

## **Ethnic Conflicts and Power Sharing**

**By Yash Ghai\***

The contemporary interest in power sharing as the underlying principle for the organisation of the state has arisen because of the belief that power sharing is particularly suited to the peaceful co-existence of ethnic groups in conflict and for a fair and participatory political system. There have been many recent examples of the use of power sharing to solve ethnic conflicts: Belgium, Northern Ireland, Bosnia-Herzegovina, Kosovo, the Sudan, Spain/Basques and other historical communities, Papua New Guinea/Bougainville. In many continuing conflicts, negotiations have revolved around the distribution of power - Sri Lanka/Tamil Tigers, Indonesia/Acehians, Iraq/Kurds, Russia/ethnic minorities, and Canada/Quebecois and indigenous peoples. Since independence, and even before, India has been in almost continuous dialogue with one or more of its communities on modes of power sharing. China has suggested a form of power sharing to solve its problems with Taiwan, relying on the system which was used to bring about re-unification with Hong Kong and Macau.

The justification for power sharing arrangements, which are sometimes categorised as consociational, is that internal conflicts arise from an unequal distribution of resources between communities or regions, the dominance of one or more communities over others, the exclusion of some groups, or the denial of the language, culture or religion of minorities. Most of these factors are deeply implicated in the structures of the state and access to these structures. Power sharing arrangements are offered as an approach to the design of the state in preference to majoritarian democracy or ethnic despotism. Majoritarianism in a multi-ethnic society, it is claimed, leads to the perpetual subordination of minorities to the will of the majority. It results in the denial of their history, traditions and identity. It is inclined towards their exclusion from or unequal access to state resources. The resentment that this breeds all too often breaks out in violence and leads to prolonged conflict.

Minorities in many countries have welcomed the consociational approach as it assures them a role in the making and implementation of laws and in the formulation of policies, and sometimes a degree of self-government. International and regional organisations, engaged or interested in the resolution of ethnic conflicts for humanitarian reasons as well as for regional stability, have supported consociational arrangements as a way to balance the claims of different communities - and as a convenient way to be rid of the problem. It would be a rare case today of international intervention in a domestic conflict where consociational arrangements would not be on the agenda. Because a majority is unlikely to agree to constitutional arrangements which it perceives as diminishing its power or authority, external pressures are often necessary. Consociational arrangements often represent the convergence of high principles and convenience.

While international statesmen applaud the virtues of power sharing, there rages an intense controversy among intellectuals and academics on its value. The controversy covers various issues. For example, it has been said that many countries which are cited as successful examples of consociational arrangements are in fact not consociational. Fiji has been cited by several authors as a successful consociational state but, at least until the ill-fated 1999 constitution, it was best characterised as an ethnically dominant state. Today's South Africa is also placed in the consociational group, but the truth is that the leaders of the African National Congress fiercely resisted deviations from the liberal, majoritarian democracy when the final constitution was agreed.

Others worry about the degree of democracy, transparency and accountability. Consociational arrangements are attended by a high degree of confidentiality among the leaders. As political

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participation is based on membership of a community, the leaders of the community, often self-appointed, exercise a powerful influence on access to state structures. Consociational arrangements are often based on a high degree of collective rights and forms of self-governance based on traditional authority. These power structures can disadvantage specific groups like women and persons belonging to lower castes (as demonstrated by discrimination against aboriginal women in Canadian reserves or Muslim women in India). Legal pluralism validating regimes of customary law, sometimes administered by separate communal or religious courts, often accompany consociationalism. Martin Edelman's research on religious laws and courts in Israel has demonstrated their negative consequences on the rights of particular groups, the resistance to reform, and the fragmentation of society. Some countries are able to maintain consociational arrangements only by imposing restrictions on the freedom of expression and the full exercise of other political participation rights. It is also the case that some countries called consociational are more accurately described as an example of ethnic dominance in which minority communities have to accept the overarching authority of the majority (e.g., Malaysia). Calls for the accountability of the leaders of the dominant group imperils the rights of participation of others and are therefore discouraged. Critics of consociationalism have also questioned its stability. In so far as the political system depends on cooperation between leaders of corporate groups, a substantial internal cohesion of each group is a pre-requisite to sustain it. To some extent, this can be maintained through coercion and sanctions (neither a desirable means), but not for long.

A particular concern with consociational arrangements arises from the manner in which they are concluded and established in contemporary contexts. They are often the result of intense outside pressure. Nothing illustrates this better than the negotiations on the constitution of Bosnia-Herzegovina at Dayton under the aegis of superpowers in collusion with Tudjman and Milosevic, to the exclusion of the people of Bosnia. More often, they are patched up by ethnic elites who are more concerned with their personal or class interests than the general welfare. This is particularly the case when the conflict has taken the form of civil war and leaders of two sides agree (in secret negotiations) on a deal which excludes other groups from power or participation. This may have been the case with the recent Sudan agreement where both warring groups had their eyes on income from the oilfields located in the area of conflict. Many groups and organisations fear that a similar situation may emerge in Sri Lanka where the president may make a power sharing deal with Tamil leaders to the exclusion of other groups and communities.

Several contemporary power sharing agreements suffer from a great deal of complexity in the rules for representation in the legislature and the executive and for decision making. Presidencies are sometimes a collective body drawn from the major communities, with veto powers granted to each member, and various modes of voting operating in the legislature, opening up possibilities of delays and even rejection by one group. There may be many layers of authority as part of devolution or autonomy which divide powers into parcels, making it both hard to understand the system or develop coherent, comprehensive policies. This makes the management of the business of government extremely complex. In these and other situations, consociationalism seems not to moderate but rather to transform ethnic problems.

I suspect that many critics of consociationalism are disturbed by its underlying assumption, rooted in the notion of primordialism, that persons of different ethnic origins cannot find common interests and the basis of cooperation, that they must forever be locked into antagonistic relations, that the project of national identity is doomed, that fundamental human and social interests in a fair society, individual dignity, professional or class solidarity, and human compassion must always be subordinated to imagined ethnic differences. They find consociationalism fragmenting; indeed experience shows that an increasing number of groups emerge claiming a distinctive ethnic identity, and the entitlements that come with it, in consociationalism.

Consociationalists provide spirited defence to these criticisms and accuse the critics of failing to provide credible alternatives. It is not my intention to enter into the debate or to assess its relative merits. I do believe that the debate is somewhat misconceived in that it exaggerates the defects of the opposed system, and fails to acknowledge the common pursuits between critics and advocates of consociationalism. It is more profitable to think in terms of a spectrum at the opposite ends of which are majoritarianism and consociationalism - and also to recognise that consociationalism is both an approach and a set of rules, some more acceptable than others. Today, most countries would fall somewhere along the spectrum, and not at either of its ends. Perhaps this is inevitable, as populations become ever more heterogeneous, international norms pay increased attention to the active and participatory rights of minorities, and the capacity for disruption and violence by dissident communities grows.

In most situations, context is critical and it is hard to generalise across countries and distinctions of ethnicity. In some contexts, consociational devices balance the weight of majoritarian dominance, as would be the case in Sri Lanka if a settlement were reached, while in the 1999 Fijian Constitution, doses of liberalism and equality redressed the unequal communal access to the state. Canada is increasingly finding that the accommodation of the claims of the Quebecois and the First Nations requires recognition of *differeance* and a measure of consociationalism. Nor does stereotyping help. The blanket criticism of consociationalism overlooks the point that many consociational devices are largely beneficial, aiming at inclusiveness, proportionality, self-government, participation and social justice (the most difficult and controversial but also archetypal being power sharing in the executive). On the other hand, critics of liberal majoritarianism disregard the efforts within the liberal tradition to find public space for the languages and cultures of minorities.

The consequence of this is the need for the fine tuning of rules and institutions. The relationship between specific and common identities (and the balance between the multiple identities that each of us carries within us) is becoming complex, and less threatening to the project of nationalism than was assumed previously. Many manifestations of religious or cultural affiliation are compatible with a common, overarching identity. Distinctions between the public and private (so critical to the liberal and so marginal to the consociationalists) are becoming blurred. Traditionally, the orientation of the liberal state has provided us with fewer tools to balance ethnic interests. The contribution of consociationalism is a repertoire of devices to suit different situations. If a device tends towards too much fragmentation or the denial of rights of others, it may be checked by liberal norms.

Let us look at some of these devices to examine how balances may be struck. One of the most favoured of these is autonomy. Autonomy serves the same interests as federalism (a concept common to both liberalism and consociationalism but with different nuances), in organising the spatial distribution of power. What is distinctive about autonomy is its asymmetry, that is, it applies to one or more regions of a state, and is not part of a general and uniform distribution of power. If an ethnic minority group is concentrated in one part of the country, autonomy can be used to balance its interests with the more general interests. If the population is more diversified but its communities are also concentrated in geographical localities, then federalism could serve on a broader front the purposes of autonomy (except that the central government may be more inclined to give greater powers to one specific minority in an autonomous region than if they were to be made available more generally). Federalism also raises, in an acute form, the question of the role of regions at the national level ('shared rule'). Autonomy is often demanded by groups that would prefer to be left alone to get on with their lives, and is the more easily granted if the centre's interest in the region is limited; the autonomy of the Aaland Islands in Finland seems to fit this situation perfectly. Autonomy is better for the distribution, and therefore, the separation of powers, but federalism is better for power sharing.

Both can work reasonably well until the ethnic basis of autonomy or federalism becomes dominant. India provides a good illustration. Some commentators say that India survived as a

state because it used the federal device to accommodate its numerous, diverse communities. The principal diversity was language. Under federalism, the local language would be used in the regional administration but English would be used as the link language. India was able to accept linguistic diversity as a basis of federalism because, for the most part, it operated within common national values and culture. However, federalism becomes problematic as cultural differences increase, and it is these cultural differences which the region wants to cultivate. Kashmir falls in large part into this category with the dominance of the Muslim culture, but it was able to negotiate a high degree of autonomy for historical reasons specific to it. More problematic have been the communities in the north-east, which were not so well integrated in pre-independence India and who feel less drawn emotionally to the idea of India. Yet, to concede strong elements of ethnic autonomy/federalism places at risk the concept of national citizenship, as in Kashmir where non-Kashmiri Indians enjoy fewer rights than those born locally. It also exposes the vulnerability of groups who are transformed into minorities in the region, as typified by the concerns of Tamil Muslims in areas of autonomy claimed by the Tamil Tigers. This consociationalist dilemma can be solved by a liberal device - that of equal rights of all - so providing the basis of a new form of balancing.

Another example to illustrate this interaction of liberal/majoritarianism and consociationalism comes from the potential and limits of legal pluralism, which assures to religious or cultural communities the application of their own personal laws, thus preserving a large element of their culture (a well known Ottoman consociational device). It used to be considered that this form of legal pluralism was inconsistent with the project of nation building to which many independence leaders in Africa and Asia had committed themselves. Many states, therefore, embarked on a programme of the unification and codification of personal laws. They encountered both technical and political problems, and eventually even those not committed to consociationalism accepted a certain degree of diversity. However, these laws could not easily be squared with liberal and nation-building projects. Implicit in the plurality of personal laws were forms of subordination of women and other groups which were incompatible with constitutional values, and thus tended to create different categories of citizens. They also tended to hinder certain forms of inter-ethnic relations and perpetuate, in the social and familial spheres, a degree of fragmentation inconsistent with nation building. South Africa dealt with some of these dilemmas by a constitutional rule under which personal laws were to be subjected to the regime of human rights. Others have explored the possibilities of exit, that is, persons who are uncomfortable with the restrictions they face under a communal system can opt out of that system. This is more acceptable if the opting out can be restricted to the specific rule that causes the problem than if it has to be a total opting out, which comes close to expulsion and the denial of one's cultural milieu. Some advocate another kind of space, perhaps a statutory regime, under which people can marry or transact other types of familial relationships across ethnic divides.

These examples show that there need not be sharp and irreconcilable differences between consociationalism on the one hand and liberalism/majoritarianism on the other. They also illustrate that some consociational devices are more acceptable (e.g., inclusiveness and proportionality) than others (e.g., total freedom of proselytisation); and that some are easier than others (e.g., separate legislative representation is easier than mandatory power sharing in the executive). Within a state, there may well be communities which differ in their preference between the two, and some compromise may be necessary. Some countries have found value in the use of some consociational devices during the transitional period from conflict to peace, but not for the long term, as in South Africa. These choices and balances have to be struck by the people concerned, those who are sensitive to the context. But they also assume some understanding of the dynamics of ethnicity, and that the demands and posturing of elites are not mistaken for the common sentiments of the members of their community. Left to themselves, people can reach across ethnic divides, which are often erected by ethnic entrepreneurs. In particular, there should be no compromise with the essential principles of social justice for all.