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Reflection on Leviathan:
State and Governance in Nepal

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Reflection on Leviathan:
State and Governance in Nepal[1]

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Keywords: constitutional state, society, conflict, democratic peace.

ABSTRACT:

Nepal's state-society relations are moving in tandem with the change in global conceptual design and claim of Nepalese citizens to share state sovereignty and authority. Nepalese citizens have experienced various nature of state system—patrimonial, extractive-patrimonial, constitutional, authoritarian, subsidiary and now fragile. The state fragility is marked by the erosion of its "legitimate monopoly on power," incapacity to achieve governance goals—national security, law and order, voice, civic participation, service delivery and cope with post-state challenges. Endogenous post-conflict state building process in Nepal requires addressing the crisis of power, a legitimate social contract, a workable constitution, structural reforms to address the root causes of conflict and democratic peace. The support of international community to the Nepalese citizens' aspiration for a constitutional state is necessary to maintain a golden rule of politics: the instinct of society for freedom and the imperative of state for public order to keep mixed fabric of Nepalese society together and attain civil peace, social justice and changing ideals of democracy rooted into constitutional and cosmological rights.

INTRODUCTION

English political theorist Thomas Hobbes uses the term "leviathan" to refer to a strong state which unites the general will of all citizens into a sovereign power and minimizes the risk of eternal fear and anarchy in society fomented by irrational human nature. The fear of violence, overpopulation and scarcity of land, food, water and fuel still feed the source of conflict and threaten the lives of poor in many societies lacking well-functioning public institutions. To him, leviathan commands enough strength to govern natural and civil laws as it embodies the power of all inhabitants who have, by social contract, made themselves its citizens. Like Guatam Buddha, John Stuart Mill, Thomas Hobbes and Adam Smith appealed to the concept

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of *golden rule*—Mill for the collective happiness of entire society of which individual is a part and Hobbes by putting the interest of others at equal level with their own. (South, 2003: 1). The patterns of cooperation among actors transcend the binary code of politics—friend and foe, minimize the intensity of conflict and reinforce the expectation of reciprocity which is necessary for political stability. Adam Smith has rightly concurred this: "To feel much for others and little for ourselves, that to restrain our selfish, and to indulge in our benevolent affections, constitutes the perfect human nature" (1759:30).

The advent of modernity marks a shift from absolute state to constitutional state as a center of free political life. Constitutional nation-state[3] represents a synthesis of liberal, Marxist and nationalist versions of state and assumes a neutral framework where diverse social classes can coexist. It embodies the basic values of these ideologies namely freedom, social justice and solidarity of citizens. It also abolishes hereditary privileges for legal-rational authority, guarantees citizens' rights, separates government's power, binds the state and citizens to the rules of constitutional conduct and bridges several gaps.[4] Effective state is defined by institutional framework of rules and norms, monopoly on legitimate use of power, authority to tax, punish law-abusers, exercise secular authority over citizens within a defined territory and shore up international recognition. Only an effective state has the ability to implement all the rights of citizens, address the structural impediments to peace, prosper in today's high-tech, high-speed and multi-layered globalization processes and fight the global perception that Nepal is a fragile state.

The imposition of civil peace is the "necessary precondition for monopolizing these legitimate means of violence" (Habermas, 2001:108) within the nation-state. Stabilization of post-conflict state like Nepal is linked with long-term crisis management, creation of constitutional authority of the polity through election, enabling government and civic institutions to function efficiently and adjust political actors to altered condition. These are critical prerequisites to address certain dysfunctions associated with structural change leading to changing role of institutions, norms and values and coordination of goals and means of governance for correct disposition of things.[5] The analysis below informs the changing concept of governance, crisis of power and historical and theoretical insights about Nepal's search for collective good life. This paper narrates the theoretical debate on nation-

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[3] "Nation-state is the product of four closely interconnected processes of *institutional closure*: a *political one* (democracy tied to national self-determination), a *legal one* (citizenship tied to nationality), a *military one* (universal conscription tied to national citizenship) and a *social one* (the institutions of the welfare state linked to the control of the immigration of foreigners)" (Wimmer, 2002:9). The *cosmopolitan foundation* of nation-state based on human rights has also increased the state's institutional opening to international law, bilateral and multi-lateral agreements and commitment to human emancipation.

[4] These gaps are: *vision gap* between the changing Spirit of the Age and indigenous idea; *power gap* between juridical international status and actual political capacity for internal social cohesion and system integration; *development gap* between unequal social classes of society causing structural injustice and conflict; and *legitimacy gap* between the ability of leaders to govern and their capacity to fulfill popular aspiration for liberty, property, justice, peace and identity.

[5] "Governance refers to the processes through which states acquire and use their power and authority. Better governance comes from strengthening the responsiveness of states to the needs of their citizens; their accountability to citizens through rule-based mechanisms (for example, electoral democracy) which require them to answer for their actions, and through which they can be rewarded or sanctioned; and the state capability—both political capability to determine needs and manage competing interests, and bureaucratic capability to design and implement policy, and enforce authority" (Moore, 2007:1).

state, historical perspective on Nepali state, oscillation between bigger state and smaller state, sclerosis of state and conflict boom, challenges to conflict transformation, state fragility and fragmented identities and presents a conclusion.

THE CHANGING CONCEPT OF GOVERNANCE

The purpose of governance is correct disposition of actors, institutions, policies and programs to serve the needs and freedoms of human life in a sustained manner. The *goals of governance* are — national security, law and order, public voice, civic participation, production, exchange and delivery of justice, public goods and services at the minimum cost to all citizens and resolution of political conflicts through binding decisions. Synergy of poly-centric governance[6] can be achieved through the orientation of various actors of governance such as the state, market, civil society and international regimes to constitutional goals and formulation of common policies and strategies in attaining them. The *means of governance* are –consensual mode of setting policy goals, steering, coherence, accountability and feedback (Peters, 2005: 26-27). Democratic state institutions, rule of law and public administration, however, must be set up prior to the struggle for political power. Otherwise, winds of global change unleashed by *third waves* of technology, human rights, democracy and sovereignty would hit the road to a new state of anarchy as they represent the *yug dharma* (zeitgeist)—the Spirit of the Age. According to Hindu-Buddhist scriptures *raj dharma* (statecraft) and *barnashram dharma* (social division of labor) have to be adapted to the changing dynamics of *zeitgeist* to prevent anarchy. Under anarchy, individual actors instinctively pursue their selfish interest unconstrained by any constitutional rules of game. Bad governance imposes high costs for the poor as poverty undercuts their human potential to become free and equal citizens with the capacity for judgment. This is the reason democratic government is purposely designed to "protect the poor from the rich" (Parenti, 1995:2), increase their collective interest and engagement in the political system and connect them to the formal institutions of state.

In this context, the shift of *sovereign* nation-state oriented international system to global relations with a much greater diversity of actors equally entails landlocked Nepal to acquire different set of capacities to adapt to the requirement of *multi-level governance.* In this model, sovereignty and responsibility are distributed at global, regional, national, federal and local self-governance levels with multiple decision-making centers, checks and balances, complex incentives and payoff, web of interdependence, adaptation and the expansion of scope for citizenship services established by their multiple memberships. The growth of different centers of power and loyalty patterns equally necessitates Nepal to adopt multi-track approach to the resolution of its *multi-layered conflicts—*geopolitical, structural, perceptual, manifest and latent. In this plural sphere, heterogeneous actors' interests are optimized for the resilience of system and "loyalty to the nation is supposed to supplant all other loyalties (Means, 1996: 107). It brings them to collective responsibility for the resolution of conflict on the basis of shared interest and institutional incentives for elites to adjust. Likewise, social change is legislated for equity through the rejection of society's outdated values—"patriarchy, the domination and control of nature,

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[6] "In contrast to the centralized and decentralized structures, a poly-centric governing structure offers citizens the opportunity to organize not one but many governing authorities. Each government many exercise considerable independent authority to make and enforce rules within a circumscribed scope of authority for a specialized geographical area" (Ostrom, Schroeder and Wynne, 1993:178).

unlimited economic growth and material consumption" (Capra, 2004:191) thus making every citizen owner of the state.

The building of stable state in Nepal, however, presupposes it to be *autonomous* of dominant interest groups of society, hold *sufficient capacity* to mobilize tax and human resources, *embed* in ecology and the general interest of all citizens and muster *recognition* and *legitimacy* of its statehood. Embeddedness implies dense links not only with society in general but also with industrial capital (Evans, 2005:133). To be sure, political stability of the state is largely buttressed by well-functioning party system based on coordination of competing interests and abolition of vicious-circle politics. "Social and civic equality presuppose at least rough approximation of economic equality" (Lasch, 1995:22). The state's adaptation to regional and international system is no less significant as international environment determines the structural change of national development pattern and "the keys to war and peace lie in the structure of international system than in the nature of individual states" (Mearshimer, 1999:108). Globalization[7] has not minimized the structurally anarchic nature of international system. It has only "changed the structural composition of that anarchy from one made up of relations between sovereign states to one made up of relations between functionally differentiated spheres of economic activity, on the one hand, and the institutional structures proliferating in an *ad hoc* fashion to fill the power void, on the other" (Cerny, 1995:16). Despite the transformation of wider structural context of the state by globalization, the global economic crises now have given the leviathan some protective, regulative and distributive public roles and right to subdue anarchy, create public order and improve its performance in fostering human security. Still, the condition of state fragility has offered "unprecedented opportunities for elites with transnational connections to profit from weak governance and ongoing conflict" (IDS, 2010:18) and act as free-riders of national politics. To minimize this, sensible donors have increasingly recognized the need for context-sensitive development approaches and allowed local participation and ownership in policy design. Critics, however, argue that for the "most part development practice remains donor-driven and aid-centric" (IDS, 2010: 69) thus helping to perpetuate patrimonial system. The "states with transformative aspirations are, almost by definition, looking for ways to participate in leading sectors and shed lagging ones" (Evans, 2005: 126).

THE CRISIS OF NATIONAL POWER

The correlation between the crises of national power and deterioration of governance in Nepal is entrenched. The fundamental element of the crisis springs from the incapacity of leaders and planners to design, steer, govern and finance many fundamental aspects of political economy. The country's international image of a *fragile state*, one that does not have effective and accountable public authority to manage many of its pressing problems without outside support, poignantly mirrors the deficiency of many state bearing institutions including State Affairs Committee of Parliament. With a per capita income of $470 Nepal is one of the poorest countries of the world. Agriculture sector contributes 33.6 percent to GDP, non-agriculture 67.4 percent and manufacturing sector 6 percent. Foreign aid contributes

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[7] . "Indeed, globalization leads to a growing disjunction between the democratic, constitutional, and social aspirations of people—which continue to be shaped by and understood through the framework of the territorial state—and the increasingly problematic potential of rcollective action through state political processes. Certain possibilities for collective action through multilateral regimes may increase, but these operate at atleast one remove from democratic accountability" (Cerny, 1995:15).

to 4.7 percent to GDP. Of the total foreign trade, export constitutes only 14 percent against 86 percent of imports. Nepal's share in world export trade is only 0.12 percent. The foreign and domestic debts stood 23.3 percent and 10.5 percent of GDP. Half of Nepal 36 public enterprises are suffering losses. It is suffering from a crisis of governance as human and national security situation continues to deteriorate and transactional leadership have undermined the country's ability to build democratic institutions to cope with post-conflict challenges. Popular dissatisfaction with democratic outcome is spreading fast. The system of checks and balance is broken in some fundamental ways. A close nexus of cross-border crime, easy access of criminal groups to guns, endemic violence, trafficking of women, plundering of natural resources, corrupt political practices of withdrawing criminal cases from the courts, perpetuation of impunity in political and public life and politicization of police and bureaucracy has hobbled the *national integrity system.*

Fast corrosion of *esprit de corps* and professionalism of police, bureaucracy and elites from public sectors has severe consequences for the welfare of poor and realization of a broad range of civil, political, economic, social and cultural rights. Election barely counts as the idiom of citizenship rights and the opportunity for them to discuss with their representatives about services, as even the leaders thumped at election have captured key decision-making posts. They have also institutionalized clientalist relations and yielded the autonomy of the state to the disparate groups of society in the commanding height of political economy. They do not have capacity to strike a legitimate bargain with private capital for increased welfare spending and enhance the regime's legitimacy. The relationship between political leaders and business elites remains highly personalized, often fragmented and lack institutional capacity, which makes productive cooperation more difficult (IDS, 2010:23).

The government, therefore, lacks the capacity and will to foster rule of law within national territory. Many ministers know no moral limits of their power set by democratic norms. As a result, the cabinet instead of becoming a coordinated mechanism of collective national action reflects an arena of vicious conflict of partisan interests. Patterns of policy negotiation among key political leaders take place outside the parliament which represents more a grand coalition of same social group of individuals disinclined to pursue collective good as a whole. The minimal engagement of national leaders in constitution drafting indicates their dearth of interest in public responsibility. The parliament is, therefore, cut off from the real life aspirations of citizens and connected with interest groups of society. The learning capabilities of political parties to new ideas, technology and leadership emerging from local governance institutions are very weak though they are resolving petty disputes, enforcing contracts and regulating social relations within villages. Local institutions are also moving beyond patrimonial lines and mediating the ties between the villagers and the state institutions such as police, court, development departments, business community and civil society. This is reforming the party structures from bottom up though one can see the tension between traditional privileges and modern rights and the competition of fractious party leaders for access to rents for themselves and their clients. Circumventing personalized rule for building institutional culture of democratic system necessitates an increased access of citizens to national political process.

Existence of a weak due process of law and prosecutorial autonomy as well as impunity to the violation of rule of law have favored special interest groups and undermined the morale of law-enforcing agencies. The scale of economic crimes such as bank defaulting, cross-border smuggling, tax evasion, capital flight, grand corruption etc. is too wretched to count even by the appetite of *Charwak,* an ardent

defender of ethically-free, ego-centric calculation of individual utility. It created a distortionary economy. There is little hope that the political situation will stabilize as political deadlock at the center and social dynamics at the periphery have made many *governments survival-oriented than pro-active and functional.* These tendencies have viciously weakened the competency of state to effectively perform key public security, law and order and basic service delivery functions for poor people and those living in geographically remote areas and pull the state out of its years of stasis.

The single-minded fixation of politicians and planners on economic growth marks a cognitive deficit in conceptualizing the changing national context, discourse, actors, issues and rules and formulation of corresponding constitutional design of development, resetting institutions and policies to control the "means of violence" and legitimately use it for public interest. Unless the tendency of entrenched elites to monopolize power and opportunities rather than define shared vision as demanded by the mandate of Constituent Assembly (CA) election of April 10, 2008 is not curbed and substantial investment is made in a peace dividend it would be difficult for the state to pursue political stabilization and achieve consolidated democracy. The outcome of CA elections instead of consolidating political settlement has alienated several groups from power-sharing, institutionalized group rights, shifted state-centric conflict to society-centric one and generated daunting institutional and humanitarian challenges. It is because political power did not follow its *dharma***,** the institutional accountability, as leaders have continued to put personal interest over institutional interests of the public.

Each government has nurtured free-riding problem on the national system, sought accord among various parties and groups with diverse preferences and interests for sharing spoils and made national capacity and identity grow weaker day by day. The autocratic power of leadership can only be limited by expanding the authority of the sphere of political representation, establishment of accountability to citizens (Moore, 2008:48) and setting a link between citizens and polity—the lifeblood of political parties. The institutional vacuum, inability of national leaders to deliver on commitments and weakening of peace lobby in every party have also stalled the peace process. It has increased the cost of disengaging various actors in the economics of violence. The proliferation of criminal gangs, armed groups, urban crimes, etc is mainly attributed to the state's weak coercive capabilities. The only progress in peace process is visible in the discharge of 4,008 disqualified Maoist combatants, mostly minors.

The adjustment of Nepal's political system to the demands of constantly changing social, economic and political structures requires power sharing between state classes and functional interest groups of society through negotiated arrangement, coordination of common goals and means and accountability to Comprehensive Peace Agreement (CPA). These steps are essential to build the confidence of citizens in leadership. The quest for crisis prevention and conflict resolution equally involves rebuilding a more effective state owned by all citizens. Beyond doubt, securing stable peace requires crafting a social contract, a workable constitution for legitimate governance which allows equal opportunities for all social classes to participate in decision-making and bound all actors by the constraints of constitutionalism (Dahal, 2007).

Nepali state is caught in *underdevelopment trap*, a situation where low level of capital investment per worker results in poor income, lean saving and meager productivity and, consequently, weak stake of the poor on national political system.

It has weakened the capacity of the state to distribute state goods to all citizens across huge swaths of its 147,181 square kilometers of national territory. Shrinkage of development space, retrenchment of foreign aid and foreign direct investment, decline in foreign exchange reserve, tourism and remittance, increase in consumption of luxury goods, sharp increase in the prices of basic consumer goods, ecocide, flight of capital, social unrest, insecurity and institutional decay add complex challenges to Nepalese polity. Deregulation of internal market and foreign trade and diminished role of state in employment set in operation since 1991 have permitted the elites from business, civil society and the state to move beyond national affiliation as market expanded all over the world to create a capitalist world-system and forced over 2.5 million Nepalese peasants and workers to earn remittance abroad to cope with livelihood crisis. About 400,000 Nepalese enter into job market every year. Over 300,000 of them migrate abroad for a lack of job opportunity at home. Now, the contribution of remittance to GDP is 22 percent which is higher than tax, income from tourism and foreign direct investment. But, the increasing reliance of state on foreign aid (which hovers around 60 percent of development budget) for its economic survival indicates its less accountability to the tax paying electorates.

Disconnected from motherland, it has also *increased the stake of millions of Nepalese migrant workers more toward global economy than national affiliation*. Huge mass of youth who did not have opportunity abroad are suffering from stressful condition of national life. They are recruiting base of various armed groups' radical politics and swelling political classes and lack a sense of national identity. But, trade unions are also awakening from deep snooze and forming coalition for collective action for the implementation of their rights. The need to negotiate public policies with multi-stakeholders including donors in Nepal Development Forum indicates the powerlessness of legislature and widespread cynicism about the declining capacity of politicians to legislate. The discourse on development continues to be constructed as an entity away from local context and, therefore, there is weak ownership of citizens in its conceptual and operational strategies. Successful recovery from *human recession*—poverty, unemployment, inequality, discrimination and domination, etc presupposes the management of reasonable expectation of citizens, arrest the downward spiral of democracy's drift and attaining policy autonomy. They are also the major development challenges for Nepal and barriers to the consolidation of statehood. The state entirely dependent on national tax is less likely to be governed by only external geopolitical imperatives.

Widening the economies of scale through the integration of Nepal's *fragmented political economy*—pastoral, agricultural, industrial, commercial, informational and service into an integrated national grid is essential for sustainable development. Integration of internal market is also necessary for external competition. Ironically, shrinkage of productive sector of economy, expansion of non-productive ones such as real state business, construction of houses, over accumulation of gold, import of private cars, high energy consumption, proliferation of financial institutions, non-investment in development activities and decline in competitive regional and international capacity, etc have increased the cost for business investment in production. In this context, a common development concept among the parties of various hues spelled out in the CPA is necessary to harness the local self-reliance and competitive strength of national economy.

The root of economic crisis lies in low level of industrial production, rising trade deficit, declining exports, political unrest and chronic insecurity. This marks the deficiency of Nepal's economic diplomacy. Obviously, only the *expansion of real economy*, not just the symbolic one, can contribute to the mobilization of national

resources, reduce external dependence, set up import-substituting, export-promoting industries, minimize increasing trade imbalance and broaden social peace over time. Given the country's diverse topography and demography, it would be pertinent to shift revenue-based to *production-based, ecologically embedded and decentralized economy,* hydro-power development, toss up new infrastructures, transport, management of forestry and bio-diversity, labor-intensive business, cooperatives, disaster preparedness and mitigation of ongoing Himalayan climate change. The relationship between citizens and the state needs to be repaired through the abolition of dual regimes by a unified sovereignty and bridge the divides rooted in class, ethnicity, region, gender and generation through decentralized development interventions. Optimization of these actors is necessary as their claim to internationalism threatens the unity and coherence of state. Similarly, coordination of efforts between the government and donors are required to focus on delivery of peace dividend, place effective democratic oversight, strengthen the ability of state to *foster production and exchange* and abolish the way of predation and conflict (Hirshleifer, 2001:11).

The leaders can overcome other compelling policy challenges to state building in Nepal if they work together to establish national security, remove all sources of competing authority in the governance and foster the coherence and orientation of leadership to *public interest* needed for the political system to persist and change. Ironically, weak political will of the Nepalese government to control the levers of enforceable action has made political transition protracted thereby deepening the crisis of governance. In this context, international community has offered Nepal critical resources (foreign aid, technology, knowledge, investment and support), trade possibility, job opportunity and options for the diversification of international relations. These resources have helped to reduce conflict-producing causes. But, Nepal can reap the benefits of these resources only under the condition of peace and improved state-society relations.

NATION-STATE: FUSION OF ETHNOS AND DEMOS

Modern state, according to Max Weber, is "a human community that successfully claims the monopoly of the legitimate use of physical force within a given territory" (quoted by Fukuyama, 2004:8). It is autonomous of pre-modern patrimonial leadership, possesses legitimate authority to collect tax, command the loyalty of citizens, resolve conflict in society and dispense justice and peace. Political thinkers such as Friedrich Meinecke, Niccolo Machiavelli and Thomas Hobbes have conceptualized the notion of *self-sufficient state* imbued with sovereign power to abolish the state of nature in multicultural societies and provide security to citizens for the pursuit of their well-being and peace. They believe that power of self-interest rooted in the aspiration and desire of leaders refuses to recognize the importance of common good which only a smart leviathan can deliver. "Deference to a sovereign frees individuals from conflict arising from competing claims" (Shivakumar, 2005:65).

John Locke, Baron de Montesquieu and Jean-Jacques Rousseau are, however, concerned with limiting the authority of all-powerful leviathan under the *constitutional system* of checks and balances and entrenching rights, interests and opinions of citizens in governance. Institutionalized checks and balances control arbitrary action of holders of political power and reduce official corruption. They seek to bring politics under the "rule of law" in order to safeguard liberty, property and dignity of individuals and allow peaceful resolution of conflict through

sociability, negotiation and compromise. Edmund Burke, G. W. F. Hegel and Joseph Mazzini have fused the ferment of democratic-industrial revolution with *nationalism*-- the ideology of sovereign state. To them, the state is capable of satisfying citizens' social, economic and political needs and abolishing the divides between state and society through educational, linguistic, ritual and communication policies.

J. S. Mill, an ardent defender of *individual liberty*, opposed the leviathan's detest of individuality, homogenizing tendency of industrial civilization and collective self-consciousness of nationalism leading to a political culture of conformism. Karl Marx opposed the absolute state, the concept of individual liberty rooted into bourgeois public sphere, exploitation of labor in industrial capitalism and even nationalist current in favor of *emancipatory politics* of common humanity as a means to resolve the class conflict of society arising out of incompatible conditions and aspirations of people for self-realization. Inspired by Kantian urge for the moral unity of human beings, it is only Jurgen Habermas who seeks to bridge the theoretical gaps between the *system and life-world* in a democratic constitutional state through communicative action, public opinion and democratic will-formation and continued rationalization of mediating agencies of society for freedom, justice, peace and international cooperation (Habermas, 2001: 58-112).

Can the secular state of Nepal transcend ethno-centric notion of the nation being vociferously debated now? Will there be a space for individualistic concept of human rights and national freedom in a group-bound and group-enclosed nation? How can an "organic nation" adjust with the artificially created boundaries of federal states and cope with the challenges of *multi-culturalism* (inclusion of minorities) within the nation-state and economic and cultural globalization from outside which requires consistency, coherence and uniformity? Can denationalization of economy and post-national challenges--climate change, cross-border transaction of goods, migration, spread of disease, etc-- maintain the sanctity of national constellation?

A *nation* is cultural collectivity of people of shared ancestry. It is united by geography and a common national identity. But, it flags itself different from other collectivities. Modern belief in *nation-building* springs from the awakening of tribes, communities and peoples to the consciousness of common historical process. It is tied by habits of communication of language, lineage, religion, history and shared destiny. The traditional concept of nation has, however, undergone substantive transformation with the modification of its method of communication. Nation is a culturally-mediated entity while the state is founded on legal-political framework. The members of a nation are unequal in statuses despite emotional bond while the members of a state defined as citizens have the status of legal equality though their conditions may be unequal. "National affiliation need not be based upon a common blood" so that "the sentiment of ethnic solidarity does not by itself make a nation" (Weber, 1970: 177-178). Now, both ethnos and demos are facing tension between nationality rooted into pre-political values of ethnicity, language and locality and state associations embedded in human rights and public international laws. A major shift has occurred as "nation" has lost its original sense (community of origin) and acquired its modern meaning (a sovereign people)" (Dieckhoff, 2003: 271).

In no way, modern nation is a self-referentially closed entity framed exclusively around either cultural code of identity or biological destiny. The identity politics has come to "serve as a substitute for religion—or at least for the feeling of self-righteousness that is so commonly confused with religion" (Lasch, 1995: 17). The democratic revolution has mobilized the diverse peoples and nations to create "imagined communities" (Anderson, 1991), new forms of collective self-

identification and transformed unequal subjects into equal citizens regardless of their gender, social and cultural backgrounds. The cultural and religious glues that stitched the people into civil coexistence of a nation have now been taken over by modern law which also defines the rights and responsibilities of citizens within the nation-state.

This democratic revolution has created the legitimacy of *constitutional state* and new forms of social integration through the exchange of technology, people, goods and services and information. The spirit of people thus provided truly modern form of collective identity and cultural basis of constitutional state (Habermas, 2001:112-13). Now, the state and nation have been amalgamated into a *nation-state* based on shared national pride, national consciousness, exercise of national self-determination and non-intervention into its sovereignty. Schools, colleges, workplace, diaspora, bureaucracy, police and army played crucial role in the uniformalization of nationalist tradition. "Every nation should have its state to accommodate democracy because the nation-state fosters a feeling of brotherhood which renders the development of a common citizenship easier" (Dieckhoff, 2003: 272). Exclusively clan-based loyalty neither creates social capital necessary for larger public and national action nor fosters competitive strength for international cooperation to cope with the challenges of globalization.

This amalgamation process has transformed *nation-centric nationalism* into *state-centric democratic public* and socialized citizens to become loyal to national constitution and institutions; granted citizenship rights and duties that framed individuals' sense of belonging and opportunities for common projects and shared future; and fostered generalized trust and cooperation with each other as members of the same political community--the state. *Nation-building* in the sense of stoking a "capacity for human feeling within closed groups and others" and recognizing national identity of various groups is coterminous with state legitimacy defined as protector of people, constitutional rule, popular consent expressed through public opinion, media and election and performance in service delivery. A nation withdraws into its protective shell if it does not find the opportunities in the wider world and goes through a period of dynastic collapse, economic depression, civil strife and banditry (Scott, 2009:333) such as the ones happening in Nepal.

The *state-building* is a continuous process of engaging the state institutions with multiple layers of national societies, consolidating values, rules and processes to rationalize state-society relations and cultural transformation. This means modern nation-building process is based on the *de-traditionalization* of society, not its reactive re-tribalization as is happening in Nepal, as the traditional concept of "nationhood" has become too narrow to consolidate a democratic constitutional state with all-inclusive character. Nepali language and culture's opening to Khas, Maithili, Tharu, Newar, Gurung, Magar, etc produced synergetic form and cultural tolerance. The secluded "cultural self-awareness becomes a level of political hate in the pursuit of power" (Meyer, 2004:45) and leaps into relativism, a sort of *counter-enlightenment*, implying an inversion of Vedic-Buddhist cosmology of world brotherhood.

Enlightened action requires self-understanding and conscious choice and will, not the wild manifestation of un-socialized human instinct. In this context, *absolutization* of ethnic, class, religious and regional identity at the cost of other values fosters fundamentalism, reacts to modernity and stokes a "politics of negation" of the other. Nationhood, in the sense of separateness, exclusion and otherness, that human beings have made a future of their existence in the past can in no way guarantee their sanctuary now. Human knowledge about the cosmos has

been greatly enlarged with the emergence of global risks, challenges and opportunities. This has entailed functional necessity of international cooperation. "The concept of us and them, however, are not based on hierarchy but on equality between us and them and among us" (Bhattachan, 2009:16). Inequality and exclusion weaken the rational basis of democracy and the political ideology of modern state—nationalism. Nepal's constitutional challenge lies in harmonizing various rights of citizens with duties, enabling the institutions of state to implement them and articulating a well-ordered political system. Over half a century of Nepal's development fostered by foreign aid agencies, civil society and private sector is linked to building modern nation-state capable of satisfying basic public goods and services for the citizens.

HISTORICAL PERSPECTIVE ON NEPALI STATE

Evolved endogenously Nepali state and inter-governmental institutions have historically engaged with multiple levels of society and played crucial role in conflict resolution applying various approaches—imperial, muscular, hegemonic (power equation) and democratic—depending on the choices offered to it by internal circumstances and international environment. Even before the adoption of Westphalian norms Nepali statespersons and scholars applied the wisdom, experience and knowledge of local indigenous societies and historical, cultural and Hindu-Buddhist religious treatises, memoirs, policy craft and wise counsels of sages and statespersons. Kautilya's *Arthashastra* discusses about mutual rights and obligations of state and citizens. A ruler's duties in the internal administration of the country were defined by "*raksha* (protection of the state from external aggression), *palana* (maintenance of law and order within the state) and *yoga-kshema* (safeguarding the welfare of people)" (Rangarajan, 1992:15). These instruments were the wellsprings of social learning as leaders and peoples have internalized historically coded rationality in public life and private conduct. The state's extractive power especially in tax revenue, military conscript and public goods and services from society in return for internal and external security enabled it to control population within the defined territories, maintain authority and coordinate socialization, mobilization, distribution, regulation and surveillance functions. "The premium on the relevance of political, economic and cultural indigenization was adequately put to see the relevance of outside from the needs of within" (Tanigawa and Dahal, 1996:121).

The Nepali state born out of the nucleus of Gorkha Kingdom in 1768 was a *patriarchal state* where monarchy possessing strategic and military advantage acted as a patron and brought two clusters of 22 and 24 peripheral micro-states under a single sovereignty. It was, however, concerned with minimal functions —national security, law and order, revenue collection, cultural and linguistic nationalism and geopolitical balance. Many subsidiary groups were living under the shadow of state and consequently produced enormous diversity of language, traits and cultures. The monarchy provided different categories of land grants to diverse sections of people for their livelihoods and loyalty, such as tributary kings of the Gorkhali Kingdom (*rajya*), military officers (*jagir*), civil administrators (*nankar*), tenant cultivators (*raikar*), servants and artisans in the court (*jagir*), religious associations (*guthi*), individual persons, such as saints, Brahmins, priests, war widows (*birta*) and Rais and Limbus of eastern Nepal (*kipat*) and provided them access to the Royal court (Burghart, 1984:103). King Prithvi Narayan Shah wanted to create a socially and culturally embedded state and utilized the existing social, cultural and intellectual resources to protect *Nepal mandala*, the spiritual and material universe of the Nepali

nation-state. Allegiance to the "state superseded personal loyalty to the ruler" (Regmi, 1995:15). Through active defense he averted the corrupting influence of external forces on social diversity and managed the survival of Nepali nation-state from the competition of great power politics.

The rule of Rana oligarchy over a century (1846-1949) created an *extractive patrimonial state*. Compared to Shaha rulers who negotiated power with elites from diverse society for a nation-state, the Rana regime monopolized the state power within family circles and high caste elites. But this regime had expanded the territorial, administrative and military outreach of state in society, prevented ethnic and territorial conflicts and framed and executed *muluki ain* (civil code) of 1856 to foster vertical integration of society based on caste hierarchy and patriarchy and annual *pande pajani*, the distribution of lands and titles to various groups of people to seek loyalties to their order. Ranarchy accepted cultural pluralism, the primacy of local tradition over Civil Code in the jurisprudence of local disputes, but was not autonomous of dominant interest groups of society. This regime, therefore, blurred the boundary between the public and the private sphere, fostered the special interest of the priestly and oligarchic bearers of social power and undermined the autonomy of rights-based civil society.

Despite its imperial alignment for the suppression of domestic dissent, the Rana regime was very much concerned with the state's sovereignty, integrated western part of Nepal into the state lost during Anglo-Gurkha war (1814-16), abolished slavery and *sati pratha* (widow burning) and cautiously applied modernity in the sense of using science to resolve social problems. The fiscally sterile Rana regime also opened Tarai, the southern flatland, to the Indian migration for cultivation and commerce to finance the expanding administration, signed Gurkha recruitment, Extradition, Trade and Commerce, and Peace and Friendship treaties with India in the wake of democratic struggle and sought to protect dominant structure of the state and geopolitical interest (Dahal, 2001: 25-53). The historically existing open border and the overlapping ethnic groups across national boundaries have critical bearing in inter-state relations. The social dynamics of migration and free flow of communication, culture and ideology have subordinated its geopolitical interests.

BIGGER STATE AND EXPANSION OF THE SCOPE OF GOVERNANCE

The success of middle class revolt[8] against Rana regime in 1950 widened the scope for the renegotiation of power as popular expectation from the government had increased with the politicization of citizens. It had also created an omnipresent *constitutional state* with political pluralism, legal-rational authority and rights of citizens. Based on power equation between Nepali Congress (NC), the Ranas and King Tribhuvan settled in the Delhi Compromise the regime defined the state's high-profile role in Nepalese society through the nationalization of commanding height of political economy and sought to transform agrarian feudal order into new political and economic arrangements, created rational organizations of banking, production and cost-accounting, subjects into citizens, infused new ideals of nationalism, democracy and citizenship, increased social spending in education, health,

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[8] The political movements of Nepal in 1950 against Rana regime, 1979 for the liberalization of Panchayat, 1990 for the restoration of multi-party democracy, 2006 for federal democratic republic, Madhesi movement in 2007 for proportional power-sharing in governance and Tharus movement for their prior use right to river, forest and land are caused by the state's weakness to address social demands, external stimuli and opportunities for various groups for collective action.

employment, cooperatives, infrastructure development and redistributive welfare to neutralize the effects of communism.

In the democratic experiments of the 1950s, "political parties tried to link nationalism to political modernization and attempted to redefine group boundaries on the basis of ideology rather than ethnicity, religion and region" (Dahal, 2006:27). The new regime had also reshuffled the old elite groups to absorb the new one but maintained the structure of *traditional political culture* and managed the nation's delicate geopolitics by fostering centripetal forces internally and diversification of international relations. The state and its institutions had remained a major instrument in conflict resolution. But, intense intra- and inter-party fracas, conflict between customary and civic power and between tradition and modernity made this power-equation based system of conflict resolution short-lived. This system often excluded the marginalized and risked undermining the principles of constitutionalism. Subsequently, the reasons of state asserted primacy over the fundamental rights of citizens from 1960 to 1990 and innovated monocratic Panchayat regime, geopolitical equidistance and zone of peace.

The Panchayati system invented welfare-based soft *authoritarian state*. It had utilized muscular and authoritarian methods including cooptation and isolation of elites to manage dissent and resolve conflict. But, it did not completely undermine the role of local elders, community-based organizations, elected representatives, educational institutions and courts. It was a class-bridging state where locus of power hovered around the central axis-- the monarchy, which also tried to reduce existential risks and inequalities through land reforms and formalization of property rights to the poor. It also initiated constitutional reforms, election, public sector economy, communication, decentralized development and distribution of patronage to influential entrepreneurs. The westernized Nepalese experts were utilized as an interlocutors between the donors and different spheres of local societies. Panchayat regime also encouraged the *Nepalization* of language and culture and *Sanskritization* of non-*Sanskritic* groups to neutralize the tide of capitalism and communism in the neighborhood and expanded public transportation, communication, health, cooperatives and education to integrate the periphery. Enormous flow of foreign aid to Nepal marked the legitimacy of Panchayat polity during cold war but it has reduced the capacity of the state to mobilize local resources and accountability to citizens.

Nepal's ethnic, indigenous-Hindu interface is the creation of much less "rigid rules in social spheres, a relatively easy mechanism of social mobility and a relaxed inter-caste and inter-ethnic behavior in comparison to India" (Sharma, 2004:198). But, the regime effectively banned demand-articulating civil society and political parties until the liberalization of regime through referendum on the system in 1980 and direct engagement of citizens in macro-politics. The expansion of economy, administration and public sphere by Panchayat regime set free the *critical mass* of change agents whose demand for political participation restored multi-party democracy in 1990 through popular movement led by Nepali Congress and United Left Front and legalized party politics. United National People's Movement (UNPM), a constellation of Maoist parties, organized the movement separately.

MULTIPLE SCLEROSIS OF SUBSIDIARY STATE AND CONFLICT BOOM

The new regime composed of heterogeneous classes generated enough political consciousness, provided opening to institutional proliferation, granted more social

rights to citizens and crafted a social democratic constitution. But, it incubated a *subsidiary state.* In contrast to welfare state where the rich subsidizes the poor and rural, the subsidiary state is subsidized by the rural poor for the global competition of urban business elites. The new elites uncritically embedded Nepali state into the principles of Washington Consensus which unified "democracy, markets and rule of law" (Moustafa and Ginsberg, 2008:2) and liberated economic decision-making from democratic control and sought to de-bureaucratize development by opening space to non-state actors such as NGOs, private sector, civil society, user groups and transnational actors. Ironically, Nepalese polity has not been able to keep pace with the capital's trudge to be global and enable its private sectors competitive. In the process, it dismantled many national barriers for external political, economic and cultural penetration and "undermined the control span of the state from without and fragmented it from within" (Cerny, 1995:9).

The regime also abdicated policy making responsibility to market forces, reduced the voice, inputs, oversight and feedback of citizens in public policy making, lost the local economic basis of *state capacity* to maximize standards of human rights, democracy and rule of law, devalued the very purpose of politics to serve public interest, monetized social and political relations and ratcheted up the overt power of urban elites, human rights NGOs, consultants and cultural industries which were less congruent with the national state's imperative. These globally mobile elites are more restless and migratory and refuse to recognize their ties to nation-state. Similarly, the state lacked autonomy from business, political and bureaucratic classes and lost the capacity to mobilize human and material resources and interest in local self-governance—the direct contact of citizens with the local state institutions. Absence of over 1,200 secretaries of Village Development Committees (VDCs) and elected authorities and inability to implement local peace committees now indicates an institutional paralysis of interest-articulating channels at the grassroots level capable of fostering local development, reconciliation and justice. How is it possible to establish human rights, democracy and peace in Nepal under *structural* adjustment of the state to global capital market?

The structural change from above by conditionalized aid policy has weakened the capacity of state to provide a broad-based framework of stability and social justice. The crisis of state authority thus undermined the coherence of bureaucratic planning and accountability to decentralized development. In Nepal, the cut in subsidy to marginalized population in favor of financial capitalism defended all forms of privileges of interest groups –private education, economy, health, communication and citizenship and undermined the egalitarian effects of democracy. As a result, these processes evoked popular distrust against *state class-capital alliance* and bred the resurgence of social discontents and social movements of under classes against the narrow concept of democracy which is stripped off of sound institutional framework to mediate state-society relations. These policies sought to transform caste-based society into class-based and, in the process, nourished the sources of structural contradictions and manifest conflicts in Nepal.

The liberalization of economy also eroded the tax base of the state to support social projects and win the loyalty of citizens as it favored "labor market flexibility," "no work, no pay," "hire and fire of workers," "individualization of life project," and imposition of "wages and condition of work" without any robust scope for free collective bargaining for wages and co-determination of public policy. Politicians and businessmen produced vicious cycles, each corrupted the other, promoted each other's interest and transformed the state in authoritarian direction. Obviously, this policy produced ricochet effects: increase of imports, decline of exports, deficit of

balance of trade, industrial stagnation, policy uncertainty, industrial strike and even economic insecurity. Informalization of economy through privatization, deregulation and denationalization broke the backward linkage of industry to agriculture and forward linkage to trade and commerce. This period is marked by harmonious relations between rights-based civil society, predation of capital over labor, assertion of identity politics and the absence of collective action on behalf of poor for the implementation of citizen charter, implementation of their rights and enforcing social accountability of the governance. "The opinion-making elites, including media and academic community, too, reflected the concerns of the haves of the world" (Levitt, 1996:14). The growing race to the bottom in economic development also denied Nepalese citizens both individual integrity and common humanity.

The donor-driven minimalist state concept espoused by post-1991 ruling strategic elites considered the Nepali state alien to their education, acculturation and interest, acted as an organic part of global regimes and constantly sought to prune it back. Their naïve belief that foreign born solution will work for Nepal's problems has dashed off as they transferred alien development models without diagnosing the national agrarian situation. The half-hearted reforms also broke the bureaucratic hierarchy, chain of command and regulative power of the state without fostering the capacity of private sector to generate economic growth so as to set macroeconomic fundamental in balance. Instead, the use of global market force for structural change undermined popular sovereignty, the endogenous determination of politics and *destabilized democracy within the writ of state*. Similarly, devolution of responsibilities to local bodies without transferring adequate authority and resources and creation of parallel bodies of civil societies, all-party committees and NGOs has damaged accountability structures at the community level. This period is also marked by the withdrawal of local state institutions from society which has caused authority and security vacuum, incubated pervasive intra-state grievances of previously marginalized groups and generated social contradictions, movements and conflicts. The mobilization of rural masses transformed illiterate youths into politically potent force. Three factors had reduced the capacity of Nepali state to govern and resolve conflict: neo-liberal globalization and liberalization limited the autonomy of Nepali state in policy making and setting national priority; homogenized economic policies of political parties compressed the democratic process and alternative social vision; and preference for group-enclosed non-state actors, NGOs, human rights groups and civil society offered universal consciousness of modernity without transferring necessary resources to translate participatory democratic projects into reality and improve the local perception of state legitimacy. Instead, these actions had fostered a clientalist political culture and unveiled a false dichotomy between state and civil society in democratic discourse. Nepal's traditional civil societies like *paropakar, guthi*, *dharmashalas*, *bihars*, temples, *chautara*, etc are charity-based and duty-oriented. They do not harbor anti-state tendency, advertise their service to the needy and curtail macroeconomic policy autonomy.

The adoption of free-market in a feudalistically segmented society, deep-seated poverty, social exclusion and poor governance undermined the quality of human development, created social divides, limited the voice of poor and provoked class radicalism-- People's War of Maoists since 1996 which caused the death of more than 15,000 Nepalese, displacement of many families and destruction of development infrastructure. Both neo-liberal and neo-Marxist elites acculturated in universal ideologies and theory of economic determinism, have confused politics with science, seriously deflated the Nepali state's *raison d' etat* and displaced local state institutions thereby allowing it to be captured by neo-patrimonial interest and

armed non-state actors of various sorts. It is preposterous to assume that Marxism and liberalism "reduce the entire social reality to economic determinism" (Amin, 1993:26).The reasons in non-conforming Nepali state lies in the internalization of exogenous ideas devoid of native historical, cultural and contextual learning and not developing a program that promotes growth and social solidarity together, rather than forcing a choice between them (Berman, 2010: 7). Ironically, they did not bring any noteworthy change in *power relations from domination and control to cooperation and partnership between sovereign citizens and leaders* other than destabilizing the structural foundation of Nepali state's construction and cohesion. "The willful destruction of culture and civilization inevitably leads to the collapse of state" (Acharya, 1998:4) and, therefore, citizens lose the base of self-dignity, historical-cultural roots of acculturation and modernization of native culture by contact with other cultures.

In the 1990s, the state elites' confidence in economic development and conflict resolution had been shaken as national economy supported by Keynesian ideology faced domestic restructuring. This gave incumbent governments an opportunity for the recruitment of their party cadres and loyalists in key posts of industrial enterprises and accelerated the de-industrialization of national economy. The rent-seeking nature of privatization of 30 agro-based import-substituting public sector industries eroded industrial employment with little resistance from human rights groups, many labor unions and civil society as they themselves were first individualized, then tied with projects on the elimination of child labor and bonded labor and then alienated from collective identity of labor themselves. The judiciary, too, exhibited a total unfairness as it did not give verdict on the case filed against illegal privatization of profit- earning industries. The disengagement of state from society and alignment with global capital has thus allowed political, business and bureaucratic control of all sorts of "subdiaries" of local governance and *hollowed the ties of citizenship with nationality*. Only a sovereign state is capable of allowing its citizens exercise general will without external manipulation. In Nepal, cut in agricultural subsidy and privatization of public enterprises reflect dual illegitimacy in the eyes of public and laws as it had generated production and livelihood crisis. The death of 550 people in Humla-Jumla in 1998 due to hunger, neglect and pestilence is symptomatic of the beginning of humanitarian crisis. Now, the World Food Program of the UN revealed that food crisis continues to hit 2.5 million people while another 3.9 million are at the risk of becoming food insecure.

The confiscation of state capacity, autonomy and embeddedness in society, rise of Maoist People's War, dysfunction of governance and geopolitical games have collectively made the state ineffective on a nation-wide basis, a sign that threatened to disconnect the state from society, destroy their livelihoods and trap millions of citizens into vicious spiral of insecurity though official data revel that only 32 percent of people are below poverty line having less than $1 per capita daily income. The enormous disproportion between social strength of masses and the class power represented by the polity generated huge social contradictions and escalation of People's War. The 12-point agreement mediated by India in 2005 to fuse CPN (Maoist)'s People's War and mass movement of parliamentary parties against King Gyanendra's direct rule opened the prospect for conventional method of *resolution of conflict through extra-constitutional means* in April 2006. But, the discourses of women, Dalits, workers, indigenous people, Madhesis and ethnic groups accompanying the movement have also opened spaces to alter dominant social relations and transformed them into effective instruments of social transformation. Empowerment of the marginalized is the most cost-effective way to develop peaceful change of society as well as broader sign of democratization.

The subsequent peace accord on November 21, 2006 and interim constitution have reduced only the amount of direct violence but not the "root causes of conflicts," improve human rights conditions and bring the national leaders to a common process of national envisioning for a new constitution, durable peace, structural transformation and enable politically legitimate collective action to improve service delivery. This failure is mainly attributed to *poor social learning* of leaders from the "action-reaction" condition of society and lack of any capacity to indigenize universal policies into Nepali condition. Rational solution of any problem requires appropriate, contextual knowledge. The current global financial crisis vindicates the necessity of regulatory system of the leviathan, provision of public security and public goods and ecologically embedded economy.

STATE-SOCIETY DISHARMONY: CHALLENGES TO CONFLICT TRANSFORMATION

The sociopolitical and economic aspirations associated with the political change of April 2006 have unleashed multiple transitions from monarchy to republic, unitary to federal state and Hindu ideology to secular worldviews in favor of *social state*. It gave more social rights to people in the Interim Constitution 2006 and increased political awareness though political participation remained highly unstructured, anomic and disorganized contributing to the formation of new groups and parties. Similarly, *educational, economic, technological, institutional and leadership preconditions to fulfill those rights are fundamentally amiss*.[9] The economic growth of 3.4 percent barely balances out population growth of 2.3 percent. The cohabitation of elites of all stripes in coalition government, inability of new classes to break from the old political culture of pre-modern spirit and over-preoccupation with executive power than separation, balance and devolution of power have made the social order prone to systemic conflicts posing difficulty for society to emerge from cycle of violence. Behind every effect, there is a web of causes argues ancient Hindu-Buddhist wisdom.

The domination of party politics by family and clientalist networks than positive law marked a crisis of representation, provoked factionalism and split and generated extra-party militant movements of youth and deprived. Due to changing nature of political equation and politics, conflicts and their components are constantly transforming beyond the capacity of leaders to manage. Leaders are, however, caught by the *populist trap* and unable to fix the dysfunctional system through the resolution of authority and regulate systemic risks. Obviously, futile negotiations on power-sharing without substantive outcome indicate a clear *leadership vacuum*, a leadership that can command respect from a myriad of opposition forces for needed consensus to resolve many contentious issues, steer the capacity of society to shape self-governing polity and establish democratic peace based on compassion, human rights and social justice. Without sacrificing group interest for greater public goods they will unlikely to gain the moral standing and social leverage. The prolong entropy of Nepalese politics indicates that leaders have not learned the most essential art of governing—meaningful compromise and mutual concessions—get something by giving something. So long as inner moral and constitutional checks upon leaders' will to absolute power are not placed a stable democratic order is less likely to

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[9] "The closer the relationship between the sites of innovation, production and use of new technologies, the faster the transformation of societies, and the greater the positive feedback from social conditions on the general conditions for further transformation" (Castells, 1996:37).

emerge and there is less likelihood of placing disincentives to those who use state's resources for personal power and act as spoilers of peace.

The deliberative politics of CA has politicized the citizens, exposed them to law–making process as a mode of conflict resolution, changed the power equation and created a new *public sphere linked to cosmopolitan laws of human rights, social justice and peace*. But, the arbitrary ways of exercising authority and lack of power balance in the system still mirror a crisis of law's accountability and rationality in the resolution of conflict and set up rule of law.[10] The CA election has further transformed consensus-based politics to competitive and confrontational modes thus making conflict resolution complex. Lack of rationality in law has undercut the possibility of coherence in the adjudication of disputes. As a result, demands for structural reforms in the judiciary including its autonomy, efficiency, fairness and integrity are strongly pronounced through substantive reforms. In this context, creation of constitutional state on the basis of majority-rule democracy with equal protection of minority alone can foster the process of national reconciliation, promotion of overlapping group interests and trust of citizens in governance.

The coalition politics has given more power to smaller parties than the dominant party Unified Communist Party of Nepal-Maoist (UCPN-Maoist) but they have also eroded the party differences thereby making politics personality-oriented than institutional and unleashing vociferous demands for inner-party democracy, demilitarization of politics, civilian supremacy, transitional justice, self-determination and identity politics. Political elites habitually do not generate democratic reforms to lose power unless circumstances compel them to do so. In this context, the habitual tendency of political actors to resolve conflict through extra-parliamentary and extra-constitutional means has dissolved law into politics, blurred the institutional memory of governance and barred the mediation of political vision to social learning about the changing narrative of conflict dynamics.

The unprincipled struggle of fractious political parties for power monopoly and lack of interest to engage conflict victims, excluded and local people in justice and reconciliation in the face of geopolitical maneuvers of external drivers of conflict threatens to decompose the fragile state from below, above and outside. Given the politicization of police, bureaucracy and educational institutions and the penchant of post-modern social scientists and manufactured policy wonks for the deconstruction of state-society relations (Bhandari, Shrestha and Dahal, 2009:9), it seems only the Nepalese society and Nepal Army (NA) *as state-bearing national establishment*. The groups that demand the state security are increasing—ordinary citizens, businessmen, judges and journalists. Building the capacity of security agencies to become politically neutral, efficient and professional and serve the legitimate state and its laws are prerequisites to institutionalize democracy (Bleie and Dahal, 2010:3).

The new political formation of radicalized elites following CA election continues to challenge the old bureaucratized elites' position and values through secularism, republicanism, federalism, inclusion, deliberation and communication. It has also brought the dispossessed and marginalized into the forefront of distributional struggle. Political uncertainties and economic downturns in Nepal have

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[10] Derrida makes a clear distinction between law and justice. For his "law is the product of social and political dynamics, it is finite, relative and historically grounded. By contrast, justice transcends the sphere of social negotiation and political deliberation, which makes it infinite and absolute. Justice stands beyond the boundaries of politics as its inexhaustible demand" (2003:164).

also fostered identity politics of ethnicity (Shrestha and Dahal, 2008:1809) against the hegemony of state dominated by upper caste elites (Gurung, 2006:3). The social labor of women has undergone profound change (Acharya, 2007:53-63) thus marking a shift of society from inherited to self-chosen one. It is a society based on gender equality and seeking reconciliation, rehabilitation and women's role in governance, conflict prevention and peace building especially because new interests are more contesting than cohesive. The conflict resolution method too required negotiation and compromise than legal jurisprudence and arbitrary sanction as the latter two are facing substantive decay in all spheres owing to the erosion of coercive power of state. Commitments to "property rights are not credible unless courts have independence and real power of judicial review" (Moustafa and Ginsberg, 2008:13). The resolution of conflict between tradition and modernity, between re-feudalizaiton of public sphere and democratization of public sphere and between peace and justice require vigorous process of social transformation of class, caste, territorial and ethnic identities into Nepali identity.

STATE FRAGILITY AND FRAGMENTED IDENTITIES

The Nepali state having sucked out by elites all around is now left bloodless, the bare bones, owned fully by no one except the Nepal Army and Nepali citizens but threatened often by various centrifugal forces to destroy its history, identity and status. Already National Day has been arbitrarily cancelled by the current establishment and historically evolved national symbols and icons have been contested by new elites as they have vowed to demolish the existing state through power capture, urban revolt, mass movement-III and declaration of people's republic to form a "new type of inclusive state" (Bhattarai, 2009). Overlooking the contribution of history for immediate geopolitical interest does not augur well for either democracy consolidation or nation-building. The vision of future springs from the achievements of the past and, therefore, citizens cannot be projected without any historical awareness of current situation. Nepalese leaders must learn that a strong push for the Westernization of Shaha of Iran and socialism by Marxist-Leninist president Nur Mohammad Taraki of Afghanistan illustrate terrible lesions of willfully ignoring local history, culture and religions. The resource to support the self-sufficient state is diminishing as the tax contributes only 12 percent to GDP and the public debt is swelling. The tax conflict between the state and private capital over the introduction of Value Added Tax (VAT) generated more distrust than increment of revenue collection although its causes are multiple including economic and political instability, weak tax administration and a lack of monitoring mechanism of public expenditure. "Efficient and effective tax administration is central to creating capable states, as well as economic development and good governance" (IDS, 2010: 75).

The CA election has engaged historically closed societies, institutionalized group rights and group boundaries of representation for ethnic, indigenous, Dalit, Madhesi, women, backward and other identities and unleashed the marvelous outburst of grassroots activism. These groups are encouraged to fight against the *fragile state*. Group rights can become unproblematic, like in South Africa, if it is confined to compensate the disadvantaged and does not undermine personal and human rights of individuals. But, massive aid packages of some donors to strengthen group-enclosed INGOs, civil society and NGOs have stabilized clients' networks in politics and encouraged sub-national associations of solidarity thereby weakening the authority and legitimacy of state. Major political parties are now battling in the CA to maintain the patronage character of Nepali *state caught already along the*

repugnant axis between federalism and unitary state, parliamentary and presidential system, integration of Maoist combatants before or after the promulgation of new constitution, prior use rights on resources and equality of opportunity, autonomy of judiciary and subordination to legislature, etc. New political parties of Madhesh and hills are inspired by a desire to democratize old parties and devolve power. In the wake of explosion of democratic consciousness only reform of institutions can constitute a democratic form of authority.

The CA has also legitimized contesting worldviews of major parties posing difficulty to establish a coherent rule of law, a workable social contract and resolve various conflicts through compromise, the ideal path to democracy (Meyer, 2007:34). *De-personalization of state power* is a precondition to strengthen public security, improve civil-military relations, protect human rights and strengthen law and order. An all-encompassing post-conflict reconstruction and nation-building can foster *constitutional patriotism* and moderate the angry protests of various group-enclosed social forces linked to pre-political and post-national values. In geo-strategic terms, such protests reflect the erosion of boundary between the state and society and a lack of autonomy of state from internal and international societies. It has dual effects: increasing loss of state's historically evolved international status and acceptability and impoverishment in the condition of life of ordinary citizens as globally mobile elites have monopolized the surplus of society in the name of opportunity. But, as they are driven more by technology than egalitarian ideal of democracy, they have lost affinity to geographically defined national societies.

Now, the state is besieged by *six-cornered conflicts*: between the Maoists and non-Maoist parties for power sharing arrangements and different approaches to state-building, democracy, development and peace; group-enclosed social movements of various sections of society demanding distributive justice, power and recognition to their identities; Madhesi parties demanding "one Madhesh, one province" and Tharus' opposition to it; 20 minority groups who are non-represented in the CA demanding voice and visibility; an un-adjustment of Rastriya Prajatantra Party-Nepal to newly-enforced consensus of old political classes with UCPN (Maoist) on secularism, republicanism and federal state and its plea for referendum on these issues; and 109 non-state armed actors, ethnic armies and militant youth wings of various political parties driven by reactive statelessness and engaged in competitive violent action against each other and against the state's monopoly of power.

The absence of bi-polar consensus between the 22-party coalition and opposition Maoists offers no immediate possibility for the formation of national government and the promulgation of full-fledged new constitution. In contrast, multi-party negotiations under High Level Political Mechanism (HLPM) have yielded more competition than collaboration for leadership in government. On May 28, 2010 three major parties—NC, CPN-UML and UCPN (Maoist) signed a three-point pact to facilitate the eighth amendment of Interim Constitution to extend the tenure of CA for one more year, implement all previous agreements, draft new constitution and durable peace as well as seek the resignation of Prime Minister at an appropriate time. This pact helped to avert the constitutional crisis but is not immune from a relapse into intractable positions as the pact does not stipulate the sequencing of reforms and time-frame for the conclusion of constitution-drafting and peace process. The ruling coalition has, however, forwarded a number of preconditions for the Maoists before the formation of national consensus government: integration and rehabilitation of Maoist combatants, return the seized property to rightful owners; dismantle the para-military wing of Young Communist League (YCL), transformation of UCPN (Maoist) into a civilian party and commitment to democratic constitution. The historical problem of Nepal's political culture is not the

lack of norms and constitution but a lack of constitutional behavior of powerful actors to democratic character of governing process.

Without confidence-building measures among key actors on power-sharing, integration and adjustment of Maoist combatants, general consensus on the principles of constitution as well as improvement in living conditions for the ordinary citizens including public security it would be difficult to isolate armed groups from society and increase the outreach of state. The disproportional social power stacked against the state has devitalized its capacity to create legitimate order and resolve multi-polar and multi-layered conflicts. *Irresolution of many contesting issues*, such as federalism, distribution of power between the center and federal states, integration of Maoist combatants, land reforms, prior use rights over land, water and forest, forms of governance, nature of parliament, economy, elections, judiciary, foreign policy, language for official transactions, etc have become drivers of conflict. Their lasting resolution require pluralist consensus, a consensus which is also a precondition to power-sharing, drafting new constitution in time and expedite the stalled peace process. Sound edifices of an effective state are a *sine qua non* for its responsiveness to citizens and win the confidence of international community.

The accommodation of fragmented identities of Nepalese people requires democratization of political parties, a strong doze of social justice in national life and the attachment of personal life of every citizen to political system through civic education and rational action. It is essential to develop necessary manpower to boost juddering economy especially in social production and satisfaction of basic needs. The declining trend in social expenditure indicates that the living standard of ordinary citizens is unlikely to be improved. This entails the virtuous role of state in modernization of agriculture which involves the prevention of land fragmentation, minimization of the cost of production, increased input facilities and access of agricultural and industrial products to market, circulation, exchange and resolution of the problems of scarcity.

CONCLUSION

Albert Einstein has rightly said: "We can't solve problems by using the same kind of thinking we used when we created them." A sound conflict resolution mechanism requires an efficient constitutional state capable of addressing the problems created by changing discourse, context, actors, rules and issues and overcome the security threat to global and regional order because of state weakness and fragility. In a post-conflict society like Nepal's, democracy can only release the potential for system integration and promise security and well-being for all if political situation is stabilized through electoral preference of citizens and constitutional mechanism and state institutions are consolidated in society (Bhatta, 2008: 116) beyond urban centers of power.

This means Nepalese leadership have to foster reconciliatory pragmatism rooted in *shared vision of the nation*, inspire each actor to enable the leviathan to implement monopoly of power, restore unitary legal order, find space for all citizens, promote goodwill with others and make the country governable. The studies of community forestry, irrigation and consumer association in Nepal have proved that heterogeneity of Nepali society has not posed a problem in collective action (Varughese and Ostrom, 2001) if rule-based system offers incentives for shared benefits. The changing nature of *multi-structural conflicts* requires the state leaders to adopt multi-track approaches for their resolution and bolster its supply-response capacity. Nepal's endorsement of human rights instruments, social charter, Kyoto protocol and gender

equality and structural condition of poverty promises a *social democratic state.* Strengthening the state capacity requires shoring up *national integrity system*, a coping mechanism of the driving forces of social transformation unleashed by critical masses, balance the precariousness of post-conflict situation with strengthening direct citizen-state relations and reducing elite capture of resources, tax evasion and escape detention through effective punishment for misdeeds. It also entails strengthening the coherence of governance to manage conflict residues and confront the past with reconciliation, restorative justice and establishment of all *institutional pillars of peace* underlined in the CPA.

The new driving forces of social transformation are: *democratic ideals*-- particularly social equality, inclusion and inter-generational and ecological justice; *patterns of political engagement*-- especially active voting participation, debates and dialogues about salient issues, non-violent protests and social movements to negotiating social contract, foundations for inclusive development, sustained peace building measures and transitional justice; democratization of the *nature of state institutions*-- particularly improved civil-military relations through right-sizing, professionalization and democratization of security agencies and demilitarization, civilianization and integration of armed groups in productive lives, discursive formation of laws, neutral jurisprudence, bureaucratic reforms, inner-party democracy, constructive role of civil society in forming rational identity, neutrality of educational, media and disciplinary institutions; and *inclusion of all the relevant concepts in a new road map* -- for getting to the final democratic arrangements of new constitution including the use of subsidiarity and humanitarian principles. Donor coordination in bridging governance gap between security and development policy under Paris Declaration on Aid Effectiveness and engaging those actors who support *endogenous post-conflict state building* measures are the ways to avoid unpredictable policy response. Donors' support to the implementation of peace agreement helps transform a culture of violence into a culture of peace based on rights, pluralism and recognition of various identities within the framework of national identity and common humanity. Now, conflict resolution has emerged as a major field of development discourse on state-building aiming to establish virtuous cycle of state-society relations, diminish potential for conflict and enable the leviathan to govern.

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