

India's Founding Moment: The Constitution of a Most Surprising Democracy, by Madhav Khosla, (Cambridge, Massachusetts and London, England: Harvard University Press, 2020), xiv + 240 pp., hardback, £36.95, ISBN: 9780674980877.

Seventy years after its adoption, the Indian Constitution appears increasingly irrelevant in adjudication and governance, even as the country plunges deeper into democratic crisis. Attempts to remind the state of the basis of its existence—for instance, through mass recitations of the preamble during protests against amendments to the citizenship law—appear to fall on deaf ears. Viewed in this context, a return to the promises of the founding moment may offer respite, if not rescue, from the cynicism of the present. After decades of historical neglect, recent scholarship on Indian constitutional history approximates this return to origins through diverse perspectives: the search for lost histories, as in Arvind Elangovan's study of the constitutional advisor B.N. Rau (A. Elangovan, *Norms and Politics: Sir Benegal Narsing Rau in the Making of the Indian Constitution, 1935–50*, (Oxford: Oxford University Press, 2019)) and Aakash Singh Rathore's search for the author of the preamble (A. Singh Rathore, *Ambedkar's Preamble: A Secret History of the Constitution of India* (New Delhi: Penguin Random House, 2020)), revisionist accounts of political events, such as Tripurdaman Singh's, *Sixteen Stormy Days: The Story of the First Amendment of the Constitution of India* (New Delhi: Penguin Random House, 2020), and the recovery of subaltern agency, for instance in Rohit De's *A People's Constitution: The Everyday Life of Law in the Indian Republic* (Princeton, New Jersey: Princeton University Press, 2018). In *India's Founding Moment*, Madhav Khosla asks: how did the founders of modern India institute democratic self-government in the absence of its preconditions?

Indeed, the new republic was constituted amidst great odds—food scarcity following the famine of 1942–43, peasant rebellion in Telangana, post-Partition apportionment of bureaucratic, human, military, and natural resources, and relief and rehabilitation of refugees, the integration of over 500 princely states, and the enrollment of a largely illiterate electorate. A study of political thought on constitutionalism and democracy, the book argues that the Indian founders adopted a three-pronged apparatus, comprising codification, a centralised state, and individualisation of identity. “Founders” is broadly interpreted to include prominent members of the Constituent Assembly, nationalist leaders, and public intellectuals. The apparatus would “free Indians from prevailing types of knowledge and understanding ... place them in a realm of agency and deliberation that was appropriate to self-rule, and ... alter the relationship that they shared with one another” (p.4), and thus respond to the colonial notion that Indians were incapable of self-rule. The constitutional text was, therefore, a “textbook” (p.156) that would create new forms of reasoning and participation, and transform erstwhile subjects into democratic citizens.

The book begins by outlining the challenge of democratic self-government in an “inhospitable environment” (p.20), for Indians were “poor and illiterate; divided by caste, religion, and language; and burdened by centuries of tradition” (p.6).

While independence signaled a radical break from the imperial past, civic participation in democratic politics required the construction of common meanings. The grandness of its vision, Khosla suggests, should lead us to view the Indian founding moment “as the paradigmatic democratic experience of the twentieth century”, much like its American counterpart a century earlier (p.6).

Three chapters elucidate the apparatus of democratisation. Chapter 1 examines the founding impulse towards codification that resulted in one of the lengthiest constitutions in the world. Codification aimed to supply consensus on shared norms, and create new intersubjective meanings. State actors would be guided in constitutional interpretation by directive principles of state policy in matters of social and economic welfare, clear restrictions on fundamental rights, and procedural due process. The latter two would ensure a properly circumscribed sphere of judicial review. Thus, the codification of rights, principles, and process would fashion a “constitutional culture” that rejects modes of anarchy (pp.70–71). Here, the analysis focuses on two Parts (III and IV) of the Constitution, although much can be said about the remaining 23.

In Chapter 2, Khosla shows that the centralised location of power was resisted by a tradition of political pluralism, or “localism”. Localists such as Mohandas Karamchand Gandhi and Radhakamal Mukerjee believed that the village ought to be the unit of political activity. For others, including Jawaharlal Nehru and B.R. Ambedkar, only a strong centre could dismantle embedded structures of social exclusion and guide the nation towards modernisation. With Partition, the latter view triumphed and power was concentrated at the centre. Linking centralisation with democratisation, Khosla argues that this scheme places the individual at its heart, and thus “allow[s] natives to transcend their narrow fields of vision and coexist under a single authority, thereby plac[es] them in a different relationship with one another” (p.94). The Hobbesian idea of social contract, in which state and citizen are simultaneously constituted, underpins this chapter. However, the chapter does not discuss federalism that, in the decolonising world of the late 20th century, was a crucial alternative to localism and centrism for asserting claims of popular sovereignty. Indeed, the constitutional crisis of the 1940s, and resultant Partition, was caused by the failure of political parties to arrive at consensus on the nature of Indian federation. When read with the works of Karuna Mantena, Faisal Devji, and Adom Getachew, which indicate the multiplicity of political imaginaries of sovereignty in this period, the centralised state appears more deeply contested than suggested.

Chapter 3 argues that the founders reconceptualised representation to centre the individual over colonial-era group-based representation. With Partition, permanent markers of identity grew suspect, and communal representation was abolished. In response to claims for special safeguards voiced by several minorities, including Muslims, Sikhs, Anglo-Indians, lower castes, women, and tribal communities, the founders decided to adopt the concept of backwardness. Groups were identified on the basis of their backwardness, rather than discrete identity markers. Thus reconceptualised, individual-centric representation would liberate the individual from their oppressive group identity, and create instead a self-governing citizen. Majorities and minorities would remain fluid categories determined in the course of ordinary politics. This is a persuasive idea, but one cannot help but wonder if

the founders were uniformly ill-disposed towards *all* minority claims, or particularly opposed to those based on religion and gender.

The book concludes by inviting the reader to think in terms of the possibilities latent in practices of democratic politics, for the Indian Constitution creates both democratic and constitutional citizens. Constitutional citizens, Khosla argues, have the power to alter the fundamental terms of coexistence through rather flexible rules of amendment. The Indian founding is, in this sense, a leap of faith, and not an exercise in crude institutionalism.

India's Founding Moment is an elegantly argued, eminently readable book, replete with intriguing detail and insight. Khosla persuasively demonstrates the extraordinary achievement of Indian constitutionalism. The Indian founding represents a noble—yet, for its sheer scale, stupendous—attempt at reconfiguring the terms of political engagement between the state and citizen, and citizens *inter se*. It is indeed a significant achievement for the Constituent Assembly, representing merely a quarter of the population, to have created conditions of political action through, and popular belief in, the Constitution. As Khosla suggests, the fact that the Constitution continues to structure political claims is a testament to both the founders who wrote it, and the citizens who rewrote it from time to time. Moreover, the book's emphasis on ideas sets it apart from other constitutional histories. This methodological choice brings political theory and intellectual history into conversation with the Constitution, which promises exciting avenues of further study.

Two concerns persist. First, a clearer theoretical framing of “founding moment” and “founders” may have clarified their use. The former seems to align with Bruce Ackerman's idea of constitutional moments. Angelica Marie Bernal has most recently criticised political foundationalism as troubling for three reasons: it may inoculate the past from critical enquiry, sanction contemporary undemocratic politics, and obscure contingency and power contestations in constitutional production (A.M. Bernal, *Beyond Origins: Rethinking Founding in a Time of Constitutional Democracy* (Oxford: Oxford University Press, 2017), pp.3–4). Scholarship that echoes these concerns in the Indian context is not fully addressed. For instance, *contra* Khosla, Aditya Nigam rejects the idea that the Assembly was guided by any particular set of values, for framers were neither Habermasian disengaged subjects, nor united by a prior commonality of interests, but “embedded subjects” (A Nigam, “A Text Without Author: Locating Constituent Assembly as Event”, *Economic and Political Weekly*, 22 May 2004, pp.2112–2113). The book tends to elide intractable political conflict in the making of the Constitution. Since this work draws on political thought, it would also benefit the reader to have Khosla's perspective on constitutional choices as historically contingent.

Perhaps an extended temporal understanding of “founding moment” is vital in the Indian context, for the constitutional compact was significantly altered almost immediately after its adoption, and subsequent events indicate the fragility of the moment. A mere 15 months later, the same Assembly enacted the first amendment to consolidate state power and curtail judicial review. Prominent “founders” discussed in the book, such as Alladi Krishnaswamy Aiyar and the chief draftsman B.R. Ambedkar, grew increasingly disillusioned with what they considered negotiations of the constitutional compact by the ruling government. Aiyar would

fight the government in a significant case on the right to equality, whereas Ambedkar would resign from ministerial office in October 1951 and later decry, “[w]e built a temple for a god to come in and reside, but before the god could be installed, if the devil had taken possession of it, what else could we do except destroy the temple?” (B.R. Ambedkar, debate in Rajya Sabha on Constitution (4th Amendment) Bill, 19 March 1955, in *Writings and Speeches* (Dr Ambedkar Foundation, Ministry of Social Justice and Empowerment, Government of India, 2014), Vol.XV, p.949). How should these inconvenient truths be treated in a narrative of Indian founding, particularly the radicalness of its founders?

Secondly, the pedagogical intent of the Constitution implies a troubling relationship between state and citizen. The book’s core thesis is that the reconstitution of subjects as citizens requires a strong state with coercive powers (“a process [that] must necessarily involve the use of authority”, p.156). However, a contrary view of the citizen so reconstituted is possible. As Srirupa Roy argues, the corollary of a strong state, viewed as “the legitimate institutional authority under whose helpful guidance individuals could enjoy security, groups could enjoy freedom and recognition, and the nation as a whole could enjoy unity and stability” (S. Roy, *Beyond Belief: India and the Politics of Postcolonial Nationalism* (Durham, North Carolina: Duke University Press, 2007), p.7) is the “infantile citizen”, in constant need of state protection and tutelage (Roy, *Beyond Belief* (2007), p.20). If the infantile citizen must also be “anonymised” (p.141), it is difficult to agree with Khosla that “to be recognised by the state in abstract and impersonal terms was a form of equality” (p.140). World history, as well as the contemporary moment, shows that authoritarianism and majoritarian rule rest easily with abstract conceptions of citizenship. Further, the retention of colonial-era coercive powers of the state, such as preventive detention and emergency provisions, is not satisfactorily dealt with in the book. Since the “founding moment” here draws to a close by 1949, the book also does not engage with permanent regimes of unequal citizenship at the nation’s frontiers in Kashmir and the North East. Yet, the ease with which a strong centre sustains infantile citizenship through constitutional methods is an all-too familiar motif of our times.

These concerns aside, Khosla offers a new, thought-provoking reading of constitution-making in India as one imbued with the pedagogical aim of creating democratic citizenship. Constitutional scholars, as well as those unfamiliar with the Indian founding, will find it an accessible study of historical antecedents and design. While it is difficult to write a constitutional history that speaks from the margins to capture the contradictions of the founding moment, Khosla’s call for optimism is a radical intervention. The book is a timely reminder of the constructive possibilities of constitutional practice, and therefore, must be closely read—especially by the skeptic.

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