B. P. Koirala and Matrika Prasad Koirala provoked the King to form an Advisory Board³⁰⁾ instead of a government. Additionally, the King started ruling the country through his own executive power. The King had already overstepped the newly agreed modality of constitutional monarchy. Against the backdrop of severe political rivalries among the political parties, the King gradually accumulated political strength, forcing B. P. Koirala to compromise with the King. Consequently, B. P. Koirala adopted a policy of alignment with the King and rejected the idea of writing a constitution through an elected constituent assembly.

Since the Constituent Assembly promised by the King was to be constituted by 1952³¹⁾ but was never established, the Interim Constitution continued for eight years. B. P. Koirala and his party, the Nepali Congress, opposed the idea of promulgating a constitution by an elected constituent assembly. In the words of B. P. Koirala, making a constitution by the constituent assembly was “highly unnecessary.”³²⁾ The ideas of B. P. Koirala concerning the constituent assembly aggravated mutual distrust and contention between the Nepali Congress and Communist parties. This political polarization pushed B. P. Koirala to ally himself further with the King. The King and B. P. Koirala agreed to draft a constitution by a committee of experts. Thus, instead of declaring elections for a constituent assembly, the King announced a Constitution Draft Commission.³³⁾ The Commission was constituted on March 24, 1958. Sir Ivor Jennings, a noted constitutional expert from the United Kingdom,³⁴⁾ was inducted to the Commission as its advisor. The commission worked for about eleven months, prepared a Draft Constitution and submitted it to the King. The King promulgated the constitution on February 12, 1959. For the first time in the history of Nepal, political parties were constitutionally recognized, and the parliament was composed of elected representatives of the people. However, it must be noted that the Constitution had provisions³⁵⁾ by which the King could sidestep the constitution by exercising prerogatives and state power accorded to him.

Prior to the promulgation of the 1959 Constitution, on November 9, 1958, King Mahendra had announced elections for the parliament. The elections took place in February 1959, within a week from the date of the promulgation of the 1959 Constitution. The Nepali Congress won the majority of seats in the parliament. The Communists were in the minority. The Nepali Congress formed the government under the leadership of B. P. Koirala. Immediately, the culture of political non-cooperation sharpened between the Communist parties and the Nepali Congress. Consequently, the non-cooperation weakened the government, and it failed to deliver. At the societal level, people started fighting against each other in the name of their allegiance to political parties, which sharply divided communities and families into intolerable warring groups. A divided and intolerable political culture became widespread. In a short period of governance, the

political parties left a pervasively undesirable image of themselves. Certainly, it was a golden time for the power-hungry King to assume state power. Eventually, on January 6, 1960, the King, with the support of Royal Nepal Army, dismissed the elected government, dissolved the parliament, took over all state power, and started dictating the country. This coup against the elected government marked the end of the 1959 constitution. The King had killed the democratic aspirations of the Nepalese people.

On May 8, 1962, the King composed a six-member Constitution Drafting Commission.³⁶⁾ In a period of less than one and a half months, the Commission drafted the constitution and submitted it to the King on June 14, 1962.³⁷⁾ The King promulgated the new constitution on December 16, 1962, known as the *panchayati* constitution, which posited all prerogatives in the hands of the King and placed the King above the constitution. As a result, it propelled the struggle between the King and the people—represented by their political parties—to a new height. The conflict continued for about fifty years until 2008. During this period, the Shah kings ignored their promises to the people, undermined their democratic aspirations, banned political parties, denied human rights, oppressed civilians, amassed wealth by abusing public resources, and ruled the country as dictators above the constitution.

B. Conflict from 1990 to 2008

It took almost thirty years to restrain the absolute monarchy exercised by the Shah Dynasty. The first people's movement launched by political parties (the Nepali Congress and different Communist factions) in 1989 against the *panchayat* system in the backdrop of the Indo-Nepal trade embargo ended the absolute monarchical rule in 1990. The ego and personality clash between King Birendra (who was killed in 2001 with his family members in a royal massacre) and the Indian Prime Minister, Rajiv Gandhi, ended up with the unilateral imposition of a trade embargo against Nepal by India. The trade embargo lasted for nine months until democracy was established in 1990. On April 16, 1990, the King restored multi-party democracy and agreed to be a constitutional monarch. On November 9, 1990, a new constitution was promulgated that legitimized democracy and modestly brought the absolute monarchy into the limits of the constitution. The Constitutional Recommendation Commission (CRC), formed on June 1, 1990 for "the preparation of a draft constitution with a view to strengthen Constitutional Monarchy and Multiparty Democracy"³⁸⁾ prepared the draft of the 1990 Constitution.

Recognizing the urgency for preparing the 1990 Constitution, the king directed the CRC to prepare the Constitution within three months.³⁹⁾ The CRC accomplished its historic assignment in time and submitted the Draft⁴⁰⁾ to the King on September 10, 1990. King Birendra handed the Draft to Prime Minister Krishna Prasad Bhattarai, instructing him to submit a final version after consulting with other political parties not represented in the CRC. To accomplish the task assigned by the King, the Interim Government of Mr. Bhattarai formed a three-member committee.⁴¹⁾ The Interim Government submitted the final version of the Constitution to the King on September 11, 1990. However, instead of producing the draft submitted by the Interim Government, the palace produced and communicated a different version of the Constitution in the *Gorkhapatra Daily* (a

government newspaper), on October 21, 1990. The Palace stated that it had been prepared in consultation with the Prime Minister. However, the King's version of the Constitution was substantially different from the draft recommended by the CRC.⁴²⁾ This deception shows that the King, from the very beginning of the making of the 1990 Constitution, was reluctant to be a constitutional monarch.

The model of the constitutional monarchy enshrined in the 1990 Constitution was defective. The drafters of the 1990 constitution were indoctrinated by a concept of the supremacy of the King and demonstrated their excessive loyalty to him. This indoctrination heavily influenced both the constitutional making process, and the statesmanship of the political leaders. For example, the chairperson of the CRC, while submitting the draft constitution to the King, depicted himself as the "Earnest Devotee of His Majesty."⁴³⁾ Given this context, one questions how a devotee could write a constitution transferring power from the King to the people, since the CRC was fraught with the legacy of *parens patriae*. Thus, did not recommend promulgating the 1990 Constitution by "we the people". One of the drafters of the 1990 Constitution, Mr. Mukunda Regmi, claimed that the monarchy was the best and most trusted institution in defining constitutionalism and promulgating the constitution. He went on by asserting that, in a monarchical country, the King is the only source and authority for the promulgation of a constitution. Therefore, people or the representative body of the people could not promulgate the 1990 Constitution.⁴⁴⁾ Mr. Regmi's statement clearly exhibits the actual state of mind of the drafters of the 1990 Constitution. Consequently, transferring power from the King to the people remained an unfinished agenda.

While promulgating the 1990 Constitution, on November 9, 1990, King Birendra proclaimed the version of the Constitution that had originally been recommended by the CRC and revised by the Interim Government. However, while proclaiming the 1990 Constitution he read a different text, picked from his pocket, instead of the text submitted by the Cabinet. The text read by the King while proclaiming the 1990 Constitution was different from the preamble of the 1990 Constitution. The texts varied from each other substantially. The text that was read by the King states that His Majesty, exercising constitutional and state authority and prerogatives vested in the Crown, promulgated the 1990 Constitution.⁴⁵⁾ The preamble of the 1990 Constitution stipulates that the Constitution is promulgated on the recommendation and advice of the Council of Ministers, recognizing that state authority and sovereign power shall be exercised in accordance with the provisions of the constitution.⁴⁶⁾

These facts suggest that from the very beginning of the making of the 1990 Constitution, the concept of constitutional monarchy was contested. The King continually overstepped the constitution, reducing the government's capabilities to that of a passive onlooker. On a number of occasions, the Supreme Court also justified the constitutional onslaughts by the King. Among them, two cases are noteworthy. In the case of an ambassadorial appointment, the Supreme Court justified an appointment made by the King, without any advice and recommendation of the Council of Ministers in the name of "privileged communication."⁴⁷⁾ Another major attack on the constitution by the King culminated in dissolving the elected government in 2002, which was challenged before the

Supreme Court of Nepal. The Supreme Court justified the King's action as constitutional. The Supreme Court judged that the action could not be challenged before a court as the King had invoked his authority under Article 127 of the 1990 constitution.⁴⁸⁾

No less than the court, the political leaders and governments, instead of bringing the King within the premise of the Constitution, engaged in appeasement. The political leaders kept allowing the King to overstep the constitution. A few examples show how the political leaders played destructive roles in this travesty of the constitution and democracy. Following the first general elections for the Parliament in 1991, the King nominated ten members in the Council of State (Upper House) without consultation, advice or recommendation of the Council of Ministers. Most of the time, the King nominated politicians who had no other chances of entering the House.⁴⁹⁾ It provoked widespread criticism against the then-Prime Minister, Girija Prasad Koirala, for not bringing the King within the bracket of Article 35 (2) of the Constitution. Aware of the fact that the Royal Nepal Army was loyal to the King, the Prime Minister felt helpless and could not invoke the available constitutional processes to rein in the excesses of the King.

The National Assembly was a Permanent House;⁵⁰⁾ therefore, it could not be dissolved or turned into a non-functional body. However, the House of Representatives could be dissolved and had been dissolved three times under the 1990 Constitution.⁵¹⁾ On the dissolution of the House of Representatives, elections had to be held within six months.⁵²⁾ The constitution had envisioned that there could be no interval of more than six months between two sessions of the Parliament.⁵³⁾ Thus, a session of the House could not be prorogued for more than six months. When the House of Representatives was dissolved on May 25, 2002, the National Assembly was conducting its session. The King prorogued the National Assembly and never summoned its session. In this way, the King thus started ruling the country without a parliament.

The transgressions continued regarding many aspects of the Constitution, including providing assent to Bills. Article 71 of the 1990 Constitution had prescribed the procedure for the assent of Bills passed by the Houses. No Bills could become an Act unless His Majesty would assent and fix the Royal Seal. Therefore, a Bill passed by the Houses had to be presented to His Majesty for assent.⁵⁴⁾ His Majesty was required to assent the Bill tendered to him within one month⁵⁵⁾ from the date presented to him, unless His Majesty had the opinion that the Bill needed further deliberations.⁵⁶⁾ Under Article 73⁵⁷⁾ of the Constitution, His Majesty could send back any Bill. However, His Majesty could not send back the Finance Bill for deliberation and, therefore, was required to assent within one month from the date of its submission for assent.⁵⁸⁾ Under the 1990 Constitution, almost one hundred fifty laws were enacted or amended by the Parliament. However, none of the Bills got assent of the King within the required timeframe.

The case of the Citizenship Bill presented the worst scenario. A Bill to amend the Nepal Citizenship Act of 1964 was passed by the House of Representatives on June 11, 2000 and was transmitted to the National Assembly for its deliberation.⁵⁹⁾ The National Assembly rejected the Bill, despite the fact that it was a Finance Bill. The National Assembly could only make necessary recommendations on a Finance Bill, which in turn the House of Representatives could accept, if deemed appropriate.⁶⁰⁾ The House of

Representatives passed the Bill a second time after it had been rejected by the National Assembly and tendered it to His Majesty for assent on December 1, 2000. In spite of the Constitutional requirements related to the Finance Bill, His Majesty did not assent to the Bill, but held it instead for almost three months. Further, on March 20, 2001, instead of assenting to the Citizenship Bill, His Majesty asked the Supreme Court of Nepal for its opinion on the compatibility of the Citizenship Bill with the Constitution. This act of the King manifestly ignored Article 35(2) of the 1990 Constitution and undermined the authority of the government. Simultaneously, Article 27(3)⁶¹⁾ of the 1990 Constitution, which required the King to abide by, respect, and protect the Constitution was grossly violated by misuse of the provision. Both King Birendra and King Gyanendra abused and arbitrarily misinterpreted Article 27(3) to overstep the constitution. Outrageously, King Gyanendra attempted to justify the October 4, 2002 takeover under Article 27(3).

Examples and experiences from other countries practicing constitutional monarchy, especially from the United Kingdom, show that the act of denial of assenting to Bills undermines the framework of constitutional monarchy. In the case of the UK, traditionally, the British Queen was given the power of veto to deny assenting to Bills. The veto power, however, has not been used since the reign of Queen Anne. The power of veto has fallen into disuse as a consequence of ministerial responsibility. The veto could only be exercised on ministerial advice, and no governments would wish to veto Bills for which they were responsible.⁶²⁾

It is a fundamental principle of a constitutional monarchy is that the “king can do no wrong” and therefore the Council of Ministers should take all the responsibilities for both the constitutional and unconstitutional acts perpetrated by the kings of Nepal. During the seventeen-year history of the 1990 Constitution, the kings undermined and violated the Constitution several times. No governments took any responsibility for the unconstitutional acts of the kings. Rather, each government, willingly or unwillingly, became a silent spectator of these acts. Instead, one of the former ministers, Dr. Minendra Rijal, acknowledged the fact that the Deuba government had satiated all the interests of the Palace, even engaging in unconstitutional acts, with an intention of maintaining democracy.⁶³⁾ Rijal’s statement proves the fact that the political leaders had misinterpreted democracy as a lust for power. This power obsession of the political leaders was undoubtedly an important reason behind the endless ambition of the King.

Many attempts were made at authoritarian reversals, even during the reign of King Birendra, but those were modest compared to the actions of King Gyanendra. As soon as Gyanendra became king on June 4, 2001, after the massacre of King Birendra and his whole family, he sped up the authoritarian reversal. He formed a Royal Commission to investigate the Royal massacre. The Commission was formed under the Chairmanship of then residing Chief Justice Keshav Prasad Upadhyaya and two other members, namely the Speaker of the House of Representatives, Mr. Taranath Ranabhat, and the leader of the opposition Party in the House, Mr. Madhav Kumar Nepal. Mr. Nepal refused to be a Member of the Commission, as his Party did not allow him to be a part of such a Commission. The Commission had to be formed under the recommendation of Article 35 (2) of the Constitution, but King Gyanendra on the first day of his reign ignored Article 35 (2)

and showed his desire to rule the country beyond the scope of the Constitution.

The October 4, 2002 takeover by King Gyanendra in particular set in motion the process of completely dismantling the constitutionalism established by the 1990 Constitution. It moved the conflict between the King and the people into a critical stage. On October 4, 2002,⁶⁴⁾ King Gyanendra dismissed the Deuba government, which constituted a suspension of fundamental rights, with the imposition of an emergency in the country in November 2001, and finally dismissed the House of Representatives in May 2002. The major political parties rhetorically welcomed the King's unconstitutional move. The King invited applications for the post of Prime Minister. Among the political leaders, Madhav Kumar Nepal of the Communist Party of Nepal petitioned the King for the position of Prime Minister.⁶⁵⁾ However, the King nominated Lokendra Bahadur Chand, a royalist, for the position instead. Later, King Gyanendra nominated Sher Bahadur Deuba⁶⁶⁾ as Prime Minister on 2 June 2004,⁶⁷⁾ until the coup of February 1, 2005. Major political parties, including the Nepali Congress, kept demanding the restoration of the House of Representatives,⁶⁸⁾ and the CPN UML joined the Deuba government, stating that the regression of the King was half corrected. On February 1, 2005, the King again dismissed the Deuba government and usurped state power, as the Chairperson of the Council of Ministers composed a government of entirely staunch royalists. A period of absolute rule thus began. Mr. Tulsi Giri, vice-chair of the King's Council, publicly called for a choice between monarchy and democracy. He gave a clear message that monarchy and democracy could not go together.⁶⁹⁾

Professional organizations, especially the Nepal Bar Association and the Federation of the Nepalese Journalists Association, jointly launched a public movement against the takeover and constitutional onslaught. Finally, political parties joined the movement. Notably, the Maoist and the major political parties entered into an agreement on November 22, 2005 to "end the absolute Monarchy and establish full democracy."⁷⁰⁾ To make an end of the monarchy, establish full democracy, restore the dissolved parliament, form an all-party inclusive government, hold elections for the constituent assembly, make a new constitution by the constituent assembly, and establish permanent peace by resolving the arms conflict were some of the key points of the Agreement.

Following the November 2005 Agreement,⁷¹⁾ the people's movement broke out all over the country like a blazing fire. King Gyanendra kneeled down before the power of the people on April 24, 2006, announcing that the sources of state power were the people, and that sovereignty inherently belongs to them alone.⁷²⁾ The King also reinstated the parliament, which had been dissolved on the recommendation of the former Prime Minister Sher Bhadrur Deuba on May 22, 2002. The Maoists joined the parliament and government, and the parliament promulgated a new Interim Constitution in January 2007. The Interim Constitution provided that the fate of the monarchy would be decided by the first meeting of the constituent assembly. Elections were held for the Constituent Assembly. No party secured a majority, but the Maoist secured the plurality in the Constituent Assembly.

Following the CA elections, the CA met for the first time on May 28, 2008. In its first meeting, the CA declared the abolition of the monarchy, and Nepal became a republican country. Finally, the conflict between the King and the people concluded with the abolition

of the institution of monarchy. However, the deposed King and his family members are still active and trying to restore the monarchy.

CONCLUSION: THE ABOLITION OF MONARCHY

The saga of the constitutional development in Nepal is a case of systemic conflict between peoples' aspirations for democracy and kings' ambitions for unlimited power. During 240 years of monarchic rule, the rulers suppressed free will, took away liberties, denied democracy, impeded development, fostered poverty, and sustained injustice. The abolition of the institution of monarchy on May 28, 2008 marks a turning point in the political and constitutional development of Nepal. Following the abolition of monarchy, the Nepalese people are engaged in institutionalizing democracy, entrenching liberty and free will, building the nation on the basis of democracy, promoting development, ending poverty, and securing the rule of law and justice through writing a new constitution. These aspirations of the Nepalese people are basic, dear, and undeniable. However, the constitution-making process has advanced considerably slow, buffeted by new issues of transforming the unitary structure of the state into a federal structure on the basis of ethnic identity, and managing ideological rivalries between the political parties finally causing the unwanted demise of the Constituent Assembly on May 27, 2012.

Traditionally, it was believed that the kings had three major sources of power: the Incarnation of Vishnu, Prerogatives, and the command of Army.⁷³⁾ As the incarnation of Vishnu (a god), the kings were above the constitution and law. Socially and culturally, they were inviolable and pious, to be worshipped by the common people. Indeed, uneducated people worshipped the kings like a god. Questioning the king was considered blasphemy. The kings exercised all prerogatives and sovereign power, including the executive, legislative and judicial power, except during the Ranas rule from 1846 to 1950. The Royal Nepal Army, formerly the Gorkha Army created by Prithivi Narayan Shah, was almost always loyal to the kings. For a long time, kings ruled Nepal abusing all these sources of power.

The mighty institution of monarchy finally crumbled. As discussed above, there are a number of reasons, which caused its abolition. Primarily, these reasons can be recapitulated into three broad clusters. First, the kings themselves had planted the seed of their demise. Second, with a decade-long insurgency, the Royal Nepal Army had almost depleted its ammunition. The supply of ammunition, constrained by India, put the Royal Nepal Army in a disadvantageous position. For a long time, India had supported the monarchy in Nepal, but finally began to distance herself when the monarchy conflicted with Indian political leaders, especially with the Nehru family (Gandhi family). Third, the Maoist insurgency, especially against the backdrop of the Royal massacre of 2001, created a fertile ground for the final blow to the monarchy, culminating in the second people's movement of 2005–2006, which evidenced the abounding power of the people, with their democratic aspirations.

The kings themselves planted the seed of their demise. If the Ranas had not usurped power from the Shah kings in 1846, perhaps, the monarchy would have been abolished

earlier. The reason is simple: the burden of blame for the misrule, despotism, nepotism, and exploitation of Nepal was solely heaped upon the Ranas instead of the kings. The monarchy had a golden opportunity in 1951, but King Tribhuvan ignored all the occasions, to the disadvantage of the monarchy. He refused to abide by constitutionalism nurtured on the ideals of democracy and constitutional monarchy. When he got a chance, he blamed the Nepali Congress, denouncing them as unable to form a government. Instead, he formed an Advisory Board and started exercising executive power within two years of the 1951 revolution. King Mahendra played a critically egregious role in 1962. He dismissed the elected government of the Nepali Congress, dissolved the parliament, suspended fundamental rights and freedoms of citizens, imprisoned political leaders, banned political parties, and started monopolistic rule with the help of the Royal Nepal Army. Further, he legitimized the institution of absolute monarchy by promulgating the 1962 Constitution. This absolute monarchy ruled the country for thirty years, until democracy was established in 1990.

The 1990 Constitution was another profound opportunity for the kings. Despite many weaknesses, the 1990 Constitution was built upon a limited concept of constitutional monarchy and democracy. From the very inception of the 1990 Constitution, King Birendra started to contest the framework of the constitutional monarchy and kept overstepping the constitution. Political parties and leaders played the role of passive onlookers in the face of constitutional encroachment by the King. In the same manner as his father, King Mahendra, King Gyanendra, upon ascent to the throne, perpetrated definitive onslaughts to constitutionalism, overwhelming the political landscape of the country. With a coup on February 1, 2005, he dissolved the government, took all executive power into his hands, ruled the country without parliament, and tried to regain all the sources of power of the absolute monarchy: Incarnation of God, Prerogatives, and Army. In short, the kings had weakened the elected governments and overstepped the constitution, declining to accept the framework of constitutional monarchy, to the extent that they caused their own end. A strong democratic government and respect for constitutionalism would be the best policy tools in the hands of the kings to protect the monarchy. However, time and again the kings refused to be constitutional monarchs and invited the demise of the institution of monarchy.

Perhaps, the monarchy could have lasted longer if King Birendra and his family had not been assassinated at the Royal massacre on June 1, 2001. The Royal Commission accused Prince Dipendra for the massacre. Even so, the public did not believe the report and suspected King Gyanendra's involvement, but this was not validated by any formal sources. Against the backdrop of widespread social skepticism, King Gyanendra failed to regain the public's respect and support. Despite the massacre, had King Gyanendra unflinchingly demonstrated respect for the constitution, and that he was bound by the principle of constitutional monarchy, and helped strengthen the elected government and democratic institutions, perhaps the monarchy could have survived for longer. With these observations, the first conclusion of this paper is that King Gyanendra is the primary reason for the demise of the institution of monarchy in Nepal.

The Indian factor played a crucial role in the abolition of the monarchy. Since the era

of King Mahendra, the warmth of the relationship between the Nehru Family of India and the Shah family of Nepal was slowly decaying. It was especially strained following the personal conflict between King Birendra and Indian Prime Minister Rajiv Gandhi. Consequently, India imposed a nine-month trade embargo against Nepal, which caused the demise of the *Panchayat* system. This caused further deterioration in the relationship between these two families. In the case of King Gyanendra, India was very reluctant to cooperate with the Royal Nepal Army. During the ten years of the Maoist insurgency, the Royal Nepal Army had almost depleted its arms and ammunition, especially due to the supply being constrained by India. With this constraint, King Gyanendra could not use the army to fight against the people. Not through benevolence, but rather through having no other choices, the distraught King unwillingly accepted the decision of the Constituent Assembly on the abolition of monarchy. Finally, he left the Royal Palace without any resistance.⁷⁴⁾ The second conclusion of this paper is that India played an indirect but significant role in the abolition of monarchy in Nepal.

The ten-year-long Maoist insurgency, implemented by a young and politically indoctrinated militia, played a strategic role in weakening the monarchy. Had the monarchy abided by the 1990 Constitution and helped strengthen the democratic institutions, perhaps the Maoist insurgency alone could not have made such an impact. Unfortunately, King Gyanendra did not believe in the virtue and strength of democracy, and therefore kept lashing the political parties into forging unity with the Maoist against him. Finally, the people stood up for democracy and pronounced their verdict on the monarchy. Hence, the third reason for the abolition of the monarchy can be associated with the Maoist insurgency, especially against the backdrop of the Royal massacre of 2001, which created a fertile ground for the final blow to the monarchy culminating in the second people's movement of 2005–2006, which evidenced the abounding power of the people with their democratic aspirations.

Despite this historic achievement of the Nepalese people; the opportunity to institutionalize democracy, establish peace, and promote socio-economic development by addressing the problems of poverty, injustice, discrimination, exploitation, corruption, misrule, nepotism, and many others social and political evils, is primarily conditioned by three important factors. First, without a complete defeat of the royalist school of thought, the royalist elements keep seeking opportunities to destabilize the democracy. The Royalists have not given up their hopes. They like to see the political parties and their leaders unable to address the question of ideological conflicts, and thus bring the Maoists into the democratic mainstream. Second, bringing the Maoists into the democratic mainstream is perhaps the most difficult task, as it demands that the ideology of communism be weeded out of the party, with which it is pervasively and fundamentally indoctrinated. Third, the issue of identity has culminated in restructuring the state based on ethnicity, and demands much more social and political discourse before the constitution writing takes a concrete shape. Therefore, the political leaders are the only hope of the Nepalese people for meeting these three challenges and driving the country into the path of peace, democracy, and prosperity. The flip side of the political leaders cannot be ignored. Fundamentally, they are not immune from the political culture that the Shah and Rana

dynasties had implanted in the Nepalese political soil. On top of that, they are mired in populist ideas rather than conceptually correct ideas. Political leaders have not yet developed the skill of taking policy decisions based on democratic discourse driven by knowledge base. In addition, they have ignored the importance of institutionalizing constitutionalism as one of the important tasks of constitution making.

The Shah Dynasty institutionalized a political culture of non-cooperation and intolerance already in vogue in the political traditions of Malla kings of the Kathmandu Valley. They were also successful in creating a widespread fear and a sense of servitude in the general population. They cultivated a national culture portrayed in the social perception of: nurture a culture of loyalty to rulers, please the powerful people in order to be blessed (*kripabad*); don't question the person in power but follow them blindly (*biswaspatra*); foster a sense of achievement and success to be achieved by pleasing people in power (*chakari*); help restrain the pursuit of freedom, knowledge, skill, and innovation by surrendering to the ruling class (*chaplusi*); and endorse nepotism in promoting your people for socio-political opportunities (*natabad*). Further, power alone is elevated as a source of social, political, and legal justification. Power was knowledge for both Ranas and Shahs; the same is true for the political leaders. Knowledge, reason, and scholarship were unnecessary qualities for success and social political justification. In a single word this culture can be described as a "feudalistic" culture, which is extensively and deeply embedded in the Nepalese soil. Even today, it has immeasurably mired every individual, institution, political party, and leader. No matter who they are: communists or so-called democrats, they all share this feudalistic culture. The monarchy is abolished, but the feudalistic culture is pandemic. Unless the feudalistic culture is uprooted, the vestiges of monarchy will keep ruling the country. It seems reasonable that the conflict between the King and the people will finally be settled with the abolition of the feudalistic political culture.

Feudalistic political culture is the stumbling block both for the institutionalization of constitutionalism and fostering the pace of growth and human development. Democracy needs a culture of diligence, perseverance, as well as the pursuit of knowledge, innovation, industriousness, honesty, and self-respect among all. Peace can only be built on constitutionalism, justice, the rule of law, and the democratic way of life espoused by a rights-based approach. The path is full of opportunities and hopes, but it is not easy. A politically volatile, economically vulnerable, and socio-culturally sensitive country such as Nepal has no alternatives other than liberal democracy and a rights-based approach to address its immense problems and create opportunities for its people.

NOTES

- 1) See PLATO, THE REPUBLIC BOOK VII (trans. by B. Jowett, Kindle, 2008). The passage of the dialogue reads, "Well, I said, and you would agree (would you not?) that what has been said about the State and the government is not a mere dream, and although difficult not impossible, but only possible in the way which has been supposed; that is to say, when the true philosopher kings are born in a State, one or more of them, despising the honors of this present world which they deem mean and worthless, esteeming above all things right and

the honor that springs from right, and regarding justice as the greatest and most necessary of all things, whose ministers they are, and whose principles will be exalted by them when they set in order their own city?"

- 2) See THOMAS HOBBS, *LEVIATHAN* (Kindle, 2009). In Hobbes words, "There be other names of Government, in the Histories, and books of Policy; as Tyranny, and Oligarchy: But they are not the names of other Forms of Government, but of the same Forms disliked. For they that are discontented under Monarchy, call it Tyranny; and they that are displeased with Aristocracy, called it Oligarchy: so also, they which find themselves grieved under a Democracy, call it Anarchy, (which signifies want of Government;) and yet I think no man believes, that want of Government, is any new kind of Government: nor by the same reason ought they to believe, that the Government is of one kind, when they like it, and another, when they dislike it, or are oppressed by the Governors."
- 3) The conflict between the Maoist and the Democratic Political Parties presents a unique set of recipes for analysis. Maoists are organized political groups guided by the idea of communism influence by the ideas of Mao. There are also other communist parties in Nepal such as the Communist Party of Nepal and United Marxist-Leninists (CPN-UML). However, CPN-UML has expressed its commitment to democracy and is generally considered as one of the democratic political parties in Nepal along with the Nepali Congress.
- 4) Prithivi Narayan Shah (1723–1775) was the King of Gorkha before he unified Nepal. Upon Unification, he established the Shah dynasty. Since then his descendents ruled Nepal as the Kings of Nepal. Gorkha was one of the small states among many in the pre-unified Nepal. Prithivi Narayan Shah's four-year journey of unification took substantial shape when he conquered Kāthmāndu, Pātan, and Bhādgaon in 1769 and consolidated them to found the modern state of Nepal. He also established Kathmandu as the capital of Nepal. For detail information about Prithivi Narayan Shah, see Encyclopedia Britannica, available at <<http://www.britannica.com/EBchecked/topic/477264/Prithvi-Narayan-Shah>>.
- 5) Currently there are more than one hundred ethnic groups in Nepal.
- 6) The First Meeting of the Constituent Assembly on 28 May 2008 with 560 votes in favor and 4 votes in opposition, declared Nepal a Republic. Article 159.3 of the Interim Constitution of Nepal had authorized the first meeting of the Constituent Assembly to take decision on the fate of the King. The Article 159.3 reads, "Notwithstanding anything contained elsewhere in this Constitution, the simple majority in the first meeting of the Constituent Assembly shall take a decision about whether or not to give continuation to the monarchy." *The Kathmandu Post*, one of the leading newspapers in Kathmandu, wrote, "We take joy and pleasure in congratulating all the citizens of Nepal. Turning Nepal into a republic is the biggest achievement of the people in the history of this country. Formally, from May 28, 2008 onward, we Nepalese are no longer subjects of the Shah Dynasty that fooled the innocent people for over 240 years, pretending that the king was a reincarnation of Lord Bishnu." For details, see also Amit Dhakal, *The End of History: The Rise and Fall of the Shah Dynasty*, THE KATHMANDU POST, (29 May 2008), available at <<http://www.ekantipur.com/the-kathmandu-post/2008/05/29/top-story/the-end-of-history--rise-and-fall-of-the-shah-dynasty/148458.html>>;
- 7) A number of books are written about Junga Bahadur Rana by both local and foreign writers. Among the interesting ones portraying his life are: C. S. R. PURUSHITTAMA, *JUNG BAHADUR RANA: THE STORY OF HIS RISE AND GLORY* (Pilgrims Publishing India, 2002); PUDMA JUNG B. RANA, *LIFE OF JUNG BAHADUR* (Ratna Pustak Bhandar, 1980); PUDMA JUNG B. RANA, *LIFE OF MAHARAJA JUNG BAHADUR* (University of Michigan Library, 1909).

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- 8) "Rana" is a family name given to the descendants of Junga Bahadur Rana, who was a military commander and who with the army's support, became the Prime Minister of Nepal, establishing a dynastic system for the Premiership as well. During the Rana Prime Ministerial dynasty, only the descendant of Junga Bahadur could "ascend to the Throne" of Prime Minister. The Prime Minister was the executive head and held the most powerful position in the country. During the Rana Dynasty there were in fact two Dynasties and Thrones in Nepal: the Shah Dynasty and the Rana Dynasty. The Throne of King used to be acceded to by Shahs and the "Throne of Prime Minister" used to be acceded to by Ranas.
- 9) See Surendra Bhandari, *Future of the Constitution and Democracy in Nepal*, in Surendra Bhandari & Budhi Karki eds., *THE FUTURE OF THE NEPALESE CONSTITUTION* (Law Associates Nepal, 2005). The Nepali Congress had launched a revolution against the Rana regime from 25 September 1950. King Tribhuvan had taken refuge in the Indian Embassy Nepal on 6 November 1950 and left for Delhi on 7 November 1950. On 7 November 1950 the Rana regime enthroned the grandson of King Tribhuvan, the infant prince Gyanendra and declared forfeiture of the throne of King Tribhuvan. India did not recognize the new King. The Indian Prime Minister Pandit Nehru said, "We cannot recognize a three-year-old boy as the King. We cannot therefore watch developments in Nepal as silent spectators. It is desirable that there should be a democratic government." In the meantime the Indian Government and the Rana regime started to negotiate a solution. Finally, the Rana Prime Minister Mohan Sumsher accepted India's proposal, known as the "Delhi Proposal" and agreed for democratic reform in the country, including reinstatement of Tribhuvan as the King of the Kingdom and the formation of a new constitution through a constituent assembly. The Nepali Congress, King Tribhuvan and Rana entered into a tri-partite agreement i.e. the "Delhi Agreement" and King Tribhuvan returned to the country on February 15, 1951, making a proclamation for a new constitution in the country on 18 February 1951. See S. K. CHATURVEDI, *NEPAL INTERNAL POLITICS AND ITS CONSTITUTIONS 48-64* (New Delhi, Inter-India Publications 1992). See also, KAISHER BHADUR K. C., *NEPAL AFTER THE REVOLUTION OF 1950* (Sharada Prakashan Griha, 1976).
- 10) Prachanda Gorkha was established by Chandra Singh, one of the exiled and disgruntled Ranas living in India. However, the Ranas used all means to betray and destroy the Prachanda Gorkha. Finally in 1931, the Ranas arrested the leading figures of the Prachanda Gorkha, such as Umesh Bikra Shah, Maina Bahadur, Khadga Man Singh, Captain Khanda Man Singh Basnet, and Ranga Nath. They were sentenced to life imprisonment for treason.
- 11) See Werner Levi, *Government and Politics in Nepal I*, 21 *FAR EASTERN SURVEY* 186, 185-191 (1952). Levi mentions that the Party was supported by King Tribhuvan. The Party started a popular movement in September 1940, which necessarily brought it publicity and therein lay the cause of its destruction. During 1942-43, four of its members were executed.
- 12) *Id.* at 186. Levi claims that the King was popular among the people and was also a formal head of the army, and that the Ranas were unsure about the loyalty of the army if they deposed the King.
- 13) See generally RAJESH GAUTAM, *NEPALI CONGRESS* (New Delhi, Adorid Publications, 2005); Y. P. ADHIKARI, *THE NEPALI CONGRESS: IDEALISM TO REALISM* (Kathmandu, 2001); IRS, *NEPALI CONGRESS AND STRUGGLE FOR DEMOCRACY* (Institute of Regional Studies, 19912); B. C. UPRETI, *THE NEPALI CONGRESS*, (New Delhi, Nirala Publications, 1993); PARMANAND, *THE NEPALI CONGRESS SINCE ITS INCEPTION* (B. R. Pub. Corp., 1982). The Nepali Congress was created following the merger between the Nepali National Congress and the Nepali Democratic

Congress. The Nepali National Congress was established by B. P. Koirala in Calcutta, India on January 25, 1946. When he was arrested in Biratnagar during the *satyagraha* movement in January 1947, Professor Dilli Raman Regmi was made acting President of the Nepali National Congress. When B. P. was released from prison six months later, Professor Regmi refused to hand back his office. B. P. established another Nepali National Congress in 1947. He was again arrested. Following this, members of the Nepali Congress met in Calcutta, India in March 1949 and elected Matrika Prasad Koirala President of the Nepali National Congress. Meanwhile, Mohindra Vikram Shah, a relative of King Tribhuvan, had founded a party called the Nepali Democratic Congress in 1948. Finally, the Nepali National Congress of B. P. and the Nepali Democratic Congress of Shah merged on April 10, 1950 forming the Nepali Congress.

- 14) On April 29, 1949; the Communist Party of Nepal was established in Calcutta, India. Its original objectives were to end the autocratic Rana regime, feudalism, and imperialism. Though the Communist Party of Nepal was established in India, it was suspicious of the Indian policy regarding Nepal and wanted the Nepali Congress to declare clearly that it would not serve the interests of the Indian government before joining the 1951 revolution. It adopted a policy for a Republican Nepal only in 1957, ratified by its second party congress held in Kathmandu in 1957.
- 15) See Levi, *supra* note 11, pp. 185–191. Levi observes that the Indian government had never hidden its sympathy for the democratic cause in Nepal. It had often expressed its view that peace and order in that country, vital to India's security, could be safeguarded only if the Ranas would relax their autocratic rule and introduce badly needed reforms to satisfy the people. The Indian government's attitude could be called neutral and diplomatically correct. However, the treatment the King had received, and the statements made by various government officials indicated very clearly that the Indian government's sympathies were with the Nepali Congress. The position of unofficial Indian groups and many newspapers was even more unequivocal.
- 16) Nepali Congress held an important meeting in Bairgania, India on September 26–27, 1950. It authorized its President, M. P. Koirala, to carry out necessary activities to expedite the last struggle for freedom, kidnap the King, and bring him to India for his safety.
- 17) See Levi, *supra* note 11, pp. 185–191.
- 18) *Id.*
- 19) K. I. Sing did not obey the cease-fire, but instead considered the compromise a betrayal. He continued fighting with the help of Raksha Dal and volunteer troops he had organized against the Ranas. He was arrested and imprisoned on a charge of dacoit by the end of February 1951.
- 20) See The Interim Government of Nepal Act, (1951). The Preamble states, "Whereas, it is necessary till such time, as the Constitution is not framed and promulgated, the administration of the country should function according to a Constitution and certain rules and principles. Now, therefore, His Majesty, the King of Nepal, on the advice of the Council of Ministers, is accordingly pleased to ordain and promulgate the following Act."
- 21) Art. 1 (2) of the Interim Government of Nepal Act, 1951 provides, "It shall come into force from Chaitra 29, 2007 (April 11, 1951)."
- 22) See King Tribhuvan's address to the nation on February 18, 1951 three days after his return from India. He declared, ". . . the government of our people be carried on henceforth according to a republican constitution prepared by a constituent assembly elected on the

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- basis of direct universal suffrage" *cited in* TOP BAHADUR SINGH, CONSTITUTION OF NEPAL AND CONSTITUTIONAL LAW, at 660 (Kathmandu, Law Book Publication Committee 1985); *see also*, MUKUND REGMI, CONSTITUTIONAL DEVELOPMENT: CONSTITUTION OF THE KINGDOM OF NEPAL 1990, 74 (Kathmandu, Mrs. Sitadevi Regmi 2004).
- 23) The concept of a Constituent Assembly was first introduced by Rana Prime Minister, Padma Shumsher, following consultation with his brothers and senior members of Rana ruling family in February 1947. He had proposed a Body consisting of 12 elected members and 12 nominated members to initiate constitutional change or reform in the country. *See* SARDAR BHIM BAHADUR PANDE, THE THEN NEPAL (Kathmandu, rep. 1982) referred in MUKUNDA REGMI, *supra* note 22, at 4–5.
 - 24) The Council of Ministers was appointed by the King and had to remain in office during the King's pleasure and be responsible to the King. The Prime Minister was required to inform the King of all the decisions of the Cabinet.
 - 25) *See* Werner Levi, *Political Rivalries in Nepal*, 23 FAR EASTERN SURVEY 103, 102–107 (1954).
 - 26) *See* Werner Levi, *Government and Politics in Nepal II*, 22 FAR EASTERN SURVEY 5, 5–10 (1953). Levi observes that the political life of the country proved to be even more difficult to settle. Under a peaceful surface there was much friction between the two factions of the Rana–Congress coalition government. Its cause was simple: the Ranas were reluctant to share political power, whereas the Congress wanted more. By the end of April 1951, conditions had deteriorated to the point where B. P. Koirala referred publicly to a crisis within the government.
 - 27) *Id.* at 6.
 - 28) *Id.* Levi mentions that the main agitator was the communist-dominated United Democratic Front, composed of a number of small political groups, not all necessarily communist themselves. The Nepali Rastriya Congress; the Nepali Praja Parisad; the Akhil Nepal Rastriya Mahasabha; and the Nepali Communist Party (Stalinist) among others formed part of the United Democratic Front.
 - 29) *Id.* at 8.
 - 30) The Advisory Board was composed of General Keshar Shumsher Rana, General Mahabir Shumsher Rana, Lieutenant General Surendra Bahadur Basnet, Mr. Khadga Man Singh, and Mr. K. Massik Lal. The King had announced that the Advisory Board would last until an effective and representative Council of Ministers could be set up. The task of the Advisory Board members was to help the King hold early elections for the constituent assembly, establish an independent judiciary, and assure fundamental rights to the citizens. Their immediate function would be to root out corruption and nepotism from government, promote the people's welfare, and maintain law and order.
 - 31) *See supra* note 26, at 5.
 - 32) *See* Dirgha Raj Prasai, *Nepalese Political Scenario 1950-2011*, available at <http://www.international.to/index.php?option=com_content&view=article&id=1079&catid=54:dirgha-raj-prasai&Itemid=84>.
 - 33) *See* NEPAL GAZETTE, Vol. 7, No. 49 (March 24, 1959). The Committee was composed of: Mr. Bhagwati Prasad Singh (Chair), Ramraj Pant, Surya Prasad Upadhyaya, Randhir Subba, and Hora P. Joshi.
 - 34) *See* RAM KUMAR DAHAL, CONSTITUTIONAL AND POLITICAL DEVELOPMENTS IN NEPAL 32 (Kathmandu, Ratna Pustak Bhandar, 2001). *See also*, MIHIR KUMAR THAKUR, NEPALESE CONSTITUTION AND POLITICS 65 (Rajbiraj, M. R. Publication 1995).

- 35) See Art. 55 of the Constitution of the Kingdom of Nepal 1959. Art. 55 (1) provides, "If His Majesty in His discretion is satisfied that a grave emergency exists whereby the security or economic life of Nepal, or any part thereof, is threatened by war or external aggression, or by internal disturbance, He may by Proclamation in His discretion:
- (a) declare that His functions shall to such extent as may be specified in the Proclamation, be exercised by Him in His discretion;
 - (b) assume to Himself all or any of the powers vested in or exercisable by Parliament or any other governmental body or authority; and any such Proclamation may contain such incidental and consequential provisions as may appear to Him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provision of this Constitution."
- 36) The Commission was composed of: Rishikesh Shah (Chair), Shambhu P. Gyanwali, Prakash B. Khatri, Angur Baba Joshi, Dambar N. Yadhav, and Kul Shekher Sharma.
- 37) Sir G. A. Falconer wrote on 19 March 1948 to British Foreign Secretary Sir Ernest Bevin on the 1948 Constitution that follows ". . . It is hardly surprising that the majority of the people have had little or no education whatever and no training to fit themselves for the responsibility of even local self-government. To introduce democracy into Nepal it is therefore necessary to begin at the bottom. To begin at the top or even halfway as the few anti-Rana agitators in India would have it will merely produce chaos and the condition of the people will be worse than before. . . ." Cited in RISHIKESH SHAHA, MODERN NEPAL: A POLITICAL HISTORY 1769–1955, 187 (New Delhi, Manohar Vol II 1990).
- 38) See *Communiqué of the Chief Secretariat of His Majesty the King*, 40 NEPAL GAZETTE Supp. 11 (May 1990).
- 39) CRC, *Constitution of the Kingdom of Nepal: Draft, Exploratory Note & Report*, at 5 (Kathmandu, CRC 1990). During the preparation of the Draft, the CRC carried public consultations and collected 8,707 suggestions from different parts of the country between 17 Jesh 2047 (May 31, 1990) to 20 Ashad 2047 (July 4, 1990). Out of all of the suggestions, 80% were from the Kathmandu Valley. Within ten days the CRC had tabulated, classified and analyzed the suggestions. The rest of the time it devoted itself to prepare the Draft. The consultation and preparation of the draft was completed in a short while because there was an overwhelming impetus to outdo the efforts of the anti-democratic forces, especially during the gestation period.
- 40) See *Id.* at 2 & 3. When the CRC accomplished its historic assignment in time, it expressed that "as per the direction given by His Majesty the King to prepare a Draft Constitution based on the principles of Constitutional Monarchy and Multiparty Democracy . . . we have prepared a balanced Draft Constitution based on these principles." Further, CRC mentioned that, "as the Constitutions of any other countries, primarily, the proposed Constitution has also defined the authority of the government and rights of the people and outlined interrelationship between different organs of the state."
- 41) The committee was composed of Mr. Nilambar Acharya, Minister of Law and Justice; Mr. Yog Prasad Upadhyaya, Minister for Home; and Dr. Keshar Jung Rayamajhi. Mr. Acharya used to represent the left front, Mr. Upadhyaya used to represent the Nepali Congress and Dr. Rayamajhi, former General Secretary of the Nepal Communist Party, was renowned for his closeness to the Palace, and afterward became Chairman of Raj Parisad, representing the King.

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- 42) See Ramesh Sharma, *Different Constitution Produced by Palace: Substantial Differences in Major Issues*, GORKHAPATRA (October 22, 1990). The text is reproduced in BHARAT RAJ UPRETI & OTHERS eds., CONSTITUTIONAL LAW OF NEPAL 715 (Kathmandu, FREEDEL 1997). See also, NARENDRAPRASAD PATHAK & BRAJESH PYAKUREL, CONSTITUTION OF THE KINGDOM OF NEPAL AND CONSTITUTIONAL MANUSCRIPTS 203–252 (Kathmandu, Parirabi Publication 2004).
- 43) See CRC, *supra* note 39, at 5.
- 44) See REGMI, *supra* note 22, at 64. Mr. Regmi argues, “. . . attention is to be given that what types of constitution should be prepared rather than who has to prepare a constitution. The Constitution is to be prepared by that political force, which has already contributed in formation of state and has obtained public confidence in the society . . . the Kingdom of Nepal has been formed by the Great King Prithivi Narayan Shah . . . Kings of this Kingdom have always wished for the greater interests and affluence of the people. . . . In a country where there is a monarchy, a constitution is made by an agreement between the King and the people. There is no record around the world that people have alone made constitution in a monarchical country.”
- 45) See NEPAL GAZETTE, 40 supp. 37 (9 Nov. 1990).
- 46) Preamble of the Constitution of the Kingdom of Nepal, 1990 provides, “. . . Now, therefore, keeping in view the desire of the people that the state authority and sovereign powers shall, after the commencement of this Constitution, be exercised in accordance with the provisions of this Constitution, I, King Birendra Bir Bikram Shah Deva, by virtue of the state authority as exercised by us, do hereby promulgate and enforce this Constitution of the Kingdom of Nepal on the recommendation and advice, and with the consent of the Council of Ministers.”
- 47) See *Radheshyam Adhikari v. HMGN*, 33 NKP 12, 810 (1992). See also, SURENDRA BHANDARI, COURT-CONSTITUTION AND GLOBAL PUBLIC POLICY: A STUDY ON NEPALESE PERSPECTIVE 87-97 (Kathmandu, DDL 1999).
- 48) *Advocate Bharatmani Poudyal v. Rt. Hon. Prime Minister Lokendra Bahadur Chand*, decided by a Single Bench of the Supreme Court of Nepal composed of Justice Hari Prasad Sharma, Decision No. 7305 decided on May 1, 2003.
- 49) See Daniel Gajraj, *National Assembly Nominations*, THE KATHMANDU POST (June 29, 2001). See also, NEPALI TIMES (Jan. 2001).
- 50) Art. 46 (2) of the *Constitution of the Kingdom of Nepal* (1990), which states, “The National Assembly shall be a permanent House. The tenure of office of one-third of its members shall expire ever two years.”
- 51) The first time, Prime Minister Girija Praasad Koirala recommended the dissolution of House of Representatives when his own party's parliamentarians did not cooperate in the Parliament, and the King dissolved the House. The second time, Prime Minister Manamohan Adhikari recommended the dissolution of the House of Representatives when his minority government could not obtain the confidence of the House of Representatives. The third time Prime Minister Surya Bahadur Thapa recommended the dissolution but the King did not recommend this (based on the opinion of the Supreme Court.) To continue the emergency beyond the permission of the Constitution, Prime Minister Sher Bahadur Deuba recommended the dissolution of the House of Representatives, and the King dissolved the House on May 25, 2002, which was the third dissolution of the House in twelve years.
- 52) *Id.* Art. 53 (4) that prescribes, “His Majesty may dissolve the House of Representatives on the recommendation of the Prime Minister. His Majesty shall, when so dissolving the House of Representatives, specify a date, to be within six months, for new elections to the House of

- Representatives.”
- 53) *Id.* Art. 53 (1), which prescribes, “His Majesty shall summon a session of Parliament within one month after the elections to the House of Representatives are held. Thereafter, His Majesty shall summon other sessions from time to time in accordance with this Constitution: Provided that the interval between two consecutive sessions shall not be more than six months.”
 - 54) Article 71 (1) of *the Constitution of the Kingdom of Nepal 1990* provides that “A Bill which is to be presented to His Majesty for assent pursuant to Article 69 shall be so presented by the Speaker or the Chairman of the House in which the Bill originated after it has been duly certified by him under his hand.”
 - 55) *Id.* Art. 71 (4) that prescribes, “If any Bill is sent back with a message from His Majesty, it shall be reconsidered by a joint sitting of the two Houses and if the Bill so reconsidered is again passed as it was or with amendments, and is again presented to Him, His Majesty shall give assent to that Bill within thirty days of such presentation.”
 - 56) *Id.* Art. 71 (3), which prescribes that, “Except for a Finance Bill, if His Majesty is of the opinion that any Bill needs further deliberations, He may send back the Bill with His message to the House of origin of the Bill within one month from the date of presentation of the Bill to Him.”
 - 57) Articles 73 (3) and (4) of the 1990 Constitution are as follows:
 - (3) Except for a Finance Bill, if His Majesty is of the opinion that any Bill needs further deliberations, he may send back the Bill with His message to the House of origin of the Bill within one month from the date of presentation of the Bill to Him.
 - (4) If any Bill is sent back with a message from His Majesty, it shall be reconsidered by a joint sitting of the two Houses and if the Bill so reconsidered is again passed as it was or with amendments, and it is again presented to him, His Majesty shall give assent to that Bill within thirty days of such presentation.
 - 58) *Id.* Art. 71.3.
 - 59) *Id.* Art. 69 (2) provides, “A Finance Bill passed by the House of Representatives shall be transmitted to the National Assembly. The National Assembly shall, after deliberations on such Bill, send back the Bill to the House of Representatives within fifteen days from the date of receipt of the Bill with recommendations, if any.”
 - 60) *Id.* Art. 69 (3) provides, “The House of Representatives shall, upon deliberations on a Bill returned within recommendations pursuant to clause (2), present it to His Majesty for assent along with such recommendations as it may deem appropriate.”
 - 61) *Id.* Art. 27 (3) provides, “His Majesty is to preserve and protect this Constitution by keeping in view the best interests and welfare of the people of Nepal.”
 - 62) See E. C. WADE & et al, CONSTITUTIONAL AND ADMINISTRATIVE LAW 178–179, (ELBS, Ninth edition 1978).
 - 63) See KATHMANDU POST (31 July 2005).
 - 64) See *Royal Proclamation by His Majesty King Gyanendra Bir Bikram Shah Deva*, 52 NEPAL GAZETTE Supplementary 49 (October 4, 2002). The Proclamation states that, “As it is our responsibility to preserve nationalism, national unity and sovereignty, as well as, to maintain peace and order in the country and also to ensure that the condition of the nation does not deteriorate for any reason, a situation has arisen wherein, by virtue of the Royal Prerogatives as exercised by us and in the spirit of the Constitution of the Kingdom of Nepal 1990, as well as, taking into consideration Article 27 (3) of the Constitution, Prime Minister

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Sher Bahadur Deuba should be relieved of his office, owing to his incompetence to conduct the general elections on the stipulated date in accordance with the Constitution, and the Council of Ministers dissolved. Similarly, the general elections dated for November 13 also needs to be postponed. We, therefore, issue the following orders in accordance with Article 127 of the Constitution of the Kingdom of Nepal 1990. . . "

- 65) See Aditya Adhikari, *The Lure of Power*, available at <<http://www.ekantipur.com/2010/05/04/oped/the-lure-of-power/313609/>>. Adhikari states that Madhav Nepal's desire for power was immense; yet that the communist leader rejected the principles and went to stand in line outside the palace, application in hand, in the company of such monarchical loyalists such as Pashupati Shamsher Rana, Kirtinidhi Bista, and Badrinath Mandal.
- 66) See International Crisis Group, *Towards A Lasting Peace in Nepal: The Constitutional Issues*, 99 ASIA REPORT, 6 (15 June 2005). The Report states, "Due to the controversial manner of their appointment, Deuba and his cabinet lacked credibility. Other political actors, including the Maoists, viewed the coalition as the King's "puppet." Governing under the pervasive threat of Article 127, dismissal deprived the Deuba government of freedom to make independent policy choices. All decisions had to be approved by the Palace."
- 67) The major political parties defined Deuba's appointment merely as the continuation of the October 4, 2002 regression in a different form, and in no way did they take it as a correction of regression. See *The Kathmandu Post* available at <http://www.ekantipur.com/2004/06/03/top-story/five-party-alliance-leaders-react-differently/12538.html>
- 68) See Aditya Adhikari, *supra* note 65.
- 69) See KANTIPUR Ashad 23, 2062 (July 7, 2005).
- 70) See The 12 Points Agreement entered between the Seven Political Parties and the Maoist on 22 November 2005, available at <<http://www.peace.gov.np/uploads/Publication/cover%20and%20con.pdf>>. Article 1 of the Agreement reads as, "The democracy, peace, prosperity, social advancement and an independent, sovereign Nepal is the principal wish of all Nepali people in the country today. We are fully agreed that the autocratic monarchy is the main hurdle for this. We have a clear opinion that the peace, progress and prosperity in the country are not possible until a full democracy is established by bringing the absolute monarchy to an end. . ."
- 71) See The Agreement is known as the 12 Points Agreement.
- 72) See THE KATHMANDU POST (April 24, 2006), the King announced that, "Convinced that the source of State Authority and Sovereignty of the Kingdom of Nepal is inherent in the people of Nepal and cognizant of the spirit of the ongoing people's movement as well as to resolve the on-going violent conflict and other problems facing the country according to the road map of the agitating Seven Party Alliance, we, through this Proclamation, reinstate the House of Representatives which was dissolved on 22 May 2002 on the advice of the then Prime Minister in accordance with the Constitution of the Kingdom of Nepal-1990. We call upon the Seven Party Alliance to bear the responsibility of taking the nation on the path to national unity and prosperity, while ensuring permanent peace and safeguarding multiparty democracy. We also summon the session of the reinstated House of Representatives at the Sansad Bhawan, Singha Durbar at 1 P.M. on Friday, 28 April 2006."
- 73) See Surendra Bhandari, *Constitution of the Kingdom of Nepal 1990 in the Context of Conflict in Nepal*, A Paper Presented in a National Workshop organized by Foundation for Parliamentary Studies and Development in Kathmandu on 29 June 2003.
- 74) See THE HIMALAYAN TIMES, *Wikileaks suggests depleted arms behind ex-king's surrender*,

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王対国民： ネパールの君主政治の廃止と憲法の構成

ネパールでの憲法構成は長期間にわたって発展している。それは、国民が政権を民主主義へ変えたいという願望に対し、国王は無制限の権力を維持することを強く望んでいるからである。240年にも渡る君主制政治は、人々の意志を抑圧し、自由を奪い、民主制を否定し、発展を衰えさせ、貧困を持続させ、そして、不法を維持したのである。2008年5月28日にこの君主制度が廃止された事はネパールの政治と憲法の発展にとっては大きな転機となったのである。君主制度の廃止と共に、ネパール共和国の新たな進展は選ばれた人々の指導の元で行われた。国民は、自由と意志を確固たるものとし、民主制を基準とし、発展を促進して貧困から脱出し、そして新しい憲法を記す事によって法律と正義の規則を保証することに没頭している最中である。この新しい変化に対する国民の思いは、根本的で、愛しく、そして、明白である。しかし、構成は逆に遅い展開へと下ているのは、不幸ながらも新たな問題が足しはばかっているからである。問題は、統一されていた国政から民族の親類閥が基となる連邦的な政府への変化、そして、政党同士の意見の違いによって起こるライバル意識の管理である。

ここではまず、ネパールの君主制政治がなぜ廃止になったかの議論を三つ挙げ、吟味していくのである。第一の議論は、国王がもたらした立憲主義への頻繁な批判と軽蔑のせいで君主制の組織を終止に落とす原因の一つとなったのである。君主制を憲法体制の枠組みに、初期の民主政治と最高裁判所は試みたが、これによって繰り返された失敗によってまだ未熟な民主主義を弱めたのである。しかし、この失敗こそが次第に君主の組織自体を破滅させる切掛けとなったのである。第二の議論は、インドが間接的でありながらも君主政治の廃止への明確な役割を果たしていた事を分析していくのである。第三の議論では、10年間にも渡る毛沢東主義への反乱と人々の運動が最高潮に達し君主政治が減じる決定的な瞬間をどう導いたかである。その上、君主政治の廃止にも関わらず、なぜ平和と憲法を記す事が、明確な具体化または重大な進展をしなければならないかである。

ほかにはここで議論されているのは、封建制の政治文化が立憲政治に組織化と人的発展と育成の前進を妨げている事である。民主主義は勤勉で忍耐力の持った、そして知識の追求、熱心な革新、誠実さと自尊心を持った文化を必要としている。平和は、立憲主義、裁判と法律の規則、そして公平な民主的生活が支持される事によって設立されるのである。容易ではないが、この先は機会と希望で満ちているのである。ネパールのように政治上不安定であり、経済的に危うく、それと共に社会的文化に敏感な国であるからこそ、自由民主的で公平な問題への対応と処理そして人々に機会を与えるためにはこの他には選択はないのである。

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