

INVITED ARTICLE

Law, Courts, and Constitutions in Twentieth-Century South Asia

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Abstract

This special issue brings together scholars from multiple disciplines and with varied research and geographic expertise to study the historical role played by the law in governing the political, social, and cultural life of twentieth-century South Asia. These articles have not emerged in a vacuum, but rather build on an exciting turn in South Asian history that is placing new focus on the legal and constitutional work that accompanied the post-colonial moment. This introduction examines some of the important historiographical and methodological interventions made by scholars working in this field, before outlining the specific themes connecting the articles in this issue.

In 2019, the Indian government proposed to amend the Citizenship Act, 1955, the first citizenship legislation enacted after independence. The new law proposed that India could refuse refugee status to Muslims entering the country from its three Muslim-majority neighboring countries: Pakistan, Afghanistan, and Bangladesh. Seventy years after the end of colonial rule, the Citizenship Amendment Act (CAA) presented a fresh undermining of the migration experience and introduced new hierarchies to the loss and violence of partition. This obvious exclusion of Muslims, and an expedited process for other denominations—Hindus, Christians, Jains, Parsis, and Buddhists—sparked protests across the country. These demonstrations were spearheaded by students and academics and spread from city to city. One site of protest, Shaheen Bagh in east Delhi, was especially iconic. The neighborhood became a nest of literary performance which included poetry readings, protest art, and book discussions, led predominantly by Muslim women. It took a global pandemic and a national lockdown to quell the 101 day sit-in ([Figure 1](#)).

The protest against the CAA was one of the many incidents that laid bare the antagonism between law and democracy. For the thousands who took to the streets, the new law was understood not just as an assault on the Muslim

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Figure 1. Wall art, Shaheen Bagh. Text: Preamble of the Indian Constitution, “We the people of India solemnly resolve to constitute India as a sovereign, socialist, secular, democratic republic.” The text in Hindi in the two speech bubbles reads *Ishq Inqalaab* (Love is revolution) and *Mohabbat Zindabad* (Long live Love) https://commons.wikimedia.org/wiki/File:Cropped_visual_of_wall_art_at_Shaheen_Bagh_protests_7_Feb_2020.jpg (January 14, 2022).

citizen but also on the Constitution writ large, and on its promises of secularism and equality. The Constitution would on the one hand seem unable to check majoritarianism and protect the rights of minorities, and yet somehow the reverence for this founding document would remain an enduring sentiment in public memory. In recent years, popular political struggles to reclaim democracy and demand rights from authoritarian states have erupted in various forms across South Asia. In 2019, Sri Lanka witnessed a severe political crisis prompted by sustained human rights violations and complete economic collapse. In the years that followed, massive demonstrations culminated in protestors temporarily taking over government institutions. Meanwhile in Burma, in the aftermath of Aung San Suu Kyi's arrest, and faced with military takeover, pro-democracy activists took to the streets to demand her release and the reinstatement of civilian rule. In what was popularly described as the "milk-tea alliance," protestors tied their struggles to similar youth-led movements across Southeast and East Asia. Each instance has produced new notions of citizenship, rights, and nationhood, and in doing so has complicated both territory and temporality across South Asia.

Although hostilities in the region were almost never contained to its borders, the flow of law and legal reasoning has been more amiable in other instances. Supreme Courts from across South Asia continue to cite each other's judgements either because of a shared colonial past, or because of the uniquely South Asian desire to reconcile religion with constitutional intention. Pakistan's divorce law frequently trickles into judgements on Muslim personal law in India. In Nepal, Indian debates on the Hindu Marriages and Succession Act feature regularly in Parliament. Matters of faith produce connections beyond nation-states. These nation-states not only birthed constitutions but also ushered in new notions of modern and model citizenship. This has been most apparent in the legal obsession over women's honor, and over ideal families in post-colonial nationalist discourse.¹ During the first decade of independence, newly sovereign states would rush to pass fresh legislation relating to the role of women in society. India welcomed a Hindu Code Bill which bestowed rights upon an "enlightened" woman subject.² Bangladesh recognized the heroic-victim figure of the Birangona who had to make her sexual violence legible to the state to demand compensation and "restore dignity."³ Pakistan saw elite reforms in education systems geared toward producing good Muslim wives. In the post-colonial context, the law has often become a site for competitive reform politics to which constitutions have been central. However, liberal laws prompting illiberal outcomes demonstrates the limits of law as an instrument of governance or reform.

This special issue brings together scholars from multiple disciplines and with varied research and geographic expertise to study the historical role

¹ Saumya Saxena, *Divorce and Democracy: A History of Personal Law in Post-Independence India* (Cambridge: Cambridge University Press, 2022).

² Eleanor Newbigin, *The Hindu Family and the Emergence of Modern India: Law Citizenship and Community* (Cambridge: Cambridge University Press, 2013).

³ Nayanika Mookherjee, *The Spectral Wound: Sexual Violence, Public Memories, and the Bangladesh War of 1971* (Durham: Duke University Press, 2015).

played by the law in governing the political, social, and cultural life of this region. These articles have not emerged in a vacuum, but rather build on an exciting turn within South Asian history that is placing new focus on the legal and constitutional work that accompanied the post-colonial moment. This introduction examines some of the important historiographical and methodological interventions made by scholars working in this field, before outlining the specific themes connecting the articles in this issue.

The Field

Scholarly writings on twentieth century constitutional histories of South Asia have grown dramatically in recent years.⁴ This is no surprise. As products of very serious historical processes, constitutions are enthralling documents. They capture the fall of monarchies and the end of empire, popular anticolonial struggles and the transnational flow of political ideas, the horrors of partition and mass migration, political crises, and the meteoric rise of the nation-state. Because of the relative youth of South Asian constitutional orders, historical approaches to law and society have emerged alongside and in conversation with political scientists, anthropologists, and sociologists.⁵ This interdisciplinarity has encouraged inventive methodological approaches to legal history, while also broadening the nature of the legal archive itself. This has included the powerful use of oral histories and vernacular material and the recovery of unpublished case-law, often left largely forgotten in courtrooms across South Asia.⁶ Efforts by legal historians to question what constitutes the “legal” also builds upon on a long-standing tradition in South Asian studies

⁴ For important recent scholarship see Gautham Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts*, (New Delhi: HarperCollins, 2019); Achyut Chetan, *Founding Mothers of the Indian Republic: Gender Politics of the Framing of the Constitution* (New Delhi: Cambridge University Press, 2023); Madhav Khosla, *India's Founding Moment: The Constitution of a Most Surprising Democracy* (Cambridge, MA: Harvard University Press, 2020); Arvind Elangovan, *Norms and Politics: Sir Benegal Narsing Rau in the Making of the Indian Constitution, 1935-1950* (New Delhi: Oxford University Press, 2019); Mithi Mukherjee, *India in the Shadows of Empire: A Legal and Political History* (New Delhi: Oxford University Press, 2009); Kevin Y.L. Tan and Ridwanul Hoque, *Constitutional Foundings in South Asia* (Oxford: Hart Publishing, 2021); and H. Kumarasingham, *Constitution-Making in Asia: Decolonisation and State-Building in the Aftermath of the British Empire* (Oxon: Routledge, 2016).

⁵ For an overview of the field see Mitra Sharafi, "South Asian Legal History," *Annual Review of Law and Social Science* 11 (2015): 309–336.

⁶ Oral histories have been particularly important for histories of partition see for instance Vasira Fazila-Yacoobali Zamindar, *The Long Partition and the Making of Modern South Asia* (New York: Columbia University Press, 2010). For the use of unpublished case-law and new approaches to legal archives in South Asia, see Mitra Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772-1947* (Cambridge: Cambridge University Press, 2014); Kalyani Ramnath, "Intertwined Itineraries: Debt, Decolonization, and International Law in Post-World War II South Asia," *Law and History Review* 8, no. 1 (2020): 1–24; Elizabeth Lhost, *Everyday Islamic Law and the Making of Modern South Asia* (Chapel Hill: University of North Carolina Press, 2022); Julia Stephens, *Governing Islam: Law, Empire, and Secularism in Modern South Asia* (Cambridge: Cambridge University Press, 2018).

to view the legal archive itself with suspicion. Both subaltern studies and post-colonial scholarship would make many of their early interventions through a critical approach to legal records and written sources.⁷ The strength of South Asian legal history, arguably, has been its willingness to draw on multiple traditions of historical writing and its continued openness to interdisciplinarity. As B.R. Ambedkar would himself argue when defending an early draft of the Indian constitution, “There is nothing to be ashamed of in borrowing.”⁸

Scholarship on South Asia has not only been experimental with methodology, it has also provoked a reimagining of the type of questions legal historians might ask: How might leaders reconcile the inheritance of a highly repressive colonial state with the assembly of a liberal democratic political order predicated on a universal franchise? In what ways might the legitimacy of new constitutions contingent on ideas of equality and universal justice survive, and potentially overcome, the sharp divisions of caste, religion, and massive economic inequality? How would new nation-states balance internal diversity against centralized elite governments, monarchies, or militaries? What place would the constitution offer to faith in the post-imperial world? In pursuit of convincing answers to these questions, politicians, advisors, lawyers, and members of the public participated in ongoing debates about their post-colonial future. These deliberations not only built upon constitutional schemas from across the world, but also drew on political ideas and traditions that were recognizably South Asian in origin.

As scholars have argued, under the pressures and challenges that the legacy of colonialism placed on constitutional design, nation-building, and state formation, South Asian political thinkers produced new languages to negotiate the relationship between the citizen and the state.⁹ Concepts and ideas like secularism, republicanism, socialism, minority rights, social and economic justice, and democracy took on fresh meanings in the post-colony.¹⁰ Whether it be Muhammad Iqbal’s Islamic constitutionalism; the political demands of Begum Qudisa Aizaz Rasul, the only Muslim woman in the Constituent Assembly Debates; the work of Benegal Shiva Rao, the biographer of India’s constitution; or Jaipal Singh Munda in his role as the leader of the Adivasi Mahasabha, a flurry of new work is shedding light on the diverse array of political visions. These plural visions informed the constitution-making process during the final years of empire and the early years of independence.¹¹

⁷ For an early example of this see Ranajit Guha “Chandra’s Death,” in *Subaltern Studies V: Writings on South Asian History and Society*, ed. Ranajit Guha (New Delhi: Oxford University Press, 1987), 135–165.

⁸ B.R. Ambedkar, *Constituent Assembly Debates*, Vol. VII, 4th November 1948.

⁹ Sudipta Kaviraj “Languages of Secularity,” *Secularism in Comparative Perspective* 23 (2023): 25–55.

¹⁰ C.A. Bayly, *Recovering Liberties: Indian Thought in the Age of Liberalism and Empire* (Cambridge: Cambridge University Press, 2012); and Shruti Kapila, *Indian Political Thought in the Global Age* (Princeton: Princeton University Press, 2021).

¹¹ Humaira Chowdhury, “The Life and Times of Begum Qudisa Aizaz Rasul: An Exploration of Muslim Women’s Self-Fashioning in Post-Colonial India,” *South Asia: Journal of South Asian Studies* 44 (2021): 264–81; Arvind Elangovan, “Constitutionalism as Discipline: Benegal Shiva Rao and the Forgotten Histories of the Indian Constitution,” *South Asia: Journal of South Asian Studies* 41 (2019):

Independence and decolonization also acted to foreclose a wide range of alternate constitutional and political imaginaries. The mass anticolonial movement of the twentieth century had taken an avowedly extraconstitutional form. As a result, the 1930s world of South Asian political thought was heavily inflected with anti-statism. Most famously, M.K. Gandhi proposed a post-colonial polity ordered around a loose confederation of village republics.¹² As Gandhi's anti-statist vision struggled to garner sympathy, the hundreds of semi-autonomous princely states across colonial South Asia were simultaneously undertaking their own novel experiments in constitutional reform. As independence beckoned, many continued to lobby, pursue, and plan for an Indian federation, remaining optimistic about this possibility right until the final months of British rule.¹³ Taken as a collective, this body of work far surpasses simple acts of historical recovery. Scholars have rather made a compelling case for South Asia as a site of creative political, and constitutional thinking, one in which actors across societies participated actively in a global twentieth century conversation around rights, justice, authority, and politics.

In drawing attention to the richness of political and legal thought in post-colonial state building, these histories have generally prioritized the agency of political elites. Other scholars, by contrast, have begun to rebuild constitutional histories from the ground up and the middle out. Ornit Shani has recently shown that the drafting of the Constitution of India would instigate debates and political claim-making that spilled well beyond the formal halls of political power. Everyday citizens, civil society groups, and political organizations successfully inserted themselves into this process through petitions, pamphlets, and letters sent to the constituent assembly.¹⁴ Rohit De found similar processes at work in his study of the extensive litigation before the Supreme Court of India in the first decade of independence. In focusing on the legal travails of ordinary citizens, he casts petty traders, butchers, and prostitutes as consequential agents in the process of constitution-making.¹⁵ The law and the constitution were (and remain) contested and dynamic arenas

605–20; Adeel Hussain, "Muhammad Iqbal's Constitutionalism," *Indian Law Review* 2, no. 2 (2018): 135–58; and Saagar Tewari, "Framing the Fifth Schedule: Tribal Agency and the Making of the Indian Constitution (1937–1950)," *Modern Asian Studies* 56 (2022): 1556–94. See also Uttara Shahani, "Language without a Land: Partition, Sindhi Refugees, and the Eighth Schedule of the Indian Constitution," *Asian Affairs* 53 (2022): 336–62.

¹² Karuna Mantena, "On Gandhi's Critique of the State: Sources, Contexts, Conjunctures," *Modern Intellectual History* 9 (2012): 535–63.

¹³ For new histories of princely states and twentieth century law, see Priyasha Saksena, "Building the Nation: Sovereignty and International Law in the Decolonisation of South Asia," *Journal of the History of International Law* 23 (2021): 52–79; Devika Shankar, "A Slippery Sovereignty: International Law and the Development of British Cochin," *Comparative Studies in Society and History* 64 (2022): 820–44; and Sarath Pillai, "Fragmenting the Nation: Divisible Sovereignty and Travancore's Quest for Federal Independence," *Law and History Review* 34 (2016): 743–82.

¹⁴ Ornit Shani, "The People and the Making of India's Constitution," *The Historical Journal* 65 (2022): 1102–23.

¹⁵ Rohit De, *The People's Constitution: The Everyday Life of Law in the Indian Republic* (Princeton: Princeton University Press, 2018).

where rights and freedoms have been constantly renegotiated and imbued with new meanings.¹⁶

Constitutional histories have been further invigorated by an embrace of transnational and global historical approaches.¹⁷ This has been most clearly demonstrated in Faiz Ahmed's study of Afghan constitutional history. After becoming independent in 1919 from the British, Afghanistan would produce its first constitution in 1923 alongside an extensive project of legal codification. As Ahmed demonstrates, these legal achievements were made possible by the congregation of Afghan, Ottoman, and Indian Muslim jurists in Kabul in the aftermath of World War One. These thinkers embarked on an "Islamic legal modernist vision" that positioned Afghanistan as the most innovative site of Islamic jurisprudence and state-making at this historical juncture.¹⁸

The constitution, of course, was only one of the many legal and political technologies that helped to facilitate the transition from empire to nation-state. The entangled question of citizenship and border-making in South Asia has been the site of a connected wave of scholarly attention.¹⁹ Institutional and bureaucratic histories are productively exploring the colossal practical work required to turn subjects into citizens.²⁰ A universal adult franchise demanded electoral rolls, citizens needed papers, and the processing of paperwork required enlarged bureaucracies. These state practices often produced more questions than they answered: How, for instance, was an illiterate Tamil laborer to provide necessary documentary evidence required to be eligible for citizenship under the 1948 Ceylon Citizenship Act?²¹ How would a Hindu woman in Pakistan divorce her husband in the absence of codified Hindu law and with the ambiguity that prevailed in customary law? What infrastructures would the state consider necessary to police newly created and environmentally unstable international borders that divided historically mobile communities?²² In many instances, the arrival of the post-colonial citizen would capture both the successful legacy of the anticolonial political struggle and new practices of exclusion.

Courts would play a central role across these histories and would occupy a complex and contradictory place. Under colonial rule, the provision of justice during criminal trials exposed the racial hierarchies and violence that

¹⁶ Saxena, *Divorce and Democracy*; and Ajantha Subramanian, *Shorelines: Space and Rights in South India* (Stanford: Stanford University Press, 2009).

¹⁷ See for instance, Arvind Elangovan, "The Making of the Indian Constitution: A Case for a Non-Nationalist Approach," *History Compass* 12 (2014): 1–10.

¹⁸ Faiz Ahmed, *Afghanistan Rising: Islamic Law and Statecraft between the Ottoman and British Empires* (Cambridge, MA: Harvard University Press, 2017).

¹⁹ Joya Chatterji, "South Asian Histories of Citizenship, 1946–1970," *The Historical Journal* 55 (2012): 1049–71; and Uditi Sen, *Citizen Refugee: Forging the Indian Nation after Partition* (Cambridge: Cambridge University Press, 2018).

²⁰ Ornit Shani, *How India Became Democratic: Citizenship and the Making of the Universal Franchise* (Cambridge: Cambridge University Press, 2017).

²¹ Nira Wickramasinghe, *Sri Lanka in the Modern Age: A History* (Oxford: Oxford University Press, 2014), 179.

²² Malini Sur, *Jungle Passports: Fences, Mobility, and Citizenship at the Northeast India-Bangladesh Border* (Philadelphia: University of Pennsylvania Press, 2021).

underpinned imperial sovereignty.²³ And yet in particular moments, these same spaces could become transformed into powerful stages to demand justice and denounce liberal imperialism.²⁴ Not unlike colonial rule, these institutions remain in a state of semi-permanent crisis and continue to be dogged by serious administrative issues. Whether due to lengthy court delays, the eye-watering scale of under-trial prisoners, or problems relating to corruption and police torture, ongoing reform efforts over the decades have yielded little change. However in particular moments, courts have also emerged as the occasional allies of select social movements. With the beginnings of public interest litigation in the 1970s, courts in India have increasingly provided a stage for transgressive acts of protest-performance rather than acting merely as arbiters or dispensers of justice. More recently, in 2007, the Supreme Court in Nepal demanded that the government legislate against the discrimination faced by sexual minorities, which included “third-gender” individuals, a judgment that would become a point of reference for Supreme Courts across the region.²⁵ Other examples include the court’s support for the decriminalization of homosexuality in India, and the firm stand taken against honor-killings in Pakistan.²⁶

This special issue examines two important aspects of the historical role played by law, courts, and constitutions across the twentieth century in South Asia. First, the issue contributes to a lively body of scholarship that has begun to complicate the dominance of 1947 as a historical moment that cleanly separates the colonial from the post-colonial.²⁷ These articles chart the multiple temporalities and messy political geographies that were central both to the making of South Asia and to twentieth century world history. In drawing out the history of constitution-making from different vantage points, this issue therefore moves from the 1940s through to the 1990s. In doing so, authors ask questions such as: What impact did decolonization and Cold War geopolitics have on the constitutional history of Nepal? How would anticolonial solidarities inform constitutional design in Burma? In what ways did

²³ Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law* (Cambridge: Cambridge University Press, 2010).

²⁴ Mithi Mukherjee, “Sedition, Law and the British Empire in India: The Trial of Tilak (1908),” *Law, Culture and the Humanities* 16 (2020): 454–76.

²⁵ Mara Malagodi, “New Frontiers of Gender Constitutionalism in Asia (2): Gender Identity and Sexuality,” *i-CONNECT, The Blog of the International Journal of Constitutional Law*, July 14, 2021. <http://www.iconnectblog.com/2021/07/new-frontiers-of-gender-constitutionalism-in-asia-2-gender-identity-and-sexuality/> (January 16, 2022).

²⁶ Navtej Singh Johar v. Union of India, *All India Reporter*, 2018, Supreme Court 4321; Siobhan Mullally, “‘As Nearly as May Be’: Debating Women’s Human Rights in Pakistan,” *Social & Legal Studies* 14 (2005): 341–58.

²⁷ Scholars have examined the staggered nature of this political process from a number of angles. Recently, this has included the transitional period of dominion rule, and the alternate story of decolonization from the perspective of French and Portuguese imperialism in South Asia. Harshan Kumarasingham, “The Tropical Dominions: The Appeal of Dominion Status in the Decolonisation of India, Pakistan and Ceylon,” *Transactions of the RHS* 23 (2013): 223–45; Jessica Namakkal, *Unsettling Utopia: The Making and Unmaking of French India* (New York: Columbia University Press, 2021); and Pamila Gupta, *Portuguese Decolonization in the Indian Ocean World: History and Ethnography* (London: Bloomsbury Academic, 2018).

Bangladesh's founding figures use international diplomacy to support their campaign for independence? How would Afghan politicians use the constitution to place emphasis on a shared national language in an attempt to consolidate a unified Afghan identity? These are histories written across multiple scales, and remain attentive to imperial, transnational, and global flows of ideas, people, and geopolitical pressures.

The second major interest in this issue is the question of the transition from the colonial to the post-colonial. The promise of post-colonial freedom and decolonization did not magically transform colonial subjects into post-colonial citizens. Long after colonial administrators' bags were packed, the legacy of colonial rule would leave its mark on the administration of law and justice across the region. Draconian laws passed under colonial rule have taken many years to be repealed. Many still litter criminal codes to this present day. Judges and lawyers cite colonial precedent, and many courts remain decorated with colonial iconography.²⁸ When these aspects of post-colonial legality are commented upon in contemporary discourse, they are often described as colonial hangovers. This remains a rather awkward descriptor. A hangover implies that the drinking has stopped. As articles in this issue show, the laws inherited from the colonial state would develop, evolve, and depart from their colonial form under the political conditions of post-colonial rule. To understand this process better, a number of authors in this issue carefully studied particular legal practices or categories across the colonial to post-colonial divide. In doing so, these articles underscore that while it has certainly proven impossible to throw off the weight of the colonial past, this burden has not been shouldered evenly across time, place, or community.

The Issue

While India's constitutional moment has received the most significant historical attention, this issue begins with four articles that revisit the story of constitution-making in South Asia from perspectives where less ground has been trodden. Situated on the conceptual, geographical, and political borderlands of "Postcolonial South Asia" are constitutional histories of countries that include Bangladesh, Burma, Nepal, and Afghanistan.²⁹

²⁸ Rahela Khorakiwala, *From the Colonial to the Contemporary Images, Iconography, Memories, and Performances of Law in India's High Courts*, (Oxford: Hart, 2019); Pratiksha Baxi, "Law, Emasculation, and Sexual Violence in India," *Current Anthropology* 62 (2021): 146; and Upendra Baxi, "Postcolonial Legality: A Postscript from India," *Law and Politics in Africa, Asia and Latin America* 45 (2012): 192. See also recent investigations into legacy of colonial jail codes from the colonial period and its implication for caste and jail labor in contemporary India: Sukanya Shanta, "From Segregation to Labour, Manu's Caste Law Governs the Indian Prison System," *The Wire*, n.d. <https://thewire.in/caste/india-prisons-caste-labour-segregation> (January 16, 2023).

²⁹ For recent histories that have written in new ways about "British India" and "South Asia," see Matthew Willis, "Making Yemen Indian: Rewriting the Boundaries of Imperial Arabia," *International Journal of Middle East Studies* 41 (2009): 23–38; Jonathan Saha, "Is it in India? Colonial Burma as a 'Problem' in South Asian History," *South Asian History and Culture* 7 (2016): 23–29; Bérénice Guyot-Réchar, "Tangled Lands: Burma and India's Unfinished Separation, 1937–1948," *The*

Working within an imperial frame, as Donal Coffey demonstrates, Ireland quickly became the most significant constitutional reference point for Burma as it sought to disentangle itself from British rule. Distinctive constitutional possibilities for Burma emerged at the end of the Second World War. By using the digital humanities, Coffey analyzes the navigation of the multiple political pulls on the Burmese constitution. Comparatively, for Nepal, Afghanistan, and Bangladesh, decolonization and cold war geopolitics placed different pressures on these nation-states across the century. In this context, monarchs, Marxists, and Islamists who had quickly become peripheral figures in the Indian story, could wield significant influence elsewhere in the region. Drawing on a wide range of archival material, Malagodi places the constitutional-making process of 1950s Nepal in its regional and international context. As the article demonstrates, how the constitution would attempt to organize political authority during this period was constantly shaped by wider forces, which included anxieties relating to Chinese expansion in the Himalayas and American fears of the spread of communism across South Asia. Although these constitutions would ultimately prove short-lived, Malagodi argues that they have proven instructive to Nepal's future political stability and regional presence. Leake places greater attention on the politics of language. In a problem familiar to post-colonial states across the world, Afghan elites would seek to create a unitary identity for a linguistically diverse population. The article explores the legalization of Pashto as an official and national language in Afghanistan's constitution, where it was imagined as a tool to flatten differences across kinship, community, and locality.

For Cynthia Farid, the legal historiography of Bangladesh and Pakistan has generally prioritized crisis, revolution and war. As a consequence, the contributions of key participants in these constitution-making processes have received less attention. The very unique problems facing these nascent nation-states in 1947, and then later in 1971, provoked a particularly wide-ranging set of debates and ideas around the form and shape that legal reform should take. Farid's article explores the important role played by ideas of legalism, normativity, and justice within Bangladesh's liberation history. The article traces the role of the Government in Exile in order to bring into focus the important interventions made by the founders of the constitution. Each article tackles constitutional histories as rooted in the local, while also influenced by significant transnational events of the twentieth century.

The subsequent articles move from the process and politics of constitution-making to the ongoing role of the law in generating legal categories that have persevered from the colonial into the contemporary. With a shared focus on India, these articles trace the historical development of three figures of law; the sati, the condemned, and the *femme covert*. From different perspectives, authors explore how the transition from colonial to post-colonial law saw fluctuating and unevenly layered historical discourses develop around central

Journal of Asian Studies 80, no. 2 (2021): 293–315; and Christoph Emmrich, Joseph McQuade, Sana Aiyar, and Thibaut d'Hubert, "Towards a Burma-Inclusive South Asian Studies: A Roundtable," *Modern Asian Studies* 57, no. 1 (2023): 283–320.

questions pertaining to rights, citizenship, and justice. Courts, administrators, lawmakers, and arbiters in particular, play an important role in these articles, which speaks to their wider historical significance in determining the limits of individual and community identities across South Asia.

In both Saxena's and McClure's contributions, exercises in the taking of life inside and outside of the law are shown to have become important grounds for India to define the nature of its post-colonial democracy, and the relationship between state and citizen. In the case of sati, a pressure to more openly embrace religion and tradition had to be balanced against newly framed constitutional promises of individual fundamental rights. These compulsions would see one of the most symbolic figures of colonial law undergo a peculiar transformation in independent India. Saxena shows that the post-colonial state has tended to emphasize its own helplessness in preventing incidents of sati in the face of reverent crowds and "insane" but "determined" widows. The degree of criminal responsibility attributed to the post-colonial sati would often be determined by whether or not the state managed to prevent the incident or make a conviction. McClure turns to the institution of capital punishment across the twentieth century. Although the number of executions would drastically decline in the first decades of India's independence, attempts at abolition would fail. As the article argues, the retention of the death penalty in the post-colony was made possible by ensuring that judicial death became intelligible within a radically new political vocabulary of democracy and popular sovereignty. Moving from criminal to personal law, Veviana shows that although absent from colonial Indian jurisprudence, the doctrine of coverture surfaces post-independence in the body of the Parsi woman. Through a historical and anthropological approach, Veviana shows the complex entanglements of intermarried women, community, and the law as it has developed from the late nineteenth century to the present day. Read together, these articles demonstrate the uneven experience of colonial and post-colonial justice across twentieth century India.

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