

Constitutional Options for Bahrain

III. Background Papers

6. Comparative Case Examples for Transition to Constitutional Monarchy¹

A. Introduction

In searching for a precedent for the constitutional reforms currently being pursued in Bahrain, we are fortunate that the past ten years have witnessed the transition of two countries from an absolute to a constitutional model of monarchy. Both Nepal and Bhutan underwent this change. Although each transition depended on a variety of unique factors, this paper will summarize the two situations, and draw lessons relevant to the situation in Bahrain. The final section will tentatively suggest policy recommendations for Bahrain, based on the positive and negative elements of the constitutional reforms in Nepal and Bhutan.

B. Nepal

i. Previous Attempts at Reform

A succession of hereditary monarchs ruled the small kingdom from unification in the late 18th century through 2008. Nepal's first attempts at democratic reform came in the late 1940s and early 1950s and coincided with pro-democracy movements around the world. In 1951, Nepal adopted a new constitution whose most noteworthy change was the creation of a governing cabinet, which replaced the former practice of the government being run by hereditary premiers. While new constitutions were also adopted in 1959 and 1962, the most significant reforms came when a new constitution was adopted in 1990. The 1990 document established a constitutional monarchy and created a multiparty democratic system of governance.²

ii. Civil War

The significant advances toward democracy that occurred following the adoption of the 1990 constitution came to an abrupt halt in the middle of that decade when the Communist Party of Nepal, led by Maoist extremists, began a violent campaign to replace the constitutional monarchy with a socialist People's Republic of Nepal. More than 12,000 people died (most at the hands of the government) during the ten-year civil war that ensued. The monarchy suffered a significant blow in 2001, when Crown Prince Dipendra massacred 9 members of the royal family with a machine gun, including King Birendra and Queen Aishwarya, before killing himself. Prince Gyanendra (Birendra's brother) inherited the throne. In 2005, King Gyanendra dissolved the parliament and imposed martial law, declaring that the actions were necessary in order to defeat the Maoist insurgency.

iii. Transition to and Introduction of the New Constitution—2006-2008

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² CONSTITUTION OF THE KINGDOM OF NEPAL, 9 Nov. 1990, *available at* http://www.nepaldemocracy.org/documents/national_laws/constitution1990.htm.

In April 2006, Nepalese citizens organized several weeks of massive strikes and street protests in response to the continued brutal martial law ordered by the king. After three weeks of violent and deadly protests, King Gyanendra issued a televised address in which he promised to restore democratic elections and declared that “Executive power of the kingdom of Nepal . . . shall from this day be returned to the people.”³ The return of sovereignty to the Nepalese citizens triggered a Comprehensive Peace Agreement between the government and the rebels and the promulgation of an interim constitution.⁴

The first nationwide elections under the interim constitution were held in April 2008, with the Maoists receiving a plurality of the votes. During its first meeting in May 2008, the Constituent Assembly voted to abolish the monarchy and declared Nepal to be a democratic republic.

iv. Ongoing Challenges

In June 2010 the Prime Minister resigned under pressure from the Maoists, although he remained in power until February of this year until a new coalition government could be formed and prime minister selected. Nepal has been operating under the interim constitution since 2006 and a new, permanent document is supposed to be completed by the end of May, but deadlock amongst the political parties has led many to doubt whether it will be finished on time. However, the inclusion of Maoists in the new prime minister’s cabinet is a sign of progress. Nevertheless, until the new constitution is adopted and disagreements over the fate of former Maoist soldiers are resolved, the peace process and democratic transition in Nepal are viewed as incomplete.

v. Analysis and Applicability to Bahrain

As with the situation in Bahrain, the constitutional transition in Nepal was brought about by external protests, which pressured the Royal family into constitutional changes. Unlike Nepal, where the protests were accompanied by a significant armed resistance, the Bahrain protesters – at the time of writing – are unarmed and generally do not have military training.

The Nepalese example also illustrates the importance of not rushing political and constitutional changes. A year and a half passed between the adoption of the interim constitution and the first nation-wide elections. Proper timing of the elections is important for the full flourishing of political parties. Economic considerations may also need to be factored in the transparency of the elections. At least some of the unrest in Nepal was economically motivated. Unlike Nepal, Bahrain has a high GDP per capita, although most wealth is concentrated within a small elite.⁵

C. Bhutan

i. Initial Political Reforms—1998-2001

³ *Nepal King Yields to Protestors*, BBC News (21 April 2006), http://news.bbc.co.uk/2/hi/south_asia/4931000.stm.

⁴ The 2007 Interim Constitution is available at http://www.worldstatesmen.org/Nepal_Interim_Constitution2007.pdf

⁵ Bahrain’s GDP per Capita as \$40,400 according to the CIA World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/ba.html>, which gives (2010 est.)

The first stage of the democratization process began in 1998, with the introduction of dramatic political reforms by King Jigme Singye Wangchuck. These initial reforms dissolved the government, created a new executive council of ministers, and transferred much of the king's executive power to this new council.⁶ Moreover, a procedure was created by which the King could be impeached by a two-thirds majority of the national assembly, thereby severely undercutting the prior absolutism of the monarchical regime.⁷ In 1999, the monarchy lifted a ban on both television broadcasting and the internet, thereby authorizing for the first time unprecedented freedom to produce, access, and distribute information from within the nation's borders.⁸ King Jigme Singye continued this trend of introducing political reforms from the platform of the monarchy by announcing, in 2001, the initiation of the drafting of a new constitution.⁹ This drafting period lasted from 2001 until 2005, during which time the document "underwent extensive public consultation" as a new constitutional order was being designed.¹⁰

ii. Transition to and Introduction of the New Constitution—2005

A completed draft of the new constitution was presented to the public in early 2005, at which point King Jigme Singye announced that it would be submitted to a popular referendum before officially going into force.¹¹ Perhaps more dramatically, it was at this point that the King announced that there would be a transition to a parliamentary democracy with a constitutional monarch.¹² Once again, the diminishment of the absolute power of the monarchy was handed down from the monarchy itself.

The draft of the new Bhutanese constitution enshrined in it extensive protection of basic political and civil rights. First and foremost, Article 1 of the new document described the Kingdom of Bhutan as a "Democratic Constitutional Monarchy," and established the basic principle that "Sovereign [political] power belongs to the *people* of Bhutan."¹³ The new constitution did create a set of expansive "emergency" powers for the monarchy, but also introduced several mechanisms in order to prevent the abuse of such broad emergency powers.

Legislative authority was to be divided between the king, the National Council, and the National Assembly; executive authority would rest primarily with the Prime Minister, who would be the leader of the winning party in the elections for the National Assembly; and judicial authority would ultimately rest with a newly established Supreme Court.

The Supreme Court was conceived as having a very active role in maintaining the rule of law under the new constitutional regime. In addition to abrogating the authority of the previously absolute monarchy, the new constitutional draft went on to enumerate certain "fundamental"

⁶ Nitasha Kaul, *Power to the People*, CSD BULLETIN, Summer 2008, at 1, 2.

⁷ Klaus Hofman, *Democratization from Above: The Case of Bhutan*, DEMOCRACY INTERNATIONAL (Apr. 1, 2006), <http://www.democracy-international.org/fileadmin/di/pdf/papers/di-bhutan.pdf>, 2.

⁸ *Id.*

⁹ Kaul, *supra* note 5, at 2.

¹⁰ *Id.*

¹¹ Hofman, *supra* note 6, at 2.

¹² Kaul, *supra* note 5, at 2.

¹³ Hofman, *supra* note 6, at 3 (emphasis added).

rights available to all Bhutanese citizens. The court system would have “the exclusive jurisdiction to enforce the Fundamental Rights”.

iii. Elections and Recent Political Developments

On December 14, 2005, King Jigme Singye abdicated the throne in favour of his son, King Jigme Khesar Namgyel Wangchuck. On March 24, 2008, the first functionally democratic parliamentary elections were held in Bhutan, in which 79.4 percent of registered voters participated.¹⁴ The newly-elected National Assembly was seated that May, and the new Constitution of Bhutan was formally enacted that July.

iv. Analysis and Applicability to Bahrain

Bhutan provides a rare example in which the monarchy itself was actively involved in the abrogation of its own absolutism. The simplest and most effective way to transition to a more democratic regime may be to have the King of Bahrain actively involved in the creation of a new constitutional order. Such a process would allow for a meaningful democratization of the country’s political regime, while at the same time preserving for the King a real and substantive role in shaping Bahrain’s political order. Spain provides a further example of such “top-down” democratization. Following Franco’s death in 1975, his appointed successor King Juan Carlos announced a transitional government and oversaw a process that culminated in national elections in 1977 and a new constitution that was approved by referendum in 1978.

The degree to which Bahrain may be able to achieve a similarly orderly transition to constitutional monarchy and reasonably democratic governance, however, may be limited. In the case of Bhutan, “[t]here were no elite pacts, no traces of regime disunity, no economic crisis, no international pressure and no popular mobilization for democratic rights. The elements that normally contribute to the decline and fall of authoritarian rulers were absent in Bhutan.”¹⁵ It is perhaps because of this lack of crisis or exigency that the monarchy was able to so fully participate in the slow transition from absolute to constitutional monarchical rule in Bhutan; by contrast, any transition to constitutional monarchy in Bahrain will necessarily occur against a backdrop of political upheaval throughout the Middle East and North Africa. The Bahraini monarchy, therefore, may not be able to afford the luxury of slow transition that so benefited the political transition in Bhutan.

D. Conclusions and Recommendations

1. Unlike Nepal, Bhutan’s constitutional revolution was top-down rather than bottom-up. It was initiated by the monarchy itself, in the absence of any particular external catalyst or crisis. To this extent, Bahrain more closely represents the situation in Nepal, where the changes were thrust upon an unwilling monarchy.
2. Cooperation with the monarchy in creating an orderly transition is therefore to be preferred. The Bhutan and Spain examples show that instead of forcing the Royal family

¹⁴ Kaul, *supra* note 5, at 1.

¹⁵ Mark Turner et al., *Democratization by Decree: The Case of Bhutan*, 18 DEMOCRATIZATION 184, 201.

into exile, it may be better to allow them to remain in a symbolic, but politically inert, role.

3. To this extent, the opposition agreement to hold talks with Crown Prince Salman bin Hamad Al-Khalifa is a positive development and should be encouraged.¹⁶
4. The examples of Nepal and Bhutan demonstrate the necessity of not rushing reforms. In both countries, a significant period elapsed between the downfall of the existing regimes and the democratic election of governments backed by permanent constitutions. Despite the pressures and expectations from protesters for instant change, democratic institutions in Bahrain may take some time to take route, and instability may result if this period is foreshortened.
5. To this extent, it is important that protesters' expectations be managed. If and when an agreement for transition is reached, a timetable should be published and promulgated, setting out when and how a new constitution will be drafted and ratified, and also giving dates for elections.
6. Other options include amending the 2002 Constitution to conform to a true democratic system of constitutional monarchy, and a transitional unity government with a defined timetable and program of constitutional reform.

Unlike Bhutan and Nepal, Bahrain is a country that possesses vast natural resources. This presents potential opportunities and pitfalls for any transition. On the one hand, Bahrain's assets are highly concentrated in the Royal Family – thus allowing entrenchment of their position of power. Conversely, the readiness to put assets behind reform may ease the shift to democracy, as any new democratic institutions will have significant resources at their disposal. Careful attention should be given to the participation of all Bahrainis in their country's wealth.

¹⁶ See Michael Birnbaum, *In Bahrain, opposition leader talks of compromise*, THE WASHINGTON POST (March 6, 2011), available at http://www.boston.com/news/world/middleeast/articles/2011/03/06/in_bahrain_opposition_leader_talks_of_compro_mise/.