Commencement of the Constitution.

5. The Draft Constitution has been prepared on the assumption that it will come into full operation on an "appointed day" after general elections have been held, the Senate constituted, and a Prime Minister appointed. Part II, relating to citizenship, will however come into operation on the promulgation of the Constitution because it will be needed for the compilation of electoral rolls. It should be noted that, before elections can be held to provide a House of Representatives as contemplated by this Draft Constitution, it will be necessary (a) to promulgate the Constitution, (b) to enact an electoral law, (c) to appoint Delimitation and Electoral Commissions, and (d) to prepare new electoral rolls. The Constitutional Commission is aware that much preparatory work has already been done, and it should be possible to hold elections beginning in February 1959, but only if expedition is shown in the completion of the formalities involved in promulgating this Constitution and enacting the electoral law, which is already in draft.

6. Certain other steps will, however, be needed to bring the Constitution into full operation. They include:

1. The making of Standing Orders for both Houses of Parliament;
2. The making of Regulations for Government Procedure;
3. The making of number of appointments;
4. The determination of emoluments for the persons who will assume office when Parliament begins to functions [sic].

Powers sufficient for this purpose are given to His Majesty by Article 77; and in case difficulties arise in the transition to the new Constitution the usual temporary power to remove them has been conferred on his Majesty by Article 79. It is appreciated that not all the existing laws can be modified before the "appointed day", and accordingly the "Pakistan Formula" has been used in Article 78. It will enable the Courts to apply the laws with necessary adaptations; but this is not an easy task for the Courts, and accordingly as many as possible of the laws should be adapted by Proclamation under that Article before the "appointed day". The Constitutional Commission has already arranged for the preparation of a draft to the Regulations referred to in (2) above.

The Constitution as fundamental law

7. The Constitution will be promulgated by His Majesty in accordance with the powers reserved by His [sic] in the Interim Government of Nepal Act, 2007, as amended. When promulgated, however, it becomes fundamental law in accordance with Article I, and can be amended (subject to the temporary power to remove difficulties in Article 79) only in the manner and form provided by Article 56; that is, any amendment will require the assent of His Majesty, the Senate and the House of Representatives; and, since it is not desirable that a mere temporary majority should have power to amend a written Constitution, the majority should have power to amend a written Constitution, the majority in the House of Representative must be two-thirds of the total number of members. All laws inconsistent with the Constitution, whether made before or after the "appointed day" will be—

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1 This probably refers to Jennings’ controversial argument used in Pakistan that the Crown’s prerogatives filled any constitutional vacuum. See Section H, p. 132, n. 12.
Government to meet any emergencies that may arise.

The Position of His Majesty

9. The succession of the Crown in accordance with the existing law is saved by clause (2) of Article 1, and clause (3) applied the Constitution to his Majesty's heirs and successors. Machinery for setting up a Regency, if it should prove necessary, is provided by Article 16, referred to below. Executive power is vested in His Majesty by Article 15, which also indicates in general terms (the details are to be found in other Articles) when that power should be exercised on recommendation and when in discretion—thus formulating the conventions operated in other constitutional monarchies. His Majesty will be in supreme command of His Majesty's force (Article 69), will confer pardons, reprieves, etc., on the recommendation of the responsible Minister (Article 70), and will confer titles and honors (Article 71). Article 72 gives the usual protection from suit, while allowing suits against His Majesty's Government.

Citizenship

10. Citizenship is usually covered by ordinary law. The existing citizenship law has, however, proved difficult to apply in the process of determining what persons were entitled to be enrolled as electors. There was already in draft a Citizenship law, amending and consolidating law. The main provision of that draft have been redrafted as constitutional provisions and inserted as Articles 2, 3, 5, and 6. As in usual [sic], Articles 2 and 5 combine the jus soli and the jus sanguinis; that is, a person born in Nepal, or a person born outside Nepal whose father was born in Nepal, is generally a citizen of Nepal, but in subsequent generations Nepalese citizenship is obtained only if the birth is registered with a prescribed Nepalese authority. The principle of Article 4, which confers citizenship on women marrying Nepalese citizens [sic], is less commonly accepted than it used to be; but it was felt that the close family relations of Nepal, and difficulties caused by an open frontier, made it desirable that husband and wife should have the same nationality. Article 5 is designed to cover those who had been registered or been naturalized as citizens under the existing law and those who, not being citizens by birth, descent or marriage under Articles 2, 3 and 4, might have claimed citizenship under the existing law; it applies particularly to persons of Nepalese origin whose families had emigrated or who had returned to Nepal. Article 6 contains the usual provisions, and Article 8 is incidental. Article 7 makes plain that citizenship law will remain under parliamentary control, as in most other countries. It will in fact be necessary to enact a new citizenship law in due course, especially to provide for citizenship by naturalization; but there are sufficient provisions in Part 11 to bring the constitution into operation without further legislation on the subject.

Civil liberties

11. In formulating the articles of Part III, use has been made of the NagarikAdhikarAin, 2012,2 the Constitution of India and the Constitution of Pakistan. Part II of this Constitution of Pakistan was drafted with the experience

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2 Civil Right Act
of India in mind; and it was thought that the use of comparatively simple general proposition, as in Pakistan, was more suited to the conditions of Nepal. It was thought, however, the process could be carried further and that the qualifying phrases of the several Pakistan Articles might be collected in a single provision in Article 14, which has been given the marginal note "Law and Order". This has enabled the Commission to produce five comparatively simple Articles, most of which could be easily explained even to illiterate citizens, and covering personal liberty, equality, religion, property, and political liberties. That all liberty is subject to the requirements of law and order and indeed cannot be made effective unless those requirements are satisfied is made plain by Article 14. Unlike those of the Interim Constitution, those civil liberties are limitations of the power of Parliament, and accordingly Acts of Parliament inconsistent with Part III of the Constitution are rendered invalid by clause (3) of Article 56. A special procedure for dealing with invalid laws in [sic] provided by Article 57, but this is additional to the ordinary legal remedies, which include the directions, orders and writs (including habeas corpus, etc.) provided by section II of the Supreme Court Ain.3

The Executive Government

12. Most of the provisions of Part IV contain the more or less standard formulae necessary to bring Cabinet Government into operation. The fact that Nepal is a Kingdom, however, and that no opportunity has yet arisen for the development of conventions, has made necessary a closer definition of position of the Crown in relation to the Cabinet and otherwise. It has been thought wise not to use the English term "advice" because, though familiar enough to those with experience of the British Constitutional system and its offspring both inside and outside the British Commonwealth, it was felt that, translated into Nepalese, and ready by those who had not had that experience, it might convey the idea of a discretion. A distinction has therefore been drawn between acts done by his Majesty 'in his discretion' particularly those of appointing a Prime Minister and refusing a dissolution of Parliament, and those done 'on the recommendation' of the Cabinet or a responsible Minister. Speaking generally, His Majesty would act on the recommendation of the Cabinet; but in certain cases in which it is customary for a constitutional monarch to act on the "advice" of a particular Minister, the "recommendation" of that Minister has been specified (e.g. the appointment of Cabinet ministers under the (sic) Article 18, the appointment of Senators under 24, and the grant of pardons, etc, under Article 70). The necessary definitions and consequential provisions are contained in Article 15. It would not be easy to go further in the direction of definition without losing flexibility. It is thought, however, that further guidance could be given to Ministers and other servants of the Crown, perhaps by illustration and example, by means of something like a "Manual of Procedure," adding to the Transaction of Business Rules used in most Cabinet systems. Provision has been made for that purpose in clause (2) of Article 21.

13. In accordance with Article 18, the prime Minister must be a person who, in His Majesty's opinion, can or will be able to command a majority in the House of representative. Normally he would be a member of that house; and where a party or a combination of parties has a majority, and also a recognized leader, no difficulty should arise. Where there is difficulty in finding a leader, however, it has in other countries sometimes been found convenient to appoint as Prime Minister a person in the second Chamber, or even outside, and this has been made possible by clause (3) of Article 18. In any event, the other Ministers will be appointed on the recommendation of the Prime Minister.

3 Ain means Act.
नया वर्ष २०७५ को
पावन अवसरमा सम्पूर्ण नेपालीहरूसमा
हार्दिक मंगलमय शुभकामनामा
व्यक्त गर्दैहुँ ।