

# Civil Society, Religion and Global Governance

Paradigms of power and persuasion

*Edited by*  
**Helen James**

Routledge Advances in International Relations and  
Global Politics

# Civil Society, Religion and Global Governance

This is one of the first books to explore the nexus between civil society, religion and global governance, their impact on human security and well-being, and significance for current debates in international politics.

This topical volume explores salient aspects of the secular state whose monopoly on, and control of, institutional violence has reified its use of power to such an extent that the modernistic separation of church and state is being called into question, as institutional limits are sought to the abuse of that power. This scholarly work looks to the notion of 'civil society' as the balancing factor with the capacity to restrict predatory state behaviour, whether in the political, economic or social sectors of human society. It also explores the notion that 'civil society' itself can be flawed, predatory, violent or corrupt, not necessarily a miracle cure for socio-political ills.

The book is clearly divided into six key sections: human security and human rights; the politics of civil religion; the ethics of civil development; civil society and global governance; cross-cultural perspectives on institutional development for civil society and international civil society. Within these sections the illuminating case studies span a wide geographical extent from Central and Eastern Europe to Egypt, to Latin America, Iran, Bangladesh, Australia, the Pacific, and East and Southeast Asia.

Shattering the myth of the divisive politics of fear fostered by the return of identity politics post-September 11, this book will be of strong interest to students, policy makers and researchers in the fields of human rights, religion, political science and sociology.

**Helen James** is a Visiting Fellow with the Research School of Pacific and Asian Studies, and the Research School of Social Sciences, The Australian National University.

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Paradigms of power and persuasion  
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'The Pulley or The Gifts of God'<sup>1</sup>

When God at first made Man,  
Having a glass of blessings standing by;  
'Let us,' said He, 'pour on him all we can:  
Let the world's riches, which dispersed lie,  
Contract into a span.'

So strength first made a way;  
Then beauty flow'd, then wisdom, honour, pleasure:  
When almost all was out, God made a stay,  
Perceiving that alone, of all His treasure,  
Rest in the bottom lay.

'For if I should,' said He,  
'Bestow this jewel also on My creature,  
He would adore My gifts instead of Me,  
And rest in Nature, not the God of Nature:  
So both should losers be.

Yet let him keep the rest,  
But keep them with repining restlessness:  
Let him be rich and weary, that at least,  
If goodness lead him not, yet weariness  
May toss him to My breast.'

George Herbert (1593–1633)

1 *The Complete Works of George Herbert (1593–1633) with a memoir of the author*, London: T. Nelson, 1871.



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(Boulder, CO: Lynne Rienner Publishers, 1999) and *Decentralization, Civil Society, and Democratic Governance: Comparative Perspectives from Latin America, Africa, and Asia* (with Joseph Tulchin and Andrew Selee) (Baltimore, MD: Woodrow Wilson Center Press/Johns Hopkins University Press, 2004). He is currently completing a book, *Sustaining Civil Society: Economic Change, Democracy and the Social Construction of Citizenship in Latin America*, based on extensive field work in Bolivia, Chile and Mexico.

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# Foreword

One of the greatest gifts and greatest burdens of humankind is its capacity to shape the society in which it must live. At various times throughout history men and women have believed they have found the definitive answer to the question of how society should best be ordered. Time after time they have been disappointed.

In recent years we have seen liberal democracy held out as the final destination of humankind's ideological search – the 'end of history', in the words of Francis Fukuyama. We have seen predicted the decline and fall of the nation state and the advent of global society. We have seen confidently asserted as unstoppable, certain trends that have consumed us, only to quickly wane, confounded by the reality that man is not wholly an economic animal and the market alone does not hold all the answers.

We have seen contradictions aplenty. At any one time we can be simultaneously persuaded by one expert, who points to evidence that individuals are in retreat from political and community engagement, and by another, who sees signs of a yearning for greater belonging and inclusion.

Some social commentators argue that the scale, speed and scope of change in our world has confused and unsettled many in the community. All the more reason for governments and communities to put greater effort into constructing and maintaining the physical, policy and legislative infrastructure upon which good governance, civil society and respect for human rights can be built.

This last manifestation of a liveable, workable, healthy society – respect for human rights – is absolutely integral, not just to modern concepts of justice, but also to modern concepts of peace.

In 2004 the Australian Capital Territory (ACT) enacted Australia's first bill of rights – the Human Rights Act – with the aim of fostering a truly 'rights-based' culture. While many Australians – and, indeed, many Canberra residents – may consider themselves not much affected by a bill of rights, there are some, including the disadvantaged, those who live with the challenge of a physical or mental disability, the very young and the very old, for whom this legislation has the potential to make an appreciable and personal difference.

Moreover, over the course of the 2005 debate over the proposed Commonwealth anti-terrorism legislation, the ACT's bill of rights had an impact far beyond the borders of the ACT. In the absence of a national bill of rights, it became the standard against which the Commonwealth's proposed laws could be held up, and against which the provisions of those laws could be measured and tested.

It is precisely at times when we are most tempted to erode and abrogate basic human rights that these rights become more precious, and their protection and observation more urgent. Hence the importance of a clear charter setting out those rights.

It is a point made eloquently and persuasively by Justice Michael Kirby AC CMG, in his opening remarks to the conference at which the chapters that follow were presented. Speaking about the importance of the rule of law to maintain a robust democracy, Justice Kirby nevertheless makes the point that it was only the prudence and spirit of fair play of the Australian people themselves that saved Australia from embarking on the dangerous path envisaged by the Communist Party Dissolution Act of 1950.

Now, more than half a century later, we again need to exercise prudence and a sense of proportion, as we confront daily calls to surrender or compromise our rights and liberties, in return for greater security against the threat of terrorism – or at least the *promise* of greater security.

The question that should vex and occupy us is how we can possibly do such a thing without effectively doing the terrorists' job for them. As former United Nations Secretary-General Kofi Annan has said, to compromise on human rights is to hand terrorists a victory they would be incapable of achieving on their own.

Executive governments, legislatures, courts, government agencies and religious institutions all have crucial roles to play in not only upholding the rule of law but in shaping and colouring the culture that gives our communal life its distinct personality. However, there are other players. The community of scholars has a critical and vital part to play. And, on these issues, as on others, scholars speak with a pleasing and necessary diversity and independence of voice and perspective.

The pages that follow are a glimpse into that world of intellectual exploration and opinion. These are views that provoke and challenge. The writers represented here illuminate the complex relationships between church and state and the realignment of these relationships as we venture further into the twenty-first century.

Many Australians would be only too conscious of the role the churches played in the formulation and delivery of policies such as those that led, for example, to the removal of indigenous children from their parents over a period of many decades. More recently, many would have noted the role religious organisations have played in debates over the invasion of Iraq, counter-terrorism laws, even industrial relations and welfare policies.

In the pages that follow, Dr Philip Towle, from Cambridge University,

traces the evolution of the Anglican Church's stance on war, a journey that has seen it move from a position of historical support for conflict, to one where it opposes the war in Iraq, on the grounds of human rights.

Professor Amitav Acharya, from Singapore's Nanyang Technological University, reminds us of the extent to which freedom from fear and freedom from want go hand in hand, and he elevates *human* security, as opposed to *national* security, as the goal most worth pursuing.

Professor Yasuaki Onuma, from the University of Tokyo, challenges readers to broaden their perspective and recognise that the Western paradigm, while dominant, is not the only way of seeing the world and not always the best tool for understanding that world.

That perspective is complemented by other essays on governance and society in Indonesia, Egypt, Burma, Bangladesh, the Philippines, Iran and the Pacific Islands.

There is much to challenge and intrigue in this collection. There are reminders of the deep and intrinsic commonalities between the peoples of the world, but also reminders of the small and not-so-small differences that can profoundly affect governance, accountability, policy-making and our sense of ourselves as members of a community.

This is a rich and worthy collection, which will find an appreciative audience among all who seek a better understanding of the foundations of civil society.

The Hon. Jon Stanhope, MLA  
Chief Minister of the Australian Capital Territory



# Preface

One of the reasons for establishing the Australian National University (ANU) in 1946 was to better understand our neighbours. The ANU was thus the natural choice to be involved with the international conference, 'Civil Society, Religion and Global Governance: Paradigms of Power and Persuasion'. The ANU was able to draw on the strength in this area which has been developed over the past 60 years by the Research School of Social Sciences, and the Research School of Pacific and Asian Studies. This was borne out by the fact that many of the conference presenters had an affiliation with the ANU either as staff or alumni.

The conference was convened in the context of increasingly divisive social practices on the domestic and the international stage. The conference atmosphere was one of great collegiality, fostered by such a wide range of representatives from diverse cultures and ethnic and religious backgrounds. The overwhelming tone of the discussions, at both the conference presentations and the dinner, was the emphasis on the universal values which bring humanity together.

Our Vice Chancellor, Professor Ian Chubb, AC, opened the conference and hosted the conference reception which was attended by VIPs from the diplomatic corps and government, and at which Reverend Tim Costello, AC, was guest speaker. I was delighted to host the conference dinner, which was marked by a hubbub of conversation, which flowed naturally and did not cease all evening. It was the same throughout the conference, right up to the final session.

This volume is a timely reminder of the potential for great harmony which can be achieved with comparatively little effort. You will see from both Dr Helen James' Introduction and the ACT Chief Minister's Foreword that the content issues are of great moment and continue to be today, perhaps even more so in view of some of the very concerning developments in the legal area since then. We all benefit from events that look towards policies which will make a 'more civil society'.

Professor Lawrence Cram  
Deputy Vice Chancellor  
ANU

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# 1 Introduction

## Civil society, religion and global governance – the power and persuasiveness of civil society

*Helen James*

### Introduction

The chapters presented in this volume were initially delivered at the international conference, 'Civil Society, Religion and Global Governance: Paradigms of Power and Persuasion', which was held 1–2 September 2005 at the National Museum of Australia, Canberra, under the aegis of the National Institute of Social Sciences and Law, The Australian National University. Inspiration for the conference, its timeliness and the fine collegiality of the discussions may all be said to have occurred in response to some very 'uncivil' aspects of world and domestic governance confronting us at the present time. Each of the main concepts – civil society, religion and global governance – is worthy of an international conference in its own right. Bringing all three into contiguity in order to examine their threefold interactions on human well-being has reinforced the commonality of human aspirations embedded in these major concepts: the desire for improved human security and greater protection of human rights; for implementation as well as recognition of the universality of the values underpinning the 1948 Universal Declaration of Human Rights (UDHR) despite the diversity of cultures amongst the 192 members of the United Nations; and for recognition that the values societies uphold, while differing in detail, often source their origins in religious or spiritual paradigms. We may not always know what is 'civil'; but we certainly know what is 'uncivil', no matter what religious or spiritual paradigm informs our existence; or what system of political governance orders our everyday lives. What is common is that no matter what religious paradigm or system of political governance prescribes our lives, there is a common seeking after an ethical plane which may be largely intuitive. 'Civil society' is often seen to fill that conceptual role in human yearning. This volume examines the 'civil society' parabola, from problematic to panacea, and ultimately says that, although it may not always be perfect, as a concept 'civil society' may be all we have in seeking after better.

How 'civil society' is constituted, however, may differ in various societies; the predominant Western liberal paradigm with its emphasis on the primacy of the individual has been under challenge for some time, as

alternate approaches to 'civil societies' are being explored (Hann and Dunn, 1996). Underlining the emergence of 'civil society' as a normative concept in multidisciplinary discourses, indicative of a desirable social order, Hann and Dunn (*ibid.*: 3) comment:

The term poses problems for political anthropology, but it may also open up new opportunities. Looking at the trajectory of the term as it has evolved from origins in early modern European political thought through to the recent astonishing renewal or reinvention of these traditions, the most important general points to emerge are: (1) that civil society debates hitherto have been too narrowly circumscribed by modern western models of liberal-individualism, and (2) that the exploration of civil society requires that careful attention be paid to a range of informal interpersonal practices overlooked by other disciplines.

Cross-cultural investigations of this emerging normative concept take us into the realms of international relations, politics, history and sociology, as well as anthropology, as our scrutiny is drawn to the moral and ethical applications of power, and issues of social order and cohesion in the contemporary troubled world. Indeed, the terminology itself has been evolving, being variously described as 'civil anthropology' or 'civic society', as analysts give preference to prescriptions of citizenship in varying social, political or cultural milieus. The amorphous nature and controversial characteristics of 'civil society' command our attention: is it an obstacle as in the traditional Marxist view, or an essential aid, as in the prevailing Western liberal paradigm of political and social change, the panacea for all ills in authoritarian polities? The relation between these overlapping planes in all human societies compels detailed consideration of the interactions between the political, social and ethical realms constituted by the concept of 'civil society'. The chapters in this volume thus range in time and space, from Egypt to the Pacific, from the UK to Indonesia and Australia, from South America to the Philippines, as they explore applications of the concept of 'civil society' within varied socio-cultural and political contexts.

While it is common practice to view the term, 'civil society' as delineating a distinct private realm separate from church and state, and based on the sanctity of private property rights and the workings of the market, contemporary writers are again identifying close relationships between 'civil society' and the world's varied religious cultures. From the private legal realm in the writings of Hobbes and Locke to the unresolved conflicts and tensions between particular individual interests and the perceived public or universal 'good' articulated by Ferguson and the writers of the Scottish Enlightenment in the late eighteenth century, this fundamental tension continues to imbue the concept of 'civil society'. At heart is the relationship between the individual and the community, between the individual state and the community of nations. Mindful of the lessons of the mid- and later

twentieth century, we in the early twenty-first century may no longer have Tocquevillean confidence in the associational life as the litmus test of non-authoritarian governance systems. However, while 'civil society' may no longer be considered a panacea for the demonic socialist state in Eastern Europe where the term's renaissance began in 1989, in regions still struggling to emerge from authoritarian governance systems in Asia, Latin America and Africa, 'civil society' is often the paradigm by which greater human security, improved protection of human rights and democratic governance are articulated.

Increasingly, the influence of value systems, informal networks of association and friendship, kinship groups, communities of interest derived from ethnicity or shared religious cultures are seen to have valid roles in constituting 'civil society'. Formal structures and organizations, the schematic liberal division of state, market and civil society, may be too limited to encompass the full workings of 'civil society' in enhancing human well-being. The chapters in this volume thus seek to move debates about 'civil society' away from the restrictive considerations embodied in the Western liberal paradigm, to take into account a wider mosaic of human interrelationships.

In contemporary academic explorations, 'civil society' is usually defined to refer to the level of governance between the state and the governed (Cohen and Arato, 1992) consistent with the criteria set out by Alagappa (2004: 35). It includes, but is not limited to, non-government organizations involved in service delivery and advocacy activities, charitable organizations, private foundations, professional associations, social movements, activist networks. The key common denominator with all these groups is that they be 'not for profit', and seek to achieve their objectives through non-violent methods. However, such a definition might not apply, for example, to those 'global civil society' organizations taking part in violent demonstrations against the international trade regime (see He and Murphy, Chapter 18), nor to some activist advocacy groups where the 'non-violent' criterion is frequently set aside. In similar vein, some civil society organizations, whilst meeting some of the criteria, can have very uncivil outcomes or programme platforms. Some quasi-political, religious and private foundations may fall into this category. Definitions of civil society organizations can thus be fraught with controversy. Whilst 'civil society' is recognized by many political scientists as a desirable structural element in the institutions underpinning democratic governance, it too can exhibit undemocratic, even corrupt, modes of operating.

Similar reservations can be made of the other two pillars in this conceptual journey – religion and global governance. All of us are only too keenly aware of the negatives as well as the positives which may be applied to these overarching concepts, and history is replete with examples of both, from the excesses of the religious wars in seventeenth century Europe to the contemporary scandal of the UN's 'food for oil' programme. It is not

intellectually robust, however, to decry the institution (or concept) because imperfect; rather we should seek to apply our resources to continual improvement, and if a Sisyphean task, at least, like Sir Gawain, we shall have been able to say ‘What can one do but try?’

### Civil society and paradigms of power and persuasion

Western oriented paradigms of power assign an active role to civil society organizations in confronting state power structures through their efforts to bring about political and social transformations. Such advocacy networks are seen as indispensable elements of transitioning societies which seek to slough off their authoritarian pasts, reduce corruption and implant more transparent systems of governance consistent with the formulae of the World Bank and the International Monetary Fund (IMF). Confrontational strategies thus become integral to the way ‘civil society’ is seen to operate. This paradigm of civil society’s power has a very public face. In February 2006, more than 100 civil society organizations in Thailand were reported to have joined with members of other sectors – academics, labourers, professional and religious groups – in large demonstrations calling for the resignation of the Prime Minister, Thaksin Shinawatra, for alleged abuse of power (*Irrawaddy Magazine*, the *Bangkok Post*, 28 February 2006). The decision by key opposition political parties to boycott the snap elections called for 2 April 2006 complements the withdrawal from the government by a key faction of the ruling *Thai Rak Thai* political party, the *Wang Nam Yen* faction, in developing what appears to be broad-based ‘people power’ determined to end Thaksin’s increasingly undemocratic style of governing. Such actions by broad-based sectors of Thai civil society also toppled the military governments in Thailand in 1973 and 1992. A similar scenario unfolded in 1986 in the Philippines when ‘people power’ brought the dictatorship of Ferdinand Marcos to an end. ‘Civil society’ organizations initially played similar roles in the ‘Velvet Revolution’ in Eastern Europe in the 1989–1991 period, especially in Poland, Hungary and Czechoslovakia. Undemocratic governments are therefore wary of the political power which activist advocacy networks within civil society can wield.

But civil society can also operate effectively within the paradigms of what might be called ‘soft power’, by persuading and negotiating; through effective input to policy development which has a beneficial social outcome, by efficient service delivery in sectors either unprovided for in government policy frameworks, or where the resources are unavailable. Whilst perhaps less dramatic or even less public than the confrontational style, the ‘soft power’ of civil society may, in certain situations, be more enduring and more sustainable with longer lasting beneficial effects for vulnerable groups who are the recipients of such services. There is now a goodly body of scholarship which questions the traditional Western paradigm of civil society as necessarily confrontational and overtly political in its operations (Schak and

Hudson, 2003; Tendler, 1997; Hann and Dunn, 1996). Many of the vast numbers of civil society organizations which have appeared since the early 1990s operate in cooperative mode with the state authorities, complement state initiatives in bringing about improved service delivery to vulnerable populations and use the arts of persuasion to nudge state power structures towards improved modes of governance. Since many – particularly in Africa, Asia and South America – are ensconced in non-democratic political cultures where the space in which civil society can operate is very limited, the cooperative, rather than the confrontational, mode of operating is necessary, if they are not only to survive, but also to be able to continue to carry out their important social work.

As Fisher (2003) has shown, civil society organizations may increase in numbers in proportion to the restrictive political culture in which they are established. By gradually increasing that space through both horizontal and vertical networks, like spreading circles on a pond, they may be able to spread their influence through ever larger communities of interest, enhancing the possibilities for social transformation almost imperceptibly. That many civil society organizations are charitable foundations often with religious origins or affiliations goes to the heart of their powers of persuasion. Focused on improving human well-being, often at grass-roots level, through alleviation of suffering, they are often found at the forefront of initiatives for the protection of human rights and greater human security, calling into question government policy frameworks which impact adversely on socially acceptable levels of human well-being. If the institutions of global governance are to remain robust, they will need to heed the voices of ‘civil society’ in restoring that desirable balance and common sense (see Chapter 2) seen to be essential to the art of keeping the peace, without the dubious prescription of resort to continual war, a theme explored by several papers in this volume.

### **Thematic organization of the book**

The 21 chapters of this volume have been presented in six thematic parts each of which focuses on a particular aspect of the magical mandala constituting ‘civil society’. These parts are: Human security and human rights; The politics of civil religion; The ethics of civil development; Civil society and global governance: panacea or problematique?; Cross-cultural perspectives on institutional development for civil society; and International civil society: prospects for enhancing human security. Amongst the broad kaleidoscope of views, problems and issues presented, the enduring common themes are clearly those which underline shared notions of concepts of human and social well-being; and appropriate measures to be taken when it is recognized that that well-being is in jeopardy from either exogenous or endogenous forces. ‘Civil society’ is often the paradigm for the collective or individual initiatives seeking to confront the state power structures which impact adversely on human security and human rights. A prominent theme



in the Hon. Justice Michael Kirby's chapter, 'National security: proportionality, restraint and common sense', is thus the need to uphold the rule of law in protecting human rights; not to allow it to be subverted in pursuit of the selfish motives of powerful individuals. It is a theme developed further in the chapter based on the keynote address by Amitav Acharya, 'Human security, identity politics and global governance: from freedom from fear to fear of freedoms'. The unfortunate securitization of religion which has been artificially engendered post-September 11 by politicians in support of their own secular power bases is undermining the very fabric of that 'civil society' that the institutions of global governance created after the Second World War were established to enhance. As Amitav has so clearly argued, this new global identity politics is giving birth to societies where increasingly larger proportions of the nation's resources are being devoted to surveillance, detention without trial and less-than-convincing obfuscations of torture, rendition and secret prisons, all of which smack of the Kafkaesque nightmare world of the medieval Star Chamber and the Prisoner in the Iron Mask. Is this the endgame of secularism? That it is the world's major democracies which have so readily caved in to the politics of fear does not augur well for the robustness of their social and political institutions. This impending descent into the maelstrom of self-doubt may be forestalled by the intercivilizational perspective on human rights proposed by Yasuaki Onuma, special Toyota Lecturer for the conference.

These major themes are developed further in the chapters by Philip Towle, Gordon Briscoe and Robert Miller in the section dealing with 'The politics of civil religion'. Each of these chapters looks to religion as the centripetal force interacting with the state to engender different paradigms of societal transformation. The Anglican church, in Towle's chapter, has moved from support for state warfare to vocal dissent, as views on what constitutes 'just war' have changed, in parallel with notions of what constitutes 'civil society'. Briscoe's chapter on the other hand, delineates the central role the Anglican church had in Australia, in destroying indigenous civil societies, and setting up paradigms of societal control that had very adverse and enduring effects for Australia's indigenous peoples. Robert F. Miller's chapter on church-state relations in post-communist Eastern Europe also examines in depth the very ambivalent, indeed, one might say, frequently malevolent, role of the church in some areas of Eastern Europe; far from enhancing or protecting 'civil society' the church in some parts of Eastern Europe at times aided and abetted the power structures of the authoritarian state for the sake of preserving its own position and status. Whilst the value systems embedded in the religious perspective are seen to be the catalysts for actions taken to bring about social and political transformation, such actions may be ambivalent; not to be necessarily advantageous for the recipients, nor to advance the cause of 'civil society'. In like manner, 'civil society' itself may become perverted, placed at the behest of power structures supportive of egoistic individualism.

Part III, 'The ethics of civil development', develops the debate further. The three chapters by Runzo, Oxhorn and Seumas Miller take us further into the nuances of the operations of civil society confronting state power structures. Runzo examines the current global context of the ethics of the Iraq War, and calls into question the dubious public prescriptions used to justify it. In doing so, he seeks to elaborate a religious perspective which would yet uphold an ethical stance, quite at odds with that present in the politics of securitized religion. Oxhorn looks beyond religious structures to the very secular operations of civil society in Latin America as it seeks to bring traditional entrenched power structures to account. That its operations are not always confrontational, but sometimes operate more within modes of persuasion, is a significant contribution to the debate on civil society–state relations in transitional democracies with a history of authoritarian governance. His exploration of citizenship as consumption, devoted to market forces, or citizenship as agency, seeking to bring about greater experience of well-being for a larger proportion of society, questions some of the fundamental aspects of the received Western liberal paradigm of 'civil society.' Seumas Miller's finely nuanced examination of corruption, governance and transcultural interaction goes to the heart of definitions of 'civil society,' how it may operate to bring about more transparent governance and how corruption may be perceived and enacted in different cultural contexts. That this is an enduring theme in analysis of political cultures may be attested to by the sorry saga of the Australian Wheat Board's payment of bribes to the former Iraqi regime of Saddam Hussein in defiance of UN sanctions. Far from promoting 'civil society' in a very undemocratic state, this is an example, par excellence, of the 'market' sector undermining initiatives towards a 'more civil society' by the formal institutions of global governance. Moreover, large-scale corruption and malfeasance in recent years amongst some of the largest corporations in the 'market' sector in both the US (e.g. Enron) and in Australia (the HIA debacle) must cause one to question any glib assumptions that the institutions of the market are an essential panacea for enhanced democratic governance; that the full force of the law has been brought to bear on the corporate perpetrators is small comfort to the millions who lost their retirement savings, livelihoods and homes as a consequence of this malfeasance.

Part IV, *Civil society and global governance: panacea or problematique?*, paves the way for considerations of the varied aspects of 'civil society', in recognition that civil society organizations themselves can become prey to undemocratic and corrupt practices. Hudson's chapter spotlights that the post-September 11 world sits amidst 'post-secular' civil society, where competing value systems are at the forefront, and notions of 'civil society' are fluid. One of these, as Douglas discusses, underpins the 'post-secular' social structure being fostered by the church in imploding states in Melanesia; another, as Duncan argues, focuses on the implications of the 'gift-giving' tradition, and the interweaving of corruption and economic development in unstable states in the Pacific.

The chapters in Part V, 'Cross-cultural perspectives on institutional development for civil society', highlight the economic crucible in attaining a 'more civil society' for unstable states with a history of inter-ethnic conflict. Serrano emphasizes the paramount role of the community, rather than the profit motive, in rural areas of the Philippines, in bringing about improved governance and a 'more civil society'; Zar Ni proposes a holistic approach encompassing economic and social development as more efficacious in moving Burma/Myanmar towards democratic governance than punitive Western economic sanctions; McDonald highlights the amazing fertility transition in the theocratic state of Iran where women have taken significant personal decisions to reduce the birth rate in favour of a better future for their offspring; D'Costa examines the role of faith-based NGOs in Bangladesh in service delivery to improve the livelihoods of the population.

The three chapters in Part VI, 'International civil society: prospects for enhancing human security', all raise problematic aspects of civil society. He and Murphy take the World Trade Organization as their field of battle and examine the operations of global civil society in seeking to bring about a more equitable distribution of the world's resources with greater access to world markets, and better prices for the products of developing countries. Angus looks at the 7 September 2005 elections in Egypt, the role of civil society in the official opposition to the ruling party and the part played by an emerging political culture of dissent. Azra, in his chapter on Indonesia, takes us full circle in arguing that the religious institutions in his country provide the core value systems from which civil society and good governance will emerge. These three chapters all take problematic cases, indeed what one might call 'unfinished business', to remind us that attaining and maintaining a 'civil society' is a never-ending story. The power of 'civil society' resides in its capacity to persuade us that the effort is worthy of the task.

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Part I

# Human security and human rights



## 2 National security

### Proportionality, restraint and common sense

*Hon. Justice Michael Kirby, AC CMG*

#### Introduction: maintaining our perspective<sup>1</sup>

I start on a somewhat discordant note. It is easy to gather a group of experts, some of whom may have a view of the importance of their topic, and perhaps a professional and institutional commitment to its themes, and to run the risk of losing a sense of proportion and perspective. However, there is a strong common sense streak in the Australian character. Normally, it tends to rescue us from overreaction. I have reason to know that fact. I learned of it when I was 12 years of age. It left an indelible imprint on my memory, as I shall show.

Terrorism, the main cause for contemporary concerns about national security law, is not new. The pirates (most of them English) who harassed the Iberian trade ships to the Americas, were international terrorists of a sort. The British certainly regarded George Washington and his confederates as terrorists who had risen in rebellion against the Crown. The twentieth century was filled with acts of terrorism. One at Sarajevo triggered the First World War. Another, shortly after in Dublin, renewed 'the troubles'. Acts of terrorism helped dismantle the great European empires until, by century's end, those empires were gone. And the communists were often regarded as terrorists. Their dedication to the destruction of capitalist society as it was organised led to legal responses that were sometimes unnecessary, excessive and unwise.

I knew about the communists because my grandmother remarried in 1944. Her new husband was a communist. He was a fine man and an idealist. But he was involved in a cause that was deeply distrusted. He was treasurer of the Australian Communist Party. That party had links to a country that possessed weapons of mass destruction. They had undoubted stockpiles of nuclear armaments and chemical weapons. Fear of the communists led to legal responses in Australia and elsewhere that we can now see as completely disproportionate. We were saved from these legislative excesses in 1951 by the decision of the High Court of Australia in *Australian Communist Party v. The Commonwealth*.<sup>2</sup> That case held that the *Communist Party Dissolution Act 1950 (Cth)* was beyond the powers of the Federal Parliament and constitutionally invalid. That decision, made by judges who had no resort to a Bill



of Rights expressing guarantees of freedom of speech and freedom of assembly,<sup>3</sup> offered a stark contrast to the decision of the United States Supreme Court a few weeks earlier in *Dennis v. United States*.<sup>4</sup> That decision upheld similar legislation to outlaw communists in the United States under the Smith Act.

In retrospect most Australians, and not a few Americans, would regard our country's judicial resolution of that legal controversy as wise and the American resolution as unwise and excessive. The decision of the High Court majority was endorsed, later in 1951, by the rejection by the electors of Australia of a proposal to amend the constitution to grant the Parliament the lawmaking powers denied by the High Court. The legislature and the executive government of the Commonwealth on that occasion went too far. The court hauled them back to the rule of law and Australia's constitutional fundamentals.

These events tend to show that in such matters, in the past, the Australian people and their highest court have been more temperate and prudent than others in evaluating the real risks to national security and judging the needs for draconian laws to respond to those risks. The United States of America, great nation as it is, sometimes gets swept up in tides of nationalistic passion that Australians tend to avoid or keep firmly under control. We should keep this story of our country before us as we embark upon responses to contemporary problems of terrorism and risks to our national security.

The times now are different. The risks have changed. The technology is new. The weapons are in some ways more perilous. Control over them is more disparate. But the need for prudence and care against overreacting is as strong today as it was in 1951. If a worldwide danger supported by a mass movement of convinced ideologues, sustained by one of the world's superpowers, armed with nuclear and other weapons, could not destroy our security in the twentieth century, we must keep in perspective the powers of those presently ranged against the Western democracies. This is not a reason for complacency over national security or indifference to violence and risks of violence. But it is a reason for keeping our feet firmly planted on the Australian ground. We should never forget that, to the extent that we exaggerate the risks to national security we fall into the hands of those who threaten our constitutionalism. To the extent that their threats propel us into demolishing the fundamentals of our liberal democracy, we reward the enemies of our form of government with success. To the extent that we overreact, we proffer the terrorists the greatest tribute.

Moreover, in terms of proportionality, terrorism and its dangers do not constitute the greatest peril for the world today. Every day on this planet more people die of AIDS than died on 11 September 2001. But most of them die anonymously, in poverty and in faraway developing countries. Their deaths are hidden in shame and suffering. They are not subject to vivid television images to frighten a proud and powerful nation. Lack of

access to water, homelessness, poverty, malaria, ethnic violence: these are more potent dangers for more members of humanity than the terrorism of Al-Qaeda. If a small proportion of the energy and capital that has been devoted to the dangers following 11 September 2001 had been lavished on the problem of AIDS, I feel sure that the world would be a better and probably a safer, kinder place. Not once have I been invited to speak at a high-level Australian conference, such as 'Civil Society, Religion and Global Governance', of judges and senior officials focused on the issues of HIV/AIDS and the way the law can contribute to reducing *its* dangers.

So my first message is one of proportion. We should found our policies and laws on national security upon sound data alone. We should maintain our prudence, as we have in the past. We should address the causes, and not simply the manifestations, of terrorism as a danger to Australia's national security. We should avoid the closed drawbridge mentality which, in any case, affords no ultimate security against fanatical individuals. We should not overreact. We should remember the events of 1951 concerning the communists. We should not necessarily follow American leadership in all of its responses in the current age for, as in the past, its responses may sometimes be misguided and prone to excess.

Our courts are the final guardians of the liberties of Australians. Their duty is to give effect to valid laws enacted by Parliament. But if those courts look around the world at this present time, they will find much food for thought on the subject of national security laws. This is the other point I wish to make. The decisions of final courts in many lands have lately spoken with considerable wisdom in recent cases involving terrorism and national security. In the balance of this contribution, I want to call attention to a few illustrations.

## Learning from the courts

### *South Africa*

An early instance of the unwillingness of national courts to bend basic principles in the face of allegations of terrorism was the decision of the Constitutional Court of South Africa in *Mohamed v. President of the Republic of South Africa*.<sup>5</sup>

The case concerned Khalfan Mohamed who was wanted by the United States on a number of capital charges relating to the terrorist bombing of the US Embassy in Dar es Salaam, Tanzania, in August 1998. The appellant had been indicted in the United States of America. A warrant for his arrest was issued by a federal district court. He had entered South Africa unlawfully as an alien. He was detained there by the authorities, acting in cooperation with US officials. In his interrogation, the detainee was not given the rights provided by South African law for such a case. The South African authorities offered him a choice of deportation to Tanzania or to the USA.

He preferred the latter; but applied to the courts for an order that the government of the United States be obliged to undertake that the death penalty would not be sought, imposed or carried out on him. That order was refused at first instance. The appellant was promptly deported. This notwithstanding, an application to the Constitutional Court was pursued on his behalf on the footing that the appellant had been denied the protection of South African constitutional law under which it has been held that capital punishment is contrary to fundamental constitutional guarantees.<sup>6</sup>

The Constitutional Court of South Africa held that Mr Mohamed's *deportation* was unlawful and that *extradition*, not deportation, was the applicable law. Under South African law, that procedure was required to be negotiated with the requesting state under conditions obliging an assurance that the death penalty would not be imposed following a conviction.<sup>7</sup> In this respect, the court below, and the government of South Africa, had failed to uphold a commitment implicit in the Constitution of South Africa. It was held that there had been no waiver by the accused in consenting to deportation or extradition.

Because, by the time of the Constitutional Court's orders, Mr Mohamed was under trial in the United States, he was outside the effective power of the Constitutional Court, by its orders, to afford him physical protection. Nevertheless, the decision of the primary judge was set aside. A declaration was made that the constitutional rights of the appellant in South Africa had been infringed. The Constitutional Court directed its chief officer, as a matter of urgency, to forward the text of its decision to the relevant United States Federal Court.<sup>8</sup> Following his trial in the United States, the appellant was convicted. However, he was not sentenced to death. Whether this was due in any way to the South African intervention is unknown. The South African court did what it could in the circumstances to uphold the accused's fundamental legal rights, notwithstanding the charge of terrorist offences. The government officials in South Africa had been less respectful of those rights.

In the course of argument, the court was reminded of the famous words of Justice Brandeis in *Olmstead v. United States*,<sup>9</sup> later cited in *Mohamed*.<sup>10</sup>

In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously . . . Government is the potent, omnipresent teacher. For good or ill, it teaches the whole people by its example . . . If the government becomes a law-breaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy.

These last words have a special resonance in South Africa as the Constitutional Court explained:<sup>11</sup>

[W]e saw in the past what happens when the State bends the law to its own ends and now, in the new era of constitutionality, we may be

tempted to use questionable measures in the war against crime. The lesson becomes particularly important when dealing with those who aim to destroy the system of government through law by means of organised violence. The legitimacy of the constitutional order is undermined rather than reinforced when the State acts unlawfully.

These reasons were written in May 2001, before the events of 11 September of that year. But they remain true today and not only in South Africa.

### *The United States*

Probably the best known decision in this class of case is that of the Supreme Court of the United States in *Rasul v. Bush*<sup>12</sup> concerning the availability of judicial scrutiny of the cases of non-citizens detained as terrorist suspects in Guantanamo Bay. That decision was delivered in June 2004. The Supreme Court was divided six to three. The opinion of the court was written by Justice Stevens. Justice Scalia wrote the opinion of the dissenting judges (Chief Justice Rehnquist, Justice Thomas and himself).

In the court opinion, Justice Stevens cited the law authorising President George W. Bush, after 11 September 2001, to use 'all necessary and appropriate force against those nations, organisations or persons he determines planned, authorised, committed or aided the terrorist attacks . . . or harboured such organisations or persons'.<sup>13</sup> In reliance upon this law, President Bush established the detention facility at the Naval Base at Guantanamo Bay, on land in Cuba leased by the United States from the Republic of Cuba. Two Australians (Mamdouh Habib and David Hicks), who were detained in the facility, together with others, filed petitions in US federal courts for writs of *habeas corpus*. They sought release from custody, access to counsel, freedom from interrogation and other relief.

The United States District Court dismissed these petitions for want of jurisdiction. It relied on a decision of the United States Supreme Court of 1950<sup>14</sup>. That decision had held that '[a]liens detained outside the sovereign territory of the United States [may not] invoke a petition for a writ of *habeas corpus*'. However, the Supreme Court reversed the federal court decision, granted *certiorari* and remitted the case to the federal courts. In effect, Justice Stevens followed what he had earlier written in the *Padilla* case where he said.<sup>15</sup>

At stake in this case is nothing less than the essence of a free society. Even more important than the method of selecting the people's rulers and their successors is the character of the constraints imposed on the Executive by the rule of law. Unrestrained Executive detention for the purpose of investigating and preventing subversive activity is the hallmark of the Star Chamber . . . for if this nation is to remain true to its ideals symbolised by its flag, it must not wield the tools of tyrants even to resist an assault by the forces of tyranny.

The decision of the majority of the Supreme Court in *Rasul v. Bush* reflects these notions. It traces the restraint on executive power in the United States to legal and constitutional 'fundamentals'. It does so through the history of the legal system which the United States shares with other common law countries.<sup>16</sup>

As Lord Mansfield wrote in 1759, even if a territory was 'no part of the realm', there was 'no doubt' as to the court's power to issue writs of habeas corpus if the territory was 'under the subjection of the Crown'.<sup>17</sup>

Later cases confirmed that the reach of the writ depended not on formal notions of territorial sovereignty, but rather on the practical question of 'the exact extent and nature of the jurisdiction or dominion exercised in fact by the Crown'.<sup>18</sup>

In *Rasul v. Bush* the rule of law was upheld by the American judges. Even in the face of Executive demands for exemption from court scrutiny because of the suggested exigencies of acts of terrorism, the Supreme Court upheld the availability of judicial supervision and the duty of judges to perform their functions, including on the application of non-citizens. To say the least, the case is an extremely important one.

### *The United Kingdom*

On 18 March 2004, the English Court of Appeal delivered its decision in *Secretary of State for the Home Department v. M*.<sup>19</sup> The judgment of the English Court was delivered by Lord Chief Justice Woolf. The case involved an application by the Home Secretary for leave to appeal against a decision of the Special Immigration Appeals Commission. That body had been established by the United Kingdom Parliament in partial response to an earlier decision of the European Court of Human Rights.<sup>20</sup> The latter had criticised the procedures that existed in Britain under the legislation then in force to respond to terrorism in Northern Ireland.

The Special Commission is, by law, a superior court of record. Its members are appointed by the Lord Chancellor. One must be a judge who holds, or has held, high judicial office. This provision was in place when the events of 11 September 2001 occurred. Under the Anti-Terrorism, Crime and Security Act 2001 (UK), the British Home Secretary enjoys the power to issue a certificate in respect of a person whose presence in the United Kingdom is deemed a 'risk to national security' or who is suspected to be a 'terrorist'.<sup>21</sup> The then Home Secretary (Mr David Blunkett) granted such a certificate in the case of M, a Libyan national, present in the United Kingdom. M was thereupon taken into custody.

In 2004, the Commission, presided over by Justice Collins, allowed M's appeal against the Home Secretary's certificate. The Home Secretary challenged this action which he saw as unwarranted judicial interference in an essentially political and ministerial judgment. He sought leave to appeal to the Court of Appeal. He complained that the Commission had reversed a

decision for which he was accountable in Parliament and through the democratic process, to the British electorate.

The Court of Appeal rejected the Home Secretary's application. That Court, like the Commission, conducted part of its hearing in closed session. Only a portion of the Court's reasons were given on the record. The Commission insisted that the suspicion of the Minister had to be a *reasonable* suspicion. It stated that the Minister had failed to demonstrate error on the part of the Commission. In his concluding observations, Lord Chief Justice Woolf, for the Court of Appeal, said:<sup>22</sup>

'Having read the transcripts we are impressed by the openness and fairness with which the issues in closed session were dealt with . . . We feel the case has additional importance because it does clearly demonstrate that, while the procedures which [the Commission] have to adopt are not ideal, it is possible by using special advocates to ensure that those detained can achieve justice and it is wrong therefore to under-value the SIAC appeal process. . . . While the need for society to protect itself against acts of terrorism today is self-evident, it remains of the greatest importance that, in a society which upholds the rule of law, if a person is detained as 'M' was detained, that individual should have access to an independent tribunal or court which can adjudicate upon whether the detention is lawful or not. If it is not lawful, then he has to be released.

### *Israel*

At about the same time as the decision of the United States Supreme Court in *Rasul v. Bush* was handed down, the Supreme Court of Israel, on 2 May 2004, delivered its decision upon a challenge brought on behalf of Palestinian complainants concerning the 'separation fence' or 'security fence' being constructed through Palestinian land.<sup>23</sup> This 'fence' has been justified by the government of Israel and the Israeli Defence Force as essential to repel the terrorist (specifically suicide) attacks against Israeli civilians and military personnel, carried out from adjoining Palestinian lands. The court was told that the issues raised by the challenge were non-justiciable.

However, from bitter experience, the Jewish people had learned about the great dangers of legal black holes. Applying what common law judges would describe as principles of administrative law or of constitutional proportionality, it upheld the complaints of the excessive way in which the wall had been created in several areas. Justice Aharon Barak, President of the Court, said:<sup>24</sup>

Our task is difficult. We are members of Israeli society. Although we are sometimes in an ivory tower, that tower is in the heart of Jerusalem,

which is not infrequently hit by ruthless terror. We are aware of the killing and destruction wrought by the terror against the state and its citizens. As any other Israelis, we too recognize the need to defend the country and its citizens against the wounds inflicted by terror. We are aware that in the short term, this judgment will not make the state's struggle against those rising up against it easier. But we are judges. When we sit in judgment, we are subject to judgment. We act according to our best conscience and understanding. Regarding the state's struggle against the terror that rises up against it, we are convinced that at the end of the day, a struggle according to the law will strengthen her power and her spirit. There is no security without law. Satisfying the provisions of the law is an aspect of national security. In *The Public Committee against Torture in Israel v. The Government of Israel*, at 845 [I said]:

'We are aware that this decision does not make it easier to deal with that reality. This is the destiny of a democracy – she does not see all means as acceptable, and the ways of her enemies are not always open before her. A democracy must sometimes fight with one arm tied behind her back. Even so, a democracy has the upper hand. The rule of law and individual liberties constitute an important aspect of her security stance. At the end of the day, they strengthen her spirit and this strength allows her to overcome her difficulties.'

That goes for this case as well. Only a separation fence built on a base of law will grant security to the state and its citizens. Only a separation route based on the path of law, will lead the state to the security so yearned for.

The Supreme Court accepted the petitions in a number of cases, holding that the injury to the petitioners was disproportionate to the security needs. It ordered relief and costs in favour of those petitioners.

### *Indonesia*

On 24 July 2004, the Constitutional Court of Indonesia set aside the conviction imposed on Masykur Abdul Kadir, sentenced to 15 year's imprisonment for helping Imam Samudra in connection with the bombings in Bali on 12 October 2002. Those bombings killed 202 people, including 88 Australians.

The decision of the Indonesian Court was reached by a majority, five Justices to four. The problem arose out of the decision of the prosecutor to proceed against the accused not on conventional charges of homicide or crimes equivalent to arson, conspiracy, use of explosives etc. Instead, the accused were charged only under a special terrorism law introduced as a regulation six days *after* the bombings in Bali.<sup>25</sup>

The amended Indonesian Constitution contains basic principles protecting human rights and fundamental freedoms. One of these principles, reflected in many statements of human rights,<sup>26</sup> is the prohibition on criminal legislation having retroactive effect. Under international law an exception is sometimes allowed to permit trial or punishment 'for any act or omission which, at the time it was committed, was criminal according to the general principles of law recognised by civilised countries',<sup>27</sup> This expression is drawn directly from the statute of the International Court of Justice.<sup>28</sup>

The rule of law is itself one of the fundamental principles which democrats, the world over, defend against terrorists.<sup>29</sup> As Chief Justice Latham once said,<sup>30</sup> it is easy for judges to accord basic rights to popular majorities. The real test comes when they are asked to accord the same rights to unpopular minorities and individuals. The Indonesian case of Masykur Abdul Kadir was such a test.

In a comment on the Indonesian court's decision, an Australian editorialist said:<sup>31</sup>

The Constitutional Court's decision should be seen for what it is – part of a proper legal process in which every person has the right to exhaust all avenues on appeal. This is a positive development for Indonesia. The ensuing legal uncertainty and the inevitable stress it will cause . . . could and should have been avoided.

I agree with that comment.

### *The House of Lords*

Finally, I would mention two recent developments in the British House of Lords – one judicial and the other political.

In December 2004, the Law Lords handed down their decision in *A (FC) v. Secretary of State for the Home Department*.<sup>32</sup> The case arose out of the arrest of nine persons under the United Kingdom Terrorism legislation, including the Anti-Terrorism (Crime and Security) Act 2001 (UK). The detainees had been taken into custody in December 2001. They were all non-citizens. None had been charged with offences or brought to trial, still less convicted. They sought release. Their case came before the Special Commission previously mentioned. That Commission upheld their objection to the lawfulness of their detention. However, the Commission's order was set aside by the English Court of Appeal. That Court emphasised the importance of deference in such matters to the Minister.

By a decision of eight to one, the Law Lords reversed the Court of Appeal and restored the decision, obliging release of the detainees.

Lord Bingham, the Senior Law Lord, in his reasons, responded to the suggestion that interference by the courts in such matters would amount to 'judicial activism'. This has been an accusation levelled at the courts in the



United States by the former Attorney-General John Ashcroft. Citing the reasons of Simon Brown L. J. in *International Transport Roth GmbH v. Secretary of State for the Home Department*<sup>33</sup> Lord Bingham said:

The Court's role under the [Human Rights Act] is as the guardian of human rights. It cannot abdicate this responsibility . . . [J]udges nowadays have no alternative but to apply the Human Rights Act . . . Constitutional dangers exist no less in too little judicial activism as in too much. There are limits to the legitimacy of executive or legislative decision-making, just as there are to decision-making by the courts.

Lord Nicholls opened his reasons with the following remarks:<sup>34</sup>

Indefinite imprisonment without charge or trial is an anathema in any country which observes the rule of law. It deprives the detained person of the protection a criminal trial is intended to afford. Wholly exceptional circumstances must exist before this extreme step can be justified. The government contends that these post-September 11 days are wholly exceptional. . . . The principal weakness in the government's case lies in the different treatment accorded to nationals and non-nationals.

Lord Hoffmann, in his reasons, said:<sup>35</sup>

This is a nation which has been tested in adversity, which has survived physical destruction and catastrophic loss of life. I do not underestimate the ability of fanatical groups of terrorists to kill and destroy, but they do not threaten the life of the nation. Whether we would survive Hitler hung in the balance, but there is no doubt that we shall survive Al Qaeda. The Spanish people have not said that what happened in Madrid, hideous crime as it was, threatened the life of their nation. . . . Terrorist violence, serious as it is, does not threaten our institutions of government or our existence as a civil community.

Baroness Hale, the only woman member of the House of Lords judicial board, observed:<sup>36</sup>

No one has the right to be an international terrorist. But substitute 'black', 'disabled', 'female', 'gay' or any other similar adjective for 'foreign' before 'suspected international terrorist' and ask whether it would be justifiable to take power to lock up that group but not the 'white', 'able-bodied', 'male' or 'straight' suspected international terrorists. The answer is clear.

Lord Walker dissented from the majority. However, the Law Lords' voice was clear. Unlimited detention of non-nationals was inconsistent with their

view of the British Constitution, legal history and the provisions of the Human Rights Act.

This decision led to a flurry of political measures aimed at increasing ministerial powers. However, the Prevention of Terrorism Bill was held up, in late night sittings in March 2005, by the repeated insistence of the House of Lords upon amendments. In the end, on 11 March 2005, the British government backed down. It continued to insist that decisions, permitting the Home Secretary the power to impose 'control orders' should be made on the civil and not the criminal onus. But it agreed to insert an effective sunset clause of one year when the legislation must be reviewed. Most importantly, it agreed that the ministerial power to impose 'control orders' on terrorist suspects, restricting their liberties, could only be made with the approval of a judge.<sup>37</sup>

The insistence of United States, British and other courts upon effective supervision of legislative and executive detention of persons, outside cases where punishment orders have been imposed by judges under pre-existing valid laws, must be compared and contrasted with recent decisions of the courts in Australia.<sup>38</sup> Of course, the constitution must be obeyed. Valid laws must be given effect. However, in reading our Constitution we should always remember the lessons of the wise decision of the High Court in the *Communist Party Case*, vindicated by the people and by history. And we should familiarise ourselves with the wisdom of other final courts approaching the new legal questions.

### Conclusion: the ultimate foundation for national security

If we hold in our minds the principle of proportionality, the dictates of Australian common sense and the wise approach of courts in other lands with raised legal systems to which I have referred, it is likely that we in Australia will face our own tests, if and when they come, with restraint and a determination to uphold respect for fundamental human rights.

National security in a country like Australia ultimately rests not on fear or restrictive laws. It lies in the loyalty of the people, their love of the country and their respect for its institutions, including those that safeguard the rule of law, due process of law and equal justice under law for all.

### Notes

- 1 This address was presented by Justice Kirby at the opening of the conference on 1 September 2005.
- 2 (1951) 83 CLR 1. See esp. at 187–188, 193.
- 3 Cf. United States Constitution, First Amendment.
- 4 341 US 494 (1951), Black J and Douglas J dissenting.
- 5 2001 (3) SA 893.
- 6 *S v. Makwanyane* 1995 (3) SA 391; (1995) (2) SACR 1; 1995 (6) BCLR 665.
- 7 Cf. *Truong v. The Queen* (2004) 78 ALJR 473.

- 8 2001 (3) SA 893 at 923 [73].
- 9 277 US 438 at 485 (1928).
- 10 2000 (3) SA 893 at 921 [68].
- 11 2001 (3) SA 893 at 921 [68].
- 12 542 US 1 (2004); 72 USLW 4596 (2004).
- 13 *Authorisation for the Use of Military Force*, Public Law 107–40, para. 1–2, US Stat 224.
- 14 *Johnson v. Eisentrager* 339 US 763 (1950).
- 15 *Padilla v. Rumsfeld* 124 SCt 2711 at 2735 (2004). In this case Stevens J was dissenting but on the availability of *habeas corpus* in the circumstances.
- 16 542 US 1 at 14 (2004); 124 SCt 2686 at 2697 (2004).
- 17 *King v. Cowle* (1759) 2 Burr 834 at 854–855; 97 ER 587 at 598–599 (KB).
- 18 *Ex parte Mwenya* [1960] 1 QB 241 at 303 (CA) per Lord Evershed MR.
- 19 [2004] EWCA Civ 324.
- 20 *Chahal v. United Kingdom* (1996) 23 ECHR 413. See Lord Lester of Herne Hill and D. Pannick (2004), *Human Rights Law and Practice* (2nd edn) (London: LexisNexis), 182 [4.5.33]–[4.5.35].
- 21 S 21(1) of the Act.
- 22 [2004] EWCA Civ 324 at [34].
- 23 Subsequently, the International Court of Justice, on a reference from the General Assembly of the United Nations, held that the construction of the wall or ‘fence’ on Palestinian land was contrary to international law. See International Court of Justice, *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, unreported, 9 July 2004.
- 24 *Beit Sourik Village Council v. The Government of Israel*, unreported decision of the Supreme Court of Israel sitting as the Israeli High Court of Justice [HCJ 2056/04], 2 May 2004, (Barak, P., Mazza, V.P. and Cheshin, J. concurring), pp. 44–45 [86].
- 25 *Sydney Morning Herald*, 24 July 2004, 1.
- 26 See e.g. *International Covenant on Civil and Political Rights*, Art. 15; *European Convention on the Protection of Human Rights and Fundamental Freedoms*, Art. 7(1). In Europe, the sub-article is not derogable. See Art. 15(2).
- 27 *European Convention on Human Rights*, Art. 7(2).
- 28 Art. 38.
- 29 See D. Kerr (2004) Australia’s legislative response to Terrorism, *Alternative Law Journal*, 29: 131–134.
- 30 *Adelaide Company of Jehovah’s Witness Inc v. The Commonwealth* (1943) 67 CLR 116 at 124.
- 31 *Sydney Morning Herald*, 27 July 2004, p. 10.
- 32 [2004] UKHL 56.
- 33 [2003] QB 728 at [27]. See [2004] UKHL 56 at [41].
- 34 [2004] UKHL 56 at [74].
- 35 [2004] UKHL 56 at [96].
- 36 [2004] UKHL 56 at [237].
- 37 *The Scotsman*, 12 March 2005, p. 1.
- 38 See e.g. *Al-Kateb v. Godwin* (2004) 78 ALJR 1099; *Minister for Immigration and Multicultural and Indigenous Affairs v. Al Khafaji* (2004) 78 ALJR 1156; *Re Woolley*; *Ex parte Applicants M276/2003* (2004) 79 ALJR 43; cf. *Re Colonel Aird*; *Ex parte Alpert* (2004) 78 ALJR 1383; *Baker v. The Queen* (2004) 78 ALJR 1483; *Fardon v. Attorney-General (Q)* (2004) 78 ALJR 1519.

# 3 Human security, identity politics and global governance

## From freedom from fear to fear of freedoms

*Amitav Acharya*

### Introduction

This chapter was originally presented as the keynote address at the conference on 'Civil Society, Religion and Global Governance: Paradigms of Power and Persuasion'. My focus is human security, which is a subject that captures the essence of an alternative conception of global governance, in which civil society plays a leading role. While national security is the ideology of a state-centric international order, human security is the ideational basis of a people-centric world order underpinned by a global civil society.

Yet, I am not here to celebrate the arrival of human security. Instead, my central argument today is that international relations since 11 September 2001 have changed in ways that render the diffusion and defence of human security norms exceedingly difficult. Prior to 11 September, the main obstacle to human security lay in reconciling two divergent perspectives: those, like Japan and Southeast Asian states who took the essence of the concept to mean freedom from want, and those, like Canada and Norway, who took it to mean freedom from fear. While the former stressed the importance of economic and developmental issues in advancing human security, the latter emphasised the protection of the dignity of the individual, and the prevention of cruelty to people caught in zones of conflict. These differences, though important, were hardly irreconcilable.<sup>1</sup> But in the post-September 11 political environment, 'freedom from fear' has acquired a new meaning. Spurred by an almost total fear of terrorist attacks, the international community led by the US is waging a global war on terror in ways that seriously undermine key bases of human security. Freedom from fear now engenders a fear of freedoms.

### Human security

The concept of human security emerged in the early 1990s. Its emergence reflected three transformative forces at work. The first was the end of the Cold War and the collapse of the Soviet Union. With the end of five decades of superpower competition, in which national security, deterrence and power

balancing were the dominant security approaches, the world seemed ready for a new security concept which stressed security from threats other than aggression and alliances. A second source of human security was ideational and normative. It had its roots in decades of advocacy by individuals and groups of the need for the international community to uphold human dignity, and focus on the security of the people, which had been a major casualty of Cold War geopolitics.

A third source of human security lay in the changing nature of conflict. Although it had been known for decades, the end of the Cold War brought home the stark realization that the vast majority of the world's conflicts originate from within the boundaries of states, and that their major victims are innocent civilians. Genocides in the former Yugoslavia and Africa's Great Lakes area, among others, were instrumental in getting the international community to accept this truth.

### *Challenges to human security*

As already noted, human security is an elastic and contested notion. But at its core, human security is security for people, rather than security exclusively for states and/or governments. It might be argued that the distinction is meaningless, what challenges the survival of states also threatens the survival of its people. Yet, the converse is not always true and herein lies the case for treating human security as a distinctive notion.

Consider two recent dangers in Asia: the Asian economic crisis which started in 1997 and in some sense continues even today, and the outbreak of the Severe Acute Respiratory Syndrome (SARS) epidemic in 2003. The 1997 Asian economic crisis caused widespread misery throughout the region. SARS did not cause comparable economic damage before it was contained, but the sense of fear and uncertainty it sparked was of a far greater magnitude than any other transnational challenge, including terrorism, experienced by Asia.

Despite having different causes and consequences, the Asian crisis and SARS had something in common that captures the essence of human security. Neither threatened the physical boundaries or territorial integrity of states in the region, which lie at the heart of the national security paradigm. To be sure, the Asian economic crisis sparked a chain of events that toppled one of Asia's most entrenched authoritarian regimes – Indonesia's Suharto – and resulted in the establishment of East Timor as an independent nation state. But what was really at stake was the security of the people, their livelihoods, their health and their sense of well-being. Some of the worst violence in Indonesia that immediately followed the fall of Suharto involved the massacre of the Indonesian Chinese; here again the physical boundaries of the Indonesian state were not at issue. This message, that the security of the people can be threatened to a significant degree without there being military aggression by other states or without there being any danger of the physical

alteration of states, does illustrate how human security analysis differs from conventional national security analysis.

Recent challenges to human security in Southeast Asia have been marked by three common features. First, they are transnational in nature, meaning that while initially originating from within the boundaries of one state, they do affect the security and well-being of entire regions and beyond. The traditional separation between domestic and international, or regional and extra-regional, becomes less relevant and useful in comprehending the sources of these dangers and the means to contain them.

Second, these threats arrive suddenly and unexpectedly. No one 'predicted' the collapse of Asian currencies in 1997 (although some would take credit for such foresight after the event). The SARS outbreak was even more unpredictable. Another recent Asian tragedy, that underscored this unpredictability was the tsunami of 26 December 2004. It encapsulated transnational forces that killed innocent people in far greater numbers than terrorism,<sup>2</sup> and affected millions of human lives without altering the physical boundaries of states, although the location of Sumatra might have moved somewhat as a result of the earthquake that caused it.

A third common feature is their link with globalisation. The economic crisis has indeed been called 'globalisation's first major crisis'. It would not have taken place without the free flow of investment and electronic financial transfers that lie at the core of economic globalisation. The SARS epidemic spread when individuals sharing the same lift in a Hong Kong hotel that had carried a Chinese national infected with the virus transmitted the disease to Singapore and Toronto.

It might be said that the case for accepting human security as an organising framework is to a large extent due to challenges that are at least partly induced by globalisation. What I mean by this assertion is that most challenges to human security whether defined as freedom from fear or freedom from want, have something to do with globalisation. And the kind of security challenges that globalisation throws up to the contemporary interstate system helps to define and illustrate the notion of human security. This is not to say that these threats are caused by globalisation. Nor is it to claim that challenges to human security are always of a larger 'global' dimension transcending local and regional catalysts and boundaries. Neither the Asian crisis nor SARS was strictly 'regional' in scope. But their impact was to a large extent regional; hence the regional dimension of transnational threats to human security should not be overlooked.

This brings us to another powerful challenge to human security today, something that is closely linked to identity politics: the other major theme of the conference. This challenge goes by the name of terrorism, although this has become an expansive and totalising concept.

Terrorism fits the description of a transnational threat as outlined above. It is transnational, in the sense that it travels vast distances and challenges the boundary between domestic politics and international relations. It is

sudden and unexpected. This may seem controversial given the self assurance with which terrorism experts now expect, if not predict, future attacks, with most taking a 'not if but when' attitude. But no one had predicted the 11 September attacks, or at least their scale and their specific targets, despite the fact that subsequent investigations have shown that signs of a conspiracy were visible and should have been picked up by the authorities.

Terrorism is also linked to globalisation. Some of its most powerful weapons are the internet and the mobile phone, and, at least before 11 September, electronic fund transfers. Too much has been written about the link between terrorism and the communication and information revolution for me to dwell on them at length here.

What is more problematic and much less reflected upon in debates about this challenge, is the relationship between terrorism – or more specifically the 'war on terror' – and human security. Let me turn to this now.

### *Human security and the war on terror*

Terrorism is a threat to human security in the sense that its victims are mainly innocent civilians. Yet, to an overwhelming degree, governments have represented this threat as a threat to national security. Why so?

Three reasons come to mind. The first is that terrorism is political, and many terrorist groups have as their aim the physical alteration of the territorial boundaries of existing nation states. From the Irish Republican Army to the Tamil Tigers to the Jemimah Islamiah (JI) group in Southeast Asia, a common goal of many terrorist organisations is the creation of a new state, or in the case of JI what has been called a 'superstate', out of existing national boundaries.

But a second and perhaps more powerful reason for describing terrorism as a national security issue may be noted; it has to do with 'securitisation'. As defined by the Copenhagen School and elaborated by others, securitisation is an act (a 'speech act') through which policy makers label certain non-military dangers which are seen as posing an existential threat to the survival or well-being of states. What is particularly important about securitisation is the underlying rationale for such labelling; it enables governments to mobilise greater attention and resources to challenges that would otherwise be difficult to justify, and hence provide 'more effective' solutions to these challenges.

But despite this seemingly functional justification, the securitisation of terrorism really reflects the heightened global state of fear that the Bush administration's 'war on terror' has engendered. In a recent book, I analysed the kind of 'total fear' which has marked the administration's 'war on terror'.<sup>3</sup> The age of 'total fear' forms the basis of security thinking in the early twenty-first century, just as the notion of 'total war' lay behind strategic thinking of the early twentieth century and much of the Cold War period. The notion of total fear comprises two elements.

One is a tendency to view terrorism as the most severe challenge to humankind's existence 'in our time'. This is in disregard of other challenges to human security. The Bali terrorist bombings in October 2002 killed about 200 innocent people; the tsunami in December 2004 took the lives of an estimated 126,473 people in Indonesia alone.<sup>4</sup>

The other element is a tendency to bracket all sorts of conflicts, including secessionist movements and national liberation struggles, as threats which the 'war on terror' must address.

One aspect of this total fear is the securitisation of religion as the basis of a new global identity politics. Let me focus a bit on the issue of religion, since this was the major theme of the conference. Before 11 September, religion played a small part in global identity politics. Scholars of identity politics paid more attention to economic, political and social bases of identity, rather than religion per se. For those who placed themselves under 'critical security studies', the focus was new forms of resistance brought about by globalisation, including anti-free trade protest movements and uprisings against state repression of ethnic minorities. Scholars who questioned the characterisation of the Rwanda and Bosnian genocide as products of 'ancient ethnic hatreds' identified socio-economic and political forces behind these tragic episodes.

Second, the fault lines of the post-Cold War era could be defined under broader categories, such as civilisation and ethnicity, rather than religion per se. For example, in Huntington's clash of civilisations thesis, shared religion was not the primary basis for inter-civilisational conflicts; the Buddhist nations of China and Japan were recognised as distinct civilisations. Yet, in the post-11 September world, religion has become the defining feature of global identity politics. And here there is nothing delicate about the representation of 'otherness' in religious identity. Consider the following statement:

The Christian God encourages freedom, love, forgiveness, prosperity and health. The Muslim god appears to value the opposite. The personalities of each god are evident in the cultures, civilisations and dispositions of the peoples that serve them. Muhammad's central mission was submission; Jesus' central message was love. They seem to be very different personalities.<sup>5</sup>

These words came from the Reverend Ted Haggard, president of the National Association of Evangelicals in the USA. The fact that such views are not widely shared should not be too comforting. Religion now dominates the discourse of identity politics in a way that challenges long-accepted beliefs about secularisation of world politics.

I return to the point about how terrorism has become the new focal point of the national security concerns of states. It is not surprising that states often invoke national security to describe this threat, rather



than human security. National security has always been and will remain, a powerful symbol of mobilisation of attention and resources. It empowers the state vis-à-vis the civil society. And the framing of terrorism as a national security concern does pose a powerful challenge to human security.

This challenge is reflected in the narrowing of perspective and approach between Western and Third World governments when it comes to legislation that allows ever more intrusive surveillance and detention without trial. Hence an American Attorney-General (John Ashcroft) endorsed Malaysia's Internal Security Act, which can be used to arrest JI activists as much as the political opponents of government. The indefinite renewal of the Patriot Act brings America's domestic freedoms closer to governments that once promoted 'Asian values'. During a recent debate in the US House of Representatives over the extension of the Patriot Act *sans* its 'sunset' clauses, Representative Dana Rorhabacher (a Republican) admitted that his support for the Act in 2001 was based on the belief that it was justified due to the extraordinary circumstances created by the 11 September attacks, and that he had believed that once the emergency was over, 'the government would again return to a level consistent with a free society'.<sup>6</sup> Apart from admitting that America's freedoms at present are not at 'a level consistent with a free society', this statement also implies that a return to the free society levels may not be forthcoming since the move to extend the sunset clauses was defeated.

Governments speak loudly about the need to address the 'root causes' of terrorism, including economic factors that are at the source of human suffering, but the level of development assistance and spending on education, health and poverty alleviation lag behind the rise in defence expenditures undertaken in the name of national security and the war on terror.

The challenge to human security is also reflected in the much-vaunted democracy promotion of the Bush administration. While Mr Bush argues that lack of democracy is a major factor behind terrorism, his agenda for democracy promotion in the Middle East is marked by ambiguities and double standards. The invasion of Iraq was not justified in terms of the democratic rights of Iraqi citizens, until the war was over and no weapons of mass destruction could be found; add to this the Bush administration's support for authoritarian rule in Pakistan.

### **The retreat of regional/global governance**

The age of total fear is also marked by a weakening of the instruments of global and regional governance. It is an age where coercion trumps persuasion. The Bush administration's distrust of multilateralism at the global and regional levels predated 11 September, but has been reinforced by it. Shortly after the attacks, the director of the State Department's Office of Policy Planning, Richard Haas, argued:

As we know from our own history, majorities are not always right: we also cannot forget that the United States has unique global responsibilities and if we are to meet them effectively, we may not always be able to go along with measures that many or even most others support. . . . We have moreover demonstrated that we can and will act alone when necessary. A commitment to multilateralism need not constrain our options.<sup>7</sup>

Yet constraining self-serving unilateral action is the essence of multilateralism. The Bush administration's preference for a 'coalition of the willing' approach, over institutionalised multilateralism of the kind that might constrain its options is well known. At the regional level, its support for the six party talks over North Korea notwithstanding, multilateral approaches to security, such as confidence and trust-building measures continue to take a back seat to security strategies aimed at fighting the war on terror and the long-term goal of preventing the emergence of China as a 'peer competitor'. In the Asia-Pacific, cooperative security approaches which emerged at the end of the Cold War have been significantly stymied by national security cooperation undertaken under the pretext of the war on terror.<sup>8</sup> Instead of promoting transparency measures, confidence-building and preventive diplomacy, the agenda of security cooperation among the states of the region has returned to counter-insurgency measures, cooperation among intelligence agencies and new security measures dictated by the US, such as the Container Security Initiative and the Proliferation Security Initiative. In the meantime, the region continues to lack even a basic multilateral disaster relief and humanitarian assistance agency, of the type that could save thousands of lives in a future earthquake or tsunami.<sup>9</sup>

In this climate, the ideal of human security becoming the governing framework of security cooperation in the post-Cold War era has receded further. There is little chance that this trend will be reversed in the near future. The war on terror, as the Bush administration constantly reminds us, is for the long haul. Yet recognising the dangers for human security created by the war is an important first step in restoring the momentum towards human security and freedom 'to a level consistent with a free society.' This is a challenge for all of us.

## Notes

- 1 For an extended discussion of these differences and the diffusion of human security in an Asian context, see: Amitav Acharya (2001) 'Human Security: East Versus West', *International Journal*, 56(3): 442–460 (translated into Chinese and reprinted in *World Economics and Politics*, published by the Institute of World Economics and Politics, Chinese Academy of Social Sciences, Beijing, No. 5 (2002), pp. 57–62). This article also appears as: 'Human Security: What Kind for Asia Pacific? What Options?', in Mohamed Jawahar Hassan, Stephen Leong and Vincent Lim (eds) (2002) *Asia Pacific Security: Challenges and Opportunities in the*

- 21st Century* (Kuala Lumpur: Institute of Strategic and International Studies); 'Human Security: What Kind for the Asia Pacific?', in David Dickens (ed.) (2002) *The Human Face of Security: Asia-Pacific Perspectives*, Canberra Papers in Strategy and Defence, No 144 (Canberra: Australian National University, Strategic and Defence Studies Centre); and 'Human Security: East Versus West', IDSS Working Paper No. 17 (Singapore: Institute of Defence and Strategic Studies, September 2001).
- 2 Amitav Acharya (2005) 'Securing a more united world', *Straits Times*, 10 January.
  - 3 Amitav Acharya (2004) *Age of Fear: Power Versus Principle in the War on Terror* (New Delhi: Rupa & Co).
  - 4 'Tsunami death toll updated', available online at [en.wikinews.org/wiki/Tsunami\\_death\\_toll\\_updated](http://en.wikinews.org/wiki/Tsunami_death_toll_updated).
  - 5 Cited in Acharya (2004) p.43.
  - 6 'House approves renewal of Patriot Act', CNN.Com, 22 July 2005, available online at [www.cnn.com/2005/POLITICS/07/21/patriot.act/](http://www.cnn.com/2005/POLITICS/07/21/patriot.act/).
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  - 8 Amitav Acharya (2004) 'Fight terrorism – but carefully', The 5th Column, *Far Eastern Economic Review*, 9 September.
  - 9 Amitav Acharya (2005) 'Asia needs better ways to protect its people', *International Herald Tribune*, 16 March.

# 4 A transcivilisational perspective on global issues in the twenty-first century

A way to overcome Euro-America-centric discourses on world affairs in the twenty-first century

*Yasuaki Onuma*

## Introduction

This chapter seeks to demonstrate the need for a transcivilisational perspective on world affairs in the twenty-first century. You may ask, what is this transcivilisational perspective? Simply defined, it is a way of seeing trans-boundary phenomena. By what means? By critically examining predominant Euro-America-centric perspectives; and then, identifying views, voices, aspirations and desperations that have not been sufficiently recognised by those in developed societies. For what purposes? To elucidate values with the highest degree of legitimacy, shared by peoples on the globe, regardless of religions, cultures and diverse ways of thinking.

The concept of human rights is regarded as one of such globally legitimate values. It has become one of the most important notions that guide and shape the spirit of the time in the latter half of the twentieth century. Recognition of the value of human rights is one of the most important indices that distinguish postwar from prewar international society. Together with global environmental concerns, human rights will likely maintain such a pre-eminent status in the twenty-first century.

A transcivilisational perspective is a perspective from which we see, evaluate and seek to solve problems transcending national boundaries by developing a cognitive and evaluative framework based on the recognition of plural civilisations.<sup>1</sup> In order to appreciate this perspective, we need to recognise other perspectives from which we view trans-boundary problems. They are international and transnational perspectives.

## International, transnational and transcivilisational perspectives

### *The international perspective*

The international perspective is the predominant perspective from which we see, recognise, interpret, assess and seek to solve trans-boundary problems. This is a product of the globalisation of a European perception that grasps the world as composed of sovereign states. This is a novel image in human history. Until the seventeenth century, such an image was not held even by Europeans. For them, the world was composed of Christians and pagans. In other regions, the situation was similar. For Muslims, the world was divided into the abode of Islam and the abode of War.<sup>2</sup> In both cases, a kind of inter-religious perspective prevailed. For East Asians, the world was composed of the civilised and the barbarians.<sup>3</sup> According to this view, most of you and I, who are not Chinese, are barbarians. This Sino-centric view of the world was shared not only by Chinese, but also by people in East Asia in general.

In all these cases, no perception of the world as composed of nation states existed.<sup>4</sup> This perception was first held by modern Europeans. It is only after European powers established hegemony on a global scale around the end of the nineteenth century that this perception came to be shared by people all over the world. Now, the international perspective became predominant.<sup>5</sup>

The idea of the 'international' has often been equated with the 'interstate' or the 'intergovernmental'. This is only natural. People have come to perceive the world from an international perspective because the power of nation states overwhelmed that of other entities, and because this power is represented and exercised by national governments. International agreements are interstate agreements made by national governments. International organisations are intergovernmental organisations. The twentieth century was the era of nation states par excellence.<sup>6</sup> The international perspective will continue to be the most important perspective from which human beings see, assess and seek to solve problems beyond the reach of a single state.<sup>7</sup>

### *The transnational perspective*

Even in modern times when the power of a nation state became pre-eminent, however, human activities are not always driven by, represented by or associated with nation states. Especially in the latter half of the twentieth century, the scale of transnational private activities became enormous. Their major agents are multinational enterprises and global NGOs. It is difficult to grasp their critical aspects from the international perspective alone, because this perspective tends to pay attention mainly to phenomena associated with national governments.<sup>8</sup> We need a transnational perspective, which is centred on non-state activities.

The transnational perspective has established itself since the 1950s.<sup>9</sup> Theories of transnational law, interdependence, global governance and global civil society apply this perspective in their own ways. This perspective is a useful tool to supplement and modify the international perspective, which tends to overlook the activities of non-state actors. The significance of the transnational perspective has been widely recognised since the late twentieth century, when market economy, human rights and the environment came to be perceived as major global issues.<sup>10</sup>

Is the combination of international and transnational perspectives sufficient to see, evaluate and solve the global problems in the twenty-first century? My answer is 'no'. Why? Because it cannot fully address the aspirations, expectations, frustrations and desperations held by the overwhelming majority of humanity: the Third World population. We can see this problematic feature by turning our attention to major agents of transnational perspectives. They are multinational enterprises and NGOs such as Microsoft, Citibank, and Amnesty International. They have a global character in their compositions, activities and influences, but their Euro-America-centric preconceptions and propensities are apparent. Transnational activities of multinational enterprises are motivated by the spirit of capitalism, which is essentially a product of modern Western society. Influential enterprises are generally owned and run by Western elites, except for Japanese companies.

In the case of NGOs, the situation is more complicated. Some NGOs have sought to work for the people in the south in the spirit of solidarity. They have made serious efforts to overcome their West-centric preconceptions. However, most of them are based, administered and financed in Western societies. Many of the leaders have Western educational and cultural backgrounds, and communicate with each other in English. It cannot be denied that their basic assumptions, ways of thinking and cultural propensities are Euro-America-centric. They have failed to represent sufficiently voices, aspirations and desperations of the poor, suppressed and frustrated populations in the Third World.<sup>11</sup> Some of their frustrations and resentment have taken a violent form: terrorist attacks. These facts suggest that merely modifying and complementing the international perspective with the transnational perspective is not sufficient. We need a perspective from which we can grasp problems that cannot be addressed either by international or transnational perspectives.

### *The transcivilisational perspective*

In a sense, we already have such perspectives. They are perspectives of 'developing countries' or the 'Third World'. They are most useful when we see the problems in terms of economic inequality between nations, hunger and poverty on a global scale. However, these perspectives are mainly concerned with economic aspects. In economic terms, it has become more and more

difficult to talk about the Third World as a single group. A small number of countries such as Singapore and South Korea have achieved significant economic development, but a far larger number of countries in Africa have become even more miserable. Moreover, although many problems have their causes in economic poverty and inequality, humans are not driven by economic factors alone. Terrorism does not originate from poverty alone.<sup>12</sup> The extremist interpretation of an influential religion, coupled with economic and political resentment, may produce terrorism.<sup>13</sup>

Thus, we need a perspective that pays attention to comprehensive factors including political, social, cultural, religious and historical ones. A transcivilisational perspective is such a comprehensive perspective.<sup>14</sup> It is a way to recognise trans-boundary human activities that may be overlooked if seen from international and transnational perspectives alone. However, the term 'civilisation' is notoriously equivocal and may bring to mind Huntington's notorious 'Clash of Civilizations'.<sup>15</sup> It is necessary to elaborate the notion of civilisation in the transcivilisational perspective.

Leading theorists on civilisations such as Toynbee, Spengler and Huntington have argued that we should adopt a perspective from which we recognise, interpret and assess problems with the comprehensive notion of civilisation in mind. I agree. However, I cannot agree with them when they view humans as belonging exclusively to a single, particular civilisation. Human beings generally belong to plural civilisations simultaneously.<sup>16</sup> For example, contemporary Australian people belong to the modern European civilisation, which is basically secular. However, many of them also belong to the Christian civilisation, which originates in the premodern period. They further belong to a global civilisation of mass production, mass consumption and mass waste, formulated as the 'American way of life'. This way of life has been accepted not only by people in the USA, but by most people in developed societies. In this way, British people 'belong' to a number of civilisations simultaneously.

Defining civilisation as excluding the possibility of being multilayered, i.e. belonging to a number of civilisations, is practically inappropriate as well. People are generally proud of their own civilisations. If contemporary life is miserable for a particular people, they tend to glorify the mystical civilisation to which they believe they belong, disclaiming other civilisations. Defining civilisation as allowing humans to belong to only one civilisation would contribute to the glorification of a particular civilisation at the cost of other civilisations, inviting the conclusion of a 'clash of civilisations'.

We should therefore define the concept of civilisation as a functional term that allows humans to belong to a number of civilisations simultaneously. The next question is to explore the relationship between civilisations and global society from this functional perspective. How has the modern international system treated various civilisations? Why did people begin to talk about civilisations with the end of the Cold War? How should we introduce the concept of civilisation into the international legal and political discourse?

## Civilisational factors and perspectives in international law and international relations

### *Civilisational factors as preserved within the framework of the sovereign states system: the significance of the non-intervention principle and its decline*

As I said earlier, the international perspective became predominant when the modern European states system<sup>17</sup> became global. The predominance of the international perspective, however, does not mean the end of the understanding of the world from various civilisational perspectives. In fact, the sovereign states system that came to be globally valid was characterised by a Eurocentric perspective of civilisation. From the late nineteenth to the early twentieth century, international law was often defined as the law among civilised nations.<sup>18</sup> Here, the term 'civilisation' meant no other than the European civilisation. Other great civilisations were ignored. Yet this Eurocentric civilisation was a modern, secular civilisation based on modern science and technologies. Christianity, the pre-eminent feature of the European civilisation for a long time, was not regarded as a requirement of civilisation. The capacity to abide by international law established by the European nations was the critical requirement for recognition as a civilised nation.<sup>19</sup>

The sovereign states system is a fundamental principle of ordering the world that modern Europeans had adopted; it was later imposed on, or accepted by, non-Europeans. One of the basic features of this states system is the principle of non-intervention. Each nation can decide its own rules, economic system, culture and religion within its territory. Even when the European powers established global hegemony, they did not require non-Europeans to adopt either Christianity, or a European political, economic, social and cultural system. As long as non-European nations conducted their foreign affairs in accordance with Eurocentric international law and diplomacy, the Europeans were content. International law has not been concerned with what kind of religion, culture or social customs each nation has. Civilisational diversity was thus preserved by the non-intervention principle as were domestic matters within national boundaries.<sup>20</sup>

However, in the twentieth century, the non-intervention principle gradually deteriorated. First, the substantive bases underlying the principle were undermined by the global market economy and the global flow of information. A large number of economic, social, cultural and informational activities transcended national boundaries. States came to find it more and more difficult to control these activities through national regulations.<sup>21</sup> Second, problems on human rights and the global environment attracted the attention of people in developed countries. These problems, once regarded as domestic matters, came to be characterised as matters of international concern. Nations can no longer claim that they can deal with these issues as they wish.<sup>22</sup>



The deterioration of the non-intervention principle proceeded gradually, but the end of the Cold War radically changed the situation. The Western powers regarded it as the victory of their system as a whole, represented by market economy, democracy, human rights and the rule of law. Also, this 'victory' was realised in the midst of the emergence of powerful NGOs based in the West. Triumphant voices questioning the legitimacy of the state worked further against the non-intervention principle. People who witnessed large-scale atrocities in the former Yugoslavia, Rwanda and other places came to regard the principle as a protective shield of a corrupt, wicked government in the south.

By the end of the twentieth century, political and intellectual elites in the developed countries raised their voices against the non-intervention principle and state sovereignty. Their claims were far more vocal than those of the rest of the world because of the influential global media institutions. These claims include 'the global market economy', 'the universality of human rights', 'global civil society' and the like. Diverse civilisational factors, which had been preserved within national boundaries, came to be attacked for various reasons.

Western NGOs played an important role in criticising human rights violations in Third World countries. Many of the claims critical of state sovereignty were, ironically, executed as *governmental policies* by the Western *states*. It was the state in the developing countries, not developed countries, whose sovereignty was severely restricted. The formidable power of globalisation penetrating national borders involved the criticism of various civilisations and cultures that had been preserved and respected in developing countries. This naturally elicited harsh reactions from Afro-Asian nations.<sup>23</sup> Their reactions assumed the character of *repercussions in terms of civilisations or cultures*. This is why the conflicts between the West-centric globalising forces and the reactions from developing countries have given the impression of a 'clash of civilizations'. Most of these 'clashes' are futile. They must be overcome. The critical question is 'How?'

### *Transcivilisational perspectives tacitly adopted in international relations*

An answer to this question lies in the transcivilisational perspective. As I said earlier, civilisational factors were not lost even after the sovereign states system became global. This was only natural. Civilisational factors, whether religious, cultural, political or economic, produced civilisational diversity for more than four millennia. They could not be lost in a few centuries of Euro-America-centric modernity. Confucian civilisation survived, although in the weaker form of social customs, maxims or aphorisms guiding people in their daily lives.<sup>24</sup> Buddhist civilisation survived; it thrived in some areas such as in Thailand, or in the weaker form of ceremonies, maxims and proverbs, influencing people unconsciously, as is the case with Japan. In Africa and in Asia, Islamic civilisation survived with great intracivilisational diversity.

Because diverse civilisational factors were preserved as domestic matters, they were not conspicuous in international relations. However, policy makers have been well aware of their importance. They have taken these factors into account when conducting foreign policies. The US policy in the Gulf War of 1991 is a good example. In carrying out campaigns against Iraq, the US made serious efforts to have Muslim and Arab nations on its side. A major reason for this policy was the concern with the legitimacy and image of the campaigns. The US government wanted to avoid giving the impression that its military actions were against Muslims or Arabs in general. Likewise, after the 11 September 2001 event, the Western powers emphasised that their campaigns against Al-Qaeda and the Taliban regime were not a war against Muslims. When the US and the UK governments carried out war in Iraq in 2003, they had a similar attitude. The present Bush administration was far less concerned with the perceptions held by others, yet even they paid a certain degree of attention to civilisational factors. After Bush was criticised for referring to the crusade, the administration made serious efforts to avoid the impression that their campaign against Iraq was a war against Arabs or Muslims.

In all these cases, they knew well that they needed transcivilisational legitimacy or at least an appearance of it. Yet, their military actions were often construed as 'Western' or 'Judeo-Christian' campaigns against Muslims. Still today this interpretation is highly influential in Muslim nations. The persistence and further resurgence of the intercivilisational or transcivilisational perspective is evident.

In the area of human rights, too, the need for transcivilisational legitimacy is obvious. Human rights policies of a government are now scrutinised by international organisations, other governments, NGOs and media institutions. Social customs and institutions that are based on religions, cultures and social systems in national societies and which have lasted for centuries are now criticised by outsiders. These outsiders claim that some of these customs or institutions violate human rights, and call for their change or abolition.<sup>25</sup> These demands have elicited harsh reactions from sectors of the targeted nations who believe that their customs or institutions must be respected and preserved. Controversies over the universality versus particularity of human rights revealed that the universalisation of human rights involves the civilisational dimensions of conflicts.<sup>26</sup>

## **The transcivilisational perspective on human rights as a key to achieving unity in diversity?**

### *Universalism as an objective and regionalism as a means*

Current mechanisms for the international protection of human rights have generally been divided into two groups: the 'universal' protection of human rights and the regional ones.<sup>27</sup> The 'universal' mechanism consists of the UN

human rights organs and monitoring bodies attached to general human rights treaties such as the International Covenants on Civil and Political Rights and Economic and Social Rights of 1966. The regional mechanisms are based on regional human rights instruments. The Convention for the Protection of Human Rights and Fundamental Freedoms, applicable to European nations, and the African Charter on Human and Peoples' Rights are leading examples.

The region provides a territorial basis for a civilisation. Thus, relations between the universal and regional mechanisms of human rights protection may be suggestive of the relations between various civilisations and human rights. People generally assume that human rights should be protected by a universal standard. Even among so-called 'relativists', relatively few argue that human rights *standards* should be diverse. Most of them argue that we should take cultural diversity into consideration when implementing human rights. Moreover, the simple dichotomy of 'universalism versus relativism' is no longer a major issue. Unsophisticated arguments assertive of 'Asian values' or 'Asian human rights', advocated by some East Asian political elites, have virtually disappeared. The Vienna Declaration on Human Rights of 1993 embodies the newly agreed universal concept of human rights.

Paragraph one of the Declaration provides that '[t]he universal nature of these human rights and freedoms is beyond question'. Paragraph five further provides that

All human rights are universal, indivisible and interdependent and interrelated. . . . While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms'.<sup>28</sup>

Before the Vienna Conference, there existed a sharp schism between 'universalists' and 'relativists' over the universality of human rights, involving political elites, scholars, NGOs and media institutions. Developing countries resisted the adoption of an unequivocal expression of the universality of human rights. Given these facts, these provisions should be read as a great achievement overcoming intergovernmental, transnational and transcivilisational disputes over the issue of the universality of human rights.

However, you may ask: 'Is it really possible to realise the universal standard of human rights on a global scale?' The answer is, no. Yet, few governments have argued that there should be different standards in the protection of human rights. There are some provisions in international instruments to the effect that developing countries can adopt different standards in guaranteeing certain categories of rights, but they are exceptional. The term 'double standard' has always been regarded as pejorative, something that must be blamed and avoided. This makes a contrast with international eco-

conomic law and environmental law. In these areas differentiated norms have been demanded by developing countries, and have actually been adopted.<sup>29</sup> A number of scholars have advocated theories to legitimise such different standards.

Why is there such a difference between international human rights on the one hand, and international economics and environmental protection on the other?

First, until the 1990s the universalistic notion of human rights was not seriously questioned even by leaders in the developing countries. The notion of human rights defined as the rights that a human has because he or she is a human was certainly criticised by Marxists. Yet, neither socialist countries nor developing countries strongly argued that different human rights standards should be adopted in international instruments. Rather, they argued that all humans should be entitled to enjoy human rights regardless of race, colour, sex and other grounds.<sup>30</sup>

Second, it may be argued that the universality of a norm does not necessarily mean the common content of the norm. The equal treatment of men and women must be universally observed. But the very notions of 'equal' and 'treatment' may be culturally bound. Their interpretations may differ according to societies. However, this is not limited to human rights. A wide range of interpretations does exist in other norms as well. Why then, is there such a strong tendency for universality in human rights?

Here we must consider the third element. It seems that the universalistic notion of human rights is deeply rooted in an even more universal sense of justice or normative consciousness that is shared by an overwhelming majority of today's people. It is one thing to understand that torture was once a legal institution both in Europe and in Asia. It is quite another to argue that torture should be allowed today. To openly assert that different standards should be adopted for the prohibition of torture would amount to political suicide in any country.

In this way, the universality of the human rights standards has generally been accepted. In developed countries it has been almost taken for granted. Thus, regional mechanisms have generally been characterised as an institutional means to take into consideration regional particularities in the realisation of universal human rights.<sup>31</sup> However, relations between the universalistic concepts and institutions, and the regionalist concepts and institutions go beyond such a simple dichotomy. These problems become apparent if we adopt a transcivilisational perspective.

### *Transcivilisational perspectives, universalism and regionalism, and unity in diversity*

'Region' is not only a geographical concept designating an area that includes neighbouring nations. What makes a certain area a 'region' are cultural, linguistic, religious, political, legal, economic, societal and strategic

commonalities or similarities. This conception of region centring on commonalities is shared not only by the people in the area, but also by people outside the area. This leads to the predominant image of a monolithic region. However, this monolithic perception of region is one-sided and misleading. It should be modified.

In the 1990s, claims characterised as advocating 'Asian values' prevailed. There were many flaws in their arguments, but the most serious one was the arbitrary use of the term 'Asia'. The term 'Asia' was dealt with as if it represented the whole of Asia. But it did not. In most cases 'Asia' meant East Asia. A vast population, and the cultures and civilisations of South, Central and West Asia were virtually ignored. Further, many of the advocates of 'Asian values' or 'Asian human rights' were political elites in East Asia. There were some experts on human rights and on Confucianism, but very few on Islam, Hinduism and Buddhism, or experts on the history of Asian ideas.

In 1993, Asian governments adopted the Bangkok Declaration on Human Rights.<sup>32</sup> This declaration was characterised as expressing so-called 'Asian' values. Against this move, a number of Asian NGOs adopted the Bangkok NGO Declaration on Human Rights.<sup>33</sup> This declaration was based on the universalistic view of human rights, and was critical of the Bangkok Declaration. The adoption of the NGO declaration was important because it refuted the myth of a monolithic Asia.<sup>34</sup> It revealed the diversity of the view in terms of human rights *within* Asia. Such cognisance becomes possible *by introducing a transnational perspective* that focuses attention on non-state actors such as NGOs.<sup>35</sup>

However, even the combination of the international perspective focusing on regional instruments adopted by governments and the transnational perspective focusing on transnational actors is not enough. The Bangkok NGO Declaration is certainly important to counterbalance the so-called 'Asian' voice, which tends to be manipulated by some assertive Asian governments. However, did the NGOs that adopted the Bangkok NGO Declaration represent the Asian voice? It is doubtful whether these NGOs, which are strongly influenced by predominant Euro-America-centric discourse, were aware and knowledgeable of, and could represent, the values, virtues, normative consciousness and other civilisational factors in Asia.<sup>36</sup> This insufficiency must be complemented *by introducing transcivilisational perspectives*.

Another problem to be addressed is an unconscious value ladder through which we compare and assess regional mechanisms. There has been a tendency to regard non-European regional instruments expressing views that are different from the universalistic one, merely as a lamentable deviation. The African Charter on Human and People's Rights, and other Asian and African instruments on human rights<sup>37</sup> have generally been evaluated negatively, characterised as particularistic.<sup>38</sup> However, such a tendency must be critically re-examined. The American Declaration of Rights and Duties of Man of 1948<sup>39</sup> already showed similar 'particularistic' features. Had Asia

established the regional mechanism on human rights, it would certainly have expressed its own 'particularistic' features. One may ask, then, whether those criticising the Asian or African regional human rights notions as 'particular' are themselves particular rather than universal.

In order that human rights may be universal, it must be inclusive of Asian and African views on human rights. These regional instruments are useful in that they express that a large number of people in the world hold views on human rights that are at least *prima facie* different from the internationally predominant, universalistic view. Of course, regional intergovernmental instruments must be read with caution because they may not properly represent the voices and aspirations of the people.<sup>40</sup> Yet, they can be a useful source to *reconceptualise* a more globally legitimate view on the human rights of tomorrow that is more inclusive of diverse peoples of the world than today's so-called 'universal' view on human rights.

The 'universal' human rights mechanisms and the regional ones can provide examples and lessons to each other. The European mechanisms of human rights have been highly evaluated in providing a number of examples to various general and other regional human rights mechanisms. But such a role should not be limited to the European mechanisms.<sup>41</sup> Regions can be identified as civilisational units with common characteristic features, yet no region, no civilisation is monolithic. A number of problems heatedly discussed in the universal protection of human rights are common to regional mechanisms of human rights. Each system must have intra-systemic dialogues. Solutions, techniques and devices utilised in the regional institutions can be, *mutatis mutandis*, applied to solutions of diverse human rights problems on a global scale.<sup>42</sup> And vice versa.

Finally, it is critically important to recognise that no culture, no religion, no custom, no civilisation is unchangeable. Teachings and interpretations of Christianity have changed greatly over the last two millennia. Some teachings of Christianity were once interpreted as anti-human rights, but not necessarily so today. Europe appears to us as a region of a high standard of human rights. However, it was only a half century ago that Europeans committed the most serious violation of human rights in human history: the Holocaust. And it was Europeans that fought with each other, massacring millions of people over different interpretations of religion.

To remind of these facts is not to criticise Europe. Quite the opposite. The important thing is to recognise that Europe has overcome such a brutal history associated with the diversity of religion, culture and interests. Religious, political, economic and social diversities, which had once appeared so insurmountable to contemporaries, changed over time, and were at least partially overcome. Today, diversities on a global scale such as those between some Islamic teachings and human rights norms appear to us so great that we are tempted to see 'insurmountable' differences between them. However, both human rights and the teaching of Islam can change. They should be reconciled for the more universal pursuit of material and spiritual well-being

of humanity. Such reconciliation can be furthered by consciously introducing the transcivilisational perspective to human rights discourses.

The transcivilisational perspective sounds new to us. But it is not. It is already there when policy makers consider projects that need to be legitimised on a global scale. It is already there when we see such projects from the viewpoint associated with our own belonging to particular civilisations and 'their' belonging to other civilisations. We *have already adopted* transcivilisational perspectives, albeit tacitly and unconsciously. An important task for us is to make explicit such unconscious ways of thinking and try to overcome an exclusive notion of civilisation so that we can better appreciate problems transcending national boundaries.

Some of you may feel that all I have said are just truisms. You are right. Arguing for the need for transcivilisational perspective is nothing new, nothing profound, but just a confirmation of truisms.

However, we often fail to see a simple truth, because it is hidden, or is overwhelmed by influential, predominant discourses and ways of thinking, which we take for granted. Discourses on human rights are a typical example. We have been so accustomed to international perspectives, and we have so favourably referred to transnational perspectives because they can rectify state-centrism, that we tend to forget a simple truth: the overwhelming majority of the human species tend to be ignored in these two perspectives. We tend to be unaware that it is somewhat strange to talk about the universality of human rights by characterising views on human rights held by more than 80 per cent of the human race as particular. The transcivilisational perspective is a simple, even a naïve theoretical device to urge people to recognise this simple truth.

## Notes

- 1 See generally Onuma (1998), pp. 13–36, 332–337, 345–347. See also Onuma (2001).
- 2 For a classical view of this Islamic perception, see Khadduri (1979). See also Khadduri (1966) and Suzuki (1993).
- 3 See Fairbank (1968) and Hamashita (1990). See also Onuma (2000), pp. 27–54 and references cited therein.
- 4 Hence there existed no notion of the 'international' as it is conceived of today.
- 5 When non-European societies attempted to assert themselves in the international arena, they sought to become independent nation states. The European model of the nation state was universalised in this way.
- 6 Some international lawyers or experts on international relations sought to establish a theory of international law or relations based on the understanding that the world is composed of individuals rather than nations (Scelle, 1932, pp.14 *et passim*; Scelle, 1934, pp. 10 *et passim*; Scelle, 1956, p. 333), but this attempt was rejected by most experts.
- 7 In addition to nation states, multinational enterprises have played, are playing and will play, an important role in addressing these issues. However, they cannot have the legitimacy of life and death. Few would die for the cause of multinational enterprises. None would accept the death penalty or even impris-

- onment sentenced by them. Moreover, for most of the developing countries that are home to about 80 per cent of the world's population, the task of nation building began only after the Second World War. For the overwhelming majority of humanity, the twenty-first century will be the period of nation states. See Onuma (1998), pp. 15–16.
- 8 It is true that the term 'international' is used not only to refer to phenomena associated with nation states or national governments, but to refer to a wider range of problems transcending national boundaries, including arts, sports, literature, movies and the like. Such usages as 'international sports' or 'international music' are typical examples. A major reason for this general usage of the term 'international' is that the notion of 'international' is so predominant that people use it unconsciously even when they refer to phenomena not directly associated with nation states or national governments. However, as long as the term 'international' is adopted, there remains a tendency to unconsciously think of something related to states or national governments when it would be more appropriate to think of non-state actors or their activities.
  - 9 Philip Jessup's *Transnational Law* (1956) was a pioneering work.
  - 10 See for example Teubner (1997); Koh (1996), pp. 181–207; Koh (1997), pp. 2599–2659.
  - 11 NGOs in Asia and Africa are far less influential. To make matters worse, some Asian and African NGOs are even more Euro-America-centric than their Western counterparts because of their members' educational backgrounds in the West, their inferiority complex towards Western society and their elitist status in their own societies. See Onuma (1998), pp. 151–179.
  - 12 If a suppressive and corrupt regime is regarded as closely connected with some powerful foreign nation regarded as arrogant and aggressive, a desperate frustration due to the suppression and corruption may take the form of a terrorist attack against the latter.
  - 13 Also a memory of a massacre of an ethnic group committed by other ethnic groups may be a cause of terrorism against the latter.
  - 14 The term 'transcivilisational' is a neologism. I first used the term 'intercivilisational', which is also a neologism, in 1980 when I gave a paper at the seventy-fifth anniversary convocation of the American Society of International Law. See Onuma (1983), pp. 163–170.
  - 15 Huntington (1993). See also Huntington (1996).
  - 16 See Onuma (2001), pp. 30–31.
  - 17 *Staatensystem*.
  - 18 See Kunz (1927–1928), S.89; Schwarzenberger (1955), p. 220; Gong (1984), pp. 45–53, 76–81 *et passim*.
  - 19 It was the Western powers who were to judge whether a certain nation was civilised or not. Japan, a non-Christian nation, made serious efforts to Westernise its society and to be recognised as a civilised nation by them. Its main purpose was to revise the unequal treaties it was forced to conclude when it started to have substantial foreign relations with them in the nineteenth century. Japan was so recognised when it demonstrated that it could comply with the law of war in the Sino-Japanese War in 1894–1895 and in the Russo-Japanese War in 1904–1905. Japan succeeded in revising the unequal treaty with Great Britain in 1902. Other Western powers followed the example of Britain and revised their unequal treaties with Japan in the early twentieth century.
  - 20 The most famous use of the term 'civilisation' in international law is in Article 38 of the Statute of the International Court of Justice (ICJ). It provides that 'the general principles of law recognised by civilised nations' is one of the norms that the ICJ shall apply. When this provision was adopted in 1919, the term



'civilised' implied European civilisation. Today, the term 'civilised' is generally ignored. Why? Because the term was abused by Western powers to rationalise colonisation of, and discrimination against Afro-Asians. It is regarded as connoting Western arrogance. Afro-Asian nations, which had sometimes suffered from various forms of intervention by imperialist powers, were eager to strengthen the non-intervention principle. After the Second World War, when Afro-Asian nations attained independence and formed a majority in international society, this principle was thus further strengthened. The principle of non-intervention provided in the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States of 1970 is a typical example of this strengthened principle of non-intervention.

- 21 The USA, the largest beneficiary from such transnational activities, has enacted extraterritorial laws that are in conflict with the traditional principle of non-intervention. Although the USA faced resistance from various nations, it has gradually transformed the system of sovereign states to its own liking.
- 22 Afro-Asian nations, which had been the major supporter of the principle, sought to deny it vis-à-vis South Africa. Why? Because South Africa sought to defend its apartheid policy by invoking the non-intervention principle. However, by denying the non-intervention principle vis-à-vis South Africa, Afro-Asian nations themselves had to accept the limitation of the principle. That is, serious violations of human rights must be characterised as matters of international concern and they could not be protected by the shield of the non-intervention principle.
- 23 Assertions of 'Asian values' or 'Asian human rights' in the early 1990s are one example. Terrorist attacks from various sectors of Afro-Asian nations, especially from the Muslim nations, are another.
- 24 The depth and strength of Confucianism varies from country to country, with Korea being the strongest.
- 25 Status of women in Islamic and Confucian civilisations and certain kinds of punishment administered by certain Muslim nations are typical examples of these customs and institutions under attack.
- 26 Onuma (1997), pp. 69–78; Onuma (2001), pp. 61–81.
- 27 This rather simplistic classification must be modified in many respects. Fundamentally, whether the protection of human rights can be classified into [the] 'international' protection and [the] 'domestic' one, and if so, to what extent and in what respect constitutes a serious problem since the late twentieth century. The description and evaluation in the text must be read with these reservations.
- 28 Vienna Declaration.
- 29 See Feuer (1974), Flory (1974), Flory *et al.* (1984), Nishiumi (1987), Nishiumi (1997).
- 30 Onuma (2001), pp. 34–35.
- 31 Not all regional mechanisms of human rights are actually established and administered according to this idea. Each mechanism has its own substantial reasons for its existence and functioning. However, as far as the normative explanation and justification of these mechanisms are concerned, the characterisation provided in the text has more or less been predominant, either explicitly or implicitly.
- 32 A/CONF.157/PC/59, 7 April 1993 (The Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights of 2 March 1993).
- 33 A/CONF.157/ASRM/8, 7 April 1993 (Bangkok NGO Declaration on Human Rights of 27 March 1993).
- 34 Even in the process of adopting the Bangkok Declaration, the diversity was apparent. The Japanese government and the South Korean government were

- against the adoption of the declaration, expressing more universalistic views on human rights. However, this fact was virtually ignored by the prevalent image of monolithic Asia.
- 35 If these non-state actors have power and legitimacy and achieve a certain degree of social influence, they should be treated as important *public* actors that must be attended seriously. If we pay attention only to the behaviour of states or nations, which are generally represented by governments, we easily overlook such an important instrument as the Bangkok NGO Declaration, and may remain uncritical of the myth of monolithic Asia.
  - 36 See supra note 10. For a more detailed analysis, see Onuma (1998), pp. 30–33, 141–188; Onuma (2001), pp. 46–49.
  - 37 As to these regional instruments of human rights including the Cairo Declaration on Human Rights in Islam of 1990, and the Bangkok Declaration and the Tunis Declaration of 1993, see Brems (2001), pp. 55–67, 75–79, 91–150, 241–266 and references cited therein.
  - 38 See, for example, statements by Tomuschat, Zemanek and Ginther in Wolfrum (1989), pp. 201–217.
  - 39 O.A.S. OffRec. OEA/Ser.L/V.I/4 Rev.(1965), cited in Brems (2001), p. 430, n. 22.
  - 40 I have already shown the limitations of these regional instruments – their inter-governmental nature – and how these limitations should be overcome through the transnational and transcivilisational perspectives. See earlier in the chapter.
  - 41 Many problems are basically common to universalistic mechanisms and regional mechanisms. Theories, practical devices and techniques for solving the problems in one mechanism can be suggestive and useful to other mechanisms. Brems (2001), pp. 341–507.
  - 42 Problems of universalism versus relativism, and universal human rights versus state sovereignty can also be seen in the regional mechanisms. Cases brought forth to regional committees and courts of human rights both in Europe and in America demonstrate this fact. For example, the theory of margin of appreciation developed by the European Court of Human Rights can be a tool to realise human rights that are globally legitimate, overcoming conflicts in terms of political ideologies, economic development, and cultural and religious differences; in a word, civilisational diversities. See Brems (2001), pp. 357–422. As to the theory of margin of appreciation, see also Delmas-Marty (2001).

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Part II

# The politics of civil religion



# 5 The Anglican church, the state and modern warfare

*Philip Towle*

## Introduction

What makes a church or religious grouping become more radical and disaffected from government policy? The question seems particularly appropriate at the moment in terms of the bitter hostility of some elements in the Muslim world towards the West. But it is also appropriate because of the conflict, which has developed over the last 100 years, between the Anglican church and British governments on the subject of warfare. Up to the nineteenth century the Anglican church usually accepted government decisions on war and peace without question and the bishops remained silent in the House of Lords during Britain's frequent wars. This was a marked contrast to the situation in 2003, when the war broke out with Iraq. The Anglican church lined up with the Catholics and other denominations to oppose the decision to go to war and the ways in which it was fought. Nor was this opposition confined to radical parish priests; it was the Archbishop of Canterbury and the Pope who led the opposition and expressed their alienation and disquiet in no uncertain terms.

The Anglican church has come, over the last 100 years, to see its role as trying to restrain the foreign and security policy of British governments because of a whole range of factors including the growing strength of governments in contrast to the weakening position of the church, competition to gain the attention of the media, the changing social composition of the clergy, increasing knowledge about warfare and the mounting destructiveness of many types of conflict. It is the last factor, which many commentators stress, because they see the First World War (1914–1918) as the turning point in attitudes towards warfare and it did, indeed, have a revolutionary impact, not only on the churches, but on the Western view of warfare in general. However, the change in church attitudes had been occurring earlier and it was by no means completed in the decade after the war.

## The changing role of the Anglican church

Thus the first reason for the radicalisation of the Anglican church has been its weakening political position. Although the church remains established

in Britain, its influence has declined, while its political voice has become steadily more strident. From its establishment by Henry VIII in the sixteenth century to the last half of the nineteenth century, the Anglican church had been closely aligned with the monarch and the government, not least because its hierarchy came from the same social class as the country's political leaders. Church and state divided their roles between them; the state protected the church from foreign attack, the church discouraged rebellion. The memory of the devastating Wars of the Roses (1455–1485) and other uprisings and civil strife loomed very large. It was hardly surprising, or unreasonable, that churchmen should have felt that it was vital to protect their congregations from a repetition of such disasters.

Thus, the Homilies, which were supposed to be read out in every church on Sundays from the time of Elizabeth I (r. 1558–1603), denounced rebellion and civil war, thereby helping achieve internal stability. According to their prescription:

[rebels] commonly . . . be rewarded with shameful deaths, their heads and carcasses set upon poles. [While] in foreign wars our countrymen in obtaining victory win the praise of valiantness; yes, though they were overthrown and slain, yet win they an honest commendation in this world and die in good conscience for serving God, their prince and their country, and be children of eternal salvation.<sup>1</sup>

The message could hardly have been more forceful or simpler for the benefit of the shepherds and tradesmen who were the intended audience. The pulpit was the main means of disseminating information to the rude villagers, and the church ran many of the schools. Until the growth of the great industrial cities, its position was unassailable.

Britain may not have followed a recognisably 'Christian' foreign policy but, as a consequence of the pervasiveness of Christian influence in Britain, statesmen and commentators usually discussed international security in Christian terms. This was clearly reflected in the first half of the nineteenth century in seminal publications such as the Duke of Wellington's 'Collected Despatches', the Poet Laureate, Alfred Lord Tennyson's futuristic predictions in 'Locksley Hall', or John Ruskin's famous lecture on war to the Royal Military Academy in 1865. Wellington's orders to his troops amalgamated the moral and the practical. He emphasised the vital importance of not looting from Spanish and Portuguese civilians, paying for any food taken and thereby winning them over to the allied cause. Tennyson looked forward in 1842 to the establishment of 'the Parliament of man, the federation of the world', when, 'The common sense of man shall hold a fretful realm in awe, And the kindly earth shall slumber lapped in universal law.'

Ruskin stressed that what should matter most for young officers was that they would be men of honour and treat civilians with dignity.<sup>2</sup> We know

that these publications were very widely read and discussed. To take one example: Wellington was impressed by Locksley Hall. It was quoted by the Archbishop of Canterbury before the outbreak of war in 1914, and again in the title of the memoirs by Sir John Slessor, who was Chief of the Air Staff after the Second World War. It was carried around and quoted by Harry Truman when he was supporting the United Nations after the Second World War.

But Christian influence was increasingly contested. By the second half of the nineteenth century, the church was losing control of the national debate. Universal education and the development of cheap newspapers meant that the pulpit was no longer the main source of information even for the rural poor, let alone for the labouring masses in the cities. In the long run, the majority would cease to be familiar with the biblical stories which had not only been the basis of Christian doctrine, but also the subject of most European art and paintings over the centuries. The media, obsessed by sensational events and by entertainment, were concerned to sell newspapers. The church had tried to instil doctrine and to advocate a way of life. Newspapers wanted to inform about current events; the focus of the church was on a series of events almost 2,000 years ago.

Nor was it any longer expected that younger sons of the aristocracy would go into the church, so the class basis of the clergy was changing. In some ways this change was helpful to the church, because it meant that it was no longer seen as a comfortable career, something for the upper classes to do. But, in the long run, it meant that the links between the political and clerical elites were attenuated, and the reciprocal influence, which had existed over the centuries, could no longer be assumed.

It was during these fundamental changes that all the Christian churches received a massive intellectual and doctrinal shock, the publication of the evolutionary theory of Charles Darwin. This undermined the biblical description of creation, showed that man had not been created separately from the rest of life and appeared to suggest that the animals who survived would be the toughest or fiercest. This gave rise to Social Darwinism, the notion that only the strongest and best armed survived amongst men and nations, the very opposite to the Christian ideal of minimising violence. This ideology became enormously influential in the public debate in the last decades of the nineteenth century, although it hardly went unchallenged.<sup>3</sup> While the Social Darwinists were apparently lauding warfare because it winnowed out the weak and decadent, the Red Cross and the Nobel Peace Prize were founded to prevent war or reduce casualties when they did occur; and the two Hague Peace Conferences were convened by the Russian Tsar to reduce the cost of military preparations, limit the weapons used in warfare and establish the law of war. Church thinkers became much more open about the contradiction between warfare and the basic Christian ideas summarised in the Sermon on the Mount. Thus the Vicar of Cobham in Surrey wrote in 1912:



In war itself, in war qua war, there is not, nor can be, any good. War is nothing but a barbarous anachronism, of which the civilised world ought to feel utterly ashamed. Good may come out of it, as out of almost any other abomination; but that cannot change its intrinsically evil nature.<sup>4</sup>

In other words, the debate became much more polarised than it had been in the past, and the national church was becoming deeply divided by the debate.

At the same time, the state was becoming ever stronger, as demonstrated by the establishment of universal education described above. Instead of the 'night watchman government', which defended the country but, otherwise, interfered minimally in day to day affairs, the industrial revolution meant that the state had a wider remit, for example, taking control of sanitation policy in the towns, limiting the hours worked in factories and presiding over the constructions of railways and roads. The bureaucracy and armed forces introduced entrance examinations to make their staff more efficient, and taxation rose inexorably. As state power increased, other institutions naturally became more wary. Over the course of the next 100 years this growth in state power was to encourage the churches to see their role increasingly in terms of the restraint they could exercise on their country's involvement in warfare.

This process can be traced in detail through the sermons of leading Anglican churchmen. As pointed out above, the bishops had remained virtually silent in the House of Lords during the great parliamentary debates on the country's involvement in the French Revolutionary and Napoleonic Wars at the end of the eighteenth and early nineteenth centuries, as well as through the Crimean War in the 1850s and the succession of imperial wars. But, the Boer War, which broke out in 1899, showed how the situation was changing. Some 5,000 Nonconformist ministers came out in open opposition to the conflict,<sup>5</sup> while the Archbishop of Canterbury, Randall Davidson, talked of 'the hideous warfare now darkening that fair land'.<sup>6</sup> Even so, liberals often denounced the churches for failing to oppose the war more vociferously. J. A. Hobson demanded subsequently:

When has a Christian nation ever entered on a war which has not been regarded by the official priesthood as a sacred war? In England the State Church has never permitted the spirit of the Prince of Peace to interfere when statesmen and soldiers appealed to passions of race, lust, conquest and revenge.<sup>7</sup>

Nevertheless, when the 1914 crisis looked likely to end in war, the first instinct of many Anglican clergy, such as the Bishop of Hereford, was strongly in favour of British neutrality<sup>8</sup> and Davidson's sermon contrasted Tennyson's optimism in Locksley Hall, and the cosmopolitan Great Exhibi-

tion of 1851, with the tragic events impending. It was only the German invasion of Belgium, in breach of treaty obligations, which united the Anglican church behind the government.<sup>9</sup> Even so, as the war went on, Davidson strongly objected to the government's use of chemical weapons in retaliation against German chemical weapons attacks, worried constantly about the treatment of prisoners of war and was even more concerned about the destruction of the Armenians at Turkish hands.<sup>10</sup> In other words, he took a far more prominent, and sometimes critical, stance on political issues than any of his predecessors over the previous 100 years.

After the end of the fighting, some Anglicans remained deeply concerned that the church had been coopted as part of the patriotic war effort. Many churchmen, such as the Bishop of London had seen their role as exhorting patriotism and encouraging recruitment, so much so that even former Prime Minister, Asquith, found their behaviour offensive.<sup>11</sup> Clergy had volunteered to fight and 4,618 had been killed during the war.<sup>12</sup> Yet the effect of the fighting was to relegate a whole area of religious argument. In the nineteenth century the Regius Professor of Divinity at Oxford, J. B. Mozley, had been expressing a common view when he suggested that 'while war has its criminal side, peace is no innocent; and who can say that more sin is not committed every day in every capital of Europe than on the largest field of battle'.<sup>13</sup> Wars meant self-sacrifice and the placing of 'higher' or communal ideals, courage and self-sacrifice, above greed and hedonism. Set against the carnage of the trenches, this juxtaposition now appeared morally blind and largely a product of ignorance and romanticism due to distance from conflict.

The very success of the church–state nexus in Britain meant that after the failure of the Stuart rebellions of 1715 and 1745, British people had become less aware of the immediate impact of warfare on civilian and soldier alike. The wars in which Britain was involved were fought elsewhere – in India, Canada, Europe, Asia and Africa – not in mainland Britain. Although war correspondents accompanied the troops from the middle of the nineteenth Century onwards, they tended to minimise the horrors of battle in their reports and to stress the heroism of the forces. Some of them, like Henty, wrote patriotic fiction for boys when they had time on their hands between wars. The First World War shattered the comfortable vision they had formed of warfare as people gradually became aware of the scale of the suffering. This process of 'education' has advanced steadily from that time forward with the development of the media and, most recently, of television reports direct from the battlefield.

While the intellectual milieu changed after the First World War, extensive discussions within the church did not produce a new consensus on warfare. The church was divided between outright pacifists, who wanted to emulate the early Christians before Constantine made Christianity the religion of the Roman Empire, and those who believed that the state had the right and duty to defend its citizens from attack. For example, the 1930

Lambeth conference passed a resolution stating that war as a method of settling international disputes was incompatible with Christianity. But the Dean of Winchester came to the defence of the military profession and Lord Hugh Cecil argued that to encourage people to oppose every war was to encourage treason.<sup>14</sup> Lacking consensus on the fundamental issue, Davidson tried to keep the church united by nailing its colours to the League of Nation's mast. In a famous sermon which he preached at St Peter's Cathedral, Geneva on 3 September 1922, the Archbishop claimed that the League's 'key-note vibrates in harmony with the key-note of the Christian faith itself'. He went on to denounce 'the awful, the horrible, the devil-devised barrier of war' and declared that Christians everywhere should make certain that 'such a thing shall [n]ever again degrade God's children and deface God's earth'.<sup>15</sup> Davidson was warned by a leading diplomat of the dangers of idealising the League, but the Archbishop was so determined to do everything possible both to avoid another war and to keep the church together, that his commitment to the new international institution was apparently total.<sup>16</sup>

With the League's collapse in the 1930s in the face of Axis aggression, his successor, Cosmo Lang, gradually adopted a more 'realistic' line on international affairs and shocked pacifists by supporting the government's rearmament policy in the face of Nazi aggression. He became the first archbishop to participate in the discussions in the House of Lords on the decision to go to war. In the crucial debate on 1 September 1939, he complimented the government on its efforts to avoid conflict and argued that the country could no longer go on breaking its oath to defend smaller nations, such as Poland. In a brief reference to the apocalyptic literature of the period, he suggested that the dire warnings of the pessimists about the possibility of war destroying civilisation itself would not be fulfilled.<sup>17</sup>

During the war years it was his colleague, Bishop Bell of Chichester, who broke new ground by leading a very unpopular campaign in the House of Lords against Britain's policy of strategic bombing. In May 1941 he claimed,

one of the most barbarous features in the whole war is the night bombing of non-combatants. This is not only an added torment to the huge volume of suffering, but a degradation of the spirit for all who take part in it.<sup>18</sup>

This line of argument particularly irritated Lang's successor as Archbishop, William Temple, who believed that, having decided on war, the country should fight with all the means at its disposal.<sup>19</sup> But it was hardly unreasonable to raise the issue and, in retrospect, it was vital that the church should draw attention to the moral dilemmas involved. Bell also clashed repeatedly with the former Permanent Under-Secretary at the Foreign Office, Lord Vansittart, who condemned the German nation as a whole in the House of Lords, while Bell made a clear distinction between the Nazis and the

German people. After meeting some of the German conspirators in Sweden, Bell tried to win the British government's support for their efforts to overthrow the Nazis. Unfortunately, the Foreign Secretary, Anthony Eden, ignored his efforts and dismissed him as a 'pestilent priest'.<sup>20</sup> Bell's position is particularly interesting because he had been Davidson's assistant during the First World War and he had winced at the criticisms made of the church for not distancing itself more clearly from the patriotic effort. Certainly there could be no criticism of Bell for not putting clear water between his view of the war and the view of the Churchill government.

The way in which the church focused on restraining the government was illustrated by its attitude towards nuclear deterrence in the 1950s and 1960s. While in the interwar period, Davidson and others had idealistically supported the League of Nations, most of the hierarchy did not object to Western reliance on nuclear weapons during the Cold War, as many people expected them to do. Rather, their interventions in the Lords were largely confined to urging the government to negotiate arms control agreements with the Soviet Union and so build confidence between the two opposing blocs. Nuclear deterrence restrained the Western powers and the Soviet Union, just as the church tried to do. So, while church leaders shared the common fears about the consequences of the failure of deterrence, they did not condemn the practice entirely.

As the Cold War declined and eventually disappeared with the collapse of the Soviet Union, so Britain became embroiled in an increasing number of wars – in the Falklands in 1982; in Iraq in 1991; in Bosnia-Herzegovina in the early 1990s and Kosovo towards the end of the decade; in Afghanistan in 2001; and Iraq two years later. Increasingly, the Anglicans rediscovered for themselves the Roman Catholic doctrine of the 'just war' invented by St Augustine in the fifth century and evolved by Catholic theologians through the Middle Ages. In recent years, this has given the Bishop of Oxford, Bishop Harries and other churchmen who specialise in international affairs a much sounder base on which to criticise government policies than Davidson, Lang and Bell were able to find.

These changes were reflected in the criticism by all the churches of government policies in recent wars. In 1982 the Pope urged the British and Argentines to settle the dispute over the Falkland Islands peacefully and condemned war as a relic of the past;<sup>21</sup> in 1991 he criticised the first Gulf War against Saddam Hussein;<sup>22</sup> in January 2002, the Bishops of Durham and Salisbury attacked US and British policy towards prisoners held in Guantanamo;<sup>23</sup> in August 2002 the Archbishop of Canterbury, Rowan Williams, presented a petition to the government against a war with Iraq,<sup>24</sup> in September he was joined by the head of the Catholic church in Britain, Cardinal Cormac Murphy O'Connor,<sup>25</sup> and in October the Archbishop reiterated his belief that the war did not fulfil the just war criteria because it was not legitimised by the UN;<sup>26</sup> in June 2004 the Archbishops of Canterbury and York protested British treatment of prisoners in Iraq.<sup>27</sup>

The central focus of such objections has been consistently the need to restrain the use of force by powerful states. The rediscovery of the just war concept is symbolic of this tendency, because it not only limits the occasions when a country should become embroiled in war, but also the methods it should use when fighting has begun. Of course, it should not be thought that the Anglican church or any other has been totally united on these issues. The current Archbishop has, indeed, been the subject of bitter attacks in the media. The rector of St Michael's church in London dismissed one of his sermons as a 'high-grade sample of the drivel we hear from those in the West who despise the civilisation that is their inheritance' and 'romantic faux naivety'.<sup>28</sup> The vicar of another London church called Williams' stance on the Iraq War 'naïve, foolish and shameful'.<sup>29</sup> An editorial in *The Times* accused the Archbishops of Canterbury and York of making 'cheap shots' against the US administration and the whole church debate of 'ideological naivety'.<sup>30</sup> Most Christians agree that restraint should be exercised and that resort to war should, if permitted at all, be a last resort. The question always is, when has that position been reached, and that, in the nature of politics, is bound to be controversial.

## Conclusion

What does all this mean in terms of our focus on paradigms of power and persuasion? The basic contention is that religion is not apolitical, but that for centuries the Anglican church was content to let the British political elite decide when foreign wars were justified, not least because the church hierarchy was part of that elite and because the interests of church and state were usually identical. The state had military and political power; the church had the best means of persuasion through the pulpit and the school.

Since the late nineteenth century leading churchmen have found it necessary to become ever more vocal, both to compete with media babble and because they no longer trust Western governments to act within the Christian tradition. In retrospect, we can see that their predecessors were too trusting of governmental security policy. They underestimated the horrors of warfare, not least because the British mainland had been spared these for so long. The shock of the First World War and better information about conflicts tore aside the veil which hid reality. The churches now, quite reasonably, want to restrain Western governments because these have become increasingly powerful.

The disadvantage is that governments and people alike have come to expect the churches to take a semi-pacifist position and are inclined to dismiss their views as a consequence. Of no one was this truer in 2003 than of Prime Minister, Tony Blair, and US President, George W. Bush, both of whom claim publicly to be Christians. The conflict between their views and the church hierarchy, between the church and state, was dismissed as relatively unimportant by the media and had little or no impact on subsequent

elections in Britain and the United States. The US experience was all the more remarkable in that some commentators believed the 2004 election was decided by other religious factors, such as marriage between homosexuals; if so, it was astonishing that church opposition to the most important decision which an administration could take – the decision to go to war – had no apparent resonance with the general public. The British situation was different because no one expected overtly religious issues to decide elections. Only 10 per cent of British voters say they go to church weekly against 58 per cent of Republican voters and 41 per cent of Democrats in the United States. Asked about their attitudes towards institutions, 57 per cent of British people admitted in 1992 to lacking confidence in the Church against only 23 per cent who said they lacked confidence in the police.

The churches may lack the powers of persuasion, but they can console themselves that they have made sure that the principles of just war are considered and that political convenience is not the only issue. Such principles fitted particularly well into consideration of the 2003 war against Iraq. Rowan Williams and other clerical critics were right to raise the questions of authority for the attack, whether the war was likely to produce more good than ill, whether sufficient consideration had been given to protecting civilians and whether there was sufficient chance of success. Looking at the Iraqi situation in August 2005, some of their concerns have clearly been vindicated. Whether politicians and the public paid sufficient attention is another question, but clearly tension between church and state is creative. The too cosy relationship which existed 100 years ago was ultimately subversive of the necessarily difficult practice of relating Christian ethics to practical politics.

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# 6 Religion and the destruction of Aboriginal society

## The paradox of Australian indigenous civil societies

*Gordon Briscoe, AO*

### Introduction

Imagining may be used, like the stolen generation, as a simile or metaphor for representing a mental form or image, or something non-existent or not present to the senses.<sup>1</sup> When we conjure up questions about the past we use our imagination, but this process is simply an historiographical tool, or what historians use to do history, but it is not to be understood as history itself! Aborigines do not imagine their children and they do not imagine a colonial past which, in many ways, was created by the agents of imperialism, thereby changing the relationship with their heritage. This chapter begins by discussing the impact on Aborigines of Lerepinta (the area from Heavtree Gap, south to Aputula and west to Lake Amadeus and the Gibson Desert): the coming of the Commonwealth administration, the telegraph line, the railway, pastoralism and, finally, the causes of what white people called the 'half-caste problem' and the effects on the children swept up in the revolution caused by the population explosion. This is a story of their history and their suffering.

In 1911 the South Australian (SA) government handed over sovereignty of the Northern Territory (NT) to the federal government which installed an administrator. At the same time legislated powers were created to deal with Aboriginal poverty, destitution and compulsory removal of people to reserves or other government institutions. In applying this and other powers the federal government had no idea what to do about questions, political or economic, concerning Aborigines. This ignorance created a set of political, economic and cultural circumstances from which those defined as 'half-castes' could not escape, and many suffered from these actions all their lives.

### Baldwin Spencer and the 'half-caste problem'

One of the first acts of the new NT administration in 1911 was to appoint Professor (Sir) Baldwin Spencer as a special commissioner to report on how policies ought to be framed in dealing with Aborigines. Spencer's report did not emerge until 1913; it came as a preliminary report. In the main part of



the report, no mention was made of 'half-castes' but he accepted an Aborigine as 'a pure nomad with no fixed abode'.<sup>2</sup> In the policy-making recommendation to amend the Aboriginal Act, 1910, and Aboriginal Ordinance 1911, the section on page 47 included a heading 'Half-castes'. Under that heading he indicated that 'half-castes' had to be redefined. He also advised that:

No half-caste children should be allowed to remain in any native camp, but they should all be removed and placed in stations. So far as practicable this plan is now being adopted. In some cases, when the child is very young, it must of necessity be accompanied by its mother, but in other cases, even though it may seem cruel to separate the mother and child, it is better to do so.<sup>3</sup>

He went on to say that while some white fathers honoured their responsibilities to their children, and some even adopted them, others did not, 'but, as especially as far as the girls are concerned . . . no white man, if white women are available, will marry a half-caste aboriginal'.<sup>4</sup> What Spencer was reporting on was the effects of the coming of the telegraph line and pastoral development on Aborigines in central Australia. Apart from the question of whether whites would care for their offspring, was the question of the impact of the coming of the new railway line, and any surge in interest that was likely to come from the new Commonwealth administration.

This was the milieu in which the new Commonwealth administration was beginning its operations. As Spencer indicated, 'half-caste' children were, on the one hand, already being either removed from the camps by native patrol officers or, on the other, by 1914, were being placed in Alice Springs at what was called 'The Bungalow'.<sup>5</sup> Others were destined to become fringe-camp children in transport depots, repeater stations and railway sidings, from Oodnadatta to Alice Springs. When these white men came to these regions they set up work camps and these semi-permanent depots attracted Aboriginal groups made up of Aboriginal people who followed the telegraph line from the south, as well as the new railway workers. In the south around Oodnadatta, Aboriginal people flocked from their bush lives into the new towns created by the development of the telegraph line, the railway line and the pastoral cattle and sheep stations of northern South Australia.<sup>6</sup>

From the mid-1860s white males came to the region without their wives. By federation in 1901, the half-caste population was already emerging both as an observable workforce and as an irritation to burgeoning white male and female town populations.

### *First contact between Aborigines and European explorers*

The initial contact between Aborigines and white explorers was with John McDouall Stuart, in 1861.<sup>7</sup> In two explorations from 1861–1862, Stuart

created a route from Oodnadatta to what is now Darwin and by 2 August 1872, the telegraph line was completed.

Small pastoral holdings, about 800 kilometres north of Adelaide were in place by 1861, but no white occupation had occurred until then. Pastoral occupation began apace once the telegraph line was completed. This opened wide-scale contact with Aboriginal groups.

As the telegraph line went through, some 40 or so males were employed on it. The work crew, albeit living a rudimentary existence, created permanent work camps attracting local Aboriginal people. These white telegraph construction workers came to build the line without their women. They set up relationships between themselves and the local migrating Aboriginal women. As the construction moved rapidly north, so the Aboriginal females who took up sedentary living around the telegraph 'repeater stations' were left to bear the children and provide for their material care.<sup>8</sup>

### **The pastoralist, missionary leaseholders and the half-caste problem**

Following on the heels of the telegraph builders, the pastoral land leasers and missionaries arrived. With British capital direct from London, investors funded the leaseholders (or managers) of pastoral (sheep or cattle) properties.<sup>9</sup> This pastoral occupation set up competition for water resources. The Aboriginal people depended on water for subsistence. As a result, they speared the cattle both to keep them from water holes and as a source of their own food. Pastoralists needed the water holes to water their cattle and sheep. Conflict, or battles, occurred between these two factions. On the one hand, as early as 1863 the killing of Aborigines by pastoralists and the killing of whites by Aborigines saw the development of police stations to keep the two warring factions apart. On the other hand, Lutheran missionaries moved in to Hermannsburg in 1877, where they took out a pastoral lease. Bush Aborigines began moving close to these new developments. The telegraph stations, police stations, pastoral homesteads and hotels serviced the passing camel transports that attracted not just families, but also females of all ages together with their children as well as young uninitiated males. It was during the period from 1863 to 1901 that the influx of white pastoralists, service people and travelling migrants began affecting the traditional mode of living and the material culture of Aborigines.<sup>10</sup>

The effects of white occupation manifested itself in a demographic way. The first idea of how a growing half-caste population was emerging became evident in the census muster of 1880 as the total Aboriginal population was given as 718 in the whole of the NT. This total never distinguished people of full descent from those of mixed Aboriginal and other racial descent. Early demographic musters talked of Aborigines as being anyone with Aboriginal blood, until the census of 1911. From the census of 1901, however, central Australian numbers show that there were 87 males and 100 female

half-castes, which grew to 117 males and 127 females by the first Commonwealth census of 1911.<sup>11</sup> This figure more than trebled by 1921 to a total figure of 624 persons, and by 1933 to a total of 781. By 1941 the total had grown to 1,032, more than sevenfold.<sup>12</sup> What looks to be a healthy growing population was in fact a disastrous predicament for the half-caste Aboriginal population.<sup>13</sup>

What had occurred was the setting up of a new relationship between white migrants and Aboriginal women and their offspring, all in the space of 20 or so years. In short a new embryonic form of society was emerging. Any population – albeit, an Aboriginal population – affected by miscegenation, and which trebles, reveals social dislocation: the half-caste population in Lerepinta was no different.<sup>14</sup> White leaseholders (and their managers), transport (including Chinese, Indian and Arabic cameleers), telegraph and railway workers, all had sexual relations with Aboriginal women from the transport bush camps. They produced children and abdicated their responsibilities to both children and mothers.

The camps, therefore, were peopled by a population of mostly full-descent mothers, young Aboriginal males from the bush and many children and adolescents, under the care of only a few older females. Once the Lutheran mission commenced operation at Hermannsburg, missionaries refused to harbour or protect females, children and adolescent half-caste populations from either older bush males or marauding white pastoralists. This exacerbated camp life along arterial routes such as from Dalhousie Springs to the small service town of Alice Springs. The service town of Alice Springs was located in a fertile, and well watered river flat in the MacDonnell Ranges. It acted as a telegraph link to the outside world. All this time the railway line from Adelaide was moving ever closer to Stuart and Alice Springs.<sup>15</sup>

The racial make up of the total population consisted of mostly people of Aboriginal and other descent, some Asians and no more than 50 or so whites, dispersed over 100 or so kilometres around Alice Springs in all directions. The pastoralists remained close to arterial routes, not just for convenience but for geography and fear of traditional Aborigines who controlled remote regions some distance from the Stuart highway. It was the whites, however, who made up the minority, but they controlled everything from law and order, the magistrate courts, the school, the service shops, the gaol, the telegraph and, finally, the railway systems. Aborigines along the arterial routes occupied the camps, and lived on open ground. They worked for whites (on local cattle stations) and in the service towns covered by legal sanctions either under SA law or NT racial ordinances.<sup>16</sup> The division of power, labour and economic wealth was obvious to passers-by. By 1911 when the federal government took over from the state of South Australia, the economic gap between the three groups, non-Aborigines, half-castes and bush people was so wide that the Northern Territory Administrator had to appoint a Commissioner to report on 'the half-caste problem'.

Although there was a number of white men and women who were important influences on central Australian race relations and policy development, the most significant were; Baldwin Spencer, J. W. Bleakley, Karl Strehlow and Ida Stanley. Briefly, Spencer was appointed Special Commissioner and reported to the federal government on Aborigines and 'the half-caste problem' in the NT; Karl Strehlow was a missionary at Hermannsburg Lutheran mission and Ida Stanley was a female teacher employed by the SA to work for the Commonwealth in the Alice Springs and Jay Creek half-caste institutions. Spencer and Strehlow were instrumental in shaping policy on Aborigines. Spencer reported to the Administrator of the NT in 1913 to: 'deal with certain points of fundamental importance, chiefly in regard to the mental and moral characteristics of the aboriginals that must be understood and taken into account in the formulating of any scheme to deal with them'.<sup>17</sup> Other reports on half-castes were tabled in the Federal Parliament in the 1920s.

Karl Strehlow was the Lutheran pastor who in 1907 rejuvenated the Finke River Mission following its demise in the late nineteenth century.<sup>18</sup> He instigated a number of important programmes, but his greatest impact was systematically to 'Christianise' indigenous groups in Lerepinta. He attracted mostly Arrernta women and children and young men. The more mature and older males resisted moving permanently to missions, but maintained a futile struggle against political assimilation and institutionalisation.<sup>19</sup> Hermannsburg missionaries were notorious because of their defiant stand against either male or female half-castes from taking up residence on their pastoral lease or mission. Through Karl Strehlow the Christians set up a deliberate policy only to Christianise people of full descent.<sup>20</sup> Karl's son, Theodore Strehlow, became a patrol officer for the NT administration, however, and was based at Iwapatarka or Jay Creek from the early 1930s.

In the first decade of Commonwealth control, the population of half-castes by 1920 had become so large and the numbers of children so affected by destitution that the Commonwealth initiated two reports: the first by Spencer and the second by J. W. Bleakley.<sup>22</sup> He reported on Aboriginal demography, conditions in Aboriginal camps, dependence on cattle station employment, native and mission institutions as well as some observations on nomadic peoples in the NT, and suggested closer care and institutionalisation. His most important statement was that the:

Policy is to check as far as possible the breeding of half-castes, by firmly discouraging miscegenation. Every effort is made to encourage the marriage of those now with us to people of their own race . . . The cross-breed element provides the most difficult part of the 'Aboriginal' problem, as what they inherit of the superior intelligence and tastes of the whites is generally nullified by the retarding instinct of the blacks.<sup>22</sup>

Half-castes from most of the bush camps had already been gathered up as soon as Spencer's report became known. Spencer's report had a strong

anthropological and scientific perspective, stipulating that the half-castes were polluting the culture and character of bush peoples.<sup>23</sup>

As indicated earlier, the 1913 central Australian half-caste population numbered between 100 and 150. Spencer indicated that 'No half-caste children should be allowed to remain in any native camp, but they should all be withdrawn and placed on stations (meaning in native institutions).'<sup>24</sup> According to Bleakley's report in 1928, whites in Alice Springs had already begun managing half-caste children and adolescents in 'their' town; they had created a crèche where babies from as far south as Oodnadatta and north to Katherine were being institutionalised at birth. Of the approximately 150 half-castes in 1913 in and around Alice Springs there were about 100 children in a tin shed close to the school house and nearby police station. This school house and crèche made up what was called the first 'Bungalow'. Two other institutions were created by 1932.

In 1914 Ida Stanley, a school teacher from Adelaide employed by the Commonwealth and SA State Education Department was first employed in the NT at the behest of the local white people.<sup>25</sup> At first the white children and half-caste children were all taught at the same time and in the same building. The white townspeople were so annoyed that they withdrew their children by 1918.<sup>26</sup> Eventually they returned when Stanley offered to teach whites in the morning and 'half-castes' in the afternoon. The plan instigated by Ida Stanley remained in place until after the Bleakley Report in 1928–1929. In the following decade, what began as one half-caste institution, termed 'The Bungalow', for half-caste babies, gradually expanded to three.

The coming of the railhead to Alice Springs exacerbated the problem for whites. A second half-caste institution was created at Iwapatarka, 70 kilometres from the small town of Alice Springs. The fear of miscegenation between white men and young Aboriginal females forced the Protector to move the Aboriginal females out of town. Many white men would wake up each morning and peer across the mud flats from the towns they lived in to see their children running around 'the blacks' camps' only hundreds of metres from their own houses. As more children were taken from camps and cattle properties, half-caste females had to be moved out of town. These young girls and adolescent women became a concern to white town dwellers. The native Aboriginal Protector, in coordination with T. G. H. Strehlow, the Central Australian Patrol Officer who lived at Jay Creek, established the half-caste institution. Proselytising the institutionalised half-castes developed into a competition between Protestants and Roman Catholic Christians. At first the Protector refused access, but reluctantly agreed because the Christian churches complained to the Protector that they were being prevented from attending to their flock.<sup>27</sup>

The location at Iwapatarka was inconvenient for a number of reasons and changes had to be made. Property in town was purchased but the overriding problem was the objection of white female townsfolk who saw the half-caste

females as a threat to their 'society'. A solution was proposed using the old telegraph station, 'The Bungalow', but by this time the population of young half-caste boys was increasing and so Iwputarka was maintained as a half-caste female institution; the old telegraph station, 'The Bungalow', was renovated and extended, and officially named as a male 'Native Institution'. This situation was maintained until 1942 when the Japanese invasion forced further changes. Martial Law was declared in 1942, the half-castes were moved south to refugee camps in South Australia, Victoria and Mulgoa, a Church of England property near Sydney NSW. Iwputarka was opened as a Native Institution under the control of Patrol Officer Strehlow.<sup>28</sup>

There were four important half-caste children's institutions in the period from 1942 to 1952, operated by the church where children from the NT were sent. They were the Balaclava aliens intern camp, created by the Australian Military and the NT Administrator to cater for those half-castes from government half-caste institutions in the NT;<sup>29</sup> St John's Hostel operated by the Church of England at the beginning of the Second World War, Mulgoa near Blacktown in Sydney and, finally, the home for boys of mixed descent called Sydney St Francis House that began in Pembroke St, Kensington Gardens and then moved to Semaphore, Adelaide by 1949.

The war with Japan created a new set of circumstances which imposed itself on the half-caste institutionalised population in and around Alice Springs. When the Japanese bombed Darwin, the coast of Western Australia and other parts of Australia, the Australian military was given control of the NT. Many of the institutions controlled by the NT Administrator, including the Aboriginal people covered by the Wards Ordinance, 1918, were closed and evacuation was coordinated with the Christian churches by William (Billy) McCoy of the Native Affairs Branch in Alice Springs.<sup>30</sup>

Balaclava, 120 kilometres north of Adelaide SA, was a camp for aliens, created by the Australian military and located at the Balaclava Racecourse. It was initially created for aliens such as Asians who were unable to be identified, and some Chinese people who were classified as non-citizens. Lutheran priests of mostly German origin made up the number. Following the declaration of martial law after the Japanese attacks in 1942, and the subsequent closure by the NT government of the 'Native and Half-caste' Institutions, many half-caste children and their mothers taken from Darwin and Borroloola on the Gulf of Carpentaria, were interned at Balaclava as aliens. They were either classified as non-citizens, or Wards of the Commonwealth of Australia.<sup>31</sup> There were 127 half-caste women, young male adolescents and children located in the aliens' camp or conscripted to work on local, special military produce farms either in Balaclava or nearby.<sup>32</sup>

Soon after martial law was declared, a group of half-caste boys was taken in by the Reverend Percy Smith, the rector of St John's Church of England, as inmates to a new hostel for boys. At the commencement of the Second World War, thousands of soldiers (Australians, then Americans) were employing half-caste females, thereby causing great stress on the half-caste

population. For the first time half-castes were free to work, had money of their own and had control of their own lives and those of their children. Such freedom fell heavily on the shoulders of women whose men either refused to support them, or were conscripted into military work gangs. The children's new freedom brought them face to face with military and civilian police and the native welfare administrator. Billy McCoy turned to Percy Smith for help to care for these rampaging children. Percy Smith's plan to create homes for half-caste children, designed prior to the commencement of hostilities with Japan, began to take on a reality.<sup>33</sup> I mention more about this plan below.

Martial law meant that no administrative welfare policies could be practised. All of the half-caste institutions were closed in 1942, and the children were placed in the care of their parents or the church.<sup>34</sup> Non-military personnel had to fend for themselves. Religious bodies tended to take advantage of the process. The churches coordinated the removal of some of the half-caste populations (mostly women, young male adolescents and children) with Mr William McCoy. Other adults, mostly females, following the closure of the various Bungalows took possession of their children. They were given army billets where they set up their homes and worked for the Australian and American armies. Some of the Protestants went north to Crocker Island. Others went to Balaclava. Others went to Melbourne and Sydney, and it is the Sydney contingent in which I am interested.

The Church of England in Alice Springs under Percy Smith, arranged through William McCoy and the Australian Board of Missions (ABM) to relocate the mission inmates from numerous half-caste institutions around the NT to a refugee camp in the Blue Mountains near Sydney NSW.<sup>35</sup> The ABM was able to secure use of a church property 15 kilometres outside Penrith, a suburb of Sydney, at an isolated site in the Blue Mountains. St Thomas' Church was located on the property which contained an old colonial mansion. The Australian military located an old timber army hut which housed the 50 women, young male adolescents and children. The mothers of working age were employed as domestics, mostly for senior American or Australian naval or military personnel. This practice was largely unsuccessful because many of the women had relationships either with local white males or men in the American and Australian forces. A number of the women were sent back to the Balaclava aliens' camps. Some of the women remained there until the end of the Second World War when they were returned to the NT, while others remained in employment in South Australia. My mother, Eileen Briscoe and I were inmates at Balaclava, and I was released to the Kensington Gardens home in 1946, from the intern camp in Father Smith's care, and with my mother's consent.<sup>36</sup>

The Kensington Gardens home, as John Smith, Percy Smith's son, has written, accepted the charity of a woman who had a disused private hospital with enough space for a small number of children.<sup>37</sup> In 1946, seven boys including myself were taken there from Alice Springs. The boys were:

Charles Perkins, David Woodford, Bill Espie, Malcolm Cooper, Peter Tilmouth and John Palmer. Brian Butler came for a short time due to his mother's illness with tuberculosis. The home was supported by private benefactors and the ABM. By 1949 a new location was selected, Glanville Hall, south Semaphore, near Port Adelaide.<sup>38</sup> The ABM also had a number of homes in and around Sydney with inmates from the NT. There was a home for older boys at Mt Wilson in the Blue Mountains, a home for babies at Millewa Birdwood and the Mulgoa home. Following the Second World War, both the church and the Commonwealth government funded these institutions from child endowment. They began wondering how to deal with these children and adults from the NT. By 1949, society in New South Wales (NSW) began discussing whether they should be sent back to the NT or whether they should remain in NSW. Eventually that year it was decided by the church that it could no longer justify spending money on their education in the face of resistance from government, and the boys and some adults went to St Francis House in Semaphore, Adelaide. The girls went to a new church home near Mount Blatherskite outside of Alice Springs called St Mary's Children's home, managed by Sister Eileen Styles.<sup>39</sup>

The numbers at St Francis House grew from ten to 21, in 1950, with a further 12 young half-caste children by 1951. The accommodation at St Francis was then renovated to house more than 32 boys. These boys were all, by 1951, funded from Commonwealth endowment and other state and NT funding for half-caste welfare. Following the Menzies' policy entitled 'New Assimilation', half-caste boys and girls outside and inside the NT drew funding from the Commonwealth to pay for their care.

## Conclusion

In many ways the governments, society and the churches saw this kind of support and programme to educate Aborigines as a way of integrating Aborigines into Australian society. Alternatively, as time went by, protesters against 'New Assimilation' joined a wider political protest which viewed such policies as denying peoples of mixed Aboriginal and other descent their heritage. This meant denial of people the right to keep in close contact with relatives, loss of language, loss of lands and loss of traditional civil societies. Although many, possibly 17 per cent gained trades, more than a quarter died young, 10 per cent achieved stable marriages and produced many children, and 45 per cent achieved sporting fame in Australian League Football. In soccer some played first division in Adelaide and Sydney and two represented Australia; three played soccer for English clubs. In the 1950s and 1960s, many politically-minded Aborigines continued to argue for different policies for over a decade, until the changes to the Australian Constitution in 1967.<sup>40</sup>



## Notes

- 1 *The Concise Oxford Dictionary of Current English*, 7th edn (Oxford: Clarendon Press, 1982), p. 498.
- 2 Preliminary Report (1913) 'On The Aborigines Of The Northern Territory', Professor W. Baldwin Spencer, MA, CMG, FRS, Professor of Biology, Melbourne University, pp. 36–52.
- 3 *Ibid.*, p. 47.
- 4 *Ibid.*, *passim*.
- 5 Australian Archives, Series A1, Item 1928/10743, 'Dr W.D. Walker Report on Aborigines, North Australia', (1928–1929), f. 47. Here Dr Walker indicates that 'The Bungalow was originally created for twelve destitute town babies, but by 1928 housed 70 children.'
- 6 Briscoe, G. (1991) 'A Social history of Northern SA, 1900–1977', unpublished MA thesis, ANU.
- 7 Aplin, G., S. G. Foster and M. McKernan (1987) *Australian Events and Places* (Fairfax: Symes and Weldon Ass.), pp. 71–76.
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- 9 Hartwig, C. M. (1965) 'The Progress of White Settlement in the Alice Springs District and its effects upon Aboriginal Inhabitants, 1860–1894' unpublished PhD thesis, Adelaide University, held in restricted listings in AIATSIS, Canberra.
- 10 Strehlow, T. G. H. (1969) *Journey to Horseshoe Bend* (Adelaide: Ribey), pp. 6–8.
- 11 Smith, L. R. (1980) *The Aboriginal Population* (Canberra: ANU Press), pp. 178–179 and see Table 7.7.1, p. 186.
- 12 *Ibid.*, pp. 187–189.
- 13 Rowley, C. D. (1971a) *Outcastes In White Australia*, Vol. II (Canberra: ANU Press), pp. 3–40.
- 14 Rowley, C. D. (1970) *The Destruction of Aboriginal Society: Aboriginal Policy and Practice*, Vol. I (Canberra: ANU Press), pp. 195–221.
- 15 Thompson, Donald (1975) *Bindibu Country* (West Melbourne: Thomas Nelson), pp. 1–14.
- 16 Rowley, C. D. (1971b) *Remote Aborigines*, Vol. III (Canberra: ANU Press). The status and conditions of work changed very little from 1911 to after the Second World War, and see, Broome, L. and F. Lancaster Jones (1973) *A Blanket A Year* (Canberra: ANU Press), pp. 24–43. See also, Colin Tatz (1964) 'Aboriginal Administration in the Northern Territory of Australia', unpublished PhD thesis, ANU, Canberra. See also, Long, J. P. M. (1970) *Aboriginal Settlement* (Canberra: ANU Press).
- 17 Professor W. Baldwin Spencer (1913) *Preliminary Report On The Aboriginal of The Northern Territory* in Report By Chief Protector, on Aboriginal Department, Annual Report, pp. 32–52.
- 18 See Hartwig (1965) See also, Briscoe (1986), pp. 32–40.
- 19 The National Gallery of Australia (2002), 'Seeing the Centre: the art of Albert Namatjira', (Canberra: NGA). But see Rowley (1971a), in particular, see pp. 218–220.
- 20 Strehlow (1969).
- 21 Bleakley, J. W. (1929) 'The Aborigines and Half-castes of Central Australia and North Australia', report by J. W. Bleakley, Chief Protector of Aborigines Queensland 1928, AGPS.
- 22 Bleakley, J. W. (1961) *The Aborigines of Australia: their history, their habits, their assimilation* (Brisbane: Jacaxanda Press), p. 314.
- 23 Professor W. Baldwin Spencer (1913), pp. 46–47.

- 24 Ibid., p. 47. Bleakley went one step further by recommending higher level schooling in preparation for work.
- 25 Nelson, H. N. and Ida Stanley (1869–1948), in John Ritchie (Gen. ed.) *Australian Dictionary Of Biography*, Vol. 12, 1891–1939, p. 46.
- 26 The Parliament of the Commonwealth of Australia, NT of Australia, *Report of The Administrator For The Year 1914–15*, AGPS, Melbourne, 11 November 1915, p. 7.
- 27 Australian Archives, Series, A1, Item 1911/18824, file title, ‘The Bungalow, 1911–1933’.
- 28 Australian Archives, ‘Native Affairs Branch, Darwin, NT’: NT, CA 1070, Administration NT, CRS: F126, Item, 1933.
- 29 Australian Archives, Series Evacuees from NT to Balaclava SA, 1942–46.
- 30 Australian Archives, Series A 659/1, Item, 1945/1/ 2493, ‘Half-castes, NT, Balaclava, Sth Aust, 1942–46’ folios 27–44.
- 31 Ibid., ‘Transfer of Half-castes’, folios 45–94.
- 32 Ibid., folio 94.
- 33 Smith, John P. McD. (1999) *The Flower in the Desert: A Biography of the Reverend Canon P. McD. Smith*, (Henley Beach, SA: Seaview Press).
- 34 Rowley (1971a), pp. 37–38. See also, Berndt, R. M. (1984) *End Of An Era* (Canberra: AIATSIS Press).
- 35 Australian Archives, Series, A 885, Item B 402 and B 400, ‘Institution: Church Missionary Society Half-caste Home-Mulgoa, 1942–1956’, folios 1–41 (in B \$00). This file also links in with the St Francis House Home for Boys of Mixed Aboriginal and other descent. See also, Smith (1999), pp. 99–125.
- 36 Australian Archives, Series A 659/1, Item, 1945/1/ 2493, ‘Half-castes, NT, Balaclava, Sth Aust, 1942–46’ folios 1–30.
37. John Smith, (1999), pp. 99–110.
- 38 Australian Archives, Series, A 431, Item 1949/496, ‘Care of Half-caste Children by CMS’, folios 8–97: here are miscellaneous claims by CMS to Dept. Interior, 1947–1949. See also, Series A 431, items 1948/58 and Series A 431/194 Item and Series A431 Item 1948/492.
- 39 Australian Archives, Series, A 431, Item 1949/496, ‘Care of Half-caste Children by CMS’, folios 8–97 ... here are miscellaneous claims by CMS to Dept. Interior, 1947–1949. See also, Australian Archives Series A 431, 1949/492, ‘Protests Registered against Half-castes Transferred from Mulgoa to Alice Springs and Semaphore’, folios 121–169. See also, ‘Extracts in Commonwealth Hansard’ dated 10 February 1948, folios 99–100.
- 40 Rowley (1971a), pp. 3–39. See also, Smith (1999), Chaps, 7–8, pp. 99–125.

# 7 Church-state relations and civil society in former communist countries

*Robert F. Miller*

## Introduction

After having been suppressed for from four to seven decades under communism, the various churches have played an important role in the post-communist transformation of Central and Eastern Europe and the activities of civil society within them. Civil society, as I shall be using the term here, denotes the realm of self-organisation of citizens in a given state for the purpose of pursuing more or less specific objectives: material interests, moral/ethical, ethnic goals or even hobbies. The more highly structured of these associations are often called 'non-governmental organisations' (NGOs). Familiar examples of NGOs range from environmental organisations such as Greenpeace and the World Wide Fund for Nature (WWF) to women's groups like the Women's Electoral Lobby (WEL), Country Women's Association (CWA) and the ALP Women's Caucus; from educational associations such as parents' and citizens' associations, to professional bodies such as the Australian Medical Association (AMA) and human rights bodies like Amnesty International, Human Rights Watch and the Open Society of George Soros.

In terms of funding, most NGOs rely on self-financing, through appeals to their membership and to the public at large, although most of them depend to a greater or lesser extent on some form of governmental support, through tax exemptions or even direct subventions, such as the US Congress's support for Freedom House. In the case of George Soros's Open Society Institute and direct US governmental funding of civil society initiatives in other countries (such as student protest groups against existing governments in the former Yugoslav Federation, Ukraine and Kyrgyzstan), the citizens of one country actually end up funding civil society activities in other countries. This can be a disadvantage for the image of independence of the recipient NGOs, which has been a negative factor for their activities in a number of these countries. Russia has engaged in analogous practices in countries of the former USSR, most recently in Ukraine, Georgia and Moldova, but usually on the other side of the barricades. 'Beauty is in the eye of the beholder', as the saying goes.

According to the above definition and description, churches can be considered a part of civil society in most countries, except where, as in the case of China, Iran and Saudi Arabia, for example, the various religious bodies are closely controlled by, or are in fact part of, the ruling authorities. In most Western liberal-democratic systems, the constitutional principle of separation of church and state prevails. However, in some cases and in some periods in history, one notes the phenomenon of 'clericalism', where church leaders endeavour to share in, or even take over, certain policy prerogatives of the state, such as public education, the status of minority religions and the prescription of public morality.

Whatever the circumstances, clericalism is always a barrier to full democracy and social freedom. It obviously oversteps the boundary between civil society and the state. On the one hand, the activities of religious bodies, like all elements of civil society, require a positive, or least a neutral, relationship with the state in order to function effectively. Clericalist advocates clearly seek more than merely a favourable climate for church activities. On the other hand, religious groups must have access to the full range of democratic processes enjoyed, or at least claimed, by other groups in civil society, subject to the same norms of tolerance, non-discrimination and non-violification in their actions.

Communism, which prevailed throughout the region was, by definition, anti-religious. In Marx's words, religion was 'the opiate of the masses'. He was particularly dismissive of Judaism and Jews, whom he saw as a parasitic economic caste, destined to disappear with the victory of socialism. But the other major religions fared little better, since they were viewed by Marx and his followers as hostile to socialism and its proletarian-internationalist ideology. Religions were viewed as part of the superstructure of bourgeois capitalism and thus required close control and repression to facilitate the victory of socialism.

Communism, as practised in the USSR and its later satellites, was also against civil society. Under Lenin, and increasingly more so under Stalin, the evolving Bolshevik system strove to direct all group activity in society by subjecting groups to control by Communist Party organs and to penetration by agents of the Secret Police (NKVD/KGB). The practical goal was the atomisation of the individual by eliminating uncontrolled intermediate bodies between the individual and the party/state. Religious bodies were no exception and were subjected to total penetration by the KGB. Unruly clergy and church hierarchs were imprisoned, sent to the Gulag or simply murdered.

### **The churches under communism**

There were differences in Communist Party attitudes to the Roman Catholic church and to the various Orthodox churches. Judaism, Islam and the several Protestant churches were usually less important concerns. Although

equally subjected to Party and police control, particularly in regions where they were more heavily concentrated, such as Central Asia, the Caucasus and the Baltic republics, their repression tended to be more episodic.

The Roman Catholic church naturally looked to the Vatican, which was avowedly and openly anti-communist. The new communist regimes in Catholic countries, like Poland and Croatia, tried to set up rival organisations of the clergy, so-called 'Unions of Patriotic Priests', which denied the jurisdiction and authority of the Pope, much as the Chinese communist regime continues to do. In Poland, PAX, headed by prewar fascist youth leader Bogdan Piasecki, was just such an organisation. Piasecki was obviously seeking to bury his right-wing past and ingratiate himself with the new authorities by forming such a body, but in staunchly Catholic Poland he had only very limited success.

In Croatia, Tito tried to persuade Archbishop Alojzije Stepinac (who had once blessed the Nazi-puppet Ustasha regime but had later broken with it) to renounce Vatican ties and endorse the new communist order. Stepinac steadfastly refused to do so, as did Stefan Cardinal Wyszynski in Poland and Jozef Cardinal Mindszenty in Hungary. All three suffered imprisonment and house arrest and became symbols of anti-communist nationalism for the next generation.

Other Roman Catholic churches were no less severely discriminated against, but their resistance was more passive. This partly reflected the less central position of the church in their respective societies (for example, in the Czech parts of Czechoslovakia and in Slovenia), or the Nazi-collaborationist record of the church which discredited it for decades (for example, in Slovakia, where Fr. Jozef Tiszo headed the pro-Nazi quisling state).

Orthodox churches are, by contrast, essentially national churches, which have historically been accustomed to playing a subordinate role to the state, especially where governments are strong. But even in such cases, they have often taken an important part in rallying the nation in times of crisis. Orthodox churches certainly suffered from the general anti-religious policies of the communists. They rarely contested communist political rule openly, as did some of the Roman Catholic churches.

During the Second World War Stalin called upon the Russian Orthodox church (ROC) to rally the Orthodox masses in the fight against Hitler. Stalin realised that communist ideology was insufficient as a basis for loyalty and sacrifice, especially among the long-suffering peasant masses. As a reward, Stalin gave the ROC control of the Uniates, or Greek Catholic church in Ukraine and Belorussia, the western parts of which were taken from Poland at Yalta. The Uniates, which owed allegiance to Rome while employing Orthodox liturgy, were simply absorbed into the ROC and their ties to the Vatican severed. It is worth noting that the centre of Uniate influence is in western Ukraine, the heartland of the recent 'Orange Revolution'. The demand for autocephaly by the Ukrainian Orthodox church and independence from the Moscow Patriarchate has been a major factor in

Ukraine's move toward genuine independence from Putin's re-integrative ambitions for the Commonwealth of Independent States (CIS).

In Yugoslavia, the Serbian Orthodox church (SOC) was forced to adopt a low profile under Tito, partly as a response to its support for his Chetnik adversaries under General Draza Mihailovic in the Second World War. This discrimination was also a signal to the other nationalities that Serbs would no longer be the dominant ethno-political force in the new Yugoslavia. The quiescence and overt acquiescence of the SOC in Yugoslavia led to a split in the church, with the formation of the Free Serbian Orthodox Church. This body, with headquarters in the US and strong branches in other countries like Australia, eschewed the authority of the Belgrade Patriarchate and continues to resist that authority despite nominal agreements on reconciliation since the fall of communism.

As the monolithic unity of the communist regimes under Moscow began to crumble in the latter half of the 1980s, the respective national Orthodox churches became more boldly associated with the rising non-communist and tacitly anti-communist national movements in many parts of the region. Even earlier, in 1967 in Yugoslavia, Tito sought to weaken the SOC further by promoting the autocephaly of the Macedonian Orthodox church (MOC). Although no other Orthodox church was willing to recognise the autocephaly of the MOC (mainly for various local geopolitical reasons), it was an important impetus to the strengthening of Macedonian national consciousness and a visible challenge to Serbian national sensitivities.

The history of the Romanian Orthodox church is a good paradigm of the manipulation of the church under communism. It was thoroughly cowed under the rule of Nicolae Ceaușescu and his predecessors, but Ceaușescu used its fears and aspirations opportunistically both to divide and rule Romanian believers of all confessions, while stimulating nationalistic sentiments in support of his half-serious conflict with Soviet leader Leonid Brezhnev over Romanian recalcitrance toward Moscow. In return, the Romanian Orthodox church received less oppressive treatment than the substantial minority Roman Catholic and Uniate, or Greek Catholic churches, which were strong in Transylvania. The Romanian Orthodox church received title to its property and was granted total ecclesiastical jurisdiction over its followers.

With the exception of the Romanian Orthodox church, whose liturgy is in the Latinate Romanian language, the Slavic or church Slavonic liturgies of the other Orthodox churches served as a strong bond to Moscow. Many of their priests and bishops received theological training in Russia. The use of Slavonic languages in the liturgy helped to acculturate them to Russian ways of thinking. They also commonly looked to the Moscow Patriarchate to adjudicate theological problems, even though it was common knowledge that the Patriarchate was fully penetrated by the KGB.

## The collapse of communism and the rise of civil society

The role of the churches, as part of the civil society that emerged with the disintegration of the USSR and the Soviet Bloc in the late 1980s, varied from country to country. The involvement of the churches in the formation of civil society was often crucial, but this, too, varied from place to place.

In Poland, the Roman Catholic church was indispensable to the successful development of civil society, especially from the agreement in 1976 with leftist, former communist, dissidents, like Jacek Kuron and Adam Michnik, (which resulted in the formation of the intellectuals-led 'Committee for Defence of the Workers' (KOR)) to the foundation of Solidarity in 1980. The visit to his Polish homeland by Pope John Paul II in 1979 was a powerful impetus to these developments and made Polish society receptive to opportunities to organise and act outside the standard Muscovite communist socio-political framework.

The church was a nucleus of such activities. It provided safe-houses, underground printing shops and general moral support for the anti-regime activities of Solidarity, even after the declaration of martial law on 13 December 1981 by President Jaruzelski. The regime retaliated by, among other things, murdering a prominent Solidarity priest, Fr. Jerzy Popieljuszko. By the end of the 1980s, however, it was already too late for the Jaruzelski regime to confront the church directly. Polish communism disappeared in 1989 with a whimper, not a roar, and the role of the Roman Catholic church in the fact and the nature of its demise was indisputable, although the social and economic residue of four decades of communist rule remained for at least another decade. Some would say that these residues are still present in Polish society and politics. And there are continuing efforts to assert church prerogatives by clericalist elements of the Polish hierarchy (Walesa, 2005b).<sup>1</sup>

In Yugoslavia, the disintegration of the country after Tito's death in 1980 and the attendant scramble of republican party leaders for advantage and then secession at the federal level in the 1980s saw the rise, in 1987, of an orthodox communist leader turned nationalist, Slobodan Milosevic, as head of the League of Communists of Serbia. Foreseeing the collapse of the federation and of Communist Party discipline, he appealed directly to the hitherto quiescent Patriarch of the Serbian Orthodox church (SOC), Gospodin Pavle, to support a Serbian national awakening and an in-gathering of all Serbs throughout the former Socialist Federation of Yugoslavia. To his credit, Patriarch Pavle remained sceptical of Milosevic's sudden espousal of the Serbian national cause and his turn toward religion, but for the first time in half a century, the SOC became an important civil society factor in the competition for post-communist power in Serbia and in ethnic Serbian communities throughout the former Yugoslavia.

In East Germany, it was the Protestant clergy (mainly Lutheran) who took the lead in organising resistance to regime policies. This was especially

true at the parish level, since the hierarchy had proven to be rather timid when faced with the need for direct action against the authorities (Holmes, 1992: 72–74).<sup>2</sup> These activities significantly increased after the Soviet invasion of Afghanistan in 1979, which evoked protests by civil society organisations criticising of the Honecker regime's threatened militarisation of society in support of the Soviet incursion, including the conscription of women. The resultant church-led peace movement is widely seen as the genesis of civil society in the German Democratic Republic.

Elsewhere, the various churches did not play as significant a role in the movements to terminate communist rule. This was particularly true of Russia itself, where the ROC continued to be subservient to the Communist Party authorities until the very end. In Romania, the only real resistance to the regime came from a Hungarian Protestant pastor, Fr Laszlo Tokes, at the very end of Ceauşescu's rule. The sudden collapse of the regime and the execution of Ceauşescu and his wife on Christmas Day 1989 undoubtedly saved Fr Tokes from the customary fate of overt dissidents.

### **Church–state relations under post-communism**

Except in Poland and Croatia, the Roman Catholic church did not play a central role in the overthrow of communism. In East Germany, the Catholic clergy were considerably less active than their Protestant counterparts in supporting human rights and other civil society demands. So the churches had various claims to share in the formation of the post-communist order. But even where the churches actively strove for inclusion in the new order, the subsequent prominence of the churches depended very much on the attitudes of the new elites.

With few exceptions, the churches had a lot of explaining to do to atone for, or justify, their supine acceptance of communist authority, even in matters of ethics and conscience. In Romania, for example, Patriarch Teoctist found it necessary to confess publicly for his shameful glorification of Ceauşescu and his system and temporarily stepped down from the Patriarchate, only to be reinstated by the Synod of Bishops three months later. In general, the Romanian Orthodox church has, in the words of the authors of a recent article, 'avoided any moral self-examination and never openly admitted to willingly collaborating with the communist authorities or the dreaded Securitate' (Stan and Turcescu, 2000:1470).

In Russia, Patriarch Aleksii II did not even try to explain away his ties to the KGB and the treatment of the Orthodox church and its few dissident priests. It was obvious that there was a general recognition by both the new post-communist regime of Boris Yeltsin and the ROC hierarchy that they needed each other for mutual legitimation before the populace, the majority of whom were at least nominally Orthodox believers.

This readiness to forgive and forget past sins of the respective church hierarchies is perhaps understandable. After all, the vast majority of the



populations of these countries had to admit that they themselves had had to make many concessions to the communist authorities to obtain security and access to the advantages and benefits of a seemingly permanent political, social and economic order. Even in staunchly Roman Catholic Poland, where the church had made few concessions to Caesar, there has been a remarkably tolerant public attitude to the revelation that a Polish priest, Fr Konrad Hejmo, assigned to the personal office of Pope John Paul II in Rome, had been an agent of the Polish Secret Police and had reported continually on the Pope's and Polish pilgrims' activities to the authorities in Warsaw. More Poles believed that the head of the State Security Archives had acted improperly rather than properly in revealing this information, and with few exceptions, this attitude was held by persons of almost all party affiliations (Strzeszewski, 2005: 37–38).

However, regardless of whether or not the church was active in the resistance to communism, almost everywhere it tried to insert itself in the national revival movement and to claim special clericalist privileges in the new, post-communist order. Most commonly, church authorities sought to present themselves as the natural guardians of public morality against what they saw as the dangers of Western materialism and licentiousness being smuggled in along with democratic political institutions and practices, and free-market capitalism. Like many others, mainly from the opposite, leftist, side of politics, they also fulminated against globalisation and consumerism, which they saw as injurious to national interests and employment security for their largely unskilled and semi-skilled working-class and peasant parishioners.

In doing so, they often sought recognition as part of state authority, as a quintessentially national institution with privileged status vis-à-vis other religions and with special claims on the state budget. In short, they resisted being forced to operate under the same restrictions as other civil society institutions. One of the best critical analyses of these aspirations on the part of the SOC, sociologist Bozidar Jaksic, has characterised the situation in the following terms:

Understandable, but, from the standpoint of the satisfaction of the Serbian Orthodox Church's basic interest and religious mission, not quite reasonable and justified, is the striving of church hierarchs to take a prominent and influential place in the political life of Serbia. No-one, naturally, may or should dispute the right of the clerical class as *citizens with equal rights*, but not as clerics . . . to participate in the political life of the country. But this is not the issue, but the public abuse of the traditional authority of the Church is. It is shocking to many Serbian citizens how impatient some members of the Holy Archpriestly Synod are to link themselves with key political figures and become part of these political circles themselves. These aspirations have often resulted in strange declarations and public actions, which have practically no

connection with religious life, by individual church notables and also church institutions. When one also considers the efforts of so-called great religious communities, with the aid of certain state institutions, to stigmatise and completely eliminate from religious life so-called small religious communities and 'sects', then, unfortunately, nothing is left in society of religious and political toleration.

(Jaksic, 2004: 41–42)

Jaksic states:

In the end, I wish to make my point of view clear: if citizens want a democratic state, it must be non-confessional. There is no democracy in fact where there is a 'church state' or a 'state church'. On the other hand, it is the obligation of the non-religious state to guarantee all the rights of man and the citizen. . . . The right to profess a religion is an inalienable right of every citizen and the state must guarantee it.

(Jaksic, 2004: 43)

In seeking more than these citizens' rights, the various churches have almost everywhere found themselves at odds with the rest of civil society. The outcome of the struggle is at times not at all clear. That is partly because, after a brief period of flourishing during and after the overthrow of communism, many civil society institutions have suffered a noticeable weakening. Memberships have declined, as has also interest in politics, especially at the local level, as shown by reduced voter turnout. The author of a recent study of civil society organisations, Marc Morje Howard, attributes the decline to three factors: (1) a reaction against formal organisations per se, in revulsion of memories of enforced group membership under communism; (2) a reversion to family ties and friendship networks that had sustained life for individuals under totalitarianism; (3) these two being directly related to the general disappointment with the Western liberal model of reforms imposed on these countries as preparation for assimilation to the world market system and, more particularly, the European Union (Howard, 2003). These reforms meant removal of the social security and employment benefits of socialism and increasingly unequal wealth distribution, with the emergence of a new elite, largely made up of hold-overs from the Communist-Party and state bureaucracies and a favoured class of new, super-rich 'oligarchs', as well as overtly criminal, 'mafia-type' elements.

The various churches have sought to play upon these disappointments by denouncing the post-communist authorities and seeking to insert their theocratic values and attitudes into the political systems. In Poland, a radical, right-wing element of the Roman Catholic church associated with radio station 'Radio Maryja' has accused Solidarity and its former leader and Polish President, Lech Wałęsa, of being connected with the former secret police and conceding too much to the communists at the 1989 Round Table

meetings, which had provided for the orderly transition from communism. (Walesa (2005b)). This section of the Polish church, associated with the Redemptorist Order, although clearly a minority in the church and society, can claim considerable political support from right-wing parties, such as the League of Polish Families, the Polish People's [Peasant] Party and the radical Self-Defence Party of Andrzej Lepper.

In Serbia, the Serbian Orthodox church (SOC) and its more radical nationalist elements can rely on the electorally powerful Serbian Radical Party in pushing its line of refusing to admit Serbia's guilt for its share of the atrocities in Bosnia-Herzegovina, Croatia and Kosovo. Some of the leaders of the minority government led by the Democratic Party of Serbia, including Prime Minister Vojislav Kostunica, are confirmed adherents of the SOC and often proclaim their dedication to Patriarch Pavle. Few Serbian politicians – even ex-communists – refuse to pay homage to the church, even though some of the statements of highly nationalistic church dignitaries are clearly an embarrassment to a country seeking economic and political support from the West. The recent television screening of the massacre of six Bosnian men and boys by a paramilitary unit under the Bosnian Serb army, the 'Scorpions', and the revelation that the unit had shortly before been blessed by an Orthodox priest, was causing major discomfort in SOC circles and society at large during my visit to Belgrade in June 2005. However, ways were already being sought to minimise the damage and to distance the church from the actions of the unit (Kuburovic, 2005).

Also in Serbia, President Boris Tadic's uncharacteristic pandering to the SOC hierarchy by recommending its assumption of a positive role in the solution of individual and community problems evoked an ascerbic reply from a prominent human-rights organisation, the 'Women In Black', who demanded that church 'keep out of our lives' (Women in Black, 2005).

Tadic's new law on Churches and Religious Communities of 27 April 2006 was criticised by the OSCE and Council of Europe for violating the European Convention on Human Rights; but nothing has been done to address the problems.

In Russia, President Putin demonstratively presents himself as a loyal adherent of the Russian Orthodox church (ROC) and a supporter of that church's involvement in many public functions, from the consecration of military units to policy formulation on religious education in state schools. The ROC seems tacitly to have been given a role in policing the registration of non-major religious bodies like the Jehovah's Witnesses, Baptists and Old Believers which the regime increasingly treats with suspicion and repression, just as its communist predecessor did. The connivance between the ROC and the Putin regime in such matters has recently been illustrated by the ability of the local church notables in Sverdlovsk *Oblast* to cancel a Jehovah's Witness Congress in Ekaterinburg by pressuring local railroad officials not to permit the use of the railway union's stadium for the conclave (Fagan, 2005). In late July 2005 a high-ranking ROC cleric, Vsevolod Chaplin,

warned a pro-Putin youth gathering that any repeat of the Ukrainian 'Orange Revolution' in Russia would be bloody and chaotic, leading one commentator to characterise his remarks as an 'explicitly political address' (Boykewich, 2005). Another veteran religious affairs commentator, Lawrence Uzzell, called them 'a perfectly logical extension of the Moscow Patriarchate's servile relationship to the state' (Boykewich, 2005).

Putin has attempted to use the ROC to improve his image against Western charges of the degradation of democracy, media freedom and civil society.

In Romania, by contrast, the Orthodox church's insistent demand for special recognition as *the* national church was rejected in the latest (2003) edition of the Romanian Constitution in favour of maintaining the separation of church and state. Romania's delicate negotiations with the EU for accession in 2007 undoubtedly played some role in denying the church this special status, although it enjoys the *de facto* status of *primus inter pares*.

In Bulgaria, on the other hand, the Bulgarian Orthodox church (BOC) had been given at least nominal status as the state church in the 1991 Constitution, where it is stated in Article 13 that 'Eastern Orthodox Christianity is considered the traditional religion of the Republic of Bulgaria'. But elsewhere in the constitution, the BOC is given no other special privileges, for example, in education, politics or social policy. The history of the BOC, for example in the protection of Bulgaria's 50,000 Jews from deportation despite strong Nazi pressures in WWII, was not in the same collaborationist league as that of some others in the region, and so its claim to moral leadership is not so inappropriate. However, the BOC has not openly made too much of an issue of clericalist demands, nor does the post-communist political elite seem ready to concede such requests. Church-state issues did not appear to figure strongly during the recent parliamentary elections in June 2005.<sup>3</sup>

## Conclusion

The path to liberal democracy and a free-market economy has been a tortuous one for the post-communist states of Central and Eastern Europe. The various churches have played a significant, if not always positive, role in the development of the new order. Most often they have been found on the conservative side of policy debates, but not exclusively so, as economic and political liberalisation have created a large number of 'losers' in the transitional societies, and the strata to which many of them belong have traditionally looked to religion for solace. Civil society institutions supported by the churches have acted to promote church positions on the family, social protection, reproductive issues and public morality.

The Roman Catholic church, acting under the authority of a morally conservative but socially activist Pope, John Paul II – and evidently by his successor, Benedict XVI – has tried in some places to assume special rights and privileges as protector of the faithful on such matters and on public

morality in general. However, it has in many cases evoked strong opposition from societies that are in radical transition to, and influenced by, European behavioural patterns. Orthodox churches have attempted to gain similar political and social-policy status and have faced similar challenges over evolving values.

It would be a mistake, however, to regard the outcome of this battle by the churches for the proverbial 'hearts and minds' of the public as pre-ordained by the changing generational mix of the populations of the region. During a tour of the Balkans in 2005, I was struck by the number of young persons, particularly young women, attending church services, even midday and at vespers. Whether this trend will continue when the economic situation in these countries improves and when they are formally integrated into the European economy remains to be seen.

Civil society, as such, has apparently declined as a motive force for democratic political and social empowerment of citizens throughout the region. In Russia, President Putin has recently made grand commitments to revive the institutions of civil society by pumping government funds into them, but only under the stipulation that they refuse to accept financial assistance from overseas. He evidently fears a repeat of US and European involvement in the various 'coloured' revolutions which unseated pro-Kremlin politicians in Georgia, Ukraine, Moldova and Kyrgyzstan (Putin, 2005). His concession of the importance of civil society as a key functional element of political democracy is noteworthy. However, it is somewhat undermined by his insistence on the specific characteristics of the structures and processes of democracy 'à la Russe' and by his efforts to regulate the shape and workings of civil society itself by the establishment of the so-called Public Chamber.

In considering the role of the churches in civil society and the policy processes throughout the region, one thing thus stands out in bold relief: the importance of the personal attitudes and perspectives of the dominant political actors and ruling elites. Vladimir Putin in Russia, Vojislav Kostunica in Serbia, Franjo Tudjman in Croatia, Lech Wałęsa, Tadeusz Mazowiecki and Hanna Suchocka in Poland, Ljupco Georgievski in Macedonia and Alija Izetbegovic in Bosnia-Herzegovina all favoured a strong role for the dominant churches in their countries. Whether out of personal religious conviction or political opportunism, they favoured a substantial church presence in the policy process. Their opponents and successors have evidently been less comfortable with such strong church influence. Regular rotation in office – sadly, the only substantial result of democratisation of politics throughout the region – has made this variability in church influence possible, and it would seem to herald a long-term diminution of that influence throughout the region, although, as the above observation about church attendance by young persons suggests, the trend is not likely to be unidirectional or without occasional reversals.

The development of civil society and the limitation of church influence to matters of conscience will obviously take much longer in these countries than Western experts and 'transitologists' had expected. Much still depends

on the attitudes of Western leaders and their readiness to assist the transformation process and promote the integration of these countries into the Euro-Atlantic community. Foreign assistance for the development of civil society, particularly in the spheres of human and civil rights, social justice and political empowerment, is still evidently necessary. However, recent discouraging experience shows that better conceptualisation and modes of delivery of such assistance will obviously have to be developed. An appropriate role for the churches in this task should not be ignored.

## Notes

- 1 See, for example, attempts by church leaders, namely from the Redemptorist Order around radio station 'Radio Maryja' to rewrite the history of the 1989 'Round Table', which organised the peaceful transfer of power by the communists, to defame the role of Lech Wałęsa and claim a greater role for the church in dictating political morality. Wałęsa demanded, in a letter to the Minister of Justice, that Radio Maryja's charges that he had betrayed Poland be fully investigated so that he could answer them in court. See Wałęsa (2005a, 2005b). Meanwhile, the Polish Episcopate, under Primate Jozef Cardinal Glemp, had been showing itself to be very timid and non-committal in defending its erstwhile favourite son, Wałęsa, and criticising the Redemptorists and Radio Maryja. 'Episkopat zajmie sie Radiem Maryja', *Donosy*, No. 3919, 1 March 2005. As of 25 July 2005 the case was still open, but Wałęsa was now being treated as the injured party, *Donosy*, No. 4018, 25 July 2005.
- 2 Holmes (1992) shows how it was mainly the lower levels of the churches which took the lead in organising the civil society manifestations which grew into the peace and humanitarian movements. The highest levels of the clergy often backed down when confronted by aggressive threats from the GDR leadership.
- 3 The author was in Bulgaria in the run-up to these elections, which were won by the post-communist social democrats. But the campaign of the former governing party, that of the heir to the former throne, Simeon Saxe-Coburg-Gotskii, did not seem to make much of an issue of privileged status for the BOC, at least as reported in the Bulgarian press.

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Part III

# The ethics of civil development





# 8 War and the role of religion in a global civil society

*Joseph Runzo*

## Introduction

Humanity has reached a crossroads at the violent start of the twenty-first century: will we, following the lead of the neoconservatives in their approach to the 'war on terror' within the most dominant nation on earth, revert to a collection of competing nation states? Or will we, resisting this impulse, see ourselves as a mutual society of global citizens? The purpose of banding together into a political society is to achieve security from various forms of violence, especially war, in exchange for restrictions on our individual liberties. But in a globally interconnected world, the only real political security is global security. Over against the apparent security provided by a fortress conception of the nation state with 'external enemies' is the long-term security which can be established through the transnational associations of a new global society – evolving international law, the robust rise of NGOs and the increasing spread of the world religions. If we think of global civil society as the collection of interconnected global citizens, the citizenship of global society transcends national citizenship, and the most powerful transnational association which can assist in this transcendence of national citizenship through global citizenship is the phenomenon of the world religions. For despite the regional instability which can be caused by religious fanaticism, the moral presence of the world religions must be one of the contributing factors in the establishment of any cosmopolitan perpetual peace.

## Civil society and self-interest

The establishment of the International Criminal Court (ICC) in The Hague is a promising example of the move toward international law for global citizenship, but it also serves as a paradigm of the tension between self-interested nation states and global citizenship. When the ICC was first established in March 2003 to replace the *ad hoc* tribunals developed to deal with atrocities in Yugoslavia, Rwanda and Sierra Leone, it was supported by 139 countries. Few would disagree with the importance of having a tribunal for the 1994 atrocities in Rwanda, and it would seem that establishing a

formal international mechanism for dealing with genocide and similar crimes against humanity is both morally and politically expedient.

However, the United States has opposed the establishment of the ICC and abstained from the Security Council vote to give the court approval to prosecute cases involving atrocities in the Darfur region of the Sudan, even though the US supports prosecution of the Darfur atrocities. The Bush administration's stance is that the court might be used as a weapon by America's political enemies to bring unjust charges of crimes against humanity regarding US military personnel and – especially worrisome – American public officials. In order to circumvent international approbation for the court, the US has induced – some would say pressured – 100 countries to sign immunity agreements that they will not support the jurisdiction of the ICC over Americans. Yet, as the *New York Times* reported on August 19, 2005, 53 countries have declined to sign this agreement. In order to enforce its will, the US has cut off certain kinds of aid to half of those countries. While Britain, Germany, Australia and Japan have been exempted from financial penalty, a number of poor and presumably more malleable countries in South America and Africa have been targeted. The affected countries include South Africa, Lesotho, Namibia, Niger, Brazil, Venezuela, Peru, Ecuador, Bolivia and Costa Rica, as well as European countries such as Croatia, Serbia and Montenegro.

There is a number of problems with this 'nation state as fortress' approach. Most fundamental is the failure to take the moral point of view. Even setting aside questions of justice, American policy on this question fails to meet the criterion of universalizability. For while the US has wanted to see international criminals from as far back as Himmler and Tojo to the late Milosevic fairly tried and fairly convicted, it is not willing to have the same standards applied to rogue Americans. Additionally, this fortress mentality is self-defeating as an attempt to provide security in a global world. Countries in Latin America and Africa who might otherwise be allies for a 'war on drugs' or a 'war on terror,' may be less inclined to help, given their sense that American bullying replaces rational or moral persuasion. Threatening to cut off your allowance may work with children, but it leaves a lot of resentment among adults. Importantly, bullying in the place of moral persuasion when it comes to military matters has the same counterproductive effect: resentment and fear. As Steve Lopez of the *Los Angeles Times* notes,

Unfortunately, being Goliath hasn't made the United States or the rest of the planet safer from all the Davids out there. If you are North Korea, Syria, or Iran, there's no better way to overcome a hopeless deficiency in boots and bullets than to drop a nuke in your sling. [Chris Hellman of The Center for Defense Information in Washington argues that] 'When you have such an overwhelming supremacy, you force people to look at alternatives to that kind of power. Not just nuclear weapons, but other weapons of mass destruction as well, which are much easier to obtain.'<sup>1</sup>

In general, civility can be defined as that organized state of human affairs where the primary goal is the minimization of violence. Originally the idea of a *societas civilis* applied to the state itself and was used to contrast the state's 'civil' society with the chaos of non-state societies, a Western European model with roots in Plato's *The Republic* and Aristotle's notion of the *polis* though it is also found in classic Islamic thought. As this notion of the state developed in the modern period, Mary Kaldor points out that,

The early thinkers, strongly influenced by Calvinism, believed that this ethical arena was based on a divine underpinning, that knowledge of what was right and wrong was imprinted by God in individual consciousness. It was immanent in nature, whose author was God. Later, as secular morality came to supplant religious injunction, this public realm was understood to be held together by nature, the notion that natural behaviour is learned, and that through experience men come to understand that altruistic behaviour sustains the public realm which is required for individual autonomy.<sup>2</sup>

Robert F. Miller has suggested a more contemporary understanding of the notion of civil society: 'Civil society . . . denotes the realm of self-organization of citizens in a given state for the purpose of pursuing more or less specific objectives: material interest, moral/ethical, ethnic goals or even hobbies.'<sup>3</sup> This parallels Ernest Gellner's definition of civil society as

that set of diverse non-governmental institutions, which is strong enough to counterbalance the state and, while not preventing the state from fulfilling its role as keeper of the peace and arbitrator between major interests, can nevertheless prevent it from dominating and atomizing the rest of society.<sup>4</sup>

Still, peace and freedom from violence remain central to the more modern notion of civil society.

Taking this modern conception and applying it to a global perspective, we have the notion of *global* civil society as a set of non-governmental institutions whose aim is the reduction of violence and which function as a counterbalance to self-interested nation states as well as non-state entities. A primary component of global civil society in this sense is international NGOs, such as the International Committee of the Red Cross (ICRC) founded in 1864 and Médecins Sans Frontières (MSF) founded in 1971 by Dr Kouchner after his experiences in the Biafra debacle. But the cosmopolitan perspective of these NGOs had earlier roots. For example the Jamaican sugar lobby had this to say about the first petition against slavery circulated in 1788: 'these abolitionists had neither been injured by slavery nor would they personally benefit from its end; what right had they to petition for its abolition?'<sup>5</sup> Thus, fundamental to global civility is taking the human

dignity of all others into account even if doing so is not in one's immediate self-interest. It will be helpful here to think about Kant's notion of the 'asocial sociability of man', that is, '[the] tendency to come together in society, coupled however with a continual resistance which constantly threatens to break society up.' He states:

Man has an inclination to *live in society*, since he feels in this state more like a man, that is, he feels able to develop his natural capacities. But he also has a great tendency to *live as an individual*, to isolate himself, since he also encounters in himself the unsocial characteristic of wanting to direct everything in accordance with his own ideas.<sup>6</sup>

In the development of either the civil society of a single nation or a transnational civil society, the salient factor is the self-centeredness or asociality of humans. It is a problem which Alexis de Tocqueville raised in his observations about American democracy:

Around the issue of individualism will be seen to cluster certain propensities, which together give rise to what we may call the problem of democracy. These are the passion for well being and material comforts, a concern for one's private welfare to the exclusion of all consideration of public affairs, and an inevitable drift to mediocrity. They make democratic man all too prone to accept or drift into a despotism securing him these pursuits and preferences.<sup>7</sup>

This 'problem' of democracy has two modes. Within a single nation state, there is the problem of asociality versus the interests of national society and, second, there is the global problem of not just self-interested individuals, but also the individual self-interested nation states versus the interests of the whole of humanity. The question that confronts us then is this: is reason or a social contract as enlightened self-interest sufficient to overcome the asocial self-centeredness of humans, whether as individuals or nation states, in the development of global civil society?

### *War*

War is one way to achieve, at least temporary, national social cohesion in the face of personal self-interest. War is the most radical way humans draw a distinction between social allies and 'the other.' This, as it were, 'sociability of war' inclined Hegel to think that war is necessary for the moral development of the state (an idea Marx drew upon). Not only did Hegel, influenced by the warfare genesis of modern European states, see the state as established through war, he thought that war is necessary to develop the 'ethical health of peoples . . . Just as the movement of the ocean prevents the corruption which would be the result of perpetual calm, so by war people escape the

corruption which would be occasioned by a continuous or eternal peace.’<sup>8</sup>

The problem is that, even as it binds people together, war multiplies and exacerbates all of the asocial tendencies of humans. As Erasmus wrote in ‘The Education of a Christian Prince:’

Some evils come from one source and others from another, but from war comes the shipwreck of all that is good and from it the sea of all calamities pours out. Then, too, no other misfortune clings so steadfastly. War is sown from war; from the smallest comes the greatest; from one come two; from a jesting one comes a fierce and bloody one . . . what a host of all evils [war] carries in its wake even if it is the most justifiable war. . . . Some princes deceive themselves that any war is certainly a just one [and] that they have a just cause for going to war . . . but who does not think his own cause just?<sup>9</sup>

Moreover, as Mary Kaldor notes,

the rights and freedoms gained through popular struggles could always be withdrawn unilaterally in wartime. The universal values that were supposed to characterize civil society did not apply outside the borders of the state and hence actually existing civil society coexisted with conquest and expropriation of people living in other parts of the world.<sup>10</sup>

Here we might consider three factors which cause the special tragedy of modern war: (1) the globalization of guns, (2) objectification and (3) verminification.

### *The globalization of guns*

The globalization of guns has changed the victims of warfare. Some 15 percent of the fatalities in World War I were civilian; in World War II this percentage rose to a horrific 65 percent while in the ‘small’ wars of the late twentieth century, in Africa and East Timor and the former Yugoslavia, the rate of civilian casualties became a grotesque 90 percent. Indeed, the massacre of civilians as legitimized military targets, which was practiced by Europeans and Americans primarily against non-Europeans in the colonial nineteenth century, has become a hallmark of all warfare in the globalized twentieth, and now twenty-first, centuries. This has been exacerbated by the phenomenon of the child-soldier. Amnesty International estimates that presently there are 300,000 children – *child-soldiers* – bearing arms in conflicts in some 25 countries.<sup>11</sup> The ‘innocents’ of past wars pull the triggers in contemporary wars, and the child civilians of past wars have become common military casualties.

*Objectification*

In his quintessentially World War II poem 'How to Kill,' which is uncomfortably relevant today, Keith Douglas writes:

Now in my dial of glass appears  
 The soldier who is going to die.  
 He smiles and moves about in ways  
 His mother knows, habits of his.  
 The wires touch his face: I cry  
 NOW. Death, like a familiar, hears

and look, has made a man of dust  
 of a man of flesh. This sorcery  
 I do. Being damned, I am amused  
 To see the centre of love diffused  
 and the waves of love travel into vacancy.  
 How easy it is to make a ghost.<sup>12</sup>

The once innocent young man (or woman) is transformed during warfare as the 'enemy' becomes objectified – precisely what happens when rape is a military/political policy – a transformation which can lead to crimes against humanity. We need only consider the perennial plight of women in war. In the recent Bosnian conflict, the systematic rape of Muslim women was a military policy, and the estimates are that between 30,000 and 50,000 Muslim women were raped, and then murdered. And most recently, the *New York Times* has reported credible accounts of the systematic rape of Shan minority women in Myanmar by the military; the Shan Women's Action Network reported that 25 percent of the rapes result in death and 83 percent are committed by officers.

*Verminification*

Colonel James R. McDonough, who was commander of a Joint Task Force during the Rwandan crisis, gives this account:

[the] Radio broadcasts found pleasure in letting the Tutsis and their sympathizers know what was coming: 'You cockroaches must know you are made of flesh. We won't let you kill. We will kill you.' . . . the country went mad. Hutus young and old rose up to join in the killing. Neighbors and colleagues were attacked without remorse. Priests killed their parishioners, and students their teachers. Local authorities pretended to extend safety, only to herd desperate Tutsi together in churches, schoolyards, and soccer stadiums for more efficient slaughter.<sup>13</sup>

How is it that native peoples were massacred throughout the nineteenth century? How is it that 800,000 Tutsis could be slaughtered in Rwanda in April and May 1994 – ironically leaving heaps of corpses in churches – while the Western world watched this ‘black on black’ violence?<sup>14</sup> At the start of World War I, the Carnegie Endowment for International Peace stated, regarding war between Greece and Bulgaria, that:

Day after day the Bulgarians were represented in the Greek press as a race of monsters, and public feeling was roused to a pitch of chauvinism which made it inevitable that war, when it should come, should be ruthless . . . Deny that your enemies are men and you will treat them as vermin.<sup>15</sup>

It is easier to violate the rights of – and even wantonly kill – those whom we do not see as persons. Thus, the Imperial Japanese military intentionally brutalized its soldiers and inculcated the belief that the Chinese were inferior beings well before the invasion of China in 1937. Likewise, the Australian General Blamey said of his Japanese opponents:

Our enemy is a curious race cross between the human being and the ape . . . Fighting the Japs is not like fighting normal human beings . . . We are not dealing with humans as we know them. We are dealing with something primitive. Our troops have the right view of the Japs. They regard them as vermin.<sup>16</sup>

## **Rights, responsibilities and the moral point of view**

The globalization of communications, ideas and trade is engendering a cosmopolitan perspective, the sense of being part of one interconnected global humankind. This includes the growing sense of international human rights and responsibilities, of taking a moral point of view, in opposition to the objectification and verminification which the mentality of ‘nation state as fortress’ brings to warfare.

### *The moral point of view*

Underlying the various global moral systems – or else they would not be systems of the same type – is the moral point of view. Three characteristics of taking the moral point of view are; (1) taking others into account in one’s actions because one respects them in themselves as persons (benevolence), (2) the willingness to take into account how one’s actions affect others by taking into account the good of everyone equally (justice or impartiality) and (3) abiding by the principle of universalizability – that is, the willingness to treat one’s own actions as morally permissible only if similar acts of others in comparable circumstances would be equally permissible.<sup>17</sup> The most important feature of what it means to take the moral point of view is (1) to take



others into account in one's actions because one respects them as persons.<sup>18</sup> But what is the origin or source of this obligation?

Human rights have become the focus of current discussions of global morality and human dignity. However, I do not think that respect for others as persons amounts to their possession of moral rights.<sup>19</sup> It seems to me that there are objections on both ethnocentric and egocentric grounds to treating rights as the most foundational element of morality. To take the ethnocentric objection, the notion of inalienable moral rights is a fairly recent Western conception based on a notion of humans as a community of rational, autonomous individuals with competing interests which need to be adjudicated. Moreover, this notion of rights is not even a Western concept, for it is decidedly European Christian. Even Islam, one of the great Western traditions and the second largest religious tradition in the world with more than a billion adherents, did not figure importantly in the development of this notion. And as Khaled Abou El Fadl notes in 'The Human Rights Commitment in Modern Islam:'

Muslims did not first encounter Western conceptions of human rights in the form of the *Universal Declaration of Human Rights* of 1948, or in the form of negotiated international conventions. Rather, Muslims encountered such conceptions as part of the 'White Man's Burden' or the 'civilizing mission' of the Colonial era, and as a part of the European Natural Law tradition, which was frequently exploited to justify imperialistic policies in the Muslim world.<sup>20</sup>

In contrast to the European Christian language of 'rights,' in the South and East Asian societies of Hinduism, Buddhism, Jainism, Confucianism and Taoism, the elemental moral notion traditionally is not one of rights, but rather of one's *role* in society, a matter of obligations to the society and so to others. I am not suggesting that 'rights' is an unimportant moral category, indeed it might be among the best moral categories for articulating some salient features of morality. But, as close attention to the great Asian cultural traditions of humanity helps us see, I am suggesting that the notion of rights should not supersede other moral notions like that of an obligation or role or moral responsibility. Indeed, I would suggest not only that possessing rights implies having duties to others and having duties to others implies rights, but that the notion of responsibilities should be given precedence as the moral wellspring of rights, though I will not specifically argue for the last point here.

Turning to the second issue, rights talk is egocentric, and if it is taken as the primary moral category, then it is egoistic. For a salient emphasis on one's rights presents a self-interested and self-centered conception of the self and a conception of society as a group of individuals each protecting their own self-interest and each a victim of the greed of others. This is not to say that self-interest is immoral, just that it should not be taken as the essential

and unregulated generative principle of morality. A good ethics slogan would be 'no rights without responsibilities and no responsibilities without rights.' The individual should not be subject to the tyranny of the 'rights' of the majority (or the powerful minority masquerading as representing the universal), and the claim to universal rights should not be taken as a substitute for the call to universal responsibilities.

This still leaves us with the question of the source for the obligation to take the moral point of view. Now, one often recognized characteristic of moral agency is autonomy. The ability to make rational and responsible decisions on one's own obviously does not in itself produce a moral point of view, or a sense of obligation, or sense of moral responsibility, for an amoral sociopathic person like Stalin can be perfectly autonomous. However, as the Christian ethicist Margaret Farley argues, 'the capacity for relationship is as significant a characteristic of human persons as the capacity for self-determination.'<sup>21</sup> Relationality, which requires autonomy, or perhaps better is the morally and spiritually appropriate expression of autonomy, is a defining characteristic of persons as social beings. Relationality is a character trait, the willingness to be open and interact fully with others as persons. Relationality is the wellspring of the felt obligation to take others into account as persons in one's action.

We can now see the moral underpinnings for the idea of 'global civil society.' The fundamental purpose of global civil society is preserving and promoting human dignity, which means treating humans as persons and not merely as consumers or objects; underlying the moral outlook of NGOs is a sense of global citizenship where the basis of civil society, and thus the basis of global civil society, is relationality and a sense of duty toward others. Thus those who commit crimes against humanity are not members of global civil society, even if they are members of a legally constituted nation state. Similarly, those who pursue purely capitalist ends are not members of global civil society, insofar as their motives are self-interested. Given the forces of international criminal behavior and the too frequent exploitative behavior of international corporations, this might seem to make prospects for the future bleak. However, one of the most powerful forces for global community is an internet relatively free from market forces. A second more powerful force is the moral core of the world religions. The character trait of relationality is encapsulated in the imperative to do unto others as you would have them do unto you, a universal moral principle found in variant forms in all the world's great religious traditions.

### *War and the role of religion in global civil society*

In the evolving global community based on relationality and a sense of responsibility for promoting human dignity, the only legitimate purpose for war-making is humanitarian intervention. In opposition to the non-humanitarian warfare of nations-as-fortresses, the world religions have

something to add to the moral point of view, something which I call the religious point of view. Of course, the world religions support taking the moral point of view itself: in the *hadith* Muhammad says, 'No man is a true believer unless he desires for his brother that which he desires for himself;' in the *Analects*, Confucius says, 'Do not impose on others what you yourself do not desire',<sup>22</sup> and in the Hindu *Mahabharata* we find the idea that 'One should never do that to another which one regards as injurious to one's own self. This, in brief, is the rule of dharma.'<sup>23</sup> Just as the obligation to take others into account in one's actions because one respects them as *persons* is a salient feature of the moral point of view and a point of commonality among diverse systems of morality, so too an obligation always to act in a way that respects others *because* they are not only persons, but also spiritual beings is a salient feature of the commonality among the diverse world religions. This is what it *is* to take the religious point of view. Treating others as spiritual beings will mean that one treats others as having the same spiritual value as oneself, as being on the same spiritual quest as oneself, and with the same potential for salvation or liberation.<sup>24</sup> Consequently, abstaining from non-humanitarian war is a *religious* obligation. Within the family of humanity, non-humanitarian war is fratricide, the use of rape as a military instrument is incest and ethnic cleansing is self-hate.

Simone Weil neatly identifies the perpetual state of warfare which the nation state engenders to justify the defense of the state as the highest good:

What a country calls its vital economic interests are not the things which enable its citizens to live, but the things which enable it to make war; . . . Thus when war is waged it is for the purpose of safe-guarding or increasing one's capacity to make war . . . What is called national prestige consists in behaving always in such a way as to demoralize other nations by giving them the impression that, if it comes to war, one would certainly defeat them. What is called national security is an imaginary state of affairs in which one would retain the capacity to make war while depriving all other countries of it. It amounts to this, that a self-respecting nation is ready for anything, including war, except for a renunciation of its option to make war.<sup>25</sup>

Both the secular *and* the religious must be marshaled together if we are successfully to counter these terrible costs of the Clausewitzian politics of the self-interested nation state and the resultant objectification and verminification of 'enemies' supporting war-making. We need a global citizenry which understands justice as something which transcends political, cultural and ethnic boundaries, and a global citizenry which embraces the commonality of humankind and treats each individual with benevolence as a person. This is the path to peace and, most importantly, the annihilation of war. We must understand humanity as an interconnected global family. Or, as the *Acharanga Sutra* of Jainism (fourth or fifth century BCE) says:

To do harm to others is to do harm to oneself.  
'You are the one whom you intend to kill!  
You are the one you intend to tyrannize over!  
We corrupt ourselves as soon as we intend to corrupt others.  
We kill ourselves as soon as we intend to kill others.'<sup>26</sup>

As Kant states in *Perpetual Peace* with prescience for our modern, global world, 'because a community widely prevails among the earth's peoples, a transgression of rights in one place in the world is felt everywhere.'<sup>27</sup> To be successful, any universal ethics for a global civil society must actively seek the participation of religious perspectives in the construction of a social ethic which takes account of both the secular and the religious.<sup>28</sup> For the majority of humanity is religious, and it is, at best, a difficult task to convince a primarily religious global population that purely secular international laws are comparable to religious ethics. Against the internationally corrosive forces of self-interest – military imperialism, cultural imperialism, colonialism, tribalism, gender oppression and racism and its evil twin of ethnic purity – the religious point of view and a genuine religious ethics support both the unique personhood of each and the spirituality of all; they are potentially powerful allies to limit the number and intensity of wars, and to condemn crimes against humanity.

In his seminal work *Christ and Culture*, H. Richard Niebuhr distinguishes six different ways in which Christianity has historically related to culture.<sup>29</sup> He argues for what he calls 'Christ the Transformer of Culture,' a position which might be taken by any of the world's religions, with the appropriate substitutions for the term 'Christ.' On H. Richard Niebuhr's view, the Christian church – and I would say this applies to all world religions – should avoid the extremes of either pitting religion against culture or reducing religion to a mere cultural convenience. For religion should both be tolerant of the alternative views held by humans qua spiritual beings and also be a transforming voice for social justice against the unjust structures of society. Thus within global civil society the world religions should be viewed as partners in ethics and not, as Calvin would have had it, as the sole foundation of ethics, though for the individual Hindu and Buddhist the morality of global citizenship is rooted in *dharma*, for the individual Muslim or Christian or Jew, it will be rooted in the mind of God, and so on. The secular and the religious must be partners in this enterprise: the secular can provide a constructive voice against the dangers of religious egoism; and the religious can add a powerful voice to the call to 'other-regarding' action which lies at the heart of both the religious life and the moral life, is fundamentally opposed to non-humanitarian warfare, and the soul destroying excesses of empire. Inevitably with global civil society the injustice of non-humanitarian warfare and verminification may be seen for what it is, for as Abraham Lincoln said about slavery, 'What kills a skunk is the publicity it gives itself.'

## Notes

- 1 Lopez, Steve (2003) *Los Angeles Times*, 9 May, p. B1.
- 2 Kaldor, Mary (2003) *Global Civil Society: An Answer to War* (Cambridge: Polity Press), p. 24.
- 3 Miller, Robert F. (2005) 'Church–State Relations and Civil Society in Former Communist Countries.' Presented at the international conference on 'Civil Society, Religion and Global Governance,' Australian National University, Canberra, September 1.
- 4 Gellner, Ernest (1994) *The Conditions of Liberty: Civil Society and its Rivals* (London: Hamish Hamilton), p. 5.
- 5 Tilly, Charles (1995) *Popular Contention in Great Britain 1758–1834* (Oxford: Oxford University Press), as quoted in Kaldor (2003), p. 83.
- 6 'What is Enlightenment?,' in Kant, I. *Political Writings*, Hans Reiss (ed.) and H. B. Nisbet (trans.) (1992) 2nd enlarged edn. (Cambridge: Cambridge University Press), p. 54.
- 7 Quoted in Zetterbaum, Marvin, 'Alexis de Tocqueville,' in Leo Strauss and Joseph Cropsey, *History of Political Philosophy* (Chicago: University of Chicago Press), p. 765.
- 8 Hegel, G. W. F. (1996) *The Philosophy of Right*, S. W. Dyde (trans.), originally published in English in 1896 (London: Prometheus Books), pp. 185–186.
- 9 Erasmus, Desiderius, 'The Education of a Christian Prince: On Beginning War' (1971) in Albert Marrin (ed.) *War and the Christian Conscience: From Augustine to Martin Luther King, Jr.* (Chicago: Henry Regnery Company), pp. 158–159.
- 10 Kaldor (2003) p. 110.
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- 13 McDonough, James R. (2003) 'African Holocaust: The Rwandan Civil War' in Richard D. Hooker Jr. (ed.) *By Their Deeds Alone: America's Combat Commanders on the Art of War* (Novato: Presidio Press), pp. 195–196.
- 14 Robertson, Geoffrey (1999) *Crimes Against Humanity: The Struggle for Global Justice* (London: Penguin) p. 72.
- 15 Quoted in Allen, Tim and Jean Seaton (eds) (1999) *The Media of Conflict: War Reporting and Representations of Ethnic Conflict* (London: Zed Books), p. 46.
- 16 Quoted from Dower, John (1986) *War Without Mercy: Race and Power in the Pacific War* (London: Faber and Faber) p. 71, by Tanaka, Yuki (1998) *Hidden Horrors: Japanese War Crimes in World War II* (Boulder, CO: Westview Press), p. 132.
- 17 Cf. Runzo, Joseph (1992) 'Ethics and the Challenge of Theological Non-Realism,' in Joseph Runzo (ed.) *Ethics, Religion, and the Good Society* (Louisville: Westminster/John Knox), p. 90, n. 45.
- 18 In 'Being Religious and Doing Ethics in a Global World' in *Ethics in the World Religions* (Oxford: Oneworld, 2001), p. 23, I argue that there are at least four identifiable characteristics of the moral point of view; (1) taking others into account in one's actions because one respects them as persons (benevolence), (2) the willingness to take into account how one's actions affect others by taking into account the good of everyone equally (justice or impartiality), (3) abiding by the principle of universalizability – i.e. the willingness to treat one's own actions as morally laudable or permissible or culpable only if similar acts of others in comparable circumstances would be equally laudable or permissible or culpable, and (4) the willingness to be committed to some set of normative moral principles.
- 19 I have argued for this in 'Secular Rights and Religious Responsibilities,' in

- Joseph Runzo, Nancy M. Martin and Arvind Sharma (eds) *Human Rights and Responsibilities in the World Religions* (Oxford: Oneworld Publications, 2003), pp. 9–25.
- 20 Khaled Abu El Fadl (2003) 'The Human Rights Commitment in Modern Islam,' in Joseph Runzo, Nancy M. Martin and Arvind Sharma (eds) *Human Rights and Responsibilities in the World Religions* (Oxford: Oneworld Publications), p. 305.
  - 21 Farley, Margaret (1992) 'Feminism and Universal Morality,' in G. Outka, J. P. Reeder, S. Mizuno and P. Luff (eds) *Prospects for Common Morality* (Princeton: Princeton University Press) p. 182.
  - 22 Confucius (1979) *The Analects* (London: Penguin), p. 135.
  - 23 Chapple, Christopher Key (1993) *Nonviolence to Animals, Earth, and Self in Asian Traditions* (Albany: State University of New York Press), p. 16.
  - 24 This can also be put in terms of two other features of the religious point of view which parallel the moral point of view: recognizing the spirit of everyone equally and accepting the universalizability to others of one's own treatment of oneself as spirit.
  - 25 Weil, Simone (1977) *The Simone Weil Reader*, George A. Panichas (ed.) (New York: Moyer Bell Limited), p. 273
  - 26 *Acaranga Sutra* (fourth or fifth century BCE) I.5.5. Trans. Christopher Key Chapple (2000) 'Jainism and Nonviolence,' in Daniel Smith-Christopher (ed.) *Subverting Hatred*, (Maryknoll: Orbis Press), p. 15.
  - 27 Kant, Immanuel (1983) 'To Perpetual Peace: A Philosophical Sketch', in *Perpetual Peace and Other Essays*, Ted Humphrey (trans.) (Cambridge: Hackett Publishing Company), p. 119.
  - 28 For an attempt to frame a religious Declaration of Human Rights, see the 'Universal Declaration of Human Rights by the World's Religions,' in Joseph Runzo, Nancy M. Martin and Arvind Sharma (eds) *Human Rights and Responsibilities in the World Religions*, (Oxford: Oneworld Publicatin, 2003), pp. 141–147.
  - 29 Neibuhr, H. Richard (1951) *Christ and Culture* (New York: Harper & Brothers Publishers).
  - 30 I would like to thank Melissa Govea for her invaluable support in the preparation of this manuscript.

## 9 Citizenship as consumption or citizenship as agency?

### The challenge for civil society in Latin America

*Philip Oxhorn*

#### Introduction

Latin America is now more democratic than at any time in its history. With the exception of Cuba, every country in the region has been choosing its governments through relatively free and fair elections since Mexico's historic 2000 elections. While countries as diverse as Argentina, Bolivia, Ecuador and Venezuela have experienced high levels of political instability in recent years, for the first time ineffective and/or extremely unpopular governments have been replaced by more legitimate ones through processes that have generally respected democratic institutional norms – not through recourse to the military, as has been the region's historical solution for problems of 'governability.'

While this democratic entrenchment is as welcome as it is unprecedented, important questions are now arising about the kinds of democracies that are becoming entrenched or consolidated throughout the region (Aguero and Stark, 1998; Oxhorn and Ducantzenzeiler, 1998; PNUD, 2004). Even when the survival of an incumbent government is not in doubt, serious problems of persistent individual economic insecurity as reflected in high levels of unemployment and the growth of the informal sector, rising levels of crime that have sapped judicial systems of their legitimacy, and a growing crisis of representation, among other problems, raise the serious danger that democratic institutions will increasingly be seen by Latin Americans as irrelevant, if not as an obstacle, for dealing with the challenges they confront on a daily basis (Oxhorn, 2004). Such perceptions only invite leaders to circumvent – with often considerable public support – democratic institutions in an effort (however illusory) to 'get the job done.'

This slippery slope towards greater levels of authoritarianism, what Guillermo O'Donnell labels delegative democracy (1994, 1996) or what I characterize as neopluralism, is ultimately the greatest threat to democracy in Latin America, even if (as has largely been the case) it is accompanied by the retention of relatively free and fair elections for deciding who will actually govern.<sup>1</sup>

Whether or not Latin America will follow this slippery slope will ulti-

mately depend on the model of citizenship that these democracies embody. In this chapter I will argue that this is best understood in terms of two competing models: citizenship as consumption versus citizenship as agency. Both reflect distinct patterns of state–society relations, with marked differences in the strength of civil society and the role it plays in buttressing democratic regimes.

This chapter is divided into four parts. In the first I explain competing models of citizenship in Latin America from the perspective of the social construction of citizenship. In the second section I provide a brief discussion of some general problems that favor a model of citizenship as consumption by blocking the emergence of a citizenship as agency model. I then compare two recent experiments in democratic reform: Bolivia's Popular Participation Law and Participatory Budgeting in Brazil. I conclude with some broad generalizations for promoting citizenship as agency and curtailing the deleterious effects of citizenship as consumption.

### Civil society and the social construction of citizenship

The starting point for my analysis is the concept of civil society. Given the concept's close association with Western history and political thought, its applicability to other regions such as Latin America is often hotly debated (Chambers and Kymlicka, 2002; Hann, 1996; Oxhorn, 2006a). Here, I will define civil society as:

the social fabric formed by a multiplicity of self-constituted territorially- and functionally-based units which peacefully coexist and collectively *resist subordination* to the state, at the same time that they *demand inclusion* into national political structures.

(Oxhorn, 1995a: 251–252)

This definition shifts the study of civil society away from a focus on civil society's normative or cultural content to an emphasis on power relations within a given society. A strong civil society reflects a relative dispersion of political power throughout entire polities. This, in turn, 'contributes to the advent of stable democratic regimes supported by already strong, vibrant civil societies whose component elements struggled for democracy in the first place' (Cohen and Arrato, 1992; Keane, 1988; Oxhorn, 1995b: 253).<sup>2</sup> In societies where political power is more concentrated, civil society is weaker and the prospects for long-term democratic stability correspondingly are lower.<sup>3</sup> In focusing on self-constituted units as the component parts of civil society, the importance of organization in generating political power is emphasized. In particular, the capacity of subaltern groups within a society to organize themselves autonomously from other actors is a key defining characteristic of developed civil societies capable of supporting stable democratic regimes.<sup>4</sup>



This emphasis on power relations contrasts with more predominant views on civil society that downplay the existence of conflict within civil society and the inherent advantages that dominant groups enjoy, even in democratic regimes.<sup>5</sup> Civil society itself becomes a realm of conflict and compromise, not (at least initially and certainly not on all issues relevant to a given polity) consensus. For this reason, 'inclusion' is defined much more broadly than electoral inclusion and the existence of electoral or political rights, although this is an integral part of inclusion (Oxborn, 2003c). It reflects the limits of political democracy in much of Latin America today. It also reflects historical problems of inequality that continue to condition the development of civil society throughout the region, as well as the need to understand the obstacles high levels of inequality pose for achieving more equitable societies independently of the existence of the political right to vote (Guidry and Sawyer, 2003; Karl, 2003).<sup>6</sup>

It is also important to stress the dual dynamic that demanding inclusion yet resisting subordination to the state implies, somewhat paradoxically, that civil society cannot be completely understood apart from its relationship to the state. While the autonomy of civil society from the state must be stressed, this autonomy does not imply isolation. Rather, autonomy refers to the ability of societal units to define their collective interests and act in open pursuit of them, in competition with one another. As part of that competition, societal units seek to influence state policy. Their relationship with the state may be fluid and mutually-reinforcing, as is the case in established liberal democratic regimes. But it can also be more selective, with preference given only to certain groups, as is the case with many newly democratic governments. It can even be openly antagonistic in countries where civil society is engaged in ongoing struggles against authoritarian regimes.

By posing a sharp dichotomy between the 'state' and 'civil society,' much of the literature on civil society tends to ignore the fact that the state and civil society frequently must work together to achieve a variety of important outcomes that would otherwise be unattainable, reflecting a more fluid relationship between the state and civil society that can be called *synergy*.<sup>7</sup> State-civil society synergy has two principal dimensions. First, there is what could be called the *negative* or prescriptive dimension. At this level, civil society plays an essential role in insisting on respect for existing rights, and working to ensure that politicians and state officials remain accountable for their actions (Smulovitz and Peruzotti, 2000). This is achieved through a variety of means, including resort to the judiciary, media campaigns and protests. It is often taken for granted in established Western democracies, but its importance has been dramatically demonstrated by the activities of human rights movements throughout the developing world, in democracies and undemocratic regimes alike.

Equally important is a second dimension which is positive or proscriptive. States obviously do much more than enforce laws and ensure that basic rights are respected. Civil society can often play a crucial role in many of

these activities. First, civil society actors frequently play important roles in setting public agenda, including demanding new laws and new rights. Agency is a crucial question when trying to understand the prospects for new, socially progressive reforms. Civil society can play a direct role, advocating change in the 'corridors of power' within the state and developing alternative policies. It also plays an indirect role, prodding reformers within the state to act, and campaigning in support of placing more reformers in the state.

Beyond that, civil society can play a critical role by working with the state in the design and implementation of important policies. For example, successful state development policies are dependent upon the linkages between state institutions responsible for economic policy and key actors who can provide the state with information needed for designing appropriate policies, and then assist in their implementation (Evans, 1995; Stallings and Peres, 2000). The achievement of key policy priorities, including effective law enforcement and improving the quality of education, actually depend on a close cooperation between relevant state institutions and civil society actors (Oxhorn, 2003a). This is particularly true in Latin America, where the lack of resources and institutional legitimacy is compounded by extremes in social inequality.

To achieve effective state–civil society synergy, state institutions must be open to exchanges with civil society; insular state institutions will not suffice and multiple institutional arenas must be created to facilitate the two-way interaction so essential to achieving such synergy. In a second paradox, however, the state often plays a central role in strengthening civil society through the provision of incentives and resources to encourage its organization (Skocpol, 1996). This is particularly important in a region like Latin America, where civil society has historically remained weak – often because state policies were intentionally designed to suppress its emergence (Oxhorn, 2006a).<sup>8</sup>

More generally, the nature of state–civil society relations is reflected in a process that I will refer to as the *social construction of citizenship*. As Tilly (1996: 9) notes, historically, it was the 'struggle and bargaining between expanding states and their subjects [that] created citizenship where it had not previously existed.' Even today, when there is perhaps greater consensus than ever before on the normative content of democratic citizenship rights, these rights are still contested in practice as a consequence of their uneven coverage and their ambiguous impact on important aspects of a given society (gender relations, land-owning patterns, indigenous cultures and the environment, for example). There is still no consensus for implementing specific rights of citizenship. In most new democracies in Latin America, conflicts over basic citizenship rights are central yet unresolved issues in the transition process. The failure of democratic institutions to address these shortcomings after the transition is often the principal source of their fragility. Agency is the key to understanding how citizenship rights actually

evolve or stagnate. The pressures for expanding citizenship rights that emerge (or fail to emerge) from within civil society, and how those pressures are dealt with by the state, are central to any causal theory of citizenship. In other words, citizenship reflects which groups participate in their social construction and how.

Viewed from this perspective, the strength of civil society is mirrored in the scope and depth of citizenship rights. As civil society expands to include more and different collective actors, their ability to define and defend their interests vis-à-vis the state ultimately is reflected in the breadth and depth of the rights enjoyed by citizens in any particular country. Conversely, when civil society is weak and/or repressed by the state, the result is a more or less severe constriction of the rights people enjoy as citizens. This is clearest in non-democratic states, but it is also reflected in the evolution of citizenship rights under democratic rule as a result of the successful organization and mobilization of different groups historically.

The process of state–civil society interaction in the social construction of citizenship is best captured in specific models of citizenship. For example, the dominant citizenship model in Latin America was *citizenship as cooptation*. It was closely associated with industrialization and urbanization, starting early in the twentieth century in countries such as Argentina, Chile and, after the 1917 Revolution, Mexico. As other countries began to industrialize, including Brazil in the 1940s, Costa Rica after it adopted a democratic regime in the 1950s and Peru in the 1960s under its unique inclusionary form of military rule, they, too, adopted a similar model of citizenship as a way to deal with the threat to highly unequal societies that an incipient working class posed.<sup>9</sup>

The cornerstone of citizenship as cooptation was a unique process of *controlled inclusion*.<sup>10</sup> Most generally, controlled inclusion consisted of top-down processes of political and social inclusion in which citizenship rights were segmented, partial and, ultimately, precarious. Rather than substantially alter structures of inequality, controlled inclusion both reflected and reinforced them. It became a state project intended to mediate the threat posed by organized subordinate classes through selective and partial incorporation for subordinate groups, severely restricting the scope and autonomy of civil society. Key societal actors were deprived of any autonomy through policies of state corporatism, clientelism and populist appeals which were made possible by the resources placed at the disposal of political elites as a by-product of rapid economic growth. This economic success in turn helped institutionalize rigid hierarchical patterns of political participation, excluding large segments of the population from economic and political power.

Starting with the working class, the autonomy of organized labor was severely circumscribed through state intervention in union affairs (Collier and Collier, 2002; Cook, 1998). In its most extreme form of state corporatism (Schmitter, 1974), the state literally (re)created the labor movement relatively early in the industrialization process, pre-empting the emergence

of strong autonomous labor movements with independent social bases in civil society. In countries such as Brazil and Mexico, corporatist labor structures were virtual appendages of the state.<sup>11</sup>

From the perspective of the social construction of citizenship, controlled inclusion reflected an important dispersion of power within civil society, with the result that workers in these countries generally achieved higher levels of socio-economic and political inclusion. This is because the institutions of controlled inclusion were eventually consolidated by granting of important but selective social rights of citizenship to workers. These rights included higher wages, contract rights, including collective bargaining (however circumscribed) and social security protection. Workers in the formal sector became the new 'elite' within the popular sectors as labor legislation, which would be considered 'progressive' in the Western European context, had the pernicious effect in many Latin American countries of segmenting labor markets and leaving the majority of workers unprotected (Portes, 1994; Thorp, 1998). Ultimately, controlled inclusion belied the existence of strong civil societies; only select segments of society were allowed to organize and the autonomy of those organizations was seriously compromised. For the same reason, controlled inclusion (and citizenship as cooptation) had an ambiguous relationship to democracy. Following T. H. Marshall's (1950) famous characterization of citizenship rights, in Latin America important social rights of citizenship were frequently granted in lieu of meaningful political rights, while the authoritarian nature of the regime by definition implied lack of respect for basic civil rights.<sup>12</sup>

The model of citizenship as cooptation generally began to break down in the 1970s and 1980s. One reason for this was the limits of the region's import substitution development model and the debt crisis of the early 1980s. But perhaps a more important reason was that citizenship as cooptation co-existed with a competing citizenship model, *citizenship as agency*. In contrast to citizenship as cooptation, citizenship as agency reflects the active role that multiple actors, particularly those representing disadvantaged groups, must play in the social construction of citizenship so that democratic governance can realize its full potential for incorporation. It is synonymous with high levels of social organization or strong civil societies in Western Europe, where advanced social welfare states can be seen as one of this model of citizenship's principal achievements.

Given the region's historical extremes of inequality and exclusion, as well as the predominance of citizen as object, the ideal of citizenship as agency was typically championed by the Left in Latin America. Political democracy was, at best, generally viewed by the Left as something to be used instrumentally or, at worst, a bourgeois trap – which was not an altogether mistaken assumption given the nature of controlled inclusion and citizenship as cooptation. Citizenship as agency in Latin America therefore is not exclusively a reflection of a strong civil society as defined here, even if its ultimate success was dependent on high levels of social organization. But

given the structural nature of inequality, Cold War ideologies often served as an excuse for violently reversing controlled inclusion by elites intent on preserving those structures from encroachments through an expansion of citizenship rights for disadvantaged groups (Garretón, 1989; Waisman, 1987). When a citizenship as agency model threatened to predominate, regardless of whether it was actually linked to a revolutionary movement, military coups were often the result, as upper and middle class elites resorted to coercion to protect their privileged positions.<sup>13</sup>

Finally, it is important to emphasize that both citizenship as cooptation and as agency (at least through the 1970s) reflect a highly antagonistic relationship between the state and civil society. Although controlled inclusion seemed to offer at least the prospects of some level of cooperation between the state and civil society, its true aim was to constrain the public sphere by subordinating civil society to the state and dominant class interests. This is antithetical to the kind of state–civil society synergy discussed above; such synergy was all too likely to escape the ability of the state to contain its transformative dimension, so it was shunned, if not feared. The alternative of citizenship as agency sought to capture the state in order to impose radical social transformation. While successful revolution might have resolved the historical problem of unequal, segmented societies, it also represented an alternative vision of society that historically has not been able to accommodate successful state–civil society synergy (Dilla and Oxhorn, 2002). State and civil society were ultimately diametrically opposed, each viewing the other as the principal enemy that had to be dominated in pursuit of its own irreconcilable interests.

The dichotomy of citizenship as agency and citizenship as cooptation has lost its centrality as a new model of citizenship has become overwhelmingly dominant: *citizenship as consumption*.<sup>14</sup> Citizens are understood as *consumers*, spending their votes and limited economic resources to access what normally would be considered minimal rights of democratic citizenship. This reflects how the transitions to democracy in Latin America since the mid-1970s represent a new alternative path in the social construction of citizenship: the provision of universal political rights in the absence of universal civil rights and declining social rights. This is radically different from the ideal path discussed by T. H. Marshall (1950), in which civil rights granted by the state in the eighteenth century are followed by political rights in the nineteenth century and, finally, social rights in the twentieth. It reflects a particular pattern of state–society relations that exacerbates historical problems of extreme inequality and weak civil societies rather than ameliorating them, despite the fact that political democracy seems more robust than at any previous period in the region's history (Oxhorn, 2003c).

Citizenship as consumption is closely related to a market-centered mode of political incorporation and social integration, *neopluralism*. The political criteria associated with controlled inclusion (social control and loyalty) are replaced by purely economic ones. It is closely associated with current

neoliberal economic policies emphasizing free trade, open markets and a minimal role for the state in both the economy and society. Yet it is not reducible to any specific set of economic policies or correlated with any particular level of economic liberalization. Brazil, for example, is a paradigmatic example of neopluralism, yet it also has continually lagged behind the region in terms of implementing liberalizing economic reforms. While countries will vary according to the degree to which they conform to the ideal-typic model of neopluralism discussed here, there is a remarkable level of convergence. This reflects not only the spread of liberal economic reforms, but also the unprecedented strength of political rights, juxtaposed with Latin America's shared structural problems of highly unequal, segmented social structures. The move toward greater levels of economic integration at the global level reinforce this convergence.

The pluralist aspect of neopluralism reflects a normative belief that the best balance of interests and values within a given polity is produced by some form (however limited) of free competition among individuals in the rational pursuit of their self-interest. In much the same way that the market is characterized in liberal economics, the rational maximization of individual interests (which are reconciled through the mechanism of the market when they conflict) is portrayed as the driving force behind progress. In this way, ultimate political authority is essentially decided upon through a free market of votes. Individual freedom is valued above all, and this requires respect for private property and (ideally, at least) the rule of law.

What distinguishes neopluralism from the more traditional pluralist model associated with democracy in the United States (Dahl, 1961) is its marked authoritarian bent. While it is important that the people who govern are elected, particularly the President, once elected, these officials have few checks on their power. They frequently bypass and deliberately undermine representative democratic institutions, at the same time that power is increasingly concentrated in the office of the presidency (O'Donnell, 1994; Oxhorn and Ducantzenzeiler, 1998).

While citizenship as consumption has clearly displaced citizenship as cooptation as the dominant model of citizenship in the region, its relationship to citizenship as agency is more ambiguous. Citizenship as consumption is not necessarily mutually exclusive of citizenship as agency in the same way that citizenship as cooptation was. This is because the constraints that neopluralism places on inclusion are indirect and citizenship as consumption is not a direct state response to the threat of an alternative citizenship model. Just as consumer rights advocates, and movements promoting greater corporate responsibility seek to influence business behavior in the marketplace, there is nothing about neopluralism or citizenship as consumption that directly prevents different actors from within civil society from attempting to influence political processes, and the existence of political rights certainly facilitates such efforts.

At the same time, there are several important indirect obstacles making it

difficult for citizenship as agency to become the dominant citizenship model. First, state–civil society synergy becomes much more difficult to achieve, both because the state is generally less willing and able to work with civil society, and because by its very logic, neopluralism privileges the same economic resources which less privileged groups by definition lack. Yet without such synergy, citizenship will necessarily remain stymied, especially given Latin America’s highly unequal social structure. Second, neopluralism and citizenship as consumption make it much more problematic for strong civil societies to emerge than in the past. Instead of institutionally constraining civil society’s development, the logic of neopluralism tends to fragment it by making collective action much more difficult. The end of the Cold War has meant that citizenship as agency is no longer tied to revolutionary projects for capturing the state, and is therefore potentially compatible with achieving state–civil society synergy, but this also has further weakened collective action because there is no clear ideological project for mobilizing lower class actors.

### Citizenship as consumption, neopluralism and the obstacles to citizenship as agency

Citizenship as consumption and neopluralism condition the development of state–civil society relations in fundamental ways that limit the potential for strong civil societies to emerge. As a result, any effort to achieve citizenship as agency must overcome important obstacles. Three obstacles in particular stand out; (1) growing economic inequality and insecurity, (2) heightened citizen insecurity and what I describe as the *marketization of the rule of law*, and (3) a general crisis of representation.<sup>15</sup>

*Growing economic inequality and insecurity* undermine civil society and the potential for achieving citizenship as agency by directly decreasing the ability of workers to engage in it, individually and collectively, severely circumscribing the social construction of citizenship. In 1996, 85 percent of Latin Americans reported that they were either unemployed or concerned about losing their jobs, and that percentage increased in 11 of the 17 countries surveyed in 2001 (Inter-American Development Bank, 2004: 57).

Such sentiments reflect several recent trends in the region. The first is unprecedented levels of open unemployment. One study sponsored by the Inter-American Development Bank (2004: 15–16) found that the median unemployment rate in Latin America in 2000 was greater than 10 percent, roughly the same level reached at the peak of the debt crisis in 1983–1985. Second, the quality of the jobs created is generally quite low. While employment in the relatively high-paying manufacturing sector has been declining, (Altimir, 1998; Stallings and Peres, 2000), nine out of ten of the new jobs created in the 1990s were in the service sector, and 70 percent of those jobs were in low productivity activities (Gurrieri and Sáinz, 2003: 160). In

particular, 70 percent of new jobs were in the informal sector in the 1990s (PNUD, 2004: 122). Yet these are generally the forms of employment with the lowest wages and, by definition, they lack even minimal legal protections. At the same time, employment in the formal sector has fewer benefits today compared to the past, as countries increasingly 'informalize themselves vis-à-vis their own laws in their quest for even more foreign investment' (Portes, 1994: 168). For example, a full 40 percent of new jobs in the formal sector in the 1990s had no social security safeguards (PNUD, 2004: 122). And where existing rights are not taken away outright, their systematic violation is often ignored by the state.

Under these circumstances, it is not surprising that poverty rates have remained persistently high throughout the 1990s, even though the percentage of people living in poverty declined significantly from a high of 48.3 percent in 1990. Poverty rates declined by only 0.1 percent, from 43.5 percent in 1997 to 43.4 percent in 2002, and they were projected to rise to 43.9 percent in 2003. As a result of population growth the number of people living in poverty actually increased from 200 million in 1990 to 220 million in 2002, and 225 million in 2003 (CEPAL, 2003: 2–3).

*Heightened citizen insecurity and the marketization of the rule of law* further compound the problems of economic insecurity in much of Latin America. Throughout the region, crime rates have been increasing significantly since the 1980s. Inter-American Bank statistics show Latin America to be the most violent region in the world, according to every measure (Carrión, 2003: 51). This has led to 'staggering victimization rates' in the mid-1990s, with a regional average of 38 percent in the mid-1990s. This is twice the level of Spain and seven times the level of the US. Moreover, while transitions to democracy generally brought about a substantial reduction in the systematic violation of human rights by the state for political reasons, the overall level of state violence has generally not declined. Instead, it has undergone a qualitative change, as it is no longer directed against the political opposition, but the poor (Carrión, 2003; Méndez, 1999: 19–20; Programa de Naciones Unidas para el Desarrollo, 1998). So serious is this that it is frequently tantamount to the criminalization of poverty (Pinherio, 1999).

What is most surprising is the lack of opposition such trends generate. Because the poor remain the principal victims of crime, the *de facto* (and sometimes *de jure*) criminalization of poverty generally receives widespread popular support among the poor (Méndez, 1999; Neild, 1999). This support for repressive police policies involves more than just a simple fear of growing crime rates. Abuse of the legal system by elites, corruption and widespread perceptions that officials enjoy a certain level of impunity regardless of what they do has also undermined trust in legal institutions (Carrión, 2003). Throughout Latin America, with the exception of Chile, public confidence in the judiciary is alarmingly low. As a result, there is a noticeable lack of citizen cooperation with the authorities on criminal matters, which leaves



few alternatives to applying more violence, because effective law enforcement and crime prevention are dependent upon community involvement. While these repressive police measures ultimately do little to improve the image of law enforcement agencies, there is a real danger that the situation will only be exacerbated as local communities further withdraw from the legal community, creating a vicious circle (Neild, 1999).

The criminalization of poverty and resort to repressive police methods also reflect the widespread marketization of the rule of law. Basic civil rights are in effect allocated according to people's 'purchasing power.' Although equal protection under the law exists on paper, the poor cannot access it because of their limited economic resources. Instead of institutionalizing equality before the law, legal systems reinforce structural problems of inequality and social exclusion. For example, 54.8 percent of people in prison in Latin America had not been convicted or charged in accordance with due process (Programa de Naciones Unidas para el Desarrollo, 1998: 109). Middle sector and upper class white collar crimes and corruption are largely ignored, despite their huge monetary and institutional costs (Arriagada and Godoy, 1999; Pinherio, 1999; Tulchin and Fagan, 2003). At the same time, privileged segments of society are able to use their economic and political resources to ensure that limited state resources are concentrated in those areas of the city where they live and work, to the detriment of poorer communities (Arriagada and Godoy, 1999; Frùghling, 2003).<sup>16</sup> There is also an increasing privatization of law enforcement throughout the region as people purchase personal security by contracting private police forces. Yet, just as repressive police tactics are counterproductive for controlling crime, the spread of private security firms has contributed to an increase in societal violence with the increased availability of guns in private hands, without any noticeable reduction in crime rates (Arriagada and Godoy, 1999). For those who lack the economic resources to hire armed guards or pay corrupt judges and police in order to attain justice, taking justice into one's own hands in the form of vigilantism or 'popular justice' is a growing phenomenon (Carrión, 2003; Neild, 1999).

Finally, the potential for realizing citizenship as agency is limited by the existence of a *general crisis of representation*. This crisis has several dimensions. The first reflects the fact that, even though Latin Americans generally believe in democracy as the best system of governance, most Latin Americans are not satisfied with existing democratic regimes. According to the 1996 *Latinobarómetro* data, the level of citizen satisfaction with how their democratic governments actually functioned was generally 24 to 50 percentage points lower than their declared support for democracy in each country. The average level of satisfaction was an abysmally low 27 percent and only in Uruguay and Costa Rica did more than a majority of people express satisfaction with the actual performance of their respective democratic governments. In 2003, the average level of satisfaction was essentially the same at 28 percent. While the gap was lower given lower levels of support for demo-

cracy in 2003, it is important to note that only a minority of respondents expressed satisfaction in every country, including Costa Rica (47 percent) and Uruguay (43 percent), which again registered the highest levels of citizen satisfaction with democracy.

This lack of satisfaction with actual governments is mirrored in low levels of citizen trust in the basic institutions of democracy. Levels of trust in governing institutions (rarely very high to begin with) have generally declined since 1996, largely because 'expectations of inclusion have largely gone unfulfilled' (*Latinobarómetro*, 2003: 26). In 2003, only 11 percent of respondents expressed some trust in political parties, down from 19 percent in the 2000 *Latinobarómetro* survey.

This high level of citizen dissatisfaction with democratic governments and institutions stems from several sources that are also characteristic of neopluralism. In general, there is a widespread perception of exclusion from political power and alienation from formal politics. The 1996 *Latinobarómetro* survey found that, apart from voting, which on average 53 percent of respondents felt allowed them to influence political outcomes, the majority of Latin Americans had little sense of political efficacy. Only 43 percent of respondents regionally felt that the political tendency they most identified with was as likely as other tendencies to assume power. At the same time, an average of just 14 percent of respondents felt that politicians offered solutions to the problems faced by their respective countries. While the percentage of respondents who felt that politicians offered solutions to problems faced by their country increased marginally to 19 percent in the 2001 survey, such feelings were shared by less than one-third of respondents in every country except Peru, where 47 percent held this position.<sup>17</sup> One graphic example of widespread cynicism is that 64.6 percent of respondents in the 2002 *Latinobarómetro* survey felt parties failed to keep their campaign promises once in office because they deliberately lied to win elections; only 2.3 percent of respondents felt parties fulfilled their electoral promises (PNUD, 2004: 49).

Political elites, particularly those exercising power, seem disconnected from society. In this context, the perceived effectiveness of voting underscores neopluralism's basis in plebiscitary forms of democratic practice: presidents, for example, are elected to exercise power with few or any checks until the next elections are held. Citizens, at best, are reduced to 'consumers' of public discourses and non-universal rights rather than participants in the social construction of citizenship rights through a vibrant public sphere. This distance is reinforced by the nature of the state, which generally leaves little space for effective citizen participation apart from elections (Huber *et al.*, 1997).

A second dimension of the crisis of political representation reflects the fragmentation and atomization of civil society that is also a characteristic of neopluralism. This makes it difficult for citizens to enter the public sphere and attempt to close the gap between them and their political representatives. It also helps explain why the region's unique combination of political

rights with declining civil and social rights of citizenship has been so stable, since destabilizing political pressures and alternatives have been slow to emerge.

Historically, one of the principal representatives of the lower classes throughout the region has been organized labor. Yet labor movements throughout the region have been weakened under neopluralism, even by comparison to periods of controlled inclusion. Union membership declined in almost every country during the 1990s, with an average union density of the non-agricultural labor force of just 14 percent (Inter-American Development Bank, 2004: 41). Declining union membership and organizational fragmentation have combined to reduce the collective bargaining power of organized labor, independently of legal changes designed to have a similar effect (Huber, 2002; Organización Internacional del Trabajo, 1993). Economic liberalization has seriously diminished the effectiveness of strikes in those sectors of the economy facing international competition (Murillo, 2003), and even those relatively few unions with resources and bargaining power have generally been forced to accept the fact that 'employers throughout the region have preferred the unilateral imposition of workplace changes' to labor negotiations (Cook, 1998: 316). The diminished economic clout of organized labor and the growth of the unorganized informal proletariat have, in turn, led to declining political influence, as politicians try to appeal directly to the mass of unorganized informal proletariat who are decisive in elections (Murillo, 2003; Roberts, 2002). Organized labor has increasingly become a narrowly self-interested actor, competing with other groups in civil society in the pursuit of the particularistic interests of its reduced membership (Garretón, 2003; O'Donnell, 1998; Roberts, 2002).

These problems reflect the way market-based dynamics permeate entire societies under neopluralism. Popular sector organizations often remain small, atomized and dependent on external (state and/or non-governmental agencies) largesse. Their efficacy – so essential for understanding the impact of the public sphere – remains severely circumscribed. People participate to pursue short-term interests at the expense of long-term projects for society (Oscar Muñoz and Francisco Rojas, q.i. CEPAL-PNUD-BID-FLACSO, 1999). As Raúl Urzúa explains, expecting people to participate in civil society is 'like building a social fabric in a moment when there is an ideological effort to convince people that they will triumph due to their own efforts. We are struggling against the current' (CEPAL-PNUD-BID-FLACSO, 1999: 29). Combined with problems of social organization created by increased economic insecurity and the effects of anti-crime efforts, the public sphere is largely closed to Latin America's lower classes, while their ability and willingness to try and occupy it remains in doubt. The necessity of day-to-day survival may make public participation and collective action seem, at best, a luxury one can no longer afford and, at worst, a wasted effort.

## **Confronting the limits of citizenship as consumption: participatory state reforms in Bolivia and Brazil**

The limits of citizenship as consumption reflect the fact that it is both a cause and effect of weak civil societies. The inability of disadvantaged groups to organize and engage in a process of citizenship construction inevitably means that other, already dominant groups will continue to prevail. Political leaders have on various occasions attempted to address this problem through innovative state reforms intended to strengthen civil society by establishing mechanisms for greater state–civil society synergy. Two of the most important examples of this are the Popular Participation Law (LPP) in Bolivia and Porto Alegre's experiment with participatory budgeting (PB) in Brazil. While the latter can be understood as a success in terms of establishing a citizenship as agency model, the Bolivian experience has been much more problematic and a comparison of the two offers important insights for understanding civil society and citizenship in Latin America.

### *Bolivia's popular participation law*

The Popular Participation Law (LPP) epitomizes a deliberate attempt to strengthen civil society by establishing institutional mechanisms for achieving both state–civil society synergy and citizenship as agency. Through a radical decentralization of the Bolivian state in 1994, Bolivia's political landscape was completely reorganized around 311 municipal governments, the majority of which were not only new, but were erected precisely in those areas where the state had been most noticeably absent.<sup>18</sup> Municipal governments would now have responsibility for administering health, education and infrastructure services, as well as other areas of social investment. To cover these new responsibilities, a new revenue sharing scheme, *co-participation* was instituted. The state would double the percentage of its revenues that it shared with municipal governments to 20 percent, and distribution would be exclusively on a per capita basis. The result was a windfall for the new city governments and many of the old ones as well. Prior to the change, only 61 city governments received state revenue sharing, and 90 percent went to the three largest cities – La Paz, Santa Cruz and Cochabamba. Now, half of the funds went to rural districts. The municipal governments' share of public investment rose from 11 percent to 39 percent, total social investment doubled and investment in education tripled. For the 42 percent of Bolivians who lived in rural areas, mostly members of indigenous communities with little or no prior contact with the state, the state had dramatically 'arrived' – and with unprecedented amounts of money to be spent locally.

Each municipal government would be governed by a popularly elected city council and mayor. To ensure that the new resources would actually be

used to the benefit of the community, over 16,000 Base-level Territorial Organizations (*Organizaciones Territoriales de Base* or OTB) were legally recognized by mid-1997 (Galindo Soza, 1998: 241). The OTBs were considered the authentic representatives of the interests of Bolivian civil society and many were the traditional organizations through which indigenous communities had historically organized and governed themselves. The OTBs would establish community priorities through local participatory planning exercises associated with the elaboration of an Annual Operational Program (*Programa Operativa Anual* or POA) in each municipality. The OTBs would also select members for a new institution in each municipal jurisdiction that would be charged with representing community interests at the level of the city government: Vigilance Committees (*Comites de Vigilancia* or CV). The CVs would articulate and represent community priorities in new participatory planning processes to be carried out at the level of each municipal jurisdiction. The CVs would also serve as a mechanism for exercising social control over the portion of municipal budgets financed through co-participation.

Through these various mechanisms, the LPP sought to ensure governmental accountability and transparency by creating a hybrid form of democracy, incorporating Western traditions of representative democracy with local, indigenous traditions of community self-government – ‘individual liberty with communitarian symbiosis’ (Secretaría Nacional de Participación Popular, 1997: 10). In one fell swoop, the LPP offered institutional solutions to begin addressing many of the problems plaguing Bolivia, from state strength and territorial penetration to the development and construction of a multi-ethnic society. In particular, the institutions of the LPP offer important arenas for the *democratic* incorporation of indigenous groups into Bolivian politics and society by allowing them to play a constructive role in influencing the social construction of citizenship rights.

Despite its pretensions and some notable local successes,<sup>19</sup> the LPP largely failed to live up to its expectations for generating either greater state–civil society synergy or citizenship as agency. From the perspective of state–civil society relations, several aspects of how the LPP was developed and implemented help explain this failure.

The first is that the LPP was conceived and designed with virtually no input from civil society.<sup>20</sup> Then President Gonzalo Sánchez de Lozada was actively involved, working closely with his key advisors. Even his Vice-President at the time, Victor Hugo Cárdenas, who was one of the most prominent political leaders of indigenous descent in Latin America, played almost no role.

Second, the deliberate decision to base LPP participation on OTBs meant that functionally-based or corporatist organizations were excluded from participating in the new institutions being created. Ironically, this decision excluded the principal actor in Bolivian civil society advocating decentralization: civic committees. The rest of Bolivian civil society was relatively

silent on the matter. Civic committees had become increasingly important as an alternative to Bolivia's corrupt political party system, were largely urban and often had close ties to business groups, which were all sources of distrust among the LPP's architects. The civic committees also advocated decentralization at the level of the regional level. While the civic committees often maintained informal, extra-legal linkages to local government, the LPP's prohibition of municipal funding for civic committees pushed them into financial crisis (Programa de Las Naciones Unidas Para el Desarrollo (PNUD), 1998: 127).

From the perspective of state-civil society relations, the LPP was completely unexpected because the principal social demand for such reforms came from groups that were deliberately excluded from the framework adopted. Conversely, the ultimate success of the LPP was now dependent on a sector of civil society that not only had not participated in its elaboration, but that was historically suspicious of central state institutions.<sup>21</sup> In more practical terms, this meant that the government had to enact the LPP with little or no social support. The government then had to win over public opinion, after the law was already in place, and transfer resources to the new municipal governments. Moreover, the government had to do so in the face of a very effective opposition campaign against the 'leyes malditas' (the damned laws) that was able to mobilize substantial opposition from a variety of sources, including political parties, functional organizations (especially organized labor) and even the non-governmental organizations that had come to play an important role in sustaining a variety of forms of social organization within Bolivian civil society. Repression of protesters further clouded the social legitimacy of the LPP when it was being implemented (Van Cott, 2000).

The key to overcoming this problem successfully inevitably became the co-participation funds, and this is the most substantial change brought about by the LPP. As the intellectual author of the LPP and first National Secretary for Popular Participation, Carlos Hugo Molina, candidly explained, 'the fundamental success for the consolidation of popular participation was the existence of resources. The people linked popular participation directly with resources' (personal interview, Santa Cruz, July 15, 1999). Within four months of the law's promulgation, particularly in rural areas, more resources had arrived than in the previous three years combined, and it was the first time they had received any resources from the state. According to Molina, a central aspect of the government's campaign to raise support for the new institutions was to publicize how much money was arriving to local governments so that people would have an incentive to start exercising some control over its expenditure. One reason for the rapid legalization of so many OTBs was their desire to gain access to these resources – and in many instances the desire of political parties to get those OTBs most closely tied to them institutionalized so they could gain access as well (Booth *et al.*, 1997: 23–24). When Sánchez de Lozada was succeeded as president by

former military dictator Hugo Banzer, this reliance on economic resources only intensified given his party's clear desire to minimize, if not completely reverse, the LPP's reforms. As Senator Walter Soriano, who was from Banzer's party, noted, even when all other aspects of the LPP were not living up to the previous government's expectations, 'the good thing is that Finance Ministry has to deliver the money – it is doing so, late, but it is delivering it' (personal interview, La Paz, July 1, 1999).

Aside from the obvious contradiction of creating participatory state institutions without any public input into their design, the more fundamental contradiction relates to models of citizenship: in essence, the legitimation of institutional reforms embodying citizenship as agency was sought through recourse to a model of citizenship as cooptation. The relatively massive resources used to 'legitimate' the institutions of LPP were bound to succeed in the sense that subsequent presidential administrations could not eliminate them. Yet this basic contradiction would have serious long-term implications for the ability of the LPP reforms to achieve state–civil society synergy and citizenship as agency. The apparently mixed motives of the reforms only served to heighten the suspicions of poor, marginalized groups that already were fearful of state efforts to equate narrow political interests with the public good.

First, the decision to limit LPP participation to territorial organizations raised serious questions regarding the representation of marginal groups and their manipulation by political elites. There generally has been little effort to mobilize organizations or citizen participation to get people actually to involve themselves in local politics (Booth *et al.*, 1997: 86; Grebe López, 1997: 181). This is particularly true for the young. A national survey conducted by PNUD (1998: 117–118) found that 73.7 percent of people 21–30 years of age had no contacts with local organizations, and this was especially pronounced among women.

Demographics and migration from depressed rural areas meant that many OTBs were stagnant, moribund organizations that had lost their appeal to local inhabitants (Booth *et al.*, 1997: 76). The sudden influx of central government resources gave them new life, but they were often soon dominated by local political elites and political party representatives. In other cases, organizations were formed in order to channel funds or work with state institutions, but without any real connection to society. Instead, these organizations were characterized as being 'imposed, artificial' (personal interview, Ana Maria Lema, Santa Cruz, July 15, 1999).

These problems are particularly acute in urban areas, where *juntas vecinales* are the principal form of OTB. The PNUD study (1998: 17) found that fewer than 30 percent of residents participated in them, and that the principal participants were men over 30 from privileged socio-economic classes. Political party influence was also quite noticeable (Programa de Las Naciones Unidas Para el Desarrollo (PNUD), 1998: 125–126). This is one reason why the LPP has had such a limited impact in urban areas.

At the same time, the most dynamic organizations were often functional organizations that were deliberately excluded from the LPP, particularly committees formed to secure irrigation and potable water. The reason for the dynamism of such committees is that they had something concrete to offer their members. Successful committees often did not disband once irrigation or potable water were obtained for their members, and have shown the capacity to move into other areas of activity related to community development.

The problem was particularly acute for women's representation, despite the LPP's formal commitment to providing equal opportunities for both men and women (Oxhorn, 2001). For example, female representation in municipal governments declined not only relatively, but also absolutely – despite that fact that the LPP more than doubled the number of municipal governments in Bolivia. The situation was sufficiently serious to lead reformers to institute a 30 percent quota for female candidates at the local level. While this led to significant relative gains for women, much of the quota's impact has been diluted by the fact that women have largely been relegated to positions of 'alternate,' of which they account for 70 percent, who wait to replace actually sitting municipal counselors should they resign or ascend to the mayor's office (Kudelka, 2004).

There are several reasons for this problem. One is that men sought to control access to the new resources provided by co-participation, thereby pushing women to the sidelines – sometimes violently (Kudelka, 2004). Another is that women's organizations were not allowed to participate in the LPP process because they were not considered to be OTBs, and men have generally dominated OTBs – even before they had access to substantial state resources (Booth *et al.*, 1997; Vargas, 1998). For example, the last survey of female participation rates in OTB was conducted in 1999 and showed that 24 men participated for every woman, although this was expected to improve as a by-product of the 1997 quota law (Kudelka, 2004: 534).

These problems have been compounded by the actual way in which two key institutions of the LPP function in practice: participatory budgeting and the vigilance committees (CVs). In terms of participatory planning, 'participation' by OTBs generally has been limited to setting priorities for expenditures and making demands, rather than actually participating in the planning process (Archondo, 1997; Booth *et al.*, 1997; Vargas, 1998). This was partly due to the nature of the planning process itself, which was not designed for more active inputs from civil society, particularly given the time constraints of annual budgeting processes. But it also reflects past patterns of a more paternalistic and conflictual relationship between the state and civil society in which civil society looked to the state to resolve its problems. As Thomas Reilly of the USAID's Desarrollo Democrático y Participación Ciudadana Program noted, there has yet to be a 'transition from protests to making proposals,' referring specifically to the period of military rule (personal interview, La Paz, July 1, 1999).



The issue of limited participation is compounded by other problems. Over the years there has been a 'recentralization' of decision making, reducing the scope for municipal budget decisions (Galindo Soza, 2004). There is also a lack of synchronization between the priorities established by the participatory budgeting process and actual municipal budgets, such that in 2000 only 23 percent of the projects funded by municipal governments originated through participatory budgeting processes.<sup>22</sup> Actually making it into the city's budget is not sufficient however because budgeted programs frequently are not implemented. In the study of municipal budgets reported by Archondo (1997: 277), only 33 percent of approved projects were actually being undertaken. In the larger study by Porcel and Thévoz of 151 representative municipal governments (1998: 103–114), only slightly more than 50 percent of budgets were actually executed. For these reasons, it comes as no surprise that relatively few people actually participate in participatory budgeting exercises, exacerbating the penetration of clientelistic and partisan influences in what is supposed to be an authentic exercise for articulating civil society's self-defined interests (Galindo Soza, 2004).

If OTBs are the foundation upon which the LPP rests, then the CVs are its central pillars. One CV is elected by the OTBs in each municipal jurisdiction. Creating 311 CVs proved to be a slow process. By December 1995, only 163 had been formed. In order to speed up the process, the government issued a decree on December 12, stating CVs had to be formed by December 31 in order to be in compliance with the LPP – and be eligible for co-participation funds. The added stimulus worked, and 'in 15 days all the political parties that governed municipalities created Vigilance Committees (Ardaya Salinas, 1998: 25). This process, aside from raising obvious questions about the representativity of the CVs (Ardaya Salinas, 1998), underscores a noticeable lack of social recognition of the role CVs potentially can play in empowering civil society. Institutionally, they were created by the state, denying them social legitimacy. As a consequence, the relationship between CVs and the communities they were supposed to represent was a formal one: 'the base makes demands, but does not support' the CVs (Maydana, 2004: 204).

The LPP deliberately did not provide for financing the activities of the CVs, in part to avoid turning the CV into a source of patronage and out of fear of coopting the CVs, but also because the LPP is founded on the ideal that such community service should be voluntary (Programa de Las Naciones Unidas Para el Desarrollo (PNUD), 1998: 132).<sup>23</sup> Moreover, the task of fiscal oversight is a very technical one. Few CV members have the necessary skills to fulfill these tasks, which also increases the vulnerability of CV members to political pressures from the municipality (Booth *et al.*, 1997). The result is that the members of CVs, particularly the CV presidents who often amass considerable influence over their respective CVs, are increasingly exposed to the patrimonial and rent-seeking dynamic of Bolivian politics in general.

Far from creating state–civil society synergy or a model of citizenship as agency, the LPP seems to have fallen victim to many of the worst aspects of the old model of citizenship as cooptation. In a social atmosphere already characterized by high levels of distrust and skepticism toward the state, the continued existence of the LPP belies a strong civil society or renewed legitimacy. Instead, as the political instability of Bolivia over the past few years dramatically demonstrates, social control and participation are increasingly following a logic of ‘civil society versus the state’ (Maydana, 2004: 235).

### *Participatory budgeting in Porto Alegre*

Participatory budgeting (PB) was first initiated in 1989 in Porto Alegre, a medium-sized (population 1.2 million) city in southern Brazil. While far less ambitious than the LPP in Bolivia, it similarly sought to create new institutions for realizing state–civil society synergy and citizenship as agency at the local level, but with considerably greater success. Indeed, its resounding success led to the adoption of similar programs in over 100 cities in Brazil, as well as many others throughout the world, and in 1996 it was declared to be among the world’s ‘best practices’ in urban government at the United Nations Habitat Conference (Goldfrank, 2003).

Of course, not all attempts to implement PB have been as equally successful as they were in Porto Alegre, a case that may be close to ideal in terms of the pre-existing nature of the local state, political party system and civil society (Nylen, 2002). Yet by contrasting the relative success and failure of PB and the LPP, respectively, important dynamics become apparent that help explain why creating state–civil society synergy and citizenship as agency are often so problematic.<sup>24</sup>

As was the case with the LPP, the initial impetus for reform came from the national level. In sharp contrast to the insulated, largely secretive process through which the LPP was designed, PB in Brazil was made possible by the 1988 Constitution that was crafted with considerable input from civil society organizations. The new constitution made PB possible by granting greater authority to local governments to design new policy making processes and recognizing the legitimacy of participatory institutions (Wampler and Avritzer, 2004). Rather than mandate a single institutional design for the entire country, as was the case of the LPP, Brazil’s 1988 Constitution merely facilitated local experimentation, and Porto Alegre took up the challenge in a particularly innovative fashion.

Once the general institutional context had been opened up by the new constitution, several local factors heavily influenced the direction new reforms would take in Porto Alegre. At the level of civil society, Porto Alegre had enjoyed a particularly vibrant civil society, which grew in opposition to Brazil’s military dictatorship (1964–1985). This experience was ultimately eclipsed by the 1986 electoral victory of the Democratic Labor Party (PDT), a left-wing populist party that demobilized civil society

in order to reimpose a more traditional clientelistic or 'tutelage regime' in which the party's influence was paramount. The initial proposal for some form of participatory budgeting actually originated within civil society, in large part to allow civil society organizations to renew their own sagging legitimacy in the face of the pervasive clientelism of the PDT government. The Union of Neighborhood Associations (UAMPA) was formed in the mid-1980s by many of the community movements that emerged in opposition to the military dictatorship, and in 1986 it proposed incorporating civil society actors in the budget-making process – an unprecedented idea that still lacked a clear institutional framework (Avritzer, 2002; Baiocchi, 2002; Wampler and Avritzer, 2004).

When the left-wing Worker's Party (PT) won the 1988 municipal elections, it won in large part because of public repudiation of the PDT and had yet to establish as a strong party in Porto Alegre. Despite divisions within the PT (Goldfrank, 2003), the party ultimately decided to make PB the cornerstone of its municipal policies (Avritzer, 2002; Baiocchi, 2002). Central to this decision were the close relations between the PT and the various civil society actors demanding greater popular participation in municipal government. Indeed, this combination of party commitment and close ties to autonomous (albeit sympathetic) social movements proved key to the success of PB (Heller, 2001).

Despite these favorable circumstances, PB got off to a rocky start. Participation was initially relatively low and actually declined during its first two years (Goldfrank, 2003). Rather than retreat into itself or abandon PB completely, the PT responded by working with civil society organizations, negotiating and perfecting the institutions of PB. Funding levels were actually increased along with the scope of PB, so that by the late 1990s 100 percent of all discretionary expenditures by the municipal government were decided through PB (Wampler and Avritzer, 2004: 307).<sup>25</sup> Deliberate efforts were also made to encourage local participants to think beyond their immediate communities so that PB effectively began to address city-wide concerns (Baiocchi, 2002).

PB operates on a yearly cycle.<sup>26</sup> It begins in March, when assemblies are held in each of the city's 16 districts. Delegates are elected to represent their local communities in subsequent phases of the cycle, as is a 42-member BP Council, which ultimately negotiates the final municipal budget with the local government. Budgets and projects from the previous year are reviewed. Delegates subsequently meet in intermediary meetings to determine regional priorities and discuss more general city-wide concerns according to designated thematic groupings. The BP Council is also responsible for balancing competing demands, setting priorities and distributing funds among regions and in accordance with larger city-wide priorities. Significantly, half of the available funds are distributed by a formal formula which is based on a region's prior access to PB funds, its population and each community's priorities. Finally, after negotiating the final municipal budget, the BP Council continues to monitor actual expenditures.

The end result of PB has been ‘a profound transformation of civil society itself’ (Baiocchi, 2002: 23). Over time, the level of public participation has continually increased, from just 976 in 1990 to 26,807 in 2000 (Wampler and Avritzer, 2004: 302). In contrast to the LPP, participation is open to all and a deliberate decision was made not to base participation exclusively on prior membership in any organization, often inviting people to participate for the first time. At the same time, however, the number of organizations has increased markedly as a result of the PB process. For example, conservative estimates suggest that the number of neighborhood organizations increased from 180 in 1986 to 540 in 1998 (Baiocchi, 2002: 25). As a result of these changes at the level of civil society, the UAMPA – which originally proposed PB as a way to strengthen democracy – has found its role in aggregating civil society’s disparate demands largely superseded by the PB process (Baiocchi, 2002). Ultimately, PB has become an example of how ‘civil society organisations challenge old practices, such as clientelism and patronage, while simultaneously offering concrete alternatives for new practices, strategies, and institutions’ (Wampler and Avritzer, 2004: 291).

Most significantly, growing levels of participation and organization tend to concentrate in poorer areas, and people with lower incomes and levels of education tend to predominate in the PB process. This, plus the fact that municipal expenditures have been deliberately redistributed toward poorer areas of the city underscores the empowerment PB offers disadvantaged groups. As Baiocchi (2002: 33) emphasizes, this success reflects the fact that ‘participatory institutions in the case of Porto Alegre have addressed issues that were central to the concerns of civil society.’ More precisely, citizens can see how their collective activities contribute to policy making in positive ways, creating a potentially virtuous circle of growing civil society strength, dispersion of economic and political power and more inclusive democratic governance.<sup>27</sup>

### **Conclusion: civil society, the state and the quest for citizenship as agency**

The obstacles to achieving citizenship as agency posed by the dominant model of citizenship as consumption and neopluralism at times seem insurmountable. Certainly, this is one conclusion that could be drawn from Bolivia’s experience with its Popular Participation Law. Yet the quite different experience of Participatory Budgeting in Porto Alegre highlights the direction that must be sought in order to devise strategies for realizing citizenship as agency in the twenty-first century.

The contrast between Bolivia and Brazil demonstrates that political will, while necessary, is by no means sufficient to achieve citizenship as agency and state–civil society synergy. This clearly was the goal of the people who designed LPP, but in cutting themselves off from civil society, the institutions they created could not live up to their own promise. It is a good example of how the exclusionary, top-down means they chose made it all

but impossible to achieve the more inclusionary, bottom-up vision of democracy that guided their efforts. The contradiction at the core of the LPP ultimately proved fatal in terms of strengthening civil society, creating citizenship as agency and state–civil society synergy.

This contrasts sharply with the experience of PB in Porto Alegre. Working with civil society, a clear and powerful alternative to citizenship as either cooptation or consumption was created, literally from the bottom-up. The synergistic interchange between the PT as a political party, civil society and the local state created a process that strengthened civil society and the quality of citizenship.

It is important not to exaggerate the success of PB Porto Alegre. It is clearly the most successful example out of more than 100 similar experiments, in a country with over 5,000 city governments. The ultimate challenge is either to truly ‘scale-up’ PB in the determination of national policies, and/or further decentralize decision-making authority to local governments so that larger issues can be addressed. Ironically, the latter was one clear goal of the LPP in Bolivia. Yet the obvious inconsistency in the methods by which it was pursued undermined the LPP’s promise. It remains to be seen if a more consistent process – one that deliberately attempts to build on the pre-existing strengths of civil society by working with it in constructive, positive ways – would fare any better. As Bolivia struggles to end its recent period of extreme political instability, perhaps the true challenge for its next generation of political leaders is to try to find out. [Editor’s note: since this chapter was first prepared, Bolivia elected its first indigenous president, Evo Morales, in early 2006.]

## Notes

- 1 Hugo Chávez of Venezuela perhaps epitomizes this threat to democratic governance, as he uses the legitimacy he has won in consecutive electoral victories to centralize political power at the expense of autonomous civil society organizations that could potentially challenge his monopoly over representation of the country’s impoverished majority. See Oxhorn (2003b).
- 2 This parallels in important ways Montesquieu’s belief that ‘the fragmentation and diversity of power within the political system’ was necessary to avoid despotism. To achieve this, the distinction between the state and civil society was blurred by the requirement that the monarchy legally recognize parliaments and estates, which in turn would hold the king accountable. See Taylor (1990).
- 3 The strength of civil society will also vary within countries due to the fact that power is often unequally distributed geographically. See Fox (1994); O’Donnell (1993).
- 4 This is not to say that the organization of subaltern groups will necessarily contribute to the emergence of political democracy, let alone civil society. Revolutionary groups seeking to capture the state, for example, are antithetical to the idea of civil society expressed here. The organization of subaltern groups also has frequently led to an authoritarian backlash.
- 5 It also distinguishes this approach from those stressing the importance of deliberation and discourse for understanding civil society’s contribution to democrat-

ization processes. See Avritzer (2002); Cohen and Arrato (1992). I will return to this issue later.

- 6 This ideal of inclusion is not limited to new democracies; the so-called 'new social movements' that emerged throughout Western Europe, Canada and the United States starting in the 1960s reflect the same dynamic, albeit in the less dramatic circumstances associated with consolidated political democracies and modern welfare states.
- 7 The term was originally coined by Peter Evans, although I use it more broadly to understand particular kinds of state–society interactions. See Evans (1997).
- 8 Under repressive military regimes, the Catholic church often played this crucial role. With the demise of such regimes, however, the church has withdrawn from this role, frequently creating a vacuum that only the state can effectively fill, although international aid has helped.
- 9 In the absence of such a threat, 'citizenship' in any meaningful sense existed only for a very small (often white) elite. This was true throughout Central America (excluding Costa Rica), Paraguay and, apart from a brief period that began with the 1952 Revolution and ended in military rule in the early 1960s, Bolivia. Social exclusion was so extreme in these cases that it makes little sense to discuss them in terms of models of citizenship and, particularly in Central America, one consequence of this was civil war.
- 10 This concept is further developed in Oxhorn (1995a); Oxhorn (2003c).
- 11 Argentina and Chile were partial exceptions because the strength of organized labor's roots in civil society created conditions approximating what Schmitter characterized as societal corporatism in Western Europe. But the autonomy of labor was constrained by other factors, including high levels of state intervention in union affairs. In both countries, the limits implied by controlled inclusion were ultimately imposed by extremely violent military regimes.
- 12 Latin America followed a very different teleology compared to what Marshall described for England, in which civil rights paved the way for political rights and, ultimately, social rights.
- 13 There have been all too many military interventions reversing the minimal advances associated with controlled inclusion in Latin America in the postwar period that were justified in the name of anti-communism, when in fact the threat stemmed from reformist movements that embodied a democratic model of citizenship as agency similar to that found in Western democracies. The only partial exception is Chile under Allende, who headed an avowedly Marxist government that pledged itself to respecting democratic institutional norms. I am not referring here to the revolutionary movements in Central America and Cuba, where the complete absence of any meaningful citizenship rights for the vast majority polarized societies to the point of civil war, although the reform policies that lead to the 1954 overthrow of the Arbenze government in Guatemala is the first example of this general problem in the region.
- 14 In sharp contrast to the past, when Latin America suffered from a variety of different forms of dictatorships that effectively denied any form of citizenship and generally only short-lived experiences with political democracy or even non-democratic regimes that attempted to institutionalize citizenship as cooptation, the only country in the region which does *not* reflect citizenship as consumption is Cuba.
- 15 I discuss these problems at greater length in Oxhorn (2004).
- 16 It also means that the poor who wander into the wrong neighborhoods stand out and the very 'movement of poor people through the city makes them possible criminals, or at least suspicious' Carrión (2003).
- 17 Such a relatively high score is not surprising given the high expectations instilled by Peru's 'second' transition to democracy after Alberto Fujimori was forced from power due to corruption scandals.

- 18 Of the 311 municipalities recognized by the LPP, 187 were new. Sixteen additional municipalities were created in recent years, bringing the current total to 327.
- 19 The LPP generally was most successful where previous patterns of state–civil society relations approximated synergy and citizenship of agency. In most instances where this was not the case, the prior dynamic of confrontation and excessive politicization tended to be exacerbated. See Oxborn (2001). Many of the ideas discussed in this section are developed at greater length in this work.
- 20 This process is discussed at length in Grindle (2000) and Van Cott (2000).
- 21 A good example of this is that in order to publicize the new law, the Secretaría Nacional de Participación Popular had to rely on small community radio transmitters – often with only a five kilometer transmission radius – because indigenous communities did not trust urban radio stations (personal interview, Gaston Zamora, Santa Cruz, July 16, 1999).
- 22 A subsequent reform increased this to 45 percent. See Galindo Soza (2004).
- 23 This problem was addressed in 1999 with the establishment of Social Control Funds to finance CV activities. Unfortunately, the fund was insufficient and lacked mechanisms for ensuring that the money would be spent appropriately. With some noticeable exceptions, the result of CVs receiving more funds has been to raise further questions about their social legitimacy without necessarily decreasing CV vulnerability to municipal and political party manipulation. See Maydana (2004).
- 24 One could argue that the challenges posed by PB in Porto Alegre were much less daunting than those posed by the LPP, given the much larger scale of the LPP. While this is perhaps true to a certain extent, it is also important to note that the LPP failed at the local level, given the central government’s ability to fiat in radical changes at the national level, and the same national level dynamics (corruption, excessive political party influence and pervasive clientelism) were very much a potential threat to the success of PB in Porto Alegre. More important, as will be stressed here, was the very different process behind Porto Alegre’s reforms in comparison to the LPP.
- 25 While impressive, it is important to note that 85–90 percent of municipal expenditures are not discretionary. And while Porto Alegre far outspends other cities on a per capita basis, total spending on PB projects in Porto Alegre only amounted to \$201 per person, 1996–1998. See Wampler and Avritzer (2004).
- 26 The following is based on Avritzer (2002) and Baiocchi (2002).
- 27 It is worth highlighting that in other contexts, where the scope for effective decision making through PB mechanisms is tightly controlled by a political party, as is the case of Recife in Brazil’s northeast, the impact of PB on the development of civil society has been considerably reduced. See Wampler and Avritzer (2004).

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# 10 Corruption, institutions and transcultural interaction

*Seumas Miller*

## Introduction

### *Varieties of Corruption*<sup>1</sup>

The causes and effects of corruption, and how to combat corruption, are issues that are increasingly on the national and international agenda of politicians and other policy makers. For example, the World Bank has relatively recently come around to the view that economic development is closely linked to corruption reduction.<sup>2</sup> By contrast, the *concept* of corruption has not received much attention. Existing conceptual work on corruption consists in little more than the presentation of brief definitions of corruption as a preliminary to extended accounts of the causes and effects of corruption and the ways to combat it. Moreover, most of these definitions of corruption are unsatisfactory in fairly obvious ways.

Consider one of the most popular of these definitions, namely, 'Corruption is the abuse of power by a public official for private gain.'<sup>3</sup> No doubt the abuse of public offices for private gain is paradigmatic of corruption. But when a bettor bribes a boxer to 'throw' a fight this is corruption for private gain, but it need not involve any public office holder; the roles of boxer and bettor are usually not public offices.

One response to this is to distinguish public corruption from private corruption, and to argue that the above definition is a definition only of public corruption. But if ordinary citizens lie when they give testimony in court, this is corruption; it is corruption of the criminal justice system. However, it does not involve abuse of a public office by a public official. And when police fabricate evidence out of a misplaced sense of justice, this is corruption of a public office, but not for private gain.

In the light of the failure of such analytical-style definitions it is tempting to try to sidestep the problem of providing a theoretical account of the concept of corruption by simply identifying corruption with specific legal and/or moral offences.

However, attempts to identify corruption with specific legal/moral offences are unlikely to succeed. Perhaps the most plausible candidate is

bribery; bribery is regarded by some as the quintessential form of corruption.<sup>4</sup> But what of nepotism? Surely it is also a paradigmatic form of corruption, and one that is conceptually distinct from bribery. The person who accepts a bribe is understood as being required to provide a benefit to the briber, otherwise it is not a bribe; but the person who is the beneficiary of an act of nepotism is not necessarily understood as being required to return the favour.

In fact, corruption is exemplified by a very wide and diverse array of phenomena of which bribery is only one kind, and nepotism another. Paradigm cases of corruption include the following. The commissioner of taxation channels public monies into his personal bank account, thereby corrupting the public financial system. A political party secures a majority vote by arranging for ballot boxes to be stuffed with false voting papers, thereby corrupting the electoral process. A police officer fabricates evidence in order to secure convictions, thereby corrupting the judicial process. A number of doctors close ranks and refuse to testify against a colleague who they know has been negligent in relation to an unsuccessful surgical operation leading to loss of life; institutional accountability procedures are thereby undermined. A sports trainer provides the athletes he trains with banned substances in order to enhance their performance, thereby subverting the institutional rules laid down to ensure fair competition. It is self-evident that none of these corrupt actions are instances of bribery.

Further, it is far from obvious that the way forward at this point is simply to add a few additional offences to the initial 'list' consisting of the single offence of bribery. Candidates for being added to the list of offences would include nepotism, police fabricating evidence, cheating in sport by using drugs, fraudulent use of travel funds by politicians and so on. However, there is bound to be disagreement in relation to any such list. For example, law enforcement practitioners often distinguish between fraud on the one hand, and corruption on the other. Most important, any such list needs to be justified by recourse to some principle or principles. Ultimately, naming a set of offences that might be regarded as instances of corruption does not obviate the need for a theoretical, or quasi-theoretical, account of the concept of corruption.

As it happens, there is at least one further salient strategy for demarcating the boundaries of corrupt acts. Implicit in much of the literature on corruption is the view that corruption is essentially a legal offence, and essentially a legal offence in the economic sphere.<sup>5</sup> Accordingly, one could seek to identify corruption with economic crimes, such as bribery, fraud and insider trading. To some extent this kind of view reflects the dominance of economically focused material in the corpus of academic literature on corruption. It also reflects the preponderance of proposed economic solutions to the problem of corruption. After all, if corruption is essentially an economic phenomenon, is it not plausible that the remedies for corruption will be economic ones?<sup>6</sup>

But many acts of corruption are not unlawful. That paradigm of corruption, bribery, is a case in point. Prior to 1977 it was not unlawful for US companies to offer bribes to secure foreign contracts; indeed, elsewhere such bribery was not unlawful until much later.<sup>7</sup> So corruption is not necessarily unlawful. This is because corruption is not at bottom simply a matter of law; rather it is fundamentally a matter of morality.

Second, corruption is not necessarily economic in character. An academic who plagiarises the work of others is not committing an economic crime or misdemeanour; and she might be committing plagiarism simply in order to increase her academic status. There might not be any financial benefit sought or gained. Academics are more strongly motivated by status, rather than by wealth. A police officer who fabricates evidence against a person he believes to be guilty of paedophilia is not committing an economic crime; and he might do so because he believes the accused to be guilty, and does not want him to go unpunished. Economics is not necessarily involved as an element of the officer's crime or as a motivation. When police do wrong they are often motivated by a misplaced sense of justice, rather than by financial reward. Again, a person in authority motivated by sadistic pleasure who abuses her power by meting out cruel and unjust treatment to those subject to her authority, is not engaging in an economic crime; and she is not motivated by economic considerations. Many of those who occupy positions of authority are motivated by a desire to exercise power for its own sake, rather than by a desire for financial reward.

Economic corruption is an important form of corruption; however, it is not the only form of corruption. There are non-economic forms of corruption, including many types of police corruption, judicial corruption, political corruption, academic corruption and so on. Indeed, there are at least as many forms of corruption as there are human institutions that might become corrupted. Further, economic gain is not the only motivation for corruption. There are a variety of different kinds of attractions that motivate corruption. These include status, power, addiction to drugs or gambling and sexual gratification, as well as economic gain.

We can conclude that the various currently influential definitions of corruption, and the recent attempts to circumscribe corruption by listing paradigmatic offences, have failed. They failed in large part because the class of corrupt actions comprises an extremely diverse array of types of moral and legal offences.

That said, *some* progress has been made. At the very least, we have identified corruption as fundamentally a moral, as opposed to a legal, phenomenon. Acts can be corrupt even though they are, and even ought to be, legal. Moreover, it is evident that not all acts of immorality are acts of corruption; corruption is only one species of immorality. Consider an otherwise gentle husband who in a fit of anger strikes his adulterous wife and accidentally kills her. The husband has committed an act that is morally wrong; he has committed murder, or perhaps culpable homicide or at least manslaughter.

But his action is not necessarily an act of corruption. Obviously the person who is killed (the wife) is not corrupted in the process of being killed. Moreover, the act of killing does not necessarily corrupt the perpetrator (the husband). Perhaps the person who commits a wrongful killing (the husband) does so just once and in mitigating circumstances, and also suffers remorse. Revulsion at his act of killing might cause such a person to embark thereafter on a life of moral rectitude. If so, the person has not been corrupted as a result of his wrongful act.

An important distinction in this regard, is the distinction between human rights violations and corruption. Genocide is a profound moral wrong; but it is not corruption. This is not to say that there is not an important relationship between human rights violations and corruption; on the contrary, there is often a close and mutually reinforcing nexus between them. Consider the endemic corruption and large-scale human rights abuses that have taken place in authoritarian regimes, such as that of Idi Amin in Uganda and that of Suharto in Indonesia. And there is increasing empirical evidence of an admittedly complex causal connection between corruption and the infringement of subsistence rights; there is evidence, that is, of a causal relation between corruption and poverty. Indeed, some human rights violations are also acts of corruption. For example, wrongfully and unlawfully incarcerating one's political opponent is a human rights violation; but it is also corrupting the political and judicial processes.

Thus far, examples of different types of corrupt action have been presented, and corrupt actions have been distinguished from some other types of immoral action. However, the class of corrupt actions has not been adequately demarcated within the more general class of immoral actions. To do so, a definition of corrupt actions is needed, and specifically of actions which corrupt institutions. To this task we now turn.

### *Definition of institutional corruption*

My definition of institutional corruption essentially consists of three necessary conditions for being a corrupt institutional action. I will state these as theses. The first thesis is what I will term the *Personal Character of Corruption*. It states that persons are relevantly involved in all corruption, and in institutional corruption in particular, either as corruptors, or as the corrupted, or as both.

Let us assume that there are at least two general – but not mutually exclusive – forms of corruption, namely institutional corruption and non-institutional personal corruption.

Non-institutional personal corruption is corruption of persons outside institutional settings. Such corruption pertains to the moral character of persons, and consists in the despoiling of their moral character. If an action has a corrupting effect on a person's character, it will typically be corrosive of one or more of a person's virtues. These virtues might be virtues that



attach to the person qua human being, e.g. the virtues of compassion and fairness in one's dealings with other human beings. Alternatively – or in some cases, additionally – these virtues might attach to persons qua occupants of specific institutional roles, e.g. impartiality in a judge or objectivity in a journalist.

Our concern here is only with institutional corruption. Nevertheless, it is plausible that corruption in general, including institutional corruption, typically involves the despoiling of the moral character of persons and in particular, in the case of institutional corruption, the despoiling of the moral character of institutional role occupants qua institutional role occupants. To this extent institutional corruption involves personal corruption.

Note that personal corruption, i.e. being corrupted, is not the same thing as performing a corrupt action, i.e. being a corruptor. Typically, corruptors are corrupted, but this is not necessarily the case. Note also that corruptors are not simply persons who perform actions that corrupt; they are also morally responsible for this corruption.<sup>8</sup>

The first hypothesis enables us to distinguish cases of institutional corruption from cases of institutional corrosion.

Acts of institutional damage that are not performed by a corruptor and also do not corrupt persons are better characterised as acts of institutional *corrosion*. Consider, for example, funding decisions that gradually reduce public monies allocated to the court system in some large jurisdiction. As a consequence, magistrates might be progressively less well trained and there might be fewer and fewer of them to deal with the gradually increasing workload of cases. This may well lead to a diminution over decades in the quality of the adjudications of these magistrates, and so the judicial processes are to an extent undermined. However, given the size of the jurisdiction and the incremental nature of these changes, neither the magistrates, nor anyone else, might be aware of this process of judicial corrosion, or even able to become aware of it (given heavy workloads, absence of statistical information, etc.). It seems that these judges have not undergone a process of personal corruption, and this is the reason we are disinclined to view this situation as one of institutional corruption.

Let us now reiterate the hypothesis of the *Personal Character of Corruption*. The hypothesis is that, to be corrupt, an action must involve a corruptor who performs the action or a person who is corrupted by it. Of course, corruptor and corrupted need not necessarily be the same person, and indeed there need not be both a corruptor and a corrupted; all that is required is that there be a corruptor or a corrupted person.

If a serviceable definition of the concept of a corrupt action is to be found – and specifically, one that does not collapse into the more general notion of an immoral action – then attention needs to be focused on the moral *effects* that some actions have on persons and institutions. An action is corrupt only if it corrupts something or someone – so corruption is not only a moral concept, but also a *causal* or quasi-causal concept.<sup>9</sup> That is, an action is

corrupt by virtue of having a *corrupting effect* on a person's moral character or on an institutional process or purpose. If an action has a corrupting effect on an institution, undermining institutional processes or purposes, then typically – but not necessarily – it has a corrupting effect also on persons qua role occupants in the affected institutions.

In relation to the concept of *institutional* corruption, the second hypothesis states (as a necessary condition) that an action is corrupt only if it has the effect of undermining an institutional process or of subverting an institutional purpose or of despoiling the character of some role occupant qua role occupant. This hypothesis asserts the *Causal Character of Corruption*.

In this regard, note that an infringement of a specific law or institutional rule does not in and of itself constitute an act of institutional corruption. In order to do so, any such infringement needs to have an institutional *effect*, e.g. to defeat the institutional purpose of the rule, to subvert the institutional process governed by the rule or to contribute to the despoiling of the moral character of the role occupant qua role occupant. In short, we need to distinguish between the offence considered in itself and the institutional effect of committing that offence. Considered in itself, the offence of, say, lying, is an infringement of a law, rule and/or a moral principle. However, the offence is only an act of institutional corruption if it has some effect, e.g. it is performed in a courtroom setting and thereby subverts the judicial process.

A further point to be made here is that an act that has a corrupting effect might not be a moral offence considered in itself. For example, provision of information by a corporate officer to an investor that will enable an investor to buy shares cheaply before they rise in value is not necessarily a moral offence considered in itself; passing on accurate information is an innocuous activity. However, in this corporate setting it might constitute insider trading, and do institutional damage; as such, it may well be an act of corruption.

The third and final thesis to be discussed concerns non-institutional agents who culpably perform acts that undermine legitimate institutional processes or purposes. My thesis here is that institutional corruption involves *institutional actors* who corrupt or are corrupted. I will refer to this as the thesis – in relation to institutional corruption – that *Corruptors or Corrupted are Institutional Actors*.

As concluded above, corruption, even if it involves the abuse of public office, is not necessarily pursued for private gain. Dennis Thompson also makes this point in relation to political corruption.<sup>10</sup> However, Thompson also holds that political corruption at least necessarily involves abuse of public office. We have canvassed arguments that, contra this view, acts of corruption, including acts of political corruption, might be actions performed by persons who do not hold public office, e.g. citizens who do not hold a public office, as opposed to, say, politicians. However, we now need to invoke a distinction between persons who hold a public office and persons

who have an institutional role. Citizens are not necessarily holders of public offices, but they do have an institutional role qua citizens, e.g. as voters.

To focus this discussion, consider a fundamentalist Muslim from Saudi Arabia who is opposed to democracy and who breaks into an electoral office in an impoverished African state and falsifies the electoral roll in order to facilitate the election of an extremist right-wing candidate who is likely, if elected, to polarise the already deeply divided community and thereby undermine the fledgling democracy. Let us further assume that the fundamentalist does so without the knowledge of the candidate, or indeed of anyone else. We are disinclined to view this as a case of corruption for two reasons: first, the offender is not an occupant of a relevant institutional role; he is not a citizen or even a resident of the state in question. Second, while the offender undermined a legitimate institutional process, namely, the electoral process, he did not corrupt or undermine the character of the occupant of an institutional role.

Accordingly, we can conclude that acts of institutional corruption necessarily involve a corruptor who performs the corrupt action *qua occupant of an institutional role* and/or someone who is corrupted *qua occupant of an institutional role*.

This enables us to distinguish not only acts of corruption from acts of corrosion, but also from moral offences that undermine institutions – specifically, institutional processes and purposes – but which are, nevertheless, not acts of corruption. The latter are not acts of corruption because no person in their capacity as institutional role occupant either performs an act of corruption or suffers a diminution in their character. There are many legal and moral offences in this latter category. Consider individuals not employed by, or otherwise institutionally connected to, a large corporation who steal from or defraud the corporation. These offences may undermine the institutional processes and purposes of the corporation, but given the non-involvement of any officer, manager or employee of the corporation, these acts are not acts of corruption.

Let me now summarise in definitional form the account of corruption elaborated above. An act X performed by an agent A is an act of institutional corruption if, and only if:

- 1 X has an effect, Ep, of undermining, or contributing to the undermining of, some institutional process and/or purpose of some institution, I, and/or an effect, Ec, of contributing to the despoiling of the moral character of some role occupant of I, agent B, qua role occupant of I;
- 2 At least one of (a) or (b) is true:
  - a A is a role occupant of I, and in performing X, A intended or foresaw that Ep and/or Ec, or A should have foreseen that Ep and/or Ec (A is a corruptor);
  - b There is a role occupant of I, agent B, and B could have avoided Ec, if B had chosen to do so (B is a corrupted).

Condition 1 expresses thesis two, the Causal Character of Corruption. Condition 2 expresses thesis two, the Personal Character of Corruption. Thesis three is expressed in those parts of 2(a) and 2(b) that define A and B (respectively) as institutional role occupants.

Let us now turn to the specific phenomenon of transcultural corruption. We begin with an account of transcultural interaction.

## **Transcultural corruption<sup>11</sup>**

### *Transcultural interaction*

I will stipulate that transcultural interaction is interaction between members of different social groups. So what is a social group? (Inevitably, I am offering a somewhat stipulative, and very rough, characterisation of the concept of a social group.)

A social group consists in a set of individual persons who are (at least) the current participants in some common structure(s) of conventions (including at least a structure of linguistic conventions). Conventions are essentially facilitative and instrumental social forms, whereas social norms embody the moral principles, values and perspectives of a social group. This is why the members of a social group by definition adhere to a common structure of *social norms*.

Such a structure of social norms is necessarily embedded in the institutions of the social group in question.<sup>12</sup> Hence, there is a further condition for being a social group, namely, a common structure of institutions, including at least linguistic, kinship, legal (or quasi-legal) and economic ones.

Most English and German people speak English and therefore share a structure of conventions, namely, the conventions of the English language. They also share a common structure of social norms, including those embodied in the criminal laws of both countries. Further, they share a similar set of structures of institutions, including those of the modern nuclear family, capitalism and the liberal democratic state. But the Germans and the English do not constitute a single social group. One reason for this is the lack of a common inter-generational history. The history of the English certainly intersects with that of the Germans, but they are nevertheless relatively distinct. Let us then add the following condition for being a social group: a common stretch of inter-generational history.

A final point about social groups. In the contemporary world many social groups are organised into nation states. But many, perhaps most, nation states have multiple social groups, or at least hybrids of social groups. At any rate, social groups and nation states are conceptually distinct, and the membership of a given social group is not necessarily identical with the membership of the nation state to which many, or indeed all, of the members of that social group belong.

Transcultural interaction is, and always has been, a pervasive feature of social groups. Throughout the course of history, many, if not most, social

groups have interacted with some other social groups communicatively, economically, sexually and so on. I want to distinguish between two such forms of transcultural interaction.

Since communicative, economic and sexual interactions – at least to the extent that they are voluntary – are to some extent structured by conventions, so transcultural communicative, economic and sexual interactions will be structured by conventions, to which the members of both interacting social groups will be party. Dialogue between members of different social groups, societies and cultures presupposes a common language. This remains true notwithstanding problems of differences in interpretation. For example, French used to be the international language and now English is. Non-institutionalised, but ongoing, trade between societies presupposes a commonly adhered to set of conventions, whether they be conventions governing barter transactions or ones governing some form of monetary exchange.

However, such merely convention-governed forms of transcultural interaction need to be distinguished from transcultural interaction that takes place in the context of transcultural *institutions*. Institutions consist in part in conventions, but they involve much more; they involve social norms, including ones that in part define institutional roles and institutional processes. Moreover, normatively speaking, institutions serve collective purposes.<sup>13</sup>

Examples of transcultural institutions include the current system of international law, the international financial system(s) and multinational entities such as the United Nations and multi-national corporations. The class of transcultural institutions includes some institutions that are not themselves necessarily *transnational* institutions. For example, western-style political or legal institutions grafted onto a tribe-based society and/or a society comprised of very diverse social groups. The political and legal institutions of the contemporary South African nation state is a case in point.

Transcultural institutions contain an inherent tension. On the one hand, they consist of institutional role occupants from different social groups, and/or role occupants who interact with external persons who are members of different social groups. On the other hand, these transcultural institutions straddle different social groups and provide an institutional framework for transcultural interaction between members of these different social groups. The tension, or at least potential tension, arises because the role occupants, or clients, consumers or citizens, of these transcultural institutions are also role occupants of their local, i.e. non-transcultural, institutions, and there is no guarantee that the respective institutional requirements and attitudes, including moral requirements and attitudes, of transcultural and local institutions will mesh, let alone be identical with one another.

Equipped with these admittedly rough characterisations of social groups, transcultural institutions and types of transcultural interaction (convention governed and institution governed), let us now turn to the phenomenon of transcultural corruption.

### *Transcultural corruption*

Transcultural corruption is institutional corruption that occurs as a consequence of actions performed in the course of transcultural interaction. The institutions thus corrupted could themselves be transcultural institutions, or they could be local institutions (or they could be both).

As with any form of institutional corruption, transcultural corruption conforms to our three theses: Personal Character of Corruption, Causal Character of Corruption and Corruptors or Corrupted are Institutional Actors.

In addition, we need to invoke a distinction between subjectively valid social norms and objectively valid moral norms. A social norm is a type of action or inaction which members of some social group *believe* to be morally right. However they are not necessarily objectively valid. An objective moral norm is a type of action or inaction which is, as a matter of objective truth, morally right.

Likewise, there is a distinction between actions that are merely believed to be acts of corruption – that is, acts of corruption, subjectively speaking – and actions that are acts of corruption, objectively speaking. The latter, but not necessarily the former, actually corrupt some institution or person.

It also needs to be noted that the concept of an objectively corrupt action is the concept of an action which is objectively corrupt relative to a person and relative to a set of circumstances. Lying can be morally right or morally wrong, depending on the circumstances. Moreover, lying in one institutional context might be institutionally damaging but not in another. So a police officer who tells a lie is performing a corrupt act if he tells the lie in a court of law, but not if he tells the same lie when functioning as an undercover operative. This reflects the causal character of corruption. Same moral or legal offence, different institutional effect.

In my account of institutional corruption, a corrupt act is corrupt by virtue of corrupting some institution. And I have already noted, that the corruption could be of the transcultural or of the local institution (or both). Here it is important to distinguish between corruption and corrosion. The actions of the role occupants of powerful, transcultural institutions might have a corrosive effect on traditional local institutions without corruption necessarily taking place.

As mentioned above, it cannot be assumed that the only institutions that can be corrupted are the transcultural institutions that have in many cases been grafted onto traditional social institutions of a very different kind. Nor can it be assumed that an act which corrupts a transcultural institution will necessarily also be one that corrupts a local institution.

When compliance with the requirements of the transcultural institution has a corrupting effect on the local institution (or vice versa) then a judgment may need to be made in respect of the moral weight to be attached to the adjustment, transformation or even survival of one or other (or both) of these two institutions in conflict. Compliance with the dictates and

processes of a local and traditional system of justice based on the village panchayat in India might be inconsistent with the requirements of a western-style national judicial system of the sort now established in India. Again, compliance with the processes, roles and purposes of a multinational may collide with the implicit and/or explicit requirements or needs of local economic institutions. As a consequence, the local economic institutions may simply be overpowered and collapse or suffer substantial corrosion.

We need now to distinguish various species of corrupt actions and activities in respect of their seriousness, extent and the degree of collaboration that they involve. First, there is *individual* corruption. This essentially involves individuals working on their own. For example, a motorist might pass money to a traffic police officer to avoid a fine for speeding.

Second, there is *organised* corruption in the sense of corrupt activities carried out by an organisation that exists for the purpose of undertaking that corrupt activity. For example, a criminal organisation such as the Mafia, or the Chinese Triads or the Yakuza might have a concerted and ongoing practice of bribing politicians to ensure that their drug trafficking activities are not unduly interfered with.

Third, there is *organisational* corruption. This is pervasive and interdependent corruption within an organisation. However, the organisation does not exist for the purposes of engaging in corrupt activities.

Further, there is *systemic* corruption, and there is also *grand* corruption. The use of the term 'systemic' indicates that the corruption is pervasive and interconnected across many organisations and institutions. Systemic corruption consists of the erosion of social norms, and as such is widely dispersed across organisations, institutions, social groups and societies.

Grand corruption involves large-scale corruption of a very serious kind, and it exists at the highest levels of one or more fundamental institutions, e.g. in the judiciary and in government.

*Transcultural* institutional corruption can take any of the above forms. It can be individual, organised, organisational, systemic and/or grand in character. Obviously, as with non-transcultural corruption, transcultural corruption constitutes a larger problem if it is, say, grand corruption, than if it is individual corruption.

More important for my purposes here, by virtue of a number of features of transcultural interaction, transcultural corruption is especially problematic, whether it be individual, organised, systemic or grand corruption that is in question. This is in part because it offers a number of attractive rationalisations and socio-psychological drivers not necessarily available to those engaging in non-transcultural corruption.

### Conditions conducive to transcultural corruption

The proposition to be advanced in this final section is that in transcultural contexts, including transcultural *institutional* contexts, there is often a

variety of conditions that are conducive to corruption; conditions that are either typically not found outside these contexts, or conditions found in other contexts but conditions, nevertheless, that are more conducive to corruption in transcultural contexts than in non-transcultural ones.

Commitment to social norms, including those in part definitive of institutional roles, processes and purposes – and the feelings of shame generated by non-conformity – often weakens when dealing with members of another society. ‘What do I care what they think?’ (‘I only care what *we* think.’) Correspondingly, members of the other society are going to be less concerned to express disapproval of one’s actions. ‘What do we care what they do?’ In short, there is more likely to be an ‘us–them’ mentality, a lack of trust and a willingness to bend or break moral norms in the service of self-interest.

Further, social norms are sometimes norms only for members of a given social group, or for a given set of institutional actors in a given social group, but not for other persons not of that group or institution. Naturally, many social norms are near enough to being universal moral norms. But some are not. For example, social norms of honour can differ greatly from one society or culture to another. On the other hand, there may be a substantial difference with respect to the extent to which compliance with the same social norm is expected by members of one social group by comparison with members of another social group. For example, a level of deception is typically involved in business dealings – a seller tries to make out the goods are better than they might in fact be, the buyer that he or she is less interested than is actually the case, and so on. But now an issue can arise concerning the nature and degree of deception that is acceptable in given transcultural, including trans-institutional, contexts. Not being bound by one’s initial word might be morally acceptable to a Japanese business person, but morally unacceptable to his Australian counterpart. What is an Australian business person to do when dealing with the Japanese in Japan? For him/her to ‘do as the Romans do when in Rome’ might well be against his/her conscience, because it is against his/her social norms. It can be viewed as corrupt, and thus as corrupting. On the other hand, to refuse to accept the social norms constitutive of the role occupants of some social group may be to court disaster – one may as well have stayed home.

Differences in institutional frameworks, as opposed to difference of degree in relation to specific moral norms, raise more profound questions. Consider different institutions of property rights. Individual property rights in relation to intellectual goods – including copyright – might have a certain structure and stringency in the Anglo-Saxon world, but not in China. In China intellectual property might be regarded as essentially a socially owned good. If so, this might partly explain recent disputes between the Chinese and US governments. But in that case, is a Chinese person copying material ‘owned’ by a US company really doing something morally wrong? More important, given our focus on corruption, is the Chinese business person who copies and sells material ‘owned’ by a US company engaged in a corrupt



practice? Certainly, he or she (jointly with others) might be undermining the institution of private ownership of intellectual property. However, perhaps the Chinese business person ought not to be regarded as an institutional actor in this setting – perhaps he or she does not really belong to *that* economic institution. If so, according to thesis three, the action is not one of corruption. On the other hand, arguably the Chinese business person is a role occupant of the transcultural economic system and, therefore, his/her action ought to be regarded as corruption.

The copyright issue also involves a background question as to whether or not the transcultural institution in question ought to be preferred to the local one or, if there is no local competing institution, ought to be the preferred transcultural institution.

And there is this further point arising from the copyright issue. Acts of corruption – and certainly acts of corrosion – are not necessarily, all things considered, morally unacceptable. Perhaps the Chinese business person is performing a corrupt action but it is, nevertheless, morally defensible to do so. If you think not, then let us change the example. What if the goods in question were generic drugs produced cheaply in India and sold cheaply to impoverished African states in contravention of India's legal requirements?

Issues like this one indicate the importance of implicit or explicit 'agreement' in relation to moral disputes and in relation to the resolution of institutional incompatibility and conflict. When social norms, including those in part definitive institutions, clash it might be necessary to redesign transcultural institutions in ways that are sensitive to local institutions. Such redesign might give rise not only to new institutional forms, but also to new or adjusted social norms. At any rate, the general point is that the real or apparent differences in conventions, social norms and institutional roles and processes can give rise to a greater or lesser degree of collective moral conflict and collective moral confusion in transcultural interaction. And moral conflict (in this sense) and moral confusion are conditions that are conducive to corruption.

There are typically, or at least often, jurisdictional problems in transcultural interaction, including in relation to legal accountability. Transcultural interactions of the corrupt kind are often trans-national and therefore – in the absence of special agreements – trans-jurisdictional. (Extradition agreements are one attempt to deal with this kind of problem.) Pornography placed on the World Wide Web, or beamed by satellite emanating from the US, but accessible by someone in Malaysia creates jurisdictional problems. Pornography is legal in the US and illegal in Muslim Malaysia; moreover, arguably pornography ought to be illegal in Malaysia, but not the US, because it corrupts (say) Islamic religious institutions. (This illustrates the possibility that there can be a corrupted (the Islamic Malaysian porn consumers) without a corruptor (perhaps the US purveyors of porn are blithely unaware of the effects their material is having on Islamic attitudes and practices.) And law enforcement may only be effective if it is the senders who are

subject to sanctions. But in that case, should the US legislate against international communication of pornography when it does not legislate against domestically distributed pornography? And if it should, who should be the one to make that decision? The US? Why not an international body? Such jurisdictional problems provide loopholes for corruption – in this instance the corruption of a Malaysian institution.

Laws differ from one society to another. Health and safety regulations in industry might be stricter in an affluent society. This might be because health and safety equipment, pollution control, and/or the training of personnel are expensive. Again, minimum wages are higher in affluent societies than in poorer ones. Should multinationals pay the same wages from one country to the next? Should they insist on the highest health and safety standards, including in relation to personnel, from one country to the next? This is partly a question of the institutional effect of these decisions; paying higher wages, for example, might create perverse incentives that distort or undermine local institutions. On the other hand, low wages and less strict health and safety regulations might simply be reflective of the low moral regard that the members of the social group that controls a transcultural institution have for members of the social group that are employed by, or otherwise interact with, that institution in a foreign country. The former social group – whether explicitly or implicitly – believes the latter social group to be morally inferior and, in the context of the lopsided power relationship, this belief is acted upon.

And there are other considerations. Surely one is under an obligation to obey the reasonable laws of one's own society. But to what extent is one under an obligation to obey the laws of another country? As a visitor one is present in that country. However, these are not the grounds on which one has an obligation to obey the laws of one's own country. And in any case, why does merely being in a place obligate one to fall in line with the laws it happens to have? But the point is, in the absence of a moral justification for obeying the laws of a foreign country, is there not increased scope for corruption? After all the purpose of many laws is to protect institutions, and the flouting of those laws may well have a corrupting effect on those institutions. Consider laws against giving lavish gifts to public officials. And even if there is some adequate moral justification for obeying the laws of another society, it might not feel like there is; there might not be adequate psychological compulsion. Once again, we have a species of moral confusion, a condition conducive to corruption.

The relationship between macro-entities such as nation states or societies is not the same as that between individuals in a society. Individuals in a society participate in a moral order embodied in a structure of institutions, and do so, at least in theory, as equals. Moreover, individuals within macro-entities such as societies, nations or organisations are driven along to some extent by the momentum – including the structure and goals – of that macro-entity. However, in these macro-entities there may be no moral order

embodied in an institutional structure, or such institutions as exist may be too weak to be effective. In particular, the institution of international law may be too weak to function as an institution for enforcing morality in relation to the 'actions' of macro-organisations (such as nation states and multi-nationals), in the international arena.

The relationships between individual human beings, especially ones who are part of the same macro-entity, only faintly resembles the relationship between macro-entities – between a huge and authoritarian entity such as China and, say, a small fledgling democracy such as Taiwan, or between Indonesia and East Timor, or the US and Grenada. Morality does not disappear in such lopsided power relationships. If anything, moral questions become more pressing because of the likelihood that overwhelming power will be abused. But there is, nevertheless, a real issue as to what to do when one finds oneself in such a lopsided power relationship. It is not as if the power relationship can be overcome or even significantly reduced. But the point is that the potential for corruption is extraordinarily high. Consider the UK's handing over of Hong Kong to China. In effect, against its will a democratic polity became a sub-institution of an authoritarian state, for a majority of the people living in Hong Kong did not wish to return to Chinese rule. What now are the prospects for Hong Kong qua democratic polity? At one level, this particular instantiation of a democratic institution has already been overpowered, since it is now a sub-institution of the People's Republic of China. However, at another level its democratic character has simply been diluted, indeed corrupted, by an extraneous authoritarian institution which makes requirements of it, and subjects it to a variety of ongoing pressures.<sup>14</sup>

The general point to be made about corruption arising from interaction in the context of lopsided power relationships is as follows. We have already identified a range of conditions conducive to corruption that obtain in transcultural interaction, but not elsewhere. Transcultural interaction that takes place in the context of a lopsided power relationship between the institutional actors is, therefore, likely to be even more conducive to corruption than in other contexts.

## Notes

- 1 This section is taken from Miller, Seumas 'The Concept of Corruption' *Stanford Encyclopedia of Philosophy* (2005). An earlier version appeared in Seumas Miller, Peter Roberts and Edward Spence (2005) *Corruption and Anti-Corruption: an Applied Philosophical Study* (Saddle River: Prentice Hall), Chapter 1.
- 2 World Bank (1997) *Helping Countries Combat Corruption* (Washington, DC: World Bank).
- 3 For one of the most influential statements of the abuse of public office for private gain definitions see Nye, Joseph (1967) 'Corruption and Political Development: A Cost-benefit Analysis', *American Political Science Review* 61(2): 417–427.
- 4 Noonan, John (1984) *Bribes* (New York: Macmillan).

- 5 This is implicit in much of Susan Rose-Ackerman's influential work on corruption. See Rose-Ackerman, S. (1999) *Corruption and Government: Causes, Consequences and Reform* (Cambridge: Cambridge University Press).
- 6 See Rose-Ackerman (1999) for this kind of view. See Hindess, Barry (2001) 'Good Government and Corruption', in Peter Larmour and Nick Wolanin (eds) *Corruption and Anti-Corruption* (Canberra: Asia Pacific Press) for a contrary view.
- 7 See the Foreign Corrupt Practices Act of 1977, Public Law 95-213 (5305), 19 December 1977, United States Code 78a, Section 103. See also Organisation for Economic Co-operation and Development (OECD) Convention Against Bribery of Foreign Public Officials in International Business Transactions of 15 February 1999.
- 8 In fact there is an important exception to this, namely, corrupt persons who are not responsible for being corrupt and whose actions are an expression of their corrupt characters. I discuss this issue in detail in Miller (forthcoming), op. cit.
- 9 This kind of account has ancient origins, e.g. in Aristotle. See Hindess (2001).
- 10 Thompson, Dennis (1995) *Ethics in Congress: From Individual to Institutional Corruption* (Washington, DC: Brookings Institute), p. 29.
- 11 An earlier version of the material in this section appeared in Miller *et al.* (2005), Chapter 5.
- 12 Miller, Seumas (2001) *Social Action: A Teleological Account* (Cambridge: Cambridge University Press), Chapter 6.
- 13 Miller (2001), Chapter 6.
- 14 However, arguably this is not a case of *transcultural* corruption. This depends on whether the Hong Kong inhabitants who are predominantly ethnic Chinese are to be regarded as belonging to the same social group as those of the People's Republic of China (the latter is, of course, itself a multi-cultural state).



Part IV

# Civil society and global governance

Panacea or problematique?



# 11 Postsecular civil society

*Wayne Hudson*

## Introduction

Many scholars have noted that the persistence and indeed in some contexts revival of religion poses problems for the practice of contemporary governance, but much less has been written about the relevance of postsecular arrangements. In this chapter I propose some parameters for postsecular civil society as a response to a range of contemporary challenges.

The term 'civil society' is found everywhere, yet what it means is often unclear. There is no single European concept of civil society. On the contrary, the term is used in multiple, conflicting and contradictory ways, many of them dependent upon a detailed understanding of the context and language in which they were originally used. This means that it is a fundamental mistake to abstract a concept from popular summaries or encyclopaedias, and then to seek to apply that concept to other parts of the world. Talk of 'civil society' is sometimes a form of self-mystification which leads those who use this term not to notice analytically crucial differences in what social actors in different countries mean by it. Hence civil society can refer to the economy, to non-economic realms or to both. It can include elements of the state and state organized institutions or be non-state. It can be wholly private or public. It can include personal life and the family or exclude them. It can be non-ethnic, non-religious and non-particularist, or ethnic, religious and particularist. In addition, contemporary accounts of civil society often attribute to civil society characteristics derived from teleological functions associated with it. Thus many accounts assume that civil society is to be equated with an ideal normative framework, as if civil society was the good society and the antithesis of the state (Misztal, 2001). There is no reason, however, to assume that associations which are intermediate between the state and the family are morally positive or modern or capitalist, or that civil society necessarily promotes democracy. Likewise, civil society cannot be assumed to be progressive, democratic, modernizing and egalitarian. Even if voluntary organizations have a role in the overthrow of despotic regimes, they do not necessarily create the conditions for democratization or amount to coherent alternatives to these regimes, as eastern



European experience shows. Moreover, many contemporary writers seem to confuse civil society with arrangements which initiate, enable or protect democracy, including the rule of law, freedom of the press, speech, assembly and religion, the practice of publicity, civility (particularly towards 'the other' or strangers' respect for human rights and especially rights which can be exercised against the state), the existence of a public–private distinction, institutional recognition of the public sphere, pluralism, civic participation and citizenship, even though some at least of these arrangements could be put in place without establishing civil society.

At the very least, it is essential to distinguish between:

- forms of governance other than the state;
- non-state forms of organization;
- associations, organizations and institutions which are intermediate between the state and the family;
- voluntary associations;
- non-governmental associations;
- economic pressure groups seeking to protect sectional economic interests;
- professional organizations of various kinds;
- practices of civic freedom;
- social movements.

Although all of these may be structurally associated in contemporary forms of Western civil society, there is no reason to claim that they have to be so associated in all possible forms of civil society. In so far as the contemporary literature on civil society often fails to observe these distinctions and endemically confuses Western configurations of civil society with civil society *per se*, it arguably provides an inadequate basis for socio-political analysis.

Once, however, the term 'civil society' is historicized and allowance is made for different civil societies in different parts of the world,<sup>1</sup> it becomes clear that civil society cannot be assumed to be necessarily secular.

### **Postsecular civil society**

Assuming these refinements, I now introduce a prospection of postsecular civil society. Much of the Western literature on civil society is shaped by Enlightenment conceptions of 'religion' and 'the secular' and assumes that in the long run religion will decline, or at least play less and less a role in public affairs. Today, however, European conceptions of 'religion' and 'the secular' are contested,<sup>2</sup> and there is empirical evidence that religion is not declining or absenting itself from public affairs. Moreover, fundamentalist religion, both Islamic and Christian, is a major problem, both internationally and within some nation states. In this context it may be useful to explore civil society in terms which are neither secularist nor confessional.

Conceiving postsecular civil society means conceiving of a different spatialization of sacrality in transformed circumstances. This spatialization seeks to eliminate the bias introduced by the outcome of the European Thirty Years War and by the European Enlightenment's critique of religion. The European Enlightenment was surely right to attack superstition, and to promote rationality, personal autonomy and social reform, but its critique of religion, which underlies many forms of secularism, was arguably mistaken. Specifically, the European Enlightenment was mistaken to view religion as *a matter of beliefs about the true which are false*. It was also arguably wrong to reject;

- cultural indirection,
- symbolization,
- counterfactual projection,
- ritual, and
- traditions

as outmoded and of little value for future social development.

If, however, cultural indirection, symbolization, counterfactual projection, ritual and traditions are needed for future social flourishing then civil society may need to be organized differently. Certainly it is not difficult to accept that some aspects of life in civil society can be religious and/or sacral. Indeed there is some reason to expect that some aspects of life in civil society will show sacral features, even in societies in which confessional religion has become weak, as the cases of Sweden and the Netherlands suggest. Then, a little more radically, it is now widely conceded that attempts to separate religion and politics are hopeless in many Asian societies, so that something more subtle and negotiable is needed to make secularity work in countries like India and Indonesia.<sup>3</sup>

### *Public and private spheres reconfigured*

By enacting the sacral in the public sphere, postsecular civil society would perhaps be such a more subtle and negotiable organizational form, one which implies, however, some amendments to liberal conceptions of 'public' and 'governance'. Contemporary understandings of 'the public' are largely shrunken and do not preserve the wider indications associated with the *res publica*. Today what properly belongs to the public sphere is disputed, and activities that were once assigned to the private sphere, especially reproductive behaviour, have become issues in the public domain. Certainly 'the public' can no longer be simply the public sphere that emerged in eighteenth century Europe.<sup>4</sup> To this extent, there is a need to apply reason to the contemporary task of reinventing the institution of 'the public' while at the same time recognizing that 'the public' in the future may not be exclusively tied to the nation state. It is more radical, at least in terms of liberalism,

to suggest that the public should be reinvented to include and enact the sacral, but this is what postsecular civil society on my account involves. Similarly, 'governance' (understood as the sum of the many ways individuals and institutions, public and private, manage their affairs and as including multinational corporations, the mass media, non-governmental organizations and citizens' movements, as well as the governments of nation states)<sup>5</sup> can be reconfigured to allow the sacral to have a greater role, both in the sense that religious institutions impact on how civil society operates, and in the more controversial sense that sacral considerations are relevant to decisions about preferred governance. Here postsecular civil society implies a major qualification to some liberal and cosmopolitan versions of secularism which imply that only what counts as a public reason should count.

There is worse to come. Postsecular civil society might not recognize liberal versions of the public–private distinction in all domains, most controversially the family, and would not be organized around the myth of religious voluntarism in societies where it is overwhelmingly and outrageously counterfactual. Here the presumption would be that appeal to general principles is often less useful than contextual negotiations of such principles which take account of different cases. Hence postsecular civil society in some countries might be compatible with the existence of religious parties, while in other countries constitutional doctrine might count heavily against them. Related qualifications might pertain in the case of group rights, especially in societies with oppressed indigenous populations, although this is more controversial and raises major problems of political and legal ontology.

Assuming that civil society can be envisaged as *not separate from the state* – households, media, markets, churches, voluntary associations and social movements are already partially state controlled in the most successful democracies, and by direct as well as indirect means, despite the many Western accounts of civil society which assert something very different (Hall, 1995; Keane, 1988) – and as *not involving a rigid separation of religion from politics*, then the question arises of whether such civil society can be non-secular, and, if so, in what sense. Postsecular civil society would be non-secular in the sense that it would include and celebrate sacral dimensions not only in religious life, but in economic life as well. Further, it would not exclude spiritual concerns from public life or render them trivial, as Western secularism has tended to do.<sup>6</sup> Nor would it prohibit the enactment of religion in the public sphere.

### Resacralizing the secular

On the other hand, postsecular civil society would deploy sacral institutions to overcome some of the pathological consequences of Western modernity, including the erosion of traditional cultures and the ethical disorientation of youth, especially in Korea and Japan. These institutions might conceivably help to counter the disaster of youth mental illness and suicide and also

provide pleasurable activities for ageing populations. These institutions might perhaps help to limit the appeal of fundamentalist religion, including the return of the repression version of fundamentalism currently evident in the United States.<sup>7</sup> Obviously such arrangements would not impose confessional religion on anyone, or exclusively privilege one religious tradition. To this extent, the parameters advocated here might require legal reforms to be made in Indonesia, Malaysia and Pakistan. At the very least Muslim scholars would have relevant criticisms of any such proposal, which, in turn, might provoke useful debate.

Given the parameters advocated here, any arrangements adopted in postsecular civil society would need to fall within the ambit of a multi-faith pluralism. It would be essential not to allow either religious hegemony or the corrupt use of religious institutions for political and economic purposes, although only strong legal secularity may prevent this in practice, as secularists in my view correctly maintain. Nonetheless, the sacral institutions of postsecular civil society would be intrinsically different from pre-modern finalist versions of *shariah* and also from the integralist regimes that characterized many Catholic states before 1950, just as they would contradict some of the separationist accounts of church–state relations dominant in American discourse. They would be so because they would fuse the sacral and the secular in appropriate cases, while building into both public civil obligations manifestly lacking from traditional sacral regimes.

Many people are justifiably and perhaps wisely concerned that postsecular civil society in this sense would undermine the secularization of the political domain and encourage regressive social developments. In the context of this discussion, however, postsecular can bear a double sense. On the one hand, it implies *a move beyond the weaknesses of secularism*, understood minimally as the exclusion of religion from politics, and, more maximally, as a hegemonic cultural practice which assumes that religions are irrational, matters of personal choice relevant only in the private sphere and manifestations of a pre-scientific mentality, which it is appropriate to restrain and repress as soon as it threatens to become involved in the serious concerns of political, cultural, social and economic life. On the other hand, postsecular can and should imply that *the benefits of secularism have been accepted and as far as possible preserved*. Hence on my account postsecular civil society would be compatible with a strong but restrained version of secularity of the type already practised to some extent in India and also with conservative but enlightened Catholic utopias which insist that clergy should not take over the work of lay people in any area.<sup>8</sup>

Postsecular civil society on my account is paradoxically consistent with the view that the state should regulate manifestations of religion and impose civil values, where need be, on forms of religious education and practice, provided it does so in ways that are constitutional, permitted by law and consistent with human rights, including the right to practise one's religion. Postsecular civil society is not an attempt to bring back confessional

religion, which in the Islamic world in many countries has not withdrawn. But it is an attempt to distinguish prudential secularity from the repression of sacrality.

On my account postsecular civil society can only realistically allow a greater role for the sacral if it is committed to state-based regulation and reform of religion, as the Indian case in large measure suggests. It is significant that the importance of religious reform has been relatively neglected in Western discussions of political reform, partly because of an expectation that religion will eventually disappear. But this approach rests on a form of wishful thinking. Both the spread of fundamentalisms and signs of revivals of spirituality and sacrality in first world countries suggest that religion may remain more important in both commercial and educational contexts than has been assumed, just as disillusion with the modernizing religion of the mainline Christian churches has already presaged a spirituality boom. In postsecular civil society the state can and would require religious organizations to meet international as well as national governance standards, for example, in the managements of their assets and staff. It would also require them to practise multi-faith toleration and cooperation in their activities, and to render all their activities consistent with global citizenship ideals and human rights declarations. Hence they can be made to acknowledge that recognition of the freedom of others is a condition for their own exercise of freedom, to adopt democratic processes, to conform to natural justice in their bureaucratic dealings and to provide transparent information and accounting so that their wealth and power become matters of public record, internationally as well as nationally. Likewise, the state can specifically proscribe religious arrangements that undermine autonomy and keep people dependent in their spiritual lives.

There is one further and even more controversial element to the prospection of postsecular civil society which I want to raise. On my account it is not enough merely to envisage a more sacral form of civil society within a nation state because the sacral is becoming caught up with globalization (Casanova, 2001; Thomas, 2001), both within the so-called major world religions and beyond them. To this extent, it may be necessary to take account not only of confessional organizations of many kinds, but of the emergence of a form of civil religion which does not depend on world views or beliefs, has no authoritative metaphysics or cosmology and is oriented towards new social life that is not bound back. If so, then a case may be able to be made for a public civil theology in roughly M. Terentius Varro's sense to regulate and rationally manage this global civil religion.

This raises the stakes by providing a body of rational theorization which supplements and possibly, in part, contradicts the secular theorizations of the political, the social and the civil to which the Western educated are often attached. Public civil theology focuses upon the needs of human communities, as well as individuals, for horizons, ideals and narratives and asks about ways in which the cultural products developed to meet such

needs can be subjected to ethical challenge and critical evaluation. Central to public civil theology is an ethics of identity – transcendent trust.<sup>9</sup> An ethics of this type is often overlooked by both secular social theorists and religionists, but it may be crucial to future forms of ethical justification. Certainly the problem of how to derive and justify ethical perspectives has re-emerged as central for contemporary social thought. Here Habermas's work is outstanding, as even his critics agree.<sup>10</sup> The difficulty is that Habermas's arguments do not establish the claims he makes, while the moral force of his views is often persuasive in ways which do not decisively depend on the considerations that he urges on their behalf. This difficulty has led some scholars to reopen the question of how far a theological perspective may be needed to explicate and sustain such moral force.<sup>11</sup> Such scholars note that ethical concerns to which Habermas is committed – solidarity, inheritance, justice – have theological associations and accordingly may not survive a thorough secularization of Enlightenment social thought. Further, Habermas has modified his own earlier views in response to his theological critics.<sup>12</sup> Clearly commitment to continuing in solidarity with others in difficult conditions of social conflict and oppression may not be practical unless such *an ethos* is socially inscribed and associated with a surplus. The macro-historical record does not provide much support for attempts to maintain commitments to solidarity, inheritance and justice, solely based on appeals to discursive reason as long-term ethical concerns. This does not imply, as some suggest, that confessional theology is needed, but it does suggest that public civil theology may have a role to play, especially if it was able to clarify key principles bearing on the relation between the global and the local, and the governance of both, in a variety of very different nation states.

Entertaining a prospection of postsecular civil society even in these extremely general terms does not mean advocating that it should be empirically realized. Nor does it involve taking a strong view of the forms religion may take in the future. At most it involves recognizing the need for *moderations*, including a greater awareness that changes away from belief-based social reforms may be tendential in advanced techno-scientific civilizations, but the relevant changes in social differentiation may be able to be achieved in non-secular as well as secular forms. Whether secularization is inevitable or turns out to be a transient Western cultural figuration remains to be seen. But it may be a mistake to assume that the privatization of religion will be the pattern of the future, even in the West, even though studies of secularization by sociologists of religion sometimes still suggest that this will be the case.<sup>13</sup> If religion survives and is more public, then postsecular civil society will need to be discussed.

## Conclusion

This chapter has attempted to widen the ambit of the issues discussed in the context of civil society by introducing some parameters for postsecular civil

society. It has done so as an exercise in constructive utopianism, on the assumption that alterations to current arrangements are possible and can, in some instances, have positive consequences. This is quite different from providing a coherent and realizable model for actual arrangements in one contextually specific nation state. It is also a different exercise from attempting to provide political theoretical principles and then justifying them by elaborated argument. A prospection is an invitation to think and imagine differently. Of course, it remains to be seen whether a prospection of postsecular civil society heightens our awareness of organizational alternatives. Even if it does so, the balance of prudential constraints may lead us to reject such arrangements.

## Notes

- 1 For discussion, see Schak, D. and W. Hudson (eds) (2003) *Civil Society in Asia* (London: Ashgate).
- 2 See Asad (2003).
- 3 For excellent discussion of the Indian case along these lines see Bhargava (1998).
- 4 See Habermas (1989).
- 5 See UNDP (1977) *The Governance of the Global Economy* (Geneva: UNDP).
- 6 See the classic discussion in Carter (1993).
- 7 For a policy-oriented discussion of fundamentalism see my 'Creating a Postsecular Enlightenment' in *Griffith Review, The Lure of Fundamentalism* 2005.
- 8 For the Opus Dei utopia of secularity see P. Rodriguez, F. Ocariz and L. L. Illanes (1994) *Opus Dei in the Church* (Princeton: Scepter).
- 9 Today there is some evidence that Western cultures are again returning to a trust model of truth as warranted assertion, rather than correspondence with a real state of affairs determined from an epistemologically transcendent site; Luhmann (1973). In English, see Burn, T. and G. Poggi (eds) 1979) *Trust and Power: Two Works* (Chichester: Wiley). Trust is basic to the Old Testament notion of faith. Yahweh is the faithful one, i.e. trustworthy. What is important is to put one's trust in Him. This meaning is distinct from a modern psychological notion of trust as an allegedly inward state in which one feels secure (*batah* in Hebrew). Old Testament faith has to do with the 'it is sure' (*Amen*): with what is to be trusted because it is trustworthy. It does not imply belief in doctrines, and Jewish theology is still relatively short on them. For the Biblical backgrounds, see M. Eliade (ed.) (1987) *The Encyclopaedia of Religion* (New York: Methuen), 6 vols. and Buttrick, G. A. (ed.) (1962) *The Interpreter's Dictionary of the Bible* (New York: Abingdon), 5 vols.
- 10 See Freundlieb, D., W. Hudson and J. Rundell (2004) *Critical Theory After Habermas Encounters and Departures* (Leiden: Brill).
- 11 See H. Peukert, (1986), esp. pp. 1–18; Habermas (1990), p. 210 and footnote 23 to Peukert. Also Lenhardt (1975). McCarthy (1991), especially the concluding chapter. For discussion of rationality which includes non-rational dimensions, see Freundlieb and Hudson (1992), chs 1 and 8.
- 12 See now Habermas and Ratzinger (2005).
- 13 Norris and Inglehart (2004).

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## 12 Christian custom and the church as structure in ‘weak states’ in Melanesia

*Bronwen Douglas*

‘the united and free Republic of Vanuatu founded on traditional Melanesian values, faith in God, and Christian principles’

(Constitution of Vanuatu)

‘the country as a whole is not strong on structure [apart from the churches]’

(Solomon Islands workshop report, ANU, 2002)

‘The UCWF [United Church Women’s Fellowship] is strong . . . they have structure in their movement. . . They climb with something to help them climb, but we have no ladder to climb – The youth have no ladder, men’s fellowship has no ladder’

(male pastor, Solomon Islands, 1998)

### Introduction

This chapter investigates certain characteristic associations in the governance of three of the four independent states of Melanesia: Papua New Guinea (henceforth PNG), granted independence by Australia in 1975; Solomon Islands, granted independence by Britain in 1978; and Vanuatu which won independence from joint Franco-British colonial rule in 1980 (see Figure 12.1).<sup>1</sup> First, it explores the seemingly paradoxical amalgam of Christianity and tradition or custom which serves as an uneasy ideological basis for national unity and identity, second, the always ambivalent, often tense intersections of Christianity and ‘politics’ and finally, the significance of the churches, with their intensely local roots but broadly global reach, as alternative structures in the context of ineffective or even absent state institutions.

Notwithstanding the great regional diversity which renders any generalization about Melanesia problematic, there are important commonalities between these relatively new post-colonial states. All three were artificial colonial creations with no overarching indigenous polities. They are spectacularly diverse or fragmented in political, cultural, religious, ethnic and linguistic terms. They are subject in varying degrees to multiple pressures stemming from inadequate infrastructure, aid or resource dependency,

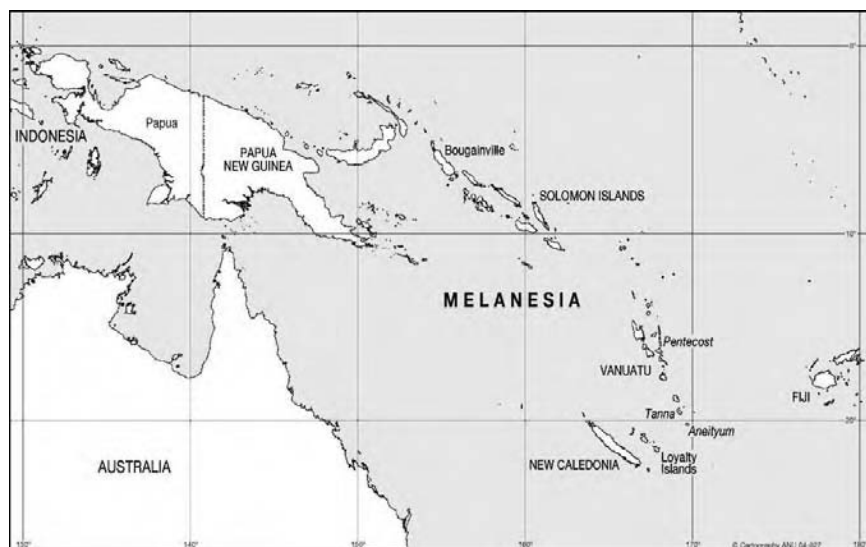


Figure 12.1 Melanesia.

encompassment by transnational capital, environmental degradation and explosive population growth (especially in Solomon Islands and PNG).<sup>2</sup> At least in part, such conditions are colonial legacies. Many of the citizens of these states, especially in rural areas and the mushrooming urban settlements, experience significant material deprivation relative to emergent local elites and 'Westerners' generally. Growing class inequalities, official corruption, declining social order and poor or non-existent service delivery outrage both indigenous and Christian values of equivalence, reciprocity and sharing. In such conditions, frustration, anger and cynicism threaten to dispel the national pride and optimism which blossomed in the immediate aftermath of independence. It is, however, important to avoid stereotyping ordinary Melanesians either as premodern and backward or as supine objects of the irresistible forces of missionization, colonialism, modernity, elite domination and globalization. The villages and smaller rural settlements in which the great majority of Melanesian citizens reside today are mostly actively Christian spaces where modernity is part of everyday experience and aspiration, however limited its material trappings.<sup>3</sup> And Melanesians, like people everywhere, exercise actual or potential agency, variously circumscribed by gender, age, status, circumstance and aptitude.

### Christian *kastom*<sup>4</sup>

The ideological importance of Christianity in processes of nation making in Melanesia is often under-appreciated. The earliest conversions to Christianity

in the region took place in the 1850s in Aneityum in the southern New Hebrides (now Vanuatu). By the mid-twentieth century, most New Hebrideans (ni-Vanuatu) and Solomon Islanders and many coastal Papua New Guineans identified themselves as Christians and often equated 'custom' with 'heathen' darkness – the devil's work that they had abandoned for one or other version of the Christian 'light'. Christians were more or less sharply at odds with unconverted pagans, including a few self-consciously 'heathen' enclaves who lived and reified the opposition of *kastom* and mission.<sup>5</sup> A half-century later, such opposition has been significantly blurred (Curtis, 1999; Robbins, 2004). Because colonial regimes throughout the region left native schooling almost entirely in missionary hands, virtually all indigenous candidates for leadership from the late 1960s were mission-educated professed Christians, often ordained priests or ministers, or former seminarians or divinity students. At independence, such leaders installed Christianity as a traditionalized state religion strategically coupled, to the discomfort of many Christians, with Christianised *kastom* (Jolly 1997: 137–140; Tonkinson, 1982). Despite denominational differences, adherence to Christianity is one of few widely-shared values in PNG, Solomon Islands and Vanuatu and it is formally enshrined in national constitutions and symbols, alongside tradition or custom, as ambiguous bases for national unity and identity (Douglas, 2000). The constitution of the 'Independent State' of PNG invokes 'the memory of our ancestors', 'the worthy customs and traditional wisdoms of our people' and 'our noble traditions and the Christian principles that are ours now'. That of the 'sovereign democratic State' of Solomon Islands brackets 'the wisdom and the worthy customs of our ancestors, mindful of our common and diverse heritage', with 'the guiding hand of God'. That of Vanuatu refers to a 'united and free Republic' 'founded on traditional Melanesian values, faith in God, and Christian principles' (Institute of Pacific Studies, 1983, II: 97, 231, 305). When applied to 'tradition' and 'customs', the epithets 'noble', 'worthy' and 'wisdom' themselves encode Christian values since they refer to indigenous practices deemed acceptable by mainline Christian islanders. Historically, the attitudes of Christian missions to indigenous beliefs and practices ranged from qualified tolerance by Catholics and Anglicans to blanket rejection by most Nonconformist and Protestant denominations. With the transformation of missions into national churches and colonies into nation states, mainline Protestant churches – the Lutheran, United and Presbyterian Churches, the Churches of Christ and the South Sea Evangelical Church – also rehabilitated selected aspects of custom, albeit more or less ambivalently. However, the more evangelical denominations like the Seventh-day Adventist Church and the Assemblies of God, together with almost all recently-arrived evangelical and pentecostal groups, remain intolerant of *kastom*.

In all three countries, Christianity is naturalized in practice but global in scope and now fairly ecumenical in spirit – at least, the mainline churches are. *Kastom*, in contrast, is defined as place-specific knowledge and practices

attributed to the precolonial past and taken to embody 'the essential distinctiveness' of particular groups 'vis-à-vis all others' within the nation (Bolton, 2000: 6–7; Facey, 1995: 217–218). Even with the recent proliferation of highly sectarian fundamentalist groups, there are far fewer Christian denominations than local versions of *kastom* which is potentially divisive. This makes Christianity arguably the key national symbol in these states, though anthropology's influential literatures on the 'politics of tradition' or nation making often privileged custom over Christianity, presumably on the grounds of authenticity (e.g. Babadzan, 1988; Foster, 1995). So to an extent do regional institutions dedicated to the recuperation, archiving and promotion of indigenous culture such as the Vanuatu Cultural Centre (Bolton, 1998).

However incompatible Christianity and *kastom* might seem to traditionalists, secular romantics and Christian fundamentalists, their coalescence in nationalist rhetoric discloses just how profoundly Christianity has been indigenized. The late Walter Lini, the founding Prime Minister of Vanuatu and an Anglican priest, proclaimed in his independence address to the nation in 1980: 'God and custom must be the sail and the steering-paddle of our canoe' (1980: 62). He subsequently celebrated 'the ethic and principles of Melanesian communalism' as 'broadly compatible' with 'the Christian religion' but denigrated 'alien concepts of materialism, individualism, and a narrow, insensitive brand of organised religion' as incompatible with both 'traditional values' and Christianity (1982: 27). Leslie Boseto, a leading politician and United Church theologian in Solomon Islands, described 'our traditional values' as 'what God our creator has already given and established amongst us' and counterposed the 'sharing and caring' ethos of 'traditional Pacific life' with the 'greed, domination, competition and exploitation' of 'the so-called "civilised nations" of the west and the north' (1994: 56–59). The polemical antithesis in these oppositional narratives of national identity is between 'Melanesia' and 'the West', *not* between *kastom* and Christianity which are represented as in fundamental accord. Political discourses routinely conflate the two. A Presbyterian ni-Vanuatu party leader did so literally in identifying customary reciprocity with Christian atonement: 'When we do not honour the custom we organised to forgive one another and settle the issue then it means that the blood Jesus Christ shed on the cross to forgive our sins is meaningless' (Peter Taurokoto, *Trading Post*, 21 March 1998).

In contrast to lived *kastom* which is place specific, the abstract conception of 'custom' celebrated in nationalist narratives and symbols is a sanitized, generalized version loosed from its diverse, intensely local footings in customary practice. In political discourse in Vanuatu and Solomon Islands, for instance, *kastom* is often a metonym for 'chiefly system' (Facey 1995: 209, 217; Lindstrom, 1997; White, 1997). Thus, the President of Vanuatu, Kalkot Mataskelekele, attributed his country's relative freedom from crime (in comparison to PNG and Solomon Islands) to 'our chiefly system': 'We

are fortunate', he said, 'that this system has been kept alive by our chiefs and our people. They saw that all communities have their chiefs but they also saw that a lot of the communities are living in towns, therefore the towns also must have their chiefs' (Pareti, 2004). In similar vein, the chief of a Malaitan urban settlement in Solomon Islands attributed 'the collapse of the country' in 1999 to the government's refusal to call on the mediatory authority and experience in conflict resolution of 'its fathers, the chiefs; the custodians and experts in the traditions of the country' (Kwa'ioloa, n.d.). In each country, the modern 'chiefly system' is more a mission, colonial and postcolonial 'tradition' than a direct descendant of the hodgepodge of small-scale indigenous leadership forms that characterized precolonial Melanesia (Douglas, 1998: 27–111). The intimate nexus between modern chiefs and Christianity, often in opposition to 'politics', emerges in the Malaitan leader's further complaint that the government 'did not understand the Biblical teaching when Jesus said, "render unto Caesar the things that are Caesar's and unto God the things that are God's", thinking they could do things without the chiefs' (Kwa'ioloa, n.d.).

### Christianity and 'politics'

Most Melanesians experience Christianity neither as foreign or imposed, nor as a separate existential domain, but as lived spiritual reality and a powerful ritual practice. Though indigenous religions were highly diverse in detail, ritual was everywhere a key strategy, essential to mundane well-being. Pre-existing religious beliefs and practices were notably porous and have provided the cosmological and epistemological ground for conversions to Christianity since the mid-nineteenth century. Christianity in Melanesia, as throughout the Pacific Islands, has a distinctly local, pragmatic cast. For 150 years, a steadily increasing number of Melanesians has invoked the power of the Christian God and his earthly agents to highly varied ends: to manage relations with ancestors or neutralize malignant sorcery; to control disease, both introduced and local; as an antidote to indigenous violence and disunity or colonial abuse; to achieve salvation, protection, fellowship, material well-being, or access to desired aspects of modernity and globalization; to reconstitute indigenous ideas of the person; to punish disapproved behaviour.<sup>6</sup> The prayers that bracket most meetings in Melanesia, from sessions of Parliament to courts, to dispute-resolution sessions, to *kastom* gatherings, to local fellowships, may strike sceptical or uncomfortable outsiders as pro forma, but prayer has practical significance to people who communicate with their god(s) or spirits on a regular, familiar, reciprocal basis. Most Melanesians take for granted the efficacy of Christian prayer and use it pragmatically to achieve private and public goals, including national ones.

Relationships between Christianity and politics in Melanesia are varied and often vexed. In broad terms, they can be classed as reciprocally instrumental with respect to the often competing claims to divine power of church

leaders anxious to promote their moral or social agenda and politicians seeking legitimation. Ordinary Christians share the widespread popular conviction that the state and individual politicians are morally obliged to reciprocate electors with services, patronage and resources. Thwarted expectations of such reciprocity and suspicions about corruption feed a growing disenchantment with politics and contempt for its agents, especially nationally.<sup>7</sup> Politicians, of course, are also people and sometimes leading church members. In Vanuatu, Lini argued that 'because Jesus upheld justice for all mankind ... the church must play its role in politics' (1980: 19). The current President is 'deeply religious', 'believes the "good spirit" had a hand in his appointment' and stressed the need 'for Vanuatu to uphold spiritual values especially since our leaders put our motto "In God we Stand"'. If a nation makes something like that as its motto, then it must follow it' (Pareti, 2004). In a recent series of articles, Philip Gibbs (1998, 2000, 2005) probed the ambiguous intersections of religion and politics in PNG where, on the one hand, 'some leaders attempt to use Christian symbols and rhetoric to appeal to people's religious sentiments and to promote nationalism', apparently with mixed success; and on the other hand, 'Christian groups, in trying to control power, appear to be divided on whether it is better to respond with a progressive social agenda [the position taken by most mainline churches] or on the level of spiritual power controlling politics for good or evil [the preferred strategy of evangelical and pentecostal denominations]' (2005: 4, 7). In a striking instance of the instrumental logic of Christian ritual in Melanesia, here employed publicly to punitive ends, many Papua New Guineans attributed the outcome of the 1997 election to a national ecumenical prayer movement called Operation Brukim Skru ('Bend the Knee') mounted 'for repentance and the election of a God-fearing government' (Gibbs, 1998: 33–36, 40; Gibbs, 2000: 156–158; Gibbs, 2005: 18–19).

Christianity features largely in nationalist rhetoric in Melanesia, but is nonetheless doubly resistant to nationalist appropriation. On the one hand, in experiential terms it is intensely parochial and grounded in local congregations; on the other, it has long offered Melanesians membership in transnational moral communities that transcend the often dubious legitimacy of colonial and national states. Global dimensions of Christianity were stressed along with local in several recent ethnographies of apocalypticism in PNG where ambivalent citizens confronted the legacies of colonialism, the paradoxes of modernity, the frustration of unmet desires in an ineffective, corrupt state and the threat and promise of a global millennium. Thus the Urapmin, a remote Highlands group in West Sepik Province, practise a largely home-grown version of charismatic Christianity and yet see themselves as participating more or less equally in a global Christian millennialism. The anthropologist Joel Robbins argued that they combine a 'strong' sense of national identity and self-recognition as 'inescapably citizens of Papua New Guinea' with extremely 'negative feelings' about the 'black'

nation of PNG and a strong positive sense of Christian identity 'that connects them with a white transnational community far more powerful than the nation' (2004: 170–179).<sup>8</sup>

The ideological salience of Christianity to Melanesians in the construction of emergent national and transnational identities, or as a political strategy has a critical practical counterpart in the core contributions long made by missions and national churches to education, health and welfare services throughout the region. Moreover, the churches were acknowledged as a major force for moderation, conflict resolution and reconciliation during the fierce civil conflicts in Bougainville (1988–1997) and Solomon Islands (1998–2003). In Bougainville, organized groups of Christian women went into the bush to seek out and 'bring home' alienated young Bougainville Revolutionary Army men. Ruth Saovana-Spriggs saw their actions as 'the birth of reconciliation . . . the beginning of the peace process' (Anon., 1995; Saovana-Spriggs, 2000: 27). Representatives of the churches and women's groups were formally included in the peace and reconciliation processes in Bougainville. In Solomon Islands, the Solomon Islands Christian Association worked tirelessly for peace while 'extraordinary courage' was shown by the Melanesian Brotherhood – an Anglican order of young, unmarried male evangelists who intervened physically between warring militants, assisted victims and energetically promoted peace. In the process, seven were kidnapped and murdered by a rebel leader. The authors of a report on regional security praised the 'cost effectiveness' of the Melanesian Brotherhood and remarked that 'more people referred to the[ir] contribution . . . to peace-making . . . than to any other institution, including the government' (ACFOA, 2000; Anere *et al.*, 2001: 35; Weir, 2000: 49–50). In Solomon Islands, too, Christian women made major organized efforts to alleviate the massive human cost of the conflict and to help broker peace. Women from both sides joined the volunteer, ecumenical Women for Peace group and cooperated across the fault-lines of ethnicity, religion, age, class and politics in the face of regular intimidation or violence from militants affronted by opposition and criticism, often including their own relatives (Amnesty International, 2004: 2–3; Liloqula and Pollard, 2000: 9–14; Paina, 2000). The report of a major NGO mission called the group 'an extraordinary force for peace' and praised its efforts in 'providing practical and moral support' for affected people and in 'promoting unity'. In Solomon Islands, unlike Bougainville, the churches and especially women were initially excluded from the 'formal political processes associated with peace and reconciliation', though local and international pressure forced their subsequent involvement (ACFOA, 2000; Amnesty International, 2004: 55–56).

The potential for churches to help avert conflict in the first place is unclear, partly because the absence or short-circuiting of violence is far less likely to be reported than its occurrence and escalation. There are, nonetheless, anecdotal hints that Christian belief and church membership can provide effective local strategies in the face of the endemic breakdown of internal

security that has long plagued parts of PNG. One such instance is the home-grown millenarian God Tri Wan (Holy Trinity) movement in western Enga Province which mobilized independent or grassroots Catholic spirituality 'to secure prosperity . . . by ceasing all tribal fighting and introducing an era of peace' (Bieniek and Trompf, 2000: 124–126). Another is the mushrooming growth of the Seventh-day Adventist Church in Eastern Highlands and Simbu Provinces where persons wanting 'to end their consumption of beer' found that 'it was only by converting that they gained the strength to oppose the pressures from non-Adventists to drink'. Banned by the Adventist Church, alcohol is a financial millstone for individual drinkers and their families and a serious social problem, heavily implicated in sexual and domestic violence, *raskalism* and tribal fighting (Westermark, 1998: 54, 58).

### **The church as structure**

As recent colonial legacies imposed on arbitrary assortments of small, highly diverse societies, Melanesian states are inherently burdened by dubious legitimacy and doubtful prospects. Moreover, the generally poor performance of governments throughout the region has seen a sharp decline in the internal efficacy and local presence of the state. It appears that 'organizations of civil society' – primarily the churches, women's organizations, trades unions and NGOs – increasingly provide alternative structures to fill the official institutional vacuum, especially in rural areas and during crises. The term 'civil society' is reified by educated Melanesians as a component of the national polity parallel to the 'public sector' and the 'private sector' (Liloqula and Pollard, 2000: 6, 7; Molisa, 2002). However, novel, oppositional meanings of 'civil society' have been noted with respect to Solomon Islands. The anthropologist Debra McDougall reported that the term was used during the crisis to label 'named collective groups (e.g. "the Civil Society Group" and "Gizo Civil Society")' which took 'overtly oppositional stances' to government (2003: 77; see also Scales *et al.*, 2002: 4, 10–12). The political scientist Tarcisius Tara Kabutaulaka generalized a broader oppositional pattern of recurrent 'confrontations between the state and civil society' over questions of land and natural resource development (2001: 15). Militants of both sides evidently regarded 'civil society organizations' in oppositional terms, especially after they held a National Peace Conference in August 2000 which called for the establishment of a Truth and Reconciliation Commission. On the insistence of 'militant negotiators', 'civil society' representatives were formally excluded from the Townsville peace talks held later that year (Amnesty International, 2004: 38–39, 55; Pollard, 2003: 52).

The major churches, and in particular the better organized of the church women's wings, best exemplify the potential for other structures to operate effectively alongside or – during crises – in place of the often spectral hierarchy of state institutions. Colonial governments left the provision of education and medical services largely to the missions. In the wake of



independence, national governments in principle took over both systems, but lacked the resources for effective service provision and the churches remained lesser but still important contributors, especially to remote areas. The anthropologist Michael Young linked the 'incomplete penetration' of hinterland areas by both colonial and postcolonial states to the ongoing significance of missions and churches 'in everyday matters of village life' (1997: 125). At least since the late 1980s, the state has retreated or even virtually disappeared from whole regions of PNG, while the Solomon Islands' government was paralysed during the conflict of 1998–2003. In such conditions, local churches – particularly women's fellowships – are often the only functioning community-wide organizations and provide the only effective linkages beyond the immediate community including, in the larger denominations, access to national and even international organizational frameworks. In Bougainville, said Saovana-Spriggs, 'in the political vacuum of 1990–1994, when there was virtually no civil government', the churches 'by necessity became involved in public affairs, resulting in a general change of [public] attitude and expectation about the respective roles of church and government' (2000: 27). A report on Solomon Islands in 2002 stressed that the churches are 'the only community level organisations that have wide organisational networks' and that women's networks are the most significant of these. The authors noted that 'the country as a whole is not strong on structure' and is afflicted by the 'problem of short-term life of structures' (Scales *et al.*, 2002: 10–11, 14) – a dilemma common to many postcolonial states, including PNG and Vanuatu.

It is arguably the peripheral position of women in heavily male-dominated national Melanesian polities that has impelled them to develop and strengthen their own structures – there are few gender-specific men's organizations in the region apart from sporting groups. Politics generally, whether national, provincial or *kastom*, remain resolutely male domains: almost all politicians and all chiefs are men. So too are most priests, ministers and church leaders, despite the local prominence of female parishioners and church women's groups. In church activities in Solomon Islands, said Alice Aruhe'eta Pollard, 'women outnumber men' and are 'so powerful and important' that without them 'church-related activities in the villages would die a natural death'; however, men 'remain the principal decision makers' and retain control of the 'higher echelons of Church governance' (2000: 44, 50). Thus, while the Women for Peace group was a key contributor to the Civil Society Network, it was primarily male church leaders of the Solomon Islands Christian Association who spoke publicly on behalf of the network. According to a recent Amnesty International report, 'women in the Solomon Islands have been suffering a double invisibility – first as victims of the conflict, now as potential contributors towards restoring peace and human rights' (2004: 3).

In both Bougainville and Solomon Islands, women's interventions were most visible and their contributions to peace and reconciliation most widely

acknowledged in conditions of overt conflict. Some, usually educated, Bougainvillean women were eager 'to take a proper share in governing the island' in the post-conflict polity (Saovana-Spriggs, 2000: 29). Nonetheless, most men and many women denied women's right to exercise public leadership and demanded they return to 'traditional' female spheres. Yet the issue of agency is vexed as women throughout Melanesia tend to avoid formal political responsibilities and leadership positions, even of women's groups. They do so partly because they are shy, untrained and grossly overworked but they are also deterred by fear of infringing the pervasive ethos of egalitarianism and by the threat of malicious gossip or sorcery (Lee, 1985: 230–232; Macintyre, 2003: 128–129). Bougainvillean women who attended a 1998 meeting with representatives of the PNG Council of Churches rejected a proposal that all church programmes for Bougainville should be coordinated through the ecumenical Inter-Church Women's Forum. They insisted that 'it was about time the [male] church leaders take note and acknowledge their responsibilities seriously by leading the people' and that women 'can only be there to support all activities and initiatives of the Church Leaders' (Gegeyo and Luke, 1998).

In much of Melanesia, parish-based women's fellowship groups are key elements in local governance and provide modest conduits for modernity; they are growing steadily in number and in economic and moral importance. In larger denominations, such groups are in principle the foundation of district, provincial, national and regional networks which constitute visible, relatively stable structures that provide members with the security of belonging to 'a larger whole'. This was McDougall's point with respect to the United Church Women's Fellowship (UCWF) in Ranongga, Solomon Islands. She cited a male pastor who lauded the UCWF 'as a model community organization': 'The UCWF is strong . . . they have structure in their movement. . . . They climb with something to help them climb, but we [men] have no ladder to climb – The youth have no ladder, men's fellowship has no ladder' (2003: 68, 75). There is, however, considerable denominational variation in the scope and effectiveness of church women's networks. The UCWF in PNG and Solomon Islands is notable both for its participatory principles and its 'elaborate structure' cross-cut by a 'dense network of personal ties' (McDougall, 2003: 75; Scheyvens, 2003: 37). The Dorcas Federation, the women's wing of the Seventh-day Adventist Church, is also notably well-run and well-integrated, consistent with a church whose well-financed, 'well-developed organization', grassroots to global, is a magnet for new converts and underwrites the Church's spectacular success in PNG and the Pacific region generally (Westermarck, 1998: 55–56).

It is clear, however, that the potential for networking between the umbrella church women's organizations and their community constituencies is not always adequately or evenly realized. In Pollard's own community in Malaita, members of the local South Sea Evangelical Church Women's Fellowship said that they regretted their lack of 'contacts with a wider women's

network', whether church or official, and recommended that their group 'should have formal links to church, non-governmental and governmental women's organisations at the national level' (2000: 56, 92). Similarly, in the village in Gulf Province, PNG, where the political scientist Orovu Sepoe worked in the late 1990s, the women complained that 'No government official or leaders of national women's organisations ever stop by to listen to us'. She remarked: 'The reality of women's situation has yet to be understood by the State and the church' (2000: 155) – and 'the church', in this case was the UCWF, the largest and probably the best-managed women's organization in the country.

Though central links with remote fellowship groups are still often tenuous, the solid, steadily-widening community base of the major church women's wings contrasted with the top-down approach initially adopted by the quasi-official, partly government-funded hierarchies of national and provincial councils of women that were established in the several Melanesian countries between 1979 and 1983. National Councils of Women (NCWs) have done much to bring women's issues and human rights to public notice and to coordinate women's groupings but were often condemned locally, even by women, as elitist, urban-centred and feminist – 'feminist' can still be a term of real abuse throughout the region. NCWs were initially opposed by most churches because their principles 'were seen as secular and conflicting with Christian norms' (Sepoe, 2000: 183). Since the mid-1990s, with governments forced into drastic financial cutbacks through public sector reform programmes adopted at the behest of donors and international agencies, NCWs have lacked the resources for effective rural outreach. Nonetheless, the will to do so increased during the same period in all three Melanesian countries as the NCWs restructured their relationships with governments and sought to broaden their support base, in particular by forging closer links with the major national church women's organisations. Most mainline church women's wings are now formally affiliated with their respective NCWs but conservative evangelical and pentecostal churches generally remain aloof.

## Conclusion

Though mainstream tendencies in the discipline of anthropology were from its inception hostile to religiosity, particularly the Christian variety, since about 1980 anthropologists have contributed important studies of the intersections of Christianity, *kastom*, gender, nationalism, modernity and the global in the aspirations, identities and strategies of Christian rural dwellers who are also ambivalent citizens of modern Melanesian states (Douglas, 2001).<sup>9</sup> But ethnographies are usually inaccessible to donors and aid personnel and have little direct impact on their policies, strategies and activities. At best, recent acknowledgement of the critical contributions made by churches in Melanesia to the provision of education, health and welfare ser-

vices has seen 'the Church' institutionalized in the international 'good governance' agenda as a component of civil society and a reliable channel for aid. Local women's fellowship groups and the parallel structure supplied by church women's organizations and networks remain seriously under researched in anthropological and development literature and have been largely ignored by the policy and aid communities.<sup>10</sup>

Pollard urged that this 'existing framework of church and other local women's groups' offers the best potential avenue for rural development programmes, especially those targeted at women and young people. But she also acknowledged that women's groupings and projects can be contingent, ephemeral and conflict-ridden, especially when they rely on outside funding (2003: 47, 52, 56–57). The problem and the challenge are to devise effective strategies to help fund such groups to participate in appropriate programmes in meaningful, doable, durable terms. Most women's fellowships are small, strongly oriented to spiritual matters, home economics and welfare, and wedded to a self-effacing ethos of service, voluntarism and self-financing which makes few coherent demands on international aid or attention but also seriously limits the scope and status of projects and seriously overburdens group members (Macintyre, 2003: 128; Pollard, 2003: 46). It is important not to overestimate their capacity to produce results that formal institutions have not. There is clearly a risk that local men and overseas agencies alike – who until lately have derided or ignored women's fellowship groups – will seek to load them with further responsibilities and expectations and in the process undermine the spirit, the commitment and the will that have so far underpinned their modest successes.

## Notes

- 1 Fiji, which received independence from Britain in 1970, is the fourth Melanesian state but does not readily fit the terms of my discussion in this chapter. Certainly, Methodist Christianity is unequivocally identified with indigenous Fijian tradition and ambiguously implicated in politics while many ethnic Fijians push for the formal declaration of Fiji as a Christian state. However, Christianity cannot be invoked in the service of *national* unity or identity in Fiji since nearly half the population is not Christian. Moreover, pre-colonial Fiji was culturally less diverse, politically less fragmented and socially more hierarchical than its western neighbours while the modern state, whatever its problems and deficiencies, can hardly be labelled 'weak'.
- 2 In January 2004, on a comprehensive *Index mundi* of population growth rates covering 226 states and territories, Solomon Islands ranked twentieth at 2.76 per cent; PNG forty-fourth at 2.3 per cent; and Vanuatu eighty-fifth at 1.57 per cent. *CIA World Factbook*, 1 January 2004. Available online [www.indexmundi.com/g/r.aspx?c=bp&v=24](http://www.indexmundi.com/g/r.aspx?c=bp&v=24) (accessed 18 August 2005).
- 3 Approximately 85 per cent of Papua New Guineans live in rural areas (Brouwer *et al.*, 1998: 6); so does a similar or greater proportion of the population of Solomon Islands and Vanuatu.
- 4 *Kastom*, 'custom', in Tok Pisin, Pijin and Bislama, the regional variants of Melanesian Pidgin spoken in PNG, Solomon Islands and Vanuatu respectively.

- 5 For example, Jolly, 1982, 1994: 247–258; Keesing, 1967, 1989; Tonkinson, 1981, 1982.
- 6 See, for example, Burt, 1982; Douglas, 1998: 223–318; Guiart, 1962; Robbins, 2004; Tonkinson, 1981; White, 1988.
- 7 See Clark, 1997; Douglas, 2000: 6, 8; Douglas, 2002: 16–18; Gibbs, 2005: 23–24; Jacobsen, 1995; Morgan, 2003; Stewart and Strathern, 1998: 133–134.
- 8 See also Eves, 2000; Stewart and Strathern, 1998; Westermark, 1998: 64.
- 9 For example, Bolton, 2000; Clark, 1997; Dureau, 1993; Errington and Gewertz, 1995: 77–134; Eves, 2000; Facey, 1995; Gewertz and Errington, 1996; Robbins, 2004; Smith, 1994; Stewart and Strathern, 1998.
- 10 See Douglas, 2002: 6–11; Dureau, 1993; Forman, 1984; Schoeffel, 1983; Sepoe, 2000: 55–56, 139–145, 154–160. I recently edited a special issue of *Oceania* (Douglas 2003) that to my knowledge provides the first systematic examination of women's groupings in Melanesia in an anthropological forum.

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# 13 Governance, civil society and economic development

## A view from the Pacific

*Ron Duncan*

### Introduction

Is poor governance a problem in the island countries of the Pacific Ocean? From all accounts it appears that it is. For example, from an Asian Development Bank (ADB) survey of governance in Pacific islands countries (PICs), Mellor and Jabes (2004) concluded that: 'Unfortunately, nearly all Pacific island countries today face serious challenges in all areas of governance.' In their recently announced aid strategies for the Pacific Region, AusAID, NZAID, the Asian Development Bank (ADB) and the World Bank have all given high priority to improving governance as a means of improving economic growth and reducing poverty. The Overview Report of the Transparency International (2003) study of corruption in 16 PICs, concluded that the studies found vagueness and disagreement about what counted as 'corruption'. There was widespread concern about political corruption, particularly during election campaigns and by governments manoeuvring to sustain support in parliament. Several countries were found to be less corrupt than they had been in the recent past, whereas in Solomon Islands corruption had become endemic since the late 1980s. There were special risks of corruption in small-scale societies, though more opportunities for oversight when 'everyone knew' what was going on. Judiciaries were generally regarded as free of corruption. Courts in Kiribati were having some success in distinguishing 'gifts' from 'bribes'. Traditional cultural or familial factors seemed to affect the willingness to act against corruption that people recognised was taking place. Civil society organisations and the private sector were unevenly developed, and faced corruption problems of their own. Most countries had a range of formal institutions in place, but they often worked ineffectively, casting doubt on strategies that involved creating new independent bodies.

I do not wish to go in depth into definitions of governance. I am comfortable with the definitions adopted by the UN and the international financial institutions that relate governance to the effectiveness of the management of a society's physical and human resources. Further, I would note that I believe that research into governance is moving towards agreement that the

quality of governance is the outcome of the appropriateness of the structure of political, economic and social institutions (both formal and informal) and the incentives they provide for individual behaviour – and ultimately of government behaviour – or, if the institutions are appropriate, the extent to which they are enforced. The appropriateness of institutions in the Pacific – in particular, whether there exists the best mix of introduced and traditional forms of institutions – is something that I will get back to later.

### Costs of poor governance

Do governance problems in the public and private (including NGOs) sectors matter in terms of their costs? The effects of poor governance are particularly difficult to quantify in monetary or other terms. Corruption, as one manifestation of poor governance, is by nature secret, and therefore very difficult to identify and cost.

In some countries, identifying the magnitude of poor governance is easier than in others. For example, in Nauru, the outcome of poor governance, including no doubt elements of corruption, has been so large that it is relatively easy to assign a ballpark figure. A substantial part of the costs of poor governance in Nauru was the almost complete loss of the trust funds established from the sales of phosphate, as the result of incompetence in business deals and corruption associated with the use of the trust funds. Gosarevski *et al.* (2004) have estimated that if the trust funds had been invested with conservative commercial investment brokers, they would in today's terms be valued at around \$10 billion (Australian). Therefore, there has been a loss of \$10 billion of assets suffered by Nauruans as the result of poor governance.

In the 1970s Nauruans were believed to have the second highest incomes in the world – next to Saudi Arabia – on the basis of the income received from their trust funds. According to the government of Nauru's 2004–2005 Budget, the country will be able to pay its public servants (who account for the bulk of the formally employed labour force) only A\$70 per week for the foreseeable future. If the country had invested its phosphate earnings wisely, so that they were today worth A\$10 billion and earning a conservative 4–5 per cent from interest and dividends, the present population of Nauru of approximately 12,000 would have a per capita income of around A\$34,000–40,000. Instead, their per capita GDP is around one-tenth of that amount.

What about the costs of poor governance in countries where they are not as obvious as in Nauru? Lisa Chauvet and Paul Collier (2004) have estimated the impact of poor governance in developing countries by identifying those countries deemed to have poor policies, institutions and governance. In cross-section analysis across all developing countries, they estimated that, on average, those countries suffering from poor governance – that are not also suffering from civil unrest – record 2.3 percentage points less GDP growth per year relative to other developing countries. (A country also suffering

civil unrest is estimated to lose an additional 3.8 percentage points of GDP growth per year for each year of the civil unrest.)

The Chauvet and Collier (2004) estimate of 2.3 percentage points loss of GDP for each year of poor governance is used here to make estimates of the costs of poor governance in Fiji, Papua New Guinea and Solomon Islands. It is assumed that these countries are chronic cases of poor governance. Therefore, it is assumed that their GDP growth would have been 2.3 per cent higher on average than it actually was. The remaining difference between the country's trend GDP growth and the average rate of GDP growth for developing countries not suffering from poor governance is assumed to be due to country-specific circumstances (such as economic losses due to natural disasters or the economic loss because of the coups in Fiji and the civil unrest and coup in Solomon Islands).

According to World Bank statistics, the real GDP per capita of Papua New Guinea was the same in 2003 as it was in 1976, the year following independence. Simple log-linear estimates of the trend in per capita GDP in Papua New Guinea show that growth in this variable has been negligible over the past 34 years. A test of whether per capita GDP growth has performed differently since 1989, the year of closure of the Panguna mine in Bougainville, showed no difference – 0.12 per cent during the pre-1989 period and 0.13 per cent during the post-1989 period. The only period when per capita GDP experienced a substantial increase was during the mineral boom of the 1991–1994 period.

Therefore, it is assumed that per capita GDP in Papua New Guinea has been static in real terms since independence in 1975 and that poor governance has been a major factor in this poor performance. To estimate the cost to the country of the poor governance over this period, it is assumed that, in the absence of the poor governance, per capita GDP would have increased throughout the period since independence at an average rate of 2.3 per cent. In 1995 constant US dollar terms, the estimated per capita GDP loss due to poor governance over this period is calculated at US\$12,000. Expressed in other terms, in the absence of poor governance, per capita GDP in 2003 would have been double what it actually was (US\$1,773 versus US\$881).

According to these calculations, the total loss in GDP due to poor governance over the period 1975–2003 was US\$52.8 billion. This amount is equivalent to over ten times the value of Papua New Guinea's GDP in 2003 (US\$4,850 million in 1995 constant dollar terms). By comparison, Chauvet and Collier (2004) estimate the average net present value of the future costs for a developing country and its neighbours of its poor governance is US\$82.4 billion.

For Fiji, log-linear trend analysis of per capita GDP (in 1995 US dollar terms) for the period from independence in 1970 to 2003 shows that there is a structural break around 1987 (the year of the first coups). In the pre-1987 period the trend in per capita GDP is estimated to be a slight decline of –0.3 per cent, while for the post-1987 period the rate of growth is a slight

0.02 per cent. The change from a negative per capita GDP growth trend in the pre-1987 period to a slightly positive trend in the post-1987 period could be explained by the fact that in the wake of the 1987 coups there was a period of economic reform. However, the post-1987 period has been characterised by continuing political uncertainty (culminating in the coup of 2000), uncertainty over access to land, and the loss of skilled and highly skilled labour. Thus, the beneficial impacts of the reforms and the adverse impacts of the coups appear to have cancelled each other out.

If we assume, therefore, that there has been no growth in GDP per capita in Fiji since independence, and also assume that in the absence of poor governance that GDP per capita would have increased at an average rate of 2.3 per cent, the gap in per capita GDP over the period to 2003 is US\$14,000 in 1995 constant dollars. This means that GDP per capita would have been US\$1,050 higher in 2003 than it actually was (\$3880 versus \$2830). Under these assumptions, the estimated total GDP foregone over the period since independence due to poor governance is calculated to be US\$10.8 billion (in 1995 dollars).

If it is assumed that there has only been poor governance in Fiji since the coups in 1987, and that, in the absence of the poor governance, per capita GDP would have increased at 2.3 per cent, the loss in per capita GDP over the 1987–2003 period is estimated to be US\$5,456 (in 1995 dollars). In line with these assumptions, the loss of GDP over this period has been US\$4.3 billion (in 1995 dollars).

The civil unrest in the Solomon Islands over the period since 1997 had a dramatic impact on output and incomes, with per capita GDP (in 1995 constant US dollar terms) declining from the historical peak of US\$850 in 1996 to US\$534 in 2002. Log-linear trend analysis of the period since 1970 gives an estimate of the positive trend in per capita GDP of 2.6 per cent up to 1996. This was a surprisingly good performance, although it may be argued that it was partly at the cost of the loss of forest resources because of unsustainable harvesting.

The costs of poor governance in Solomon Islands were estimated for the period 1978 to 2003. From their cross-country analysis, Chauvet and Collier (2004) estimated that civil unrest costs an economy an additional 3.8 per cent of GDP output for each year of the unrest. Therefore, in estimating the costs of poor governance for the period 1978–2003, an adjustment of per capita GDP was made for the period 1997–2003 so that the costs of civil unrest would not be counted as costs of poor governance. Hence, for each of the years 1997 to 2002, an additional 3.8 per cent was added to the per capita GDP. For 2003, with the economy beginning to recover following the RAMSI intervention, the add-on percentage was reduced by 3.8 percentage points.

According to the calculations, the total loss of per capita GDP over the period 1978 to 2003 due to poor governance is US\$6,960 (in 1995 constant dollar terms). In the absence of both poor governance (over the 1978–2003 period) and the civil unrest (over the 1997–2002 period), the adjusted per

capita GDP in 2003 would be three times the actual level (US\$1,670 versus US\$538). The estimated loss in per capita GDP due to the civil unrest over the period 1997 to 2003 is US\$608. The estimated total loss of GDP over the period 1979 to 2003 due to poor governance is US\$2.8 billion (in 1995 constant dollar terms). This is equivalent to 11.4 times the value of Solomon Islands' GDP in 2003. It is estimated that an additional US\$260 million of GDP was lost due to the civil unrest (equivalent to the value of a full year's output in recent years).

### **Reasons for poor governance**

Given that poor governance is a major problem in the Pacific island countries, what are the reasons for it? An analytical framework that I find useful in thinking about governance is what economists call the 'Principal/Agent problem'. 'Agency' problems are widespread throughout society. When we buy or sell a house, for example, the real estate agent and the lawyer are our agents. But we have to realise that they may not act in our best interests. It is difficult, if not impossible, to know if they are putting in full effort on our behalf and revealing all the information about the deal, or if they are colluding with the other party (a conflict of interest) to our disadvantage. So there are two parts to the agency problem – 'hidden effort' and 'hidden information' – and the issue is how to minimise these adverse elements, or costs.

In just about every activity that takes place in the public sector – in its political and bureaucratic dimensions – the politician or bureaucrat is acting as an agent for society as a whole, the principal. One can think about this in the sense that these public agents are in a position of trust: they are trustees of the public's affairs. 'Agency' problems are also inherent in the operations of NGOs. NGOs receive moneys from the public in the form of donations or indirectly from taxpayers in the form of funds directed from the government.

It has to be realised that the potential for agency problems are inherent in every area where there is a trust relationship between a principal and an agent. Therefore, none of the mechanisms adopted to overcome them can be thought of as being 100 per cent effective. We should not set ourselves the goal of eliminating agency problems. The objective should be to minimize the likelihood of them occurring and attaining the most transparent and accountable performance possible.

Is the concept applicable in the Pacific islands context? I do not see any problem in applying it in either what might be described as the modern form of government or in a traditional governance context. Chiefs, 'big men' and monarchs were/are all 'agents' placed in positions of trust to act in the best interests of their constituencies. Thought of in this way, governance is certainly not a new idea.

There are many mechanisms that may be put in place to reduce agency problems in the public or private sectors, or in the NGO sector. Direct and indirect oversight is one means. We can think of in-line supervisors, internal

and external auditors and, in private companies or state-owned enterprises, boards of directors as such mechanisms. But in its oversight role, a company board is acting as an agent for the owners of the firm, the shareholders. Therefore, the possibility of agency problems with board members, such as through colluding with management against the interests of the shareholders, cannot be ignored. Similarly, in the public sector, in-line supervisors, auditors, heads of departments and ministers are also agents and are therefore subject to the potential for colluding against the interests of the principals, the people. So there can be layer upon layer of agents, all with the potential for collusion. While sanctions may be imposed on both managers and auditors, theoretical research in the field of Principal/Agent problems suggests that higher sanctions should be imposed on auditors than on managers, and that unless sanctions against auditor misbehaviour are severe, auditing may not be worthwhile.

External oversight bodies are also put in place to monitor the behaviour of 'agents' in the public sector. Here, we can think of the role of the Auditor General, the public accounts committee, ombudsman offices and, ultimately, parliament. All of these mechanisms are basically directed at trying to correct imbalances in the information available to managers and owners. Essentially, trying to ensure transparency in government is about trying to reveal 'hidden effort' or 'hidden information' on the part of the various agents. But, to repeat, all of these mechanisms involve some form of agency, and therefore have potential problems.

As well as these various mechanisms to improve transparency and accountability, there are other mechanisms that can be used to try to ensure that agents act in the interests of the principals. Remuneration packages can be designed with this aim in mind. However, the important issue in the design of remuneration packages is to make them what economists call 'incentive compatible'. That is, they should encourage managers to reveal the full information about their performance. This is not always easy to do. The performance contracts becoming more widespread in government departments are basically designed with the aim of ensuring good performance from managers. Performance under these contracts is usually measured in terms of outputs. However, results from Principal/Agent theory suggest that output measures may be inferior to input-based measures because they are more susceptible to 'hidden information' problems.

Codes of ethics/conduct for public servants, leadership codes for politicians, freedom of information and whistleblower legislation are other mechanisms for reducing agency costs. For example, a code of ethics/conduct for members of boards of state-owned enterprises should make clear the obligations of the board members – for instance, relating to possible conflicts of interest – and basically use moral suasion in trying to overcome agency problems. Freedom of information legislation can improve transparency by assisting the public to access 'hidden information'. There is a long history of the ill treatment of whistleblowers by the departments and

companies they work for, which must have a salutary impact on the willingness of staff to reveal perverse behaviour by management and gives me cause to doubt the effectiveness of such legislation.

The media too has important roles to play in ensuring transparency and accountability, through both education and awareness raising. The understanding of the general public about the workings of the public and private sectors can be enhanced by informed writings in the media. In this way the demand for good governance will be enhanced. The media also has an important investigative function to fulfil in tracking down any hints of malpractice. Towards serving these purposes effectively, the media must ensure that its staff are well trained.

All of the Principal/Agent relationships discussed above can be seen as *contracts* between the agents and the principals. A critical feature of contracts is that they must be *enforceable*. Ultimately, therefore, the sanctions against non-performance of the contract must be credible; that is, all involved must believe that those responsible for imposing sanctions in the event of misbehaviour *will* impose them. For the government, the private sector and the NGOs to serve the best interests of their stakeholders, supervisors, auditors, managers, board members and external regulatory authorities must all fulfil their contracts. How likely is it that these conditions will be met in the Pacific Island states?

### **Governance in the Pacific and the role of civil society**

In countries with small populations, where the likelihood that people fulfilling the various supervisory, auditing and sanctioning functions have close personal or family relationships is much higher than in countries with much larger populations, achieving transparency and accountability is much more difficult in the absence of other mechanisms. Moreover, in the Pacific, traditional authority remains influential and there may be unresolved tensions between the state authorities established at independence and traditional authorities. As a result, individuals may have conflicting loyalties. The existence of these rival loyalties raises doubts about how well individuals will respect their duty to the 'principals' (society in the case of the public sector, or the shareholders in the case of a private company) when it may be in conflict with their 'duty' to a traditional authority.

However, reverting to the point made previously about the role of trusteeship in all 'agency' relationships, there should be no conflict between good governance in a traditional setting and good governance in a 'modern' setting. Claims are widespread in the Pacific that what is seen as corruption in modern government structures is not corruption but accepted as 'custom'. However, more often than not, custom appears to be used as a camouflage. There are certainly grey areas, such as is the case with gifts handed out by aspiring politicians during electioneering. But there appears to be less and less acceptance of these arguments.



Traditional societies surely must have good governance structures and where the traditional structures remain strong, they should be used. A country such as Solomon Islands, where the majority of the people live in rural areas in traditional settings, may find it worthwhile to explore a different government structure than exists at present or the kind of federal structure being proposed in the draft constitution, but place less reliance on provincial-level government and give more authority to local-level government. However, there will still have to be concern for the 'agency' problems that can arise.

In these 'small country' circumstances, therefore, the 'costs of collusion' between the various 'agents' appear to be small, internal supervision seems weak and internal sanctions are unlikely to be imposed. Thus, these various *contracts* designed to ensure transparency and accountability in most government activities may well be 'incentive incompatible' and therefore unenforceable. In that case, the credibility of external supervision and sanctioning, such as by a government agency, the police and the courts is crucial. However, if a government's reputation for enforcing supervision and sanctions is also weak, the job becomes so much more difficult.

It may be argued that in small societies there is greater opportunity for oversight: that is, 'everyone knows what everyone else is doing'. This reasoning has been one of the main arguments behind decentralisation of government around the world. However, the evidence does not support this argument. Therefore, what can be done to reduce the 'small country' problem?

One possibility for reducing the incidence of agency problems at all levels, whether in small countries or large, is the development of higher moral or ethical values in society. A country with a larger share of people of higher ethical standards should have fewer governance problems. Anything that can be done to instill ethical values that lead to reduced risk of agency problems is obviously desirable.

NGOs, or more broadly, civil society, can do much to improve governance mainly through similar roles to the media – improving community understanding of government activities and monitoring government activities. Perhaps their role is even more important in small countries (or communities) than in large countries, because the unwillingness of people to undertake the essential functions of reporting and sanctioning misbehaviour is so much greater. Admittedly, NGOs can have their own governance problems and it is wise for them to have their house in order before they assume the role of monitoring and commenting on government activities. It is therefore pleasing to see NGOs throughout the world – including the Pacific – adopting codes of conduct.

Similar to the points made about the roles of the media, it is important that NGOs have people with the expertise necessary to understand government activities, which are often complex – such as in areas of fiscal or monetary policy or trade policy. To illustrate. Civil society organisations

throughout the world have long protested against the idea of trade liberalisation, i.e. removing assistance given by governments to particular firms and industries. Within the small island countries of the Pacific, such resistance is alive and well, fighting against any moves to have freer trade among the island countries themselves or between the island countries and their neighbouring high-income countries, Australia and New Zealand. The arguments used by civil society groups in the Pacific against trade liberalisation are no different from those used elsewhere. However, free trade is of considerably more importance to these small island countries than it is for most other countries. Therefore, it is important that civil society groups understand the complexities of trade and trade policy.

The small island states of the Pacific have two major handicaps: their extremely small populations and their isolation from major markets. Because of their tiny populations and thus their very small domestic markets, domestic firms are unable to take advantage of specialisation and economies of scale and scope within their domestic markets. Thus, in order to reduce their production costs they need to be able to export. However, they are greatly disadvantaged in exporting because of the long distance to major markets and their high sea and air transport costs.

Export activity in the PICs has been largely confined to sales of unprocessed primary commodities: copra, cocoa and sugar. However, these countries are in a highly disadvantaged position for exporting such commodities. Competition in exporting of unprocessed primary commodities is essentially in terms of supplying a uniform quality product in large volumes at low cost and on a reliable basis. Being far away from the major transport routes and able to produce only small volumes of these primary commodities, most of the PICs can never hope to be competitive in global markets. Reliance on preferential market access, such as sugar exports to the EU, or on government subsidised farm prices, such as in the case of copra in most countries – that is, subsidies from consumers in rich countries or subsidies from poor taxpayers in poor countries – are not sustainable options.

However, the PICs' inherent high costs of exporting are magnified by the special assistance given to firms setting up domestic manufacturing activities in the form of tariffs and other import restrictions. Such import restrictions raise the costs of production of exporters and so are effectively taxes on exports. Domestic producers are also disadvantaged by the high costs of essential services such as power, water and telecommunications due to these being government monopolies or joint private sector/government monopolies. NGOs also resist attempts to make the markets for essential services contestable, i.e. open them up to competition.

Because of their high costs of trade and their need to export, the PICs must maximise their opportunities for exporting goods and services that command a premium that will enable them to be profitable. This means a focus on what economists call differentiated products, or what otherwise is termed 'niche' markets. As can be seen, all the exports that have been

successful in the Pacific have this characteristic. Tourism is a differentiated service in the sense that it is location specific. All tourist destinations are unique, if only in the sense that countries are unique. Other differentiated Pacific products that have been successful are Fiji Water and Pure Fiji cosmetics, noni, black pearls, kava and squash. These products are successful because they are not grown anywhere else in the world (kava, noni), or because through advertising they have established themselves as different (Fiji Water, Pure Fiji) or because they can fill an off-season market niche in the northern hemisphere (squash). Tuna sold into the high-priced sashimi markets in Japan and the United States is also able to be profitable in spite of the high costs of exporting.

Therefore, if they are to be able to have profitable export activities the PICs must maximise their opportunities for developing differentiated goods and services. Therefore, they must be open to new ideas, skills and technologies, and they must minimise their domestic production costs. Thus, openness to trade is more critical for these small countries than for any other category of countries. Resistance to getting rid of import restrictions and monopoly positions in essential services is therefore very damaging. Hence, countering the resistance presented by civil society organisations is most important.

It is ironic that on the one hand civil society organisations are being enlisted in the battle to improve governance and economic performance through enhancing transparency and accountability, yet on the other hand they are resisting what appears to be one of the primary means of the PICs improving their economic performance. In the latter case they are fighting for the cause of the inefficient protected manufacturing industries. Most unfortunately, the products produced by these protected industries are mostly products consumed by the low-income segment of the population, i.e. biscuits, tinned fish, rice, flour and milk, which means that the import taxes are extremely regressive taxes.

Why is it that the NGOs take this unfortunate position? I suspect that it is not sympathy for the owners of the manufacturing plants, although they are effectively operating as lobbyists for them. There is sympathy for the workers in the plants. But it should be understood that these kinds of plants are usually highly capital intensive and therefore do not employ much labour. So protecting such plants is certainly not pro-poor. Protecting import-substitution industries discriminates against other potential industries that could be more labour intensive. I suspect that the major problem is that people working in the civil society organisations or employed by them do not understand the complexities of trade and trade policy.

## Conclusion

This chapter discusses the difficulties that the small island states of the Pacific face in achieving good governance. Partly as a result of their dif-

difficulties in achieving good governance, economic performance is poor and, with increasing populations, there is increasing poverty. Further, with limited growth in revenues, governments have limited resources with which to guard against international threats to their natural resources such as fisheries and timber.

Because of their small populations and therefore the close family and personal ties among people in positions that should provide the checks and balances to ensure good governance, these mechanisms do not work effectively. Moreover, in those countries where traditional authority remains important, the 'conflicted loyalties' of people caught between their loyalty to the state and to the traditional authorities makes achieving good governance even more difficult.

The chapter discussed how civil society organisations can help to reduce the Principal/Agent problems that are difficult to control in the public sector in these small countries. However, taking on this role means taking on the responsibility to be well informed about activities in the public sector. These activities are often complex. The complexities of trade and trade policy and the lack of understanding of civil society groups were illustrated. Similar points could have been made about government fiscal policy.

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Part V

**Cross-cultural perspectives  
on institutional development  
for civil society**



# 14 Community development and globalisation

*Isagani Serrano*

## Introduction

### *Defining community and globalisation*

A dictionary meaning of community speaks of people living in the same place. This is similar to what is sometimes referred to as 'community of place' by some authors (Barnet and Cavanagh, 1994). Physical location is a primary political and economic consideration.

But not all communities are a community of place. There is the academic community or the Muslim community, each defined by mutually supportive relations among members, regardless of residence. Identity comes from being an academic or being a Muslim. Members participate in shaping their respective communities and have a special sense of responsibility for fellow members. Usually, they are not constrained by physical boundaries or nationalist allegiance.

It is a feature of today to be part of multiple communities. A Filipino born in the Philippines works in the UN, resides in New Jersey, joins the Filipino-American Friendship Society, keeps his membership and connection through the internet to a home fraternity, and so on. This reality need not contradict geographic communities which people sometimes find too parochial and constricting.

Non-geographical communities also operate within relatively small areas. We find, for example, religious, civic, labour and business organisations at the town level. Their activities provide opportunities and spaces for interaction that make for social cohesion within the local community.

Globalisation may be defined simply as a worldwide spread of ideas, goods, services and people, though it means different things to different people. Good, bad or a mix of both. To some, it's manna from heaven, to others, an apocalypse in the making. Or, it may just be a reality we're caught in and have to live with. The Human Development Report (HDR) (UNDP, 1999) described globalisation as shrinking space, shrinking time and disappearing borders. But shrinking time, shrinking space, disappearing borders *for what and for whom?*



Much literature, especially that coming from international financial institutions, seems to suggest only the good side of globalisation. Yet many are now beginning to question its promised benefits. The downsides of this process appear to be played down, if not entirely left out of the picture.

Mark Weisbrot, contributing author to *Global Backlash: Citizen Initiatives for A Just World Economy* (Broad, 2002) defines globalisation as increase in international trade and investment. Then he questions whether this is necessarily beneficial to everyone involved or even for the majority of people in any given country, suggesting answers in the negative.

To Joseph Stiglitz, former World Bank chief economist and 2001 Nobel Prize winner for economics, globalisation means the removal of barriers to free trade and the closer integration of national economies (Stiglitz, 2002). He wrote *Globalization and Its Discontents* because he saw first hand, while still with the World Bank, the devastating effect that globalisation can have on developing countries, and especially the poor within those countries. He believes, though, that globalisation can be a force for good with the potential to enrich everyone in the world, particularly the poor. But to be so globalisation needs a radical rethinking, considering how it has been managed so far. He was quite emphatic that globalisation today is not working, not for many of the world's poor, not for the environment, not for the stability of the global economy.

Globalisation is new, but not quite new. You might want to trace it back to when earliest humans roamed the world as nomads, when land bridges still linked continents. Or as Marx and Engels (1986) would track the development of capitalism in their 1848 Communist Manifesto:

Modern industry has established the world market. All old-established national industries have been destroyed. They are dislodged by new industries whose introduction becomes a life and death question for all civilised nations, by industries that work up raw material drawn from the remotest zones, industries whose products are consumed, not only at home but in every quarter of the globe. In place of the old wants, we find new wants, requiring for their satisfaction the product of distant lands and climes. All fixed, fast-frozen relations are swept away, all new-formed ones become antiquated before they can ossify. All that is solid melts into air, all that is holy is profaned, and man is at last compelled to face, with sober senses, his real conditions of life and his relations with his kind.

Note that these words had been taken as a call to arms, as it were, by more than half of humanity, and so seriously as to cause historic disintegration and reorganisation of societies around the world. But these words could as well have been uttered by former World Bank president Wolfensohn, or George Soros (sponsor and founder of the Open Society Foundation).

What's really new about today's globalisation, according to the HDR

(UNDP, 1999), is new markets, new actors, new rules and norms, new (faster and cheaper) tools of communication. We may want to reduce all these to two symbols – finance capital and the internet – which seem to drive all the so-called linking and shrinking, and the exponential growth of the global economy, among other things.

Globalisation cuts in many ways. Neither its good side nor its bad side is clear-cut and can pass without being contested. Positive globalisation can be about coming together, a sharing of humanity's best across cultural divides. And negative globalisation, just the opposite – a boundless spread of man's worst, threatening global solidarity. The first seems so scarce, the second we find so abundant in today's world.

Negative globalisation speaks of the disastrous outcomes of globalised systems of production, trade, investment, finance, debt and Overseas Development Assistance (ODA). Among these are growing world poverty, widening rich–poor divide, intensifying wars and conflicts, international crimes, global warming, loss of biodiversity, loss of community.

I sometimes speak of globalisation as the pace at which corn leaves your farm gate and comes back to you in corn chips. It is in large part a high-speed shrinking of space and time that benefits a few and drags us all down into a rat race towards a very uncertain future. To borrow George Soros' metaphor for the crisis of global capitalism, it's like a wrecking ball creating havoc and bringing disaster after disaster everywhere.

America leads the developed world in the globalisation process. The so-called American dream is the nation's number-one export. The dream is imbedded in a variety of cultural products – movies, TV programmes, videos, records, cassettes, CDs, VCDs, DVDs, iPods. These 'soft' or cultural products now dominating erstwhile iconic 'durables' like cars, washing machines, refrigerators and electronic equipment look, feel and sound American. As these products sweep the planet, you do not have to be American to sell American culture. The super rich and middle class living in the posh subdivisions of Manila have basically the same taste, style, habit and outlook as their counterparts in Manhattan.

China, which is now driving the world economy like nothing we have seen before, is as much a globaliser as America. But while made-in-China products are now sweeping the planet, these same products have deep American thumbmarks on them. Perhaps China is itself selling the American dream to its people and to the rest of the world.

## **Globalisation and rural development**

A world free of poverty is a rural world freed from this condition. Cities, despite their own share of poverty, will always represent progress and prosperity. It is the progress and prosperity of towns and villages outside the metropolis that will help cities live up to that prosperity symbol, and reduce urban poverty itself to insignificance.

Globalisation helps to accelerate growth in the rural areas and to facilitate concentration of cheap rural products in the global marketplace. Wittingly or otherwise, international financial institutions become instruments for prying loose the world's countrysides for exploitation by global corporate monopolists in food, seeds, feeds, machineries, biotechnology, minerals.

Rural areas can be made an attractive place to venture, risk and make money for anyone with money to invest. But this would suggest a policy of disincentives for public and private investors who naturally prefer the developed areas. This looks rather negative but it is a necessary viewpoint to take alongside positive policies. Cities can and should finance further urban improvement.

Why is it so easy to invest money to widen further an already wide highway? Why is it so hard to spend for barrio roads, communal irrigation systems, post-harvest facilities, potable water, a rural clinic, a barrio school? Why must a highland dweller be made to pay for the amenities and convenience of the big city inhabitants? These questions need to be answered as they suggest lopsided priorities and distorted structure of public subsidies.

At bottom is the issue of inequality. Expressed in spatial terms, 'urban' suggests disproportionate claims on food, education, health, shelter, communication, energy, opportunities for civic participation and cultural interactions, freedom of movement, amenities that make us happy and enjoy life. 'Rural' suggests just the opposite, though romanticised by environmentalists as 'refuge' from polluted brown jungles even as they themselves realise the trans-boundary nature of most ecological problems.

A closer look at the production pipeline should reveal to us that those who grow our food usually suffer a double whammy. They get exploited at both ends, so to speak. At the head, there's the high costs of land, water, seeds, farm machineries, interests on credit, etc. At the end, there's the pricing down at the farm gate, the high costs of storage or bringing the produce to market.

On both ends, we see the trader. The trader, usually an outsider or local richman, does not only possess the capital and leverage to price up or price down the value of real production. He or she is benefiting from the value gained out of easy access to opportunities and mobility, many of which are subsidised by taxpayers' money in one form or another.

The 'cheapness' of the products of rural labour is neither friendly to the producer, nor to the environment. To have, say, a karaoke set, a poor farmer needs several harvest cycles in a one-hectare farm, assuming no crop failure and good prices obtained. Likewise, a poor municipal fisher would have to catch hundreds of kilos of fish from an already seriously depleted fishing ground. Once cell phones swarm the countryside, an even more intense exploitation of labour and natural resources will be triggered.

The rich and urban consumers, the non-agricultural sectors, enjoy cheap prices that discount both rural labour and the land, water and forest resources. Some ways should be found and articulated in any rural development strategy to deal with these negative externalities.

Poverty seems easier to reproduce than reduce. The 1997 Asian crisis proved that on a grand scale. This is also proved every day at the micro level. From experience, livelihoods are hard to create and sustain, but easy to lose, especially when the macroeconomic situation is unstable. Cash incomes are hard to come by and easy to flow out of communities that buy from the outside most of the means to live and enjoy life. Cash income is one's passport to inclusion in today's world. You need it to buy a c-phone and get connected to globalisation.

One way of understanding our present predicament is to look at the dynamics of the so-called money game. Today, billions of dollars move in and out of an economy in seconds. Round the clock about \$1.3 trillion (total of world's official foreign exchange reserves in 1995) move around the global economy as computer bytes with hardly any connection to the real economy. This cyberspace operation has little or nothing at all to do with the production and trade of real goods like grains, meat, fish, fruits and vegetables, building materials, television, cars, etc. or providing a service like local resources management, community education and spiritual healing.

Wealth in money form can be created without creating value. There are two common ways to do this: (a) borrowing or creating debt and (b) bidding up asset values. A hundred pesos representing a real chicken can be multiplied several times within a day through a series of borrowings that eventually ends up in a debt pyramid far removed from the original real chicken. A piece of land may cost nothing if no one wants to buy it, but can cost one a fortune if many want it so badly for themselves. This is the casino economy (coined by Keynes) which now rules the greater part, if not the whole, of the global economy. But it is not just about gambling, it is about money making claims on real resources.

### *An experience in community development*

Neither democracy nor development is inclusive enough to have a space for every poor rural village in the Philippines. But democracy and development *for all* is attainable and worth striving for. And it's not an impossible goal.

Such was the view and vision of the founders of the Philippine Rural Reconstruction Movement (PRRM) when they organised this mass movement in 1952. These founders – mostly prominent citizens from non-poor, upper-class society, in other words, the 'included' – believed there was potential out there, innate among the poor themselves, waiting to be released. All that was needed was a movement that could trigger and assist the liberating process. And so they set out on an ambitious mission of mobilising the non-poor to help the poor help themselves learn their way out of social exclusion.

Since its founding, PRRM has been in the process of building community and habitat. A child of war and reconstruction, PRRM's life story parallels a new era of modernisation that has produced not only unprecedented

material wealth for humanity, but also a monumental legacy of wasted human and natural capacity. The strivings have revolved around people's struggles for equality and human dignity addressing the two outstanding victims of modernisation, community and living space.

More than half a century down the road, PRRM has been doing just that: helping the poor to develop themselves in their chosen ways and become important actors in building inclusive rural societies. The hope was to make democracy work at the grassroots and become a voice of influence in public policy.

In the local communities where it has taken deep roots over time PRRM has enabled the organisation of village organisations among poor farmers, municipal fishers and indigenous peoples, women and youth. These primary organisations have now formed themselves into federations to leverage their strength and voice. They have achieved a level of capacity for self-governance, for addressing poverty on site and for asserting their right to participate in shaping policies that affect their own communities and the larger society.

The programmes revolve around the fourfold approach of education, health, livelihood and self-government combined with community-based natural resources management (CBNRM). Projects range from municipal fish sanctuaries to baywide co-management of coastal resources; from advocacy of budget allocation for reproductive health to setting up a primary health care system in a number of villages; from organising savings and credit groups to establishing a rural bank; from installing potable water systems, solar energy and micro-hydro units to watershed management.

The fourfold approach is a legacy of Dr Yen, the founder of the rural reconstruction movement. This approach was designed to address the interlocking problems of ignorance, poverty, disease and civic inertia seen as endemic to all agrarian societies throughout the developing world.

The CBNRM is an emerging approach to the conservation of coastal, lowland and upland habitats. Informed by sustainable development discourses and lessons from community organising practices, the CBNRM approach emphasises the central role of local communities in the management of ecological systems.

Around these programmes and projects PRRM has built partnerships with local communities and, together, they have demonstrated a different way of doing development. Based on project experience they engage government, bilateral and multilateral aid agencies, and private corporate interests in dialogues on poverty reduction, social and environmental justice, citizen participation and good governance.

But building inclusive societies and realising sustainable development in a rapidly globalising world is a far more complex story. The PRRM story is but one small episode in a complex web of strivings to find clues and learn the ways out of social exclusion and unsustainability.

## **Rethinking community, development and globalisation**

If we look back to the first settled societies, or the more recently enlightened feudal societies in the Middle Ages, our modern society is far beyond recognition. The process of creating one world, particularly during the last decade, seems to be leading nowhere near that goal. Rather, globalisation is leading us to where no sane person wants to be, to the brink of global systems collapse.

The process of globalisation has brought us within touching or wrecking distance of each other, literally and figuratively. We now have before us a modern world that has more than enough accumulated wealth to sustain us even if we work fewer hours and have longer leisure time. We have more than enough to feed, to clothe, to house, to educate, lengthen the life-span, expand the freedom of movement and choices of every man, woman and child now living. We can use this accumulated wealth to pay back social dues and start off the greatest ever social levelling process. And probably there will be more left to clean up the mess we have caused to our environment.

The current human crisis should be a wake-up call. It should make us realise how so tightly connected we are, how a minor glitch in one part could trigger a breakdown in the whole system. The world we live in has become so small that we can hardly avoid each other. We live in this closely interconnected world where we have seen how at one point a country like Russia that does not trade with Latin America, and is located on the other side of the globe, could crash and bring down Latin America and threaten the collapse of the world economy.

The civilised world has come this far, but continues to be so divided. The civic and friendly world we all desire is yet to be, and there may not be enough time to build it. The writing on the wall is so clear and compelling. British economist Paul Ekins (Daly and Cobb, 1989) sees our current development dilemma in this way:

To those people not completely entranced by the cascade of consumer goods which pour from the modern industrial economy, it is becoming increasingly clear that this cascade has been made possible through the progressive sacrifice of two of humanity's most treasured traditional assets: a supportive local community and a healthy, productive natural environment.

Closing the equality gap within our societies is a priority. Policies and programmes must help accelerate the social levelling process. This goes beyond the rhetoric of making poverty the all-encompassing theme, as in the Millennium Development Goals and vision statements of the World Bank and the Asian Development Bank. In Asia we have seen the most dramatic reduction in poverty in the last three decades. But we cannot say that we have a more just, a more equal Asia now than before this happened.

Moreover, the world community has failed to arrest the decline of the natural systems on which all of us depend for our survival. And for all we care, humanity might perish, not because of cataclysmic terrorism or world revolution but because of climate change.

To illustrate the stark inequality in this world let us recall a 1990 baseline assessment. At that time an inter-agency panel of scientists suggested that if we are to succeed in stabilising the global climate system, each individual then living would be entitled to only 1,500 kilograms of CO<sub>2</sub> emissions, our right to pollute the environment, if you like. At that time, an American was already using 20,000, while a poor Afghan or Zairean about 100 or so. Moreover, the 1,500 kilogram-norm assumed (1) no further cutting of existing forest stands and (2) no more addition to the then 5.3 billion inhabitants of this planet.

One obvious implication is, an American must give up so much to enable an Afghan or Zairean to live in dignity. Now, you and I can see why we are in this present mess. Neither of the two assumptions worked, to begin with. While 200 million Asians have been lifted out of poverty, there has been little progress in closing the rich–poor divide. There has been virtually no change in the per capita CO<sub>2</sub> emission level of the US, for example. It's so amazing how so little has changed.

What went wrong? Back in 1992, at the Earth Summit in Rio we thought we had the answer – sustainable development – defined basically as justice and fairness between and within nations, women and men, across generations and restoration of our degraded environment.

We also had a global plan, some kind of 'global deal'. The 'deal' is about human survival. It's not about the rich and powerful setting conditions for sharing, especially ones that are burdensome and humiliating to the poor and less powerful. Rich and poor alike stand to lose in a global system collapse. What each side is expected to do, under the principle of common but differentiated responsibility, is but a just and fair share based on differing accountability for what happened and continues to happen.

Nobody's a beggar here. If poor peasants shifted to organic farming or if municipal fishers managed their coastal resources right, they would be doing it not only for their own sake, but for all of us. If a poor country takes care of its biodiversity, that country is doing a great service for humanity. It deserves to be reciprocated somehow, through untied ODA, unconditional debt relief, fairer trade terms and other forms of resource transfer. And we know, real net transfers from the rich to the poor imply deep cuts, possible only if the rich themselves begin to dramatically change the way they see the world, in how they produce and consume things.

We are witness to a modern paradox. Along with the interlinking of national economies we find nations and communities breaking up in many different ways. Globalisation brings wealth beyond measure to one part of the world and extreme poverty to the other. We see how traditional communities disappear, how ancient cultures are eroded by dominating cul-

tures. Millions of human beings are losing the sense of place and sense of self that give life meaning. Some predict that future conflicts will probably be less between nations, but more between the forces of globalisation and territorially-based forces of local survival seeking to preserve and to redefine community (Barnet and Cavanagh, 1994).

### *The challenges of inclusion*

The ways of social exclusion are many – poverty, colour, sex, faith and belief, language, ethnicity, culture, destruction of living environments, even advances in information technology. We have to overcome all these barriers to build an inclusive society.

But how inclusive is an inclusive society or community? Could it be that an inclusive and sustainable society or community is as much a dream as a world without poverty?

To quote the poetess, Emily Dickinson (2002): ‘The soul selects her own society/then shuts the door.’ This suggests that any society can be inclusive only to the extent that individuals choose and are chosen to belong there. It makes a strong case for freedom of expression and sovereignty of the person. More, it implies that the moment we begin to make selections based on any set of criteria or values, we already begin to exclude.

Is there any historical parallel for this kind of inclusive society we are looking for? Herman Daly and Rev. John Cobb (1989) alluded to some bygone era of enlightened feudalism. Under that system, every member of the community enjoyed work; there was more sharing and caring than in either capitalism or socialism. One need not worry about joblessness and lack of old-age security and everyone was assured of the basic needs and means to live in dignity. But this utopian viewpoint is contested.

Today’s world, in their view, has strayed too far away from that medieval society. Yet current discourses on sustainable development have again put back on the table the concept of community. This seems motivated less by a romantic return to the past than by a strong revulsion to the pervasive breakdown of social consensus and social cohesion. The primary driving forces are the civics – individuals and associations of high civic consciousness and civic activism – which include NGOs and social movements, and other concerned actors in society, in government, in the corporate world. They have proved to be the critical elements against negative globalisation and for redirecting this seemingly inexorable process away from the race to the edge.

The notion of community is far from being clear-cut and uncontested. It cannot be assumed as self-evidently good. A racist or fascist community is also a product of choice of some kind. Or it could be the case that a community whose expression of its right to be left alone might be as absurd as exercising its right to clear cut its communal forests, or even commit collective suicide.

The positive meaning of community needs stressing here. In PRRM dis-



course and practice, bias and focus of programmes on the poor is deliberate and meant to achieve inclusiveness in divided communities. Efforts to help the poor reclaim their power to decide on their own is balanced by education for solidarity. People are being helped to realise that self-governing and self-sufficient communities are a pipe dream, if not linked to many other similar strivings to bring about greater social cohesion and well-being for all.

Community participation is now widely recognised as a critical element in the success of any development project. The World Bank and Asian Development Bank (ADB) and other UN agencies like the United Nations Development Program (UNDP) and Food and Agriculture Organisation (FAO), have it as a matter of policy to ensure people's participation at all levels throughout the project cycle.

But how can you participate if you know not how? Communities at a project site may be assumed to know what they want and to tell a good or bad project when they see one. But it cannot be taken for granted, for example, that they can effectively hold donors and governments to account for their commitment to participatory processes and outcomes. They need to be smarter than they already are to be taken seriously and their inputs considered in improving project performance.

Daly and Cobb (1989) recommend what they call an economics for community in contrast to economics as we know it. An economics for community is the reverse of endless growth of production and consumption. Rather it aims at sufficiency of goods for the sake of community well-being.

To them, the larger community should be viewed as community of communities. The local community would be the primary basis for self-identification. Participation in community affairs is more direct. Representation is more grounded on local decisions. Representatives chosen locally would participate in important decisions at higher levels and in the selection of representatives to still higher levels. Personal identification would continue to operate at several levels to varying degrees.

The point is precisely to avoid concentration of political power at the global level following the concentration of economic power there. Decentralisation of the world economy will allow decentralisation of world political power. But considering what has become of the planet because of unrestrained exploitation of natural resources and sinks for waste, global action by the whole community of nations, e.g. the UN, will be necessary to prevent systemic disaster.

Viewing the world as a community of communities suggests diminution of sovereignty. Daly and Cobb assert that there are no sovereign states, nations or global government. Today's sovereign nation states would retain important roles, but must devolve others to smaller units and surrender still others to the United Nations. All communities would exercise some 'sovereignty', but none would be sovereign in the sense of modern political theory.

## Deglobalisation: fast backward to the future

Another world is possible. Worldwide, alternative voices and movements among ordinary citizens are saying 'enough' to globalisation, as we know it.

Deglobalise – a word we coined in a statement of Asian NGOs in Bangkok in 2000 when preparing for the World Food Summit+5 – seems to capture this anti-globalisation sentiment. Deglobalisation, by extension, would thus mean a process of reversal of negative globalisation.

It can be taken to mean promoting positive globalisation – the global sharing of ideas, know-how, resources, goodwill and hospitality, the free movement of people and mutual learning among different cultures. It means building more inclusive, sustainable societies in a highly unequal and environmentally-damaged world.

Deglobalisation need not suggest a return to protection regimes of old, if not outright autarky. In Asia, for example, given the five-year experience with the World Trade Organisation (WTO), and considering the lessons of the 1997 Asian crisis, deglobalisation might entail setting up region-specific systems around trade, investment, debt, ODA and financing, building on or even diverging from existing arrangements. As well, this might mean getting the WTO out of agriculture and preventing it from deciding the fate of small farmers and hungry millions, from determining whether and how these farmers will exercise their rights to be secure in food.

Deglobalisation must aim to strengthen local community action. As well, it must help build the local economies that serve the needs and aspirations of people in their communities and living environments.

## Conclusion

In building a deglobalised 'one world' the first tall order is a fundamental change in our thinking and value system. Some would say that the root of everything that's going wrong today comes down to mindset and values. And they may be right. But what sort of thinking and values must change? We are talking here of modern society or societies of six billion people believing, thinking, valuing, doing different things.

True, but some ideas happened to be more hegemonic than others and thus more decisive in guiding and shaping human actions. The dominant institutions that we see today have been built around them. Until they are questioned and changed it will be development-as-usual.

Deglobalisation may be the right word for communicating the need to turn the clock fast backward, toward a more secure common future. But what about doing something we never ever thought of or tried?

Donella Meadows has something to offer to those of us who think the world needs saving. She says there is one solution to the world's problems that she never heard the frenzied activists suggest – *slowing down*. According to her, slowing down could be the single most effective action to save the world.

She suggests a bundle of ‘what ifs’:

Suppose we weren’t in such a hurry. We could take time to walk instead of drive, to sail instead of fly. To clean up our messes. To discuss our plans throughout the whole community before we send in bulldozers to make irreversible changes. To figure out how many fish the ocean can produce before boats race out to beat other boats to whatever fish are left . . . Suppose we went at a slow enough pace not only to smell the flowers, but to feel our bodies, play with children, look openly without agenda or timetable into the faces of loved ones. Suppose we stopped gulping fast food and started savoring slow food, grown, cooked, served and eaten with care. Suppose we took time each day to sit in silence . . . I think, if we did those things, the world wouldn’t need much saving.

If we did all these things, she thinks we could be spared from consumption headaches, from things we think we have to buy but don’t really need. We could be spared from making so many mistakes. We could listen more and hurt each other less. We could take time to justify our favourite solutions, test them and learn what their actual effects are.

What if we do all that first and then, quietly, carefully, think about what else might need to be done?

She concludes, ‘Good advice. Too bad I don’t have time to take it. I have to go save the world.’

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# 15 Confronting Burma/Myanmar's security dilemma

An integrated approach to national and human security issues

*Zar Ni*

## Introduction

I would like to present first the following poem which I wrote.

*Burma or Myanmar: A Political Primer*

A typical 'Third World' nation  
In and against the service  
of 'Big Power' Nations  
On their way to Capital accumulation  
Thwarting or supporting revolutions  
Throwing crumbs at native elites of all stripes and colours.  
A beautiful landscape  
Diverse cultures  
With an ancient past of a tortured kind  
Still living a curse of gas, jade and oil  
While endowed with a fertile soil.  
Plagued by ugly conflicts  
Rooted in the Past of the Raj  
Long mis-handled by local dullards  
Fueled further by latter-day zealots,  
home-grown and foreign.

A broken nation  
A pathological State  
And isolated peoples  
Generally acquiescing  
Occasionally unruly  
And progressively sick and hungry  
With their populist minds  
Shackled in native authoritarianisms  
Given in to pedantic Liberalism.

'An outpost of tyranny'  
To the really existing imperialism  
And a pawn of ambitions  
For the dormant 'Oriental' clientalism

Subject peoples  
Reduced to a project or a field  
Labeled a 'failed or failing state'  
In the game of 'First World' faddish policy-ism  
Inside the baggage  
of sinister 'Democracy-ism'.

A typical 'Third World' nation  
In and against the service  
of 'Big Power' Nations  
On their way to Capital accumulation  
Thwarting or supporting revolutions  
Throwing crumbs at native elites of all stripes and colours.

My country – Burma or Myanmar – has made occasional headlines in the international media since she emerged from the self-imposed isolationism, following the collapse in 1988 of General Ne Win's disastrous, militaristic socialist regime. There appears to be a broad script in terms of how the outsiders understand my country.

In the eyes of the West, the politics in contemporary Burma have indeed been an epic struggle between the forces of good and evil. Since the spontaneous popular uprisings swept across the country's urban centers in 1988, the successive 'illegitimate' military governments have been horn-locked with the election winner, the National League for Democracy (NLD) led by the Nobel Prize winner Aung San Suu Kyi, for political power and the right to represent the great majority of the people.

The elected governments in the West – from the White House to Whitehall – have opted to support the NLD by snapping sanctions and other symbolically punitive measures against the authoritarian regime and exceptionalizing it as an international pariah, struggling to shake off its legacy of the self-imposed isolationism of 26 years. All Asian governments, however, have refused to join the sanctions regime, quietly writing it off as yet another example of the characteristic Western hypocrisy cloaked in the language of democracy, freedom and human rights.

Meanwhile, cultural conservatives, free trade reformers and human rights liberals in the West have become strange bedfellows, adopting the charismatic Oxford-educated NLD leader as their idol, and placing her in the league of such self-made, politician revolutionaries as Gandhi, Mandela and Dr Martin Luther King, Jr.

From the perspective of the Burmese generals, the West's 'adoption' of

Aung San Suu Kyi has only reinforced the common suspicion that she is, in fact, a stooge of 'neocolonialists' in 'big Western nations' hell-bent on imposing their will and advancing their own national interests, ideological or otherwise, in Myanmar. Needless to say, this has led to the regime's determined attempt to render further the NLD leader domestically irrelevant through prolonged and chronic incarcerations.

For better, or more for worse, the template of the contemporary Burma tale has been set in stone, more or less. And no protagonists may be expected to shift their views or switch their roles any time soon. It is against this backdrop that I attempt to argue for the integrated approach towards national and human security in Burma.

### **Historical and structural issues in the Burmese security debate**

While I am a democrat at heart and deeply committed to democratic development in my country, I am prepared to state that the absence of democracy is *not* the only issue that confronts Burma, nor is it a panacea for all her ills – as staunch advocates of Burmese democracy, both local Burmese and their Western supporters, have made it out to be. A quick look at the historical and structural issues that have led to the present sorry state of affairs in Burma would help us understand the nature of the country's problems.

The year 1948 was a very crucial year for Burma. Not only did mainland Southeast Asia's largest country regain her sovereignty and independence, after long years of struggle against the British rule, but also she inherited the structural problems that were deeply rooted in the 124 years of British colonial rule. These problems include: highly uneven economic and social development along geographic and ethnic lines; the British-induced movement into colonial Burma of Indian (and to a lesser extent) Chinese cheap laborers, as well as skilled laborers, and the resultant economic nationalism spurred by the visible control of the national economy by outsiders, Europeans, Chinese and Indians; ethnicization of local politics amongst Burma's multi-ethnic communities; a national colonial economy devastated by World War II; fragile political institutions such as a nascent parliament and an independent judiciary; a controversial constitution which included indigenous cultures deeply unfamiliar with the notions and workings of a democratic constitution; the abundance not simply of natural resources such as teak, gems, oil and agricultural products, but of arms and munitions left over from World War II, and, last but not least, a significant number of armed organizations all too ready to put to use these stockpiles as the first resort in dealing with differences in interests, visions and ideologies.

As in many former colonial states, the stage was set for protracted internal conflicts among both ethnic and ideological groups to push for their conflicting interests and visions. The result has been the five decades of dev-

astating civil war. Some of these internal armed revolts flared up in less than three months after independence as in the case of the Beijing-backed Burma Communist Party (BCP), which was followed by the almost successful military operation by the Karen National Defense Organization (KNDO) against the country's first and democratically installed government of Prime Minister U Nu in 1948. Out of the country's eight principal ethnic groups, namely the Chin, the Kachin, the Shan, the Mon, the Arakanese or Rakhine, the Karenni and the Karen, seven had launched, at varying points in time, armed resistance against Rangoon since independence in 1948. Amongst the Burmans, the country's dominant ethnic group, the Burmese communists, supported financially, politically and ideologically by Mao's Red China, revolted against their former nationalist comrades who were in Parliament and the armed forces, producing a pro-communist mutiny within the armed forces. In addition, the illustrious student activism, which started out as the anti-British, pro-independence movement, morphed into a political pawn which adult politicians and parties of all stripes and colors were quick to use towards their own ends. To make matters worse, the Central Intelligence Agency (CIA)-backed remnants of Kuomintang/nationalist Chinese troops who fled Mao's China, entered Burma from the east and set up military bases to fight Mao's troops. Neighboring Thailand has long used armed ethnic groups operating along Thai-Burmese borders as a buffer, as well as a partner in cross-border smuggling of timber, precious stones and Made-in-Thailand consumer goods.

In a nutshell, the state in Burma has been under siege since independence, resulting in the absence of political and national security. This sense of national insecurity has not only shaped the configurations of the state, but it has also instilled a siege mentality in the successive generations of powerful stakeholders in the country's national politics, that is, military officers and cadets. Operating in this state of mind, the successive generations of military officers who have had an effective monopoly over politics in Burma since 1962 have elevated concerns of national security above any other aspects of state building – social, cultural and economic development, peaceful integration of multi-ethnic communities into a single national political community, and security and dignity of individual citizens and ethnic communities throughout the country.

Several factors should conceivably have reduced the generals' acute sense of being under constant threat by both internal and external political forces. These include the end of Beijing's historically supportive policy toward Southeast Asian communist armed rebellions following the reformist Deng Xiopeng's ascent to power after Mao's death in the 1970s; and the subsequent total collapse of the BCP a decade later (in 1989). These factors, as well as the massive domestic unpopularity of, and revolt against, the military rule, helped pave the way for 'the ceasefire movement' in Burma to emerge in 1989. This ceasefire movement resulted, by 2003, in the signing of seventeen and a half separate ceasefire agreements between the



military-controlled central government and various armed ethnic groups (with the exception of the Shan State Army-South, the Karenni National Progressive Party and the Karen National Union – all Thai-Burmese border based). These deals are significant achievements when measured against five decades of civil war, especially in the relatively underdeveloped non-Burman ethnic areas of the country, even in spite of the fact that the ceasefire deals have not been transformed into the necessary, lasting peace agreements between Rangoon and the ceasefire organizations, which, since independence, have fought for greater administrative and political autonomy.

A year after the beginning of the ceasefire movement and the collapse of the BCP, the military held multiparty elections in 1990 as a response to the popular demand expressed in massive, nationwide protests. Not yet prepared to leave the national political stage, the military leadership, which was made up of new faces intent on protecting both the officially retired head of state, the late General Ne Win, and the institutional survival and, perhaps, supremacy, of the armed forces, found itself with a new and formidable political foe: one of the parties allowed to contest the military-sponsored multiparty elections, namely, the National League for Democracy (NLD). The NLD has been led by the domestically widely popular Aung San Suu Kyi, the daughter of Burma's slain independence hero and the founder of the country's armed forces. In spite of the fact that top NLD leaders were placed either under house arrest or behind bars, the party went on to win a landslide election victory, sweeping almost 60 percent of the popular votes and 82 percent of the parliamentary seats. The military was stunned by the election results and started to feel the ground shifting underneath. There was talk of Nuremberg-style trials in Burma for the military leaders who were responsible for the bloody crackdown on the popular uprising in Burma, and for the generally oppressive political conditions.

### **The sense of insecurity**

The post-election years have seen intractable political deadlock, specifically between the top military leadership and the NLD. Sixteen years after the 1990 elections, the country's politics and economy remain categorically stagnant as a result. The military's sense of personal and institutional insecurity and its concerns for national security – sovereignty, non-disintegration and territorial integrity of Burma or Myanmar – remains as acute as ever, despite the fact that an overwhelming number of armed ethnic groups have entered into ceasefire deals, bringing many former armed conflict areas under indirect state control.

Militarily, there is no single group, including the drug-producing, best-armed United Wa State Army (UWSA), that can conceivably match Burma's armed forces in terms of fire power and institutional strength. Politically, despite its domestic popularity coupled with its election-based mandate, the NLD has been reduced from the most formidable popular,

non-violent democratic front to nominal opposition that exists at the mercy of the ruling military regime.

All the neighboring states – Thailand, China, India, Laos and Bangladesh – have forged increasing economic and political ties with the Burmese military leadership. Thailand has opted to work directly with Rangoon since trade, bilateral and regional relationships, as well as economic integration have begun to dictate the national policies of Southeast Asian governments. In the wake of the collapse of the Leftist armed insurgency movements, the Thai government has practically turned its back on the Thai-Burmese border-based armed ethnic organizations, which Bangkok used as a buffer between the two countries for nearly 40 years. Since 1989, Beijing has transformed itself from the most serious threat via Burmese communists to the military-ruled Burma, to Rangoon's most significant ally. While the generals are still concerned about being too close to Beijing, the latter is eager to prove that it is the resource-rich and strategically placed Burma's friend in need. Concerned about the growing Chinese influence and penetration in Burma and the need for Rangoon's security and intelligence collaboration regarding its northeast insurgencies, India on its part has, by the mid-1990s, adopted a highly pragmatic stance toward Burma; New Delhi withdrew its initial financial and political support for the Burmese pro-democracy movement and conversely has established long-term trade, political and security cooperation with Rangoon.

In light of the removal of Beijing's military threat, nominal domestic opposition, the death of the Burmese communist movement, significantly weakened ethnic armed resistance, the ceasefire deals and the lack of military threat from neighboring states, why then does the military leadership in Rangoon continue to operate with the bunker or siege mentality? Why do the Burmese generals and the rank and file feel they need to maintain tight control over all aspects of Burmese society, economy and politics? The answer, in two words, is the United States.

Since 1988 Washington has been the harshest critic of the Burmese regime. It has made strident calls for large-scale political reforms under the leadership of Aung San Suu Kyi and/or outright regime change in Rangoon. Many have argued that Burma is not really a significant issue for the United States. Washington's top priority issues include trade, non-proliferation of weapons of mass destruction (WMD), energy security, North Korea, Iran, Middle East-induced Islamic terrorism, the growing power of China and the resultant challenges (and threats) it feels.

However, as the neoconservatives in Washington work toward refashioning the world unilaterally to serve US national interests, the rest of the international community watches nervously what Washington might do. And the Burmese generals are no exception, especially since they have been singled out as one of the 'outposts of tyranny' (ripe for regime change). Having witnessed the downfall of other generals who turned despotic, such as Suharto and Pinochet, and the US-induced collapse of several former

USSR republics, not to mention Iraq and Afghanistan, the generals are understandably concerned about the new American military adventurism.

The building of a new military headquarters/administrative capital in the more strategically placed Pyinmana/Yamethin area and the removal of key government ministries there, demonstrate how seriously the generals take the US threat to regime survival. As the United States openly works toward changing the regimes in Cuba, Iran, Venezuela, Zimbabwe and so on – not necessarily through direct military intervention – by supporting ideologically, financially, politically, diplomatically and technologically organized dissent within these countries. Despite the fact that they are not taking any chances regarding their concerns about direct military intervention in Burma by the United States, the generals seem to be fairly convinced that Washington is looking for ‘an honorable exit’ from Iraq. Because of the likely sense of failure with its mission in Iraq, the US is unlikely to insert itself militarily in their country, sandwiched as it is between China and India. However, judging from the official media reports and press conferences in Rangoon, the military leadership in Rangoon has deep suspicions that the US is applying a destabilization strategy similar to that it has used in Cuba, Venezuela and other places, using proxy organizations and armed Burmese opposition groups (both mainstream Burman opposition led by Aung San Suu Kyi and the remaining ethnic armed resistance groups such as the Shan State Army-South). In late August 2005, Rangoon outlawed both armed and non-violent organizations that it suspects the United States is using as proxies in Burma. These organizations include: the Federation of Trade Unions of Burma (FTUB) headed by Maung Maung, whose father Nyunt Wei, a Harvard MPA, serves as a member of the NLD Central Executive Committee and is a close advisor to NLD leader Aung San Suu Kyi; the Washington-based National Coalition Government of the Union of Burma headed by Dr Sein Win, a first cousin of Aung San Suu Kyi; the armed, All Burma Students’ Democratic Front (ABSDF) based on the Thai-Burmese borders, with its supporters scattered throughout the United States; and the Shan State Army-South with its links to the Shan diaspora in Europe, North America and Australia.

What appears to have cemented the generals’ perception that they are on the hit list of the United States, which will not be satisfied with anything less than their downfall, are the well-coordinated and deadly terrorist bomb blasts in May 1995 that shocked Rangoon and shook the generals’ confidence and self-perception as guarantors of security and stability (at least in the areas under their direct and tight control). While its international legitimacy and the right to represent the people and the country have been challenged internationally since the NLD’s resounding electoral victory in 1990, its internal legitimacy in the eyes of the Burmese public has been eroded significantly as it can no longer guarantee even the physical safety of the non-politically engaged public. Furthermore, the unilateral declaration of independence of the Shan State by exiled remnants of past Shan feudal lords

from the comfort of their homes scattered across the globe in countries such as Canada and Australia, has given the generals one more reason to suspect that Western powers have either encouraged, or quietly provided the old Shan feudal exiles with political blessing and/or financial backing.

Five decades after its rebirth as a modern nation state, both the ruling class and the ruled in Burma have found themselves extremely vulnerable. And the country has been in a vicious cycle of violence, poverty, armed conflict, political repression. So far I have focused primarily on the security issues as seen from the perspective of the ruling military.

One main reason for my having chosen to highlight Burma's security issues through the eyes of the generals is that we have been inundated – and rightly so – with news and human rights reports about human security issues which have plagued the bulk of the population, regardless of race, ethnicity, religion and economic background, as well as their place of residence (that is, whether they live in the regime-controlled villages, towns and cities, or the non-Burman ethnic peoples' armed conflict areas). There is a long list of human security issues. Among them are the chronic flow of a significant number of refugees from Burma into neighboring India, Bangladesh and Thailand; the high percentage of malnourished children; numerous downstream local communities that are paying the price for the proliferation of dams; agrarian problems induced by deforestation, soil erosion, misguided state agricultural policies; one to two million Burmese migrant workers in search of employment across Southeast Asia subject to all types of abuses as they live and work as 'illegal aliens'; the lack of food security for the growing percentage of people inside the country; the increasing HIV/AIDS epidemic in Burma which is estimated to reach up to 500,000 in the country; an estimated 500,000 internally displaced persons (IDPs) driven out of their ancestral communities by incessant, low-intensity military operations between government troops and the ethnic armed resistance organizations; the reported use of forced labor in military operations and development-related infrastructure building projects; the failing government-run public institutions in health, social and educational sectors; and the list goes on. In short, there is no security or predictability in Burma, either for the ruling class or the ruled.

### **An alternative approach**

In order to break this cycle, there is a pressing need to take a fresh look at the problems that confront the country, for both the ruled and the ruling junta, but not from the conventional perspective of who is right and who is wrong, what is democratic and what is dictatorial. The past approaches pursued by all players – and their foreign supporters – have not been fruitful. Democracy-based demands or democracy-driven policy initiatives – such as tripartite dialogue as advocated by Burma's non-Burman ethnic elite in exile and called for by the United Nations, or instant democratic reforms,

if not overnight power transfer – demanded by the West, and backed by the mainstream Burmese opposition – or the drafting and adoption of the constitution – are not really addressing the real issues that the ruled and the ruling class, that is, the ordinary citizens and the military leadership, have to confront on a day-to-day basis. For instance, while the public respects and loves Aung San Suu Kyi and what she stands for – a free and democratic political system for the people – they are primarily concerned about various aspects of security in their lives. Scenes of massive audiences at her democracy lectures are misleading in that they give the impression that the NLD and ‘the masses’ are one and the same, while in fact the very masses quickly disperse into the safety of their homes and security of their offices when the NLD comes under literal attacks by the regime-sponsored organization – the Union Solidarity and Development Association (USDA). People seek security – however relative it may be – as opposed to revolution. Likewise, while ethnic minority elite demand political autonomy and ultimately the right to self-determination, and forms of statehood such as federal versus unitary, the overwhelming majority of non-Burman ethnic peoples, especially those who are most vulnerable to rights abuses in armed conflict zones of Burma, would be happy to have fundamental security in their lives, something at least several generations of them have only dreamed of since they were born – and sucked – into the conflict.

In its institutionalized memory which has found its way into the political socialization of successive generations of military leaders, as well as the rank and file of Burma’s armed forces, it is the armed forces (and its leaders) that have successfully held the Burmese post-colonial state together since ‘multi-color insurgency’ – as ideologically and ethnically-driven armed insurrections were known – flared up within 60 days after independence in 1948. During the 50 years, the military has inscribed itself into the body politic of Burma. National security, to them, is not to be differentiated from their own personal security, as well as the security of the armed forces as the most dominant institution. The current rights-based approach advocated by the West-backed National League for Democracy and non-Burman ethno-nationalists, demands that meaningful economic and political reforms begin immediately, while the country and its ruling military are reeling under the weight of economic sanctions and Western isolation, and continuing pariah-ization.

On the eve of Aung San Suu Kyi’s sixtieth birthday, a group of Nobel Peace Laureates published an open letter, stating their support for further sanctions and isolation of Burma or Myanmar, until ‘the evil regime’ there ‘reconciles with its people.’ In July 2005, *The Economist* ran an editorial and a special report on Burma, stressing the need for the reassessment of the failed policies of both sanctions by the West and constructive engagement by the East, and called for making a deal with the generals. In light of what is on the generals’ mind, as well as the collective minds of ordinary citizens (from all walks of life and different ethnic and religious backgrounds), such a deal

has to address both national security issues as understood by the generals and human security issues lived by ordinary people of Burma – not opposition political elites backed by the West – in whose name the deal is to be struck. However unpalatable and unpopular this approach may be, absent total regime/institutional collapse or US-brokered regime change, neither of which is desirable or conducive to democratic transformation of Burma, this is the only approach that has not been tried, and hence its validity or usefulness cannot be written off, without testing it.

The past offers of international aid packages have been rejected indignantly by Rangoon, saying the Burmese military leaders are not monkeys who could be induced to do certain things by the offer of bananas! ASEAN's (Association of South East Asian Nations) softly-softly approach since 1997 has not yielded anything because it doesn't really address the real issue of regime-defined national security. The dialogue that needs to take place is not between Aung San Suu Kyi and the ruling generals, much less the dreamed-of tripartite talks, however outlandish and outrageous this may sound to those who operate within the moralistic framework of Orwellian two-legs bad and four-legs good or 'evil doers' and the 'good guys.' Perversely, the only deal there is to strike is the deal between Washington and Rangoon. For all the tough talks, exceptionalization of Myanmar, and demonization of successive groups of generals since 1988 by Washington has convinced not simply the top brass in Burma but the military as an institution that their real opponent is not the NLD or Aung San Suu Kyi or ethnic minority groups that ultimately want their own nations and states, but is the evangelizing and unilateralist United States.

Within the local context, there is an extreme imbalance of (fire)power between the 'democratic forces' and the dominant institution of the armed forces, those who rule the country through this once venerable institution (at least for the Burman majority). Burma is a national security state and its rulers are most acutely concerned about issues of security, personal, institutional and regime as a whole. Until and unless the threat, perceived or real, has been addressed effectively, the chances of addressing the broader – and pressing – issues of human security, that affect very negatively 50 million ordinary citizens of all ethnic, religious and class backgrounds, are pretty slim.

All modern nation states created out of conflict, violence and exploitation that feel under siege, especially by foreign forces, are going to lash out at their legitimate critics and opponents, take unilateral actions – military or otherwise – trampling on or rolling back any type of liberties – economic or political – and flouting international norms, treaties and organizations. The United States, especially those who are now in the driver's seat of US foreign policy implementing the 'National Security 2002' doctrine, is best positioned to understand the Burmese regime's psychology and mentality. The US is reeling from increasing economic, political and military insecurity in the face of China's growth, the emerging multi-polarity in international

relations, the growing worldwide resentment toward the US and the ongoing terrorist operations by Muslim fundamentalists. It is high time that the international community moves the Burma policy debate in the direction that addresses the mundane, but important concerns both of the ruling generals and the ruled, by taking an integrated approach to Burma's national and human security issues while adopting the long-term view of democratic transformation.

# 16 The place of religion in the Iranian fertility transition

*Peter McDonald and Md Jalal Abbasi-Shavazi*

## Introduction

### *Women and their fertility in the early years of the revolution*

Following the 1970s oil boom, by the end of that decade many Iranians considered that their country was wealthy, but that they themselves were not seeing the fruits of that wealth. There were also many disaffected religious leaders and scholars who saw the social changes implemented by Md Reza Shah as being un-Islamic. These circumstances combined with many others to produce regime change through popular revolution, the only example of such change in the Middle East in the past 40 years. The strong and viable alternative at the time was an Islamic republic.

Reform in the new republic was focused first and foremost on the application of a conservative social and religious agenda and upon the realignment of foreign relationships. Highly visible were reforms related to women including the rigid application of their status as contingent upon a responsible male, separation of the sexes in public, the enforcement of the strict dress code and the lowering of the minimum age of marriage. The family planning programme that under the Shah regime had enjoyed only modest success at best, was allowed to fall into a state of disrepair, and contraception became much less readily available. Indeed, the new government, plunged almost immediately into a long and bloody war with Iraq, adopted a number of policies that were effectively pronatalist. The absolute rejection of Western values and isolation from those values along with the changes in women's status portrayed Iran to the West as being culturally conservative, including in relation to fertility and family planning. This expectation was borne out in the first years of the revolution through increases in fertility rates across the country. In some provinces, especially those with substantial ethnic minorities (and more especially those with large Sunni populations), the cross-sectional fertility rate rose in the first half of the 1980s to almost ten children per woman.



*Economic and social change in the early years of the revolution*

Economic reform was very limited in the new republic. Stimulated by the war and perhaps by the Islamic approach to economic development, industry became even more state-centralised and isolated from world markets. Almost 600 large- to medium-sized companies were nationalised. Protection, inflation and currency mismanagement were rampant. The hopes of most people that their economic circumstances would be greatly improved through the revolution were not realised.

On the positive side of the equation, the new government invested heavily in infrastructure especially electricity and water supply and access to these services was extended across most of the country. More importantly for the story of this chapter, however, was the creation throughout the country of widespread and cheap access to education and health services. Infant and child mortality rates fell sharply and education and literacy rose remarkably. Despite the restrictions placed upon women in many areas of their lives, the egalitarian nature of the revolution extended full access to education and health services to women. In this respect, the revolution was highly enlightened compared, for example, to what was to happen under the Taliban regime in neighbouring Afghanistan. Table 16.1 shows that the rapid advance of literacy for young Iranian women extended to both urban and rural women. Today, women constitute over 60 per cent of new enrolments at Iranian state universities.

**1986: the watershed in Iranian demography**

In 1986, the oil price plummeted, greatly reducing the revenues of the government. On top of the poor economic outcomes resulting from the combined effects of economic sanctions, corruption, inefficient nationalised industries and tariff protections, living standards remained well below the expectations of most people. The populace had had six years to realise that their economic aspirations were not about to be met and, with the fall in the oil price, a future worsening of their circumstances was much more likely. The Iran–Iraq War was in its sixth year with no sign of resolution. The

*Table 16.1* The literacy rate (%) for women aged 15–19 to 25–29, rural and urban areas, Iran, 1966–1996

<i>Age group</i>	1966		1976		1986		1996	
	<i>Urban</i>	<i>Rural</i>	<i>Urban</i>	<i>Rural</i>	<i>Urban</i>	<i>Rural</i>	<i>Urban</i>	<i>Rural</i>
15–19	58	5	75	20	86	53	97	86
20–24	41	3	59	10	76	37	94	78
25–29	30	1	49	5	66	22	90	65

Source: Statistical Centre of Iran, various censuses.

1986 Census revealed that the population was growing very rapidly indeed (4 per cent per annum from 1976 to 1986) as a result of the very high fertility rates that had applied in the first years of the revolution.

At a population growth rate of 4 per cent per annum, the population doubles in size every 18 years. The longer-term social and economic implications of a continuation of population growth at such a high level were brought to the attention of policy makers and religious leaders by Iranian demographers. While the convention may have been Western in origin, Iranian leaders accepted the viewpoint that high population growth threatened the very stability of the government. Nevertheless, official action to address the high birth rate was slow. Even so, the fertility rate began to fall from the mid-1980s onwards. The total fertility rate fell from 6.5 births per woman in 1986 to 5.9 in 1989. Furthermore, the fall in these years would have been more rapid had it not been for a marriage boom that came with the end of the war in 1988 (Hosseini-Chavoshi *et al.*, 2006).

*The recommencement of the national family planning programme: fertility from 1990 onwards*

After the national family planning programme was established in 1989, fertility fell sharply and continues to fall. Well over 70 per cent of women of childbearing age were using contraception in 2000. The two-child norm is widespread. In the 1990s, simultaneously, women delayed their first births spaced their second births and stopped having children at whatever number they already had so long as that number was at least two (Hosseini-Chavoshi *et al.*, 2006).

The above description of the spectacular fall in fertility in Iran is in keeping with three closely related theories of fertility change: multiphasic response (Davis, 1963) whereby people respond in almost every demographic manner when subjected to a powerful stimulus; the relative income hypothesis (Easterlin, 1980) whereby the perception that economic outcomes will fall well short of economic aspirations leads to restriction of the number of children that a family has; and the economic opportunity hypothesis (Abernethy and Penazola, 2002) whereby the perception of shrinking opportunities discourages reproduction. If the Easterlin hypothesis applies, the suddenness and rapidity of the fall in fertility in Iran suggests that the gap between aspirations and expectation was very wide indeed – and we would argue that this was the case. The following two quotations from intensive interviews organised by the second author in the religiously conservative province of Yazd in 2001 are illustrative:

'The economic situation is not good now, and we cannot have many children. Even if the situation became better, it's impossible to have many children, because we cannot rear them properly.

(a rural woman aged 39)

Having children is difficult. We want to rear them properly. If we had fewer children, we would not have to be thinking about them all the time.

(an urban woman aged 49 with seven children)

Women also report ideal family sizes that are in keeping with today's low levels of fertility. Table 16.2 shows the ideal family size for a couple as reported in four separate provinces in 2002 by women married from 1980 onwards. In three of the four provinces, almost three-quarters of these women stated that two children was the ideal and, in the same provinces, very few reported that four or more children was ideal. In Sistan Baluchistan, where a substantial proportion of the population is Baluch ethnicity and Sunni Muslims, 38 per cent of women stated that four or more children was ideal. The startling number in the table, however, is that 22 per cent of Gilaki women considered one child to be ideal. Consistent with this, as mentioned above, this mainly rural province had a fertility rate in 2004 below 1.5 births per woman, a level approaching the lowest levels in European and East Asian advanced countries.

Motivations, however, are not enough on their own. Beyond motivations, the means to control fertility must be accessible, and cultural or religious obstacles to the control of fertility must be able to be overcome.

The means were available through the family planning programme that was offered through the efficient and accessible public health system that had been developed in the 1980s. This implies considerable commitment to family planning on the part of the Ministry of Health and Medical Education and our work with the ministry confirms that this was and still is the case. In our survey conducted in four provinces in 2002, we found that the percentages of married women aged 25–44 years who were using some form of contraception were 85 per cent in Yazd, 87 per cent in Gilan, 84 per cent in West Azerbaijan and 52 per cent in Sistan-Baluchistan.

*Table 16.2* Percentage distribution of ideal number of children of women married from 1980 onwards, four provinces of Iran 2002

<i>Province</i>	<i>Ideal number of children for a couple</i>				<i>Total</i>
	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	
Gilan	22	72	5	1	100
West Azerbaijan	10	73	15	2	100
Sistan Baluchistan	4	47	12	37	100
Yazd	7	74	14	5	100

Source: Iran Fertility Transition Survey 2002.

## **The role of religion in the fertility decline**

In relation to cultural obstacles, it has been conventional for Western commentators to assume that conservative religious institutions in Iran would block any attempts to lower fertility. On the contrary, our research indicates that religious institutions often were important vehicles for the promulgation of family planning across the country. Furthermore, where a local religious leader may have opposed family planning, this was an area in which people, especially women, were prepared to make their own decisions, and their freedom to do so was not curtailed. Two other women interviewed in Yazd in 2001 said:

'If [a religious leader] says tubectomy or vasectomy is forbidden, people would not accept it. Because most people are thinking that living costs and expenses have increased.

(urban woman aged 49)

If [religious leaders] say using a method is forbidden, I would use it. Because if I don't use it, I may have another child. Would they do anything for me if I become pregnant and have another child, then?'

(rural woman aged 34)

In relation to the sects of Islam, from the late 1980s through to the current time, the fertility rate for Sunni women has been considerably higher than the fertility rate for Shiite women. In 1988–1990, the rate for Sunni women was almost eight children per woman compared with around 5.5 for the Shiite women. After this time, fertility fell more or less in parallel for both groups, such that the difference of around two children remained in 2000–2002. However, there is a heavy overlap between sects of Islam and ethnic groups. Therefore, the differences that we observe between sects are probably more the result of the cultural differences between Persians, Gilaki and Azari (all Shiite in the vast majority) and Kurds and Baluch (mainly Sunni).

## **Conclusion**

Our analysis shows that, at least since 1990, Iranians have prioritised economic considerations over religious pronouncements in relation to the number of children that they have. While many religious leaders tend to be ambivalent about the legitimacy of various methods of contraception and about birth control in general, they are also convinced about the development problems associated with very high fertility rates. They are also now very aware of the popularity of birth control and of the desire of most parents to limit the number of their children to no more than two.

Accordingly, it would be very difficult at this point for any Iranian

government to curtail access to contraception and sterilisation. This is especially the case given that, over the years, those involved in the running of family planning have been able to obtain *fatwa* from religious scholars that provide approval of various forms of contraception, including sterilisation. We expect that the fertility rate will continue to fall in Iran as economic pressures on young people lead to further delays of the first birth and as fertility falls in the provinces that still have moderately high fertility.

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# 17 Faith, NGOs and the politics of development in Bangladesh

*Bina D'Costa*

## Introduction

Bangladesh has a greater concentration of non-governmental organizations (NGOs) than any other developing country in the world. It has a rich history of experimentation in rural development models by NGOs. There is a number of NGOs which call themselves faith based or religious NGOs. However, there has not been any separate study on them.

Scholars who work on NGOs have analysed them under various categories, such as northern and southern, local, regional and international or, depending on work, Women's Rights, Legal Aid, Environmental NGOs and so on. These categories however increasingly isolated a number of growing NGOs that identify themselves as faith-based or religious NGOs (RNGOs).<sup>1</sup> They may operate under similar political and legal frameworks, but faith-based NGOs strongly believe in the responsibility entrusted to them by God. In this way, RNGOs are different from rights-based NGOs and they use a 'duty oriented language of religion characterized by obligations toward the divine and others, by a belief in transformative capacities, and a concern for justice and reconciliation' (Falk, 2001).<sup>2</sup>

A visible number of organizations define themselves in religious terms, although what they call themselves might be different. Spiritual, religious, faith-based are some of the common terms used by NGOs that use religion as the founding principle of their organization. Berger defines religious NGOs as 'formal organizations whose identity and mission are self-consciously derived from the teachings of one or more religious or spiritual traditions and which operates on a nonprofit, independent, voluntary basis to promote and realize collectively articulated ideas about the public good at the national and international level' (Berger, 2003: 16).<sup>3</sup> Drawing upon her definition I discuss the role of religious NGOs in Bangladesh.

While both secular and religious NGOs come from a strong moral tradition and strive for what they consider as moral 'right' instead of real or perceived 'wrong', RNGOs believe that it is their mission and responsibility based on their faith to help those who are oppressed. More than being

accountable to the community, RNGOs believe that they are accountable to the divine being or God in serving the communities to foster justice and peace and that they are the deliverer of the divine being's benevolence.

In Bangladesh, both Christian and Islamic NGOs work on microcredit and gender issues, including many other development projects. I argue that while the local Christian NGOs have culturally interpreted the term 'secular' in order to survive in an otherwise hostile development environment and thereby become part of the broader NGO community, Islamic NGOs draw upon the Islamic religious and traditional norms and intend to open up a new legitimate space within civil society. However, Islamic NGOs still work with selected partners and do not tend to engage in broader NGO community dialogues.

In this chapter, I analyse the role of RNGOs in Bangladesh. In the first section, I detail the tension between religious identity and a sense of national community in Bangladesh following the post-colonial and Pakistani periods. It is important to situate the debate of secularism and how Islam views it, because Bangladesh is a Muslim majority country. This debate refers to the more complex and somewhat uneasy relationship Islamic NGOs have with other parts of the civil society in Bangladesh. In the third part of the chapter, I investigate the role of Islam in Bangladesh's political space that actually opened up opportunities for Islamic NGOs to operate, but also created an environment of suspicion and distrust in the NGO community in particular and in broader civil society movements of the country. After a brief explanation of NGOs in Bangladesh, I articulate the nature, funding issues and activities of faith-based NGOs. I also look at gender issues which most RNGOs embraced in their development programmes. Finally, the most recent phenomenon of Islamic NGOs and security articulated in the chapter demonstrates that at least a few RNGOs had hidden political agendas in the name of religion and community development, creating a challenge for other pro-poor and action-oriented RNGOs to sustain their projects.

During my preliminary research, I visited some of the major Christian NGOs such as Caritas, Christian Commission for Development in Bangladesh (CCDB), Heed Bangladesh, World Vision, YWCA and YMCA. Most of the research conducted on Islamic NGOs is from newspaper reports, discussion with leaders of the NGO community and Islamic NGO publications. I intend to carry out further research in this area and visit the Islamic NGOs in a later stage of the research. Although there are some Hindu and Buddhist NGOs, they are very small and in some cases almost inoperative in Bangladesh. Some secular, and almost all the Christian NGOs, often work in Hindu and Buddhist community areas, and have outreach programmes for both communities. Although in future I plan to incorporate some analysis on Hindu and Buddhist NGOs, this present chapter focuses on Christian and Islamic NGOs only.

## Religion and national identity

Largely due to the two-nation theory that advocated two separate states for Muslims and Hindus, India was divided along religious lines in August 1947. Pakistan, the Muslim state, was divided again in 1971 when the Bengalis of East Pakistan decided that religion alone was not sufficient to create a national community. Since Bangladesh was created through a secular national movement, and then moved back into religious politics, it is important to examine the relationship between national identity and religion in the context of Bangladesh.

Important contributions in the political and anthropological discourse of nationalism have treated religion as essentially traditional and nationalism as modern (Gellner: 1983, Anderson: 1991).<sup>4</sup> In Gellner's text, the secular nation state is presented as a sign of modernity. To a considerable extent he narrowed down the discussion of nationalism to the dichotomy between traditional and modern. According to Gellner, tradition is what societies have before they are touched by the great transformation of capitalism, while the most important characteristic of traditional societies is that they are heavily influenced by religion. According to Anderson, nationalism appeared when the two large cultural systems that had preceded it – the religious community and the dynastic realm – disappeared (Anderson, 1983: 12–22, see Note 4). Both Gellner's and Anderson's work replace the study of 'traditional' with nationalism that also incorporates elements of religion.

In identity politics literature, religious community has the capability to supersede other identity dissimilarities. The significance of religious identity was strongly evident before the rise of the modern nation state. Having a common religion permitted group survival despite loss of national independence, for example, in ancient Israel. In relatively modern history, one of the major decisive factors to cause the disintegration of the subcontinent of India was religion. India and Pakistan were created based on the Hindu and Muslim identities of the people.

Scholars have attempted to explain the power of religion in national identity formation. Hobsbawm, for example, notes that the relationship between religious and national identity continues to be 'extremely opaque' (Hobsbawm, 1990: 71).<sup>5</sup> While Ayatollah Khomeini saved some of his most contemptuous rhetoric for condemning European nationalism and the secularism that accompanied it, he referred to the Islamic nation, the umma, as the sole community identity in which he believed (Cottam and Cottam, 2001: 29).<sup>6</sup> Northern Ireland, Lebanon and post-Cold War Yugoslavia are other examples where would-be national communities have a strong religious identity component. Prominent sociologist, Durkheim on the other hand, examined the role of religion and society. Durkheim considered that there was no real distinction between religion and nationality and observed that religion maintained the solidarity of the national community. He argued that 'the idea of society is the soul of religion' (1947: 419)<sup>7</sup> and saw



'in the Divinity only society transfigured and symbolically expressed' (1947: 52). Religion was understood by him not only to occur from the social life itself, but also to be a system of ideas by which individuals as a group identified in a society to which they belonged and their relations to it (Grosby, 2001: 97–98).<sup>8</sup>

However, it is necessary to make an analytical distinction between religion and nationality. For example, although Bangladesh, India and Pakistan all clearly demonstrate strong affiliation of nationalism to religion, other forms of identity also strongly contributed in shaping the political and social life in these countries. Bengali ethnic community identity forms an integral part of the national identity in Bangladesh which has an uneasy partnership with religious community identity in the country. In India, a secular Nehruvian identity challenged the concept of a unitary religious identity; however, not without bloodshed.

In the Bangladesh context furthermore, it is necessary to understand the role of Islam and its influence on the formation of civil society. It is important to note, that while Islamic scholars elsewhere have been examining the relationship of Islam with civil society, in Bangladesh there has not been much intellectual discussion of Islam and the domestic civil society movement. Some discussions of Islam and development focus on the secular aspects of Islam.

### **Islam and secularism**

The definition of 'secular' according to the Oxford Dictionary is: 'not religious, sacred, or spiritual or not subject to or bound by religious rule'. Secularism means:

- a in philosophy, the belief that one's own life can be best lived, and the universe best understood, with little or no reference to a god or gods or other supernatural concepts;
- b in society, any of a range of situations where a society less automatically assumes religious beliefs to be either widely shared or a basis for conflict in various forms, than in recent generations of the same society;
- c in government, a policy of avoiding entanglement between government and religion (ranging from reducing ties to a state church to promoting secularism in society), of non-discrimination among religions (providing they don't deny primacy of civil laws) and of guaranteeing human rights of all citizens, regardless of the creed (and, if conflicting with certain religious rules, by imposing priority of the universal human rights).

In the Western popular mind, the practice of religion is often perceived as fundamentalism. In the early phases of the Iranian revolution, especially during the hostage crisis in Tehran, this expression was given its

fullest expression (Falk, 2001: 67).<sup>9</sup> Fundamentalism, according to the *Oxford Dictionary*, is a 'form of Protestant Christianity which upholds belief in the strict and literal interpretation of the Bible. It can also mean the strict maintenance of the ancient or fundamental doctrines of any religion or ideology.' The *American Heritage Dictionary of the English Language* defines it as 'a usually religious movement or point of view characterized by a return to fundamental principles, by rigid adherence to those principles, and often by intolerance of other views and opposition to secularism'.

Can Islam and secularism go together? As scholars have suggested, whether religion and secularism can go together or not, depends on the interpretation of not only religion, but also secularism. If religion is interpreted in keeping with very conservative traditions, it may be difficult for it to coexist with secularism which demands more liberal disposition and tolerance, as well as promotion of pluralism. On the other hand, if secularism is interpreted too rigidly i.e. if it is equated with atheism, as many rationalists do, then also the two (i.e. religion and secularism) will find it difficult to coexist.

There is a great deal of emphasis on freedom of conscience and human rights in the modern civil society. Freedom of conscience, human rights and democracy are quite integral to each other. In most of the Muslim majority countries today which have declared themselves as 'Islamic countries' even the democratic discourse is banished, let alone human rights discourse. However, it is not right to maintain that an Islamic society cannot uphold human rights. The lack of democracy and human rights is not because of Islam or Islamic teachings, but due to authoritarian and corrupt regimes which totally lack transparency in governance.

## **Religion, national movement and the creation of Bangladesh**

East Pakistan was a distinct region for its historical background, landscape, river, music and poetry. Cultural and social practices of the East Pakistanis were diametrically opposite to those of West Pakistanis. The age-old name of East Bengal was changed into East Pakistan in 1955 (Muhith, 1978: 65)<sup>10</sup> even though the other regions in West Pakistan retained their original names. As Bengali frustration in the fields of economy, politics and administration was reaching its peak, linguistic identity became increasingly important to Bengalis. The language movement of 1952 had a far-reaching impact on the consolidation of the ethnic identity of Bengali Muslims who only a few years earlier ardently supported the creation of Pakistan based on their religious identity.

*Language movement: the contradiction between Islamic and Bengali identity*

The valorisation of Urdu over Bangla was not only a matter of linguistic priority, but also a matter of Islamic identity. Islam was a powerful source of pride and inspiration for the Muslim elite of undivided Bengal. They looked beyond their land toward the Muslim Middle East in search of the roots of their identity. Writers, journalists and the ulema (Islamic Scholars) raised questions about the appropriateness of Bangla as the language of Muslims. One writer suggested, 'We Bengali Muslims have no language of our own' (Nur-al-Imam, 1900, quoted in Kabir, 1994: 124).<sup>11</sup> However, the newly educated Muslims from peasant and lower middle class background began to challenge the predominant position of Urdu in the psyche of Bengali Muslims. They claimed that Urdu was 'revered' only by the aristocratic Muslims living in urban areas. These debates were subdued for a while during the anti-colonial and Pakistan movement when religious nationalism was intensified and loyalty to a common Muslim identity surpassed linguistic or ethnic identity.

The initial elation of Bengali Muslims at the creation of Pakistan suffered a shock when it was clear that their language would have a secondary status in the new state. In spite of various distinct cultural differences the central government made an attempt to impose Urdu as the only state language of Pakistan. In 1948, the Constituent Assembly ordained that Urdu, together with English, would be the official languages of Pakistan and would be used in the national assembly. The daily tokens of national identity – coins, currency notes, postage stamps – of the new Pakistan excluded Bangla as a language.

The East Pakistanis demanded that Bangla, the native language of 55 per cent of the Pakistani population, be one of the state languages. The resentment over this issue intensified over the years and exploded in 1952. Prime Minister Khwaja Nazimuddin (a Bengali) proclaimed while in Dhaka, that Urdu alone would be the only national language of Pakistan. On 21 February 1952, massive student demonstrations were held at Dhaka University and other educational institutions of the city. The demonstrators defied a government ban on public gatherings and processions. Several students were killed when police opened fire which incited protests from all over East Pakistan. The government machinery virtually collapsed in the face of a civil commotion which was only suppressed after the deployment of the army. However, the central government finally accepted the demand of the people and Bangla was incorporated as one of the state languages of Pakistan in the Constitution of 1956.

The language issue reassigned the political orientation of Bengalis towards their ethnic identity. The political appeal of religion began to lose its attraction for Bengali Muslims, which was aptly described by the title of an article published in 1966. *Musolmaner shwadesh prottyaborton* or 'Muslims

return home' (Umar, 1966)<sup>12</sup> showed signs of attenuation of Bengali Muslims to their religion and a tilt towards their culture.

Over the years, the language question became vital in creating the national identity for the Bengalis. In 1961, East Pakistanis commemorated the centenary celebration of the birth of Rabindranath Tagore, the Nobel Laureate Bengali poet. The government tried to stop the celebrations (Kabir, 1994, see Note 11). In 1967, a ban was imposed on broadcasting Tagore's songs on government-controlled Radio Pakistan, which was vehemently protested by the Bengali students and intelligentsia. A government-initiated step to alter the lyrics of a song written by Nazrul Islam, East Pakistan's most prominent poet, was probably the best example of how far the central government believed that East Pakistan needed to be 'purged' of its Hinduani (Hindu cultural ties). The song, 'khelichey jolodebi shunilo shagoro joley' (the goddess of the water is playing in the blue water of the ocean) was altered to 'khelichey jolopori' (the fairies of the water) since the idea of goddess was not accepted in Islam. Many of the cultural activists of this period who protested these repressive steps of the government were women. Therefore, women were specifically targeted as the bearers of Hindu culture and tradition. Women's personal and cosmetic practices were also under scrutiny. Their *sarees*, attires, singing and dancing were criticised by the West Pakistani government. Bengali women, especially the students resisted government-sponsored propaganda and participated in the national political struggle wearing *saree* and *teep*. A distinct secular cultural identity of the Bengali ethnic group was portrayed through the images of Bengali women. The nationalistic movement consciously used the 'image' of women to promote ideas of a secular and liberal Bengali culture.

This added a gendered dimension to the Bengali identity of East Pakistan. It created new symbols, slogans and myths for the sustenance of Bengali nationalism based on linguistic and gendered identity whose foundation for the first time was secular. Bengalis, Hindus, Muslims, Christians and Buddhist alike transcended their various religious identities and placed emphasis on their common Bengali ethnicity.

However, political and pragmatic choices of the successive regimes made it necessary to overlook these issues in the official historical narrative of Bangladesh, first, to create gradual friendship with Pakistan, with which it shared memories of a bloody conflict, and second, to make allies with the Islamic political parties as both domestic and foreign policy decisions originated in economic necessity and Bangladesh's aid dependency.<sup>13</sup>

On the other hand, these issues became very much a part of the civil society movement in Bangladesh. NGO leaders who participated in the national movement were heavily influenced by the tension between secular Bengali identity and their personal commitment to religion. Many of them consciously resiled from their religious identity in the first phase of the civil society movements in the 1970s, and embraced a secular Bengali identity.

## Back to Islamic politics: challenge for a secular civil society

At the ideological level, the secular politics of the Awami League (AL), the first party to form a government in 1971, were more compatible with the emerging civil society than with the theocratic politics of the Pakistani state. Bangladesh in 1971 was declared the 'People's Republic of Bangladesh' rather than an Islamic state, and the constitution embodied principles of secularism, democracy, socialism and nationalism. The AL's adoption of these principles derived from an analysis of the 'divisive political role played by religion in the nation's history and its links with Pakistani colonialism rather than any commitment to (gender) equality' (Kabeer, 1989: 112).<sup>14</sup> Therefore, in the initial stage after 1971, Mujib projected himself as the champion of the new nation's Bengali identity. However, before long he realized that he was alienating the Islamic forces in the country. To mend his ways, in 1973 he declared a general amnesty for all collaborators who were against the creation of Bangladesh and had carried out genocidal acts against the Bengali people. The Islamic Academy that he had abolished in 1972 was revived in March 1975. He started attending religious gatherings and gradually dropped the nationalistic slogan 'joy Bangla' (victory to Bengal) from his speeches (Ghosh, 1993).<sup>15</sup>

The Islamic nationalist parties including the Jama'at-i-Islami, the several factions of the Muslim League, the Nizam-i-Islami and the Jamiat-e-Ulama-e-Islam were at first held to be collaborators with the Pakistani army and banned. Because of the strong pressure from the Left revolutionaries, the AL decided to co-opt the Islamic nationalists and on 30 November 1973 a general amnesty was granted to collaborators with the exception of those who were charged with murder, rape and arson (Maniruzzaman, 1975)<sup>16</sup> during the war.

In 1973, Bangladesh gained diplomatically when it was recognized by the Arab countries. Bangladesh attended the Non-Aligned Movement (NAM) in Algiers in September 1973. Moreover, it began using its 'Muslim' image to gain Arab friendship. Bangladesh also sent a medical support team for the Arab side during the Arab-Israeli War in October 1973. By 1975, the Islamic, anti-Indian nationalism in Bangladesh gained preponderance over the secularist, ethnic nationalism which the AL had propagated during the liberation struggle. Internal factionalism, corruption and growing discontent within the armed forces of Bangladesh resulted in a bloody coup on 15 August 1975 and the assassination of Mujib, after which the military elite took over the leadership of the country.

Khondokhar Mushtaq Ahmed announced over the radio that the armed forces had taken control and that in response to the 'historic necessity' he had assumed the presidency of the country (Maniruzzaman, 1982).<sup>17</sup> Pakistan was the first country to recognize the new government. The next day

Saudi Arabia, which had withheld recognition for nearly four years, recognized Bangladesh. India however made no secret of its resentment of the coup. There was a series of coups and counter-coups during the chaotic months of 1975 and early 1976. Finally, on 30 November 1976 General Zia-ur Rahman (hereafter Zia) took over power as the Chief Martial Law Administrator. Zia founded the Bangladesh Nationalist Party (BNP) in September 1978. Reinstating Islamic elements into politics was important for the military regime to gain civilian legitimacy. Owing to the necessity to have the OPEC countries, especially Saudi Arabia, as donor countries, in 1977, the government dropped secularism from the Preamble to the Constitution, replacing it with an 'absolute trust and faith in the Almighty Allah' and adding, 'The State shall endeavor to consolidate, preserve and strengthen fraternal relations among Muslim countries based on Islamic solidarity' (Kabeer, 1989: 114, see Note 15). Article 12, which provided for the adoption of secularism, was omitted by the same Order (The Proclamation Order, 1977: 23 April 1977). Prior to that, the Second Proclamation (Sixth Amendment) Order of 1976 omitted the provision that forbade the operation of religion-based political parties in Article 38 of the Constitution, thus allowing the Islam-oriented parties to return to the political arena in Bangladesh.

Zia declared the slogan 'joy Bangla' un-Islamic and popularized in its place 'Bangladesh Zindabad' (Long Live Bangladesh, identical to the Pakistan Zindabad slogan). He made it mandatory for public servants to preface their speeches with the words 'Bismillahir Rahmanir Rahim' (In the name of Allah, the beneficent, the merciful). In 1980 Zia announced his intention to declare Bangladesh an Islamic state again. However, after public protests the matter was quickly dropped. The Middle-Eastern influence sought to strengthen traditional Islamic values, including the withdrawal of women from the public sphere and their seclusion in the private sphere. To make matters worse, aid from the Muslim countries was channelled into strengthening the madrasa (religious education system) in the countryside that adversely affected women by imposing further social control on them.

Following Zia's assassination in 1982, Bangladesh began its second encounter with martial law and military rule that lasted for nine years. Lt General Ershad reinstated martial rule and manipulated Islam to construct his political legitimacy within the rural areas in particular. He also amended the Constitution and finally declared Bangladesh as an Islamic state.

It is against this background that we have to examine the role of religion in civil society in general and in NGOs in particular, bearing in mind that two important developments had taken place in the first two decades which reshaped the NGO characteristics in Bangladesh. First, the emotional make-up of Bengali nationalism changed meaningfully with the 1975 coup that transferred power to the military elite. Although the AL did not accept the BNP's proposal to call the citizens of Bangladesh, Bangladeshis instead of

Bengalis, this debate successfully divided the citizens on their Bengali versus Bangladeshi identity. This offered a new historical imagination of Bengali nationalism which was not secular in character at all. Second, the Islamic revivalism in Bengali nationalistic identity required women's participation in the national struggle to return to the private sphere, thus pushing the women's movement and the gender agenda back to more traditional struggles of empowerment, which was one of the most significant areas for NGOs to work in.

During the national struggle of liberation the collaborators and the Islamic parties were alleged to support the Pakistani government's oppressive policies towards women. Moreover, numerous unofficial documents, including literature, films and personal stories of Bengalis point out that these collaborators and the political leaders of Islamic parties were directly involved in the rape and abduction of women. Imams and mullahs (Muslim religious leaders) publicly declared Bengali women as 'Gonimoter Maal' (public property) thereby making it official and rational for Pakistanis and the collaborators to rape Bengali women.

With this past to deal with, the women's movement, rights-based and feminist NGOs in Bangladesh found it very difficult to come to any compromise with the Islamic political parties or Islamic NGOs that were supported by these Islamic political parties. Whereas women's empowerment is the key area in which all of the NGOs work in Bangladesh, Islamic NGOs in particular have no strong network with other NGOs, especially women's NGOs and often work in isolation. The Christian NGOs, on the other hand have both formal and informal relationships with them because of their dependence on both rights-based and feminist NGOs for legal aid programmes, advocacy and social awareness projects.

## NGOs in Bangladesh

NGOs in Bangladesh emerged mainly through the relief and rehabilitation work taken during the cyclone of 1970 and the war of 1971. Mainly known as voluntary organizations, they stepped in to participate in the massive task of rehabilitating a war-ravaged country. As the need for relief and rehabilitation receded, some of these organizations moved on to support direct interventions to promote social and economic empowerment of the rural poor.

Now they form an integral part of the institutional framework addressing issues such as poverty alleviation, rural development, gender equality, environment protection, disaster management and human rights. The phenomenal growth of NGOs in Bangladesh is also attributed to the limitation of the government to meet the enormous challenges of poverty. It is difficult to ascertain the exact number of NGOs in the country, because they are not registered under one authority and many of them operate even without any registration at the central level. A major institution that gives

registration to NGOs is the Department of Social Welfare, which registered more than 19,000 NGOs between 1961 and 2001. A great majority of them are small clubs or cultural groups. There is no separate record of faith-based NGOs.

Table 17.1 depicts the role of development NGOs during the last three decades in Bangladesh. As it demonstrates, in the colonial period, the area which we now know as Bengal had mainly missionary organizations or Hindu and Muslim organizations that worked for social welfare programmes. Ramkrishna Mission or the Brahhymo Shomaj Shomity were two such organizations. Corr, the Jute Works, also worked from the late 1960s and had some handicrafts programmes, agricultural projects and cyclone shelters. After 1971, it changed its name to Caritas. Although they were voluntary organizations, no record suggests that there existed any Islamic NGO around that time.

### *Rules and regulations relevant for NGOs in Bangladesh*

Although registration is not mandatory for NGOs or associations, most development NGOs register themselves so that they have some kind of legal recognition. There are two parts to the legal framework that governs NGOs in Bangladesh, laws for incorporation, i.e. acts under which voluntary, non-government associations are incorporated and given a legal identity and, second, laws and ordinances for regulating the relationships of such associations with the government.

The Societies Registration Act of 1861, one of the first legal frameworks to be introduced by the colonial administrators, registered some of the oldest NGOs of the Indian Colonial Empire. The Trust Act of 1882, administered by a Registrar of Trusts, does not involve any government ministry. A few NGOs are registered under this act. The other two important laws are the Companies Act of 1913 (amended in 1964) that provides strong legal identity to non-profit organizations and autonomous government bodies (e.g. PKSf) and the Cooperative Societies Ordinance of 1964.<sup>18</sup>

In order to govern their activities, NGOs are required to adhere to the Voluntary Social Welfare Agencies (Regulation and Control) Ordinance, 1961, the Foreign Donation (Voluntary Activities) Regulation Ordinance, 1978<sup>19</sup> and the Foreign Contributions (Regulation) Ordinance, 1982.<sup>20</sup>

These rules and regulations are implemented by several government agencies. The NGO Affairs Bureau (NGOAB) was established in the 1990s to regulate NGOs seeking or receiving funds from foreign donors. Other than the NGOAB, the Department of Social Welfare and the Department of Women and Children's Affairs provide assistance of various types to NGOs registered under them.

The ambiguities, inconsistencies and definitions of the types of activities allowed under the existing acts, laws and ordinances however create



Table 17.1 Development of NGOs in Bangladesh

<i>Phase</i>	<i>Government</i>	<i>NGO activities in general</i>
Colonial period	British Raj	<b>Voluntary and philanthropic in nature:</b> Christian Missionary Organizations, voluntary associations, Hindu and Muslim philanthropy, working on maintaining schools, hospitals and orphanages, and individual support.
1947–1971	East Pakistan	<b>Continued charitable approach:</b> Mainly Christian Missionary and other voluntary organizations focusing on poverty reduction in various communities including religious and ethnic minorities, with an emerging Bengali base to action.
1972–1975	Sheikh Mujibur Rahman (the Awami League)	<b>Crisis management and legitimization of the state:</b> Relief and reconstruction working on geographic areas, village-level cooperatives, international and Bangladeshi NGOs.
1976–1981	Ziaur Rahman (military rule and the BNP)	<b>NGOs grow and take a stronger role:</b> Conscientization approach, and early social mobilization, relief work, flood and disaster management programmes, cyclone shelters.
1982–1990	Hussein Md. Ershad (military rule and the Jatiyo Party)	<b>NGOs as the third sector, social transformation, civil society voice:</b> Examples: microcredit, women's human rights, social reform, land rights, health and population, nutrition, training, poultry and livestock.
1990–1996	Begum Khaleda Zia (BNP)	<b>Professionalization of NGOs, emergence of rights-based approaches:</b> Increase in service delivery – health, education, financial services, environment, nutrition, minority development issues, human rights.
1996–2001	Sheikh Hasina (Awami League)	<b>Rights organizations grow, tensions between service delivery and mobilization:</b> Continuation of above activities, some new examples: minority rights issues, legal aid, public interest litigation, policy advocacy around budget.

*continued*

Table 17.1 Continued

<i>Phase</i>	<i>Government</i>	<i>NGO activities in general</i>
2001–2005	Begum Khaleda Zia (BNP)	Restricted political space for NGOs: Advocacy organizations, new service developments e.g. water supply and sanitation, fragmentation of NGO community, new ultra-poor approaches.

Source: Thornton *et al.* 2005. *The Impact of Big NGOs on Poverty and Democratic Governance in Bangladesh*. Report by Verulam Associates Ltd, Commissioned by DFID, UK (in Bangladesh).

problems, particularly in terms of the scope of NGO operations. In addition, the rigidity of the ordinances and rules limits NGO capacity to respond to needs in a flexible and fully participatory way. The laws and ordinances, as their titles indicate, have, in general, less of a facilitating role and more of a controlling and regulatory function.

### *Faith-based NGOs and their nature*

All of the major faith-based NGOs that work in the development area in Bangladesh are similar in nature, scope and activities to other (secular) NGOs described above. Some of the major Christian NGOs such as Caritas and World Vision have international partners and they are part of the big NGO community because of their innovation and effectiveness. They also provide input into the national government's social and welfare policy, in the fields of agriculture, development, employment creation, health and education. As explained earlier, the Christian NGOs started in the country as voluntary and missionary organizations. Partly because of that, for a long time they had been perceived suspiciously by the populace in rural and conservative areas. Christian NGOs had to be strategic about their programmes and express repeatedly that they were not there to convert people to Christianity. However, their contribution is crucial to the country's development largely because of their funding from international counterparts and the massive scale of development projects undertaken by them.

Although Islamic NGOs are a recent phenomenon, many of these are funded by Middle Eastern countries. Rabeta-Al-Islami and Sheba are two of the largest Islamic NGOs. They have similar programmes to both Christian and other secular NGOs. On the one hand, they do not have to worry about the national anxiety of converting the community. However, following September 11 and growing fundamentalism worldwide they have to prove that they could be part of the civil society community within the country and that they do not have any hidden political agenda.

Caritas, on the front gate of their office has a placard which says, 'Caritas means love'. Emphasizing love and charity in the preamble of the charter Caritas BD specifies that 'CARITAS is a Latin word and it means "charity" or universal love. We prefer "LOVE" which includes all aspects of humanity.'<sup>21</sup> Caritas is one of the biggest NGOs of Bangladesh with several gender programmes, hospitals and clinics, development projects, schools, technical assistance programmes, sericulture, pisciculture, microcredit and some small profit-based programmes.

Another national NGO, Christian Commission for Development in Bangladesh (CCDB), was formed in 1973. CCDB is an associate body of the National Council of Churches in Bangladesh (NCCB), which 'expresses the national and global ecumenical concern of Christian services and witness'. CCDB works through a combination of programmes and projects in different parts of Bangladesh. Since 1992, it adopted the People's Participatory Process (PPP) as a value fundamental to all its activities. CCDB's major programme components include human and organizational potential enhancement, literacy and functional education, people's resourcing programme, health and nutrition programmes, gender equity, advocacy and networking, environment and disaster preparedness, capacitation of small local organizations and tribals and aboriginals.<sup>22</sup>

Although there are approximately 450 Islamic NGOs, only 254 are registered with the Social Welfare Ministry. Rabeta Al Islami, the biggest Islamic NGO in the country, has hospitals and some Islamic schools. It also has some smaller development assistance programmes such as non-formal education programmes, mosque-based adult education programmes, health assistance and so on. Some of the Islamic NGOs in the Chittagong Hill Tracts and near the coastline bordering Burma also have development projects for Rohingya refugees, a Muslim ethnic minority group from Burma (Myanmar).

To summarize the nature, scope and role of faith-based NGOs in Bangladesh, I make the following observations,

- NGOs in Bangladesh do not trace their origin to pre-existing NGOs and rather draw on the nationalist spirit of the Liberation War of 1971 that generated new forces of development outside government mechanisms. Christian NGOs on the other hand highlight the voluntary nature of their work that predates 1971 and draw mainly on the relief and rehabilitation programmes, especially after the cyclone of the 1970s.
- During the 1970s and the 1980s most RNGOs mobilized people in various group activities related to income, health, education and other services. From the 1990s, some of the Christian NGOs began to follow other secular NGO activities to organize people around rights-based issues.
- From the 1990s non-state actors also started to acquire a development

discourse legitimacy on issues of poverty and social agency. However, in the institutional front no single actor, be it the state or the NGOs or the private sector, can now realistically claim to control people's agency. Many RNGOs focused on community-building approaches and attempted to consolidate some sort of community identity, either through a shared religion or common location, or even shared vulnerability experienced by people.

- RNGO overemphasis on access to education and health services undermined the quality of their services. Additionally, market-relevant and pro-poor skill education did not get policy prominence in either the NGO discourse, or the government discourse (Rahman and Rahman, 1995).<sup>23</sup>
- The confrontation and stalemate between two major political parties in the 1990s created opportunities for NGOs as civil society actors to emerge as mediators and play important roles in upholding democratic values and practices. However, their value as a neutral third sector has been undermined by political alignment in various degrees. With their strong affiliation with the fundamentalist Jama'at and Islami Oiko Jote, Islamic NGOs lost some of their credibility.
- While secular NGOs are taking up more challenging projects such as participation in election monitoring, voters' education programmes and social movements, RNGOs are still involved in more traditional development projects. For the Christian NGOs it is a strategic political choice, and for Islamic NGOs it is more because they are new in development projects and attract less skilled personnel to take up challenging activities, or do not have enough interest yet to work in those areas.
- There has been a positive shift in social and cultural attitudes towards an acceptance of women's economic role through the state, NGO and private sector activities. However, widespread feminization of poverty and increased violence against women demonstrate that gender equality in many cases still remains mere rhetoric. This is prevalent in RNGO activities. Various reproductive rights programmes undertaken by Christian NGOs do not emphasize women's equality, but rather draw on the Christian tradition of birth control. Islamic NGOs on the other hand focus on women and development but with strict obedience to traditional practices. They offer sewing machines, poultry and agricultural product assistance, but nothing beyond that.
- Judicial activism of NGOs to struggle for women and children's rights against oppressive social and religious practices played an important role in confronting religious fundamentalism. While this has not affected the work of Christian NGOs or their relationship with other NGOs, since they have also participated in some of these, albeit to a lesser extent, the relationship of Islamic NGOs with NGOs with rights-based approaches has deteriorated.

- Almost all the RNGOs work in rural areas. 'Real experience' still seems to be in the field which means in rural areas. There has been a visible lack of safety net programmes to reach the urban poor who have been excluded from education and health programmes.
- GO-NGO (government-non-government) coordinated efforts after the 1998 flood demonstrate the increased crisis-coping capacity of the poor and enhanced governance capacity of the state in the face of national calamity. Most of the RNGOs also participated in these efforts.
- NGO finance trend demonstrates that donors are willing to fund only the few tested NGOs rather than many small ones. This strategy reduces donors' management time and administrative costs. For greater access to large-scale funding, for establishing a better public policy framework and for performing advocacy roles, NGOs are gradually developing close relationships with International Finance Institutions (IFIs) (Siddiqui, 2001).<sup>24</sup> Larger Christian NGOs are also developing relationships with IFIs and International Christian Charity Organizations. Islamic NGOs rely on their Middle Eastern partners for intellectual guidance and financial support. However, they have been used as subcontractors or service deliverers. Islamic NGOs, mainly work as executors of pre-designed projects. In some cases, this might be detrimental for Bangladesh's NGO movement.

### *Funding*

After September 11, reappraisal among the donors and Western governments regarding who to support for their democratic programmes resulted in discontinuing aid to some religious NGOs, especially Islamic NGOs. Scholars have suggested that often democracy assistance programmes were synonymous with a narrow range of human rights, advocacy and civic education programmes favoured by the West (Thomas, 2005; Diamond, 1994).<sup>25</sup> There are examples of Muslim organizations in Turkey, Syria and Jordan that worked for women's empowerment, but had not been considered part of the civil society because of their religious nature (Thomas, 2005: 199-200).

According to the Association of Muslim Welfare Agencies in Bangladesh (AMWAB), the donor agencies and individual donors and charity organizations, since September 11, have been reducing their funds for the Islamic NGOs in Bangladesh at an alarming rate. The Islamic NGOs in Bangladesh employ about 25,000 people. Some of these NGOs, because of an acute lack of funds, have already abandoned their projects and retrenched the staff. Under these circumstances they have had to severely curtail their activities. Many organizations are fighting for survival. One AMWAB leader told the media, 'Many donors, especially those that are non-Muslim, have stopped funding Islamic NGOs totally.'<sup>26</sup>

Rabeta Al Islami, the largest Muslim NGO in Bangladesh funded by

Saudi Arabia, admitted that they had closed many of their projects because of funding shortages in 1993, but their activities were unaffected in recent years.<sup>27</sup>

Various press reports in Bangladesh suggest that until 2002, Islamic NGOs spent an estimated US\$25 million annually on religious education. The only proof of NGOs receiving funds illegally dates to three years ago. In 2001, an investigation by the central bank into allegations of money laundering by NGOs reportedly found that the outlawed Saudi Arabia based NGO Al Harmine Islamic Foundation was guilty of money laundering in 2001–2002.<sup>28</sup>

### **Conclusion: RNGOs and security**

On 17 August 2005 there was a series of bomb attacks in Bangladesh. Nearly 300 bombs exploded all over the country and it was determined that a fundamentalist organization, Jamaitul Mujahedin was behind the bombing attacks. Former Islamic Foundation director Moulana Fariduddin Masud, detained for suspected links to the 17 August 2005 blasts, accused Jamaat-e-Islami Ameer and Industries Minister Motiur Rahman Nizami of involvement in the countrywide explosions.<sup>29</sup> However, investigation also found that two NGOs, the Revival of Islamic Heritage and Yahiya Tutturoras, were involved with the fundamentalist groups. While they have some child welfare programmes such as Shonami, both of these organizations advocate Sharia law in Bangladesh. The latter was funded by the Revival of Islamic Heritage Society (RHS) of Kuwait that has been directly connected with the 9/11 bombings and has been banned ever since. It created some smaller NGOs such as Al-Markazul Islami and also developed some of the madrasah (Islamic schools) in the country. Several of the major donor agencies including USAID have repeatedly expressed their concern to the government since 2002. In January 2002, the US blacklisted RHS as an Al-Qaeda supported organization. However, the government in Bangladesh did not want to offend Islamic groups and decided not to ban RHS in Bangladesh. Qatar Charitable Society and the UAE Welfare Society also funded some micro NGOs which are working in remote areas of Bangladesh including Chittagong Hill Tracts region. While they have an anti-smoking campaign and some smaller health programmes, since the August bombings the government believes many of them are fake RNGOs which have other political agenda behind their development activities. Some have been blamed for operating as semi-religious bodies.

The direct connection of the latest bombing with some RNGOs actually affected all the Islamic NGOs and their credibility. However, it is crucial for major Islamic NGOs to continue various issues of justice and advocacy, and re-evaluate their positions to face this political challenge. RNGOs are still struggling for their space in the already fragile democracy. While Christian NGOs have been successful in asserting their rights by making some

strategic choices in remaining apolitical and non-confrontational, Islamic NGOs still need to learn from their experiences. Only after that can their development programmes truly involve the community.

## Notes

- 1 In this chapter I use the terms interchangeably.
- 2 Falk, Richard (2001) *Religion and Humane Global Governance* (New York: Palgrave).
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- 10 Muhite, A. M. A. (1978) *Bangladesh: Emergence of a Nation* (Dacca: Bangladesh Books International).
- 11 Kabir, M. G. (1994) *Changing Faces of Nationalism: The Case of Bangladesh* (Dhaka: University Press).
- 12 Umar, Badruddin (1966) *Shankskritik Shamprodayikota* (Dhaka: Janamaitri Publications).
- 13 Both of these choices were made by the political and military elite of the country and were not reflective of their citizens' wishes.
- 14 Kabeer, N. (1989) *The Quest for National Identity: Women, Islam and the State in Bangladesh* (Brighton: Institute of Development Studies, University of Sussex).
- 15 Ghosh, B. N. (1993) *Poverty and Underdevelopment: The Basic Issues* (New Delhi: South Asian Publishers).
- 16 Maniruzzam, T. (1975) *Radical Politics and the Emergence of Bangladesh* (Dacca: Bangladesh Books International).
- 17 Maniruzzam, T. (1982) *Group Interests and Political Change: Studies of Pakistan and Bangladesh* (New Delhi: South Asian Publishers).
- 18 For details see Asian Development Bank, (1999) *A Study of NGOs: Bangladesh*. (Manila: ADB), pp. 7–11.
- 19 Introduced possibly to control the flow of foreign funds to political parties in Bangladesh. See ADB (1999) report.
- 20 Ibid.
- 21 See, [www.drik.net/memisa/html/caritas.html](http://www.drik.net/memisa/html/caritas.html), last accessed 23 August 2005.
- 22 CCDB Annual Report, 2004. See also, [www.indiabusinessonline.com/ncasal/ccdb.htm](http://www.indiabusinessonline.com/ncasal/ccdb.htm).
- 23 Rahman, H. Z. and Rahman, M. (eds) (1995) *Rethinking Rural Poverty: Bangladesh as a Case Study* (New Delhi; Thousand Oaks: Sage Publications).
- 24 Siddiqui, K. (2001) *Better Days, Better Times: Towards a Strategy for Implementing the Convention on the Rights of the Child in Bangladesh* (Dhaka: University Press).
- 25 Scott Thomas, (2005) *The Global Resurgence of Religion and the Transformation of*

*International Relations: The Struggle for the Soul of the Twenty-First Century*. (New York: Palgrave); Larry Diamond, (1994) 'Toward Democratic Consolidation: Rethinking Civil Society'. *Journal of Democracy*, 5(3).

26 See, [www.matamat.com/fullstory.php?gd=22&cd=2003-11-12](http://www.matamat.com/fullstory.php?gd=22&cd=2003-11-12), last accessed 22 August 2005.

27 Ibid.

28 See, [southasia.oneworld.net/article/view/83486/1/38](http://southasia.oneworld.net/article/view/83486/1/38), last accessed 23 August 2005.

29 *Daily Star*, 25 August 2005.





Part VI

**International civil  
society**

Prospects for enhancing human security



# 18 Contesting ‘globalisation from above’

## International non-governmental organisations and the prospects for global social contract

*Baogang He and Hannah Murphy*

### Introduction

A growing literature testifies to the emerging importance of what may be termed a ‘global social contract’ in contesting the neoliberal economic order. A global social contract constitutes a normative condition for what Richard Falk calls ‘humane governance’. Will this develop into a new paradigm and become a new form of persuasion? This chapter considers the prospects for, and relevance of, a global social contract to the international trade regime. It explores the ways in which the activities of international non-governmental organisations (INGOs) and their networks are contesting World Trade Organisation (WTO) agreements and contributing to the development of a global social contract. Through six case studies of INGO campaigns, we test the normative definition, meaning and content of the global social contract concept.

### The idea of a global social contract<sup>1</sup>

‘Predatory globalisation’, a term coined by Richard Falk, has empowered the international business sector and powerful nation states while undermining the voice of developing nations and ordinary citizens in general. As Falk asserts, international economic institutions are often secretive and do not allow developing countries to participate sufficiently in the formulation of global economic policy. Their activities also entrench inhumane practices, such as child labour and the destruction of the environment.<sup>2</sup> Moreover, it is predicted that in the twenty-first century, Chief Executive Officers (CEOs) will spend a third of their time addressing issues once seen as matters of social policy for which nation states were previously responsible. This will strike a major blow to democratic control by citizens. There is no political constitution to match the increasingly integrated global economy – the social contract is seen to be outside the mandate of the major international economic policy-making institutions.<sup>3</sup>

According to Peter O’Driscoll, the Washington Consensus has brought about new rules of engagement, different from the Keynesian social contract

that combined economic growth with social improvement and provided a stable balance of power between the private and public sectors. These new rules have granted the private sector a disproportionate amount of power to the detriment of state institutions. However, it is argued that the Washington Consensus is now faltering<sup>4</sup> and that there is a need for a 'new social contract' to promote equitable development in less developed nations.

Different conceptualisations of a global social contract have been formulated by a diverse set of authors to address various aspects of the problems associated with globalisation from above. For Georg Kell and John Gerard Ruggie, the purpose of a global social contract is to regulate corporate practice and the corporate code of conduct.<sup>5</sup> At the Davos World Forum in January 1999, UN Secretary-General Kofi Annan initiated the 'global compact' to challenge the international business community to help the UN implement universal values in the areas of human rights, the environment and labour standards. The global compact is understood as a framework of reference as well as a dialogue to stimulate best practices and to bring about a convergence in corporate practices around universally shared values. According to Mazarr, the global social contract is a contract between nation states and international organisations whereby nation states will begin gradually to entrust elements of their security to a coalescing set of global norms.<sup>6</sup> In the eyes of Richard Falk, a global social contract is a new equilibrium that strikes a balance between capital and society, between capital-driven social forces and people-driven social forces. It strikes the sort of balance similar to that which the state once assumed between society and the market at an earlier stage of capitalism.<sup>7</sup> A global social contract also 'provides for basic human needs and regulatory uniformity, resembling the achievement of social democracy and the labour movement at the level of the state'.<sup>8</sup> In the opinion of Richard Smith, a global social contract entails the rich accepting greater responsibility for the poor. He states that rich countries should transfer a quarter of their gross national product to poor countries in order to provide education, health care, social services, income support and the like. 'A true global society would mean a global social contract between rich and poor'.<sup>9</sup>

Alain Touraine calls for the globalisation of social movements from below to recover individual freedom that has been lost in the process of the globalisation of capitalism. Richard Falk describes the activities and campaigns of INGOs as *globalisation from below* against the forces of globalisation from above. Civil society has emerged as a viable 'third sector' with experience and insight into how to balance economic growth with social and environmental concerns. INGOs can monitor and disseminate information about corporate behaviour, which can be combined with appropriate government regulation and funding of selected development programmes. Consensus needs to be built on the priority of certain development outcomes and the respective roles for government, business and civil society need to be negotiated. This is the essence of Driscoll's 'new social contract'.<sup>10</sup>

Through the lens of global social contract theorising, some INGOs view the agreements of the WTO as economic contracts that lack accountability and democratic legitimacy; the WTO is seen as determined to realise its goal of trade liberalisation regardless of the social and environmental consequences. In challenging the WTO's authority, some INGOs are attempting to establish a global social contract with the organisation, aiming to inject social and environmental justice into its regulatory framework of agreements. The elements of a global social contract in this sense include the development of a democratic process in establishing the contract, the inclusion of social protection and rights for the poor and weak, and ensuring that the international business sector behaves in a responsible and accountable manner. In this context, successful INGO action has redefined the terms and content of WTO agreements/contracts, by modifying existing WTO agreements and establishing a symbolic alternative to the existing trade regime through the practice of fair trade.

In essence, a global social contract is a political and moral principle for addressing the problems arising from globalisation from above. The idea of a global social contract is comprised of three core elements. The first is that the global social contract is *global*, that citizens residing in developed, developing and under-developed nations are equally relevant contracting parties. This element is related to the principle of global citizenship, which stresses that people, citizens and global society are the most important third contracting parties beyond the conventional notion of a bilateral contract between nation states and international organisations. The second is the *social* element, which refers to the incorporation of adequate social protection and the principle of equality into the actual content of global economic policy. The third is the element of *contract* meaning that the agreement is based on consent (not imposed from above) and that the process of reaching an agreement is transparent in that those administering global economic policy operate with an appropriate level of democratic accountability and transparency.

Many empirical questions arise with regards to the role of INGOs in building a global social contract. (1) Are INGOs significant parties to the global social contract? Are they outsider challengers or insider policy-making participants? (2) Have INGOs successfully challenged the international business community in implementing universal values? (3) In challenging the undemocratic process, do INGOs make the process more democratic, and in what sense? (4) Do INGOs force the WTO to revise some economic contracts in order to meet social demands? (5) Do the poor benefit from the campaigns against the WTO agreements organised by INGOs? (6) Do INGOs make trade fairer? Do they make the WTO agreements fairer and in what sense? Table 18.1 lists these six concrete and testable empirical questions and summarises how INGOs employ the notion of a global social contract to contest the practice and content of the WTO agreements from these perspectives.

Table 18.1 WTO Agreements and the global social contract

<i>Perspectives</i>	<i>WTO agreements</i>	<i>Global social contract</i>	<i>Testable questions</i>
<b>Who</b>	Nation states, in particular, powerful nation states such as the US, EU and Japan, and large corporations are the principal parties to the economic contracts.	A global social contract must involve international organisations, states and civil society. INGOs are striving to become active parties in the development of a global social contract.	(1) Are INGOs significant parties in the emerging global social contract? Are they outsider challengers or insider policy-making participants?
<b>What: issue and value</b>	Economic issues related to international trade such as tariffs, intellectual property rights and trade in services etc.	A global social contract must duly account for human rights and environmental sustainability.	(2) Have INGOs successfully challenged the international business community in implementing universal values?
<b>How: process</b>	No direct democratic accountability to citizens. WTO negotiations are dominated by powerful states.	Citizens must be given certain rights when their states enter into global economic contracts. The voice of people in developing countries must be heard and weighted.	(3) In challenging the undemocratic process, do INGOs make the process more democratic and accountable, and in what sense?
<b>Nature</b>	Economic contract.	Global and social contract.	(4) Do INGOs force the WTO to revise some economic contracts in order to meet social demands?
<b>Whom</b>	Nation states and the international business sector.	A global social contract accounts for the social costs of economic globalisation and ensures that the rights and interests of poor countries and the poor people of rich countries are protected.	(5) Do the poor benefit from the campaigns against the WTO agreements organised by INGOs?
<b>Fairness</b>	Unfair to the poor and unemployed	Emphasis on the equity of global rules.	(6) Do INGOs make trade fairer? Do they make WTO agreements fairer and in what sense?

Sceptics such as Faux would stress the difficulty in creating a global social contract. He argues that a global social contract must be enforced by the international economic policy-making institutions, but that in the absence of a global democratic government, these institutions will be captured by business interests, which will prevent the enforcement of a global social contract.<sup>11</sup> Buchanan too points to the danger that the efforts of civil society groups in challenging the accountability and transparency of the WTO may actually enhance the legitimacy of the institution making it more difficult for civil society to bring about more fundamental change.<sup>12</sup>

This chapter aims to (1) address the above six empirical questions and examine the roles of INGOs in constructing a global social contract, and (2) test the normative definition, meaning, and content of global social contract through six case studies of INGO campaigns directed at the WTO. The result of this study offers us a reasonable basis to assess the validity of the scepticism about the idea of a global social contract. This chapter adopts a normative empiricist approach<sup>13</sup> which enables us to develop an empirically based notion of a global social contract, and provides a solid empirical foundation to develop what Falk calls 'normative renewal' toward a cosmopolitan or transnational democratic ethos of renewal.<sup>14</sup>

This normative empiricist approach starts with the real world. We strongly believe that an empirical approach is preferable to the Rawlsian approach that starts with an ideal world such as the veil of ignorance. This is because normative aspirations and conceptual tools for the framing of world order must have an empirical base and realistic driving forces. An application of Lockean or Rawlsian social contract theory, which originated in the nation-state system, is an unproductive intellectual exercise. The outcome of a simplistic and purely theoretical extension is likely to lead to the argument made by Boswell that the application of social contract theory for solving problems at the global level cannot be achieved. The virtues of social contract theory are not replicated when applied to issues of international justice. This is because it reveals a tension between the goal of conflict regulation and an ethically driven conception of justice, and this tension renders global social contract theory utopian.<sup>15</sup> Also unproductive is the internationalisation of the social contract.<sup>16</sup> This is because the internationalisation approach misses the urgent issue about the global social contract per se and carries with it uncontested nationalist assumptions. It also presupposes what the authors of the *Global Civil Society 2001* yearbook refer to as 'methodological nationalism', which is the tendency for theorists to remain bonded to categories created for and applicable to nineteenth century industrial nation states.<sup>17</sup>

Below we provide a review of basic information about INGOs. This is followed by the six case studies and a discussion and conclusion.



### Some basic information about INGOs

Tables 18.2–18.7 denote the existence of a large number of INGOs and offer a breakdown of their different types. Table 18.2 shows that of the total number of INGOs, 36 are federations of international organisations, which constitute only 0.50 per cent; 474 are universal membership organisations, making up 6.53 per cent and 5,676 are regionally-oriented membership organisations, comprising the majority of 78.17 per cent. It should be noted that a further 3,815 organisations are dissolved or apparently inactive. Table 18.3 highlights the tremendous proliferation of INGOs over the past century. Table 18.4 demonstrates that both developed and developing countries have a high participation rate in INGOs. The majority of selected nations participate in over 25 federations of international organisations; China, Indonesia, Kenya, Thailand and Uganda participate in between 20 and 25, while only Hong Kong (China) and North Korea participate in less than 20 federations of INGOs. The figures in Table 18.5 however, show that the countries in which INGO secretariats are based are more or less geographically limited to Europe and North America.<sup>18</sup> Table 18.6 lists the major INGOs and NGOs involved in the six case studies of campaigns against the WTO. Table 18.7 lists the number of NGOs in attendance as

*Table 18.2* Number of international non-governmental organisations by type (2004)

<i>Types</i>	<i>Number</i>	<i>%</i>
A Federations of international organisations	36	0.50
B Universal membership organisations	474	6.53
C Intercontinental membership organisations	1,075	14.81
D Regionally oriented membership organisations	5,676	78.17
Total	7,261	100.00

Source: *Yearbook of International Organizations* (2004/2005) see Note 18.

*Table 18.3* International non-governmental organisations by year and type (1909–1999)<sup>19</sup>

<i>Type</i>	1909	1951	1964	1972	1985	1991	1993	1995	1997	1998	1999
A	–	–	–	–	43	39	39	38	39	37	37
B	–	–	–	–	397	427	437	486	485	483	484
C	–	–	–	–	796	773	783	1,001	997	1,074	1,057
D	–	–	–	–	3,440	3,381	3,571	3,596	4,064	4,172	4,247
Total	176	832	1,470	2,173	4,676	4,620	4,830	5,121	5,585	5,766	5,825

Source: *Yearbook of International Organizations* (1999/2000) Edition 36 (Munich: K. G. Saur), modified, p. 2357.

Table 18.4 Selected country participation in international non-governmental organisations by type (2004)

Country/types	A	B	C	D
Australia	28	443	857	1,193
Argentina	28	430	657	830
China	24	356	565	622
France	31	452	962	2,676
Germany	29	452	957	2,667
Hong Kong – China	16	326	418	516
India	28	436	735	763
Indonesia	23	363	348	445
Japan	30	445	831	1,159
Kenya	21	326	278	253
Korea DPR	10	83	52	54
Korea Republic	27	396	526	600
Mexico	27	417	612	768
South Africa	29	423	656	717
Switzerland	30	430	873	2,065
Thailand	21	385	354	443
Uganda	20	234	132	174
United Kingdom	28	424	925	2,554
USA	29	450	934	1719

Source: *Yearbook of International Organizations (2004/2005)*, Edition 41 see Note 18, modified, pp. 1698–1707.

observers at the five WTO Ministerial Conferences held to date, as well as the selected NGO campaigns in force at the time of (and surrounding) these meetings.

### Global day of action against the WTO 'Millennium Round'

The 30 November 1999 Seattle street demonstration outside the WTO Ministerial Conference was part of a global day of action against neoliberalism as designated by the People's Global Action (PGA) and the Jubilee 2000 debt cancellation campaign. According to Wood, this global day of action involved 111 protest events in 22 countries in 97 cities, including two cities in Australia and New Zealand, seven countries and 20 cities in Asia, 12 countries and 41 cities in Europe and 34 cities across the United States (US) and Canada.<sup>21</sup> However, the most widely reported protest was that held in Seattle where an estimated 30,000 protesters<sup>22</sup> consisting of trade unionists, environmentalists, human rights advocates, conservatives and neoisolationists stole the limelight from the WTO conference.

Despite many accounts citing the protests as the reason for the breakdown of the conference and the failure to launch the Millennium Round,

Table 18.5 Selected countries in which international non-governmental organisation secretariats are located

<i>Country/types</i>	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>
Australia	0	6	25	97
Argentina	0	3	2	102
China	0	0	3	11
France	7	59	112	420
Germany	1	20	70	378
Hong Kong – China	0	0	1	41
India	0	9	6	35
Indonesia	0	0	0	7
Japan	0	4	16	85
Kenya	0	0	0	24
Korea DPR	0	0	0	0
Korea Republic	0	2	3	29
Mexico	0	2	1	58
South Africa	0	1	6	54
Switzerland	9	69	70	166
Thailand	0	0	3	29
Uganda	0	0	0	11
United Kingdom	2	61	190	546
USA	3	82	168	418

Source: *Yearbook of International Organizations (2004/2005)*, Edition 38 (Munich: K. G. Saur), modified, pp. 1708–1715.

it has been argued that the collapse of the WTO meeting was primarily due to disagreements among the major economic powers over many of the same issues for which protesters were lobbying.<sup>23</sup> The failure of the conference and the media coverage of the protest saw the WTO receive a great deal of negative press and this added weight to claims emanating from civil society that the WTO lacks transparency and accountability.

In reaction to the intensity of the Seattle protests, the WTO sought to reinvigorate its public profile, which consisted mainly of an upgrade to the organisation's website. The website was used to showcase a series of public relations documents promoting the work of the WTO, a revised electronic document database, electronic forums, NGO bulletins and position papers and the WTO newsletter.<sup>24</sup> The WTO has also conducted a number of dialogues and briefings where NGO representatives are given the opportunity to attend informal discussions, workshops and technical seminars on trade-related issues.<sup>25</sup> The WTO has created a chat room on its website for NGOs as well as posting NGO bulletins and NGO position papers.<sup>26</sup>

The WTO's attempts to remedy its poor image following the Seattle meeting are superficial and problematic. In regard to the expansion of its website – the development of chat rooms, online forums, the increased availability of documentation and so forth – the important issue of access to inter-

Table 18.6 Selected INGOs and NGOs involved in selected campaigns against WTO agreements

<i>Campaign</i>	<i>INGOs/NGOs</i>
Global Day of Action Against the WTO 'Millennium Round'	A broad array of civil society groups including environmentalists, labour unions, human rights activists, protectionists, anti-capitalists, neoisolationists and anarchists.
Campaign for WTO Core Labour Standards	International Confederation of Free Trade Unions (ICFTU), World Confederation of Labour (WCL), various International Trade Secretariats, International Textile, Garment and Leather Workers' Federation (ITGLWF), International Metalworkers Federation, International Federation of Chemical, Energy, Mine and General Workers' Union (ICEM), various research institutes and various NGOs (not affiliated to the above structures).
Campaign Against the TRIPS Agreement	Médecins Sans Frontières (MSF), Oxfam International, Catholic Agency for Overseas Development (CAFOD), ActionAid, ACT UP Consumer Project on Technology, Health Action International, Voluntary Service Overseas, Treatment Action Campaign (South Africa), Aids Access Coalition (Thailand), Health Gap Coalition (USA), Kenya Coalition for Access to Essential Medicines.
Campaign Against the GATS Agreement	World Development Movement (UK), Bern Declaration, Public Services International (PSI), Focus on the Global South (Thailand), Public Citizen's Global Trade Watch, ActionAid (Uganda), Alternative Information and Development Centre (South Africa), ARENA (New Zealand), Business Watch (Indonesia), Center for International Environmental Law (Switzerland), Consumer Information Network (Kenya), EcoNews Africa (Kenya), 11.11.11 (Belgium), Equations (India), Food Rights Alliance (Uganda), Gender and Trade Network in Africa, Institute for Global Justice (Indonesia), Institute of Economic Affairs (Kenya), International Gender and Trade Network Asia, Lawyers Environmental Action Team (Tanzania), Mwelekeo waNGO (Zimbabwe), Polaris Institute (Canada), Brazilian Network for the Integration among Peoples (REBRIP), Southern and Eastern African Trade Information and Negotiations Institute (SEATINI), SodNet (Kenya), Tanzania Gender and Networking Programme, Third World Network Africa (Ghana), Trade Watch (Kenya), Australian Fair Trade and Investment Network (AFTINET).

*continued*

Table 18.6 Continued

<i>Campaign</i>	<i>INGOs/NGOs</i>
Campaign Against a WTO Foreign Investment Agreement	Oxfam International, Center for Consumer Defense of El Salvador, Public Citizen (United States), Third World Institute (Uruguay), Rede Brasileira Pela Integração dos Povos (REBRIP) (Brazil), Solon Foundation (Bolivia), Third World Network, World Wide Fund for Nature (WWF), Public Services International, Centre for International Environmental Law, Institute for Agriculture and Trade Policy, African Trade Network, International Gender and Trade Network (IGTN), Lutheran World Federation, Seattle 2 Brussels Network, International Institute for Sustainable Development.
Campaign for Fair Trade	Oxfam International, International Fair Trade Labelling Organisation, Fair Trade Federation, International Federation for Alternative Trade, European Fair Trade Association, and a vast number of alternative trade organisations including Equal Exchange, Global Exchange, TransFair USA, Oxfam Community Aid Abroad Trading, People For Fair Trade, Trading Partners, Aid Through Trade, Twin Trading, Traidcraft, Equal Exchange, Ten Thousand Villages, Pueblo to People, MarketPlace: Handwork of India, SERRV International, Bridgehead, Stichting Max Havelaar and Nepali Bazar.

net services remains unresolved. Only those who can afford internet access, the majority of whom reside in industrialised nations, will see any benefit from these measures. In this way, the utilisation of its website underscores the WTO's focus on responding to 'noisy' NGOs from developed countries. The utility of the WTO's other measures concerning NGO relations are also questionable. For example, the WTO has retained a tight grasp on deciding which NGOs are granted accreditation for attendance at ministerial meetings and informal discussions of specific issues. The WTO selects NGOs that are deemed by the organisation to have a 'legitimate interest' in trade issues.<sup>27</sup> Scholte *et al.* state that relations between the WTO and civil society have also tended to reinforce global structural inequality whereby WTO contact with civil society groups representing business interests and NGOs based in industrialised nations is privileged over those NGOs situated in the global south.<sup>28</sup> Overall, the WTO has approached its relations with civil society in a unilateral manner where control and power over these relations remain vested in the hands of the WTO. Despite signs that the WTO might have revisited and extended its provisions for civil contact following the Seattle ministerial meeting, the organisation continues to resist meaningful dialogue with civil society organisations.

Table 18.7 WTO Ministerial Conferences, number of attending NGOs and associated INGO campaigns

<i>Year</i>	<i>WTO Ministerial Conference</i>	<i>Number of NGO observers<sup>20</sup></i>	<i>NGO Campaigns in progress</i>
1996	Singapore	108	<ul style="list-style-type: none"> <li>• Campaign for WTO Core Labour Standards</li> </ul>
1998	Geneva, Switzerland	153	<ul style="list-style-type: none"> <li>• Campaign for WTO Core Labour Standards</li> </ul>
1999	Seattle, United States	776	<ul style="list-style-type: none"> <li>• Campaign for WTO Core Labour Standards</li> <li>• Global Day of Action Against WTO Millennium Round</li> </ul>
2001	Doha, Qatar	651	<ul style="list-style-type: none"> <li>• Campaign Against the TRIPS Agreement</li> </ul>
2003	Cancun, Mexico	795	<ul style="list-style-type: none"> <li>• Campaign Against the TRIPS Agreement</li> <li>• Campaign Against a WTO Foreign Investment Agreement</li> <li>• Campaign Against the GATS Agreement</li> </ul>

Although the collapse of the Seattle conference cannot wholly be attributed to the 30 November 1999 global day of action, the protest was successful in a number of respects. The protest events highlighted citizen dissatisfaction over the WTO's inability to account for the negative consequences of international trade such as environmental degradation, human rights violations, poor labour standards and economic inequality. Moreover, these same issues that the protesters aimed to emphasise were echoed by member states inside the conference and were ultimately the catalyst for the collapse of the meeting. Most importantly, the protest events received widespread media coverage, as did the WTO itself, which in turn heightened public awareness of the secretive nature of global trade policy. As Stigliani summarises,

many people who had previously been unaware of or paid little attention to the WTO now have some sense of the purpose of the organisation and of the debate over the relative benefits and costs of the worldwide free trade that it seeks to promote.<sup>29</sup>

### Campaign for WTO core labour standards

Although the International Labour Organisation (ILO) provides a forum for the representatives of governments, employers and workers to discuss labour

standards, in recent years an increasing segment of the international labour movement has come to view the organisation as ineffective. The ILO's conventions are voluntary and even where nations agree to adopt particular conventions, the institution does not have the enforcement capacity to ensure these are upheld.<sup>30</sup> The institutional transformation of the General Agreement on Tariffs and Trade (GATT) into the more powerful WTO in 1995 led the international labour movement to argue that increased trade liberalisation and strengthened trade rules permit labour exploitation and undermine national health and safety regulations. However, the creation of the WTO also presented the international labour movement with a legally enforceable arena in which to lobby for a set of core labour standards. The violation of labour rights in export sectors can broadly be conceived as an unfair trade practice that could be addressed through the WTO's powerful dispute settlement body.

The campaign for the incorporation of core labour standards into the WTO framework was led by the International Confederation of Free Trade Unions (ICFTU), one of the most entrenched global networks.<sup>31</sup> The campaign stressed that international trade liberalisation under the WTO treats workers as factors of production rather than as human beings who deserve to have recourse to a standard set of basic rights that govern their treatment at work.<sup>32</sup> The ICFTU and other civil society groups involved in the campaign lobbied for the WTO to adopt a social clause that would commit states to respect seven basic ILO conventions (Conventions 87, 98, 29, 105, 100, 111 and 138).<sup>33</sup> These conventions relate to freedom of association, the right to collective bargaining, the abolition of forced labour, prevention of discrimination in employment and a minimum age for employment.<sup>34</sup>

The WTO's inaugural Ministerial Conference in Singapore in 1996 presented the ICFTU campaign with their first opportunity to secure a WTO labour rights clause. The domestic political importance of labour as an interest group in developed countries assisted the campaign. At the WTO conference, the European Union (EU) and the US strongly advocated that the WTO recognise labour issues.<sup>35</sup> However, the majority of developing countries opposed the incorporation of core labour standards into the WTO framework. Essentially, the debate centred around whether the WTO is the appropriate institution for enforcing labour standards and what impact such standards might have on the comparative advantage of countries that depend on labour-intensive industries. Developing countries argued that allowing the creation of unions would cause multinational companies interested in investing in countries with low labour costs and low labour activism to disinvest.<sup>36</sup>

There was also considerable disagreement amongst civil society groups regarding a WTO labour standards clause. Significantly, the Indian National Trade Union Congress as well as a great many civil society groups from developing countries opposed the incorporation of core labour standards into the WTO framework.<sup>37</sup> In a further setback to the ICFTU cam-

campaign, a coalition of NGOs organised by the Third World Network (TWN) issued a public statement that opposed the WTO taking on new issues including labour standards.<sup>38</sup> Echoing developing country governments, the TWN statement claimed that developed country protectionists would use a labour standards clause to prevent the importation of products from less developed countries. Essentially, these groups viewed the WTO as 'a source of domination rather than an opportunity for justice'.<sup>39</sup>

Despite discussion of labour issues dominating the Singapore conference, the proposal for a core labour standards clause at the WTO failed to be adopted, largely due to opposition from developing countries. However, the subject of core labour standards was mentioned in the final declaration:

We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them.<sup>40</sup>

Following the Singapore Ministerial, pressure from several campaign affiliates to increase the participation of member organisations in the campaign led to the ICFTU establishing the Task Force on Trade, Investment and Labor Standards (TILS).<sup>41</sup> Prior to the WTO's second Ministerial Conference in Geneva in May 1998, TILS organised a three day conference for its members, one of the main goals being to prepare unionists to lobby their governments on the issue of core labour standards.<sup>42</sup> This strategy had a limited impact as the primary purpose of the Geneva conference was to celebrate the fiftieth anniversary of GATT rather than discuss substantive issues.

In preparation for the 1999 WTO Ministerial Conference in Seattle, the ICFTU undertook a number of activities. These included a seminar in December 1998 entitled 'Globalisation, Investment and Labor Standards' dedicated to investigating a number of campaign proposals.<sup>43</sup> These proposals included the organisation of regional and subregional activities to achieve the campaign goals at a national level, the targeting of developed countries and regions such as Japan and the EU where governments appeared to be favouring a purely ILO-based approach to the labour standards issue, and the exploration of possible NGO alliances.<sup>44</sup> One of the most significant proposals was that it should be the ILO, not the WTO, that should decide if a country has violated core labour standards: the role of the WTO would be to ensure compliance through possible trade sanctions as a measure of last resort.<sup>45</sup> The ICFTU also managed to gain the firm support of the US government through the American Federation of Labour–Congress of International Organisations (AFL-CIO), the umbrella organisation for US unions. In October 1999, the US government stated its support for a WTO labour standards working party. However, this proposal did not involve the enforcement of labour rights with trade sanctions.<sup>46</sup> The US government was responsive to the AFL-CIO largely because the Clinton administration was



under pressure to regain the support lost from labour over the adoption of the North American Free Trade Agreement (NAFTA).<sup>47</sup>

The ICFTU campaign culminated with the 1999 Seattle Ministerial Conference, in which negotiations effectively broke down resulting in member states failing to agree upon the launching of the Millennium Round of trade negotiations. The lack of continuing consensus over the labour standards issue was only one of many factors leading to the meeting's collapse. Notwithstanding the 1996 Singapore declaration which commits to cooperation with the ILO, the ICFTU campaign for a set of core labour standards at the WTO has met limited success. Nevertheless, the campaign has played an important role in drawing attention to the issue of universal labour standards and one way or another, this issue is likely to be an ongoing controversy within international trade governance that trade unions and civil society groups will not allow to languish quietly.

### **Campaign against the TRIPS Agreement**

The WTO's Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS) sets out the minimum standards for the protection of intellectual property, including patents for pharmaceutical products. The deadline for member states' implementation of the TRIPS Agreement is dependent on their level of development.<sup>48</sup> The TRIPS Agreement obliges WTO member states to increase standards of patent protection for all products and removes a nation's ability to treat pharmaceutical products differently from other products.<sup>49</sup> The TRIPS Agreement gives patent protection to pharmaceutical companies for 20 years, which means that developing countries will face increased difficulty in accessing affordable generic versions of patented drugs.<sup>50</sup> While the Agreement contained safeguards to deal with the negative consequences of patent protection, in practice it was unclear how developing countries could use these safeguards when patents become a barrier to medicine access. The INGO campaign against the TRIPS Agreement aimed to highlight the public health consequences for developing country citizens of inadequate access to essential medicines such as those for HIV/AIDS and malaria. The INGOs claimed that the enforcement of WTO rules would have a negative effect on local manufacturing capacity and would remove a source of generic medicines on which developing countries rely.<sup>51</sup>

The TRIPS campaign began in 1999 and was led by INGOs Oxfam International and Médecins Sans Frontières (MSF). The INGOs linked up with NGOs from Thailand and South Africa and focused attention on the effects of the TRIPS Agreement and its implementation at national level.<sup>52</sup> The campaign network supported and encouraged developing country governments including Thailand, South Africa and Brazil to issue compulsory licences for the production of patented medicines without the permission of the drug companies holding the intellectual property.<sup>53</sup> The NGOs lobbied

international organisations other than the WTO including the World Health Organisation, the World Bank and the United Nations Development Programme,<sup>54</sup> stating that developing countries should have the right to issue compulsory licences and build alliances with the generic pharmaceutical industry to produce HIV/AIDS drugs in order to make them available at affordable prices.<sup>55</sup> Further, the INGOs mobilised international donors to purchase essential medicines and made them available to countries facing the HIV/AIDS crises.<sup>56</sup> The campaign network sought to discredit the business agenda by highlighting the enormous profits that pharmaceutical companies were earning from HIV/AIDS drugs.<sup>57</sup>

At the 2001 Doha Ministerial Conference, the controversy over TRIPS resulted in a partial victory for the NGO campaign and developing countries, with WTO member states agreeing upon the Declaration on TRIPS and Public Health<sup>58</sup> in which WTO members' rights to employ TRIPS safeguards was clarified. Although this was regarded by public health advocates as an important achievement, it did not resolve all of the issues associated with public health and intellectual property protection.<sup>59</sup> For example, it did not resolve the problem of production for export from markets that provide patents to countries that do not grant pharmaceutical patents (and subsequently do not grant compulsory licences).<sup>60</sup> After several weeks of intense negotiations in the run-up to the WTO Ministerial Conference in Cancun in September 2003, a deal was finally concluded. WTO member governments broke their deadlock and agreed on legal changes to make it easier for poorer countries to import cheaper generic medicines made under compulsory licensing, if they are unable to manufacture the medicines themselves.<sup>61</sup> The decision waived the obligations of exporting countries under Article 31(f); provided certain conditions are met, any member country can export generic pharmaceutical products made under compulsory licences to meet the needs of importing countries.<sup>62</sup> The INGO campaign played a key role in drawing attention to the provisions of TRIPS, supporting and aiding the voices of developing countries in the WTO arena and putting pressure on more powerful member governments, particularly the US, to clarify and reform the TRIPS Agreement.

## **Campaign against the GATS**

The General Agreement on Trade in Services (GATS) is one of the most comprehensive WTO agreements. Although GATS came into force in January 1995 with the establishment of the WTO, negotiations did not officially begin until early 2000. However, at an industry level, negotiations on basic telecommunications were successfully concluded in February 1997 and negotiations in the area of financial services were finalised in mid-December 1997.<sup>63</sup>

In March 2001, the WTO's Council for Trade in Services set out the guidelines for negotiations on the full range of services to be included in the

GATS. At the 2001 Doha Ministerial Conference, member states backed the efforts conducted up to that point, endorsed the guidelines and procedures documents, and set a deadline of 1 January 2005 to finalise the negotiations.<sup>64</sup> The negotiation procedures for the GATS allow governments to select service areas for which they will make a commitment to guarantee access to foreign suppliers. Each WTO member must present a national schedule of commitments; however, there are no guidelines as to how extensive these commitments should be. Some least developed countries have made commitments only in the tourism sector.<sup>65</sup> The GATS negotiations require governments to 'offer' to list an increasing number of services to be included in the GATS.

WTO members that favour the liberalisation of services, such as the US, the EU and Japan, highlight the flexible nature of liberalisation under the GATS. They claim that GATS allows countries to select which sectors to liberalise through bilateral negotiations, determine the length of time needed to open its markets and even reverse liberalisation as long as adequate compensation is paid to the affected firms.<sup>66</sup> Despite assurances of the flexibility in GATS, there is serious unresolved contention over the definition of public services and whether public services will be drawn into the agreement.<sup>67</sup> Supporters of GATS point to the fact that the agreement clearly states that public services are excluded. In Article 1.3 of the agreement, public services are defined as services carried out in the exercise of governmental authority and provided neither 'on a commercial basis, nor in competition with one or more service suppliers'.<sup>68</sup> Within many countries however, public services are provided by governments *and* the private sector. The NGOs argue that this ambiguity may lead to public services eventually being drawn into the GATS (where they are currently provided on a partially commercial basis) and that this ambiguity may end up being determined by the WTO's Dispute Settlement Body after the GATS has been negotiated.<sup>69</sup>

The INGO campaign against the GATS is based on its negative effects on national democratic decision making over a range of public services, in particular, education and health as well as its less tangible effect on culture. NGOs argue that the ambiguity surrounding public services in the GATS will compel governments to privatise essential services, constrain their ability to regulate the provision of basic services and obligate them to open up these sectors to foreign corporations. The NGO campaign contends that particular sectors require regulation in order to protect the environment, improve public health, and maintain an equitable level of wealth distribution. The NGO Focus on the global south questions the claims made by proponents of services liberalisation, noting that where water services have been privatised, there has been an increase in prices and a fall in the quality of service.<sup>70</sup> Moreover, developing nations are concerned that liberalising trade in services may weaken the sovereignty of local and national governments by jeopardising control over land use, licensing, environmental health, and local content and production rules in media.<sup>71</sup>

In calling for mobilisation, the INGOs have stated that the services negotiations are 'geared towards complete liberalisation and deregulation of domestic markets, which pave the way for privatisation and increase the influence of multinational corporations over essential public services'.<sup>72</sup> The NGO campaign has argued that the flexibility in GATS is a myth. They assert that in bilateral negotiations, developing countries may be pressured to open sectors they would prefer to keep under protection and that the burden of paying compensation means that liberalisation is not easily reversible.<sup>73</sup> If a nation seeks to withdraw a sector from GATS, the government must enter into negotiations to compensate their trading partners for their lost business opportunities.

INGOs have adopted a variety of strategies ranging from petitions, street demonstrations, the issuing of declarations and sign-on statements. On 19 March 2001, a protest entitled 'Stop the GATS Attack', in which NGO representatives from more than 30 countries were involved, was held in Geneva.<sup>74</sup> This demonstration generated a campaign statement against the GATS which is now supported by over 500 organisations from 60 countries around the world.<sup>75</sup> On 9 February 2003, opposition to the GATS in Europe reached a new level with the European anti-GATS demonstration in Brussels. This demonstration was organised by Belgian trade unions and NGOs and attracted over 15,000 people both from Belgium and other European countries.<sup>76</sup> In May 2003, civil society groups from developed and developing countries gathered in Nairobi to discuss the impact of GATS on the developing world.<sup>77</sup> In June 2003, African NGOs submitted a statement to the African Union Trade Ministers Meeting in Mauritius calling for a moratorium on the GATS negotiations, until independent and reliable impact assessments have been carried out.<sup>78</sup> On 28 August 2003, 650 civil society representatives in India issued a demand to the Indian Prime Minister and commerce ministry calling for a moratorium on all commitments under the GATS.<sup>79</sup> European NGOs are campaigning to have anti-GATS resolutions adopted by local governments.<sup>80</sup> Another mass demonstration against the GATS was held outside the WTO headquarters in Geneva on 17 February 2005 to coincide with the most recent services negotiations by WTO member states.

Overall, the NGO campaign has brought greater scrutiny to bear upon the GATS. The NGOs have identified a number of vague elements of the agreement and in response, proponents have been forced to defend the agreement. Although officials have been dismissive of NGO claims, the anti-GATS campaign has clearly affected the WTO Secretariat as well as Geneva-based diplomats. The WTO Secretariat released a report to counter NGO claims and negative press, entitled 'GATS – Fact and Fiction',<sup>81</sup> which has been widely received and propagated by the western financial media.<sup>82</sup> The report denounced the 'ill-informed and hostile criticism' of the negotiations taking place under the GATS framework. The WTO's July 2004 package which rescued negotiations following the breakdown of the 2003

Cancun Ministerial Conference<sup>83</sup> has managed to put GATS negotiations back on track. In December 2005, WTO member states convened a WTO Ministerial Meeting in Hong Kong to finalise the GATS negotiations begun in 2001.

### **Campaign against a WTO foreign investment agreement**

The development of a multilateral investment agreement has been under discussion since the 1996 Singapore Ministerial Conference and is commonly referred to as one of the 'Singapore issues'.<sup>84</sup> The regulation of foreign direct investment (FDI) subsequently emerged as one of the flashpoints in the Doha 'development round' of WTO negotiations. Put simply, the key issue at stake is *should WTO rules apply to foreign investment?*

To an extent, investment is already dealt with under the WTO's Trade-Related Investment Measures (TRIMs) Agreement. However, TRIMs only applies to trade in goods and prevents countries from imposing certain types of conditions on foreign investors. Because developing countries are continuing to experience difficulties in implementing the Uruguay Round agreements, TRIMs obligations, which were supposed to apply to developing countries from 1999/2000, have now become the subject of further negotiation within the WTO.<sup>85</sup> Investment in services is also under discussion as part of the GATS negotiations.

At the Doha Conference, member states agreed to commence wide-ranging multilateral investment negotiations.<sup>86</sup> Yet, it was only in 1998 that similar negotiations in the Organisation for Economic Cooperation and Development (OECD) towards a Multilateral Agreement on Investment (MAI) ended without result due to pressure from a highly successful NGO campaign.<sup>87</sup> At the Doha Conference, the broad alliance of developing nations known as the Group of 77 (G77) unexpectedly did not strongly oppose the launching of negotiations on investment. However, within the G77, there was strong opposition from the 'like-minded group' comprised of India, Malaysia and Pakistan; these nations opposed the commencement of investment negotiations and merely sought further study on the possibility.<sup>88</sup> On balance, developing countries are ambivalent about negotiations on investment due to their lack of resources for adequately negotiating these issues. They have questioned whether such an agreement would be positive for investment flows or beneficial for developing countries as well as whether the latest proposals offer an adequate degree of flexibility.

The NGOs involved in the campaign against an investment agreement in the WTO have expressed serious doubt as to whether the WTO is the appropriate venue for an extensive international investment agreement. The NGO campaign also focuses on the potential detrimental effects of such an agreement on developing countries. The NGOs have argued that a one-size-fits-all multilateral framework on investment liberalisation is inappropriate as its member nations are at different stages of development. The NGOs

have stated that a multilateral agreement on investment would not only bind member countries to pursue indiscriminate investment liberalisation, but would also significantly reduce the space for countries to manoeuvre investment policies to suit their specific conditions.<sup>89</sup> NGOs have pointed to the fact that it may be difficult to design an agreement on foreign investment without also drawing in other types of capital flows, including short-term flows and portfolio investment.<sup>90</sup> Moreover, while some NGOs focus on the economic effects, others such as the World Wide Fund for Nature (WWF) and the International Institute for Sustainable Development (IISD) have been advocating that conditions relating to environmental protection be incorporated into any proposed investment agreement.

A number of high profile NGOs jointly organised a series of seminars on a possible future WTO investment agreement and the other Singapore issues, which were held in Geneva during March 2003.<sup>91</sup> The seminars brought together NGOs from around the world and provided a platform for interaction between civil society, independent experts and Geneva-based WTO delegates.<sup>92</sup> The seminars also involved government officials from countries both favouring and opposing an investment agreement and there were presentations from ambassadors from three developing countries (India, Kenya and Uganda).<sup>93</sup> The NGOs involved in these seminars issued a joint declaration calling upon WTO member nations to drop plans to launch negotiations on a new investment agreement at the 2003 Cancun Ministerial Conference.<sup>94</sup> Also during 2003, NGOs lobbied against an investment agreement at the meeting of the G8 in France, at a meeting of European trade ministers and at the Free Trade Area of the Americas (FTAA) Ministerial Conference in Miami. In November 2003, NGOs visited the WTO Secretariat and individual WTO missions (including the US, Brazil and South Africa) to exchange views and information about a potential WTO investment agreement.<sup>95</sup>

Due to the breakdown of negotiations at the Cancun Conference, negotiations on an investment agreement were not launched as expected. This was largely due to the alliance of developing nations, the Group of 21 (G21) which formed prior to the conference, who would not agree to negotiate on the Singapore issues, until progress was made on greater access for developing country agricultural products to EU and US markets.<sup>96</sup> The subsequent 2004 July Package stated that WTO members have agreed not to expand the WTO's powers over the Singapore issues, which includes investment. It is difficult to assess the NGO campaign's influence on the eventual removal of investment from the Doha agenda. Certainly, the NGOs provided solidarity and assistance to developing country WTO members; however, the impact of the unity of the G21 of developing nations during the Cancun Conference was integral to investment negotiations eventually being dropped from the agenda in July 2004.<sup>97</sup>

## Campaign for fair trade

Although the origins of the fair trade movement may be traced back to the 1940s, recent citizen dissatisfaction with trade liberalisation, combined with the difficulties civil society organisations face in achieving dialogue with the WTO has fostered the reinvigoration of fair trade. As Reynolds describes it, '[t]he fair trade movement critiques conventional production, trade and consumption relations and seeks to create new and more egalitarian commodity networks.'<sup>98</sup> Fair trade incorporates a number of issues of public concern ranging from global economic inequality, environmental degradation, corporate responsibility, labour rights and child labour. The idea of a global social contract is prominent in this ongoing campaign: the practice of fair trade focuses on the responsibilities of populations in the global north for conditions in developing countries.<sup>99</sup> Unlike many of the campaigns against the WTO, advocates of fair trade accept that socially and environmentally responsible international trade has the potential to be a powerful tool for poverty reduction.<sup>100</sup> However, the 'rigged rules and double standards' sustained by powerful states are preventing the realisation of this goal at the WTO.<sup>101</sup>

As types of NGOs, alternative trade organisations (ATOs) are the lynchpins of the fair trade movement. The core aim of ATOs in the developed world is to alter consumption practices by encouraging consumer demand for goods that have been produced under fair conditions. ATOs select disadvantaged producer groups to whom they provide financial and technical support, assistance with product development and packaging as well as information on quality and safety standards to meet First World consumer demand preferences. The majority of fair trade goods are commodity products like coffee (the most widely consumed fair trade product), tea, honey, cocoa, bananas and nuts as well as cultural products or handcrafts including clothing, jewellery, textiles, furniture and musical instruments. For selected developing country producers, the fair trade movement has presented the opportunity to participate in the global economy, receive a fair wage and engage in economically and environmentally sustainable production.

ATOs also lobby corporations, international organisations and domestic governments to adopt policies and introduce legislation that incorporates the objectives of the fair trade movement.<sup>102</sup> ATOs emphasise the education of Western consumers about fair traded products so that they can make informed decisions about the way in which their spending dollars are distributed.<sup>103</sup> This is achieved through the dissemination of information about the cultures and lifestyles of developing country producers as well as the disadvantages that they face in participating in global markets. The labelling of fair trade products is an important tool in distinguishing fair trade products and it is a well-recognised label in North America and Europe.

The success of the fair trade movement is expanding with the proportion of fair trade products sold growing annually. According to the Fair Trade

Labelling Organisation (FLO), in 2003, general sales of fair trade labelled products totalled US\$83,480 million, which represents an increase of 42.3 per cent over the previous year.<sup>104</sup> The fastest growing markets are in Belgium, France, Italy and the US with growth rates between 80 per cent and 700 per cent, reflected in sales volumes calculated between 2002 and 2003.<sup>105</sup> Moreover, fair trade groups have established commercial agreements with the European Commission and municipal councils in the United Kingdom to purchase fair trade products.<sup>106</sup> Although the fair trade sales figures represent only a tiny fraction of all goods exchanged globally, fair trade represents an alternative system of trade that incorporates human rights, economic equality and environmental concerns. The practice of fair trade is an important symbolic counterpoint to the international trade regime as administered by the WTO.

## Discussion and conclusion

Let us turn to the six empirical questions relating to the prospects for the development of a global social contract as listed in Table 18.1.

- 1 In challenging the undemocratic process, have INGOs made the process more democratic, and in what sense? Can the global social contract be democratic? And how? As Dahl states, extensive delegation of national decision making to an international institution has the potential to 'move a political system beyond the democratic threshold'.<sup>107</sup> Certainly, the transferral of national authority to the WTO has undermined national democratic processes and national control over decision making on economic policy. The idea of a global social contract should involve a democratic process. INGOs dispute the authority of the WTO to regulate an investment agreement, and attempt to establish democratic control over foreign investment. According to the normative claims of INGOs, a WTO multilateral investment agreement (to fulfil the terms of a global social contract) must be sensitive to particular national circumstances and varying levels of development. The campaign against a WTO investment agreement highlights the need for flexibility and adaptability in a global social contract. This repudiates Falk's view that regulatory uniformity must be a core element of a global social contract.<sup>108</sup>

The INGO campaign against the GATS is concerned with the secretive manner in which the negotiations are being conducted. The INGOs involved have complained that the negotiations are taking place behind closed doors and that most of the WTO members will not reveal their requests and offers. In response, INGOs are lobbying for increased transparency of the negotiations process. The INGOs have called on governments to publish their liberalisation offers and requests in detail to enable informed public discussion. They are also campaigning for



detailed and independent analyses of services liberalisation as well as public discussion of the sectors that have already been liberalised before further negotiations take place. The INGOs are attempting to maintain nation-state's democratic control over public services and oppose the private sector acquiring the ability to take over the provision of public services. This battle is still in progress and as such the result is not yet certain.

- 2 Have INGOs forced the WTO to revise some economic contracts in order to meet social demands? The intellectual property case study shows how INGOs successfully clarified and incorporated social rights into the TRIPS. In their campaign against the WTO TRIPS Agreement, INGOs have been successful in making global economic agreements fairer in regards to developing countries. WTO member governments agreed on legal changes that allow poorer countries to import less expensive generic medicines.
- 3 Do the poor benefit from the INGO campaigns against the various WTO agreements? While on the whole, the record of INGO campaigns is not completely satisfactory, there are encouraging signs of success. As discussed above, the INGO campaign was vital in aiding South Africa, Brazil and Thailand to modify the WTO TRIPS Agreement. In 2005, the efforts made by INGOs in calling for the cancellation of the debt of underdeveloped African nations have brought some success in the World Economic Forum and the G8 Summit.
- 4 Are INGOs significant parties in the emerging global social contract? Are they outsider challengers or insider policy-making participants? It is clear now that *INGOs have established themselves as undeniably important parties in a global social contract* through challenging the undemocratic nature of WTO agreements and demanding that multilateral economic agreements provide social protection for the weak and poor. Due to the challenge that civil society presents, and following the Seattle protests in particular, the WTO has made some advances in recognising INGOs. With the exception of the Doha Ministerial Conference, successive WTO ministerial conferences have accredited an increasing number of NGOs with observer status (see Table 18.7). Nevertheless, NGOs may only observe plenary sessions and do not have the right to vote on key issues in the WTO. The WTO selects NGOs that are deemed by the organisation to have a 'legitimate interest' in trade issues.

In overcoming the constraints on NGO accreditation, NGOs are increasingly adopting an alternative method for gaining access to and influence in the WTO. A less perceptible process of dialogue between civil society and trade policy makers is under way at a national level. At the Singapore Ministerial Conference, successful lobbying resulted in ICFTU affiliates in several countries including the US, Canada, New Zealand, Denmark, Norway, Egypt, Tunisia, Burkina Faso and South Africa being accredited to their government's official delegations.<sup>109</sup>

Additionally, after many years of NGO lobbying, several governments have allowed domestic NGOs onto their official national delegations at the Seattle and Doha Ministerial Conferences.<sup>110</sup> Ddamilura and Noor Abdi describe how the governments of Kenya and Uganda established multi-stakeholder advisory committees on trade policy and the WTO which led to NGOs becoming part of national delegations to WTO ministerial conferences.<sup>111</sup> For the 1999 Seattle Ministerial Conference, the United Kingdom, Denmark, the Netherlands and the EU also allowed NGO representatives onto their official delegations.<sup>112</sup> Moreover, as was the case in the controversy surrounding the TRIPS Agreement, some WTO members have consistently drawn on INGOs for trade-related research and media assistance.<sup>113</sup> This is evidence that civil society groups are establishing themselves as important parties to an emerging global social contract as both outsider challengers *and* insider policy-maker participants. NGOs, social movements and citizens are challenging the WTO not only by staging demonstrations and participating in global days of action, but are beginning to exert influence through more formal (and potentially more consequential) channels.

- 5 Have INGOs successfully challenged the international business community to implement universal values? A global social contract should take labour standards seriously and contain a social clause in regard to these standards. INGOs forced the issue of core labour standards onto the WTO's agenda, with this issue being taken up by the EU and the US for the WTO to recognise labour issues as a key element of international trade. At the Singapore Ministerial Conference, WTO members agreed to institutional cooperation with the ILO. The Singapore Declaration states that the WTO supports the work of the ILO on the labour standards issue. Perhaps a longer term strategy for incorporating labour issues into the WTO may lie in the area of social labelling and company codes of conduct. However, it is not clear that such campaigns pose a great enough obstacle for the WTO to become seriously involved.

The debate over core labour standards at the WTO revealed the limits of the ICFTU speaking on behalf of the international labour movement, especially unions in less developed countries. This campaign exposed the divide between developed and developing country trade unions and this was reflected in the WTO member states' disagreement over the issue. It is uncertain as to whether a multilateral agreement on labour standards will be achieved through the WTO in the near future. Some see this as a victory for developing countries by allowing them to benefit from trade, while others see it as a defeat for their citizens, who will continue to work in very poor conditions.

- 6 Do INGOs make trade fairer? Do they make the WTO agreements fairer and in what sense? Through the practice of fair trade, INGOs are attempting to construct an alternative global social contract. Purchasing

fair trade products offers a unique method for expressing dissatisfaction about the policies of the WTO and the perceived inequities that trade liberalisation creates. Fair trade principles centre on consumer education, paying producers a fair price, promoting democratic, worker-owned cooperative workplaces, encouraging environmentally sustainable production, establishing long-term working relationships, providing financial and technical support and respecting cultural identity.

Nevertheless, the practice of fair trade has been accused of not adequately challenging the neoliberal order. Critics argue that the fair trade strategy promotes a form of lifestyle politics at the expense of more meaningful political engagement, understanding and solidarity.<sup>114</sup> In particular, it has been charged with promoting consumerism in the developed world without questioning consumerism's links with underdevelopment or environmental sustainability. The practice of fair trade can make developing country producers reliant on the often fickle tastes and preferences of developed country consumers. Furthermore, there is a tension between consumerism and citizenship. In the developed world, only those who can afford to pay a premium price for fair trade goods can participate in this alternative global social contract. Fair trade organisations have become sidetracked by a perceived need to compete for customers with mainstream businesses, which has diverted resources from the more politically efficacious goal of raising public awareness of international trade issues.

From the above mixed results of an empirical testing of the normative theory of a global social contract, we can address two unexamined assumptions made by Richard Falk. Falk draws a distinction between two rival forces: 'globalisation from above' to describe global economic liberalisation as endorsed by powerful states, transnational corporations and global economic institutions and 'globalisation from below' to describe the social movements and NGOs that are seeking to promote a global community committed to human rights, economic justice and environmental sustainability beyond the territorial state. The successful campaign against the TRIPS Agreement demonstrates that this is a somewhat forced dichotomy and that the basis of developing a global social contract instead centres on forging a compromise and even cooperation between these two forces.<sup>115</sup>

Second, in attempting to find a path through the cooptation of the state by global economic forces, Falk employs the global social contract idea stating that it should be based on 'basic human needs' and regulatory uniformity. While regulatory uniformity is an appropriate goal in terms of human rights and labour standards, differing levels of industrialisation in developed and developing nations means that rather than being uniformly applied, global economic policy needs to be carefully tailored to suit domestic conditions. This is evident in relation to global investment rules as is borne out in the case study (see Table 18.8) of the campaign against a WTO

Table 18.8 Summary of case studies of INGO campaigns against the WTO

Campaign	Aims	Strategies	Outcomes	Links with power – national or transnational	Transnational alliances	Consensus
<p>Global Day of Action Against the WTO 'Millennium Round'</p> <p>To protest against the WTO launching the Millennium Round of trade negotiations. While environmentalists and social rights campaigners called for the incorporation of social and environmental into the WTO and for the organisation to be held to greater account, more radical groups comprising isolationists, protectionists and anarchists, called for abolition of the WTO.</p>	<p>The staging of street demonstrations and other activities in various locations around the world on 30 November 1999 to coincide with the WTO conference. The 30,000 protesters in Seattle attracted the most media attention. While the WTO conference provided the catalyst for the global day of action and drew together the protesters, other targets included symbols of corporate globalisation such as multinational corporations, banks and stock exchanges.</p>	<p>The WTO Ministerial conference collapsed due to disagreement among member states over many of the same issues for which protesters were lobbying. The Millennium Round of trade negotiations failed to be launched.</p>	<p>Weak: no obvious relations with national governments or international organisations.</p>	<p>Strong: the global day of action involved 111 protest events in 22 countries in 97 cities around the world.</p>	<p>Weak: there were strong ideological divisions between reformist, professional NGOs and populist social movements, between trade unionists, environmentalists, anarchists, etc.</p>	

*continued*

Table 18.8 Continued

<i>Campaign</i>	<i>Aims</i>	<i>Strategies</i>	<i>Outcomes</i>	<i>Links with power – national or transnational</i>	<i>Transnational alliances</i>	<i>Consensus</i>
Campaign for WTO Core Labour Standards	To have a core set of ILO conventions adopted by the WTO in order to make them enforceable.	The ICFTU lobbied powerful WTO member states and attempted to build alliances with trade unions from developing countries and other non-affiliated NGOs.	Success was limited with labour issues being rejected as an appropriate issue for the WTO. However, WTO members agreed to institutional cooperation with the ILO. The declaration states that the WTO supports the work of the ILO.	Strong: ICFTU has greater informal access to the WTO Secretariat than other civil society groups. Trade unions also drew on their domestic political importance to build strong links with governments, particularly the US.	Strong: the ICFTU has a membership of 127 million people from 136 countries, the campaign also comprised NGOs and various international trade secretariats.	Weak: a number of trade unions from developing countries disagreed with the institutionalisation of core labour standards in the WTO.
Campaign Against the TRIPS agreement	To modify WTO rules on intellectual property rights in order to institute greater leverage for national governments to make generic medicines available to citizens.	The NGO network supported national governments (Thailand, South Africa and Brazil) in issuing compulsory licences for the production of generic medicines. The NGOs lobbied against TRIPS in policy-relevant international forums	On 30 August 2003, WTO member governments agreed on legal changes to make it easier for developing nations to import generic medicines made under compulsory licensing if they are unable to manufacture the medicines themselves.	Strong: NGOs worked with national governments (South Africa, Thailand, Brazil) and international organisations (UNDP, World Bank and WHO).	Strong: INGOs formed alliances with national NGOs from international organisations (UNDP, World Bank and WHO).	Strong.

(the World Health Organisation, the World Bank, the UNDP), they mobilised international donors to purchase essential medicines and sought to discredit the business agenda by highlighting the magnitude of their profits.

<p>Campaign Against the GATS Agreement</p>	<p>To make WTO negotiations more transparent and democratic. To maintain adequate state control over public services (water, education health, etc.)</p>	<p>The NGOs organised public demonstrations, forums and seminars and released NGO declarations and sign-on statements.</p>	<p>Negotiations in Cancun collapsed before GATS was discussed. The WTO's July 2004 package put negotiations back on track. The agreement was endorsed at the Hong Kong Ministerial Conference in December 2005.</p>	<p>Medium: informal alliances between developing country governments and NGOs.</p>	<p>Strong: transnational alliances between INGOs and developing country NGOs.</p>	<p>Strong: all civil society groups involved agreed that WTO negotiations must be more transparent and agreed on the goal of equitable access to public services.</p>
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*continued*

Table 18.8 Continued

Campaign	Aims	Strategies	Outcomes	Links with power – national or transnational	Transnational alliances	Consensus
Campaign Against a WTO Foreign Investment Agreement	To prevent the adoption of a WTO multilateral investment agreement.	The NGOs leading the campaign convened a series of seminars held in Geneva during March 2003 involving more than 50 NGOs and social movements to address possible future WTO rules on investment and other new issues. A civil society/NGO joint declaration was issued. NGOs organised parallel meetings to the WTO's Working Group on trade and investment and also held meetings with the WTO's Secretariat.	A WTO investment agreement was one of the key issues over which the negotiations broke down at the 2003 Cancun Ministerial Conference. Not just blocking, but removing this issue from the Doha Round is seen as a major victory for civil society.	Strong: representatives of developing country governments were involved in the seminar series.	Strong: transnational alliances between INGOs and developing country NGOs.	Strong.

<p>Campaign for Fair Trade</p>	<p>To challenge the inequity of the global trading system as administered by the WTO. To engender greater equity in global trade between developing countries and consumers and producers. To ensure producers are paid a fair price for their products.</p>	<p>The demonstration of an alternative trading system that incorporates social rights and environmental sustainability. To link developing country consumers with developing country producers in a framework of fair trade. Fair trade labelling of products deemed to be produced under fair and environmentally-friendly conditions.</p>	<p>The proportion of fair trade products sold is growing annually. However, as it is a symbolic demonstration of an equitable trading system, it has not affected the WTO not directly challenged it.</p>	<p>Weak: however, fair trade groups have commercial agreements with governments (European Commission, UK municipal councils) to purchase fair trade products.</p>	<p>Medium: alliances between producers and consumers. International fair trade umbrella organisations include the Fair Trade Labelling Organisation (FLO), Fair Trade Federation (FTF) and International Federation for Alternative Trade (IFAT).</p>	<p>High: a popular movement in the developed world. Proponents believe that equitable trade can contribute to economic growth and decrease poverty.</p>
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foreign investment agreement. The development of a global social contract for the international trade regime will be more complex than the establishment of a uniform global economic policy framework.

In short, the November 1999 Global Day of Action, in particular, the Seattle street demonstration, has become a symbol of the awakening of global civil society and marks the trend towards greater interchange with globalisation from above. However, while the WTO and INGOs continue to share an uneasy coexistence, the increasing role of INGOs as outsider challengers and insider policy-making participants indicates an evolving process from confrontation (with globalisation from above) to an emerging global social contract.

In the process of developing a global social contract, we need to investigate the role of international corporations in regards to their complex relationships with INGOs. Is it possible for transnational corporations and international organisations to coopt some INGOs into the structure of power? Will a global social contract entrench or limit the authority of international organisations? These questions deserve further investigation.

## Notes

- 1 The global social contract or precisely a series of global social contracts, is in the process of emerging. There are also terms such as the new, global (regional) contract and/or compact.
- 2 Australian Broadcasting Commission (ABC) Radio Australia and Radio National, Program 6: Global Citizenship, Extended Interview with Richard Falk, *Globally Speaking: The Politics of Globalisation Radio Program*, (2004), available at [www.abc.net.au/global/radio/falk.htm](http://www.abc.net.au/global/radio/falk.htm).
- 3 Faux, J. (2000) 'Toward a Global Social Contract: The Politics of the Global Economy', speech presented at the *Latin American Faculty of Social Sciences 25th Anniversary Conference*, Mexico City, Mexico, 25 October 2000.
- 4 See Broad, R. (2004) 'The Washington Consensus Meets Global Backlash: Shifting Debates and Policies', *Globalizations*, 1(2): 129–154.
- 5 Kell, G. and J. G. Ruggie, 'Global Markets and Social Legitimacy: The Case of the "Global Compact"', paper presented at 'Governing the Public Domain beyond the Era of the Washington Consensus? Redrawing the Line between the State and the Market', York University, Toronto, 4–6 November 1999.
- 6 Mazarr, M. J. (1999) *Global Trends 2005: An Owner's Manual for the Next Decade* (New York: St. Martins Press), pp. 109–113.
- 7 Falk, R. (1999) *Predatory Globalization: A Critique* (Cambridge: Polity Press), p. 3.
- 8 *Ibid.*, p. 46.
- 9 Smith, R. (2004) 'Towards a Global Social Contract', *British Medical Journal*, 328.
- 10 O'Driscoll, P. 'Civil Society, Corporate Accountability and the New Social Contract', Center of Concern, PSD project concept paper, available at [www.coc.org/resources/articles/display.html?ID=17](http://www.coc.org/resources/articles/display.html?ID=17).
- 11 Faux (2000).
- 12 Buchanan, R. (2003) 'Perpetual Peace or Perpetual Process: Global Civil Society and Cosmopolitan Legality at the World Trade Organization', *Leiden Journal of International Law*, 16: 673–699.

- 13 Baogang He has used this approach to test a number of normative theories. See He, Baogang (2002) 'Cosmopolitan Democracy and the National Identity Question in Europe and East Asia', *International Relations of Asia Pacific*, 2(1): 47–68; (2004) 'Transnational Civil Society and the National Identity Question in East Asia', *Global Governance: A Review of Multilateralism and International Organizations*, 10(2): 227–246; (2004) 'Confucianism versus Liberalism over Minority Rights: A Critical Response to Will Kymlicka', *Journal of Chinese Philosophy*, 31(1): 103–123; and (2004) 'World Citizenship and Transnational Activism', in N. Piper and A. Uhlin, (eds) *Transnational Activism in Asia: Problems of Power and Democracy* (London: Routledge), pp. 78–93, Chapter 5.
- 14 Falk (1999), p. 46.
- 15 Boswell C. (2000) 'Social Contract Theory, Global Justice and Motivation', paper for the 'Political Studies Association – UK 50th Annual Conference', London, 10–13 April 2000.
- 16 See Banting, K. (1997) 'The Internationalization of the Social Contract', in T. Courchene, (ed.) *The Nation State in a Global/Information Era* (Kingston: John Deutsch Institute for the Study of Economic Policy, Queen's University), pp. 255–85.
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## 19 *Kifaya* as political culture

The Egyptian presidential election,  
2005<sup>1</sup>

*Jacky Angus*

### Introduction

Recent developments in Egyptian political culture leading up to the presidential elections of 7 September 2005 suggest that increasing participation and broader political representation are underway. This is exemplified by the *Kifaya* protest movement, now a significant feature of the Egyptian political scene. More significantly, however, is a general revitalisation of Cairene civil society upon which *Kifaya* is based. Over the last decade, this revitalisation has meant that a new emphasis on political ethics and social civility has emerged to replace preoccupations with 'political Islam' of the 1990s. This shift in values is reflected in the social discourse of Cairene elites. From 2000, key debates and images of Egyptian national identity projected by journalists and other professionals increasingly highlight civic ideals – *adab* (propriety/civility), *akblaq* (public ethics), *ta'addudiya* (pluralism) – seen as critical to a reformed political culture. This suggests a return to a more nuanced understanding of Muslim governance (*hakimiyya*) based on scholarly *fiqh* and *ijtihad*, as distinct from unilateral and defensive *usuliyya* (fundamentalism) that drove earlier Islamist challenges of the secular state. Furthermore, the 1980s vogue of cultural authenticity (*asala*) as the ultimate measure of identity politics, in which ritual differentiation from 'Western' values was obligatory, also appears to have diminished in Cairene cultural discourse. This can be attributed to Egypt's national interests (*wataniya*) having eclipsed *qawmiya* (transnationalism) of ideological Arabism that dominated Egyptian national discourses throughout the 1970s and 1980s. Finally, incorporation of Islam by the state, from the mid-1980s, also influenced Cairene social discourse by successfully promoting religious moderation, social pluralism and civility as official Islam. Gradual convergence of Egyptian civil society with global norms of civil society was thus firmly anchored in ethically constitutive portrayals of Islam. The result indicates the closer conjunction between projections of a positive self-image and a more progressive political culture.



## The *Kifaya* movement

This combination of religious reform as a function of state incorporation of religion, plus the cautious political liberalisation of the media from 1991 suggest that strengthening civil society requires the support of the state, if a secular *polis* is to be maintained in the Muslim context. My interest, therefore, lies in both these areas as potential constituents of change: at the cultural level, the role of the intelligentsia and, at the political level, the capacity of the state to renegotiate state–society relations conducive to democratisation.

It is to the latter that I now turn, to address the question of how a mood of impatience characteristic of this movement successfully pressured the regime into accommodating new pressure to democratise Egyptian political culture. Egypt today is an interesting example of the contradictions within the transition to democracy, often assumed to be an automatic development. Even in a stable nation like Egypt, democratisation has been a slow business. And, as the 7 September 2005 election in Egypt approached, *Kifaya* appeared to be more than a slogan of resistance; it is recognised within Egypt as the symbol of political re-empowerment of the mainstream.

What follows, therefore, is consequently journalistic, rather than discursive. Nonetheless, it illustrates four caveats about democratisation in a contemporary Muslim world:

- The highly specific nature of democratisation, that is, the significance of the *local*,
- The role of cultural *globalism* (and media) in setting standards for civil society,
- The persistence of *semi-authoritarianism* as a key factor in socio-political change,
- The importance of public debate and dialogue to *accommodate change* more easily.

## *The Egyptian political scene today*

In late February 2005, the Egyptian President, Hosni Mubarak, announced that constitutional reform was to be considered in the *Maglis* i.e. the Parliament. This announcement fell like a bombshell among Cairo's highly politicised intelligentsia. Only a month earlier, Mubarak had appeared on *al-Arabiya* television, denouncing the idea of broad constitutional change as irresponsible: as tantamount to destabilising the political system. On the other hand, he said sadly, he was quite willing to stand down as president. The coming referendum would give Egyptians the opportunity to reject him.<sup>2</sup> Mubarak suddenly seemed a dignified old man of nearly 80, ponderous, genuine, a little bemused by events. He spoke with contained passion of the dangers of too rapid a change in a changing world, of Egypt's example as

a peaceful nation, a nation whose political stability he has personally maintained for 24 years.

That was January. In February, with constitutional reform a certainty, this was the signal for change: for a redrawing of the boundaries of Egyptian politics. The impossible would happen: Mubarak would face competition from 13 other presidential hopefuls.<sup>3</sup>

In the local press, the response to his announcement ranged from euphoria to cynicism.

- 'Mubarak initiates major political change!' wrote one excited journalist.
- 'He is finally giving way to *Kifaya*!' another declared.
- 'Is this just so his son Gamal can be President?' one paper asked.

So, how did this unlikely situation come about?

Despite producing the legendary source of modern extremism in the Muslim Brotherhood (*Ikhwan al-Muslimin*), Egypt remains the most stable nation in the Muslim world today. Its history as a unified political entity dates back millennia; but its modern history is an ideological patchwork that has included patrimonial feudalism, monarchy, colonialism, liberalism, socialism, Islamism, rentier state dependence and semi-authoritarianism.

Since the death of Gammel Abd al-Nasser in 1970, the regime's stated aim is transition to democracy. However, a 'transition' still going on 30 years later is no transition. Twenty years ago, academic Hamid Ansari labelled Egypt the 'stalled society', a phrase echoed ever since by local politicians, activists, religious leaders and a vociferous media – not to mention observers overseas – all of whom have demanded an end to what is effectively a one-party system. Egyptian politics is dominated by the National Democratic Party (NDP – *Hizb al-Dimuqratiya al-Wataniya*). As at August 2005, this held 388 of 454 seats in the Parliament (*Maglis*).

President Hosni Mubarak, a stolidly rational but cautious man, has regularly affirmed his government's intentions to modernise, liberalise, privatise and democratise Egypt. He has also been wont to speak of 'democracy in doses' as his preferred model for Egypt (Lesch 1989).<sup>4</sup> But nowadays, the President, who faces a fifth consecutive term in office, is openly considered an obstacle to Egyptian democratisation. His capitulation to constitutional reform in 2005 can thus be read as a pre-emptive strike against the wave of opposition that has slowly been mounting for years, and now threatens to sweep him away – at least in theory. In practice, of course, he cannot just be swept away. His position is protected by Article 76 of the Egyptian Constitution. This decrees that the President of the Republic of Egypt be appointed in perpetuity, based on a two-thirds majority of the *Maglis*, subject only to six-yearly referenda by the people.

Such was the situation in mid-2004; but sparks of exasperation with the

regime were gathering for conflagration. These slowly spread through Cairene civil society, the heart of Egyptian politics. The arrest of popular MP, Ayman Nour, in early 2005 proved to be the point of no return, the confirmation that Egyptians had simply had enough (*kifaya*). Before detailing the fate of Nour and the conflagration this caused in the public domain, I will mention two other social indicators of the current political climate:

- the steady growth of networks of resistance to the regime and
- failure of trust in the NDP's 2004 reform agenda.

### *The National Consensus for Political Reform (NCPR)*

Given the dominance of the political arena by Mubarak's NDP, Egypt's parliamentary opposition has always been rubbery. Like most oppositions, dispirited by years on the cross-benches, its coalition members spend a lot of time sniping at each other. Dubious deals were sometimes made by these parties with Islamists – usually against their better judgment – to provide them with a candidate who would guarantee the party a seat. Over the years, the Wafd, the Socialists and the Liberal parties have each done deals and regretted it. Given the number of Islamists now in the *Maglis* (now 37), and bearing in mind that as a group they cannot by law form a party, this indicates their successful incorporation into the political domain. In other words, the secular state has turned a blind eye to this religious element.

In 2004, the inherent weakness of the *secular* opposition was offset by a new influence. As an extra-parliamentary group interested in political change through parliamentary means, this promised to revitalise parliamentary procedure. This ginger group, the National Consensus for Political Reform (NCPR), was a broad alliance of left-wing activists, some of whom were represented in the *Maglis* itself.<sup>5</sup> The group considered constitutional reform as the only effective way to rescue Egyptian democratisation from being stalled forever. All 'legitimate' political parties were welcome, so communists and *Ikhwani* (Muslim Brothers) were excluded. The *Ikhwan* was unphased by this. As the media-savvy spokesman, Essam el-Erian, announced that by excluding the *Ikhwan*, the NCPR simply made itself 'less than credible in the eyes of ordinary people'.<sup>6</sup> Confident of their capacity to mobilise the masses when the time came, the *Ikhwani* kept a low profile, later joining the Egyptian Movement for Change (EMC). The communists had already formed another group, the Popular Campaign for Change (PCC). Eventually these groups amalgamated in an uneasy alliance.

For its part, the NCPR soon attracted the support of intellectuals across the secular spectrum. It planned to launch a *Maglis* debate to target Mubarak's right to presidency in perpetuity. Even if referenda provisions

remained in place and Mubarak *were* re-elected in September, it was thought constitutional reform could trigger abolition of Emergency Laws (1981). These have been a subject of debate in Egypt for years. They allow the President extra-constitutional control of the state, the military, national security and stays of execution. They were passed in the wake of Sadat's assassination in 1981, when they may well have prevented a military coup. Now that this is no longer an issue, replacing Emergency Laws by administrative checks and balances could be rationalised as guarantee of separation of powers. It would also curtail Mubarak's personal power via the NDP. The need to limit personal patrimonial power to effect regime change was echoed in various party newspapers. Abdel Halim Kandil, editor of *al-Arabi* stated openly that 'if we do not break the [NDP's] monopoly on the President, our progress to democracy will be very slow'.<sup>7</sup>

### *The NDP national convention October 2004*

The event that confirmed this view and which thus broadened the focus of change to direct action to unseat Mubarak, was the negative response to the government's 2004 reform package. This was presented at the NDP's national convention in October. The President, spoke of new 'comprehensive reform policies . . . [which would] contribute to raising the living standards of the Egyptian citizen'.<sup>8</sup> His son Gamal, head of the Policy Secretariat, detailed plans to advantage Egyptian youth. Rather than elicit media approval, Gamal's role set the rumour mills grinding again about his possible succession as president. For its part, the opposition responded with indifference, rejecting the slate of vague but fulsome promises on economic and political reform, claiming these contained no surprises.<sup>9</sup>

One surprise, however, did emerge: a review of the Political Parties Affairs Committee (PPAC). This body approves new political parties applying for registration.<sup>10</sup> Seen as effectively blocking potential opposition to the regime, the PPAC has long been the target of public criticism. By limiting the supply of a licence to function as a legitimate party, it limits the development of legitimate opposition to the regime. Repeated rejection by the PPAC on grounds that the party has 'nothing new to offer', plus Egypt's famed bureaucratic inefficiency, mean that applicants can wait years to be approved. Many choose to operate 'informally' that is, illegally. Others appeal to the courts. In 2004, of the 16 Egyptian parties now operating legally, 11 had won the right to do so by resorting to court action. Thus, promises by the government, in 2004, to streamline PPAC operation were regarded with scepticism. Dr Muhammad el-Sayyid Said, of the government's own Centre for Strategic and Political Studies, commented dryly that 'The PPAC still belongs to the government, and reflects its will . . . to veto . . . new parties'.<sup>11</sup>

Thus by early this year, the government's reform agenda had been undermined by proliferating informal networks that tended to label all

government efforts as propaganda. One exception to this was Prime Minister Ahmed Nazif, appointed in August 2004. His popularity was primarily due to his openness about the need to root out government corruption and install mechanisms for better accountability. Consequently, he was generally referred to as 'Nazif, kitir kitir' 'Mr very very Clean' (*nazif* Arabic for 'clean'). Otherwise, there were few public favourites. A sense of betrayal of leadership prevailed. One government newspaper, *Al-Abram Weekly*, guarded about offering direct criticism, left it to a guest columnist, academic Amr Hamzawi to shoot home responsibility for the current mood. Hamzawi described a 'climate, characterized by acrimony, [that] serves, at least, to spotlight the corrupt core of [this] "democratization in spurts" farce, in which our rulers and their intellectual apologists have been playing the leading roles for nearly three decades now'.<sup>12</sup>

### *Ayman Nour and Hizb' al-Ghad*

In such a climate, a further portent of change was the rise of Ayman Nour. Nour is the enthusiastic founder of a new political party, *Hizb al-Ghad* or the Party of Tomorrow.<sup>13</sup> The son of a wealthy landowner in Daqahliyya, and educated to postgraduate level in Russia, Nour was a popular *Maglis* member, one of the seven *Wafdists* in the House and thus part of the coalition opposing Mubarak's NDP. After years of persistent application for PPAC registration, Nour finally obtained legal status for *al-Ghad*, in October 2004. Even before this outcome, the rush for membership of the new party was such that its success was widely predicted. It was said that the October 2005 parliamentary elections would surely give *al-Ghad* majority opposition status in the *Maglis*. As a member of NCPR, Nour was also one of the MPs keen to introduce constitutional change. He made no secret of this, lobbying Speaker Fathi Sorour about introducing a bill, and, allegedly, even seeking advice from Madelaine Albright.<sup>14</sup> Within days of the latter – now disputed to have ever occurred – Nour's parliamentary immunity was suddenly revoked on 29 January.

Unaware of the situation, Nour arrived at the *Maglis*, to argue for constitutional reform, and was summarily arrested. Images of him being led out startled and in handcuffs, were soon circulated to horrified watchers at home and abroad. According to Reuters, it was six hours before his wife was permitted to see him. Nour, who is a diabetic with a heart condition, was apparently 'sweating, vomiting and holding his left arm'.<sup>15</sup> No explanation was offered, other than that criminal proceedings were in process. Several weeks passed before the Attorney General announced that Nour would be charged with falsifying 1,887 signatures of the 'founding members' of *al-Ghad*. On 12 March, Nour was eventually released on bail, and trial set for October.<sup>16</sup> Outcries from fellow parliamentarians, human rights groups and the media followed. Within *Hizb al-Ghad*, disagreements soon surfaced, threatening unity of the new party. From behind bars, Nour offered advice,

somewhat tinged with melodrama, while in Washington, a State Department spokesman referred to Nour's treatment as 'incongruous', adding crisply that Nour's trial would test 'Egypt's commitment to upholding the rule of law'.<sup>17</sup> All this was valuable publicity for *al-Ghad*, but the *coup de grâce* was yet to come. It came in the form of a letter from Members of the European Parliament, expressing 'grave concern' over Nour's treatment.<sup>18</sup> It was addressed to the Speaker of the *Maglis*, Fathi Sorour, who is a former president of the International Parliamentary Union. The letter was signed by 118 signatories, many of them Sorour's former colleagues.

The Nour episode had by now served as a global target for scrutiny of Egyptian politics, and was a crushing embarrassment for the Egyptian government. The President was said to be furious over Madeline Albright's visit to Egypt in January and Nour's 'consultation' with her. Nour was re-arraigned for trial in June, before the same judge who in 2001 had sentenced Professor Sa'ad Eddin Ibrahim to seven years hard labour for 'tarnishing Egypt's reputation' among other charges.<sup>19</sup> In June, however, Nour's trial was rescheduled for 25 September, enabling him to be nominated for the September election.

### *Kifaya* gains ground

Meanwhile, in the wider political domain, where Nour enjoyed less attention, or was barely known, the *Kifaya* movement was gaining rapid ground as the means for replication of NCPR resistance down the social scale. The swelling advocates of *Kifaya* now included the non-incorporated masses of the Cairene poor, drawn by Socialist-Communist and *Ikhwan* community networks, and expressing open defiance of regulations forbidding large gatherings. The repeated chant of '*Kifaya!*' became virtually interchangeable with allegiance to the Egyptian Movement for Change (EMC) and the Popular Movement for Change (PMC) that had now joined forces. Their fiery meetings took on Islamist rhetoric, denouncing the 'meaninglessness' of Mubarak's promise of political reform as irrelevant to Egyptian Muslims. There was talk of *Ikhwan* mobilisation, although in fact the *Ikhwan* leadership remained cautiously supportive of Mubarak.<sup>20</sup> Nonetheless, hundreds of protesters were arrested, most of whom were identified, for purposes of imprisonment as *Islamiyun*.<sup>21</sup>

In parts of the movement, attempts were made to channel *Kifaya* energy into discussion on strategy, goals and policies for change. However, when a conference was organised by the EMC in March, critics from all sides called it a mere talkfest. In an article entitled 'Enough reiterated', political journalist, Amira Howeidly, noted that the 'first *Kifaya* conference underlined the rejection of the political establishment, but offered no strategy on how it might be countered'.<sup>22</sup>

*National dialogue insufficient to quel Kifaya*

Meanwhile, the Egyptian government, which was becoming concerned about the influence of the new movement, decided to call for a 'national dialogue' in February. This convention, part of Egyptian political culture since the Nasser era of the 1960s, involves all registered political parties in a summit, called by the President to discuss issues of the day. In this case, there were three critical issues for discussion:

- changes to the Constitution
- conditions of nomination for election for president
- conditions for the appointment of judicial panels to oversee the election itself.

The government proposal to limit constitutional amendment to Article 76 only was immediately condemned as inadequate. The judicial panels announced by the government as scrutineers were seen as likely to comprise only NDP partisans. However the real point of contention proved to be the requirement that any nominee for president, other than by licensed political parties, needed to produce 250 supporting votes. Like many previous national dialogue summits, this one soon developed into a quagmire of antagonism. In the face of these conditions for democratisation nominated by the government, a boycott of further discussion was immediately threatened, followed by refusal to nominate any candidate at all. The three main parties involved – the *Tagammu'*, Nasserists and the *Wafd*,<sup>21</sup> oppositional by nature and tradition, constantly shifted their position on whether, and how far, to participate in this or any other political process.

*Journalists sceptical*

Local journalists largely responded with scepticism to this process. 'Which way will he bend next?' Azziza Sami of the *Weekly* asked rhetorically of Rifa'at al-Said, of the far left *Hizb al-Tagammu'*, whose decision to stand for the presidency was as constantly subject to review as his policies appeared to be.<sup>24</sup> In contrast, the *eminence grise* of Egyptian journalism, Ibrahim Nafie, wrote fulsomely of a 'transition to a new phase of national action'; one 'in which our political parties will be expected to act as political parties *should* in pluralistic democratic systems'.<sup>25</sup> This, he stated, meant 'relinquishing the "boycott" approach'. It behoved all politicians to 'mould themselves into dynamic grassroots forces, thereby stimulating broader public participation in the political process' so as to 'address our needs and concerns, in a forward-looking national minded spirit'.<sup>26</sup>

## Conclusion

The normative nature of Ibrahim Nafie's comments are consistent with the points I made at the start of this chapter concerning real democratisation as part of the strengthening of civil society in a Muslim nation state in transition to modernity and a modern political culture.

- 1 My first point concerned *the highly specific nature of the process of democratisation, that is, the significance of the local rather than the global*. This is fairly self-evident. It confirms the need to grasp fully the conditions on the ground, that is, the particularities that shape local understanding and the constraints facing implementation of democratic reform.
- 2 My second point was *the role of cultural globalism in providing global standards for civil society*. Awareness of the pervasiveness of modern communication media as a change agent within that society, the positive and negative uses by the state of these media and the potential for education of the nation as regards the political process.
- 3 My third point was *the persistence of semi-authoritarianism as a key factor in socio-political change*. This advocates a certain hard-boiled realism. It is particularly relevant in the case of Egypt whose power centre, the state, is weak, but dominating, while the periphery, the opposition, remains brittle rather than flexible. It highlights the impasse between a semi-authoritarian state with an entrenched government, on the one hand, and on the other, oppositional elements that find negotiation impossible. Rather than compromise, they tend to simply cry 'boycott!' at regular intervals. Such tactics are a commonplace in the Middle East as tragically illustrated by al-Fattah and HAMAS in the occupied territories. In Egypt, the Nasserists and *Tagammu'* exemplify this resistance. Until very recently, the dominant NDP too has opted for this no-win situation. Now, it seems the regime is seeking greater compromise in order to retain some measure of power.
- 4 My final point was *the importance of public debate and dialogue as a means to accommodate socio-political change*. This entails tolerance of public debate and dissent for sufficient time to process change. Open discussion and freedom of association are necessary, but may have security implications and thus be problematic for the regime. One of the inherent strengths of a traditional society like Egypt is that it allows for considerable informal interaction that, if permitted without censure by government or religious authorities, allow accommodation to change to occur at a natural pace.

I hope I have illustrated that theorising about civil society and democratisation needs to be realistic about established cultural practices. In other words, events on the ground need to be addressed specifically when considering if democratisation has taken root in any particular political



culture. Authoritarianism embedded as cultural practice tends to block real change.

[Editor's note: Hosni Mubarak was re-elected President; the Muslim Brotherhood gained 20 per cent (i.e. 88 elected representatives) of the seats in the 2005 Parliamentary elections.]

## Notes

- 1 Editor's note: this chapter was written in August 2005, before the outcome of the 7 September presidential election was known.
- 2 The majority of Egyptians I interviewed at this time said simply that there was no one to replace Mubarak.
- 3 Apart from the NDP, parties standing candidates were: *Hizb al-Wafd*; *Hizb'l-Abrar*; *Hizb'l-Ghad*; *Hizb'al-Dosturai al-Itimai' al-Hur*; *Hizb al-Takaful*; *Hizb al-Misr 2000*; *Hizb al-Shaab al-Demoqrati*; *Hizb al-Watani*; *Hizb al-Misr al-Arabi*; *Hizb al-Umma*; and *Hizb al-Ittihad al-Demoqrati*.
- 4 Lesch, A. M. and M. Tessler (1989) *Israel, Egypt and the Palestinians: from Camp David to Intifada* (Bloomington: Indiana University Press).
- 5 As at November 2004, members of the NCPR comprised: (i) (centre-left) al-Wafd; (ii) Socialist Labour Party (banned); (iii) far-left al-Tagammu; (iv) the Umma Party; (v) the Nasserist Party; (vi) Egypt 2000 Party and (vii) the newly formed Democratic Generation Party.
- 6 Essam el-Erian quoted by Noha el-Hennawy in 'Let the Whining Begin' *Egypt Today*, October 2004.
- 7 Abdel Halim Kandil, quoted by Noha el-Hennawy (2004), *ibid*.
- 8 For details of this speech, see [www.usatoday.com/news/world/2004-09-21-mubarak-reforms\\_x.htm](http://www.usatoday.com/news/world/2004-09-21-mubarak-reforms_x.htm).
- 9 See Gamal Essam El-Din (2004) 'Opposition Parties Wholeheartedly Rejected the Relatively Progressive Amendments Proposed by the NDP to Some Key Political Laws' *Al-Abram Weekly*, 6 October.
- 10 National Democratic Party of Egypt policy: 'The Rights of Citizenship and Democratization', 2004. Available online at [www.ndp.org.eg/en/Platform/Mubarak.aspx](http://www.ndp.org.eg/en/Platform/Mubarak.aspx).
- 11 Quoted by Noha el-Hennawy (2004), *op. cit*.
- 12 Amr Hamzawi (2004) 'When Discord Spells Health: In the Absence of Dialogue the Acrimony Sounded Following the NDP's Conference is no Bad Thing', *Al-Abram Weekly*, 14 October.
- 13 *Al-ghad*, 'the future' in Arabic, also means '(the) tomorrow'. It thus carries a sense of the auspicious.
- 14 Nour later distanced himself from this event. See Fatemah Farag, *Al-Abram Weekly*, 24 March 2005.
- 15 *Washington Post*, 24 February 2005, p. A20.
- 16 This was later postponed until June, and then again until 25 September, well after election day on 7 September 2005.
- 17 See 'Newsreel', *Al-Abram Weekly*, 24 March 2005.
- 18 For the full text of the letter sent to Dr Fathi Sorour, see [www.EGYPTDOC.TYPE:LETTERS](http://www.EGYPTDOC.TYPE:LETTERS).
- 19 Professor Sa'ad was eventually cleared on appeal in April 2003. Due to the stringent regulations governing candidacy, he was unable to be nominated however.
- 20 As of 22 August 2005, this was abrogated by a statement by the *Ikhwan mursbid* Mahdi Akef that: 'All Muslim brothers should know that we cannot support an oppressor or cooperate with a tyrant'. The deputy *mursbid*, Muhammad

Habib, added that members would know how to vote or not to vote ([www.arabicnews.com](http://www.arabicnews.com)).

21 There are currently an estimated 10,000 political prisoners in Egyptian jails.

22 *Al-Abram Weekly*, 19 March 2005.

23 These are the major parties among the approximately 14 parties which contested the 2005 election.

24 *Al-Abram Weekly*, 9 July 2005.

25 *Al-Abram Weekly*, 2 June 2005.

26 Ibid.

## 20 Religious-based civil society and anti-corruption campaign

### The Indonesian experience in the creation of good governance

*Azyumardi Azra*

#### Introduction

A number of studies on civil society in Indonesia such as those done by Hefner (2000) and Nakamura *et al.* (2001) have concluded that Muslim or Islamic-based civil societies and their leaders played a major and crucial role not only in the ‘better ordering’ of Indonesian Muslim society at large, but also in the eventual fall of the Suharto regime in 1998. Many leaders of Muslim or Islamic-based civil society organisations, the most prominent among whom were Abdurrahman Wahid – also well-known as ‘Gus Dur’ – (then the national leader of the *Nabdlatul Ulama*/NU), Mohamad Amien Rais (then the national chief leader of *Muhammadiyah*), and Nurcholish Madjid (the former national leader of the Association of University Muslim Student Associations/HMI), were the most outspoken critics of the Suharto regime and took the leading role in the increased prominence of civil society’s opposition to the authoritarian rule in Indonesia since the 1990s.

Indonesian religious-based civil society has a long and rich history. As have been shown by many Indonesianists, mentioned above, the earliest forms of nationwide civil society organisations in the country were Muslim social-religious organisations such as Muhammadiyah (established in 1926), *Nabdlatul Ulama* or NU (founded in 1912) and many other national and local organisations. The Muhammadiyah and NU were (and still are) the largest Muslim organisations in Indonesia, each of which now claim membership of some 35 and 40 millions respectively. Voluntary, independent from the state, self-funded, self-help and self-regulating, the Muhammadiyah, NU and many other Muslim organisations operate as mediating and bridging forces between state and society since their foundation up until today. These Islamic-based civil society organisations since the colonial period up until today have been conducting a variety of programmes and activities, ranging from religious activities to social, cultural, educational, health and economic ones.

The second kind of civil society organisations in Indonesia mostly appeared during the economic modernisation period of President Suharto, roughly from the early 1970s to the second half of the 1990s. They are non-

governmental organisations (NGOs), known in Indonesia initially as *Lembaga Pengembangan Swadaya Masyarakat* (LPSM organisations, or more precisely groups, or Society's Self-Development groups) that in the current usage are popularly known as *Lembaga Swadaya Masyarakat* (LSM, or literally Institutions for Social Empowerment). Most of these LSMs (NGOs) are non-religious based, even though their activists by and large are Muslims; but an increasing number of Islamic-based NGOs have also made their appearance. These NGOs could be also regarded as advocacy NGOs working for the empowerment of society in such fields as democracy, human rights, gender equity, environmental preservation and others.

The third group of civil society organisations existing in Indonesia are professional associations like associations of teachers, of medical doctors, of journalists, labour movements and the like. Some of these associations are Islamic-based, like the All-Indonesian Association of Muslim Intellectuals (ICMI, or *Ikatan Cendekiawan Muslim se-Indonesia*), the United Muslim Labour Movement, etc. Even though these associations have increasingly become more vocal in furthering their own interests, they are rarely involved in much wider social, political and cultural issues.

The first two groups of civil society organisations have been directly or indirectly involved in many political, social, cultural and economic issues. That is why many leaders of civil society organisations during the last years of the Suharto government tended to be heavily politicised; and soon enough they turned to be politicians in the period following the downfall of President Suharto from his long-held power of more than three decades in May 1998. The question was whether or not they would be able to live up to the expectations of the public in general.

This can be clearly seen in the case of Abdurrahman Wahid, the national chairperson of the NU, who founded the Nation Awakening Party (*Partai Kebangkitan Bangsa/PKB*), or Amien Rais, the national chief of Muhammadiyah, who established the National Mandate Party (*Partai Amanat Nasional/PAN*) in the period after President B. J. Habibie, who had replaced Suharto, introduced liberalisation of Indonesian politics as well as the multi-party political system. Later, following the first democratic general election in 1999, Rais was elected as the Speaker of the Indonesian Peoples Consultative Assembly (*Majelis Permusyawaratan Rakyat/MPR*); Wahid was elected President of the Republic of Indonesia.

President Wahid, the former civil society leader, however, failed to meet public expectations; he was impeached by the MPR in 2001 following his controversial policies and statements as well as his erratic attitude and mismanagement. And he was replaced by his Vice-President, Megawati Soekarnoputri, the national chairperson of the Indonesian Democratic Party-Struggle (PDI-P) and one of the daughters of Soekarno, the first president of the Republic of Indonesia.

Despite the failure of Abdurrahman Wahid, many other civil society figures and public intellectuals continued to be tempted by power politics.

The most striking example is Nurcholish Madjid, one of the most prominent independent Indonesian public intellectuals in contemporary times, who in the end could not resist political temptation. He joined the presidential bid through the intervention of the *Golkar* party in 2003. But he soon withdrew from power politics after he ran into the complexities of politics in the Golkar party. Other public intellectuals such as Sjahrir and Ryaas Rasyid founded their own party; but their respective parties fared poorly in the 2004 general elections.

This tendency continued during the times of the 2004 general elections. A number of figures, known mainly as civil society leaders, such as Hasyim Muzadi, the national chairman of the NU, and Shalahuddin Wahid, Vice Chief of the Indonesian Human Rights Commission, joined the political battlefield. Muzadi became vice-presidential candidate of Megawati Soekarnoputri in her bid to win another presidential term. Shalahuddin Wahid, the younger brother of Abdurrahman Wahid, was the vice-presidential candidate of the retired general Wiranto. They failed in their bids. The winners of the direct presidential elections were Susilo Bambang Yudhoyono and Muhammad Jusuf Kalla, the current President and Vice-President of the Republic of Indonesia.

Therefore, as I discussed elsewhere (2003b, 2004), the involvement of civil society figures and public intellectuals in Indonesian power politics during the so-called 'Reforms Period' (*Masa Reformasi*), has resulted not only in their failure, but also in the unmaking of civil society in Indonesia in general. The involvement and eventual failure of civil society leaders in Indonesian politics has resulted in some kind of frustration and disorientation of civil society organisations and groups. This is true not only in the case of religious-based civil society organisations like NU and Muhammadiyah, but also of advocacy NGOs, since many figures of the latter groups have also been pulled into politics. The implication has been far-reaching at the grassroots level; there are cases where members of NU and Muhammadiyah have been involved in mass brawls during the period of President Abdurrahman Wahid. The fanatic NU supporters of President Wahid, on the edge of imminent impeachment, accused Muhammadiyah – to which the Speaker of the MPR belonged – of launching the anti-Wahid campaign.

The political situation is of course now becoming more stable since the last years of President Megawati Soekarnoputri, especially with the completion of general elections in 2004. Since then, there are some good signs that civil society organisations and groups have been trying to reconsolidate themselves. Hasyim Muzadi, the chief leader of NU, for instance, has promised publicly that he would never again be involved in power politics. At the same time, Ahmad Syafii Maarif, the national chief of the Muhammadiyah, continues to hold firmly that his organisation must support the idea of civil society; Muhammadiyah must continue not to be involved in practical, day-to-day and power politics.

With the continued stabilisation of Indonesian politics under President

Yudhoyono, some crucial agenda have been put forward not only by the President, but also by Indonesian society in general. Among the foremost agenda are; the creation of good governance, eradication of rampant corruption, continued recovery of the Indonesian economy and improvement in the enforcement of law and order. There is a lot of hope that besides government efforts, civil society organisations and groups should play a greater role in implementing all of these urgent agenda.

## Good governance in Indonesia

Since the fall of President Suharto in 1998, there have been increasing demands from many sectors of Indonesian society for the creation of good governance. Civil society organisations have also been trying to play a greater role towards that end, by forming for instance a number of 'watch-dog bodies' that attempt to watch the workings of government institutions and other public offices. Since then, a number of policies and programmes have been implemented by the government; but one has to admit that not much progress has been achieved (Ricklefs, 2005; *Jakarta Post*, 30 May 2005). There is a number of inhibiting factors that make the efforts to create good governance in Indonesia seem to be an impossible task.

One of the biggest hurdles towards the creation of good governance is the fact that Indonesia, in my opinion, has long been a 'soft state', according to the Weberian framework.

Among some important features of Indonesia as a 'soft state' are, first, the existence of '*patron-client*' relationships among state officials and many segments of society, particularly the business sector. This kind of relationship has given rise to strong 'patrimonialism' at almost all levels of society that in turn has manifested itself in the culture of 'ABS' (*Asal Bapak/Ibu Senang*, or 'yes men'). Second, unclear and inappropriate practices in government and bureaucracy mean there seem to be no clear boundaries, for instance, between those things that are official and those that are personal in nature. The third feature is weakness in social and public ethics and, fourth, weakness in law enforcement as well as low credibility, accountability and *morale* of law enforcement agencies.

Furthermore, according to Indonesia's Partnership for Governance Reform, there is very little understanding among state officials as well as society at large of the concept and practice of good governance. This is not surprising, since the period of the Old Order under President Soekarno and continued in the era of the New Order (since the late 1960s under President Suharto), the executive branch of government – that is in many cases very arbitrary – has been the most dominant and unchallenged institution at the expense of society in general. The executive branch of the government was almost without control. Therefore, when the ideas of good governance gained momentum in the post-Suharto Indonesia, there was no fertile ground to implant them.

Government is of course only one of the actors in governance. There are many other actors outside of the executive branch of government, including legislative and judicial branches which play an important role in decision-making processes. Even in a wider sense, other 'non-government actors' that also play a role in decision making or in influencing decision-making processes, can be called 'actors' in governance. They are, for instance, civil society organisations and groups, NGOs, research institutes, political parties, the military, religious leaders, public intellectuals and others. But, above all, it is government especially that is central in the creation of good governance.

The creation of 'good governance', no doubt, needs an accurate understanding of the very concept and practice of 'governance'. According to the concept of 'participatory governance', 'governance' basically is good governance and good order in public life for a better shared life. Therefore, 'good governance' is an order that makes it possible for the public to share a better life and at the same time is free from any kind of disorder and imbalance. Good governance includes eight major characteristics; participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and follows the rule of law. With these characteristics, good governance seeks to ensure that corruption, for instance, is minimised.

There is a great deal of very complex constraints in the creation of good governance. Among others are, first, lack of understanding of the concept and necessity for good governance, second, lack of trust and cooperation between government bodies and agencies on the one hand and civil society on the other and third, absence of precedents and experience in Indonesia of the implementation and development of good governance.

Good governance in many ways is identical with governance that is free from what is in Indonesia called KKN (*korupsi, kolusi, nepotisme* or corruption, collusion, nepotism). The creation of good governance, a clean and healthy government, can be created by reforming the bureaucracy and public service. The aim of the reforms is to create transparency in bureaucratic processes and public service. To achieve this aim, it is necessary to improve the quality of human resources in the bureaucracy. Human resources development in the bureaucracy should be more professional from the recruitment of employees, their conduct of public service, to their job promotion.

The reform of governance can also be called 'reinventing government'. Using the framework of Osborne and Gablaer (1992), 'reinventing government' has an orientation to the creation of ten kinds of 'governance models', that is: (1) catalyst government, which leads rather than dictates; (2) society-owned government, which gives authority rather than being served; (3) government with mission, which transforms organisation of bureaucracy from simply work by regulations to missions; (4) competitive government, which emphasises competitiveness in public service; (5) results-oriented

government, which has an orientation to results rather than simply the presence of employees; (6) society-oriented government, which aims at fulfilling the needs of society rather than those of the bureaucracy; (7) entrepreneurship government, which produces revenues rather than simply spends; (8) anticipative government, which prevents rather than cures mistakes and failures; (9) decentralised government; and (10) 'market-oriented' government, which encourages changes through the market and the public.

It is clear that the creation of good governance needs the participation of civil society and the public as a whole. By the same token, rampant practices of power arrogance and KKN in Indonesia have also been caused by public apathy. This originates from the public's lack of awareness of their rights as both citizens and subjects of public service of government bureaucracy. The public does not know either how to file complaints, or does not want to be bothered by complications resulting from their complaints against bad practices in the bureaucracy. Therefore, dissemination of the ideas and practices of good governance is absolutely necessary; on what good governance is all about; on benefits that the public can derive from good governance and, in reverse, on public disadvantages or even loss, resulting from bad governance.

## Corruption and politics

Corruption, no doubt, is one of the most acute problems Indonesia faces today and, of course, the biggest challenge in the efforts to create good governance. Despite this the effort to combat corruption has continued to gain momentum in the last few years, particularly during the period of President Susilo Bambang Yudhoyono; there is much convincing evidence that this acute problem could be soon solved. Indonesia remains at the lowest rung on the ladder among the most corrupt nations in the world.

The fight against such rampant corruption is clearly not easy. The difficulties have been compounded, for corruption seems to have been a 'culture' at every level of Indonesian society, having even stronger roots in public and societal lives. Serious and concerted efforts must be conducted, however, so that corruption can be reduced if not eliminated all together. Therefore, this chapter will also try to suggest a number of steps that can be taken in combating corruption that is so instrumental in the creation of good governance.

Before going too far – to discuss some ways to combat corruption – it is necessary to provide some definition of 'corruption', that now in Indonesia is called *KKN*. In general, the term 'corruption' conventionally refers to any 'illicit and illegal activities for personal or collective gain'. In more recent discussions, from various definitions of 'corruption', there is a general emphasis that 'corruption' is 'the use and abuse of power or public position for individual and collective gains'. Based on this definition, Philip (1997) identifies three general definitions that are mostly used in various discussions on corruption.

First, corruption that is centred in public office (*public office-centred corruption*), which is defined as the 'acts and policies of a particular public official



that is not in accord with his/her official position in order to get personal gains, or gains for certain people who have a close relationship with him/her such as family, relatives, and friends'. This definition, as one might observe, includes corruption and nepotism, that is, establishing patronage based on familial relationship (ascriptive) rather than on merit.

Second, definition of corruption that centres on the effect of corruption on public interest (*public interest-centred*). In this respect, 'corruption' can be said to have taken place when a power holder or public official conducted certain acts and policies on the basis of the will of other individuals who had provided money or other kinds of material 'rewards'. In line with this definition, corruption can be said to have taken place when a holder of public office conducted certain acts or policies in favour of certain people who had given him/her material rewards that in turn corrupted his/her official position and public interests.

Third, a definition of corruption that centres on the market (*market-centred*) based on analyses of corruption that employ various theories of social and public choices as well as of economic approaches in the framework of political analysis. In this respect, corruption is an 'extra-legal' institution that is used by individuals or groups of people in order to influence policies and practices of bureaucracy. Therefore, this kind of corruption indicates that individuals and groups of people, involved in the process of decision making, are more prone to corruption than any other individuals or groups.

Within this framework still, corruption also means the abuse of power by public servants, government or public officials in order to gain extra income from public resources. Thus, public position or office is used (or abused) as a business venture that is exploited to get the maximum possible gains.

Based on the three groups of definitions above, a number of academic fora, international organisations – such as the Asian Development Bank (ADB), the World Bank, Transparency International and others – and also government officials that have been allegedly involved in corruption, propose a minimalist definition that would include almost all forms of corruption. This 'minimalist' definition was formulated by Leiken (1996: 55–73) that 'corruption is the use and abuse of public power for personal material gains as well as political benefits'.

Elaborating on that kind of 'minimalist' definition, the World Bank gives a detailed elaboration of acts that include corruption, that is:

Public office is abused for private gain when an official accepts solicits, or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even when no bribery occurs, through patronage and nepotism, the theft of state assets, or the diversion of state revenues.

(World Bank, 1997)

A similar minimalist definition is also put forward by Syed Hussein Alatas (1990: 3–4). In his opinion, ‘corruption is the abuse of trust in the interest of private gain’. Based on this minimalist definition, Alatas proposes typologies of corruption; first, ‘transactive corruption’, that is corruption that takes place on some kind of agreement between a donor and recipient for mutual gains; second, ‘extortive corruption’, that is corruption that involves extortion to avoid possible legal consequences for those who are involved and close to the actor of corruption; third, ‘investive corruption’, that is corruption that begins with promises – a kind of investment – to anticipate certain gains in the future; fourth, ‘nepotist corruption’, that is corruption that takes place because of certain favourable treatment in job promotion in public office and in projects for close relatives; fifth, ‘autogenic corruption’, that is corruption that takes place when a public official gains certain benefits for his/her knowledge as an insider (insider information) on public policies that he/she must otherwise keep secret; and sixth, ‘supportive corruption’, that is protection or even support of certain acts of corruption that take place within a power struggle.

Thus, from the minimalist definition, corruption in the end can be divided into a number of typologies and categories. Furthermore, corruption can also be categorised based on its place (in public sector and private) or based on its intensity (isolative or systematic), national or local, personal or institutional, traditional or modern kind of corruption.

All of these categories, typologies and kinds of corruption would be very helpful not only for a better knowledge of corruption, its causes and consequences, but also for finding ways to solve it. They could help to formulate strategies to combat corruption, to develop political will against it, as well as to mobilise an anti-corruption movement within the public in general.

## **Good governance and the anti-corruption war**

By recognising various categories, typologies and kinds of corruption in certain contexts, corruption can be eliminated. Briefly, the anti-corruption movement includes a two-stage process, first, the stage of policy formulation to address the root causes of corruption and, second, the stage of creating and enhancing political will which is very crucial for the implementation of anti-corruption programmes.

The two-stage processes reflect the crucial role of government and bureaucracy in the war against corruption. This is of course one of the first steps towards the creation of a democratic, credible, accountable government in the management of the public sector. Therefore, the first crucial step in the eradication of corruption is to accelerate the demands and pressures for reforms at the level of government, then at the level of the business sector and in the end at the level of the public in general.

One the most important determining factors in the success of the anti-corruption efforts is the political will at the highest level of the government.

After conducting a number of researches on corruption, Morgan points out that one conclusion that has emerged from many studies on corruption is that a sincere commitment by high-level leadership to counter-corruption efforts is a crucial component of successful campaigns (Morgan, 1998: 6).

Therefore, the failure of the anti-corruption programmes in many countries does not lie on the 'incomplete' or insufficient laws and regulations or lack of anti-corruption bodies, but more often because of the absence or lack of commitment, seriousness and sincerity on the part of the government's highest office holders. In most cases, they rarely talk about corruption eradication.

As a result, there is a strong impression that they talk about corruption only for political publicity, or for additional legitimacy through the issue of corruption. In fact, there is a strong tendency among them to apply the analysis of political cost-benefit in deciding whether or not to implement anti-corruption policies and programmes. Therefore, it is the duty of anti-corruption agencies and the public in general to continually pressure them in order to ensure that they have political will to make necessary policies and programmes for corruption eradication.

Basically, there are four kinds of policies that can be taken by government policy makers in order effectively to minimise – if not wholly eradicate – various kinds of corruption; first, reforming policies that in one way or another could be abused by public officials to commit corruption, second, reforming the structure of salary and other material incentives that apply in the bureaucracy and other public institutions, third, reforming law enforcement agencies and expanding their capacity to enforce law and order and, last, strengthening the rule of law. There is little doubt that the success of corruption eradication depends very much on the ability to carry out the four reforms in a simultaneous, comprehensive and consistent way.

In the next stage, the four kinds of reforms mentioned above can be integrated with recommendations issued by the World Bank (1997: 105) on the strategies to eradicate corruption comprehensively. Their three main components included in the strategy to eradicate corruption are as follows.

First, it is necessary to develop a bureaucracy that is based on the rule of law with a salary structure that honours employees for their honesty. There should be empowerment through a merit system in the process of recruitment and job promotion, so that it will be possible to prevent political interference in both. There should be also empowerment of financial control in order to prevent misuse of public funding in an arbitrary manner. Second, employees should be prevented from committing corrupt acts by limiting their authority in the formulation of policies as well as in the management of funding. Third, the accountability of government employees should be enhanced by strengthening monitoring; anti-corruption agencies and the public in general should also enhance their control and monitoring.

The empowerment of control and monitoring functions of such institutions also needs a certain strategy, so that the eradication of corruption can

be conducted comprehensively. There are at least three strategies in this respect: first, to strengthen the official institutional mechanism of control in order to supervise and monitor employees, officials, and other holders of public office; second, to enhance public pressures for these institutions to function in a more effective way – this can be done through free press, decentralisation of administration, and greater transparency on the part of government in decision-making processes – and last, to educate the public to exert moral and political pressures for eradication of corruption. The public should also be taught about such concepts as ‘public office’, ‘public service’ as well as on the social, economic, political and religious consequences of corruption for public life.

### **Conclusion: scaling-up the momentum**

Again, the Indonesian war against corruption has gained new momentum in the Susilo Bambang Yudhoyono administration. The latest disclosure of such big corruption cases involving the Bank Mandiri, General Election Commission (KPU), a good number of provincial governors and heads of districts and members of local parliaments gives an even stronger hope of the eradication of corruption in the country. Despite these cases, there is a lot being done in order to win the war against corruption that in the end will provide a more fertile ground for the creation of good governance.

As pointed out by the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi/KPK*), there are some important factors that make corruption rampant. The combination of a corruption prone system combined with public office holders lacking integrity, in addition to inconsistent law enforcement, make the problems worse. Not only that, law enforcement agencies and anti-corruption bodies responsible for investigating and bringing corruption cases to court have not been supported by sufficient funding. There is also strong evidence that the government is still lacking the political will to fight corruption. Worse still, there is also widespread public permissiveness towards corruption.

Therefore, there should be scaling-up of the momentum of the efforts to combat corruption and to create good governance at all levels of society. Civil society organisations and groups in Indonesia – as suggested above – have been involved in the war against corruption and creation of good governance. The two largest Muslim civil society organisations in the country, NU and Muhammadiyah, since 2003, in cooperation with Indonesia’s Partnership for Governance Reform, have launched the programme to combat corruption. Muhammadiyah chairperson, Ahmad Syafii Maarif and his NU counterpart in mid-2005 signed an agreement to work together to fight corruption taking place inside and outside the two organisations (*Jakarta Post*, 7 July 2005).

It is clear that there was no resistance from within the two organisations in their fight against corruption; in contrast there is a lot of strong support. But

their joint efforts have yet to make any progress, as some of their members stand accused of involvement in corruption. Many leaders of NU and Muhammadiyah admitted that the joint anti-graft movement remained ineffective, since there were no concrete programmes designed to follow up on it.

Indonesian President Susilo Bambang Yudhoyono, as reported by the *Jakarta Post* (7 July 2005) in his remarks at the opening ceremony of the Muhammadiyah national congress said that this predominantly Muslim country should be very embarrassed by the fact that it was still considered one of the most corrupt nations in the world. President Susilo did not blame Islam for the widespread corruption, but said that some Muslim individuals were to blame for failing to embrace the Islamic teachings that, among others, prohibit Muslims from being involved in corruption.

Despite scepticism and pessimism, it is important to keep the flame of optimism alive. As Ricklefs (2005) concludes, one should not give in to pessimism about Indonesia. There are many creative, honest, hopeful people there and many positive things going on that are crucial to win the war against corruption as well as to create good governance.

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# 21 Conclusion

## Paradigms of a more civil society

*Helen James*

### Introduction

The contributors whose chapters appear in this volume have all addressed the implications of the conference's subtitle – paradigms of power and persuasion – within the context of the conceptual intersections embodied in the institutional trinity: civil society, religion and global governance. All have focused on salient aspects of the secular state whose monopoly on, and control of, institutional violence has reified its use of power to such an extent that the modernistic separation of church and state is being called into question, as institutional limits are sought to the abuse of that power. Many of the chapters in this volume look to the notion of 'civil society' as the balancing factor with the capacity to restrict predatory state behaviour, whether in the political, economic or social sectors of human society. Yet they are also conscious that 'civil society' itself can be flawed, predatory, violent or corrupt, in fact, not necessarily a panacea for socio-political ills.

A major theme informing this volume is the source of alternate value systems – alternate from those of the secular state – on which civil society may draw, in formulating its questioning of the political, economic or social policies of the secular state. Wayne Hudson's prospection of a postsecular civil society conceptually seeks to overcome the often dualistic portrayal of state and civil society, as necessarily in opposition to each other. Indeed, in contradistinction to many portrayals of civil society as entirely separate from the state (Cohen and Arato, 1992), Hudson emphasizes that civil society *cannot* be conceptualized as a separate sphere of either public or private activity; that each in effect defines the other and cannot have a totally separate existence apart from the other. It is a perception shared by Philip Oxhorn in his discussion of civil society in Latin America.

Hudson's call that the sacral dimension be re-enacted within the parameters of both the private and public spheres resonates in the chapters of several other authors – Azyumardi Azra, Philip Towle, Bronwen Douglas, Joseph Runzo and Robert Miller. They focus on political contexts to which the ascription of a postsecular civil society may seem entirely apposite. Yet none seeks to replace the secular state with a theocratic model; rather to call

to account the fallibility of the secular state and to underscore its deficiencies in fostering robust civil societies within which human rights are upheld and human security is strengthened. Many of the contributors to this volume ask whether the value systems inherent in the world's religions may not provide the sources for paradigms of a more civil society than that presently being propagated by the modernist secular state. In Hudson's words:

postsecular civil society would deploy sacral institutions to overcome some of the pathological consequences of Western modernity, including the erosion of traditional cultures and the ethical disorientation of youth, especially in Korea and Japan. These institutions might conceivably help to counter the disaster of youth mental illness and suicide and also provide pleasurable activities for ageing populations. These institutions might perhaps help to limit the appeal of fundamentalist religion, including the return of the repression version of fundamentalism currently evident in the United States.

(Hudson, this volume, page 152)

The overweening power of the secular state, the corruption of its institutions, and means to counter the widespread corruption of political, economic and social life, are major themes in this volume. Seumas Miller proposes a theory of transcultural corruption; Ron Duncan analyses the cost of corruption for some Pacific Island states when the institutions of the secular state are so undermined that they no longer function; Azyumardi Azra discusses the approaches of the current Indonesian government to eradicating corruption and its enlistment of the largest Islamic religious civil society organizations, *Nabdlatul Ulama* and *Mubammadiyah*, in that endeavour, despite the fact that some of their individual members are themselves being investigated for corruption. Bronwen Douglas analyses the role of religious civil society – the church as structure – in three island states in Melanesia, when the secular state has imploded under the combined burdens of political, economic and social corruption.

A small volume such as this can only seek to present a cross-section of the themes which such a title evokes. Despite encompassing a wide geographical spread from Australia (Briscoe, Chapter 6) to Latin America (Oxhorn, Chapter 9) to Egypt (Angus, Chapter 19), it has, for instance, been a matter of great regret that this volume has been unable to include detailed discussions on civil society, religion and global governance in the Buddhist or Hindu political context, although two chapters (those by Zar Ni on Burma; and D'Costa on Bangladesh) touch on the subject. Ideally, it would have been useful, for instance, to have chapters on civil society in India, Thailand, Sri Lanka or Vietnam, but space and time precluded this. Since we are examining 'paradigms of a more civil society', and in view of this lacunae – which we may be able to fill on a future occasion – perhaps it is appropriate to include the words of Sulak Sivaraksa, the Siamese Buddhist social and



political activist, who founded the International Network of socially engaged Buddhists. In 1992, after being pursued by the military government of General Suchinda Kraprayoon for his challenge to the coup of February 1991, Khun Sulak, in an address at the University of Helsinki, stated:

My country [is] one of the only Buddhist kingdoms left in the world. Burma is supposed to be a Buddhist country, as well as Cambodia, Sri Lanka and Laos, not to mention China, Japan, and Korea which used to be Buddhist countries. What is wrong with it? The difference is between Buddhism with a capital 'B' and Buddhism with a small 'b'. It is the same as Christianity with a capital 'C' and Christianity with a small 'c'. The same goes for Islam with a capital 'I' and Islam with a small 'i'. The original teaching of Christ, the Buddha, or Mohammed were for love, compassion and sacrifice. You must be willing to turn the other cheek to those who torment and persecute you. When it becomes an institution, however, the church and state develop into something strong. You identify yourself with that religion. You identify with your nation. It becomes chauvinistic and exploitative. Sometimes it becomes capitalistic. . . . Religion can be both oppressive and liberative. When it becomes oppressive, it identifies with certain groups, cliques, and certain elements in the name of nationalism, in the name of development, and in the name of whatever it is. . . . Buddhism teaches that we are interrelated. We care for the suffering. We want to change the world in a very meaningful way. But first we must change ourselves to be peaceful and nonviolent . . . We are all fellow sufferers and all interrelated to each other.

(S. Sivaraksa, 1993: 257)

As we stand appalled at the spectacles of human suffering arising from the conflict in the Middle East between Israel and its neighbours, it is timely to ask ourselves where the paradigms for a more civil society might be found. Certainly not in the paradigms of overweening state power daily reflected on our television screens.

And what of 'global governance'? Can it provide convincing paradigms of a 'more civil society'? Amitav Acharya notes the retreat from regional and global governance as a result of the securitization of religion and the revival of identity politics since the terrorist attacks on New York and Washington on September 11, 2001. The frameworks of global governance seem to be struggling to sustain their credibility under persistent attacks from the centres of state power. The chapter of Baogang He and Hannah Murphy (Chapter 18) presents the contested sphere of global civil society in its challenge to the global economic institutions, themselves agents of powerful states in the First World; Isagani Serrano explores in depth the effect at the communal, local level in the Philippines, of 'globalisation from above' leaving those below in wretched poverty at the mercy of enriched elites. Zar Ni examines the detrimental effects on the socio-economic fabric of his

country, Burma/Myanmar, of the international sanctions imposed to allegedly bring about a more civil society than that espoused by its military government and calls for a more thoughtful and strategic international approach. His country exemplifies the undesirable condition in which human security has, for all its modern history, been hostage to the national security paradigm. Is this, we ask, again becoming the prevailing international paradigm, not only for many Third World countries, but also for certain First World countries? In the visions of Serrano, Zar Ni, Douglas, McDonald and Briscoe, a more civil society seems to emerge from the small, individual actions at the local level of those who act on the precepts of Sulak Sivaraksa set out above: the admonition to change ourselves to be peaceful and non-violent and to take to heart the notion that 'we are all fellow sufferers and all interrelated to each other'.

### Paradigms of persuasion and influence

Cohen and Arrato (1992: 563) have identified the politics of persuasion and influence as 'one of the most important means through which social movements can hope to influence modern society'. Certainly the peace movements which contributed to the end of the Vietnam War support this notion, and both Towle (Chapter 5) and Runzo (Chapter 8) allude to the position of the churches in their reflections on the concept of 'just war'. In the six sections by which the chapters in this volume have been presented, the various writers explore the many avenues by which the politics of persuasion can be deployed to bring about a more civil society than one based on war, violence, injustice and oppression.

In Part I, 'Human rights and human security', Justice Michael Kirby, AC CMG, outlines the critical role of a nation's legal institutions, in this case, the High Court of Australia, in invalidating unjust laws which frequently arise from contexts of fear portrayed as national security concerns. Balance and proportionality, he avers, are essential in upholding human rights and fostering human security; not ill-thought out proposals which undermine the very democracy they purportedly support. Developing this theme further in the context of the shift in world politics since September 11, 2001, Amitav Acharya in his keynote address, presents the redefining of the concept of human security, which previously was understood to mean freedom from fear of economic, political and social deprivation (UNDP, 1994), to being reconceptualized as a fear of the very democratic freedoms that the human security concept was intended to enhance. The resulting return to a national security paradigm has enabled state governments to reify defences against terrorist attacks in 'all-encompassing and totalizing ways' which has been detrimental to the normative framework for global governance as it existed prior to September 11, and to the continuing robustness of democratic politics. The consequential reinforcement of state centrism, Acharya argues, has seen the return of divisive identity politics

with attendant negative implications for civil society, human rights and human security. To counter this descent into the maelstrom, Yasuaki Onuma, special Toyota lecturer for the conference, proposes a transcivilisational approach to world affairs, as a corrective to the prevailing 'Euro-America' centric perspective. Both Onuma and Acharya therefore look to the institutions of global governance, as Justice Kirby does to the supra-parliamentary legal institutions, as avenues to persuade nation states to keep within the boundaries of a more civil society.

Part II, 'The politics of civil religion', the three chapters by Towle, Briscoe and Miller, examine the human rights and human security paradigm through the role of the churches in various societies at different times, and their contribution to a politics of persuasion and influence. Towle concludes that though the Anglican church in contemporary England may have less persuasive power than it did prior to the First World War, when the views of state and church were generally closely aligned, the ethical stance it took against the Iraq War of 2003, stands in stark contrast to the prevarications of the state. Towle states:

Rowan Williams and other clerical critics were right to raise the questions of authority for the attack, whether the war was likely to produce more good than ill, whether sufficient consideration had been given to protecting civilians, and whether there was sufficient chance of success. Looking at the Iraqi situation in August 2005, some of their concerns have clearly been vindicated. Whether politicians and the public paid sufficient attention is another question, but clearly tension between church and state is creative.

(Towle, this volume, page 59)

Briscoe details the very negative consequences for indigenous civil societies in Australia in the nineteenth and twentieth centuries of the church interventions and the close church–state relations at that time. From his own personal experiences, it is only the actions of a few courageous individuals at the local level which have enabled them to rise above these disadvantageous socio-economic and political contexts, a situation still ongoing in contemporary Australia. Robert Miller examines the ambivalent role of the various Roman Catholic and Orthodox churches in Central and Eastern Europe in supporting authoritarian and nationalistic political contexts; although in certain cases, e.g. Poland, the church initially assisted the re-emergence of a civil society, in other cases the church emerged as a supporter of nationalistic state regimes which oppress civil society. Miller states: 'Civil society, as such, has apparently declined as a motive force for democratic political and social empowerment of citizens throughout the region' (Miller, this volume, page 82). He does, however, advocate continued international assistance, carefully thought out in terms of its delivery modes, as a means to bring about a revival of civil society in Eastern and Central Europe.

In Part III, 'The ethics of civil development', Joseph Runzo looks to the concept of global civil society, the collection of global citizens and the positive influence of the world's religions, as means to pull mankind back from the abyss of destruction which the resurgent unbridled power of the nation states threatens to unleash. His emphasis on the rise of robust NGOs is developed further by Philip Oxhorn in his fine study of civil society in Latin America and the notion of citizenship as agency, as opposed to citizenship as consumption or cooptation. Oxhorn's chapter takes us into the realm of assessing the quality of democracies – either elitist or participatory – and compels us to look more closely at the institutional development of our own political societies. The stage is thus set for Seumas Miller's theoretical exploration of corruption – of the individual and the state – in the transcultural and transnational context. Lopsided power relationships, a theme also developed by Oxhorn, differing ethical and moral standards, and jurisdictional problems, underpin the pervasiveness of societal and political corruption which can lead to state collapse.

The chapters in Part IV, 'Civil society and global governance: panacea or problematique?', examine the implications of a postsecular civil society, in which religious or cultural institutions may provide the framework for governance when secular political society has failed or been found deficient. Hudson's discussion of a civil society informed by the sacral dimension, is exemplified in Douglas's chapter on the church as structure in post-conflict states in Melanesia, when indigenized religiously oriented NGOs and women's groups took leading roles in bringing peace to the war-torn societies, and provided basic essential services at a time of state collapse. Whilst here culture and *Kastom* in indigenous civil society have been critical to the restoration of social order, the succeeding chapter by Ron Duncan also highlights the potential for political, economic and social corruption which certain cultural traditions such as gift giving can foster. He raises the prospect of civil society being a 'problematique' when local and global are in opposition, a theme developed in detail by He and Murphy (Chapter 18) in relation to global civil society's opposition to the World Trade Organization. The three chapters in this section thus raise the question: what constitutes effective state institutions, capable of engendering and fostering a robust civil society?

The four chapters in Part V, 'Cross-cultural perspectives on institutional development for civil society', examine this question in relation to the strengthening of civil society in the Philippines (Serrano, Chapter 14), Burma/Myanmar (Zar Ni, Chapter 15), Iran (McDonald and Md Jalal Abbasi-Shavazi, Chapter 16) and Bangladesh (D'Costa, Chapter 17). All deal with transformations in their civil societies, initiated at the local level by individuals with a keen sense of the sacral dimension guiding their policy decisions. As D'Costa asserts, they consider the interlinkages between people, power and their varied religious contexts, the politics of ethnicity and religion, and the impact these have on the policy decisions affecting the

development of a robust civil society. In contrast to Iran where women have taken charge of their own reproductive rights, faith-based NGOs in Bangladesh, as D'Costa shows, have been less successful in addressing reproductive rights and dealing with the social reality of continuing patriarchal traditions that have adverse impact on gender inequality issues and women's educational opportunities. These four chapters thus explore problematic political and socio-economic aspects of constituting civil society in non-Western cultural traditions.

The final Part VI, 'International civil society: prospects for enhancing human security', takes us back full circle to focusing on the conceptual origins of civil society. The economic aspects are spotlighted by He and Murphy through their exploration of the ways international NGOs (INGOs) and their transnational networks are contesting the assumptions of the international trade regime. Global civil society, they assert, seems to constitute a normative paradigm for global economic governance. In their analysis of the politics of persuasion and influence brought to bear on the WTO by these INGOs they suggest that global civil society is seeking a new global social contract as a key normative element in global economic governance. Angus takes the Egyptian elections of September 2005 as her field of analysis in contending that the *Kifaya* (enough!) movement is producing a revitalization of Cairene political culture; she sees a new emphasis on civility and ethics replacing the earlier preoccupation with 'political Islam' in the re-emergence of a credible political opposition in Egyptian politics, despite ongoing government harassment of its opponents. Azra takes up this baton in relation to Indonesia, the largest Muslim democracy in the world, despite the reservations of some scholars on the relevance of Islamic civil society; a concerted anti-corruption campaign by the democratically elected Indonesian government which is enlisting the cooperation of key Islamic civil society organizations (*Nahdlatul Ulama* and *Mubammadiyah*) is seen as the litmus test not only for the embedding of a vibrant civil society in Indonesia, but also for achieving that 'good governance' which must underpin aspirations to improved protection of human rights and enhanced human security. These final chapters all therefore project an optimistic view of the prospects for achieving greater human security through the political, economic and social principles we recognize as necessary to inform a robust civil society. They take the interactions between the state and the institutions of global governance as their field of battle; and look to concepts of justice, ethics and upholding the rule of law as the primary principles supporting democratic politics. These are seen to be transnational, transcivilisational and transcultural in their application.

In conclusion, as we seek convincing paradigms of a more civil society than that which daily confronts us, one might recall the archetypal admonition: 'Consider the lilies of the field; they yield not, neither do they spin.' As a paradigm of civility, the lilies may hold greater power than do the institutions of state or global governance with their constant 'chasing after the wind' (Ecclesiastes 1:16).

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