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BOOK REVIEWS

Nation and Family, Personal Law, Cultural Pluralism, and Gendered Citizenship in India. By Narendra Subramanian. Stanford: Stanford University Press, 2014. Pp. 377. $50.00 (cloth). ISBN: 9780804788786.

Examining the aftermath of the French Revolution on the law of succession, historian Gustave Aron rightly pointed out in 1901 that while "succession rules exert a profound influence over the political constitution of the People, it will *vice versa* so happen that changes regarding political constitution will result in transformation to inheritance rules."[1] The link between family law and the constitution of the nation-state was nonetheless all but ignored by a majority of jurists and political scientists for the better part of the twentieth century. Family law, especially when applied through a system of personal law, was left to colonial administrators and later historians of empire as a useful heuristic device to both understand and exert influence over populations under Western control. Following Savigny and Maine, personal laws were considered a remnant of "ancient" political and legal organizations, statuses that would naturally evolve to contracts, to paraphrase Maine's famous phrase, if a modern nation-state were to eventually appear and survive.

If towards the end of the twentieth century personal family laws were again a focus of attention at the behest of legal pluralists, the latter would soon move to more grandiose considerations about law in general, leaving the family as one example, among others, of state construction—or indeed deconstruction. The gap left by jurists was eventually filled by political scientists and philosophers who, noticing the growing tensions within Western societies between their migrant, indigenous, and sometimes national communities, started to conceptualize models of "multiculturalism," most notably in Canada with the seminal works of political philosophers Will Kymlicka and Charles Taylor.[2] It thus seems all but natural that another Canadian academic would further our knowledge of multiculturalism, reviving the long-lost link between family law—more specifically in the form of religious personal laws—and nation-state formation.

With *Nation and Family*, political scientist Narendra Subramanian begins with fairly typical interrogations regarding multiculturalist studies, identifying inherent tensions within a nation-state between group and personal autonomy, the idea of nation and citizenship within a multicultural society, and the debates between liberals and conservatives through the broader framework of alternative modernities. However, Subramanian takes these common tropes to relatively unchartered territories.

First, he adopts a truly comparative, albeit not all-encompassing, perspective in order to put forward a typology of how postcolonial nation-states legally translated religious cultural diversity through family laws, leading him to construct a model of the causes of such differences, while offering the possibility of an alternative idea of secularism to the traditionally Western post-Enlightenment concept. The case of India and analysis of the evolution of its three main religious personal law systems—Hindu, Muslim, and Christian—following independence, while constituting the center and bulk of the study, should be considered in relation to Subramanian's

1 Gustave Aron, "Etude sur les lois successorales de la Révolution depuis 1789 jusqu'à la promulgation du code civil," *Nouvelles Revue Historique de Droit Français et Étranger* 25 (1901): 444–45.

2 William Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995); Charles Taylor, *Multiculturalism and "The Politics of Recognition": An Essay*, ed. Amy Gutmann (Princeton: Princeton University Press, 1992).

aforementioned model. Though there have been many studies comparing India to other states, the breadth of comparison Subramanian undertakes is nonetheless uncommon, especially within contemporary history. *Nation and Family* can thus be included within the recent academic works on "global history," which overcomes the—mainly Orientalist—conception of the Subcontinent as a world of its own that has for the most part dominated South Asian religious studies (Robert Eric Frykenberg's recent history of Indian Christians is a prime example of an Indocentric approach[3]). On the contrary, without neglecting India's specificities—such as its majoritarian Hindu population, the issues surrounding caste and social mobility, as well as its commitment to democratic ideals—Subramanian does make a case in point to revisit India's nation building within a broader postcolonial context. The resulting dynamic is one in which the postcolonial context influences India's nation building and vice versa.

Secondly, Subramanian brings multiculturalism to the personal legal sphere. If the law-and-society tradition, particularly important in North America, has often emphasized the role law plays within politics of identity and indeed ideas of belonging and citizenship, multiculturalist studies have more often than not accentuated its territorial dimension over its personal one. Territory—sometimes the one a migrant is originally from—does play an important role in the incorporation of communities into a nation-state—as India has experienced in fashioning its federate states along linguistic lines or granting its tribal populations specific land rights. This territorial aspect of law is often treated in the literature within the realm of public law; however, postcolonial states have also had the particular challenge right from the outset to integrate inhabitants who were scattered across religious denominations inherited from colonial rule and whose family relations were governed by the personal laws of their respective religious affiliation. Despite being essentially a private-law matter, this personal-law system not only has significant public-policy repercussions—for instance on the allocation of resources upon inheritance, which may influence the economic model a state wishes to pursue—but also, and most importantly perhaps, may have an impact on the construction of a national identity governed in part by the principles laid down at its foundation, particularly its constitution. As such, personal laws, and hence the "family," can be at odds with the "nation" in terms of rights to equality, life, religious freedom, etc. As the jurist and statesman B. R. Ambedkar famously pointed out in regard to the promulgation of the Indian Constitution: "On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality."[4] In focusing on how the postcolonial states—in particular India—have managed this conundrum, Subramanian re-places family law at the core of nation-state building and offers the reader a theoretical model upon which to evaluate the latter's sustainability.

Through a careful analysis of a wide array of sources, including statutes, law reports, case law, and numerous interviews with important actors in the field, Subramanian organizes his study through six comprehensive, albeit dense, chapters. First, he presents the comparative dimension of his study of personal laws across multiple jurisdictions, along a long, wide geographic line extending from Morocco to Indonesia, and including Turkey and Iran. At the same time, Subramanian clarifies some all too common misconceptions of the "minority issue" in India, which tend to emphasize the lack of reform within "minority" Muslim personal law—compared to the reform carried out within "majoritarian" Hindu law—due to the conservatism of Muslim

3 Robert Eric Frykenberg, *Christianity in India: From Beginnings to the Present* (New York: Oxford University Press, 2010).

4 11 Constituent Assembly Debates (Proceedings) 11 (1949) (India), *available at* http://parliamentofindia.nic.in/ls/debates/vol11p11.htm.

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religious elites. In what emerges a common thread throughout the book, Subramanian points, on the contrary, to Islamic law's continuous evolution during the colonial era (especially at the beginning of the twentieth century), which was hampered by the British Raj's implementation of strict precedents to the detriment of *ijtihad* (legal interpretation). This misconception would endure after independence, this time under the influence of a certain nationalist Hindu agenda recycling colonial discourses on Islamic law. However, as Subramanian stresses throughout his study, if colonial legacies are important to understand the trends pertaining to the reforms of personal laws, they cannot alone be responsible for certain of their failures: it "limited the options available to regimes, but did not determine the precise choices made" (272).

In the second chapter, which forms the bulk of the study, Subramanian analyzes precisely how such choices came about. He puts forward a tripartite theoretical model: "state-society relations" consist of "social structures, the nature of state-society engagements under the predecessor regime, the coalitions that the regime or segments of the regime have and aim to build, and the projects of state elites to change state-society relations" (45); and "discourses of community" are developed through "mutual engagement" (58) between elites, the state, and social actors, in order to cement links between citizens among themselves and towards the state; these two explanatory variables interact with one another, in turn, to influence "nation formation, recognition and family law" (46; see also 59–70). Through this model, Subramanian convincingly explains the trajectories personal law reforms took in different countries, as well as their relative successes.

In the third and fourth chapters, Subramanian deals with the Indian case study with its Hindu component and analyzes the process by which the reform of Hindu law came to dominate early post-independent politics to the detriment of minority personal laws. As members of a previously colonized state, postcolonial elites were keen to build an Indian nation based on previously undervalued indigenous cultures while also adopting the modernist and gender equality goals entrenched in the constitution. However, the apparent contradiction between the two led the state to adopt strategies of cultural accommodation in order to ease one into the other. In doing so, Indian policy makers favored consolidation and reform of Hindu law, to the detriment of Muslim and Christian laws. Subramanian rightly points out that this was not from a lack of will for reform on the part of Muslim elites (as it is more often than not portrayed), but rather because Indian nationalists had, for the most part, bought into the colonial legacy equating Hinduism with indigenous culture (pushing Christians and Muslims towards a more transnational identity), while being sociologically more inclined to favor reform initiatives from Hindu activists. Unintentionally, this would pave the way for a Hindu nationalist discourse whose political proponents would benefit in the non-reform of minority laws in order to propose the enactment of a Hindu-influenced Uniform Civil Code. Even so, Subramanian points out that Hindu legal reform was not as progressive as often represented, though it was not entirely without merit in the rights afforded to women, contrary to what some have otherwise claimed. In fact, Subramanian observes that "neither the Hindu law legislation of the 1950s nor the personal-law reforms introduced thereafter were systematically driven by constitutional rights" (99), but rather were formulated in response to "traditions, initiatives, and practices of group members" (99), reflecting an interaction between state-society relations and community discourse which, in turn, influenced family law policy.

In the fifth chapter of his analysis, focusing on reforms to Muslim and Christian personal laws, Subramanian points to the different biases each community faced from mainly Hindu political elites, who were perceived as rejecting all idea of reform and reflecting a certain paternalistic viewpoint, respectively. Once more, such misconceptions go against the historical reality of reforms within these minority laws prior to independence and the call to pursue them thereafter. Only after the 1970s, with better organized political and social activism and faced with the prospect

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that the lack of reform would soon threaten the national cohesion, did some evolutions start to take place.

In his final chapter, while summing up the main findings of the study, Subramanian also proposes certain avenues for the pursuit of personal law reforms in India. As previously mentioned, the colonial legacy of the newly founded nation-sates did play a part in family law policy after independence. If non-colonized states such as Turkey and pre-Revolutionary Iran did not feel compelled to base their family law policy on indigenous culture and thus fell sway to a modernist discourse, nonetheless, their particular lack of interaction with "state-society relations," the first prong of Subramanian's tripartite model, has pushed them towards more conservative Islamic political forces and required military coups—not always successful as recent events have shown in Turkey—to sustain such reforms. On the other hand, a greater emphasis on social factors that do not interact with a community discourse can lead to a purely confessional legal system, soon to weaken the state to the point of civil war, as in Lebanon. India's emphasis on democratic ideals has perhaps inadvertently favored a Hindu majoritarian approach to family law reform, which in part through Hindu nationalist discourse but also through ignorance of the inner workings of minority laws, hampered "cultural pluralist" reform—that is, reform that does not favor one culture over another—which Subramanian suggests to achieve in light of the success of the Indonesian model.

Subramanian's overall argument in *Nation and Family* and the framework he offers is appealing in more ways than one. The model he proposes does effectively explain major political as well as social changes within postcolonial states after independence. Moreover, the choice to focus on a specific case, India, allows the detailed testing of such a model. It also means that the book can be used as a textbook for readers interested in Indian personal laws, who will find an impressive overview of their evolution through extensive references to case law. The density of this study does however have some inherent setbacks. Sweeping generalizations of other postcolonial states, which could not have possibly been analyzed in such detail as is India in this study, inevitably calls for more nuanced future examination in order to confirm or weaken Subramanian's model. Even within the Indian case, one would have sometimes wished for a more thorough critique of previous literature, which Subramanian tends to rapidly brush aside.

Furthermore, and keeping in mind that *Nation and Family* places itself within the realm of the law and society movement, the classically trained lawyer might feel some arguments wanting. Indeed, from a strictly legal perspective one may point out that given their respective colonial history, Muslim and Hindu personal laws did not have the same place within the colonial legal framework. If Hindu law was arguably a British creation on the basis of selective indigenous sources, Islamic law was already a set legal system that the British Raj tried to integrate or at least accommodate within English legal categories. Thus, without denying Subramanian's overall argument, there could also be specific internal legal reasons as to why Muslim personal law has been harder to centrally reform after independence.

Despite the study's comparative breadth, the reader may also be surprised to notice that, with a few exceptions, only Muslim-majority jurisdictions are used as points of comparison. One is thus left to wonder if the specific jurisprudential ethos of Islamic law has had a role to play within the accommodation (or non-accommodation) of other religious personal laws, and why Sub-Saharan Africa—especially East Africa, given its shared colonial legal past with the Subcontinent—is strangely absent from the study's comparative outlook.

Finally, one may regret the lack of comparison with Western jurisdictions, with the exception of passing remarks on France. As indicated by the words of Gustave Aron, the link between family law and nation building is not a purely postcolonial novelty but shares many references to Europe's early modern history. Even with an understandable focus on the modern and contemporary

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eras, if Subramanian is right not to overplay Western legal influence on the early years of independent India, it may be argued that from the 1970s onwards the Indian higher judiciary takes full part within the constitutional "revolution" encompassing many constitutional courts in the West. If the Basic Structure Doctrine or the essentiality test in regards to freedom of religion provisions did not trigger personal law reforms per se, they did create the legal environment upon which these reforms could be enacted.

However, these comments should not be regarded as critiques, but rather as a set of open invitations for academics to further test Subramanian's model in new jurisdictions, as well as to extend his analysis to other fields. Indeed, *Nation and Family* should not be considered as a definitive study but as a point of entry for future research on multiculturalism and, more broadly, law and society. As such, it already establishes itself as a seminal work one cannot and should not ignore.

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