

# Book Review: Constitutional Nationalism and Legal Exclusion: Equality, Identity, Politics, and Democracy in Nepal (1990-2007), by Mara Malagodi

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*This book presents a thorough case study of Nepal's post-1990 constitutional experience. Mara Malagodi looks to trace the evolution of Nepal from a constitutional monarchy to a republic by analysing the drafting of the 1990 Constitution, the impact of the Maoist insurgency (1996-2006) on demands for constitutional change, the relationship between conflict and demands for recognition, and the role of Nepal's Supreme Court in the articulation of identity politics. Amanda Snellinger finds that the book will be a striking read for scholars interested in legal exclusion, Nepal's political history, and constitutions and national identities.*



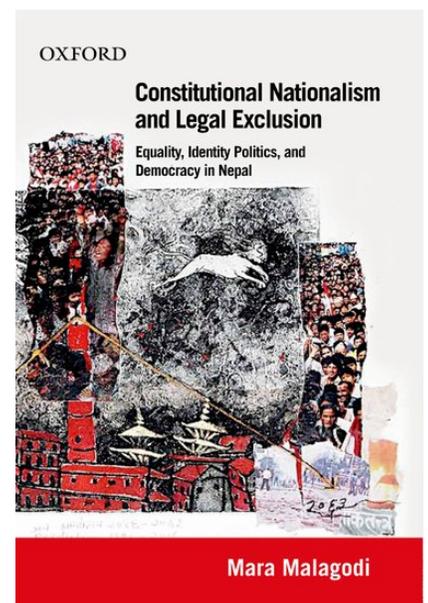
**Constitutional Nationalism and Legal Exclusion: Equality, Identity, Politics, and Democracy in Nepal (1990-2007).** Mara Malagodi. Oxford University Press. January 2013.

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For the last six years, Nepal has been drafting its sixth constitution since the nation's struggle for multiparty democracy began in 1950. The criteria for the current process is remarkably different than the past. This time an elected body of 601 constituent assembly members is restructuring the state to be a multiparty democratic, secular republic. Thus the publication of Mara Malagodi's book, *Constitutionalism and Legal Exclusion*, is timely.

This book provides an in-depth analysis of the drafting of the 1990 constitution and how it entrenched a path of legal exclusion during the last decade of the 20<sup>th</sup> century—which fuelled the civil war and political disintegration that led to the overthrow of the Shah monarchy and Nepal becoming a secular federal republic in 2006. Malagodi – British Academy Postdoctoral Fellow in the Law Department at the LSE – uses a historical institutionalist analytical approach to demonstrate that despite the aspirations of the 1990's People's Movement for broader inclusion, the 1990 constitution did little to broaden the definition of 'We, the People'. Malagodi argues that the previous constitutional arrangements shaped the choices available to the makers of the 1990 constitution in regards to what defined the nation, which led to the reinstating of three national pillars: the Shah monarchy; Nepal being a Hindu nation; and Nepali as the national language. The re-enshrining of these institutions into the 1990 constitution allowed state actors to perpetrate legal exclusion and undermine the fundamental right to equality.

The research that Malagodi undertook to craft her argument was an impressive mix of historical analysis, translation, in-depth interviews with constitution makers and Supreme Court judges, and case law analysis. She uses this research to demonstrate the ongoing pattern of legal exclusion as a 'culture-specific legal and political exercise' (p.271), first by covering Nepal's history of constitutional nationalism—based on the premise of the Shah Hindu monarchy—to identify the institutional factors, values, and logic that shaped the drafting of the 1990 constitution, and then how the juridical interpretations of the constitutional text reinforced national unity at the expense of socio-cultural diversity. Malagodi's effective argument for legal exclusion is buttressed by a broad interdisciplinary understanding of constitutionalism that recognizes that the making and interpreting of a constitution



involves balancing state power and individual and collective rights by harnessing political action within the 'rules of the game' (p.159). Constitutionalism can only be understood as a socio-historical process in which previous law shapes political actors' norms and conceptual categories, and by default, their behaviour. 'The way of imagining and defining the entity of the Nepali nation through the prism of Hindu kingship has become path dependent' (p.159).

Nepal has been exclusionary since its birth as a modern nation-state. This is not a novel assertion. The contentious politics of the Maoist People's War and the 2<sup>nd</sup> People's Movement fundamentally questioned this order of things—the 'univocal vision of the Nepali nation' (p.160). What Malagodi's scholarship brings to this argument is a fine-grained understanding of why and how this exclusionist history repeated itself in the making of the 1990 constitution. A nuanced understanding of this process is important since the intent of the current constituent assembly's mandate is to, again, 'redress historical wrongs by legal means' (pp. 49). The most striking thing that emerges from Malagodi's analysis is how the 1990 constitution makers' symbolic gestures translated into a pattern of legal exclusion. She systematically goes through both her interviews with the constitution makers and archived meeting notes to sketch the process by which the three national pillars were maintained. 'Preserving national unity' (p.143) was the constitution makers' main concern during their debates on the role of the monarchy, secularism, and language and minority accommodation. Many justified the constitution's phrasing as having symbolic import meant to preserve social harmony. Nonetheless, the language re-entrenched the political authority of the Hindu monarchy as the necessary foundation for the Nepali state to maintain 'unity in diversity'. The author's analysis demonstrates a direct link between the symbolic and the legitimacy of political power in a way that elucidates the subtle work of ideology. Malagodi relies on [John Breully's definition of ideology](#) as a political map that positions one in relation to others (p.175). By taking for granted the 'essentially political idea of the inner unity of the Nepali State', the constitution makers never questioned if the 'ontological and ideational foundations of the Nepali state' could be otherwise (p.159). At an ideological level, Nepal's new institutional arrangement was contingent upon 'His Majesty' as a symbol of the nation (p.20). The latter chapters demonstrate that juridical interpretations of textual symbols have real world consequences, which entrenched the elite ideology underpinning those symbols as reality, in this case, making legal exclusion path dependent.

Malagodi's engagement with her data on legal exclusion is thorough, but I was longing for her to put it in conversation with other scholars who have addressed these issues from other angles. [Susan Hangen's work on minority group's antithetical opposition](#), [Laura Kunreuther's work on property law](#), and [Lauren Leve and Chiara Letizia's work on secularism](#) all analyse cases studies that have challenged the political authority of the three national pillars and the obstacles that came with it. Having engaged with works like these, Malagodi could have weaved the earlier analytic theme regarding the tension of modernity and tradition in Nepal's politically hybrid state (pp. 55) more comprehensively through in her latter analysis on patterns of legal exclusion. Nonetheless, Malagodi's primary research is a valuable addition for any scholar researching these issues. Other scholars who will benefit from reading Malagodi's book are those interested in Nepal's political and legal history and its construction as a modern nation-state, constitutionalism in South Asia, constitutional nationalism, and law and society.

This book left me wondering if the current constituent assembly is capable of creating the critical juncture necessary to depart from the homogenizing vision of the Nepali nation. Can this constitutional body break the institutional continuity and redefine national unity in a way that foregrounds Nepal's diversity? The three national pillars are gone. However, many of the political elites are still at the bargaining table, and their centralized governing orientation may be the ideological sticking point that keeps them from creating a federal system that truly prioritizes the local autonomy needed to generate an inclusive, participatory political system.

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