GOVERNING DIVERSITY

Democratic Solutions in Multicultural Societies

Edited by Razmik Panossian, Bruce Berman and Anne Linscott

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Razmik Panossian, Bruce Berman and Anne Linscott

The politics of ethnicity and nationalism have occupied a central position in global social and political dynamics in the past 20 years — from the monumental collapse of the Soviet Union to the wars in the Balkans, from the civil wars in Africa to the possible break-up of Belgium. In Canada, these dynamics are expressed in the debates about multiculturalism, "reasonable accommodation," and Quebec-English Canada relations.

How to govern multi-ethnic, multi-national, and multi-religious polities remains a major challenge for political leaders and policy makers throughout the world. How to govern – and negotiate – such societies in a *democratic* manner is the subject of this book.

Most of the violent conflicts in the past two decades have been fought over ethno-national cleavages — Darfur, East Timor, Eritrea, Georgia, Kashmir, Rwanda, Sri Lanka, former Yugoslavia… the list is unfortunately longer. And yet, the "standard" development paradigms have failed to understand and cope with such societies that are deeply divided along ethno-national lines.

The traditional focus on socio-economic development as a solution to conflict misses the point. Indeed, the inequitable distribution of rapid economic development may even be a contributing source of ethnic conflicts. The more recent acknowledgement of good and democratic governance as central to development is a step in the right direction. But a piece of the puzzle is still missing: the crucial importance of addressing identity politics — that is, addressing issues related to ethnicity and nationalism. In the chapters that follow, various authors address issues related to this problematic, basing their arguments on democratic principles.

Each of these policy papers emanates from a much more extensive academic paper prepared in the context of the SSHRC-funded "Ethnicity and Democratic Governance" (EDG) research project

(the longer papers, along with references, can be found on www.edg-gde.ca). While we have decided to put the emphasis on the developing world in this book, the EDG project itself has emerged from and addresses issues relating to the increasing socio-cultural diversity that has emerged over the past quarter century of political and economic globalization.

For the social scientist and policy maker, understanding and acting on diversity issues requires comprehension of complex interactions between local, national and global factors. The unprecedented movement of peoples, particularly from the former colonial peripheries towards the centers of the developed world in Europe and North America, has generated sharper – and often violent – confrontations of cultural and religious differences, political identities and social integration. Migration within and between societies in both the "North" and the "South" adds to the increasingly complex mixing of peoples — from cosmopolitan world cities to refugee camps in conflict zones.

The Ethnicity and Democratic Governance program attempts to understand these issues within the context of the ongoing development of democratic and democratizing societies and their relations in the international system. This includes studies of the intimate details of cultural practice, religious belief, and ethnic identities; the institutional forms and practical policies of multicultural democratic states; the changing global structures of production and trade; the development of international standards and practices of individual and communal human rights; and the resolution of national and ethnic conflicts.

The policy papers presented in this volume are drawn from the first year of EDG's research (2006). They address many of the wide range of issues noted above. These include the global diffusion of multiculturalism as reality, concept and practice (Kymlicka), and the relationship between globalization, development and the political mobilization of ethnic communities (Berman). The international movement of peoples has reopened two crucial areas of controversy, notably the issue of integration vs. accommodation of ethnic communities in multicultural societies (McGarry and O'Leary); and the increasingly fraught relationship between secular nation-states and diverse ethno-religious communities (Bhargava and Emon).

In Asia, in particular, there has been a complex relationship between democratization and the treatment of national minorities in countries like Indonesia (Bertrand) and efforts, perhaps even within some non-democratic states, to develop hybrid forms of federal institutions to accommodate at least some minority demands (He). Democratization of multicultural societies also involves careful attention not only to the representative and electoral institutions of the state, but also to the crucial apparatus of administration in a representative and effective civil service that is the first line of contact between citizens and the government (Gagnon, Turgeon and De Champlain). Finally, at the

regional and international levels, there has been increasing attention to the protection of minority rights (Leuprecht) and to the role of international institutions such as the UN Security Council in the protection of human rights and resolution of violent ethnic conflicts (Boulden).

These brief policy papers provide analytic framework approaches to the issues that illuminate the policy choices available to govern diversity in democratic and democratizing societies. Traditional approaches – be they from a socio-economic development perspective or based on the paradigm of the nationalizing state – are no longer sufficient and have indeed backfired. The choices are rarely obvious or clear-cut, but demand careful and informed attention and a willingness to find imaginative and hybrid solutions in complex and often contentious circumstances. We hope these essays will provide some ideas in this direction, and help move the debate forward.

The Global Diffusion of Multiculturalism

Will Kymlicka

EXECUTIVE SUMMARY

While multiculturalism has faced a backlash in many Western democracies, particularly in Europe, it remains a popular idea at the international level, actively promoted by influential international organizations. On any given day of the year, somewhere in the world, an international organization is sponsoring a seminar or publishing a report intended to publicize the ideals and practices of multiculturalism. These activities often involve sharing knowledge about best practices in various countries, formulating norms and standards for the treatment of ethnic diversity, building transnational networks of experts and advocates, creating space for the safe expression of politically sensitive topics, and training local educators, bureaucrats, NGOs and media personnel in the challenges of accommodating a multiethnic and multicultural population.

Canada has played a vital role in this process of diffusing multiculturalism in at least two ways. First, Canada is widely viewed as a place where multiculturalism exists and works reasonably well, and hence as a potential source of best practices for other countries to emulate. Second, Canada has actively encouraged and financially supported multiculturalism promotion activities, on the grounds that diversity and tolerance are fundamental Canadian values worthy of "export." However, efforts to promote multiculturalism internationally have run into a number of dilemmas and difficulties.

Promoting fairer accommodation of ethnic diversity around the world is a legitimate goal of international organizations, and of Canadian foreign policy, but current efforts may be naïve, or worse — politically dangerous. This policy paper explains why the sort of multiculturalism that is most worth defending and diffusing internationally may be rather different from the sort that Canada is currently promoting.

BACKGROUND

For most of the period between 1945 and 1990, international organizations took little interest in the question of how states dealt with their ethnic minorities, and made few efforts to promote pro-minority policies in the field of education, language, citizenship, political participation, and so on. On the contrary, it was widely assumed that the key to successful development and state consolidation in the Global South was some form of centralizing and homogenizing "nation-building:" the various ethnic, linguistic, regional or religious identities within a state should be submerged and replaced with a larger pan-ethnic national identity. "Kill the tribe to build the nation" was a popular expression in many post-colonial African countries. International organizations actively encouraged this process by promoting policies of national development that replaced pre-existing forms of ethnic or regional autonomy in the field of education, law or property rights with strongly centralized models of nationhood.

> Ethnic minorities have often been able to take advantage of the neo-liberal shift of powers away from central governments, since groups that are excluded from power at the central level may nonetheless be able to effectively self-organize at the local level or in civil society associations. Indigenous peoples in Latin America, for example, who have historically been excluded from the central state, have been able to take control of local governments established under neo-liberal policies of state restructuring and decentralization

Since 1990, however, we have seen a dramatic shift in the attitudes of international organizations in a more "multicultural" or pro-minority direction. This shift is the result of several converging factors.

In part, it is an unintended byproduct of a broader international trend towards neo-liberalism, which seeks to shift power away from central states to lower levels of governments, civil society groups, and markets.

The main reason for the shift to multiculturalism, however, is the recognition that older models of nation-building simply have not worked. International organizations increasingly came to the view that "kill the tribe to build the nation" is simply not a politically viable or morally acceptable model of development.

THE FAILURE OF TRADITIONAL NATION-BUILDING

Forty years of attempts to "kill the tribe" in post-colonial states largely failed. Many post-colonial states remained deeply ethnically divided, and the inability of states to find constructive ways to deal with their ethnic diversity was clearly inhibiting efforts at development and democratization.

Moreover, the experience of post-communist Europe in the early 1990s showed that this was not a problem limited to Africa. When post-communist states attempted to impose a hegemonic

national identity on their minorities, the result was often an exacerbation rather than a reduction of ethnic divisions, leading in some cases to brutal civil wars, as have been witnessed in the Balkans and Caucasus. Around the world, the model of unitary and homogenous nation-building was failing, and there was a desperate search to find new models premised on accommodating rather than suppressing ethnic diversity.

At the same time that international organizations were becoming increasingly pessimistic about the viability of old nation-building models, they started to notice the apparent success of countries like Canada in developing more "multi-cultural" models of the state and society. Canada indeed offered a rich palette of pro-minority institutions and policies – whether in the form of bilingualism and federalism for francophones, land claims and self-government for Aboriginal peoples or multiculturalism for immigrant groups – without endangering its status as a peaceful and prosperous liberal democracy.

One can argue that Canadian multicultural policies have helped to deepen democracy. Historically, ethnocultural and religious diversity in Canada and other Western countries has been characterized by a range of illiberal and undemocratic relations — including relations of conqueror and conquered; colonizer and colonized; settler and indigenous; racialized and unmarked; normalized and deviant; orthodox and heretic; civilized and backward; ally and enemy; master and slave.

The task for all liberal democracies has been to turn this catalogue of uncivil relations into relationships of liberal-democratic citizenship, both between the members of minorities and the state, and amongst the members of different groups. I would argue that Canada's various diversity policies – for francophones, aboriginals and immigrants – have all been an important step in this direction.

These, and comparable pro-minority policies in other Western states, have been held up by international organizations as evidence that there is a multicultural alternative — one that makes room for peaceful and democratic ethnic politics, seeks to fairly accommodate the ethnic, linguistic and religious diversity of citizens within the state, and takes advantage of the cultural heritage, institutional capacities, and social capital that ethnic groups possess.

THE DILEMMA

For a variety of reasons, then, international organizations since the early 1990s have wanted to promote the message that there is a multicultural alternative. Unfortunately, this is easier said than done. What does it mean to promote multiculturalism, and what tools are available to the international community to do so?

Whenever international organizations seek to promote a good cause – from gender equality to AIDS prevention to environmental protection – the first strategy is invariably to publicize examples of "best practices," in the hope that these will inspire countries around the world to seek to emulate these success stories.

And so, not surprisingly, the first impulse of international organizations in the early 1990s was to commission a number of reports and manuals compiling examples of the successful accommodations of ethnic diversity, and then to organize workshops and training sessions to publicize these "inspiring" examples.

Unfortunately, this strategy has been an almost complete failure. Very few if any countries have been inspired to emulate these best practices — and for good reason.

In general, those countries (like Canada) that have successfully adopted policies of bilingualism, federalism or multiculturalism, were able to do so because of their fortunate circumstances: the preconditions for success were already present. In most developing countries, however, these preconditions are absent.

THE PRECONDITIONS FOR SUCCESSFUL MULTICULTURALISM

Consider the use of federalism as a tool to accommodate territorially-concentrated ethnonational groups, such as the French-majority province of Quebec and the Inuit-majority territory of Nunavut. This is widely – and, in my view, rightly – viewed as a success in Canada, enabling groups with a powerful substate national identity to govern themselves as part of a larger federal liberal-democratic constitutional order. But should we be encouraging other countries to adopt this approach? I would argue that the use of federalism to accommodate substate ethnonational groups is most likely to work if two conditions are met:

1. The rule of law and human rights protection must be firmly established, so that "internal minorities" within the self-governing region are confident that their individual human rights will be respected. For example, anglophones, aboriginals and allophones in Quebec have firm assurances that they will not be expelled, fired from their jobs, stripped of their property or citizenship, systematically harassed on the street, etc.
2. The self-governing national group must be an ally of the larger state on issues of geo-political security, and hence unlikely to collaborate with enemies of the state. For example, if Canada were to be invaded, we would expect Quebec not to collaborate with the invaders.

Where these two conditions are met, using federalism to enable self-government for ethnonational groups is a relatively low-risk move — it is not a threat to either individual rights or state security.

Unfortunately, in most parts of the world, these two conditions do not hold. Internal minorities in most countries have no confidence that their individual human rights will be respected by self-governing ethnonational groups (think of the fate of ethnic Serbs in Kosovo); nor do states have confidence that self-governing ethnonational groups will choose not to collaborate with neighbouring enemies (think of Estonia's reluctance to grant autonomy to its ethnic Russian minority, out of fear it would collaborate with Russia, one of Estonia's historic enemies).

In short, when human rights protections and geo-political security are absent,

it is unlikely that states will voluntarily adopt Canadian-style bilingual federalism, no matter how much this is promoted as a "best practice." Indeed, in the absence of these preconditions, adopting the Canadian model is unlikely to have the desired effects: it may serve not to deepen democracy but, rather, to exacerbate pre-existing relations of enmity and exclusion.

CANADIAN MULTICULTURAL SUCCESS RESTS ON GOOD LUCK AS WELL AS GOOD POLICY

The same can be said for other "best practices," such as Canada's multiculturalism policy for immigrant-origin ethnic groups, first adopted in 1971. Here again, this is widely and rightly viewed as a "success story," and hence promoted internationally as a model to inspire other countries with sizeable immigrant populations. But I would argue that Canada's success with multiculturalism is tied up with a number of rather unique and fortuitous circumstances:

1. It was initially demanded by well-integrated, white ethnic groups, such as the Ukrainians and Italians, who had been living in Canada for decades, if not generations. Canadians were there- fore already familiar and comfortable with the idea of multiculturalism by the time large numbers of non-European immigrants arrived in the 1980s.
2. It was part of a larger political bargain ("multiculturalism within a bilingual framework") that was intended primarily to accommodate Quebecois nationalism. Ethnic groups were able to take advantage of a larger power struggle between English and French, and bargain for multicultural recognition.
3. It is seen as benefiting legal immigrants who had been selected under a deliberate immigration policy, not illegal immigrants who entered Canada uninvited. The facts of Canadian geography have made it easy to control its borders, and hence to determine the nature and composition of its immigrant population.

Here again, these circumstances lowered the risks associated with adopting multiculturalism. In the absence of these conditions, it is unlikely that Canada would have adopted a multiculturalism policy, or that it would have taken root in the way it has.

On inspection, virtually all of the "best practices" identified by international organizations – from bilingualism in Finland, to cantonisation in Switzerland, to Maori treaty rights in New Zealand – turn out to be dependent on a number of fortunate circumstances and unique contingencies. And so publicizing these best practices without taking their context into account is almost inevitably doomed to fail. Most countries, particularly in the Global South, do not feel that they are in the same fortunate circumstances, and hence do not believe that adopting these policies will have the intended effects.

CONCLUSION

Does it follow that international organizations and specific countries such as Canada should abandon the promotion of multiculturalism? Not at all. Old models of centralized and homogenizing nation-building are unjust, and increasingly untenable, and we need to find viable multicultural alternatives. The international community has an important role to play in helping states find ways to respond constructively to the challenges of ethnic diversity. This is an issue on which Canada can play a leadership role, partly because of its wealth of experience with the issue, and partly because it is seen as having no external agenda in promoting values of tolerance and diversity. Yet, Canada needs to rethink our aims and strategies in promoting multiculturalism. Currently, the main strategy for diffusing multiculturalism is to publicize accounts of Canadian policies and institutions, often in an idealized and self-congratulatory way.

Given that Canada's policies have depended on a set of fortunate circumstances that do not exist in much of the world, we should not expect other countries to be inspired by the best of what we have achieved. Rather, we should be more modest, and think about what are the *minimal standards* that we can reasonably expect all states to meet in their treatment of ethnic minorities. Put differently, we should focus more on identifying minimum floors below which no state should fall, no matter what their circumstances, rather than focusing on the highest standards that have been achieved in the most fortunate circumstances.

The goals of the international Metropolis Canada project on immigration, or the international Forum of Federations, both partners of the Ethnicity and Democratic Governance Project, were largely established at the initiative of the Canadian government — in part to increase the international exposure of the 'Canadian model' of diversity.

POLICY IMPLICATIONS

There have been considerable efforts made at the international level in formulating legal norms and minimum standards of minority rights. There is, for example, the UN's 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; UNESCO's 2001 Universal Declaration on Cultural Diversity; the Organization of American States' 1997 draft Declaration on the Rights of Indigenous Peoples; and the series of Recommendations of the Organization for Security and Cooperation in Europe on the language, education and political rights of minorities, adopted between 1996 and 1999.

- Although these international organizations' documents establish only modest and minimal standards for states to comply with, identifying minimum standards is, in many ways, much more important for the global diffusion of multiculturalism than the trumpeting of "best practices" which may work only under fortunate circumstances.
- Many of these documents are in a state of legal limbo, and whether they come to play a constructive role will depend in part on whether countries like Canada actively champion them, and encourage their more active monitoring and implementation. Canada has, regrettably, been virtually absent in international debates on establishing and monitoring legal standards on minority rights, except to oppose the passing of the Draft Declaration on the Rights of Indigenous Peoples at the UN in 2006. Too often Canada has preferred to toot its own horn, publicizing its own practices; instead, it must think in a collective and collaborative way about advancing international standards.
- While minimum standards are an important first step, the long-term goal should be to encourage and enable countries to build up from the minimum floor, and to work towards more robust forms of multicultural democracy. For example, as human rights protection is strengthened, as democracy is consolidated, and as regional geo-political security is established, we can hope and expect states to move towards the highest standards and best practices of accommodating substate ethnonational groups, perhaps through Canadian-style forms of bilingualism and federalism.

- The best way to encourage this long-term development is to focus on the preconditions that enable multicultural democracies to emerge and flourish. It may be that the best way to encourage multiculturalism in South Asia or East Africa, for example, is to focus on building regional geo-political security – to develop the regional equivalents of the EU and NATO – so that minorities are no longer seen as fifth-columnists working for neighbouring enemies.
- In other contexts, democratic consolidation and the strengthening of domestic and international human rights protection will be the key precondition for enabling multiculturalism, by lowering the stakes involved in granting rights and powers to ethnic groups or regions. If people are confident that both the central state and self-governing minorities will respect human rights and democratic rules, then debates about the distribution of power and resources between centre and region are no longer matters of life and death. Once democracy and human rights are consolidated, citizens will know that, no matter how debates between states and minorities are ultimately resolved, they will not be subject to discrimination, persecution, harassment or expulsion. As a result, these debates become a matter of normal negotiation and bargaining, not a matter of existential threat.
- It is not, however, that we should *replace* concern with multiculturalism with concern for geo-political security or democratization and human rights, (the two policy implications addressed above) or even that we should *defer* multiculturalism until these conditions are in place. This might simply lead us back to traditional models of development based on centralized and homogenizing nation-building. Rather, we should address issues of regional security, democratization and human rights *in light of our concern for multiculturalism*. We should be asking what models of security, democratization and legal reform can help initiate and sustain a long-term process of multicultural reforms.

We are only at the first stages of thinking through these issues. And if we are to make progress, it will require rethinking the way we promote the Canadian model of diversity abroad. There is nothing wrong with occasionally trumpeting Canadian success stories. But the more important and challenging task is to think, at a global scale, about minimum standards of minority rights and about the preconditions of multicultural democracy.

Framing the Debate: Integration Versus Accommodation

John McGarry and Brendan O'Leary

EXECUTIVE SUMMARY

Democracies have two broad choices for managing diversity. They may construct a single public identity through "integration," the preferred approach of most democratic states and international organizations. Accommodation, by contrast, recognizes more than one public identity, has more support among large minority communities and is sometimes backed by states and international agents. Here we outline the main institutional repertoires of integrationists and accommodationists, and the debate between supporters of the two approaches. Of course, in the international political arena there is overlap between these approaches, making for "mixed" political systems.

INTEGRATIONISTS

Integration is blind to differences in public and accepting of differences in the private sphere. Integrationists believe conflict results from group-based partisanship. A discriminatory state alienates the excluded. Integrationists frown on ethnic political parties or civic associations, and praise parties such as the Republicans and Democrats in the U.S. that stand for non-ethnic or cross-ethnic agendas. They favour electoral systems that discourage the mobilization of cultural differences. They reject proportional electoral systems which facilitate segmental appeals, preferring winners to achieve majority or plurality broad-based support. Integrationists back executive systems that favour candidates who rise above religious, linguistic and ethnic "faction." They frown on the delegation of public-policy functions to minorities, oppose publicly funded religious school systems, and any form of non-territorial or territorial group-based autonomy.

There are, arguably, three types of integrationists:

- Republicans
- Liberals
- Socialists

Republican integrationists value the nation and promote integration as a prelude to assimilation, as in contemporary France and Turkey. Republican integrationists have an expansive view of what should be publicly homogenized. For example, they maintain a strong secularism (laicism) in which religious symbols and dress are banned from state schools. Republicans favour a centralized unitary state, majoritarian or winner-takes-all political institutions, and a monistic conception of national sovereignty. They reject federalism because it splinters the sovereignty of *the* people, and champion a nation-building executive: *either* a president, directly elected by the nation, a unifying and decisive figure, *or* a prime minister with the same traits, backed by a legislature chosen through a majoritarian procedure. They favour "national," meaning statewide, political parties over regional, ethnic or linguistic parties, and may legislate that parties be organized on a state-wide basis, as in Putin's Russia.

The institutional toolbox of Republican integrationists:

- A centralized unitary state
- A widely homogenized public sphere (e.g. no Muslim headscarves in public buildings)
- The pronounced use of schools and the military to promote a common identity
- Majoritarian executive institutions
- Mandatory statewide "national" political parties

Liberal integrationists champion the individual. They blame conflict in divided polities on partisan discrimination by the state, and on manipulative demagogues. They highlight individual equality and impartial meritocracy to prevent conflict. Liberals do not share republicans' faith in the unrestrained sovereign people, and favour restricting legislative action with a bill of individual rights, enforced by an independent judiciary. The liberal tradition, particularly strong in the United States, seeks to prevent tyranny by dividing, separating and checking power. It champions federation for its divisive power, but it emphatically rejects ethno-federalism, i.e. the drawing of political boundaries to enable ethnic minorities to become local majorities in federative units. That supposedly leads to local tyrannies of the majority and encourages secession. Instead, *national* federations, which aim for *mono* nation-building, are championed. In the American paradigm no (minority) nationality, religious or linguistic community controls a federal unit. In a related variant, where demography or geography render such design impossible, each significant minority is divided across several federative units rather than concentrated in a single unit.

Liberal integrationism informs "centripetalism," which advocates that national federations disperse power among as many federative units as possible, to prevent ethnic communities from becoming local majorities, and to divide ethnic communities across several units. The strategic goal is to weaken potentially hostile ethno-nationalisms by encouraging

intra-group divisions, and to encourage inter-group and hence state-wide solidarities. Centripetalists claim potentially tyrannical majority-rule institutions may be tempered through "vote-pooling" systems, which facilitate – or mandate – the election of moderate politicians with electoral appeals that cut across ethnic and religious lines. Two electoral systems are advocated. One relies on territorial distributive requirements, and is considered especially useful for presidential elections where ethnic communities are territorially clustered. The second is the "alternative vote," a preferential voting system. In a single-member district the winning candidate has to win an absolute majority of first-preference votes or a majority of votes after the transfer of lower-order preferences from eliminated candidates. It is held to encourage moderation and trans-ethnic voting as long as the constituencies are heterogeneous and no single group is in a majority.

The institutional toolbox of liberal integrationists (and centripetalists):

- A Bill of Rights outlawing discrimination against individuals
- A professional (impartial) judiciary and public sector
- Promotion of meritocracy
- Division of powers (within a non-ethnic federation)
- Separation of powers at the level of the central government
- Promotion of "vote-pooling" electoral systems, such as the Alternative Vote and Majority Vote, plus regional distributive requirements

Socialist integrationists advocate a strong welfare state, with redistribution and public investment in deprived areas to deal with the presumed "material basis" of ethnic and other collective identities. They are less likely than republicans to champion the "nation" as the key unit of social solidarity and less likely than liberals to value individualism. Distrusting the liberal emphasis on procedural or difference-blind approaches to inequalities, they have supported temporary affirmative-action programs, but most insist on universal programs that do not make any distinction along ethnic or racial lines. Leftist integrationists are sometimes distrustful of elites in general and believe bottom-up or mass-based collective action will solve national, ethnic, religious or linguistic conflicts. They call for ethnic, linguistic and religious elites to be challenged by civil society, particularly trade unions, civic associations, and political parties that cut across ethnic or religious communities. Socialist integrationists, like other integrationists, stress social mixing as a solution to conflict and for the promotion of solidarity.

The institutional toolbox of socialist integrationists:

- Redistribution through a strong welfare state
- Some socialists support affirmative action, others universal social programs
- Support for mass collective action through progressive groups in civil society
- Social mixing (though this is also supported by all integrationists)

ACCOMMODATIONISTS

Accommodation recognizes at least two public identities. Accommodationists see themselves as responsible realists, though some value diversity, per se, in the tradition of the German romantic philosopher Herder. While integrationists mostly believe that identities are malleable, fluid, soft or transformable, accommodationists think that – in certain contexts – they are resilient, durable and hard. Political prudence and morality requires considering the special interests, needs and fears of groups so that they regard the state as fit for them.

The main forms of accommodation are:

- Credible multiculturalism
- Consociation
- Territorial pluralism

Credible Multiculturalism must be distinguished from "western" multiculturalism, the variety practised toward immigrants in countries like Canada and the United States. Western multiculturalism encourages the gentle integration of immigrants into a (more inclusive) mainstream public and liberal culture, and *not* the long-term maintenance of multiple and separate cultures. Credible multiculturalism, by contrast, involves respect for a group's self-government in matters the group defines as important, e.g. public funding for minority-controlled schools that promote its religion and/or language, or support for religious minorities to be governed according to their own traditions with respect to marriage, divorce and inheritance. It involves some broad appreciation of the principle of proportional representation of all groups in key public institutions (not necessarily quotas but certainly public targets to create a representative and broad public sector).

> Western multiculturalism encourages gentle integration not long-term multiple cultures: these might be attained through "credible" multiculturalism means such as self governance in areas such as religious schooling, marriage, divorce and inheritance.

> *The institutional toolbox of credible multiculturalists*
>
> - Self-government for the group in issues of importance (e.g. minority-controlled public schools)
> - Commitment to a proportionally representative public sector

Consociation addresses deep antagonisms with two additional distinct devices. The key consociational tool is a cross-community power-sharing executive, in which representative elites from different communities *jointly* hold office (e.g. in Bosnia-Herzegovina and Northern Ireland). The second instrument, used in rigid consociations, amid high historic mistrust or antagonism, endows each partner to the consociation with veto rights, enabling them to prevent legislative or constitutional changes that threaten fundamental interests. Consociation also mandates the two features of credible multiculturalism, namely proportionality and community autonomy. Proportionality is commended throughout the critical components of the public sector, including the police service

and army. Proportional representation electoral systems are championed — or, where that is not practical, minority representation is assured through "set asides". Consociation is strongly associated with corporate, or non-territorial autonomy (e.g. separate personal laws on marriage and inheritance, separate schooling and university systems, and separate publicly-funded media), but consociational autonomy may take a territorial form, though that is distinctly characteristic of territorial pluralism in federations or union states (discussed below). Consociation mandates public support for the maintenance of diverse communities, unlike western or pseudo-multiculturalism.

Consociations can be undemocratic or democratic, formal or informal, liberal or corporate. Communist Yugoslavia was an undemocratic consociation. A communist elite from each group controlled the government but was not democratically representative of the respective nationalities. A democratic consociation has open elections among competing elites but permits some elites from each sizable community representation in the executive. A formal consociation is entrenched by way of constitutional or statutory law (e.g. Northern Ireland's executive after 1998), while an informal consociation is a matter of convention (e.g. Switzerland's collective presidency). A corporate consociation accommodates groups according to fixed criteria, such as ethnicity or religion or mother tongue (e.g. Lebanon), whereas a liberal consociation rewards whatever salient political identities emerge in democratic elections (e.g. South Africa, 1994-96).

The institutional toolbox of consociationalists:

- Executive power-sharing among all sizable communities
- Proportionality throughout the public sector
- Community self-government (corporate or territorial)
- Minority vetoes (in some cases)

Applications of Integration

Integration is the dominant conflict-regulation strategy in the longer established democracies. It is more likely to be supported by dominant communities (e.g. the Arabs of Iraq), or rather small minorities, such as immigrant communities or minorities that have left their ancestral territory for a new homeland (e.g. the Turkomen of Iraq), or indigenous members of communities living on their ancestral homeland but interspersed among the majority population (e.g. the Christians of Iraq). In the United States, African Americans broadly support integration because of their previous status as slaves and their current status as a dispersed minority historically subject to racial mistreatment. Conspicuously absent from the list of groups that support integration are normally large minorities, especially territorially concentrated and nationally mobilized communities.

Territorial pluralism. Compact communities (in which a minority is located within a single geographical area) may be managed through territorial pluralism, either in a pluralist federation or in a pluralist union state. A pluralist federation has internal boundaries which respect minority communities' self-determination. A federation in which all, or virtually all, of a minority is converted into a self-governing majority within its own single federal unit, as in Canada or Belgium, is unambiguously pluralist. Federations may also be pluralist, even if minorities are divided across several units, provided that they are majorities in some of these units and that this pattern developed organically (as in the case of Switzerland) rather than being imposed without the minority's consent (as in Nigeria).

> Internal boundaries such as a federal unit (e.g. the province of Quebec in Canada) allow minorities to be self-governing within a geographical territory — territorial pluralism.
>
> Full pluralist federation would mean that this self-governance was constitutionally recognized and entrenched, and that there is significant consensual decision-making at the federal level.

Full pluralist federations have three complementary arrangements: (i) significant *and* constitutionally entrenched autonomy for the federative entities; (ii) consensual, indeed consociational, rather than majoritarian decision-making within the federal government; and (iii) constitutional recognition of each of the multi-national partners. A plurinational federation may also permit asymmetric institutional arrangements, where the federal unit belonging to the minority nation has more autonomy than units representing regional components of the majority nation. There are few fully pluralist federations in existence. Iraq is one on paper, but its future is decidedly uncertain.

"Union states" (e.g. the UK, Spain and Denmark) recognize historic nationalities and their boundaries, but jurist and constitutional tradition privilege a centralized sovereignty and treat autonomy as a rescindable gift of the central political institutions. Yet, the state is a composite which respects historically incorporated territories and grants them extensive autonomy and, indeed, national recognition. India, arguably, is similar: it officially calls itself a union state rather than a federation. In federations, institutions of self-government exist across the whole state. In union states, they may exist across only part of the state, parts inhabited by national minorities. The United Kingdom has home-rule parliaments in Northern Ireland and Scotland, but the Westminster parliament is the sole parliament for England and the sole parliament entitled to pass primary statutes for Wales. When the autonomy of such asymmetrically self-governing regions is constitutionally entrenched in a union-state, we have "a federacy".

The institutional toolbox of territorial pluralists:

- Extensive and collective territorial self-government for minorities within a federation or union state
- Power-sharing within federal or central governments in the case of sizable minorities
- Plurinational recognition within the state's constitution
- In some cases, a more extensive (asymmetrical) self-governance for minority regions

THE DEBATE BETWEEN ACCOMMODATION AND INTEGRATION

The vigorous debate that has waged between the two approaches of accommodation and integration has focused on three fundamental sets of values — stability, justice, and democracy.

Stability: Integrationists believe accommodation increases instability. They think minority group leaders have an interest in maintaining division, and also that the accommodation of some groups will exclude others. Lebanon's civil war between 1975 and 1989 is blamed by some on the exclusion of the Shia and Druze, and the privileged treatment of Maronite Christians and Sunni, while the break-up of the Soviet Union, Yugoslavia, and Czechoslovakia, is blamed on pluralist territorial design. Integrationists claim that consociation is based on the implausible assumption that elites, including radical elites, will cooperate. Proportional electoral systems are thought to facilitate the "outbidding" of moderate politicians by hardliners *within* ethnic communities because they allow multiple ethnic parties to compete without threatening the community's share of seats. Integrationists maintain successful consociations are "as rare as the arctic rose" and that pluralist federations, likewise, have a terrible track record with many failing to remain democratic or stay together. Integration is seen as more feasible because they believe that ethnic identities are seldom as long-standing or as deep as supporters of accommodation suggest. Even when ethnic identities are deep, some integrationists argue that integration can still be promoted with outside help.

Accommodationists respond by arguing that promoting integration amid deep diversity provokes conflict. Minority communities in response to integration will seek public redress, subsidies, the institutionalization of their culture in the curriculum, political autonomy or power-sharing. Accommodationists believe leaders in polarized polities may agree to consociational or pluralist territorial settlements but not to integrative (or centripetal) institutions, precisely because consociations and territorial pluralist arrangements guarantee such leaders – and their peoples – a share in power. Radical ethnic elites are particularly likely to resist integrationist impositions. Supporters of accommodation or consociation argue, in our view correctly, that proportionality norms enhance stability because they better match the rival parties' respective bargaining strengths and their conceptions of distributive justice. As a result, there is less need for external actors to play a

coercive role in maintaining accommodation. Accommodationists believe that voters in deeply divided places will be reluctant to place their faith in moderate political parties even if the electoral system is rigged in such a way that only such parties can win office. They are likely to prefer their authentic ethnic representatives, including radicals.

Fairness/Justice: Integrationists claim that recognition and public power for a group may lead it to repress its own members, as happens among religious communities that discriminate against women. They argue such arrangements privilege the identity of members of some groups over other groups, *either* other ethnic groups, bridging groups that stress class or gender *or* those who belong to no group. Critics of consociation point to arrangements in which certain communities are privileged, i.e. to corporate consociations, such as in Bosnia-Herzegovina and Lebanon. Critics of territorial pluralism claim that such arrangements lead to the unfair treatment of *regional* minorities. Americans are particularly likely to make such arguments, recalling how southern whites used federal institutions to maintain slavery and then the "Jim Crow" segregationist regime. Since group rights promote privilege, integrationists argue that individual rights provide sufficient protection to all.

Accommodationists respond that integrationist rhetoric frequently hides dominant interests beneath veneers of neutrality or impartiality. It is no accident that dominant communities generally champion integration while minorities generally prefer accommodation.

Privatizing culture, accommodationists argue, is inherently biased against weaker cultures. A single official language and single national identity usually favour the language and identity of the state's dominant community. The same holds for integrationist prescriptions for state design. Unitary states and national federations will favour dominant communities, as will majoritarian executives and public sectors with difference-blind composition rules. In other words, integration is often merely assimilation with good manners. Some multiculturalists insist integrationism is a form of western liberal colonialism.

Applications of accommodation

Accommodation is less popular with state elites than integration, but is becoming more widespread. Spain, Belgium, the United Kingdom, Italy and even France have moved toward systems that accommodate minorities through autonomy, through pluralist federations, devolution within union states and federacies. States, and international organizations like NATO, the UN and OSCE have been prepared to back, or impose, consociation, pluralist federations, and federacies in situations of conflict and ethnic polarization, including in Northern Ireland, Bosnia-Herzegovina, Iraq, Burundi, and, abortively, in Cyprus.

Liberal accommodationists argue that properly constructed pluralist territories or consociations do not require the privileging of particular communities. Many

minority communities have civic rather than ethnic national identities, which they are more likely to develop when in secure possession of their own territorial units of government. Quebec, Catalonia, Scotland and Kurdistan are examples. Liberal consociationalists insist that consociational institutions may be liberal: i.e., they may reward any party with electoral support, rather than entrenched groups.

Democracy: Integrationists believe that accommodationists undermine democracy. Republicans think that federations, national or pluralist, are "demos-constraining," that they interfere with the general will and regard consociations as the surrender of public power to interest groups. Liberals condemn the anti-competitive nature of consociational politics. Their position is one that asks if everyone is in government how can governing parties be held to account at election time, and how can government be changed? Other critics focus on the consociational practice of negotiations and accommodation among elites. They see such "summit diplomacy" as inconsistent with the development of a modern participatory democracy.

Accommodationists respond that majority rule in divided places is partisan rule, even when padded with integrationist safety mechanisms. Integrationist institutions, in any case, often produce plurality or minority rule rather than majority rule, something which cannot happen when elections and government composition are based on proportionality. Consociations do not require all parties to be in government, just parties that represent at least a plurality of each sizable community, and therefore they are compatible with opposition politics. Voters are free in democratic consociations to change the composition of government (consistent with the maintenance of power-sharing), and consociational institutions can foster a competitive politics, with incentives for all parties to compete, within or across ethnic groups, to increase their share of legislative and executive positions.

CONCLUSION

The fact that integration and accommodation are more feasible in some contexts but not in others helps to explain why both strategies are adopted by democratic states, acting singly or jointly and indeed why states may combine one approach to one group, with another approach to another group. States are more pragmatic than academics. Many states follow integrationist policies for immigrants and accommodationist policies toward nationally mobilized communities. The international community, which usually preaches integration, has sometimes backed accommodation where that has been demanded, if only, unfortunately, after rebellion.

States are by disposition integrationist or assimilationist. While we agree that integration may be appropriate in some contexts, it is likely to fail in other contexts where accommodation should be the preferred option. Governments sometimes come to the same conclusion, but because of realpolitik rather than from a commitment to the flowering of diversity — though one can expect that language to flourish after a realistic breakthrough.

POLICY IMPLICATIONS

Both integration and accommodation have empirical and normative merit in particular demographic and historic contexts.

Integration may be a feasible and desirable strategy when:

- Minorities are numerically small, interspersed among others and well disposed to the strategy. Usually, small minorities can not realistically aspire to public recognition through territorial autonomy or consociation; and dispersed groups find it more difficult to mobilize to defend their culture.
- The minorities involved are not "homeland peoples," i.e. they are not living on what they regard as their ancestral territories. Such immigrant minorities, especially if dispersed, are less likely to see themselves as *national* communities entitled to some form of autonomy.
- Social divisions within a state are cross-cutting rather than reinforcing, assuming that each division is of roughly equal potential salience. Differently put, integration is more likely to take place when societies are not deeply polarized along national, ethnic, religious or linguistic lines, and when ethnicity, class and other social cleavages are incongruent (i.e. when there is already extensive heterogeneity, hybridity and mixing). This logic explains why integration has had some success in places like India and Switzerland where linguistic and religious divisions (and in the former case, tribal and caste) divisions have overlapped and cross-cut each other.
- The state is comprised of many ethnic communities, with none dominant. In these circumstances, a genuinely composite public identity then becomes possible, as has arguably happened in mainland Tanzania.

Integration is less feasible or desirable when:

- Immigrants have a religion which mandates sacralizing the public domain, and have difficulty accepting an allegedly neutral (secular) public domain or one associated with another religious community.
- The immigrants are diasporas, which by definition maintain links with their homeland, and therefore resist both assimilation and integration.
- The immigrants in question possess advanced levels of education. "High" cultures make it easier for immigrants to maintain their culture of origin.
- The state and its dominant community are not willing to accept the partial privatization of the dominant culture or to accept new members into the political community.

Accommodation strategies are feasible and desirable where:

- Minorities are large and territorially concentrated, and particularly when they are mobilized as national communities. Even small territorially compact minorities may aspire to territorial self-government, as is true of some native Corsicans, Canada's native communities and Moldova's Gagauz.
- Politics are deeply polarized along national, ethnic or communal lines, i.e when divisions are congruent rather than cross-cutting, or when one division is significantly more salient than others.
- Minorities possess the political resources to resist integration. Large territorially concentrated minorities may demand consociation as well as territorial pluralism — and cross-border relations with their co-nationals or co-ethnics in other states. Small interspersed minorities may be able to insist on consociation if they have bargaining power. Burundi's Tutsi community, which fears retribution by the sizable Hutu majority, and has disproportionate strength in the armed forces, rejects a majoritarian government based on equal citizenship.

Ethnic Politics, Democracy and Globalization

Bruce Berman

EXECUTIVE SUMMARY

In the 1960s and 1970s, experts on "developing nations" believed that ethnic identities and communities in non-Western societies were primitive and atavistic, sentiments that would disappear with the inevitable advance of modernity. Instead, they would be replaced by the wider solidarities of nations or classes. Since then, however, the issue of ethnicity has become a global issue shaping social relations and politics within and between nearly all nation-states. For students of international development, regardless of their theoretical or political orientations, this was an unexpected and, indeed, shocking development. By the 1990s, it was clear that rapid globalization was accompanied not by an emerging 'global village' of a world culture, but by the discordant and aggressive assertion of cultural difference.

How then can we understand this apparent "anomaly" of human development, this paradox known as globalization? Recent research has revealed the increasing emphasis on cultural difference, and the lapse into divisive ethnic identities, ethnic politics and ethnic conflict to be (at least in part) historically modern phenomena that have developed in the West and in non-Western societies, since the 18th century, as part of a complex response to the rise of modern secular industrial society and national states. Ethnic identities and communities are debated, negotiated and contested, both internally and externally, making use of cultural elements from the past, borrowed from other groups, or newly invented. Ethnicities are always contemporary and in flux.

TRADITION VS. MODERNITY

Ethnic politicization in non-Western societies has helped to clarify the distinction between so-called traditional and modern societies, and show how "modernity" in the West represented a dramatic cultural and institutional break with earlier patterns of social development.

In pre-modern "traditional" societies, the production and distribution of wealth was largely legitimated by principles of reciprocity and redistribution within the social hierarchy, in order to meet wider needs of material and social security in the community. Relations between rulers and subjects were based on *personal ties* of mutual trust and loyalty, somewhat like and extending from the kin-ship patterns in patriarchal extended families.

Such *patron and client* relationships came to play in a myriad of variations from the most informal of social ties to highly elaborated and formal systems of ranks and reciprocal obligations between superiors and subordinates. Elders and chiefs, kings, and even emperors all exercised power that was authoritarian, but also paternal and patriarchal.

"Religion" as a spiritual realm, separate from profane material reality, is a distinctive Western historical experience and cultural concept. It emerged out of a unique historical development of "church and state" as separate, sacred and secular hierarchies of power, increasingly in competition. The politico-religious schisms of the Reformation and bloody conflicts which followed propelled a unique European separation not only of church and state as institutions, but of the sacred and secular in the social and material world as well.

No cultural, social or political distinction was made between the spheres of politics and economics as distinct social arenas of conflict resolution and authoritative value allocation, or for the allocation of labour, resources and the distribution of material production. Equally important, no distinction was made between religion and politics: the sacred and the secular were combined in one reality, and the realm of the sacred infused and legitimated political authority.

Modernity represents a radical break from traditional societies in its separation of the sacred from politics and material reality, and in its construction of the world based on rationality, science and human agency. This entailed a radical secularization of nature and society through the systematic development of rational knowledge and its instrumental application. Rather than the result of divine will or necessity, events were now seen to be the outcome, although often unforeseen and unin-tended, of human agency and choice.

The calculation and management of risk through the application of specialized knowledge, reflexive self-monitoring of actions and consequences, and systematic surveillance of nature and society has been the basis of expanding agency and control in both capitalist enterprise and the state.

The second crucial break between modernity and tradition is in the separation between its most important institutional forms, the capitalist "self-regulating"

market and the bureaucratic nation-state. Traditional social relations were overthrown by the separation of political power from the control of production and allocation of wealth, now contained in ostensibly separate institutional spheres.

THE GREAT TRANSFORMATION: CAPITALISM AND THE NATION STATE

The "great transformation" was the momentous rise of industrial capitalism through the creation of a self-regulating market in Britain, analyzed by Hungarian intellectual, Karl Polanyi, in his classic 1944 study of the same name. The two central institutions of capitalist modernity – the market and the national state – interacted in what he called the "double movement." The first part was a deliberate "disembedding" of the market from other social institutions and state intervention to create freely fluctuating factor markets for land, labour and capital. Instead of production and distribution being allocated by custom and social hierarchy, social relations were now embedded in the economic system and allocated by market exchange.

In early industrialization, society became an accessory of the market with disastrous social consequences. Social conditions under the industrial revolution became what Polanyi termed "a veritable abyss of human degradation" with unparalleled poverty, urban squalor, disease and insecurity. Even capitalists were disoriented by the wild instability of the market and competition that created fewer and fewer winners and threatened the very existence of more and more losers. The industrial revolution destroyed customary social institutions and their moral economy.

The second part of the double movement was a spontaneous reaction to protect nature and humanity from the ravages of the "free" market. Market dogma had been pressed by market liberals and apostles of laissez-faire to legitimate the self-regulating market's distribution of wealth, but their cold and ruthless logic provided no basis for a new moral economy. Capitalists' denial of responsibility for the fate of labour provided no basis for legitimating their dominance.

In a response to some of the human hardships produced in an uncontrolled market, in a series of epochal reforms beginning in Britain in the 1850s, the state began to take control of the market by absorbing part of the risk of capitalist investment and regulating the exploitation of industrial labour. Such reforms began articulating a new protective moral economy based on the "trusteeship" of the state and its responsibility to clean up the social and economic disorder of industrial capitalism.

The intensely contested and often violent process through which liberal democracy emerged in the West was a contingent outcome of strategic reforms by hard-pressed regimes that blunted threats of revolution, restored a degree of social stability and provided some improvement in material conditions and welfare for the mass of citizens. Western states became the primary agents of the second part of the double movement – that of social protection and management – by

bringing the market under control, subordinating it to social interests and using it in purposeful projects of national development.

ETHNIC DIVISIONS VS. NATIONAL INTEGRATION

Nation-building projects, involving the "invention of tradition" within an "imagined" national community and identity, typically spread from a core central region to embrace and integrate, often coercively, peripheral regions frequently inhabited by people of distinctly different language and culture. At the same time, the characteristic pattern of combined and uneven capitalist development lead to regional as well as class differentiation. The relationship between capitalist modernity, nation-building and the political mobilization of ethnic communities is strikingly apparent in the fate of the "Celtic fringe" (Scotland, Ireland and Wales) in Britain in the 19th and 20th centuries.

The industrialization of Britain had strikingly different effects on the regions of the Celtic fringe. Scotland and Wales were rapidly integrated into the structure of capitalist modernity, with industry flourishing in both southern Scotland and southern Wales. Much of their population was rapidly proletarianized, although the industrial capitalist class and political elite of both regions were substantially indigenous. Ireland, however, remained into the 20th century a largely agrarian society providing agricultural commodities for the British market and large numbers of migrant workers for industry in England and Scotland.

Ireland's relationship to Britain was far more peripheral and colonial: its landlords and its ruling class generally were English and Protestant, and directly in control of both the economy and the state. Irish Catholics were not given the vote until the 1880s. Thus the Celtic fringe regions were integrated into British development in a manner producing ethnic as well as regional divisions of labour, with striking difference between the Scots and Welsh, on the one hand, and the Irish, on the other.

Structurally and culturally, Scotland and Wales were more effectively integrated into British capitalist modernity: their ethno-cultural communities did not coincide with or reinforce differences of class or religion. A form of Scottish and Welsh ethnicity was a component of a hegemonic "British" national identity. Up to the last quarter of the 20th century, political mobilization in both regions was based on class. Scotland and Wales were bastions of the Labour Party, class consciousness overrode ethnic identity, and politics focused on issues defined within the institutional structures of capitalism and the British state. In Ireland, however, the weaker and more colonial integration of the island, and its rule by an English dominant class, united all classes of the Irish in a national movement. It also began a tradition of recovered cultural authenticity, with powerful religious and anti-modernist elements that ultimately sought independence and the overthrow of English oppression.

COLONIALISM AND MODERN ETHNICITY: THE AFRICAN EXPERIENCE

Industrial capitalism, the nation-state and the culture of secular modernity came to the non-Western world primarily through the forceful imposition of Western hegemony, and then direct colonial control during the first epoch of globalization in the era of the "new imperialism" of 1870-1914. Colonialism involved the selective imposition of elements of the state and market, and the diverse patterns of colonial rule interacted with indigenous societies to produce the economic, cultural, and political bases for the development of modern ethnicity.

Colonialism resulted in confused, disorderly and incomplete capitalist transformations of subject African societies, typically involving an unstable partial transformation and partial preservation of indigenous institutions. The result was an unruly kaleidoscope of changing patterns of penetration of agrarian societies and the extraction of labour and commodity production. To maintain control, colonial states relied on indirect rule through local African authorities, both indigenous and colonial creations, rewarded by channels of clientelistic access to state resources for chiefs and new elites, including a developing petty bourgeoisie of farmers and traders.

Colonial officials became, in effect, patrons to their African client/collaborators and made patron-client relations, already deeply embedded in the political relations of most African societies, the fundamental mode of access to the state and to the available resources of modernity. Africans were not fully incorporated as "free citizens" or producers and workers in "free markets," nor did they entirely remain dependent "subjects" or clients of traditional authorities.

Colonialism both introduced new sources of wealth and power and undermined or abolished old ones. Former understandings of the reciprocal obligations of ruler and ruled, rich and poor, elders and youth, men and women, were called into question. Ethnicity and class were actually intimately linked products of the same social forces and expressions of the moral and political crises of colonial modernity. Conflicts over property rights and access to the new opportunities of modernity through the state and market, widening social differentiation and class formation became part of debates over the legitimacy of political authority and the definition of community cast in ethnic terms.

Within these social, cultural, economic and political processes, the creation of modern African ethnicities has taken place — partially, deliberately and intended, as unforeseen consequences of conflict and disorder. Politics became increasingly intertwined with the issue of the boundaries of ethnic communities: only those with recognized ties of kinship and ethnicity could legitimately negotiate property rights, marital connections, and relations of obligation and reciprocity.

Modern African ethnicities thus originate in attempts to reconstruct political community against the threat of class formation and to redefine political authority against the intrusive threats and opportunities of

the colonial state. In arguing out such issues, Africans became members of self-conscious ethnic communities, both larger in social scale and more sharply demarcated than any that had existed before.

What is often referred to as tribalism emerged, then, out of the varied impact of colonialism on different African communities. Access to the resources of modernity and economic accumulation created ethnic divisions of labour between communities that served as producers of cash crops and as labour reserves for mines and plantations. Instead of the stereotypical and largely mythical "ancient tribal conflicts," these involve confrontations that are distinctly modern in origin. Political tribalism is about political mobilization and action by ethnically defined communities, particularly against the competing interests of rival ethnicities for access to the institutions of the state and control of its patronage resources. It began to emerge more forcefully in the late colonial period with the start of public investment in "development" and rapid growth in resources invested in economic growth, education and social services.

Political tribes, some unheard of before the last decades of European rule, were often multi-class alliances mobilized for access to state resources and centered on clientelism. With independence, and the passing of control of the state and its resources to the relatively weak coalitions of African nationalist movements, political tribalism led to an increasingly frenetic competition for control of parts of the state and its patronage resources along clientage networks reaching to the urban and rural grassroots.

CONTEMPORARY GLOBALIZATION, NEO-LIBERALISM AND ETHNIC POLITICS

So, how can consideration of the great transformation, the ethnic trajectories of the Celtic fringe in Britain, and the development of African ethnicity and tribalism help us to understand the paradox of contemporary globalization and its implication for politics and policy, local and global?

In particular, how can we understand the basis for, on the one hand, the salience of ethnic politics within the "developing" societies of the southern hemisphere, and, on the other, the unprecedented movements of peoples from those nations to the developed states of Europe and North America that is the occasion for the politics of multiculturalism in the West?

During the past 25 years, the hegemony of neo-liberalism in the West has brought the most sustained attempt since the 19th century to aggressively spread the self-regulating market around the world: globalization. The "magic of the market" was supposed to replace the predatory state with economic growth that would eventually trickle down to eliminate poverty and universally improve standards of living. The results have, to the contrary, been strikingly similar to the results in the earlier epochs of the Industrial Revolution and the first era of globalization. Economic growth has been notably uneven in its incidence, both structurally and geographically, and has widened the gap between rich and poor both within and between ethnic communities.

In Africa, for example, the increasing inequalities of wealth and poverty have sharpened the internal politics within ethnic communities and the political competition of tribalism between them. Politically, however, the neo-liberal hegemony limited the political expression of a public politics of interest and class. The underlying political project of neo-liberalism has been to constrain the second part of a new double movement and leave the "free market" unchallenged as the moral economy of globalized capitalism.

For states in Africa, the result was the decline in their already limited administrative capabilities and their tenuous legitimacy. The response of the international financial institutions and major Western aid agencies was the "governance agenda" to avert outright state collapse, and then, with growing popular unrest and evident loss of legitimacy by African governments, to promote "multi-party democracy." However, to the extent that this democratization was linked to rigid adherence to neo-liberal free-market policies, it has been all but impossible for African states to pursue the interventionist and protectionist policies that all developed states have deployed in the past to manage the market, guide industrial development and construct a semblance of a functional moral economy. Without the ability to pursue alternative social and economic policies, governments and parties are simply alternations of competing alliances of ethno-political patronage networks. This means no effective economic growth or redistribution, an actual reinforcement of ethnic politics, and no double movement of social adjustment.

CONCLUSION

The remarkable movement of peoples over the past quarter century, from the former colonial peripheries to the developed states of North America and Western Europe, has originated in the failures and inequities of the development of neo-liberal globalization, creating waves of desperate economic and political refugees. They bring with them not only wider degrees of cultural difference, but also the internal crises of moral economy and external communal conflicts of the ethnic politics of their former homes that define the increasingly intense issues of integration and communal accommodation of multiculturalism. The challenge is twofold: first, to promote democratization, in the non-Western societies from which immigrants come, in a way that permits renegotiation of moral economies as central components of nation-building; and, second, in the nations receiving new waves of immigrants, to facilitate an integration of immigrant communities, to national cultures and institutions that is democratic, both internally and externally, for those communities. The results, in all instances, are likely to be locally contingent, and distinctively cultural and political, constructions.

POLICY IMPLICATIONS

1. Continued imposition of orthodox neo-liberal reforms through International Financial Institution (IFI) structural adjustment programs in developing societies prevent essential social and political adjustment to the stresses of market development and deny states the ability to pursue policies of market management, social development and nation-building.
2. Where such policies, allowing states control over their own markets, cannot be pursued, "democratization" may actually increase the internal and external conflicts of ethnic communities, promote competition for public resources and sustain pervasive corruption and patronage politics. Strategies of nation-building require attention to the distinctive economic and political relations between ethnic communities in each state.
3. Within Western countries, the integration of immigrant communities from non-Western cultures should take account of the internal stresses of adjustment to secular modernity manifested particularly in conflicts of gender and generation over issues of family authority and law; and also of reactions to external barriers to economic and social access imposed by racism and ethnocentrism in the wider society.

Minority Rights in Europe

Peter Leuprecht

EXECUTIVE SUMMARY

Minorities, for many years a taboo subject, moved to the centre stage of European concerns after 1989, mainly due to the rise in ethnic conflict that followed regime-altering events including the collapse of the Berlin Wall, German reunification and the fall of communist regimes in Eastern Europe. Since then, Europe has created a multi-faceted system for the protection and promotion of minority rights, with measures taken by the Council of Europe, the Organization for Security and Co-operation in Europe (OSCE) and the European Union. At the same time, the idea of multiculturalism is being challenged in various European quarters and is facing considerable opposition in particular countries such as France.

At the international level, developments following two important world-wide forums might have a considerable impact with regard to the situation of minorities; these are the United Nations Educational, Scientific and Cultural Organization's (UNESCO's) work on cultural diversity and negotiations on the global information society, particularly in connection with the follow-up to the World Summit on the Information Society.

Peter Leuprecht's observations on minority rights are based not only on his academic research but on his perspective as a witness and participant in European and global rights issues. He was Director of Human Rights (1980-93) and Deputy Secretary-General of the Council of Europe (1993-97), influential positions in which he was directly involved in discussions and negotiations on minority issues.

MINORITIES: FROM TABOO SUBJECT TO CENTRE STAGE OF EUROPEAN CONCERNS

The basic principles enshrined in the Statute of the Council of Europe (the oldest European institution) – namely, pluralist democracy, rule of law and respect for human rights – have been taken over by the European Union. They appear in the Copenhagen criteria for admitting new member states to the Union, with one important and highly significant addition — respect for minorities. How did minority rights move from a taboo subject to centre stage in European institutions and in European concerns in general?

In the 1950s and '60s minorities were regarded as a taboo subject in European institutions, for two prominent reasons. One was historical, based on the memory of how, in the years leading up to WWII, Nazi Germany had brutally exploited the situation of German-speaking minorities as a justification for its policy of expansion and aggression. The other was a widely held belief that the general guarantee of universal human rights would be sufficient to protect minorities.

> *"…exclusive nationalism presents the greatest danger to democratic transition…Not only is extreme nationalism hostile to true pluralism…it poses a serious threat to human rights."*
>
> Yugoslavian academic Vojin Dimitrijevic in *The Insecurity of Human Rights After Communism*, a publication written for the Norwegian Institute of Human Rights (1993)

Minorities, however, had not been completely forgotten.

- Article 14 of the European Convention on Human Rights, its non-discrimination clause, refers to "association with a national minority" as one of the grounds of prohibited discrimination.
- There were also interesting initiatives within the Parliamentary Assembly of the Council of Europe which proposed, in particular, the inclusion of minority rights in an additional protocol to the European Convention on Human Rights. However, these initiatives were not followed up by governments.

At the global level, the International Covenant on Civil and Political Rights was negotiated until its adoption in 1966, including what was to later become Article 27 which guarantees the rights of persons belonging to minorities "in States in which... minorities exist." This odd formulation is being used by certain states to deny the existence of minorities on their territory.

In Europe the sharp move towards formal recognition of minority rights occurred after 1989. The euphoria of the "annus mirabilis" of 1989 (following the collapse of the Berlin Wall, German reunification and the fall of communist regimes in Eastern Europe) rapidly gave way to disillusionment and fear. Politicians in regimes of decaying totalitarianism used nationalism as a means of clinging to power. There was a widespread feeling that in some countries of Central and

Eastern Europe nationalism and ethnocentrism were progressing much more rapidly than democratization. The tragedy of Yugoslavia reinforced the fears, which were powerfully expressed by eminent political leaders and intellectuals of Central and East European countries.

The major decisions made at the 1993 Vienna Summit of Heads of State and Government of the member states of the Council of Europe have to be seen against the background of the anxiety and fears caused by developments in Central and Eastern Europe and, in particular, by the war in Yugoslavia. *"Alarmed by the development of aggressive nationalism and ethnocentrism,"* summit participants adopted important decisions on minorities and on a policy for combating racism, xenophobia, anti-Semitism and intolerance. The guarantee of minority rights was seen as a contribution to peace and security – *democratic security*, as the term was coined by the Summit – and as a means of preventing conflict.

A MULTIFACETED EUROPEAN SYSTEM FOR THE PROTECTION OF MINORITIES

Within the Council of Europe, two new legal instruments were adopted: the European Charter for Regional and Minority Languages of 1992 and the Framework Convention for the Protection of National Minorities of 1995. Both entered into force in 1998.

With regard to the European Convention on Human Rights adopted by the Council of Europe in 1950 and which all Council of Europe members are party to, there has been an important development — the entry into force of Protocol 12. This protocol contains a general prohibition of discrimination, whereas Article 14 prohibits discrimination only with regard to the rights and freedoms as set forth in the Convention.

> *"This is a war for our own future – a war of those to whom their tribal otherness is the ultimate value against all those who embrace higher values than the blood group which they happen to belong to. This war is waged against us all, against human rights, against the coexistence of people of different nationalities or religious beliefs, against the civic principle; it is a war for what divides us, and against what brings us together. The war in Bosnia is in fact a war against meaningful human coexistence based on the universality of human rights."*
>
> *— Vaclav Havel, then President of the Czech Republic, speaking about the war in Bosnia, at the inauguration of the new Human Rights Building in Strasbourg (29 June 1995)*

There is also a growing body of interesting case law of the European Court of Human Rights, especially concerning the Roma. The 8-10 million Roma who live in Europe are undoubtedly the most exposed and vulnerable minority, historically targeted by racism and exclusion. In a number of cases concerning the Roma, the Court has found serious violations including violations of the right to life, the right not to be subjected to degrading treatment and the right not

to be discriminated against. The judgments of the Court are binding upon the states concerned. Also, within the Council of Europe, numerous initiatives have been taken not only in favour of the Roma, but *with* them — the creation of the position of a Coordinator and an Intergovernmental Committee for Roma issues and the Roma Forum being one example. It is hoped that the situation of the Roma peoples will improve as both the first European Commissioner for Human Rights, Alvaro Gil-Robles, and his successor, Thomas Hammarberg, have shown a keen interest in Roma issues. The collective complaints procedure under the European Social Charter has given rise to noteworthy case law, some of which also concerns the Roma. The Charter protects social rights, the guarantee of which may be of great importance for minorities.

The work of the European Commission against Racism and Intolerance (ECRI), a body set up by the Vienna Summit, is of considerable interest for minorities. The Commission issues country reports and develops recommendations for Council of Europe member states relating to racism, xenophobia and intolerance.

Important work has been and is being done within the Organization for Security and Cooperation in Europe (OSCE), particularly by its High Commissioner for National Minorities.

Within the European Union, certain developments deserve mention: the Racial Equality Directive, the Charter of Fundamental Rights and the creation of the Fundamental Rights Agency. They illustrate the Union's growing concern for human rights. The Charter of Fundamental Rights contains a provision according to which the Union respects cultural, religious and linguistic diversity. There is also a Joint Council of Europe/European Commission Programme for the Roma. It concerns, in particular, the Roma in Albania, Bosnia-Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro and Serbia.

The Council of Europe's approach to minority issues is based on the philosophy of universal human rights. It requires that human rights protect every human being, not an abstract human being, but also "l'homme situé," the "situated" human being, the human being living in certain conditions that may affect his or her enjoyment of fundamental rights. Belonging to a minority is such a condition, which justifies the granting of specific rights.

The Framework Convention for the Protection of National Minorities adopted by the Council of Europe in 1995 now has 39 state parties. Contrary to what some had feared, it has not turned out to be a paper tiger. Its main monitoring body, the Advisory Committee, composed of independent experts, rightly interprets the Framework Convention as part of a larger system of human rights protection. Although the Advisory Committee forms a sometimes uneasy tandem with the Council of Europe's Committee of Ministers and the two do not always pedal in the same direction, the overall record of the Convention's control machinery seems quite convincing. It is producing a growing body of interesting "jurisprudence."

One interesting aspect of the "jurisprudence" produced by the control machinery of the Framework Convention concerns the scope of its application. The Convention does not contain a definition of national minorities. This absence of definition was preferable to any of the definitions that were on the table when the Convention was negotiated; all of them were designed to exclude certain groups and individuals. Avoiding a definition left the way open to "jurisprudential" developments. On this, like on other issues, the Advisory Committee adopts an open, inclusive and dynamic approach based on a teleological interpretation of the Convention. Its basic premise is that, rather than a rigid concept of the term of national minority, defining the scope of application of the Convention requires a nuanced, article-by-article approach. This raises in particular the thorny issue of whether "new" minorities as well as "historical" minorities should be protected by the Convention and whether or not there should be a citizenship requirement. There is an obvious trend to move away from a citizenship-based concept of national minorities towards a more inclusive stance. This more open approach is advocated by the Advisory Committee and, more recently, by the European Commission for Democracy Through Law (Venice Commission), an expert body operating within the framework of the Council of Europe.

It seems fair to say that the actions taken by the Council of Europe and the European Union have had positive effects on the situation of minorities, not only in countries of Central and Eastern Europe, but also elsewhere. Turkey is one country in which there have been substantial effects, particularly regarding the linguistic rights of Kurds. It should be added that European integration, based on the principle of subsidiarity, fosters regional and local autonomy and that the infra-state level (i.e. Länder, provinces and regions) is increasingly involved in European institutions and decision-making.

MULTICULTURALISM CHALLENGED

The idea of multiculturalism is under challenge in various European quarters. This is also documented by the reports of ECRI. The most striking and extreme example is France where the prevailing thinking does not seem to have changed since the French Revolution. In this respect, the decision of France's Constitutional Council of June 15, 1999 regarding the European Charter for Regional and Minority Languages and the debates leading up to the law on the wearing of religious signs in schools are highly significant. The law prohibits the wearing of signs or dress by which pupils openly demonstrate a religious belonging. In its decision on the question of ratification of the Charter by France, the Constitutional Council, emphasizing the unity of the French people, argues that the recognition of collective rights of groups is contrary to fundamental principles of the constitution. It refers to Article 2 of France's constitution according to which "the language of the Republic is French" and concludes that certain provisions of the Charter are contrary to the constitution.

The same philosophy was expressed by President Chirac. "The Republic is composed of citizens; it cannot be segmented into communities," the former president of France wrote in his letter of July 3, 2003 to Bernard Stasi, who would later chair the independent commission that recommended the adoption of the law on religious signs in schools.

In fact, the argument of individual versus collective or group rights seems old-fashioned and increasingly futile. Human rights must take into account both the individual and the social dimension of the human being. An individual can hardly be free if he or she belongs to an oppressed group.

In other European countries, such as Germany, Austria and Denmark, there also seems to be a trend away from the idea of multiculturalism.

TWO IMPORTANT INTERNATIONAL FORUMS INVOLVING CULTURAL DIVERSITY

Two important international developments might have a considerable impact on cultural diversity and the situation of minorities around the globe, including Europe. One of these is the important work on cultural diversity by UNESCO (the United Nations Educational, Scientific and Cultural Organization). The most significant result of UNESCO's work is the Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted in October 2005 (in spite of strong resistance from the United States). It marks an important step forward on the road to recognition of cultural diversity as an asset and a value that deserves protection and promotion by the law. However, a key issue for the years to come will be how the UNESCO Convention relates to the rules of the World Trade Organization and whether it will be effective in preventing cultural expression and production from being subjected to the rules on international trade.

WHAT LOGIC WILL PREVAIL — THAT OF TRADE OR THAT OF CULTURAL DIVERSITY?

Another important international development is the worldwide discussion on the global information society, which will inevitably continue, having been generated by the World Summit on the Information Society held in 2003 and 2005. The question is whether modern information and communication technologies (ICTs) will be used to promote diversity and to ensure equal access to information and knowledge for all – the rich as well as the poor – or as a means of domination and standardization. They can be used for both. Very interesting experiences in multilingual countries such as India and South Africa show that they can be important instruments for the preservation and promotion of linguistic diversity. However, they can also be used as instruments of cultural hegemony. Those who advocate and praise US cultural hegemony are fully aware of their potential in this respect.

CONCLUSION

In spite of considerable resistance in certain quarters, there seems to be growing recognition of the fact that respect for cultural diversity and for minorities and minority rights is an essential feature of the basic principles of European unification: pluralist democracy, rule of law and human rights. Obviously, this also applies to other parts of the world. Social cohesion, peace and harmony must be built on respect for the other, for otherness, difference and diversity, on the basis of a shared ethic of humanity — that of the equal dignity of every human being.

POLICY IMPLICATIONS

For Canada, a country of great diversity attached to multiculturalism, European developments with regard to minority rights are certainly of interest. Canada (and Québec) are actively involved in UNESCO's work on cultural diversity and played a prominent role in the elaboration and adoption of the Convention on Diversity of Cultural Expressions.

Canada should:

- Press for the speedy implementation of UNESCO's Convention on Diversity of Cultural Expressions. With regard to the follow-up to the World Summit on the Information Society, it is to be hoped that the Canadian government will abandon an essentially technical approach in favour of one that takes into account the important human rights dimension of the issues discussed at the Summit.

Europe should:

- Regard and promote its diversity as an asset and a source of immense enrichment.
- Practise and promote not only political but also cultural pluralism, promote intercultural dialogue and intercultural learning, and stand firm in its rejection of racism, xenophobia and intolerance.
- Guarantee cultural rights, which are an essential, but still largely neglected, category of human rights.
- Be generous in guaranteeing minority rights, thus promoting a climate in which minorities have no reason for feeling threatened.

How Should Secular States Deal With Deep Religious Diversity? The Indian Model

Rajeev Bhargava

EXECUTIVE SUMMARY

Secular states everywhere are in crisis. Movements challenging secular states involve Muslim societies but also protestant movements in the United States, Kenya, Guatemala and the Philippines. Migration from former colonies and an intensified globalization have thrown together on western public spaces pre-Christian faiths, Christianity and Islam — providing major challenges to secularism within western societies. Yet, religion-centred alternatives to secular states are unlikely to grant freedom or equality. How do people who value freedom and equality get out of this bind?

We must understand that our choice is not limited to supporting *or* opposing *western models of secularism. Several societies, in their specific cultural and historical conditions, have worked out their own version of a secular state that is also sensitive to freedom and equality and yet different, perhaps in some sense, even better than western secular states. One such model provided by India – neither wholly Christian nor western – meets both the secularist objection to non-secular states,* and *religious objections to some forms of secularism.*

THE PROBLEM

Secular states and their underlying ideology, political secularism, appear to be under siege everywhere since the last quarter of the 20th century. They were severely jolted with the establishment of the first modern theocracy in 1979 in Iran. By the late 1980s, Islamic political movements had emerged in Egypt, Sudan, Algeria, Tunisia, Ethiopia, Nigeria, Chad, Senegal, Turkey, Afghanistan, Pakistan, and even in Bangladesh.

Movements challenging secular states were hardly restricted to Muslim societies. Protestant movements decrying secularism emerged in Kenya, Guatemala and the Philippines. Protestant fundamentalism became a force in American politics. Singhalese Buddhist nationalists in Sri Lanka, Hindu nationalists in India, religious ultra-orthodoxy in Israel and Sikh nationalists in the state of Punjab in India, as well as among diasporic communities in Canada and Britain, began to question the separation of state and religion.

Even the largely secular-humanist ethos of Western Europe did not remain untouched by this public challenge. This is evident in Germany and Britain, but was dramatically highlighted by the headscarf issue in France and the murder of film-maker Theo Van Gogh in the Netherlands shortly after the release of his controversial film about Islamic culture.

Migration from former colonies and an intensified globalization has thrown together on western public spaces pre-Christian faiths, Christianity and Islam. The cumulative result is unprecedented religious diversity, the weakening of public monopoly of single religions, and the generation of mutual suspicion, distrust, hostility and conflict.

MAINSTREAM WESTERN SECULARISM: PART OF THE PROBLEM

Can western secularism reinvigorate itself and deal with the new reality of the vibrant presence of multiple religions in public life and accompanying social tensions?

The dominant self-understanding of western secularism is that it is a *universal* doctrine requiring the strict separation (mutual exclusion) of church/religion and state, for the sake of individual liberty and equality (including *religious* liberty and equality). The social/historical context of this self-understanding was the fundamental problem faced by modernizing western societies: the tyranny, oppression and sectarianism of the church and the threats to liberty these posed — to individual religious liberty (the liberty of an individual to seek his own personal way to God/individual freedom of conscience), and to liberty more generally as (ultimately) the foundation of common citizenship.

To overcome this problem, modernizing western societies needed to create or strengthen an alternative centre of public power completely separate from the church. To achieve this, the state had to extricate itself from a hegemonizing religion, sometimes forcefully. Some force against the church was necessary for the sake of both religious liberty and liberty more generally (hence, the anti-religious

flavour of secular states). Moreover, the rigidity of the demand for separation here is unmistakable — mutual exclusion (a wall, as Thomas Jefferson famously put it) between the two relevant institutions; *one* intrinsically and solely public and the *other* expected to retreat into the private domain and remain there. The individualist underpinnings of this view are also fully evident.

> Can western secularism reinvigorate itself and deal with the new reality of the vibrant presence of multiple religions in public life and accompanying social tensions?

The classic, western conception of secularism was designed to solve the internal problem of a single religion with different heresies — Christianity. It also appeared to rest on an active hostility to the *public* role of religion and an obligatory, sometimes respectful, indifference to whatever religion does within its own internal, *private* domain. As long as it is private, the state is not meant to interfere.

It is now increasingly clear that this form of western secularism was not designed for societies with deep religious diversity and that it has persistent difficulties coping with community-oriented religions such as Roman Catholicism, Islam, some forms of Hinduism and Sikhism that demand a public presence for themselves — particularly when they begin to cohabit the same society. This individualistic secularism is not only challenged outside western societies but also from within. In fact, the western form of secularism has become part of the problem.

ALTERNATIVES TO SECULARISM: ADDING TO THE PROBLEM

Is there nothing redeemable in western secularism? Should we turn then to states that are religion-centred, which fuse with rather than separate from religion?

Not if we value freedom and equality. Historically such states – for example, the state that established the Anglican Church in England or the Catholic Church in Italy – valued neither freedom nor equality. Such states recognized a particular version of the religion enunciated by that church as the official religion compelled individuals to congregate for only one church, punished them for failing to profess a particular set of religious beliefs, levied taxes in support of one particular church, and made mandatory instruction of the favoured interpretation of the religion in educational institutions. In such cases, not only was there inequality among religions (Christians and Jews) but also among the churches of the same religion. Societies with such states were either wracked by inter-religious or inter-denominational wars or persecuted minority religious groups.

States with substantive establishments have not changed colour with time. In Pakistan, for instance, the virtual establishment of the dominant Sunni sect has proved to be disastrous, even to Muslim minorities. For example, Ahmedis have been deemed as a non-Muslim minority and therefore convicted for calling themselves Muslims or using the word "mosque" to designate their place of worship.

The "democratic" state of Israel suffers from the same problem. Once declared a

Jewish state, it cannot but exclude from its scheme of rights and benefits its own Arab citizens, let alone other Palestinians.

This does not mean that all secular states are better than religion-centred states. Many states separate themselves from religion for purely amoral ends such as the pursuit of power, wealth or both. These Machiavellian states – for example, the British colonial state in India – opportunistically distanced themselves from all religions and fared poorly on an index of freedom and equality.

Distinct from amoral secular states are secular states that uphold freedom and equality. Mainstream western secularism favours precisely such value-based states. The problem, however, is that it is these very states which are said to be in crisis.

Let us look at this issue more closely.

There are two types of religious domination: intra-religious and inter-religious domination. The former is domination within a single religion while the latter is domination between members of different religions. Western secularism is quite strong in meeting the threat of intra-religious domination. In fact, it was historically this type of domination — that of the clergy over laypersons, that propelled the formation of secular states in western societies. Other examples of intra-religious domination include the exclusion of "outcastes" from Hindu temples, the prohibition of Roman Catholic women to conduct the Holy Mass, the discrimination faced by homosexuals in many Christian societies, and the legal discrimination in many Muslim societies, which holds on par the evidence of two women with that of a single male.

However, western secularism is unable to meet inter-religious repression, in which members of one religious community oppress members of another religious community. The persistent persecution of Jews in much of European history comes immediately to mind. In recent times, as Islamophobia grips the imagination of several western societies, it is very likely that their Muslim citizens face disadvantage only on account of membership in their religious community. Mainstream western secularism is not as well equipped to deal with deep religious diversity and is insensitive to the inter-religious domination endemic in its midst.

ALTERNATIVE CONCEPTION OF SECULARISM: THE INDIAN MODEL

There is another model of secularism, one not generated exclusively in the west, which meets the needs of deeply religiously diverse societies and also complies with principles of freedom and equality: the Indian model.

Although not available as a doctrine or theory, India provides a conception worked out jointly by Hindus and Muslims in the subcontinent, available loosely in the best moments of inter-communal practice in India, and occasionally, during moments of inter-communal violence. Nevertheless, this conception is implicit within the country's constitution.

Six features of the Indian model are both striking and relevant to wider discussion.

- First, multiple religions are not extras, added on as an afterthought, but were present at its starting point, as part of its foundation.
- Second, this model is not entirely averse to the public character of religions. Although the state is not identified with a particular religion, or with religion more generally (there is no establishment of religion), there is official and therefore public recognition granted to religious communities.
- Third, it has a commitment to multiple values — liberty and equality, not conceived narrowly as pertaining to individuals but interpreted broadly to cover the relative autonomy of religious communities, as well as other more basic values such as peace and toleration between communities. This model is acutely sensitive to the potential within religions to sanction violence.
- Fourth, it does not erect a wall of separation between state and religion. There are boundaries, of course, but they are porous. This allows the state to exempt some religions from laws applicable to others and to intervene in religious institutions. This involves multiple roles: granting aid to educational institutions of religious communities on a non-preferential basis; interfering in socio-religious institutions that deny equal dignity and status to members of their own religion or to those of others (for example, the ban on untouchability and the obligation to allow everyone, irrespective of their caste, to enter Hindu temples, and potentially to correct gender inequalities). These interventions are made on the basis of a more sensible understanding of equal concern and respect for all individuals *and* groups. In short, the Indian model interprets separation to mean not strict exclusion or strict neutrality but rather what I call *principled distance*.
- Fifth, this model shows that we do not have to choose between active hostility and passive indifference, or between disrespectful hostility and respectful indifference. We can combine the two: the state may intervene to inhibit some practices, as long as it shows respect for other practices of the religious community by publicly lending support to them.
- Sixth, by not fixing its commitment from the start exclusively to individual or community values or marking rigid boundaries between the public and private, India's constitutional secularism allows decisions on these matters to be taken within the open dynamics of democratic politics — albeit with the basic constraints such as abnegation of violence and protection of basic human rights, including the right not to be disenfranchised.

This commitment to multiple values and principled distance means that the state tries to balance different, ambiguous but equally important values. This makes its secular ideal more like a contextual, ethically sensitive, politically negotiated arrangement — which it really is.

Discerning experts of western secularism may now begin to find something familiar in the above ideal. But then, Indian secularism has not dropped fully formed from the sky. It shares a history with the West; one which it has, in part, learnt from and built upon. Indian secularism may be seen to be a route to retrieving the rich history of western secularism — forgotten, underemphasized, or frequently obscured by the formula of strict separation. If so, western societies can find reflected in Indian secularism not only a compressed version of their own history but also a vision of their future.

A somewhat forced, formulaic articulation of Indian secularism goes something like this:

The state must keep a principled distance from all public or private, individual-oriented or community-oriented religious institutions for the sake of the equally significant (and sometimes conflicting) values of peace, this-worldly goods, dignity, liberty and equality (in all its complicated individualistic or communal versions).

But it might still be objected; look at the state of the subcontinent! Look at India! How deeply divided it remains. How can success be claimed for the Indian version of secularism? The force of this objection should not be underestimated. The secular ideal in India is in periodic crisis and is deeply *contested*. Besides, at the best of times, it generates as many problems as it solves.

But it should not be forgotten that a secular state was set up in India *despite* the massacre and displacement of millions of people on ethno-religious grounds. It has survived in a continuing context in which ethnic nationalism remains dominant throughout the world. As different religious cultures claim their place in societies across the world, it may be India's development of secularism that offers the most peaceful, freedom-sensitive and democratic way forward.

CONCLUSION

India, by itself, is only one alternative model. Parts of this model are embedded in the best practices of many states, including those western states that are deeply enamoured by mainstream political secularism. And yet, the Indian model may help to demonstrate that it is the sensitivity to multiple values, the adoption of principled distance and a commitment to contextual reasoning that permits each society to work out its own conception of secularism and its own model of a secular state. This helps underpin the need for multiple secularisms.

Such an approach can help countries, such as Canada, to carefully examine their normative potential and political practices rather than getting stuck on a model developed at a particular time in history.

POLICY IMPLICATIONS

- The state cannot avoid having or endorsing a policy towards religion or religious organizations. Religion plays an important part in the lives of many people and religious institutions function in this world like other purely secular institutions. So separation cannot mean the *exclusion* of religion from the domain of the state.
- Separation of church and state should also not be interpreted as absolute or *strict neutrality*. No state can possibly help or hinder all religions in the same manner and to the same degree.
- The state may interfere with religion and refrain from such interference depending entirely on which of these promotes the values of freedom and equality.
- Values of freedom and equality must be interpreted both as rights of individuals, and wherever required, as rights of communities. Community rights are particularly important if religious groups are vulnerable or, because of their small number, have relatively little power to influence the process of decision-making.
- Secularism must be neither servile nor hostile to religion. It must manifest an attitude of neither blind deference nor indifference but of critical respect towards all religions.
- Secularism which professes principled distance and is sensitive to multiple values cannot avoid making contextual judgements. Contextual judgements allow for ethically sensitive balancing and compromise.
- Those who think that they are emancipated from religion or believe that their own religion is emancipated, but not that of others, should accept with humility that none of its achievements are irreversible. They should also not fail to remember the history of oppressions within their own respective religions as well as the repressive policies of many secular states. As more and more societies become multi-religious, a sense of vulnerability of one's own religions, indeed of one's own worldview will be crucial for a peaceful and just world order.
- Canada, like other western societies, must devise a secularism that is more openly sensitive to public and community-oriented religions.

Democratization and National Minorities in Southeast Asia

Jacques Bertrand

EXECUTIVE SUMMARY

Democratization sometimes leads to violent ethnic conflict. Why does this occur and what can be done to prevent it? In the last two decades, a number of countries (former Yugoslavia, USSR) have experienced violent ethnic conflict after holding elections and establishing new democratic institutions. The analysis of Southeast Asia, which has had a number of such cases, suggests that the timing of concessions provided to ethnic groups, and prior levels of organization of groups vying for particular accommodations, can be important reasons for escalation of violence at the time of democratization.

Contrary to what one might be tempted to conclude, a resurgence of violent conflict involving national minorities is not caused by long, simmering conflicts. More often than not, it results from a particular conjuncture of factors, some of which can be effectively managed at times of regime transition — in this case, democratization. Concessions prior to democratization can greatly reduce incentives for mobilization. Short of doing so, early commitments as part of the transition can also be effective. The cases of Thailand and the Philippines suggest successful outcomes of such tactics. The violence in Indonesia illustrates the consequences of failing to implement concessions.

Failures to follow through on commitments, however, can create conditions for renewed violent conflict. In fact, we see later ethnic mobilization in Thailand and the Philippines, and threat of such in other areas of Southeast Asia, as a result of ambiguity of commitments. Where commitments are made and followed through effectively, with genuine negotiations involving all parties, peaceful outcomes are more likely.

INTRODUCTION

One of the most significant types of ethnic conflict has been ethnonationalist conflict — a type of conflict involving ethnic groups that see themselves as separate nations and that demand self-determination (often independence) as a result.

In Southeast Asia, there have been many such ethnonationalist conflicts:

- Acehnese and Papuans in Indonesia have demanded their own state, and used violence to attain these ends.
- Muslims in the Southern Philippines have rejected the Filipino state; an insurgency continues to this day.
- Malay Muslims in the South of Thailand have mobilized violently: they have long rejected their integration into the majority-Buddhist state.

Ethnonationalist conflicts in Southeast Asia are distinguished from other forms of ethnic conflict in the region in that they are directed against the state, they aim for self-determination, they identify their group as a separate nation, and they have organized resistance movements to attain these goals. The analysis of these conflicts, and more crucially, their potential solutions, often revolve around crafting institutions that can best respond to group demands, while maintaining the stability of the state.

ACCOMMODATION OR INTEGRATION? THE DELICATE TRANSITION TO DEMOCRACY

Scholars have long debated the relative effects of democratization on stimulating ethnic violence. Democracy, if not well crafted, many argue, can lead to instability and calls for secession by ethnonationalist groups. Moments of transition to democracy from authoritarian rule, therefore, are crucial in the establishment of institutions that will prevent violent conflict. Yet, there are no clear recipes (institutional solutions) that have been successful in all cases.

Many scholars have argued that integrationist strategies can best secure long-term stability. An integrationist strategy aims to foster alliances across ethnic boundaries, eliminating political representation on the basis of ethnic identification in order to create stronger, unifying bonds and loyalty to the state.

Accommodationists, on the other hand, reject this prescription on the basis that it often leads to overt or disguised discrimination against some ethnic minorities, and can lead to more, rather than less, conflict. An accommodationist strategy works on the assumption that once ethnic groups have been mobilized, the best way to preserve stability is to recognize the reality of these groups and to craft institutions that give them representation and rights.

In fact, where we have seen accommodation of ethnonationalist groups in Southeast Asia, the outcomes have been more stable. In these cases, despite relatively long histories of struggle against the state, violence has not been constant. It is true that in recent years we have seen a resurgence of violence that has followed in the steps of democratization. Democratic institutions in themselves were insufficient to create strong bonds of loyalty to the state or make groups feel included.

Responding with greater recognition of grievances and crafting new institutions to represent groups specifically has had the best results. There is a challenge, however, in doing so successfully. Timing is key, as is credible implementation of commitments.

SOUTHEAST ASIA: ACCOMMODATING THE DEMANDS OF ETHNONATIONALIST GROUPS

Large empirical studies have shown that, at least in some instances, greater conflict tends to occur during the early, rather than later, period of establishing democratic institutions, particularly in the cases of ethnonationalist conflicts. In Southeast Asia, while democratization did lead to intensified ethnonationalist conflict, the levels of conflict varied widely, with Thailand showing very little increase in the early period of democratization.

- In the Philippines, which democratized after the downfall of then-dictator, Ferdinand Marcos, in 1985, a secessionist conflict involving the Muslim Moro of the Southern Philippines intensified for several years before reaching a peace agreement in 1996.
- In Indonesia, democratic opening after the downfall of President Suharto in 1998 led to an intensification of conflict among three different ethnonationalist groups: East Timorese, Acehnese and Papuans.
- Thailand, however, after democratizing in 1988, saw very little change in Malay Muslim mobilization in the South. Yet Thailand then experienced a strong increase in ethnic conflict in a later period of democratization when such conflicts more typically subside.

In the cases of the Acehnese in Indonesia and the Moro in the Philippines, there were well-organized, armed movements prior to democratization. Although they were weakened by the repressive policies of authoritarian states, they were able to rearm and reorganize clandestinely: they were thus in a position to take advantage of the relative weakness of the state during the uncertain period of democratization to remobilize.

There are three reasons countries experience differentiated levels of ethnic conflict in either the early or later periods of democratization:

a) Levels of violent conflict will be greater when there is an existing well-organized, coherent ethnonationalist organization prior to democratization.

b) If significant concessions are made prior to democratization, ethnonationalist groups are more likely to have some level of trust in the state and to negotiate and seek concessions when democratization occurs.

c) Concessions that are promised but not followed through upon can lead to more violent conflict because the state fails to implement *expected* commitments.

In the case of Thailand, however, Malay Muslim organizations had largely disappeared and did not materialize following democratization.

In the cases of East Timor and Papua, civilian movements emerged and mobilized in parallel to armed groups.

The lack of civilian movements in Thailand is explained by the fact that significant concessions of language, culture and representation were extended to ethnonationalist groups *prior* to democratization. In the case of Thailand, however, greater ethnic remobilization (and conflict) occurred later, as the government failed to follow through and remain committed to the promised concessions.

A CLOSER EXAMINATION OF INDONESIA

Looking specifically at Indonesia, the cases of Aceh and Papua suggest further lessons for resolving ethnonationalist conflicts while implementing new democratic institutions. The original Indonesian Constitution of 1945, which had embodied the concept of a single nation, provided little recognition to ethnic diversity. After the fall of the authoritarian regime in 1998, the constitution was amended and new laws were passed to democratize Indonesia's political system. As part of this democratization, new measures were taken to increase the flexibility of the political system to accommodate pressures in favour of decentralization, devolution of power, and accommodation of demands from ethnonationalist groups in East Timor, Aceh, and Papua (East Timor subsequently became independent so the case is not treated specifically in this paper). After 1998, amendments enshrined the recognition of regional differences and the need to adopt flexible institutions to reflect this diversity.

The new Law on Aceh (2006) provides the most flexible and promising piece of legislation for accommodating ethnonationalist demands in Indonesia. Previous autonomy concessions had all failed to create peace. The 2006 law was obtained, however, after years of repression and violence under democratic governance. Following the collapse of the Suharto New Order regime, the Free Aceh Movement had re-emerged alongside a strong civilian movement seeking autonomy for Aceh. The 2006 legislation is a new breakthrough that emerged out of the Helsinki Memorandum of Understanding between the Indonesian government and the Free Aceh Movement, signed on August 15, 2005: it provides wide-ranging autonomy in all areas (except a few retained by the central government), fiscal decentralization, control over natural resources, and the ability to organize local political parties for provincial and regency level elections.

By contrast, Papua obtained autonomy through the 2001 Special Autonomy Law, but it has failed to garner much support within the population. After 1998, a large civilian movement has also emerged making strong demands for independence. The armed movement, the Free Papua Movement, continued some of its activities but allowed the civilian movement to take precedence as it had garnered vast support among the Papuan population. The Indonesian government still responded with repression but also adopted the

Special Autonomy Law. The law provides for wide-ranging autonomy, a special assembly to represent Papuan groups in addition to the local legislature, and a redistribution of fiscal resources and income from natural resource exploitation in favour of the province.

There are several problems, however, with the Special Autonomy Law and its implementation. It was implemented against the objections of many Papuan leaders who made stronger demands for accommodation and redress of historical grievances. There has been no progress on revisiting the Papuans' demands for self-determination in light of the Act of Free Choice, by which they were integrated to Indonesia in 1969. There have also been problems with other legislation contradicting the Special Autonomy Law, as there are no clauses specifically stipulating its precedence over other legislation. Furthermore, it uses vague language and lacks precision, which opens up opportunities for interpreting the Law in ways that can significantly undermine its original intent. Most importantly, the Law was implemented at the same time as another piece of legislation that divided the province into three.

CONCLUSION

Periods of democratic transition are often accompanied by a resurgence of sub-state nationalism and ethnic conflict. Far from being long, simmering conflicts that suddenly explode as a result of a democratic opening, these conflicts are, rather, a result of calculated remobilization because of failures to respond adequately to grievances and to follow up on commitments. Concessions, such as the peace agreement in Aceh, are often made after long periods of violent conflict. Building in concessions prior to democratization, or in its very early stages, however, can be highly successful at preventing an escalation of violent conflict. Malay Muslims in Thailand did not immediately remobilize after democratization because they had been given large concessions. Similarly, Moros in the Philippines provided some hiatus to remobilization when promises were made in the new Constitution of 1986. In Indonesia, however, Acehnese, Timorese and Papuans mobilized forcefully as there were no concessions made prior to democratization: they had strong grievances, and few expectations that these would be met within the new regime. That violence subsequently erupted was an unfortunate outcome of weak concessions and weak commitments to follow up on promises.

The move away from a highly integrationist strategy to an accommodative one in the cases of Papua and Aceh has contributed significantly to a reduction of conflict. By allowing for autonomy and special provisions for these regions, the Indonesian state has shown a willingness to accommodate demands, thus reducing group mobilization. This flexibility promises to bring much more stability than the previous approach.

The record, however, has been mixed. Accommodation in the form of the 2006

Law on Aceh has been very successful so far. It has put an end to violent conflict in the region. It was extensive in the powers it allocated regionally, and recognizes the distinct needs of the Acehnese. The Law is well drafted and specific; it has also been implemented according to schedule and as expected. By contrast, the Special Autonomy Law for Papua is vague, contains some contradictions, has less legal clout, and has been implemented alongside legislation that undermines it.

POLICY IMPLICATIONS

To a large extent, lessons learned from the Southeast Asian experience can be applied to other countries. Timing is a crucial issue that has already passed in the countries under study. Nevertheless, there are some recommendations that can still be implemented:

- Countries of the region should follow up with credible commitments and implementation of any legislation intended to accommodate national minorities. Showing greater commitment to the autonomy agreements in Mindanao, as well as Papua, can be effective in reducing the potential for continued conflict.
- The Special Autonomy Law for Papua could be revisited and written in more specific and precise language. It could extend to more jurisdictions, and be renegotiated with stronger input from local organizations. Most importantly, it should clearly override other legislation affecting Papua. The Law of Aceh provides a good example.
- The partition of Papua should be revisited, in consultation with all parties involved.
- The Thai government should develop an autonomy law along the lines of the Law on Aceh to accommodate grievances in the South of Thailand. If they do so, however, it must be followed by a clear, unambiguous commitment to its implementation.

Some more general recommendations:

- In order to avoid escalating conflict at the time of democratization, it can be very useful to extend significant concessions to national minorities prior to democratization, or to send clear signals that accommodation will be part of the democratization process.
- Autonomy laws should be drafted with the clearest, most precise language so that later interpretation cannot weaken the original intent of extending autonomy.
- Autonomy laws should be implemented effectively and shortly after their adoption, and previously created legislation that undermines them must be quickly revoked. Autonomy laws that are not quickly followed up by credible implementation run the risk of being undermined and creating further sources of conflict.

Hybrid Federalization in Asia

Baogang He

EXECUTIVE SUMMARY

In most Asian countries there have been calls for federalism as a means of reducing ethnic conflicts and achieving integration and unity. The debate centres on whether regionalist or multinational federalism offers a successful model for Asian circumstances. This question ignores or underrates existing hybrid models of Asian federalism.

This policy paper presents an alternative argument: that hybrid federalism is the form most appropriate to deal with minority issues and the national identity question in Asia. Within hybrid federalism only one or two peripheral regions or units have been decentralized or offered the status of regional autonomy; oriented toward stability rather than democracy and human rights, hybrid federalism has intentionally asymmetric features. It also has shortfalls. The Asian form of hybrid federalism does not necessarily provide maximal minority rights for certain groups, and the long-term prospect for hybrid federalism in Asia is admittedly uncertain.

Yet, certain forms of hybrid federalism and Asian variants may be capable of accommodating ethnic differences and facilitating ethnic harmony and national integration. Asian countries provide important comparative experiences in nation building, having drawn partly upon Western institutional influences, sometimes copying or adapting institutions that are perceived to work well or are residual from colonial rule, but often reshaping and combining them with indigenous traditions of government.

INTRODUCTION

The year 2005 was a watershed in the contemporary history of Asian federalism. The formation of hybrid federalism in Indonesia was marked by the granting of substantial autonomy to the Aceh people in the 2005 peace agreement. In the Philippines, President Gloria Macapagal-Arroyo's 2005 State of the Nation address to Congress had accelerated the process of federalization. These two events point to fundamental changes in Asian governance with regards to minorities and ethnic conflicts.

Conflicts over ethnic homeland rule, the right to territorial autonomy and even nation-statehood, are ongoing in Asia, where there have been debates over whether federalism in general – and multinational federalism in particular – is the best practice to reduce or contain ethnic conflicts. The international community has also questioned whether the multinational federalism of Canada offers a successful model and whether underlying norms and principles such as the right to territorial autonomy, the right to self-determination, and the right not to be assimilated are acceptable as universal norms.

ASIAN COUNTRIES FLIRT WITH FEDERALISM

In the 1940s and '50s, many Asian countries attempted to build federal systems, but most failed. Federalism was seen as a way of achieving a form of political union between India and Pakistan and between Malaysia and Singapore. This imposition of federalism by the British failed, with partition between India and Pakistan and the secession of Singapore from Malaysia. Nevertheless, federalism was adopted by India, Pakistan, Malaysia and Indonesia, though the 1948 Indonesian experiment was short-lived. China toyed with federalism but quickly rejected the Soviet version in the 1950s.

In the first few decades following decolonization, Asian countries distrusting federalism, focused mainly on building unitary and homogenizing nation-states. Despite the earlier failures, in most Asian countries there have been recent calls for federalism. These are stronger in countries facing a national identity question — for example, in the Philippines, China, Burma, Indonesia, India, Sri Lanka and Pakistan, countries in which there has been resistance amongst ethnic and religious minorities, as well as secessionist movements.

FEDERAL DEBATE IN ASIA: REGIONALIST VERSUS MULTINATIONAL

Current debate on federalism amongst academics and policy makers centres around which form can successfully achieve autonomy, contain and reduce ethnic conflicts, and facilitate and promote democracy: should it be regional or multinational federalism?

Regional or territorial federalism can be characterized as:

- the universal protection of individual rights
- the neutrality of the state with regards to different ethnic groups

- the absence of an internal boundary for ethnic groups
- the division and diffusion of power within a single national community and regions.

In short, ethnicity is not the basic unit of federal polity.

The federalism of the US and Australia are examples of the region-based federalism described above. Malaysian federalism is also territorial rather than multinational. India, too, contains a strong element of regional federalism.

Multinational federalism contains the following characteristics:

- federal constitutions accommodate concentrated ethnic groups
- an internal boundary is drawn to enable minorities to exercise minority rights and self-determination, and to achieve an ethno-national homeland.

The federations of Canada, Spain and Belgium are examples of multinational federalism.

MULTINATIONAL FEDERALISM: FAIR BUT UNSTABLE?

Well-known Canadian political philosopher, Will Kymlicka, defines multinational federalism as "creating a federal or quasi-federal subunit in which the minority group forms a local majority, and so can exercise meaningful forms of self-government", and where the group's language is likely to be recognized as an official state language either within their federal subunit or country-wide. Multinational federalism allows for language to be a determinant for the drawing of internal political boundaries. Taking India as an example, the organization of state boundaries was based on ethnic language in the 1950s.

Linguistic-based internal boundaries make a significant number of people happier, and they are not inconsistent with liberalism, nor do they pose a threat to national unity. Multinational federalism seems much fairer than other systems in accommodating the desires and concerns of minorities.

However, for those such as David Brown, an Australian specialist of Southeast Asia, multinational federalism is unstable and problematic. He claims that, by its very nature, it solicits trouble, promotes a more contentious violence and is likely, eventually, to break down the nation-state. Multinational federalism, by giving minorities pockets of majority power, creates difficulties for the functioning of democracy, whereas regional federalism can coexist with and promote democracy. In the multinational federation of Belgium, there is little sense of national identity and the future of Belgium is uncertain. The question of whether multinational federalism has been mistaken, premature, and problematic in Western countries remains a contested issue.

The debate over regional versus multinational federalism manifests itself in Sri Lanka. The government of Sri Lanka and a majority of Sinhalese are interested in a region-based federal model combining shared rule and self-rule with limited autonomy for the Tamil Tigers. The Tamil

Tigers' vision of federalism is a multinational one, more confederal in nature with maximal autonomy. In 2001, the Tigers rejected government offers of far-ranging decentralization of power, demanding an interim administration that would control police, judiciary, revenue and land issues that would have taken effect in 2002. At the same time, the right-wing group among Sri Lanka's Sinhalese-Buddhist majority opposed the government's decentralization plan.

HYBRID FEDERALISM IN ASIA

It would be extremely difficult for some Asian states, such as the Philippines and Indonesia, to establish a strictly region-based federalism because of regional federalism's inadequacy in dealing with the challenge of ethnic conflicts. Region or territorial federalism fails to meet the special demands of minority nationalities and therefore it is inevitable that some Asian countries, those with greater ethnic dissention, will adopt some elements of multinational federalism, but one combined with centralized and asymmetric characteristics.

Key questions for Asia

Can Asian states follow Western models of federalism? And should they?

Does the American model of territorial federalism provide a stable, yet largely irrelevant system for Asia?

Is the Canadian model of multinational federalism relevant to Asia, but inherently unstable?

What do Asian forms of hybrid federalism currently offer?

The model of multinational federalism cannot apply to the case of Hong Kong because most of Hong Kong's population is Chinese, and multi-nationalities do not exist there. Likewise, if federal institutions reunified China and Taiwan, it would not be a case of multinational federalism because Taiwanese are largely regarded as Han Chinese (*huaren*). Multinational federalism has its limits, namely in Japan and in the two Koreas. If the two Koreas were to be unified to establish one federal polity, the form of federalism that would be taken up is unlikely to be multinational.

The wholesale implementation of multinational federalism is unrealistic in terms of the lack of a powerful driving force and problematic in terms of the subsequent difficulties it will bring. Debate over region-based versus multinational federalism may be conceptually too narrow in Asia, ignoring or underrating existing models of Asian federalism. Pakistan and Malaysia for example, have developed *illiberal federalism* where federalism coexists with, and even supports, the authoritarian structure. India, Indonesia, the Philippines, and China have built up *hybrid federalism* with key characteristics of a regional autonomy.

The Western models of federalism – regional (territorial) federalism and multinational federalism – have not been widely implemented in Asia. Instead, a hybrid form of federalism has evolved in Asia. It does not introduce wholesale Western

federalization; rather, it is a piece-meal process that is more appropriate for some Asian countries.

India's success story

Normatively speaking, one ethnicity cannot constitute a basis for federalism; and the federal state must pursue a mix of civic and ethnic interests. The Indian success story reveals that its federalism has blended both regional and multinational elements of federalism. The achievement of the Indian federal accommodation of ethnic groups is due to this hybrid of those two types of federalism mechanisms.

Hybrid federalism refers to the special mixed institutional arrangement in which the centre and the main body of a polity remain a unitary system, while only one or two peripheral regions or units have been decentralized or offered the status of regional autonomy. This institutional configuration combines a unitary system with federal elements. It differs from the conventional unitary system, which does not have special regional autonomy but, instead, has central and local relations. The autonomy of Hong Kong and Aceh, for example, are hybrid forms of federalism, defined and guaranteed by the Hong Kong Basic Law, and Law No. 11, 2006 passed by the Indonesian parliament, respectively; the central government cannot unilaterally change the autonomy law.

This hybrid federalism is dissimilar to multinational federalism because the former only introduces federal elements in peripheral regions or units, while the latter has federalized the main body of polity. Indonesia and China, for instance, adopt only a minimal form of federalism. As a result, a large component of the unitary political system remains intact so that it has the advantage of maintaining the unity of the nation-state while avoiding the uncertainty of multinational federalism.

Hybrid federalism differs from multinational federalism in the following ways: As in the case of Aceh and Hong Kong, it is not purely ethnicity-based, nor does it guarantee political equality. It lacks a clearly defined internal boundary based on one ethnic language. Finally, as in the case of Hong Kong, hybrid federalism has the capacity of achieving stability and peace at the cost of inter-group equality and even democracy.

Hong Kong enjoys a higher degree of autonomy than most federal subunits. For instance, Hong Kong has a separate customs territory and is able to participate in relevant international organizations and international trade agreements. In Indonesia, quasi-federal institutions have emerged under the banner of regional autonomy. In the case of Aceh, Nangroe Aceh Darussalam (NAD), the autonomy law recognized the Aceh people's long-sought religious sovereignty. The Acehnese may practice their Islamic laws (Shari'a). Under the NAD the Acehnese are entitled to receive 70 percent of the revenues from oil and gas. Under the peace agreement of 2005, they can hold elections for a self-governing body.

In the Philippines, the 1987 Constitution provided autonomous regions in Muslim Mindanao with many concessions: legislative powers over administrative organization; creation of sources of revenues; ancestral domain and natural resources; personal, family, and property relations; regional urban and rural planning development; economic, social, and tourism development; educational policies; and preservation and development of cultural heritage.

In order to meet both the desire for self-government and the need for maintaining the unity of the state, Asian countries adopt hybrid forms of federalism. Federal institutions have to be hybrid and asymmetric (not all regions or peoples have equal powers) to maintain diversity and difference. To preserve this diversity and difference, federalism must adopt differential treatment and an asymmetric policy. The constituent units of a federation do not possess identical powers — some should have special rights because of their social and political history.

The initiating of hybrid federalism in Asia carries with it two apparent contradictions. First, the most centralized states – Indonesia and China, for example – are allowing special regional autonomy. The second contradiction is that despite the existence of asymmetric elements of federalism being implemented, central governments in both countries avoid the use of the term "federalism," instead favouring the language of autonomy. While some Chinese dissidents openly call for a federal system, the official line bans any debate on federalism and sticks to Deng Xiaoping's idea of "one country two systems."

WEAKNESSES IN ASIAN HYBRID FEDERALISM

The Asian form of hybrid federalism has a number of deficiencies. It institutionalizes unequal relations but it does not necessarily provide maximal minority rights for certain groups, even those that receive special status. The Hong Kong model of autonomy is an excellent example. Beijing makes it clear that the ultimate source of power radiates from the centre to the regions and not vice-versa. This is secured by two institutional arrangements. First, the central government has the power to appoint the Chief Executive in an autonomous system in which the executive body dominates the legislative body. Second, the power to interpret the Basic Law and to amend it belongs respectively to the Standing Committee of the National People's Congress and the National People's Congress of the PRC.

The long-term prospects for hybrid federalism are uncertain. It is possible that other regions or units will follow the example of special regional autonomy and demand similar treatment, thus more and more federal elements might be grafted on to the unitary system. It is equally possible that the centre might be able to absorb the federal unit (such as Hong Kong) and transform it into an integral of the unitary system. Hong Kong will be a test case to see which possibility will prevail in the long term.

CONCLUSION

Asian countries have been developing a variety of hybrid political systems, partly through borrowing and modifying Western elements, partly by adapting traditional ones, and by inventing new forms. In effect, they have done what Western countries, and particularly the United States, did earlier on in adapting and inventing new forms of government. Asian forms of federalism show a range of dynamic variants, some more stable than others.

POLICY IMPLICATIONS

- Those in Canada who advocate multinational federalism for Asian countries, need to be sensitive to Asia's special needs to strengthen national unity and complex institutional arrangements and configurations. Nation-state building is still the priority on the political agenda in Asia. Human rights, including minority rights, are an integral aspect of hybrid federalism, but are merely a secondary element within a mixed regime; they do not enjoy a privileged position.
- Further studies are needed to examine which forms of hybrid federalism and Asian variants are capable of accommodating ethnic differences and facilitating ethnic harmony and national integration.
- Academics and policy makers need to be aware of Asian countries' efforts to develop mixed regimes; that is, to generate a dynamic blending of traditional rule, regional, multinational and asymmetric elements of federalism, and confederalism in different proportions at different times, sensitive to specific countries' needs and within the acceptable parameters to those in power.

Representative Bureaucracy in Multinational States: Turkey, Nigeria and Canada

Alain-G. Gagnon, Luc Turgeon and Olivier De Champlain

EXECUTIVE SUMMARY

A key challenge for most democracies, old and new, is to ensure that national minorities are represented in central institutions. Weak or non-existent representation of national minorities in bureaucratic machinery, and the inability for members of a linguistic minority to be served in their own language, can lead to serious challenges to a state's stability and its claim to legitimacy. This policy paper explores the challenges of ensuring a representative bureaucracy in multinational states. It examines how two countries, Nigeria and Turkey, have dealt with their multinational character; both have failed, in part, to find an appropriate balance between fair representation and effectiveness. Failure in the former case can be attributed to an overemphasis on representativeness *and, in the latter, to the refusal to recognize national diversity. The Canadian experience provides some potential solutions to the challenge of balancing representation and effectiveness in a multinational state.*

INTRODUCTION

As dramatically demonstrated in the current situation in Iraq, the management of diversity is often a key challenge in the process of democratization. Social scientists and international organizations have spent considerable resources exploring how the legal framework, electoral system, territorial organization and executive power can promote peaceful relationships between different national groups, especially during democratization. Yet, the key role of the public service, to foster stability and justice, has been neglected in multinational countries.

THE IMPORTANCE OF REPRESENTATION IN THE PUBLIC SERVICE

Why is it important that ethnic minorities be represented in bureaucracies?

- Individuals' relations with the state often require contact with front-line public servants, sometimes referred to as "street-level bureaucrats." A weak or non-existent representation of members of national minorities in bureaucratic machinery and an inability of members of a linguistic minority to be served in their own language can lead to serious challenges to a state's legitimacy.
- The exclusion or under-representation of national minorities in government administrative positions can be a major source of conflict and resentment, particularly if such positions are considered desirable because of the income or benefits they guarantee.
- Public servants can favour members of a specific national group with respect to implementation of government programs, and thereby increase the discontent of other national groups.

This paper explores the challenges of ensuring a representative bureaucracy in multinational states. It examines the failures of Nigeria and Turkey to appropriately balance representativeness with effectiveness and draws from the Canadian experience to provide potential "best-practice" examples.

SEEKING A BALANCE BETWEEN JUSTICE AND EFFECTIVENESS

A key challenge for most democracies, old and new, is ensuring that national minorities are fairly represented in central institutions. This requires more than ensuring basic rights of national minorities to vote. Just as essential, is the capacity to be central political actors. Justice in multinational states entails that national minorities should neither be forced to assimilate nor be excluded entirely from political institutions — as was the case in South Africa during apartheid. Justice is essential to stability, since groups who do not feel represented in central institutions

In the last decade, much research has also been done on multination states and national minorities. A multination state can be defined as a state that has more than one group defining itself as a nation.

Spain, for example, is often said to be composed of different national groups: the Castilians, the Basques and the Catalans. Multinational states are often federations, as in the cases of Canada, Belgium, India, Malaysia, Spain, Ethiopia and Nigeria.

However, while some countries, Turkey being a case in point, officially deny their multinational nature, they are nonetheless *sociologically* multinational entities, encompassing more than one group with a distinct language, religion or historical trajectory. National minorities are often concentrated in specific regions and, unlike most new immigrant groups, can threaten the territorial integrity of the state.

are more likely to be willing to explore other options, such as secession. Yet, it is also essential for the legitimacy of new democracies that the state perform key functions effectively; as such, a state must not overly challenge the merit principle central to the functioning of modern, effective bureaucracies. Finding a fair balance between these two values is a key challenge.

TURKEY

With the Kurdish community accounting for over 20% of the population, Turkey is empirically a multination state. Yet, since its foundation in the 1920s, the Turkish state has failed to recognize national diversity. Inspired by the example of the European unitary nation-state (particularly that of France), the father of modern Turkey, Mustafa Kemal Atatürk, based the foundations of a new national community on three principles: republicanism, nationalism and secularism. The first two are especially important to understanding how national diversity is managed in Turkey, as they are based on the principle of the indivisibility of the Turkish territory and the Turkish people. In light of these principles, it is not surprising that Turkey has no formal mechanisms for ensuring fair representation of the Kurdish national minority in the public service. However, the principles of merit and non-discrimination have been enshrined in the Turkish Constitution. Section 70 of the country's Constitution stipulates that every Turkish national has the right to join the public service and that qualifications are the only things that may be taken into account in the hiring of public servants.

At the same time, use of the Kurdish language within the public service and in interactions with citizens is prohibited. In 1926, the government had adopted legislation concerning use of the Turkish language, and made its exclusive use compulsory in all government correspondence — the case remains the same today. Many international organizations have denounced the fact that Kurdish citizens are unable to receive services in the language of their choice, particularly in the health care sector.

In principle, the Turkish republican system guarantees equality of opportunity, with no regard for ethnic origin. Yet, unlike Canada, Belgium and Great Britain, Turkey has provided no independent political institutions for its primary national minority. The southeast provinces, in which the bulk of the Kurdish people reside, are governed by Turkish bureaucrats. Municipal government is comprised of an elected mayor and public servants appointed by the central government.

In Turkey, a sole focus on stability and effectiveness to the detriment of basic standards of justice has led to a counterproductive exclusion of the Kurdish language from the public sphere. This has contributed to political instability in the country.

In Nigeria, an obsession with equal representation, in a context of unequal access to education, has led to a politicization of the public service and lack of effectiveness.

TURKISH POLITICAL PARTIES UNABLE TO ACT ON BEHALF OF MINORITIES

Discussion of a federal solution for the Turkish problem has long been prohibited. Moreover, section 81 of the legislation covering political parties deals with the prevention and creation of minorities, and specifies that political parties

– may not say that in Turkey there are minorities based on national, religious, cultural, confessional, racial or linguistic differences, and

– may not have the objective or carry out activities designed to undermine national unity by creating minorities in the Republic of Turkey and by protecting, developing or spreading a language or culture other than the Turkish language and culture.

Turkey explicitly rejects the establishment of a representative bureaucracy. This rejection is not limited to the lack of mechanisms for achieving better representation of Kurdish people in the public service. It also entails the Kurdish minority's inability to have its language and culture taken into consideration by the bureaucratic apparatus. This exclusion, rather than contributing to the stability of the Turkish Republic, has continued to feed extra-parliamentary activities in opposition to the State in Kurdish regions.

NIGERIA

It is important to grasp the impact of geography and demographics on how Nigerian groups live together. While the country has over 250 ethnic groups living in different locations, three major groups participate in the fragile north-south balance of the country:

- The Hausa-Fulanis, who are associated with the north, are, in majority, Muslim and account for 27.6% of the population.
- The Yorubas, who are concentrated in the southeast, are, in majority, Christian and account for 16.2% of the total population.
- The Ibos, who live in the southeast, are, in majority, also Christian and account for 17.6% of that population.

The primacy of ethnic and regional identities is therefore not surprising. Nigeria was thus founded on the concept "one country, many peoples," and very little was done to create unifying institutions.

NIGERIA'S CONSTITUTION DEMANDS ETHNIC REPRESENTATION

In sharp contrast with Turkey, Nigeria, since 1979, has enshrined a series of constitutional provisions requiring that every public-service hiring or appointment must favour the representation of all regions and ethnic groups in the country. Article 14(3) of the Nigerian constitution stipulates that the government and its agencies must reflect the *federal character* of Nigeria. This clause, included in the 1979 Constitution, led to the creation of the Federal Character Commission in 1996 establishing measures to ensure equitable representation of Nigeria's various cultural groups.

The inclusion of this clause on the country's federal nature has been the subject of much debate in Nigeria. Proponents point out its positive effects. For example, 1996 data from the Federal Character Commission on the origins of members of the Nigerian public service and para-public organizations show that people from the north (55% of the population) account for 41% of public service jobs. They held only 10% of such positions in 1960, at the time of independence.

One might assume Nigeria's focus on "federal character" ensuring ethnic representation, would promote attachment to central institutions rather than to community groups. Yet, according to J.A.A. Ayoade, the high degree of centralization characterizing the Nigerian federation increases the importance of representation of the regions in the central government, including the public service, in order to guarantee that each region receives its fair share of financial resources. This situation is reinforced by the fact that oil and gas, the most important source of revenue, belong to the federal government.

Thus, public servants are not representatives of the central government, with respect to the population, but rather politicized intermediaries bridging the gap between the central government and their respective ethno-regional groups.

Opponents say that establishing quotas and compliance with "federal character" challenges the merit principle, considering the significant regional variations in the number of university graduates. Historically, an overwhelming majority of the students admitted to university came from southern Nigeria. A number of analysts of Nigerian society fear that the very concept of federal character has become a national obsession, which could demoralize the bureaucracy by bringing its efficiency into question. Beyond the strains against the principles at the base of modern bureaucracies, such as merit and seniority, opponents of the clause see Nigeria's application of the principle of representativeness as simply *nepotism with an ethnic face*.

CANADIAN DIMENSION

Canada's own experience as a multinational democracy can provide certain examples of "best practices." This is not to say that Canada has always had a history of fair representation of national minorities; the country has, however, overcome a history of under-representation of French Canadians in the public service. In 1944–1945, French Canadians represented around 30% of the Canadian population, but occupied only 12.5% of the public service positions.

In the senior public service, the numbers were even more alarming. While in 1918, 14.3% of federal senior officials were French speakers, their numbers gradually dropped, and by 1946 there were none. Such exclusion of French-speaking Canadians from the civil service in the post-war period directly contributed to the rise of the Quebec independence movement.

OFFICIAL LANGUAGES ACT DRAMATICALLY INCREASES FRANCOPHONE REPRESENTATION

In the 1960s, faced with the rise of the Quebec separatist movement, the federal government orchestrated a response that culminated, in 1969, with the adoption of the *Official Languages Act*. The Act formally acknowledged the equal status of French and English (later made into Canada's two official languages), and created the position of Commissioner of Official Languages, whose task is to ensure implementation of the principles on which the Act is based. The Commissioner produces an annual report on bilingualism, which is similar to a "name and shame" review of the federal government's linguistic practices, and asks political authorities to make corrections to alleviate problems.

With respect to the public service, the Act's purpose is as follows: "Canadians of the two language groups should participate equitably in federal institutions and should have equitable opportunities for employment and a career in federal institutions." Moreover, "federal employees should be able to work in the official language of their choice in designated areas."

In order to achieve the objectives of the *Official Languages Act*, the federal government adopted a multifaceted strategy:

- Active recruitment of French speakers.
- Designation of bilingual positions in the public service.
- Development of language courses designed to establish a bilingual public service.

These measures have often been criticized by political players and unions, which see in them a flagrant disregard for the merit principle and a disguised form of discrimination against English speakers. The federal government's answer to such accusations can be summarized as *bilingualism is a criterion of merit*. Naturally, when there is an increase in the number of positions requiring mastery of both official languages, job opportunities for French speakers also augment.

In short, the *Official Languages Act* has significantly increased French speakers' representation in the federal public service. From the feeble 12.25% of positions they held in 1946 for a population that accounted for 29% of the population of Canada (1951 Census), French speakers' participation rose to 27% of positions in 2004, for a French-speaking population that accounted for 22.9% of Canada's population in 2001.

> In the senior public service, the numbers were even more alarming. While in 1918, 14.3% of federal senior officials were French speakers, their numbers gradually dropped, and by 1946 there were none. Such exclusion of French-speaking Canadians from the civil service in the post-war period directly contributed to the rise of the Quebec independence movement.

CONCLUSION

The issue of bureaucratic representativeness in government reveals the fundamental concerns running through multinational states. In Turkey, denial of the Kurdish fact and an obsession with security, far from ensuring the stability of the Turkish government, has undermined the legitimacy of the public service in the eyes of a large proportion of the Kurdish population. Nigeria's problem is very different. The obsession with proportional representation of all regional groups in order to redress colonial injustices, and more recent political inequalities has resulted in the politicization of the public service, casting doubt on its efficiency. Nigeria's political stability has suffered greatly. The establishment of a representative bureaucracy is essential to the smooth operation of the machinery of government, but it cannot compromise effectiveness. Such concerns must be addressed if these democracies are to continue to be consolidated in the coming years. Canada provides some encouraging lessons for the consolidation of both representation and effectiveness.

POLICY IMPLICATIONS

Recommendations based on the Canadian experience:

- In cases where, as in the Kurdish region of Turkey, a significant linguistic minority is territorially concentrated, at a minimum, proximity services (health care, social services, drivers' permit, etc) should be made available in the linguistic minority language.
- An independent auditor should be in charge of reporting linguistic minorities' access to services in their own language.
- In order to increase the number of members of linguistic minorities in the public services without compromising the merit principle, bilingualism can be made a criterion of merit.
- Although the objective of a representative bureaucracy can and should be adopted, quotas should be rejected, especially in situations of significant variation in access to post-secondary education.
- Clear guidelines of minimum qualification requirements should be drafted and their implementation supervised by an independent commission working collaboratively but at arms length from any commission charged with ensuring a better representation of the different national groups.
- Universities should be encouraged to actively recruit candidates from groups historically excluded from the civil service and to offer degrees in public administration in regions with low level of post-secondary attendance.
- In light of its own experience, the Canadian government should provide more resources to encourage former civil servants to play a consulting role, in collaboration with non-governmental organizations, to emerging and consolidating democracies trying to build an effective and representative public service.

Shari'a, the State, and Identity Politics

Anver M. Emon

EXECUTIVE SUMMARY

History has shown that demands to implement Shari'a or Islamic law are not solely claims for religious freedom. In a post-colonial context, Shari'a has become a symbol of political identity, its historical doctrines used to invest individual and community identity with a determinate and objective "Islamic" content — one often positioned against the perceived emptiness of the liberal individual. This policy paper argues that the international community should adopt policies that enhance its knowledge of Islam and Islamic law. It must engage in and facilitate dialogue with the multiple voices of Islam and Islamic law without favoring one over another. To favour one is to ignore how each voice represents certain interests at stake which, if ignored, may perpetuate the antagonisms that exist in the world today.

INTRODUCTION

Understanding the Muslim world is often an elusive task, and to generalize about it is not only naïve but very likely counterproductive. However, for Muslim communities and countries, one issue that often assumes significant symbolic power, domestically and internationally, is the role of Shari'a in society.

- In Ontario, Canada, for instance, a vociferous and often polemical debate occurred about the use of Shari'a-based family law arbitration.
- The recent civil conflict in Somalia witnessed the Islamic Courts Union, a group of Somali Islamists that rebelled against the interim parliament of Somalia on a Shari'a-based platform.
- The new constitutions of Afghanistan and Iraq expressly incorporate Islamic law into both legal systems.
- Finally, at the time of writing, a Muslim cleric in Pakistan threatens to institute his own Shari'a tribunals as an act of defiance against President Pervez Musharraf's regime.

Whether used as a form of political opposition, a mode of dispute resolution – or both – Shari'a often invokes anxiety regarding its potential effects socially and politically, domestically and internationally. The challenge of understanding the role of Islamic law in Muslim societies is to recognize that while the state may enforce Shari'a norms, the nature and scope of those norms are often defined in light of the masses who invoke Islam as a symbol of political identity for themselves, whether as individuals or members of a community or state. The meaning of Shari'a takes shape through institutions of government immersed within a context of, not one single, but contested, Shari'a values. Whether the government in a Muslim society can change or alter the legal landscape is not, therefore, simply a function of its constitutional or coercive power, but rather stems from the legitimacy it can and does derive from its people. Effective engagement on Shari'a-related issues requires that those of us in countries such as Canada:

- Understand the multiplicity of Shari'a voices in the Muslim world.
- Empower Muslim voices from below to engage in a *horizontal* dialogue with each other about the meaning, definition, and significance of Shari'a for themselves and their society.
- Enable a *vertical* dialogue between the Muslim voices below and the centres of state power to facilitate a mutually meaningful discourse about what Shari'a means in society amidst other competing interests of local, domestic, and international concern.

To illustrate how these recommendations can breed new realms of understanding and engagement, this paper will focus on the ways in which Muslim countries incorporate Islamic law in their rule of law systems and how the adjudication of Islamic law disputes reveal and provide avenues for more nuanced policies promoting good governance and rights protection.

THE CONSTITUTIONAL CONTEXT OF ISLAMIC LAW: THE CASE OF RELIGIOUS FREEDOM

Various majority Muslim countries may specify in their constitutions that Islam is the state religion, although that is not always the case. Some countries with significant Muslim populations specifically state that the government is secular, keeping religion and state law distinct. Aside from designating Islam as the state religion, some Muslim nations also state that Islam is either "a" source or "the" source of law in the country, thereby bringing into sharp focus the constitutional significance of violating a precept of Shari'a law.

PROTECTING THE INTERESTS OF RELIGIOUS MINORITIES

To protect the interests of religious minorities, Muslim state constitutions may include equality clauses that protect individuals from religious discrimination.

Examples:

"People are equal in human dignity, and citizens shall be equal in public rights and

duties before the law, without discrimination as to race, origin, language, religion, or belief."
(— Article 18 of Bahrain's constitution)

"All persons are equal before the law. No person may be discriminated against on account of race, ethnic origin, language, colour, sex, religion, disability, political belief or opinion, or social or economic status or any other factor…."
(— Article 14 of Eritrea's constitution)

Generally, equality clauses are listed among the earliest provisions of "basic rights" and occur without limitation or restriction.

SPECIFIC PROVISIONS FOR RELIGIOUS FREEDOM

Muslim countries may also include provisions protecting religious freedom specifically.

Examples:

"The State shall guarantee the freedom of belief and the freedom of practice of religious rites."
(— Article 46 of Egypt's constitution)

"The State guarantees all persons the freedom of worship, each according to his/her own religion or belief."
(— Article 29(2) of Indonesia's constitution)

Other countries adopting this unrestrictive approach include Bosnia-Herzegovina, Eritrea, Mali, and Morocco.

CONSTITUTIONAL AMBIGUITY REGARDING RELIGIOUS FREEDOM

Some Muslim countries may, however, qualify the scope of religious freedom.

Examples:

Bahrain's constitution reads: *"Freedom of conscience is absolute."* The next sentence, however, follows up with, *"The State shall guarantee the inviolability of places of worship and the freedom to perform religious rites and to hold religious processions and meetings in accordance with the customs observed in the country."* (— Article 22)

Kuwait's constitution also reads, "*Freedom of belief is absolute.*" The next sentence then states, "*The State protects the freedom of practising religion in accordance with established customs, provided that it does not conflict with public policy or morals.*"
(— Article 35)

Both examples illustrate how a statement of absolute freedom is coupled with ambiguous limiting language about "customs," "public policy" and "morals". Who decides what those customs, morals, and public policies are? To suggest the government alone defines them is to ignore the prevailing context and culture that gives those words meaning at the social, institutional, legal, and political levels.

CASE STUDY: THE AFGHAN APOSTASY CASE AND THE LIMITS OF RIGHTS TALK

The 2006 apostasy trial in Afghanistan – in which an Afghan man, Abdul Rahman, was indicted for converting from Islam to Christianity – illustrates how Shari'a in modern Muslim states reflects, in part, local context and, in part, government institutions and practice. If the country embraced no official religion, his conversion should not have been a problem.

However, Abdul Rahman's apostasy presented a capital, or death penalty, case for the newly re-established Afghan state, which is constitutionally defined as an Islamic Republic, and upholds Islam and Islamic law as governing principles.

When Abdul Rahman was tried as an apostate, he could not invoke his religious freedom under Article 2(2): for the court to free him on that ground would violate Article 3, given that the pre-modern rules of Shari'a prohibit apostasy as a capital crime. Under historical Shari'a doctrine, an apostate was given time to repent; if he did not repent, he was subjected to execution. Any law or judicial decision that allows a Muslim to convert to another faith might be construed as violating Article 3's requirement that all law be Shari'a compliant, where Shari'a is substantively defined to include pre-modern rules governing the treatment of apostates from Islam.

But the real question is: why is Shari'a defined in that fashion?

Article 2 of Afghanistan's constitution recognizes Islam as the country's official religion, but also provides protection for religious minorities.

"Followers of other religions are free to exercise their faith and perform their religious rites within the limits of the provisions of law" (— Article 2(2)).

Those limits, though, are defined in part by another section of the constitution which states: "In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam." (— Article 3).

ISLAM AS PART OF AFGHANISTAN'S HISTORY OF RESISTANCE

The use of historical Islamic terms and concepts to define the national ethos is perhaps not surprising given the recent memory of violence in Afghanistan, during which the fight against Soviet occupation was often framed in Islamically meaningful language and resulted in both sacrifice and success.

Afghanistan's history is framed in religious terms of resistance and sacrifice, which renders the language of Islamic values, and even law, a mode of expression and identity, political and otherwise. The respected political theorist Roxanne Euben has argued that the Muslim fundamentalist's resort to early Islamic tradition may provide a communitarian foundation for identity in a way that allows a people or nation, such as Afghanistan, to assert an authentic identity in a quickly globalizing world. Within the realm of Islamic thought, pre-modern rules of Shari'a arguably provide determinate and objective points of reference for asserting such an identity as both authentic and organic. In a situation like the Afghan apostate case, pre-modern rules of Shari'a provide more than rules of decision; they constitute a foundation for national and political identity in a state that has already resisted and is currently contending with occupying forces that have undermined its sovereignty. Indeed, eventually, even to

acquit Abdul Rahman, the Afghan court relied on a pre-modern Islamic legal defence — i.e. insanity.

> The preamble to the Afghan constitution invokes both its history of occupation and Islamic language of resistance as part of the guiding spirit of the nation.
>
> "Realizing the injustice and shortcoming of the past, and the numerous troubles imposed on our country; while acknowledging the sacrifices and the historic struggles, rightful jihad and just resistance of all people of Afghanistan, and respecting the high position of the martyrs for the freedom of Afghanistan…."

THE RULING: BALANCING SHARI'A WITH INTERNAL AND INTERNATIONAL PRESSURES

The insanity ruling might be perceived by those in the West as implying that anyone in Afghanistan who abandons the Islamic faith must by definition be insane, thereby only emphasizing the limited religious freedom in the country. Another reading of the case, however, illustrates how the judge used technical rules of pre-modern Shari'a in light of Afghanistan's constitutional structure and the context of politicized Shari'a to decide the case while *upholding* a nascent government. The Afghan constitution proclaims the independence of the judiciary, an institutional value well respected in contemporary theories of democracy and the rule of law. However, this independence is qualified in cases where a court imposes an execution sentence on a defendant. Specifically, Article 129(2) states: "All specific decisions of the courts are enforceable, except for capital punishment, which is conditional upon approval of the President."

If the judge in Abdul Rahman's case found him guilty of apostasy and sentenced him to death, the judge would have forced a confrontation with the executive, namely President Hamid Karzai. Karzai was already under considerable international pressure to intervene in Abdul Rahman's case. If Karzai had then disapproved of the court's death sentence, he arguably would have set a dangerous precedent of executive interference with the judiciary, potentially undermining the public's confidence in the independence of the judiciary, the integrity of the President's office, and even the democratic aspirations of the Afghan government.

By finding Abdul Rahman insane, the judge preserved Abdul Rahman's life, upheld the constitutional commitment to Shari'a law, avoided a conflict with the executive and defused the immediate consternation of the international community.

CONCLUSION

The examples of Muslim constitutions, and the Afghan apostate case more specifically, demonstrate the importance of understanding how Muslims' claims to observe the Shari'a are substantially more than an assertion for religious freedom. They show that such claims are embedded in a contest over

competing claims of political identity in an international system of markets, states, and regionalisms. The medieval rules of Shari'a provide determinate, objective points of reference to construct an "authentic" Islamic political identity. This political identity is then parlayed into a claim against the institutions of government, where implementing Shari'a is instrumental, for instance, in defining the identity of a nation, claiming regional autonomy in Muslim Mindanao, or seeking limited legal autonomy, as in the Shari'a debates in Ontario, Canada.

To enable Muslim voices to dialogue horizontally with each other, and vertically with the modern state, the international community can play a significant role as facilitator. But to do so, it must not only intend to play this role, but also be perceived as playing it as an informed and respectful party. A policy of being informed and respectful seems to be common sense but the fact remains that governments across the globe have illustrated little understanding and awareness of the history of Islam and the way that history crystallizes in a given country.

POLICY IMPLICATIONS

To be effective, the international community should consider the following policies:

- Learn about and support ongoing research on Islam, Islamic law and the particularities of the Muslim world.
- Recognize the difference between experts and political representatives. Expertise in Islam and Islamic law is distinct from politically representing a community of Muslims. Contemporary Muslim leaders are often trained in intellectually conservative Islamic schools in the Muslim world, or even are Western-trained engineers, scientists and doctors, lacking critical training in the human sciences. They often represent communities rather than reflect considered study of Islamic history, law, and society. The international community should not confuse the claims of political representatives with the analysis of academic experts.
- Identify the interests at stake in the competing voices on Islam and the Muslim world. In countries such as Canada, Muslim organizations occupy various positions on the political spectrum; yet their names suggest they represent the Muslims of Canada *en toto*. There has been and likely will always be a multiplicity of voices about Islam and Islamic law. To be informed and respectful will require the international community to recognize that each voice has a particular interest at stake. The challenge to the international community, therefore, is not to find the most appealing voice to consult, but instead to recognize and respect the interests at stake in each voice, and chart a course of engagement that encourages dialogue amongst the voices and with the state.

The United Nations Security Council and Ethnic Conflict

Jane Boulden

EXECUTIVE SUMMARY

The United Nations Security Council is an important but unrecognized actor in ethnic conflict situations. This lack of recognition is due to a false sense of distance between Security Council decision-making and the conflict in question. This distance stems from the perception that when the Security Council responds to conflict it does not do so in pursuit of its own views of the positions of the parties and how the conflict should end. Rather, its objective is simply to support the push towards peace, regardless of its specific nature.

While it may be the case that the Security Council does not have a political agenda in a specific sense, the nature of its mandate — the maintenance of international peace and security — and the tools used to implement that mandate, have unrecognized, often unintended, consequences. Once the Security Council decides to respond to conflict, especially ethnic conflict, its actions are likely to impact the positions and perceptions of the parties involved, sometimes even perpetuating or sowing the seeds for later return to conflict.

If the Security Council is to have a positive impact in supporting movement towards durable peace in ethnic conflict situations they must recognize this impact, and build it into their decision-making process.

WHY IS THE SECURITY COUNCIL AN IMPORTANT ACTOR IN ETHNIC CONFLICTS?

The Security Council has become a key actor in ethnic conflicts by virtue of its role as the primary organ at the United Nations responsible for issues of international peace and security.

That simple statement must be qualified in a number of ways.

- There is no automaticity to Security Council involvement in conflict. The choice of which conflicts the Security Council responds to depends on a variety of factors, many of which have as much to do with Council politics as they do with the situation on the ground in the conflict in question.
- The Security Council approach is to deal with conflict as conflict, regardless of its origin or nature. It does not have one set of tools for ethnic conflict, another for civil wars, and another for conflict between states.
- When the Security Council responds to a conflict it does so on the basis of a ceasefire or peace agreement which the parties to the conflict have already agreed upon. It does not respond to the conflict with its own views as to the most desirable outcome or how that outcome will be achieved.

While we can describe the Security Council as an important actor in ethnic conflict situations, the combined effect of these three inter-related factors is that the Council does not necessarily see itself in that role.

THE PARAMETERS OF THE SECURITY COUNCIL ROLE

In many ways the Security Council is a unique actor on the world stage. The UN Charter entrusts it with the *central task of the UN* — the maintenance of international peace and security — and endows it with wide latitude to determine when and how the United Nations will respond.

This latitude made possible the expansion of the concept of "*international peace and security*" witnessed after the end of the Cold War when humanitarian crises and faltering democratic transitions, for example, were cited as threats to international peace and security. It also means that there is no automaticity built into the process. Under the terms of the Charter, threats to international peace and security are what the Council says they are.

Article 39 of the United Nations Charter, gives the Security Council the right to "determine the existence of any threat to the peace, breach of the peace or act of aggression" and also to recommend what measures are to be taken as a consequence. There is tremendous power placed in the hands of the Security Council in this arrangement. In the absence of any established criteria for defining international peace and security, it is left entirely to the Security Council to determine when a threat, breach of the peace or act of aggression has occurred.

Coupled with the veto power of the five permanent members, this means that the definition of threats to international peace and security is not only very malleable but highly selective. This level of selectivity sometimes prompts accusations of double standards.

Once a decision is made to respond to a conflict situation, the Security Council has a wide range of tools at its disposal. Again, the Charter was built with maximum flexibility in mind. The Security Council can suggest or mandate anything from mediation and negotiation to sanctions and the use of force when authorizing a response to conflict.

PRACTICE OF THE SECURITY COUNCIL

The Council has wide latitude for its responses both in terms of when it responds and how it responds: What has it actually done in practice?

With respect to ethnic conflict, the nature of the Council's practice is important in three main ways:

– The basis of its response.

– The goals of Council action when it does respond.

– The tools it uses when responding.

THE BASIS OF THE RESPONSE

The onset of the Cold War almost immediately after the UN came into existence meant that the Council was effectively stalemated by the inability of the Soviet Union and the United States to agree on any issue and that the mechanisms enshrined in the Charter for dealing with international peace and security were rarely used. When the Suez crisis broke in 1956, the idea of a peacekeeping operation was created as an ad hoc framework for a UN response.

Peacekeeping is based on three main principles: the use of force only in self defence, the consent of the parties to the conflict, and an imperial mandate.

Although it has no specific basis in the Charter, these peacekeeping principles have endured as the framework within which most UN action is based even after the end of the Cold War opened the way for a return to the original Charter mechanisms.

> In the early post-Cold War years, latitude in the Security Council's power to decide what constituted a threat to international peace and security, and the ensuing decisions regarding which conflicts to act upon, left many commentators wondering aloud why the UN was so committed to Bosnia and Kosovo while leaving many conflicts in other regions, especially Africa, under-resourced or completely unattended to.

The need for consent, and by extension impartiality, means that the Council waits for a peace agreement or some form of ceasefire agreement that it can use as the basis for its response before it takes action. By linking its response to such agreements, the Council takes no formal position on the nature of the conflict or the issues at hand.

All that it is doing is supporting and overseeing or somehow facilitating the agreement in question, which has been arrived at by the parties involved.

There are a number of implications here for questions relating to how we deal with ethnicity. In linking its response to an agreement, the Council effectively legitimizes the arrangement, regardless of its specifics. As a result, the Council may be establishing or giving weight to an arrangement that privileges one group over another or that may set in motion a sequence of events or new struggle that leads to that outcome. In situations of ethnic conflict or tension this may exacerbate rather than ease tensions and may solidify situations that ultimately contribute to further conflict.

In the same way, the Council also gives legitimacy and authority to warring groups or leaders of warring groups, whose agreement must be gained in order for the process to work, but who have sometimes bought their seat at the table by engaging in terrible levels of violence. It is often said of the Council that it will take any peace agreement, even a bad one, but the implications of that tendency have not been fully explored.

GOALS OF SECURITY COUNCIL ACTION

Humanitarianism

As mentioned above, the ability of the Security Council to determine what constitutes a threat to international peace and security gives it wide latitude for action. Beginning just after the end of the Cold War, the Security Council began to exercise that latitude in new and innovative ways. The first and most obvious indication of this shift was reflected in a new sense that humanitarian crises constituted threats to international peace and security. In 1992, in response to the conflicts in Bosnia and then Somalia, the Security Council made a direct link between the humanitarian situation and international peace and security.

In both conflicts, concern about humanitarian assistance remained a persistent theme in the Security Council's approach. Indeed, in Bosnia, humanitarian aid rather than the specifics of the conflict itself was the central theme of the Security Council's response through more than 70 resolutions.

The provision of humanitarian aid usually privileges one group over another, possibly encouraging groups to stay in place rather than leave disputed territory, as was the case in Bosnia, or by bringing about a change in the relative position of the warring parties. As a result, although a focus on humanitarian assistance seems to provide the Council with a sense of distance from the politics of the situation, as with the act of legitimization that sometimes comes with a UN response, in conflicts that are ethnic in nature the

decision to respond on humanitarian grounds can consolidate, exacerbate or even create tensions along ethnic lines.

Democracy

As the Council has chosen to become active in more varied ways in a wider range of conflict situations, it has also drawn itself into the realm of democracy and human rights. The first overt shift in this direction occurred when the Security Council authorized an operation to reinstate the democratically elected government in Haiti in 1994. While democracy concerns were not new to the organization, the authorization to reinstate a democratically elected government, *with force if necessary*, was definitely a new step. In its authorizing resolution the Council made reference to both humanitarian and human rights issues, citing, in particular, the systematic violation of civil liberties. This concern for democracy and its linkage to issues of peace and security seemed to be a one-time event and was portrayed that way at the time. The exceptional nature of this response, however, has since been downgraded by Security Council authorized operations in Sierra Leone and East Timor with mandates relating to restoring or ensuring democratic transitions. Beyond these specific examples, some form of democratization has become a standard element of post-conflict operations under UN auspices.

The idea of supporting democracy as a general principle seems both laudable and desirable. As with humanitarianism, however, the application of these principles can have unintended effects, especially in situations of ethnic conflict. For example, situations where ethnically-based minority groups perceive themselves to be disenfranchised by a newly instituted majority-rule democratic system may sow the seeds of ongoing or future conflict.

TOOLS FOR RESPONSE

Use of Force

The way in which Security Council mandates are implemented has also changed with the end of the Cold War. While peacekeeping during the Cold War was firmly based on the idea that UN troops would be lightly armed and use force only in self defence, since then, the Security Council has demonstrated a willingness to authorize the use of force *beyond self defence* in order to achieve its established goals. This practice has generated mixed results. From Somalia and Bosnia to Sierra Leone and East Timor, one key lesson is that the use of force beyond self defence, in the context of an operation which is otherwise occurring under the banner of impartiality, is problematic at best. At worst it has the potential to make the UN a full party to the conflict. Again, using Bosnia as an example, the use of force to ensure compliance with safe areas and weapons exclusion zones inevitably pitted the UN against the Bosnian Serbs. While the use of force was geared towards ensuring compliance with the overall UN mandate and while the mandate was geared towards minimizing the effects of the conflict on civilians, and not directed against the Bosnian Serbs, as such, these nuances were lost to the parties on the

ground, — or manipulated by them to accentuate their sense of grievance and to rally others to their cause.

Sanctions

As with the use of force, sanctions can be used to pressure parties to a conflict to comply with their original commitments. Previously a tool used only against governments, the Council has moved to use sanctions against specific individuals and non-state actors as they did, for instance, in 1993 in order to pressure the Angolan rebel group, UNITA, into taking political dialogue seriously by establishing an arms and petroleum embargo against them. But when used in ethnic conflict situations, sanctions can impact the positions of the various parties struggling for power on the ground. The imposition of sanctions against Yugoslavia as that country descended into secession and conflict had the much-advertised effect of freezing Bosnian forces into an ongoing position of military inferiority by denying them access, or at least relatively easy access, to weapons supplies. The criticism at the time was that if the international community was not going to resolve the situation by other means it should not work to deny groups the ability to fight back.

CONCLUSION

The Security Council is an important actor in ethnic conflict situations, and by extension, on issues of democracy and human rights in post-conflict situations, but it is an actor of a particular kind. The way in which the Security Council responds to conflict has the potential to have an impact on the positions of the parties to the conflict both during and after the conflict. This is not always fully recognized by Security Council members themselves or by other states advocating that they take action.

POLICY IMPLICATIONS

- Security Council members, both permanent and non-permanent members, need to increase their awareness of the ways in which their decisions can have an impact on the situation on the ground, in situations where ethnicity is a key factor.

In particular, the following ideas need to be kept in mind:

- Any action taken or approved by the Security Council will be read by the parties to the conflict through the lens of the conflict and interpreted according to how it privileges or alters the positions of the various groups regardless of its intent. Perception matters very much in conflict situations, especially those with ethnic overtones.
- The delivery of humanitarian aid, and its protection, a focus on democratization and democratic institutions as well as human rights, must all be seen in this light. None of these objectives can be achieved without having an impact on the positions of one or more of the parties to the conflict.
- Impartiality is rarely achievable when force is likely to be used, even when only in self defence. Similarly, sanctions can privilege one or more parties to the conflict.
- All of these factors speak to a need for states at the United Nations to develop, separately and together, a much more nuanced understanding of the conflicts they are seeking to address and the potential implications of the mandates and tools they establish to achieve their objectives.

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How to *democratically* govern multi-ethnic, multi-national, and multi-religious societies remains a major challenge for political leaders and policy makers throughout the world. This book, containing ten policy papers, draws on the expertise of Canadian and international specialists to highlight some of the key issues and challenges, as well as to provide certain policy suggestions.

Most of the violent conflicts in the past two decades have been fought over ethno-national cleavages. The traditional focus on socio-economic development as a solution to conflict misses the point. The more recent acknowledgement of good and democratic governance as central to development is a step in the right direction. But a piece of the puzzle is still missing: the crucial importance of addressing identity politics — that is, addressing issues related to ethnicity and nationalism. This volume examines, from a policy perspective, this relationship between conflict, ethnicity and democracy.

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