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Gender, Class, Resilient Power: Nepal Lessons in Transformation

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Abstract

Control of armies, police and parties delivers hard power in the 'state of exception' illustrated by civil war in Nepal. The history of Nepal nevertheless shows how in revolutionary conditions, the crowd can be decisive to advance equality. Soft people power is mostly superior for advancing egalitarian agendas than hard power. Yet momentary people power must grapple with ancient, entrenched, material power. While ethnic or religious groups sometimes create armies, political parties, states within a federation, women do not create such institutions of hard power. Deft vernacularisation of women's rights, LGBT[i] rights and the rights of Untouchables into the discourses of both Maoist and western hard power delivered some egalitarian shifts. This case reveals how windows of soft power that advance gender and class equality can be widened in the face of resurgence of the hard power of parties, militaries, crony capitalism and foreign capital. Together, window-widening, disciplined nonviolence and vernacularisation to enroll hard power can deliver transformations that favour the marginalised.

Keywords

Feminism, class, people power, nonviolence, Nepal

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*WORKING PAPER***Gender, Class, Resilient Power: Nepal Lessons in Transformation****John Braithwaite, Regulatory Institutions Network, Australian National University****I. Introduction and Summary**

People power is on the rise globally. The success rate of nonviolent movements of people on the streets demanding regime change was close to zero in the early decades of the twentieth century; by its latter decades and the early twenty-first century, regime change led nonviolently from the streets had become common. According to Chenoweth and Stephan's (2011) data, if a civilian resistance campaign with a 'maximalist agenda' (regime change) between 1900 and 2006 was strong enough to mobilize 3.5 per cent of the population on the street or through other forms of active political engagement in a sustained way, its success rate moved to 100 per cent (Chenoweth 2013:11).

Leader of the Citizens Movement for Democracy and Peace, Devendra Raj Panday, confirmed the relevance of this result in the Nepal context when he said 'It was the sheer numbers that lent us legitimacy' (Kathmandu interview 031415). The People's Movement in its culmination was so massive that people power occupied the entire circumference of the 27 km ring road around Kathmandu and Lalitpur (Dixit 2011:124). It brought about a regime change and abolition of the monarchy in Nepal in 2006 that a protracted armed Maoist insurgency that preceded it could not accomplish. Overall in the Chenoweth and Stephan (2011) data, nonviolent resistance movements had twice the success rate (53 per cent) of those that resist regimes through armed struggle (26 per cent) in the long run. This might suggest that political power no longer grows mostly out of the barrel of a gun. There is hope in this for disadvantaged constituencies who do not control guns: women, children, LGBTs, and the most disadvantaged ethnic, class and caste groups. Nepal is an increasingly common kind of case – like South Africa, Northern Ireland, East Timor – where an armed insurgency secured power by shifting strategy from violent to nonviolent resistance.

The recent history of Nepal is used to problematise this analysis. On the one hand, Nepal is a rare historical case where feudalism finally comes to an end from a massive citizen uprising and general strike on the streets of Kathmandu right across the towns of Nepal in 2006. It is also a case where women achieve some decisive gains at this historical moment, such as reservations of 33 per cent of parliamentary seats for women, a progressive new law on domestic violence including a national campaign against domestic violence after a 'black petticoat' movement on the streets, a law criminalizing rape within marriage, and reform of laws that granted rights to inheritance and citizenship only through the male line (Nepal Citizenship Act 2006).

Women's organisations submitted 116 gender discriminatory laws to the Supreme Court after the abolition of the monarchy, arguing that these laws were inconsistent with a republican democracy, with an equal rule of law, and with Nepal's obligations under the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). The court ruled in favour of the women's groups. This reform was newly translated into the vernacular of a republican rule of law. The most disadvantaged caste group, Dalits (Untouchables), also won symbolic gains such as a declaration of the abolition of the caste system in the interim constitution, a law criminalising untouchability, and class-based discrimination (Caste Based Discrimination and Untouchability (Offence and Punishment) Act. 2011). These gains were combined with the more concrete gain of significantly increased Dalit representation in the Constituent Assembly of 2008. As with women, Dalit parliamentary representation fell back slightly in 2013, though the fall was still to a substantially higher level than before 2008.

The proportional elements of the post-conflict voting system guaranteed 59 indigenous groups at least one elected representative in the parliamentary and Constitution-writing Constituent Assembly. No mean accomplishment of electoral engineering. Drilling down into the case we find that the politically decisive mass citizen uprising was preceded by a decade-long Maoist armed struggle in which women, disadvantaged indigenous peoples and Dalits had unusually high representation in the People's Liberation Army. The prominence of women and Dalits in the Maoist army helps explain their gains through the ultimate decisiveness of the nonviolent citizen uprising of 2006. Child soldiers were also widespread in the People's Liberation Army. They are not the focus of this analysis, though the conclusion turns to how their engagement with armed struggle adds complexity to the analysis.

The point is not to essentialise these categories of disadvantage. Some children are Dalits, some inter-gendered. Children at one phase of this historical narrative are adults at a later phase. Some 'caste' identities were ethnic identities before Hindu elites fleeing the Mughal advance five centuries ago imposed a more totalising caste system on Nepal. Getting categories of essentialised disadvantage clear or right is not the objective. What is important here is to use shifting configurations of disadvantage to reveal the power of suites of mechanisms of struggle. These may prove of relevance to varieties of disadvantage that take different forms in different historical contexts.

It is far from the purpose of this article to dampen a politics of hope grounded in inspiration that can be derived from the liberation struggles of women, LGBTs and Dalits in Nepal. Rather, it seeks to draw both positive lessons about those successes and lessons, and about the extra ingredients needed to consolidate gains. Before this can be accomplished, however, we must learn what gave resilience to male power, upper caste power, the power of established political parties and armed groups to push back the gains of the revolutionary moment for the most disadvantaged groups.

We discover that both hard power – control of organisations that can mobilise the coercive power of guns and money – and soft power are important to understanding the history of Nepal. Entrenched rulers and powerless groups alike are most effective when they wield soft power (Nye 2004). Soft

power aims to persuade rather than punish or coerce to achieve change. Yet the comparative advantage of entrenched rulers over the powerless is widest with hard power. Hegemony is the most potent form of soft power – where the dominated come to support their domination. Hard power also constitutes a formidable hegemonic advantage in soft power for rulers.¹ Even so, ‘the crowd in history’ (Rudé 1964) has clout. Though it is systematically true that the poor win symbolic rewards from conflicts while the rich win material rewards (Edelman 1967), symbolic politics, particularly the politics of vernacularisation (Merry 2006), can allow the weak to harness the power of the strong. The weak often divide and conquer the strong through astute mobilisation of soft power. This essay is about how this accomplishment can be secured and strengthened.

Preliminary conclusions from the Nepal transformation are advanced as hypotheses to guide future research:

1. The most decisive factor in Nepal’s republican revolution was a triumph of nonviolent people power on the streets, enabled by a unilateral Maoist ceasefire that brought masses of people in behind the Maoists in 2006. Behind the scenes of this people power lurked hegemonic male power of armies, parties, foreign states and upper castes.
2. In contemporary conditions, disadvantaged gender and class groups secure gains by translating their grievances into the vernacular of hegemonic state, party and military formations. Women and Dalits accomplished this by translating grievances into a Maoist vernacular during the armed conflict, and post-conflict into the vernacular of donors and international NGOs, particularly human rights organisations.
3. Women, LGBTs and Dalits could succeed in deploying strategic vernaculars to ride the wave of people power. As the revolutionary moment fades, however, people power is captured by elites who control the most potent forms of organisational power – armies, parties, executive governments, capital. Women and maximally disadvantaged class groups like Dalits never win revolutions in the long run of history because they never secure majority control of armies, parties, executive governments and capital. This contrasts with religious groups, ethnic and nationality groups, capitalist shadow governments and groups with particular political ideologies, which routinely control armies, parties, and executive governments (domestic and foreign), with support from only fractions of the population. This is partly about spatial concentration of the minorities who grab the most enduring forms of organisational power. An ethnic, religious or Maoist minority can rise to national power from a base in one

¹ Part of this is rulers’ control of resources that permits a combination of the soft power of rewards and the soft power of hegemony: ‘In Nepal the authorities make you feel shit. If you want your passport, they look at you like you are shit. So people rely on contacts they have with the military or the police to help them to get something like a passport.’ This journalist went on to suggest various modalities of hegemonic power of the military such as being able to suggest to rural people who one would vote for if one had the interests of the people at heart (Kathmandu interview 021447 2014).

region of a state where it is a dominant majority. Women, Dalits, LGBTs (or children) cannot concentrate spatially to exploit this.

4. Federalism and consocialism as common post-conflict settlements play into this comparative disadvantage. Nepal illustrates how Maoists and other political parties, ethnic parties, organised clutches of crony capitalists, armed groups, even foreign states like India, can win domination in certain provinces of a federation through their deployment of concentrated organisational power. This even though they might fail to secure control of the central state. Women, LGBTs, Dalits (and children) are not concentrated spatially in ways that allow them to grab a base of provincial power from which they can seize moments of national power. The dominant parties crafted a distinctively Nepalese informal consocialism (power sharing) that excluded women, LGBTs and Dalits.

Point 4 is more than just a contextually relevant Nepal insight. An ethnically Pashtun extremist religious minority can use military domination of Kandahar province of Afghanistan to seize state power. Later, through its Quetta Shura and links to the Pakistan Taliban, it can become a factor in the power equation of a larger neighbouring state. It can deploy power in both states to crush women's rights. Women have not managed to dominate provincial power anywhere in South Asia or across the globe, nor have Dalits (Kisan 2005). Nor have LGBTs, even though they are numerically a much larger group across South Asia than the Taliban. Even more acutely than with women, the political problem of LGBTs is that they are not concentrated to majority control of any geographical space and therefore to control of dominant political parties, dominating capital or armies. Spatial concentration enabled the numerically tiny Taliban to achieve all of these kinds of control in Afghanistan and large swathes of Pakistan.

Chenoweth and Stephan's (2011) data show that point 1 is also of global relevance. It will be argued that work in the vernacularisation tradition of Sally Engle Merry (2006) also goes to the more global relevance of points 2 and 3 above. What then are the policy arguments for women's rights and the rights of LGBTs and Dalits in response to the explanatory insights of these four conclusions? Five activist hypotheses to complement our first four explanatory hypotheses advanced inductively from the Nepal case are:

1. Women, LGBTs and Dalits can secure gains by advancing their claims in the vernacular of the organisational power concentrations of armies, political parties, capital, their own executive government and muscular foreign states.
2. Women, LGBTs and Dalits must compensate for their want of control of organisational power as they did in Nepal by organising cross-party women and Dalit caucuses that unify minority fractions of the organisational power of parties, domestic and foreign states, armed groups and business.
3. Women, LGBTs and Dalits enjoy maximum influence during transitional moments of people

power on the streets; improved organisation (enrollment of organisational power) for entrenching constitutional and institutional reforms is needed for brief windows of people power.

4. One way to extend the people power window is to prolong the period when party leaders are in the more original position that prevails before the first post-conflict election.
5. A critical form of institutional entrenchment for women, LGBTs and Dalits is semi-autonomous separations of powers in a polity.

The plan of this paper is nine sections that explore in order the above nine hypotheses. Part II systematically works through hypotheses 1-4; it attempts an explanatory account of how vernaculars of inclusion make headway. Part III systematically works through the activist hypotheses 5-9 using subheadings to inform a normative theory of how to institutionalise equality.

The data that drive the analysis came from extensive reading on the transition in Nepal, including primary source documents, fieldwork mostly in 2014 mostly in Kathmandu and rural Rolpa District in the western hills, but also interviews with key UN players, peacekeepers and national diplomats in New York, Delhi, Beijing and elsewhere. 66 informants in total were interviewed, nearly all for more than one hour but less than two, and some on more than one occasion. All interviews were conducted by the author, half of them with a local interpreter, as the Nepal leg of the *Peacebuilding Compared* data collection (<http://regnet.anu.edu.au/peacebuilding-compared/home>), a project with wider aims, but one that embraces exploration of the hypotheses explored herein for 32 other armed conflicts to date.

II. Vernaculars of Inclusion Confront Gender and Class Power

1. People's power triumphs

Monarchy to Democracy: Nepal stretches along much of India's north-eastern border. The history of Nepal is like many countries in the sense that from 1769 a monarchy (the house of Gorkha) unified disparate feudal fiefdoms into a nation state through superior military capability. What is distinctive about Nepal is that the Royal palace continued to dominate national politics and enjoyed control of the Royal Nepal Army until April 2006, when the king stood down to end the monarchy after 19 days of massive mobilisation of the people on the streets. This was preceded by six decades of struggle between the king and left-of-center political parties campaigning for parliamentary democracy from the end of the British Raj. The most prominent of these parties has been Nepal Congress, a party of democratic socialist provenance, which like all significant left parties in Nepal became less socialist and more corrupt as it tasted power. To the left of Nepal Congress was a multitude of Communist Parties. One of these, the Communist Party of Nepal – Unified coalesced a number of Marxist-Leninist parties to accept multi-party democracy and compete electorally to become the major party competitor to Nepal Congress. Its successor as the dominant Marxist Party, which shares power with

Nepal Congress in 2014, was the Communist Part of Nepal (Unified Marxist-Leninist) (CPN-UML). These political parties enjoyed many victories over the king in demanding that he step back to become a more constitutional monarch, demanding parliamentary elections, and successive constitutional reforms to edge Nepal toward democracy. At each turn until 2006, the palace, backed by the army, had succeeded in winning power back from the parliamentary parties, indeed in dismissing prime ministers, after recurrent periods of unstable, corrupt and unpopular elected governments.

Enter the Communist Party of Nepal – Maoist (CPN-M) in 1996 leading a People's Liberation Army after a period when it fared poorly in winning parliamentary seats. Its strategy was Maoist rather than Leninist in that it sought to expand its military control of the countryside from remote rural areas until it encircled the capital. This it accomplished, coming to control 80 per cent of the territory and establishing a People's Government in those domains of rural control. Its revolution started in the remote mid-western districts of Rolpa and Rukum where initial raids on police posts captured its first weapons. 13,000 died in the People's War. A unilateral ceasefire by the CPN-M was embraced by a war-weary people who surged onto the streets in a movement beginning in 2005, culminating the people's victory of April 2006.² The Maoists agreed to participate in a multiparty democracy, successfully demanded a UN peacekeeping operation to monitor the cantonment of its troops and those of the Royal Nepal Army, and became so popular that they became the dominant elected party. Its commander-in-chief Prachanda became the first post-conflict Prime Minister until he unconstitutionally sought to oust the defence chief, causing his own demise. The Maoists, however, continued to wield influence as the largest parliamentary party until they lost most of their seats at the second post-conflict election in November 2013.

King Gyanendra, Nepal's last king, was unpopular. People were suspicious about how he came to power after his brother, the popular former King Birendra, and 10 other members of the royal line were murdered in the Royal Massacre of 2001. In 2005 Gyandendra dismissed the elected prime minister and re-established royal autocracy. At first, the Royal Nepal Army fell in behind their new king, as did the entire international diplomatic community. The major regional powers – India and China – supported him and his war. The United States post-9/11 classified CPN-M as a terrorist group. The United States particularly strongly supported the new king and the Royal Nepal Army. India was playing a more complex game than the other international players, however. It hedged its bets for the future by both helping the Royal Nepal Army with hardware and training to fight the Maoists, while also protecting Prachandra and the other Maoist leaders, who were running their war from Delhi. Civil society leaders of the people power movement that resulted in the return of parliamentary democracy and a new Constitution in 1990 went to Delhi to succeed ultimately in

² An earlier attempt of the alliance of seven parliamentary parties to mobilize a mass people's movement against the monarchy failed because the parties did not have the trust to lead it but also because the people overwhelmingly wanted democracy and peace, not just the reinstatement of democracy without peace (Dixit 2011:124).

persuading the Maoist leaders in 2005 to join forces with what became the Citizens Movement for Democracy and Peace (CMDP)³ and with the old democratic parties in deposing the king with a genuine multi-party democracy.

CMDP was an umbrella for other umbrella organisations like the All Nepal Peasant Federation, the All Nepal Women's Association and the Professional Alliance for Peace and Democracy that mobilised lawyers, teachers, engineers, professors, doctors, journalists and importantly, stars of the stage and screen. In 2003, seeing how unpopular the king had become, India hijacked the peace talks, moving them from the Maoist capital in Rolpa to Delhi, and excluded the Nepal civil society leaders who had convened the talks to that point. As so often occurs in peacemaking, international players who speak a vernacular of inclusion impose a practice of exclusion when they have an opportunity to shape a peace process with a narrow group of party and military leaders. One of the remarkable terms of the peace that India secretly secured from the Maoist leadership was a signed undertaking that any future Maoist government of Nepal would not act against Indian interests!

India's peace talk leadership by April 2006 had brought the international community to consensus behind a peace package where parliamentary democracy would return and the king would step back to being a Constitutional Monarch. This was a miscalculation by a Kathmandu diplomatic community that was out of touch with the level of feeling on the street. The Citizens Movement for Democracy and Peace would not compromise with the king; the Maoists were prepared to exploit chaos by returning to the People's War; the army and the international community blinked, deserting the king who eventually resigned in favour of a transitional government of the Maoists and the democratic parties.

Women and the poor to the fore: A remarkable feature of this war and this transition to peace is that it embraced women as fighters to a degree that no other war in the *Peacebuilding Compared* database has seen to date. Among the 40 demands the Maoists put to the government as conditions for not embarking upon the People's War, was an explicitly feminist demand: 'Patriarchal exploitation and discrimination against women should be stopped. The daughter should be allowed access to property.' Estimates of the proportion of female Maoist fighters vary from the 20 per cent recorded by the UN from a count of the numbers who entered cantonment (an undercount because of the way Maoist commanders told women to return to care of their children and families at war's end) to more than 40 per cent. The policy of the People's Liberation Army was to achieve a fighting force that was 33 per cent female. It probably achieved this, as it claims to have done. Yami (2006:5) asserts women were 30-50 per cent of the People's Liberation Army, which was even higher in Maoist militias. The fighting started out a predominantly male affair between 1996-1998. The Maoists did not make great progress until they broadened their Maoist class appeal to advocacy of women's rights, indigenous rights and liberation of landless castes, particularly Dalits, from oppression by landlords. Almost all of the Maoist fighters came from these three groups, though the party elite was predominantly upper

³ Also known as Jana Andolan II, with the 1990 citizens democracy movement being Jana Andolan I.

caste males.

The policy of the parallel People's Government across its local administration, People's Courts and its army to have 33 per cent women was carried forward into the Comprehensive Peace Agreement, according to which 33 per cent of the legislature and constitutional assembly, the Constituent Assembly, would be female (something institutionalised and achieved in the 2008 election, though it slipped back to 30 per cent in 2013 as a result of technical failures in the electoral machinery), 33 per cent of the civil service and of the security forces would be women. The latter two remain a long way short of implementation, though there has been some progress. The new Constitution of 2015 also guarantees a minimum of 33 per cent women in the national and provincial parliaments and for at least 40 per cent of those elected women at the ward level to local village governance to be women. Likewise reservations for Dalits across these spheres has achieved significant progress (50 Dalits in the 2008 Constituent Assembly), while falling far short of proportional representation of Dalits. Both educational opportunities and informal discrimination against Dalits have improved according to interviews with Dalit activists. The 2015 Constitution has a number of provisions on proportional representation of Dalits among elected officials and within the executive government.

Rolpa, the district that became HQ for the Maoists, achieved what my interview informants asserted was the highest percentage of female fighters. Estimates of the peak percentage female ranged from 'exceeding our policy of 33 per cent, but I don't know by how much' to '50 per cent (or more)' (the most common kind of answer) to '60 per cent'. There are no surviving authoritative records from war-ravaged Rolpa. The upper range estimate came from the most authoritative sources of the top Maoist Military commanders in Rolpa. So it seems possible that the majority of fighters in Rolpa District came to be women.

My Rolpa interviews suggest that targeted rape may have been the most important reason for the percentage of female fighters being highest there. Because Rolpa District was a first mover into sustained armed conflict that became host to the head quarters of the People's Liberation Army, the security forces targeted daughters, wives and sisters of Maoist fighters particularly savagely with rape. Rolpa was also targeted earlier, by Operation Romeo in November 1995, which drove Maoist men into the forest to escape police atrocities (Gautam, Banskota and Manchanda 2011: 343). After many men were killed, women stepped in to take their places, partly to avenge family killings and rapes, and partly because they concluded it was better to get up in the hills and fight than wait in the valleys to be raped. Interviews with male and female Maoist fighters in Rolpa and beyond also explained women's participation in terms of an ideology of women's liberation from educational and employment discrimination and landlessness. As feminist Maoist leader Hsila Yami put it: 'Since women have suffered class and sexual oppression they have double the capacity to revolt'; though poignantly also saying 'the People's War give all of them [women] a meaningful life and a meaningful death; it allows them to prove their worth is equal to the men' (Manchanda 2004:241,246; see also Yami 2006).

[The Maoists] came to my house, talked about my suffering, warned my husband who used to beat me every day . . . we were supposed to go to the chairperson of the Village Development Committee . . . I do not think he can provide justice to women since he himself beats his wife all the time. [The Maoists] . . . have taken actions against many abusive husbands. Since they were people from the same village I did not need to tell them the story, they knew it themselves. So I support them, they provide real justice for women (Dang woman quoted in Sharma and Prasain 2004:156).

Menon and Rodgers (2013) showed using three waves of data that the payoff of the conflict was in increased paid female employment – as opposed to dependence on remittances and subsistence work – during the war. Valente (2013) showed that districts that experienced more conflict violence during the Maoist war also had the highest increase in educational attainment of girls during the war. Contrary to the negative effects on schooling of war recorded in many other countries, war intensity in Nepal also increased male educational attainment, though not as strongly or robustly as for females. This was true even though Maoist abductions of children were found to have a negative effect on educational attainment during the war (Valente 2013:2). In 2011, only 5 per cent of women over 40 had some secondary education, while 50 per cent of women between 15 and 20 (who mostly entered high school during the war) had some secondary education (Engel *et al* 2013:27). One reason was evidence that Maoists, perhaps particularly female ones, policed the problem of teacher absenteeism in remote rural schools and used the People's Courts to confront parents who allowed truancy by their children. During the war, between 1996 and 2006 when a majority of the population came to be under Maoist rural governance, Nepal's maternal mortality ratio fell by 47 per cent (Engel *et al* 2013:4), an indicator that normally rises sharply during civil wars. Neonatal mortality, under five mortality and many other health outcomes also improved markedly during the war. Remarkably for a major war, overall life expectancy improved at about twice the rate during the war as the improvement of the previous two decades of peace (Engel *et al* 2013: 9). Part of this change was shorter life expectancy for women than men before the war becoming women living longer than men by war's end, a change assisted by a successful female community health volunteers program.

Nepal is a rural economy where landlessness is a dominant driver of poverty. The two demographic groups with the highest rates of landlessness are women and Dalits (Nepali 2008). Murshed and Gates (2005) found that variation in the intensity of armed conflict across Nepal's 75 districts between 1996 and 2001 was a function of the incidence of landlessness and the Human Development Index. Macours (2011) shows that Maoist recruitment by abductions of young people to fight was most intense in districts where inequality had widened most between those who owned land and those who did not.

Nepal *et al* (2011) argued that in a village society the village is the best-specified level of analysis for exploring inequality effects, rather than the district or national level. This is because it is groups who must overcome the costly collective action problems to organise for revolt against the state machinery; and in village society, it is at the village level that organisation for collective action is most

possible. Indeed it is true that the initial attacks on police posts to acquire the insurgency's first weapons did not arise nationally, but as a result of local uprisings in certain villages of the remote districts of Rolpa and Rukum. Nepal *et al* (2011) found large, robust effects of between-groups inequality explaining resistance, especially inequality between upper and lower castes (and disadvantaged indigenous groups). That is, across 3,857 villages, when between-groups inequality was high, Maoist killings were high.⁴ These effects persisted after instrumenting for endogeneity.

2. Successful vernacularisation of gender and Dalit rights

One of the ways the Maoists were politically sure footed was that when their Maoist rhetoric was failing to mobilise enough fighters to sustain an expanding insurgency, they adopted the vernacular of women's rights, indigenous, and Dalit rights. Conversely, many feminists translated women's rights into a Maoist discourse of struggle, People's War and Maoist encirclement from the countryside of male Brahmin (Bahun) and Chetri domination of the capital. Dalit and indigenous advocates likewise accomplished a Maoist vernacularisation of their agenda. The idea of vernacularisation as a way that the weak can enroll the strong, and vice versa, comes from the anthropological scholarship of Sally Engel Merry (2006). Her work shows how something like Dalit identity can be creolised with Maoist identity, through a translation of Dalit aspirations into the vernacular of Maoists, and vice versa. Out of the crucible of the 1996-2006 war came Maoist-feminist, Maoist-Dalit, and Maoist-indigenous vernaculars that worked for the Maoists in advancing their political power. Likewise it worked for feminist, Dalit and indigenous activists.

At the war's end, Maoists themselves attenuated their Maoist rhetoric. Their senior leaders all moved to Kathmandu to recover from the hardships of fighting in the hills and to cash in on funding from donors, who were pouring into Kathmandu (but afraid to enter the hills). At first, their move to participate in a multi-party democracy was hedged with Maoist vernacular. Thus, the 2005 Chunbang central committee meeting accepted multi-party democracy 'until international conditions became suitable for revolution' (ICG 2012:5). They would join a 'bourgeois republic' as a stepping stone to a 'people's republic'; all this was a 'new model of revolution' (ICG 2007:4) that adapted Maoism to the realities of the 21st century. An alliance with the 'capitalist parliamentary forces' was a necessary step to end 'feudal monarchy' (ICG 2007:5). At first when Baburam Bhattarai, who was destined to become Prime Minister of Nepal, proposed this 'creative development of Marxism, Leninism and Maoism' he was arrested in Rolpa and charged with 'rightist deviation' (ICG 2007:4). The party's 'dialectical process' became a euphemism for the reality of the rejection by many cadres of step-by-step abandonment of Maoist revolutionary struggle: 'a situation must be created to ensure continuous

⁴ Nepal *et al* (2011) is also an important methodological advance in the study of between-groups inequality effects on intensity of war because a cross-national study of inequality effects across 100 societies suffers massive institutional heterogeneity problems with wars of local origin and local resilience. On the impossibility of understanding civil wars without understanding grievance and mobilization at a very local level, see Séverine Autesserre (2010, 2014).

proletarianisation and revolutionisation of the communist party by organising political competition within the constitutional limits of the anti-feudal and anti-imperialist democratic state' (Central Committee in 2003 quoted in ICG 2007:7).

The Maoist leaders quickly learnt that those who received the most in donor funds were those who steered their language most towards human rights, democracy and peacebuilding vernaculars favoured by donors. Among those donor vernaculars were vernaculars of women's and indigenous rights. So of course the Maoist feminists and the Maoist indigenous leaders migrated to these vernaculars. Dalits translated their claims from the Maoist vernacular they deployed between 1996 and 2006 to human development and anti-poverty vernaculars of donors.

Another interesting vernacular into which women's voices were translated was that of the democracy movement, more specifically the technical discourse of electoral engineering. Women lobbied intensively for a 'proportional' electoral system rather than 'first past the post'. The final deal was a mixed system where some seats in the Constituent Assembly were selected by first past the post and some by a proportional system. For the proportional seats, parties won seats in proportion to their percentage of the vote; then parties were regulated to select fixed numbers of women from the list of candidates they had put before the electorate. A feminism that was illiterate in the arcane logic of electoral discourse would not have maneuvered as effectively as Nepali feminists to entrench an empowering result constitutionally.

Indigenous groups embraced a discourse of federalism. This was also a continuity and a re-vernacularisation of the Maoist tactic of mobilizing indigenous groups by promising them indigenous homelands. In Rolpa, for example, while most of the fighters became women, most fighters were also indigenous Magars. They were promised a Magar homeland and vernacularised the Maoist struggle into a struggle for a Magar homeland even though only 44 per cent of the population of Rolpa was Magar. The Magar homeland was translated by the post-conflict electoral engineering of donors who supported federalist power sharing as a liberal peace technology. They were able to put together proposals for a cluster of contiguous districts around Rolpa that would become almost half Magar! In the final dispensation of just eight provinces in the 2015 Constitution, only a few ethnic groups received their own homeland at the provincial level, though there could be some semblance of it at the local tier of government.

An empirical finding of Merry's (2006) work on vernacularisation in Fiji and Hawaii was that the downwards vernacularisation of global discourses on human rights and women's rights was much more common and powerful than upwards vernacularisation of indigenous vernaculars into global human rights institutions. This contrasts with somewhat more equal two-way vernacularisations in Nepal. During the 1996-2006 war, there was a decidedly two-way vernacularisation of Maoism into indigenous, Dalit and feminist discourses and of these discourses into Maoism. Post-war, there was vernacularisation of both into international donor discourses. War's end also saw a significant translation of donor discourses into the decidedly non-global discourses of Dalit rights, Magar

liberation (and that of many dozens of other indigenous groups) from upper caste domination of landlords. There was also vernacularisation of global feminist discourses into a ruralised Maoist version of feminism.

A distinctive feature of this rural feminism is that it liked the way People's Courts, in which one third of the judges and advocates were women, cracked down on domestic violence during the People's War. Onasari Gharti, a Commissar in Rolpa who became a Minister and the most senior Maoist woman in the parliament said:

Women got more justice than they get today. During the People's War they got speedier justice in the People's Courts. The meeting would be held quickly. There was a lot of participation of women in the People's Courts. A lot more participation of women in many things during the war. In the People's Court the advocates and judges were frequently women. This was because the judges were elected in the village. Judges would go to a victim's place in the village as a mobile team to listen to the victim before the court case began. The people liked that. The court would sometimes give them labor as punishment and they would get counseling during their labor. There were two kinds of labor punishment, one that involves doing something for the victim's house itself, the other kind involved social development work. Maintaining social harmony was important to the court (Kathmandu interview 031405).

Maoist justice mostly simply confronted domestic violence and extracted undertakings for desistance by perpetrators, combined with monitoring by relatives, and reporting desistance back to the People's Government. Sometimes reform of perpetrators was promoted through work for the community, sometimes even forcing some abusive husbands 'to perform household chores they traditionally never touched' (Sharma and Prasain 2004:157), and sometimes procedurally rough justice in which perpetrators were beaten or had an extra bag of rice taken off them by feminists of the People's Revolutionary Army. Of course, this rural feminist-Maoist justice was unattractive to the metropolitan feminist justice of the legality of courts and prisons.

The two-way hybridity on the ground in Rolpa in 2014 was interesting. The District People's Court of Rolpa with its female Chief Justice was gone as part of the peace agreement to re-empower state institutions. A number of District Court judges and prosecutors had served in Rolpa since the end of the war, every one of them male. However, the single District Court judge that was serving the 250,000 people of Rolpa and the local chief of police were both men strongly committed to a criminal justice system responsive to women's rights. This single judge (Rolpa interview 0312445) handed down convictions in five rape cases in Rolpa in the previous 11 months (a big number for such a small jurisdiction, indeed a big number compared to Australia's national capital where I write). While only profoundly violent incidents of domestic violence would find their way into the Rolpa District Court, human rights and women's leaders argued that in the traditional justice of the elders in the village that handled such matters today there was still unsatisfactory representation of women and advocacy of women's rights, but that there had been a positive carry-forward from the reign of the female Chief Justice of the village-level People's Courts. More women elders were involved than pre-war.

The Department of Women and Children, with credible feminist district leadership, was a crucial mediator of women's and children's rights. A key mechanism of this mediation was an education campaign supported by a network of paralegals trained to focus on persuading women to complain about domestic violence to one of nine Women's committees spread across the district. The Women's Committee works with village elders who control local mediation of disputes to get a satisfactory outcome for the victim (Dept. of Women interviews Rolpa 031434). If the village elders are not satisfactorily responsive, the local Women's Committee asks the local police officer to intervene on behalf of the woman or child who was a victim of violence. If the village-level police are unresponsive, the local Women's Committee takes the complaint to the District Women's Committee in the District Office of the Department of Women and Children, which may refer it to the District Gender Violence Control Committee. Local police have learned to fear complaints going to this committee because their boss, the District police chief, is an active member of it and had previously acted to take over domestic violence prosecutions in serious matters where the village elders and the local police officer had failed to act. In one Rolpa village, the Women's Committee had taken up 67 women's rights cases, many involving domestic violence. 6,000 women serve on at least one of Rolpa's government-sponsored committees. One Rolpa businesswoman who fought with the Maoists expressed the virtues of this new hybridity into which both the rural feminist justice of the People's Court and the cosmopolitan justice of feminist human rights NGOs had percolated:

During the war there were many women involved in the People's Courts. They provided good justice. Women could take domestic violence cases for a fair hearing for the first time. Today the situation is even better but has a long way to go still. It's better because there is a choice of access to government courts and there is better access to the village justice. It has more women than before when it had none. That is thanks to our struggle. Justice is also better today because of the rights. The rights get more protection in the courts but there are also other rights in the village mediation. The rights has been a good thing for women (Rolpa interview 031433).

That said, as Rita Manchanda (2004:2) cautioned, this kind of narrative is problematic for feminist politics 'for it posits the possibility of emancipatory politics in the crucible of a militarised, hierarchical, authoritarian culture of violent politics'. Yet perhaps the emancipatory prospect arises from responsive hybridity between this militarised politics and a nonviolent politics of people power that embraces a feminism with an ethic of care that also takes rights seriously. One could say that many Nepali feminists have struggled productively against the odds for this kind of creolized indigenous republicanism of post-Maoist feminism.

I am not aware of LGBT empowerment via the People's Liberation Army. LGBT activism during the war was metropolitan, while Maoist power was rural. Even so, what caught fire momentarily in post-conflict Nepal was a raging politics of inclusion. While it had Maoist origins, all the major parties sought to claw back some of the electoral advantages the Maoists were banking from 2006 to 2013 by buying in to solidarity with that politics of inclusion. In my 2014 interviews with leaders of the major non-Maoist parties, they remained locked in to that same Constitutional reform and legislative

program of inclusion. Indeed the legislature continued to be overwhelmed with the busy work of settling the consensus on the details of getting this inclusion agenda into law. In this legislative environment, Kathmandu LGBT activists were able to mobilize resources from LGBT rights NGOs internationally to take liberal legislators on study tours to witness 'world's best practice' in LGBT inclusion. In return, those legislators sponsored LGBT laws in advance of most western countries, including same sex and inter-gender marriage rights, even inclusion of 'Other' beside 'Male/Female' on the arrival and departure cards signed at international airports. Businessman and newspaper editor Kanat Mani Dixit explained how this was possible:

Most Nepalis don't own this progressive agenda. It was introduced from the top. Donor funding drove it. You bless the activists and their supporters and sponsors in the Parliament with international visits. We have a very busy parliament that is overburdened with more legislative initiatives than they can cope with, so things with donor support and the support of active minorities get through. The parliament is just not very alert (2014 Kathmandu Interview 031419).

It is also important to note that translation of the Maoist discourse of inclusion occurred in stages through the agency of the Citizens Movement for Democracy and Peace. Their leaders explained in interviews that at first people on the streets simply wanted democracy, possibly with a new constitutional monarch. This was not articulated initially by the popular will in the vocabulary of overthrowing the monarchy as an institution and replacing it with a republic. A first step toward this destination that the leaders pushed in their speeches at rallies was that the people should no longer be '*praja*' (subjects) but should become '*loka*' (active citizens). The next step was to move the vernacular of protest to demands for '*gana*' or '*gana tantra*' (institutionalised republicanism), a part of which was a vernacular of inclusion of women, Dalits and indigenous peoples. This was an explicit strategy to expand people's ideological imagination by maturing their vocabulary of political transformation in a Nepali *loka* vernacular that connected up to the Maoist vernacular of struggle (2014 Kathmandu interview 043145).

3. Resilience of male and Brahmin power

We have already seen how, at the moment of cantonment, Maoist leaders who no longer depended on the mobilisation of female fighters to make their military capability credible, sent Maoist women back to their families in the village. From the moment of serious peace negotiations, women leaders were almost completely excluded from the negotiating table (Arino 2008: 10). Upper caste male Maoist leaders moved in an opposite metropolitan direction, first to Delhi and then to where the money was in Kathmandu. To get one's snout in the trough, leaders must note of the geography of trough location and relegate their minions from marginalised groups, with whom they do not wish to share the contents of the trough, back to control of the spaces remote from troughs. Embezzled donor funds supported the election campaigns of Maoist leaders up to 2013. Ministerial power created opportunities for corruption. Bribes and embezzled funds lubricated capital and contracts with which to start businesses that would continue to flourish once ministers had lost power.

Other second tier male Maoist leaders became senior officers in the Nepal National Army. Only two female Maoists by 2013 had made it to the rank of Major even though there had been a number of Maoist female battalion and brigade commanders (Colonels and Brigadiers up to 2006) as well as female Commissars who liaised between the military and political leadership. Dalits secured more positions in the army than in the past, but again at proportionately low levels.

The argument here is that power on the streets and in mobilising general strikes, blockades and other people power tactics does shape history, as does the symbolic and enrolment power of vernaculars of empowerment. They do so, however, by shaping the organisational and material might of armies, political parties, capitalist enterprise and executive governments. Leader of the Citizens Movement for Democracy and Peace, Devendra Raj Panday, recognized this when he said in interview that their strategy was to prevent party leaders from speaking at their rallies because their unpopularity would dampen the movement. But in recognition of the fact that they were the ones with the political power to enact the legislative changes sought, they asked all the party leaders to attend their rallies and sit at the front listening to speakers from the movement (Interview 03415). This all party leaders did.

All 38 prime ministers and presidents in the history of Nepal have been males from the three dominant caste/ethnic groups (of the country's 103 caste/ethnic groups) – Brahmins, Chetris, and upper caste Buddhist Newars. These groups have continued to dominate some 80 per cent of major party leaderships (central committees), military leadership, civil service leaders and university professors. While the majority of mid-level Maoist leaders during the war were not from these groups, this is no longer true as reflected in the surviving Maoist leadership that was not decimated by the 2013 election. In 1999, Brahmins, Chetris and Newars held 90 per cent of top positions in prominent Nepali NGOs and human rights groups, 80 per cent of the media elite post-conflict, and there were no Dalit judges, cabinet ministers or members of the police or army elites (Lawoti 2007:13–14).

In sum, the wartime and 19-day peoples' movement elevation of women, Dalits and indigenous people to a spring of leadership has now been reversed to gains for these groups only at the lower and middling levels of elite incumbency, though still with very notable advances at these middling levels.

4. The politics of federalism puts women, LGBTs and Dalits back at the margin

We have seen that ethnic federalism was part of the Maoist inclusion and empowerment agenda. It was not something that benefitted women. Women were half the population of all districts, so there would be no 'women's homeland'. Dalits (13 per cent of the national population) were spread roughly equally across all districts. LGBTs likewise lacked the geographical concentration for a 'gay and lesbian homeland'. There was actually some determined advocacy for a 'non-territorial' Dalit province in the new federation (Kisan 2012). Worldly Maoist leaders knew this was symbolic politics to sustain their Dalit support base; at the end of the day it would prove administratively unworkable, an

economically inefficient approach to federalism that the Constituent Assembly would never vote in.

While women, LGBTs and Dalits can win gains through deploying soft power – vernaculars, symbolic politics, street politics – federalism becomes another way that the hard power of controlling organisations that mobilise guns and money – executive governments, parties, big business, armies – is put beyond their grasp. In contrast, federalism is a path to hard power for ethnic groups that are minorities nationally but large enough to dominate in a particular region. The next paragraph illustrates how it favours larger minorities over smaller ones like Dalits or lesbians. More than that, it illustrates how federalist agendas can mobilise the hard power of foreign states.

The numerically strongest disadvantaged ethnic group, the Madhesi of the south-eastern plains of the Tarai, were also determined to hold the post-conflict parties to the federalist plank of the inclusion agenda. When Madhesi leaders were dissatisfied with the specificity of commitment to federalism in the early drafts of the interim constitution in 2007, they mobilised protests on the streets of Tarai towns. Blockades prevented food and other essentials getting up to Kathmandu. Fifty were killed in these massive mobilisations. They utterly de-stabilised the country. Bloody Tarai protests and blockades occurred again in 2015 over fears of levels of Madhesi representation than it was hoped federal boundaries would provide.

India was supportive of a federalism that it hoped would see the Tarai host powerful pro-Indian provinces dominated by ethnically Indian immigrants on India's border. Because the Tarai is half the population of Nepal, India hoped it might become a politically dominant state that would be a captive of Indian diplomacy. India hoped that payoffs to Tarai provincial politicians would make them facilitative of Indian interests in water resources that flowed through the Tarai down to India (Interviews 031410, 031427). Conversely, India was attracted to a proliferation of tiny ethnic provinces along Nepal's northern border with China. This would best enable the option of destabilising Tibet by providing a Nepalese (provincial) safe haven for Tibetan terrorists or activists. Chinese diplomacy on this was flat footed; Beijing awoke too late to the reality that it had an interest in opposing Nepalese federalism and questioning why India needed a buffer within a buffer (the Tarai) from China (interview 031410). By the time China began its attempts to influence the debate, all the major parties had surrendered to pressure from the Madhesi and other ethnic groups to lock in their commitment to a federalist constitution.

One of the best known interpretations of hard power is the theory of the state of exception. Carl Schmitt (2006, 2013) and Giorgio Agamben (2005) are influential theorists. Schmitt conceives the power of state leadership in a state of emergency to be a particularly decisive form of power. Were Schmitt to diagnose Nepal's people power of 2006, he might put more emphasis on the power that only the Royal Nepal Army and the People's Liberation Army had to assert a military solution as the alternative path to bringing country to stability should people power fail. Schmitt defines sovereignty as the power to decide when a state of emergency, a state of exception, will justify dictatorial armed force freed from legal constraint. Guantanamo Bay illustrates how the state of exception can be sold

as a defence of the Constitution, while the reality can be that it changes the Constitution, legalising detention without trial and torture under that Constitution.

Schmitt and Agamben's work draws us to the importance of the hard power of the state of exception. In the present analysis, there is much more to military and police power than implementing the state of exception, and more to executive power than ordering it. Militaries and police also exercise a crucial form of power when they disperse the soft power of mass protest legally. They do so when they achieve this hegemonically. An example is when people hide in their homes for fear of provoking arrest or because they believe that the police and the military are all that stand between them and a dangerous anarchy. The large women's participation at the center of Maoist military power in Rolpa shows that even at the high water mark of militarised women's power, executive control to switch the state of exception on and off across Nepal, or across Rolpa, never rested with women. Nor with Dalits. The executive power of People's (parallel) Governments or state governments were not, particularly in the final acts of this narrative, controlled by women acting as agents for a women's liberation movement. Nor were major political parties ever controlled by a women's movement in this way. One might counter with nearby Bangladesh where for decades the two opposed dominant party machines have been controlled by women who have alternated as heads of state. Neither of these women serve in Bangladesh as agents of a women's movement; they are agents of a family dynasty they inherited from the male line and that they pass on to their men, as with Indira Gandhi in India and Benazir Bhutto in Pakistan. In conclusion, while Nepal is an exceptional case of the transformative power of feminism, it is not a case of feminists controlling the state of exception. There is no case in modern history of feminist control to mobilize the state of exception. The militarisation of the state has frequently been mobilised in support of class projects, dynastic projects, ethnic projects, religious group projects, but never a feminist project.

While class-based parties, religious parties and ethnic parties commonly become major parties, women's parties do not. While ethnic armies, religious armies, People's Liberation Armies that represent a class are common in history, women's armies are not. While capitalist shadow governments that pull the strings of states⁵ are common (Reno 1995), and these are commonly business organisations dominated by men to the exclusion of women from senior executive positions, there has never been an all-powerful shadow state of businesses dominated by women, who exclude men from senior executive positions. Patriarchal shadow states often, matriarchal shadow states never. Female dominance, dominance by feminist agendas, is frequently an accomplishment of soft power, but never an accomplishment of the hard power of capitalist control over shadow states, armies, parties, nation states or single provinces of a federation. Nor does feminist power co-opt

⁵ One senior journalist explained that China and India get their way in Nepal a lot of the time simply by cash payments to political leaders. But they also enroll the power of shadow governments of domestic capitalists: '90% of our trade is with India, but the 10% of business with China is a more lucrative trade with a bigger profit margin. If these countries get unhappy about what is happening in Nepal, all I have to do is call Nepal's 10 biggest importers. These are people who own the media and bribe the politicians.' (Interview 031407).

foreign states to wield their hard domestic power (as with the profoundly influential tug-of-war between China in Nepal and an India in Nepal that has intimidated Nepalese through its intelligence agents, bribed its politicians, supported its armed groups and threatened capital flight).

It is reasonable to say that while it is inevitable that a federation will never see a women's province, what do exist are feminist political parties, feminist police chiefs, feminist business cooperatives and CEOs. These can be supported. Hence, there is no inevitability that the gendered hard power of state, capital and militaries will never be dominated by feminist agendas. Even so, the lessons of Nepal will be read in Part III as lessons about the superior returns from focusing political energy on the gendered soft power that best advanced equality for women, LGBTs and Dalits.

Moreover, the power of nonviolence is more ethical than violence, the power of persuasion more ethical than bribery with fists of cash, the power of soft inclusion more principled than the exclusion of those without the muscle to demand inclusion. This is the normative turn we now take. There is a connection between the explanatory account above and the normative propositions that follow. This is that ethical nonviolent power can attract wider support for institutional transformation. Chenoweth and Stephan (2011) show empirically that this is why nonviolent projects of maximalist transformation have twice the success rate of violent ones. If the project is simply to milk institutions rather than transform them, then of course one does not need the broadly based citizen mobilisation of soft power.

III. Toward a Normative Theory of How to Institutionalise Equality

1. Translate grievances of the marginalised into vernaculars of organisational power

The final paragraph of the last section is about how the soft power of vernacularisation is important because it can enroll hard power. Feminists in Nepal were effective in enrolling Maoist vernaculars, and then liberal peace vernaculars, that favoured women's rights and were supported by western donors. So were LGBT advocates and Dalit advocates effective in this way. Looking forward from a vantage point during the Cold War, it is quite an amazing accomplishment that it would be possible for Dalits in Nepal to weave together strands of power from a Maoist insurgency, from western donors like USAID, and from upper caste Indian intelligence agents who supported the final demise of the monarchy, to advance greater equality for Dalits. Nimble vernacularisation was required to weave discourses of engagement with these hard powers in an era when the Maoists regarded the Indians and Americans as imperialists, when the Indians were inclined to see Nepalese Maoists as comrades of Indian Maoists fighting their Indian government in Northeast India, when a US reeling from September 11, 2001 had outlawed the Communist Party of Nepal - Maoist as a terrorist organization. There is much to marvel at here, and to learn from.

The translation of social justice agendas into the vernaculars of hard organisational powers with

opposed interests not only makes it possible to catch wind from different directions into sails set for transformation, it also opens up the possibility of playing them off against each other. This is given practical meaning in the next section. It considers the accomplishments of a Women's Caucus and a Dalits' Caucus in the 2008-2013 Constituent Assembly. This makes it possible for the Women's Caucus and the Dalit's Caucus to say to the United States that Women and Dalit Caucus members will resist a vote viewed as against US interests if the US will persuade India against something that threatens the interests of women and Dalits in Nepal.

2. Build inter-organisational caucuses controlled from the margins

Women and Dalit leaders have established women's and Dalit wings in all the major parties in Nepal. This started with the establishment Marxist party, the Communist Party of Nepal – Unified Marxist Leninist (CPN-UML). These women and Dalit Wings have been progressively extracting commitments to reservations for women and Dalits on the central committees of most significant parties. Increasing the number of women and Dalits in the legislature, however, has been approached by a strategy of getting reservations for women and Dalits into the new Constitution and into laws to implement the new Constitution in the military, the police, the civil service, and in the political party laws that regulate the political parties (along with all these other institutions) to achieve 33 per cent women now and more later, and at least 13 per cent Dalit across these institutions.

To secure these objectives, the party women's wings and Dalit wings organized themselves across party lines into a Women's Caucus and a Dalit Caucus. The Women's Caucus was formally recognized by the 2008-13 Constituent Assembly. It gave the Women's Caucus an office and staff for the conduct of Caucus meetings inside the Assembly building. Dalits were denied this formal recognition but caucused informally. Testimony to the effectiveness of this work is the fact that the new government elected in 2013 has moved to a policy of refusing to recognize any cross-party caucus. Moreover, the major parties are fighting back with disciplinary policies to enforce party loyalty as a higher calling than Women's Caucus loyalty or Dalit Caucus loyalty.

Hypothesis 6 is not just about cross-party caucuses, it is about inter-organisational caucuses across all kinds of organizations that exercise hard power. Valerie Braithwaite (1992) has shown empirically, for example, that one of the best predictors of the effectiveness of affirmative action officers for women in large Australian businesses was whether they were strongly networked with other affirmative action officers in other firms, or struggling on their own to change the organisation from within. This is more about the power of sharing precedents, networked sharing of strategies and learning from each other's mistakes and triumphs.

In summary, women, LGBTs and Dalits must compensate for their want of control of organisational power as they did in Nepal by organizing cross-party women and Dalit caucuses that unify minority fractions of the organisational power of parties, domestic and foreign states, armed groups and business. Another implication of this is that caucuses of feminist activists can network with caucuses

of feminists in trade unions, in business regulatory organisations and in political parties for the unions, the regulators and the parties to add their pressure upon business for equal employment opportunities. Even in states like Saudi Arabia where all hard power organisations oppose women's rights, caucused women's power can harness the power of foreign corporations operating in Saudi Arabia to open up early cracks in patriarchy by insisting on women's employment and other women's rights inside their organizations in compliance with their own global policies.

3. Be ready to strike decisively with constitutional proposals

It would be wrong to say that the Nepal peace process was a failure. The poorest country in Asia has been growing at an average of over 4 per cent per year since the end of the war, Human Development Indicators have been steadily improving, and no spoilers have returned the country to war. There were 119 post-war armed gangs involved in kidnapping, extortion and robberies in the Tarai, some supported by Indian interests. Most of their leaders have now been persuaded by enforcement or peace negotiations to surrender their weapons (police chief and interior secretary interviews). Nepal's homicide rate is less than half the world average now. Two post-conflict elections have been held that have allowed changes of power with only moderate levels of violence.

If the big picture is encouraging, at a micro level, the peacemaking and peacebuilding has been dispiriting. Women, leaders of less powerful indigenous and caste groups, were quickly discarded when they were no longer needed to fight a war and depose the king from the streets. Progressively more narrow cliques of upper caste male power were doing the deals. They were in no hurry. The priority for most of them was an incumbency they could use to grow rich and powerful through corruption and embezzlement. The first Constituent Assembly elected in 2008 went to the 2013 election without having built consensus on a Constitution. Details of how federalism would be carved up were the main obstacle. Many interview informants said that the tragedy for the inclusion agenda for women and Dalits is that more could have been accomplished had the Constitution been settled in the early years of the first Constituent Assembly. Then momentum was with the oppressed masses who drove the People's War and the Citizen's Movement for Democracy and Peace. 'Reform fatigue' in civil society had not yet set in. With every subsequent year, narrow party cliques consolidated their power, with the military leadership also rebuilding its authority to influence the Constitution in the background.

Two of the most senior women I interviewed argued that more than 50 per cent of the people exercising power on the streets in Kathmandu and across the country in April 2006 were women and that in many protest locales women were the first to dare defy the security forces on the street. 'If we go to the front the men will come in behind' (Women's leader interview 031449 2014). Most male leaders disputed that women were a majority, male peasant movement leaders said peasants were the majority, but all conceded that women were vital to a momentum of the streets the security forces could not stop; none argued that they were fewer than 20-30 per cent of the participants, none disputed a surge of women's participation compared to all previous events in Nepal's history. With

the passing of every year since 2006, these women have progressively been pushed to the decision making periphery about constitutional change.

The lesson is that the Citizen's Movement for constitutional change should have harnessed a fraction of its surging mass of volunteers wanting to work hard for change from the street to work on drafting competing models for core constitutional demands and key elements of an inclusive constitutional process as demands. Instead this was totally left in the hands of the political parties with technical assistance later from foreign constitutional lawyers brought in by the donors. From the perspective of the inclusion agenda, it would have been better that the core parameters of the Constitution be settled quickly than settled right in terms of every technical detail. More than that, as a matter of global democracy movement politics, women's movement and human rights politics, local NGOs everywhere need support in the development of a culture of broad-based dialogue around constitutional reform models. These can then be ready to be pulled from the top drawers of advocacy groups once the constitutional moment arrives. These could have been models that demanded early votes by the first Constituent Assembly on certain core principles that would then be sent to technical committees with an inclusive composition that included those leaders from the streets who had consulted widely to produce the Constitutional proposals from their top drawer. Braithwaite and Drahos (2000) have developed this strategy of 'model mongering' where social movements develop many models of transformation, which all sit on the back burner waiting for the right moment of crisis to move the right one at the right moment onto the front burner. Egypt in the Arab Spring is another recent history that evokes this lesson. Instead of settling a new Constitution first that would limit the power of the executive and the military, a rush to an election installed a party, the Muslim Brotherhood, who installed dominant party control over the process for writing the Constitution. This unpopular party domination in turn paved the way for a coup in which the military reasserted central control. Blood was wasted, inclusion and human rights destroyed.

4. Prolong the window of people power during which apparatchiks are in a more original position.

Constitutions are not everything. The South African transition illustrates this. Its constitutional process was much more participatory and decisive than Nepal's; it delivered South Africa an inspiring Constitution. The excluded were also overwhelmingly delighted with the way the new Constitution enabled the election of a Mandela Presidency. Twenty years on, with consolidation of African National Congress corruption and domination of many institutions, many are disappointed. Popular struggle against party and security sector dominations requires continuous dedication. Yet the constitutional piece remains very important.

Crises of the state are most productive when they usher unconstitutional moments that put political leaders in a Rawlsian original position where none can be sure who might seize power in the successor regime after the constitutional moment has passed (Rawls 1971). The most inspiring and transformational constitutional moments in the history of democracy illustrate this phenomenon. The

American Revolution created a context where no one knew whom among the founding fathers of the federalist debates would come out of the ruck to become the first President of the United States. Many of those founders became presidents — Jefferson, Adams, Hamilton, Madison — but they had to live under Washington's Presidency first. They all argued for changes that would restrain an executive government they feared they would have to live under themselves, as opposed to a disposition they would rule over as incumbents. The 1945 German and Japanese Constitutional moments were both unusually inspiring ones that took constitutionalism to new global heights for similar reasons — all incumbents of executive power were out of their seats during the process.

The 1996 South African Constitution is the most potent example of this Rawlsian insight about constitutions. When its parameters were first laid down in the peace negotiations from 1990, no one knew who would ultimately seize executive power. All the good money was on Mandela rather than de Klerk or Chief Buthelezi. Yet everyone knew that Mandela would only rule the transition, soon to hand over to a successor. No one knew if that would be Thabo Mbeki, Cyril Ramaphosa, Jacob Zuma, Allan Boesak or someone else. Indeed no one knew whether the ANC would end up ruling in its own right, on the basis of power sharing, or in coalition. The greatness of the South African Constitution was born of a group of political leaders, who were in a more original position than is normally the case in politics.

Juxtaposed with these more successful post-conflict constitutional transformations, we can see that a key learning from Nepal, moreso from Egypt, is that the first post-conflict election might best have been deferred with an extended transitional national unity government with a dual peacebuilding and Constitution-building mandate.

5. Task the transition government with deep institutionalisation of a separation of powers

The danger in a transition from a monarchy to a republic that has been illustrated many times before Nepal is that Robespierre, Napoleon and Stalin become new kings that Morsi became a new Pharaoh. Robust separations of powers that go beyond the basics of separating an executive from a legislature and a judiciary are needed. A genuinely independent election commission is needed, a human rights commission, an anti-corruption commission, an ombudsman, audit office, business regulatory institutions that do not protect businesses owned by cronies of the party leaders, independent universities, and much more.

One recurrent threat of a dominated polity is posed by the kind of deal making we see in Nepal where control of these institutions is divided up between loyalists of the three large parties to ensure that their checks and balances do not rock any major party's boat. The more common threat is the polity settling to domination of all these institutions by one or two parties. Again, rules of the game for separated powers, for appointment of independent judges, prosecutors, human rights commissioners, military commanders, who are loyal to the Constitution rather than to ruling parties, are most likely to

be resilient when they are deeply and decisively institutionalised during the period of transitional government when party leaders are in a more original position.

For excluded groups, separated powers are not just about checking and balancing the power of institutions dominated by included elites. They are also about separations of powers that require ruling elites to sit at the table with marginalised groups to respond to their grievances. More than that, separated powers are furthermore about giving excluded groups extra options when ruling elites ignore their voicing of grievance. Perhaps they can then take it to the courts, or the Human Rights Commission and from there to Universal Periodic Review of the nation's human rights record by the UN Human Rights Council. And if the judge that hears their case is corrupted by the system, they can take her to the Anti-Corruption Commission or pressure an independent legal profession to get their professional house in order. Or they can take it back to the streets and to a future election stirred and shaken by impulses from the streets.

Interviews with leaders of the Citizens Movement for Democracy and Peace they discussed how the parties were now seen as controlling everything. If new Commissioners must be appointed to the Human Rights Commission or some other key institution in the separation of powers, major party leaders have a meeting and do a deal: 'We get this Commissioner, you get that one, a third party gets to choose the next one'. Each party places their crony to ensure the institution fails to check its party power. This is a *de facto* consociationalism (Lijphart 1977; Taylor 2009) that evolved informally as a post-conflict settlement through the power of the major parties, even though the formal voting system was not designed to share power among major parties (but to share it with women, ethnic minorities and disadvantaged castes). This parceling out of positions to dominant party hacks delivers party domination right down to village-level Peace Committees, the effectiveness of which has been greatly compromised by top-down party domination. Other interview informants lamented that Nepal had become a 'partyocracy' and that 'Political parties are the state' (newspaper editor Interview 031410). Even to get a job as a university professor, Devendra Raj Panday and other intellectual informants argued, you must be acceptable to the party that has captured that university. Because he seemed to be heading there, I asked if another citizens' movement was needed to tame the pervasive domination of the party machines. Panday replied yes, but not yet as it could disrupt the fragile process of finalising a consensus over the Constitution: 'after the Constitution and the truth and reconciliation commission are settled then the movement for cultural transformation of the parties is needed.' (Interview 031415).

IV. Conclusions

1. Method, contingency, theory

This contribution is partly about reflecting on universals – that feminist armies, feminist political parties, feminist foreign intelligence services never command a state of exception, that feminists never force federalism to deliver control of a government through geographical concentration of

women. Maoists and communists in contrast have controlled provincial state power and district power within major capitalist states such as India for long periods. Maoist armies, Maoist parties, Maoist intelligence services even mastered the state of exception in the world's new superpower, while the party in China did continuously from 1949 enact gender equality projects more vigorously than most capitalist states. The Soviet Communists also did extremely well at reducing gendered inequality in many key domains such as employment opportunity, even in their period of hegemony in Afghanistan in the time before the western-backed mujahideen swept to power. A communist or a capitalist state of exception is always open to enrollment by clever feminist politics, even in communist Afghanistan in the 1970s and 80s and capitalist Afghanistan after 2001, though feminism never controls the state of exception. When Laura Bush advocates the invasion of Afghanistan as a way of liberating Afghan women, an opportunity is created for Afghan feminists to translate their projects into Laura's vernacular, even though there was little question that George had executive command of the state of exception in Afghanistan.

Of course, there is also much contingency in this Nepal narrative. Insights of sharp relevance to Nepal will not be relevant elsewhere. Methodologically, Nepal was selected from 33 wars that have been coded (preliminarily) so far for the *Peacebuilding Compared* project because it is an outlier. None among the 33 post-1990 wars coded so far has achieved an increase of participation of women in the national parliament as sharp as Nepal's. None other has seen significant post-conflict reforms for LGBT people akin to those of Nepal, though there are instances of transgender units of armed fighters across these wars. Nepal has the highest percentage of female fighters coded so far. Within Nepal, the methodology was also purposive in targeting remote Rolpa District for fieldwork, probably the only major theatre of war in modern times where the majority of fighters were female. In some *Peacebuilding Compared* conflicts the number of female fighters is zero or near zero. For some South Asian insurgent groups, the elimination of caste discrimination has been among their objectives, though none more clearly than for Nepal's Maoists. None of the other post-1990 South Asian wars achieved greater post-conflict affirmative action for Dalits than Nepal. Communists see Nepal as the only successful communist revolution of this century. Western media could not celebrate it like other people power democratic revolutions because Maoists prominently supported it and were elected as a result of it. Yet it is precisely the exceptionalism of Maoists putting down their guns and trusting the people to support them that opens new insights.

Other inferences that ground the theory in this article do not depend on strategic analysis of an outlier case, for example the inference about the decisiveness of disciplined nonviolence that persuades the state military to defect from the regime and support people power. Completion of the *Peacebuilding Compared* data set of 50 or 60 wars post-1990 will not add great value beyond that already available in the Chenoweth and Stephan data set of 323 resistance movements (between 1900 and 2006). Interestingly, this essay makes a tiny addition to strengthen their inferences, however. The Nepal civil war was correctly coded by Chenoweth and Stephan in 2006 as a predominantly violent campaign of civil resistance that failed to achieve its objectives. 2006 was the very year, however, when the

Maoists abandoned violence and succeeded in achieving most of their immediate objectives through joining a nonviolent campaign of civilian resistance. This second nonviolent campaign should now be recoded as a success for nonviolent resistance.

Vernacularisation bottom-up and top-down are coded among the more than 700 variables in *Peacebuilding Compared*. When the data set, including follow-ups, is complete around 2030, it will be used to assess whether vernacularisation has some explanatory power in explaining post-conflict outcomes across all the world's major wars since 1990. Likewise, we will explore other variables quantitatively on the final 2030 data set to test other theoretical claims in this essay about federalist transformations post-conflict, the timing and sequencing of elections and post-conflict constitutions, the vitality of the separation of powers, the successes of the weak in dividing the strong who control parties, and more.

2. Normative contingency for weavers of soft and hard power

Does Part III imply that the gains Maoist women made as a result of their hard power to kill should be denounced? Not at all. One can oppose a war; yet when it becomes a fact on the ground, one can decide which side to join, which side promises a more just future and protection of one's children, and oneself from rape. One can be like Nelson Mandela in believing it best to turn the African National Congress away from armed struggle, while still using those who disagree as a violent radical flank that is a strategic asset in negotiations for peace with justice (Braithwaite 2013). Facts of already existing hard power cannot be denied by those who struggle softly for justice. They should be woven together with strands of soft power that bind brutal facts into the most justice-enhancing fabric of power possible. This means weaving the most liberating project possible against the background of the facts of hard power. That is why a politics of presence (Phillips 1998) in the corridors of hard power can always help support gendered justice, even as feminists never come to dominate a state, an army, an entire business class with an egalitarian politics.

War and revolution bring blood, rape. They can open rule of law vacuums that attract the most tyrannous of forces. Egypt after the Arab Spring, Afghanistan after liberation from Soviet occupation illustrate. Yet revolutions and transitions to peace are the best opportunities societies have to structurally shift inequality and injustice. This paper first sought to theorize the conditions for regime changes to reduce class and gender dominations. It saw them as being fundamentally about nonviolence, mass citizen mobilisation, vernacularisation, enrollment (especially by divide and conquer tactics) and resistance to hijacking by federalist and consociational agendas of party, ethnic or religious elites. These conditions for egalitarian regime change are:

- a) *Nonviolence*, which in turn is enabled by organised discipline for rejection of violence and *mobilisation of large numbers* of citizens to regime resistance.
- b) *Vernacularisation* of class and gender reforms into vernaculars of organisational power (of parties, militaries, states, international organizations).

- c) *Divide and conquer* opportunities as people power fades and resilient old orders of gendered class power are reasserted.
- d) Averting *federalist and consociational hijack* of the politics of empowerment.

These theoretical insights then ground a suite of tactical insights for egalitarian struggle that are about organisationally disciplined nonviolence, vernacularisation, inter-organisational caucusing by the weak to divide the strong, deferred elections that extend windows of people power, institutionalisation of separations of powers, and model mongering with constitutional reform proposals that can assist disadvantaged ethnic and religious groups with alternatives to federalist and consociational carve-ups of power. We could have selected other disadvantaged groups beyond women, LGBTs and Dalits to reach these conclusions in some ways more strongly with other disadvantaged caste and indigenous groups.

We could have done so more powerfully with children. Children also fought in large numbers in the Maoist army. Because of their greater weakness, they were recruited more coercively than adults, who overwhelmingly volunteered. Children were even more excluded from post-conflict dialogue and logrolling than women, LGBTs and Dalits. No children were appointed even as army Majors. None became party leaders. A 'kid's homeland' was not an option for inclusive federalism. Children's rights have nowhere to go by reliance on hard power. Children's rights vernaculars must enroll hard power in the hands of others.

So the most important argument of this article is that people power on the streets and in mobilising general strikes, blockades and other people power tactics does shape history, as does the symbolic power and the enrollment power of model mongering and vernaculars of empowerment. They do so, however, by shaping the organisational and material might of armies, political parties, capitalist enterprise and executive governments. Nepal is a context that casts a glimmer of hope that this could be child's play.

References

- Agamben, Giorgio. 2005. *State of Exception*, trans. Kevin Attell. Chicago: University of Chicago Press.
- Arino, Maria Vilellas. 2008. *Nepal: a Gender View of the Armed Conflict and the Peace Process*. Barcelona: School for a Culture of Peace.
- Autesserre, Séverine. 2010. *The Trouble with Congo: Local violence and the failure of international peacebuilding*. New York: Cambridge University Press.
- Autesserre, Séverine. 2014. *Peaceland: Conflict Resolution and the Everyday Politics of International Intervention*. New York: Cambridge University Press.
- Braithwaite, John. 2013. *Rethinking Radical Flank Theory: South Africa*. RegNet Research Paper No. 2014/23SSRN Working Paper Series, 23/2014. Canberra: Australian National University.
- Braithwaite, John and Peter Drahos. 2000. *Global Business Regulation*. Cambridge: Cambridge University Press.
- Braithwaite, Valerie. 1992. *First Steps: Business Reactions to Implementing the Affirmative Action Act. Report to the Affirmative Action Agency*. Canberra: Affirmative Action Agency.
- Chenoweth, Erica. 2013. "Why Civil Resistance Works: The Future of Nonviolent 'Conflict'" in *Non-Violence, Peacebuilding and Reconciliation*, ed. J. Kurzcwski. Warsaw: Lech Walesa Institute and University of Warsaw.
- Chenoweth, Erica., and Maria J. Stephan. 2011. *Why Civil Resistance Works: The Strategic Logic of Nonviolent Conflict*. New York: Columbia University Press.
- Dixit, Kanak Mani. 2011. *Peace Politics of Nepal*. Kathmandu: Himal Books.
- Edelman, Murray. 1967. *The Symbolic Uses of Politics*. Champagne, Illinois: University of Illinois Press.
- Engel, Jakob, Jonathan Glennie, Shiva Raj Adikhari, Sanju Wagle Bhattarai, Devi Prasad Prasai, and Fiona Samuels. 2013. *Nepal's Story: Understanding Improvements in Maternal Health*. London: Overseas Development Institute.
- Gautam, Shobha, Amrita Banskota, and Rita Manchanda. 2011. "Where There Are No Men: Women in the Maoist Insurgency in Nepal." In *Perspectives on Modern South Asia*, ed. K. Visweswaran. New York: Wiley. 340–348.
- ICG. 2007. *Nepal's Maoists: Purists or Pragmatists?* Brussels: International Crisis Group.
- ICG. 2012. *Nepal's Constitution (II): The Expanding Political Matrix*. Brussels: International Crisis Group.
- Kisan, Yam Bahadur. 2005. *The Nepali Dalit Social Movement*. Kupondol, Nepal: Legal Rights Protection Society Nepal.
- Kisan, Yam Bahadur. 2012. *Federalism and Dalit Governance*. Lalitpur, Nepal: Samata Foundation.
- Lawoti, Mahendra. 2007. *Looking Back: Centralization, Multiple Conflicts, and Democratic State Building in Nepal*. Policy Studies No. 43. Washington, DC: East-West Center.
- Lijphart, Arend. 1977. *Democracy in Plural Societies: A Comparative Explanation*. New Haven, CT: Yale University Press.
- Macours, Karen. 2011. "Increasing Inequality and Civil Conflict in Nepal." *Oxford Economic Papers* 63

(1): 1–26.

- Manchanda, R. 2004. "Maoist Insurgency in Nepal: Radicalizing Gendered Narratives." *Cultural Dynamics* 16 (2–3): 237–58.
- Menon, Nidhiya and Yana van der Meulen Rodgers. 2013. "War and Women's Work: Evidence from the Conflict in Nepal." *Journal of Conflict Resolution*
DOI: 10.1177/0022002713498699.
- Merry, Sally Engle. 2006. *Human Rights and Gender Violence*. Chicago: University of Chicago Press.
- Murshed, S Mansoob and Scott Gates. 2005. "Spatial-horizontal Inequality and the Maoist Insurgency in Nepal." *Review of Development Economics* 9: 121–34.
- Nepal, Mani, Alok K. Bohara, and Kishore Gawande. 2011. "More Inequality, More Killings: The Maoist Insurgency in Nepal." *American Journal of Political Science* 55 (4): 886–906.
- Nepali, Purna B. 2008. "Access to Land Resource: Dalits and Their Livelihood Insecurity." In *Nepal: Transition to Transformation*, ed. K. N. Pyakuryal, B. R. Upreti, and S. R. Sharma. Kathmandu: Human and Natural Resources Center, Kathmandu University. 163–184.
- Nye, Joseph S., Jr. 2004. *Soft Power: The Means to Success in World Politics*. New York: Public Affairs.
- Phillips, Anne. 1998. *The Politics of Presence*. Oxford: Oxford University Press.
- Rawls, John. 1971. *A Theory of Justice*. Cambridge, Massachusetts: Harvard University Press.
- Reno, William. 1995. *Corruption and State Politics in Sierra Leone*. Cambridge: Cambridge University Press.
- Rudé, George. 1964. *The Crowd in History*. New York: Wiley.
- Schmitt, Carl. 2006. *Dictatorship*. London: Polity.
- Schmitt, Carl. 2013. *Political Theology*. Chicago: University of Chicago Press.
- Sharma, Mandira and Dinesh Prasain. 2004. "Gender dimensions of the People's War: Some Reflections on the Experiences of Rural Women." In *Himalayan 'People's War': Nepal's Maoist Rebellion*. ed. M. Hutt. London: Hurst&Co. 152–165.
- Taylor, Rupert, ed. 2009. *Consociational Theory: McGarry and O'Leary and the Northern Ireland Conflict*. London: Routledge.
- Valente, Christine. 2013. "Education and Civil Conflict in Nepal." *World Bank Economic Review* 28 (2): 354–383.
- Yami, Hsila. 2006. *People's War and Women's Liberation in Nepal*. Raipur, India: Purvaiya Publications.