

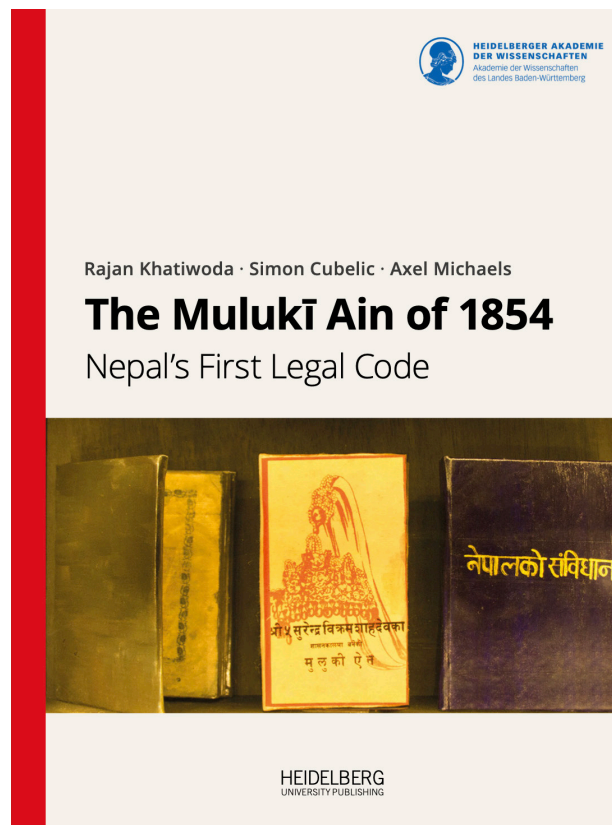
Book Review

## Review of *The Mulukī Ain of 1854: Nepal's First Legal Code* by Rajan Khatiwoda, Simon Cubelic, and Axel Michaels

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The Legal Code promulgated for the Kingdom of Nepal by Jang Bahadur Rana in Bikram Sambat 1910 must be one of the most fascinating texts produced in South Asia during the late pre-modern period. In the Introduction to this monumental study and translation, its aims are summarised as follows:

“Jaṅga Bahādura Rāṇā’s goal was to establish a national caste hierarchy for the multiplicity of Nepal’s ethno-cultural units, to bring about homogeneous legislation as well as a uniform system of administration, and, through such legal measures, control over remote areas and separate ethnic groups, to strengthen Rāṇā rule, to reinforce Hindu law in contrast to the British influence in India, and to point out that Nepal is ‘the only Hindu kingdom left in the Kali age’ where cows, women and Brahmins are especially protected. On an international level, the *Ain* served as a symbol that Nepal had joined ranks with the advanced nations which adopted constitutions and codified laws” (p. 3).

In the courses I taught on culture and conflict in Nepal during my years at SOAS in London, I usually dedicated a class to the *Muluki Ain* (MA), presenting it as the fundamental institutionalization of the caste, ethnic, and gender hierarchies under which Nepalis have struggled for political and social change for generations. My students found the topic fascinating - especially my Nepali students, who were often not previously aware of the *Ain*. Its legacy for contemporary Nepal is largely passed over in these pages, but is more than hinted at in the book’s frontispiece, which is a reproduction of a 2017 aquatint by Subas Tamang which features a portrait of Jang Bahadur Rana, a picture of porters carrying a Mercedes-Benz car into Nepal for their rulers, and a small portion of text from the *Ain* listing some of the ethnic groups that it designated as enslavable.

The *Ain* has received the attention of a number of scholars over the years. It was described and analyzed by András Höfer in his 1979 book *The Caste Hierarchy and the State in Nepal* and provides an important part of the basis for Richard Burghart’s seminal 1984 article ‘The emergence of the concept of the nation-state in Nepal’. Before this book appeared, only 36 of the *Ain*’s 165 (or 169) articles had been translated

into English, many of them only in part, by six translators: Fezas, Regmi, Mühlich, Michaels, Macdonald, and Gaborieau (the dominance of German and French scholars in the field of pre-modern Nepali textual studies is telling). Now the *Ain* is available in its entirety in this scholarly English translation - not only to those who can afford to buy it in hard copy (and have space on their bookshelves for it), but also to those who cannot: the entire book is available, free of charge and without access restrictions, as a downloadable pdf. This is almost incredibly generous.

Most of the book (pp. 83-854) is given over to a translation of the text of the MA. The rest consists of an Introduction (pp. 1-81), a Glossary, and a List of References. There is no Index, perhaps because such an item is redundant when a searchable pdf version of the book is so easily available.

*“However, as one turns the pages of the print version and reads the articles of the Ain one after the other in sequence, one ... understands something of what this extraordinary text, coming from a place and time so radically different from our own, was actually trying to do“.*

- Michael Hutt on *The Mulukī Ain of 1854*

The Introduction is both meticulous and illuminating. It begins by assessing the structure and sources of the *Ain*, with a particular focus on the extent to which it drew upon Dharmashastra texts. It then goes on to assess its content under seven thematic headings (state law and state formation; caste and family law; criminal law; compulsory labor and slavery; land and property rights; public, administrative, and fiscal law; procedural law and punishments) before considering its actual application. It resists the temptation to “approach the *Ain* as a decisive step in the emergence of the modern Nepalese state”, arguing that “In the *Ain*, it is legal modernity that is traditionalised, and not tradition that is modernised” (pp. 21-22). Thus, for instance, punishments for the various crimes do not depend wholly upon the nature of the crime itself, but are also related to the caste status of those who have committed them and those who have suffered their effects. Instead, the authors represent its promulgation as a “transitory moment”, at a time when the “locus of political

sovereignty” was ambiguous and there was as yet no “codified vocabulary of statehood” (p. 28). Insisting that the *Ain* “cannot simply be taken as strengthening the dictatorial power of the Rana regime”, the authors rebuke those who argue that the *Ain* was ignored by that regime, citing a number of documented 19th century cases in which it clearly was both cited and implemented, and arguing that scholars need to pay more attention to “the large corpora of documents available in private and public institutions of Kathmandu valley and beyond” (p. 77).

The text that is translated here had to be reconstructed from a number of different sources, largely because the *Ain* was first circulated in handwritten form, and the first printed edition did not appear until 1870-71, some 17 years after its promulgation. The primary text was one published by the Ministry of Law and Justice in 1965, based on an amended manuscript written around 1865-67 (it is stated in a footnote that the Nepali text of this version of the MA was published online by the Central Law Library, but unfortunately the link provided is no longer live). The text as translated also draws upon two manuscript versions of the Code held in the National Archives in Kathmandu, dating from 1855-61 and 1876, and one microfilmed by Michaels in Gorkha in 1983, plus two smaller manuscripts on specific topics.

The translators also consulted a number of major amendments to the *Ain*, drawing upon volumes published in 1870, 1888, 1935, and 1965. Thus, invaluable light is shed on the evolution of legal and political concepts and practices, as well as the ebbing and flowing of power across the decades which followed the initial promulgation of the *Ain*. For instance, the authority and immunity of the judiciary are eroded in 1870 as high-ranking government officials are elevated above the law; and in 1888 we see an erosion of the notion of divine kingship as the Ranas further usurp the king’s power. Variations between recensions are footnoted, as are successive amendments. The translation of the *Ain* is scholarly, precise, and highly sensitive to the fact that there are many Nepali terms for which no exact English equivalents exist. Instead of attempting to translate these, it therefore often preserves the original Nepali terms, for which it provides an explanation in the 17-page Glossary.

For instance, Article 45.5 begins, “If someone insults the *hākima* of an *adālata*...”. In the Glossary, *hākima* is defined as ‘Chief of an administrative unit, government office or court’ (p. 860) and *adālata* as ‘A law court at the district level or in frontier areas, superordinated to *ṭhānās* and *amālas*’ (p. 855).

There are a few tiny typos: ‘divine kinship’ on p. 19 should surely be ‘divine kingship’, and ‘child marriage or polygamy’ on p. 9 should be ‘child marriage and polygamy’. The hyper-correct rendering of Nepali names with the full panoply of diacritics (Jaṅga Bahādura Rāṅṅā) sits oddly alongside the colonial usage of ‘Nepalese’, and the Indological transliteration of words of Arabic or Perso-Arabic origin (*hākima*, *adālata*) also seems inappropriate: but these are perhaps questions of personal preference, in a context where exactitude is crucial.

This extraordinary book not only makes the *Ain* readable for those who do not know Nepali, but also for bilinguals who find the archaic language and terminology of the original Nepali text forbidding. To describe the text as ‘readable’ in an aesthetic sense would be to flatter its authors: this is a legal text, and much of it is necessarily repetitive because it must spell out the sanctions and punishments for particular crimes as they apply to each of the prescribed caste categories by turn. As an online resource, it will no doubt be used largely as a work of reference. However, as one turns the pages of the print version and reads the articles of the *Ain* one after the other in sequence, one begins to sense what Michaels refers to in his Preface as “the richness of life in Nepal in the mid-19th century - with all its social, religious and economic problems and conflicts”, and understands something of what this extraordinary text, coming from a place and time so radically different from our own, was actually trying to do.

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