



Part (C)
Federalism

**Federalism in Multiethnic Societies:
A Look at Accommodative Institutions**

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Multiethnic societies contain groups of people with varied traditions, languages, and cultural backgrounds. Frequently, the sociological development of the ethnic identities predates the political development of the state unit that governs that society. Whether the state was created as a result of a series of historical battles, a consensual coming together, or as part of an ill-designed decolonization process, many multiethnic states struggle with ethnic differences and face the choice of fragmentation or redesigning the government to better hold it together. Federalism is a form of governance increasingly recommended for multiethnic societies.

Federalism, according to William Riker's classic definition, has three fundamental elements: two levels of government rule the same territory and people; each level is autonomous in at least one area; and the respective autonomy is protected from encroachment, generally by a constitution.¹ In practice, federalism requires democratic rule and a developed rule of law. Without those two prerequisites, one level of government can encroach with impunity on the powers of the other. While some scholars believe that federalism can exist under an authoritarian regime, the unchecked power of such a regime defies the autonomy and protection components. Non-democracies such as Ethiopia and Serbia and Montenegro give decision-making powers to regional legislatures in principle but interfere in regional affairs by flouting regional law and installing politicians at the regional level who will not challenge the center.² Both of these actions undercut the foundations of federalism.

In multiethnic states, federalism can benefit both the center and the sub-national regional units. Regions acquire local autonomy while retaining advantages accessible only to larger states. They benefit from a larger common market,



centrality of trade, and an increased military capacity to protect against cross-border aggression and strengthen international political posturing. In conflict-prone diverse societies, the regions benefit from constraints on predatory politics and the "ethnic security dilemma" in which one group fears another will seize power and wield it against it; decentralization insulates regions from the center so as to limit absolute control by any one group.³ The center, in turn, can better manage inter-ethnic conflict through the federal framework and thereby avoid dissolution or secession. Federalism cannot prevent conflict but may be able to contain it if adapted properly and implemented in a supportive context. Distributing authority at lower levels of society may serve as a pressure valve to release ethnic tension within the state.⁴ Key is determining the best level of devolution of power, internal self determination, and shared rule.

On the other hand, an inappropriately designed form of federalism may threaten to further destabilize a society. Some fear that federalism encourages secessionism or that it risks entrenching differences instead of "unifying through diversity".⁵ Other fears doubt the long-term stability of federalism, questioning whether it can accommodate the changing demands of groups. The delicate balance of state-region and inter-regional relations may further be vulnerable to societal suspicion of "the other" or to opportunism by either level of government. A properly tailored system of institutions and incentives can assuage many fears even though it is not an infallible arrangement.

What this paper aims to do is to discuss typical federalist institutions from the perspective of multiethnic accommodation. It will then highlight some ideas that could be particularly relevant for the situation in Burma. Being unable to offer an expert opinion on the political situation in Burma, the paper does not presume to provide a means of transition from the current military regime to a democratic federal state; the scope is limited to considering varied options for what may one day allow Burma to achieve a peaceful and stable state.

Multiethnic States Face Special Challenges to Political Unity

Some multiethnic states require special accommodations in order to have a successful federal government. Inter-ethnic conflict or friction and the pervasion of ethnicity in all political decisions and debates add more tension to already complex decision-making processes. Political decisions are sub-optimal for the entire society as a result. Frequently the majority ethnic group fears losing the political influence it already enjoys while oppressed minority groups struggle to gain enough influence to provide for their own political goals. Exclusion



from the political system, after all, costs more than simple pride (although pride is in itself not an insignificant factor). Additionally, suspicions of those who oppose the majority can be exacerbated by historical enmity or a lack of affinity towards the national identity of the state. All of these conditions may pose a threat to the unity of the state.

I. Division of Powers: Shared and Self Rule

The Combination of Shared and Self Rule Supports Autonomy through Decentralization

Through self rule, federal states devolve a degree of political duties to sub-national units while retaining specific governing powers for the center. Many also have a system of shared rule in which particular powers are controlled by both the center and regions. While shared rule implicates a power balance between the center and regions, self rule invokes the principles of autonomy and self-determination, both of which are frequently cherished aspirations for marginalized ethnic groups.

Decentralization brings government closer to the people, giving the population greater control over their political, social, and economic affairs. Citizens can oversee the work of public officials and more easily hold politicians accountable.⁶ It also increases opportunity to participate in government by creating more positions while shrinking the pool of candidates against which one must compete to fill them.⁷ Thus, being able to govern themselves, regions achieve a degree of autonomy.

Autonomy insulates regions from the central government and improves the regional government's capacity to respond to the local people's needs. Particularly significant in areas of ethnic friction, autonomy increases political accountability and reduces the likelihood of the electorate misplacing blame. Where politically salient ethnic tensions are high and blaming a group of others is an easy scapegoat, misplaced blame can produce disastrous consequences. Localized governance increases accountability. Autonomy can further protect both individuals and minority groups from the center because it decreases opportunity for domination.⁸ The regional instead of the central government controls the dispensation of services. Since the local ethnic groups likely



constitute a greater percentage of the regional population than they do of the state population, the regional government will have less freedom and incentive to deprive those minority groups.

Granting internal self-determination to regions gives them the autonomy to control their own affairs. In the ethno-federal context, it increases the ability of ethnic groups to protect their culture, language, and traditions, which is frequently a serious fundamental concern to people. If an official state language or even an unofficial functional language is not their own, parents and community leaders may fret that their children will lose their mother tongue and the cultural traditions attached to it. Language is particularly tricky since a state cannot function with a dozen different languages treated equally in all official business. The state must choose one or two languages in which to conduct its business, so decentralization grants regions an opportunity to conduct regional business in their predominant language should it differ from that of the state. It may be wise, however, for the regions to consider using the functional state language on an equal basis with their chosen language in order to enable close state-region relations and to allow regional politicians to more easily enter the central level of government.

States can only realize the benefits of decentralization if the regional governments are granted significant responsibilities. In order to avoid dispute, it is also important to clearly delineate which powers and responsibilities are granted to the regional governments and which to the central government. By clearly defining these responsibilities, the society reduces the likelihood of conflict between the levels of government due to misunderstanding or opportunistic attempts at encroachment on the other level's power.⁹

Residual powers which are not explicitly granted to either level of government need also be specified as presumptively going to one or the other level. Typically societies fearing fragmentation have vested residual powers in the center. Those societies who either fear domination by the center or need to offer a satisfying compromise to separatist regions seeking greater autonomy often reserve residual powers for the regions. Highly centralized India reserves residual powers to the center in a country that must consistently deal with separatist threats. Its ethnic and religious conflict led to the initial partition of the territory into India and Pakistan, and it notably still threatens to give way to the separatist movement in Kashmir. The United States, although multiethnic in a unique way, exemplifies a highly decentralized union of sub-national units which has become increasingly centralized over a couple centuries. Its founding fathers



valued small-scale local governance and feared a powerful sovereign; however, as societal attitudes changed and people developed an American identity, constitutional interpretation began to grant more lawmaking powers to the federal legislature and more policy-making freedom to the president. While many powers are still adamantly protected as states' rights,* the United States strongly identifies and operates as a single state.

In a state with a well-functioning rule of law, the judicial system will have interpretive powers to determine which duties and responsibilities fall within each level's scope. The division of powers between the center and the units must be supported by the rule of law in order to exist at all. Even where each government's powers are clearly enumerated, courts provide an invaluable service through their case-by-case interpretation. The influence of courts on the de facto division of powers is clear in the Canadian situation, where the constitution grants residual powers to the center but the courts have interpreted the constitution in such a way as to grant them to the provinces. Additionally, both American and Canadian courts have interpreted the enumerated powers broadly.¹⁰

II. Institutions and Federal Design

The Number, Size, and Composition of Regions Dramatically Affects Outcome

Federal constitution-makers must consider the most accommodative number and size of sub-national units as well as the most optimal geographic boundaries for those regions. The boundaries determine both the demographic composition of the units and the distribution among the units of natural resources and pre-existing industrial and cultural centers. Both are prime factors for future satisfaction in inter-regional and intra-state relations. In multiethnic states, boundaries may be drawn either to match or to contravene the extant ethnic boundaries.

The Number of Units Impacts Center-Region and Inter-Regional Relations

Many constitutional scholars warn of the destabilizing tendencies of states with only two or three regions.¹¹ The historical examples of Czechoslovakia and Yugoslavia prominently demonstrate the potential for dissolution or secession. Having too many sub-national units on the other hand may subordinate their



power and role in relation to the central government, making them less able to withstand central government attempts to encroach on their power.¹² Nigeria has experimented with the number of units during its different constitutional periods, having increased from 3 to 36. Due to the size and composition of the units, the Nigerian state struggled to maintain regional parity with only three units when one dominated central politics, and this resulted in civil conflict and constitutional change.¹³ Dramatic inequality invites dissatisfaction. The breakup of Nigeria's interim 12 regions into 36 was partially an attempt to keep ethnic groups from aligning with regional boundaries.¹⁴

Regional Composition May Exacerbate or Alleviate Existing Tensions

Where boundaries are drawn in relation to the existing ethnic lines can have an even more immediately obvious effect on the success of a federal state. Not only can disagreement about where boundaries should be set destroy negotiations, but suboptimal determinations may doom a country to renewed conflict. Of course, the geographical distribution of ethnic groups within a state will greatly affect how internal borders can and should be drawn. If groups are physically interspersed, borders cannot be matched with preexisting ethnic-based community boundaries. If groups are geographically concentrated, borders can match historical divisions; however, whether this is a good or a bad idea depends on the context.

On one side of the argument, matching subunit boundaries to preexisting ethnic boundaries may increase secessionism by providing the ethnic group with the organizational structure and resources to mobilize for secession. Viewing the situation from another perspective, though, separatist sentiment among the ethnic group may have been founded on dissatisfaction with systematic denial of internal self-determination. Granting the ethnic group sufficient autonomy to govern its own affairs may inherently remove the desire to secede. Separatist mobilization of Tamil nationalism in India in the 1950s, for example, subsided after Tamils were given their own state. If full independence is not the ultimate goal of the group, remaining part of the state could provide enticing benefits.

Ethnofederalism typically draws boundaries so that a minority group has a majority status in at least one province.¹⁵ This type of federalism has been criticized for historical outcomes of civil conflict and separatist movements, but numerous other factors could contribute to the breakup of a state, including



establishing a federal government too late or halfheartedly. The existence of a core ethnic region (defined as having a regional population composed of at least 20 percent of the total population within the region dominated by the core ethnic group) among numerous smaller ones, however, may be particularly unstable, and one scholar suggests that such a region should be divided into multiple smaller ones; this would frustrate collective action by the core ethnic group by dividing their political energy among multiple regions each with their own institutions.¹⁶ Because subdividing a large region may actually increase the representation of the core ethnic group where a bicameral legislature exists, though, subdivision may not always be appropriate for establishing an accepted balance of power.

Studies have shown that greater geographical concentration of minorities is positively associated with secessionism, protest, and rebellion.¹⁷ Prominent examples such as Kosovo's struggle for independence (approximately 95% of the region's population is Kosovar) may increase fears of secessionism. Logically, territorial boundaries that match ethnic divisions can strengthen ethnic identity and stifle an incipient identification with the state. However, where geographical concentration of a minority group exists, it is something with which the state must cope, and it does not have to lead to violent separatism. Accommodating institutions can ideally grant the minority group self rule within its geographically concentrated area, provide a way for the group's political concerns to be addressed at the central level of government, and create or maintain benefits for remaining a part of the state.

Drawing boundaries instead to create cross-cutting cleavages in a multiethnic society may mitigate ethnic conflict in some states. Such a division can encourage alternative forms of competition unrelated to ethnicity and may thereby reduce the effects of an ethno-centric identity. Competition for political influence among mixed ethnicity groups, such as resource-rich regions versus resource-poor regions, can create some of these cross-cutting cleavages.¹⁸

India has successfully used territorial delineation to create intra-ethnic group cleavages that counteract inter-ethnic group tensions. By reorganizing states along linguistic/ethnic lines, the conflict between Tamil and Telugu speakers became instead a political struggle within the new states between subgroups of those speakers.¹⁹ The reorganization did not protect sub-regional minorities from discrimination within the Indian states, though, since regional governments denied their linguistic minorities educational services, government publications, and civil service exams in the minority languages.²⁰



To protect sub-regional minority ethnic groups from marginalization or rights violations, one solution is to give the federal government special responsibility for guarding those minorities against repression. Such a situation is often used in the case of aboriginal and indigenous people. It does require that the central government has the capacity and motivation to enforce protections for the individual and group rights of the smaller minorities. Further, a constitutionally granted comprehensive set of fundamental rights can assuage small minority groups' fears of regional oppression.

When establishing internal territorial boundaries, the following conditions should be considered: ethnic group geographical distribution, identity, and demands; the extant security situation; availability of protection for sub-regional minorities by either a cooperative regional political system or a strong and willing federal government; and ensuring that the formerly dominant groups do not maintain overwhelming de facto federal political power at the expense of the oppressed groups.

The Electoral System Must Be Specially Designed for Minority Representation

Common goals for a democratic electoral system include proportionality of seats to votes, accountability of representatives, and the durability of government. In divided societies, however, these may need to be subordinated to the goal of state survival through interethnic moderation.²¹ If political affiliations are not fluid and a certain group never receives a turn of political power, representation of that minority is de facto suppressed.²² When ethnicity has political salience, such minority suppression can easily seem or be equivalent to ethnic oppression.

Persistent denial of political influence exacerbates ethnic tensions and may spark violent separatism. True democratic rule of the majority, then, may be unachievable and may actually do more harm than good. Compromise through broader ethnic inclusion in the political system is essential, and this is what the electoral system's design must accomplish. How best to do that in a given context requires exploration of the contrasting consociational and centripetal democracy models of federalism.



Consociational and Centripetal Democracy Are the Two Primary Models of Federalism

Consociational democracy enforces proportional representation as a means of decreasing minority disaffection by guaranteeing political influence to all significant groups. As envisioned by Arend Lijphart, it has four key components: (1) rule by grand coalition within the cabinet; (2) a veto power granted to minorities for significant decisions; (3) proportional representation; (4) and regional autonomy. The proportional representation extends to all main branches of government, including the executive department, legislature, and civil service. All substantial minorities are guaranteed representation in the governing coalition according to a predetermined proportionality, and each minority may veto major decisions. The veto power forces groups to compromise on important matters in order to achieve the required consensus. It thus encourages participation and compromise but threatens stalemate.²³ Ideally, the political struggle for compromise will accommodate special interests and fears. The lawmaking process is more frustrated under a consociational model than under a traditional government model since the government is formed based on ethnic composition instead of a common ideological basis.

In contrast, the centripetal model (so named because of its aim to support moderates) encourages pre-election cross-ethnic power sharing. Political candidates must vie for the votes of those outside of their own ethnic group, so those who are elected are held accountable for addressing broader interests than those of a single ethnic group. Successful political candidates will be those moderates who can appeal to members of other ethnic groups, and ethnic-based parties may appeal to voters from different ethnic groups through coalition partners. Both require willingness to compromise on ethnic issues.²⁴ Such a system aims to naturally and gradually reduce the political saliency of ethnicity. Instead of abandoning majoritarian democracy it seeks to achieve majority rule by producing cross-ethnic majorities as opposed to ethnically-based majorities.

Key in a centripetal democracy is implementing an electoral system that will naturally support the election of pan-ethnic moderates.²⁵ List system proportional representation is disfavored because it tends to emphasize or exacerbate ethnic cleavages. Where groups are geographically dispersed within the state, single-member constituencies may favor the alternative vote, while multiple-member constituencies may prefer reserving certain seats based on



ethnicity in an otherwise common role election. The alternative vote encourages interethnic exchange of voters' second preferences. If the ethnic groups are instead in geographically concentrated units aligned with regional borders, then the electoral system may require that candidates achieve a minimal percentage of votes within a significant proportion of the regions in addition to a plurality of the total votes cast across the state.²⁶ Nigeria's 1978 constitution, for example, required that the president win a plurality of total votes plus 25 percent of the votes in at least two-thirds of the states. Indonesia's 2002 constitution similarly created a vote distribution formula. The first past the post electoral system will only perpetuate majoritarian democracy and cannot alone encourage ethnic integration.

The consociational and centripetal systems are not interchangeable. Whether one is preferred over the other in a given context depends largely on where regional boundaries may feasibly be established. Consociational democracy only functions in parliamentary as opposed to presidential systems. Critics of consociationalism argue that it unrealistically expects groups to shift instantaneously from irreconcilable conflict to a sustained ability to compromise. In the case of Cyprus, the Greek majority ended the consociation within three years after the Turkish Cypriots' frequent use of the group veto; this led to further civil strife and a Turkish invasion of the island.²⁷ Furthermore, some believe that reinforcing both ethnic-based parties and proportional representation perpetuates ethnic politics.²⁸ Another argument suggests that while proportional systems are associated with dampened ethnic protest they do not change attitudes or cultivate a state-wide identity.²⁹ In the case of Northern Ireland, extremist parties have actually flourished under consociational federalism.³⁰ As a result, proportional representation may not offer a long term solution to ethnic conflict.

Political Party Organization Can Substantially Affect the Success of Federalism

Large, well-organized parties can dominate politics in their own constituencies and can often impose party discipline to influence the developing government structure in surprising ways. For example, party discipline of the national party in post-independence Burma caused the two chambers of the bicameral legislature to develop uniformly even though one was created to represent the states and the other the people. The result was a barely recognizable skeleton of federalism.³¹ Centralized party systems operating both regionally and



nationally can also keep in check opportunistic attempts by one level of government to alter the center-region power balance.³²

Strong regional parties can undermine the maturation of federalism in a state. One argument goes so far as to say that federalism can only succeed when representatives derive their electoral power from a broader national constituency instead of a purely regional electorate.³³ National parties are still capable of meeting regional needs, especially when they have the ability to secure electoral rewards in the politicians' home states.³⁴

Some research faults regional parties and not decentralization for increasing ethnic-based conflict in federalist states. According to that argument, regional parties may increase conflict by reinforcing ethnic-based identities, producing legislation that favors certain groups over others (such as by preventing educational instruction in a group's mother tongue), and mobilizing groups to engage in ethnic-based conflict, secessionism, or terrorist violence. Regional parties are most likely to gain influence in decentralized states if the state has large regions, if the upper house of the government is elected or appointed by regional legislatures, and if national and regional elections are not held concurrently.³⁵ Additionally, regional parties may enable destabilizing minority control at the central level of government. Nigeria's First Republic failed for just such a reason. Through its substantial regional majority, the Hausa-Fulani politically dominated its region to the extent that regional minorities could not build political influence. Using its strong regional power base, the Hausa Fulani then gained a large number of seats in parliament through the predominating size of its region.³⁶ The combination of one excessively large region and a small number of regions is likely to subvert a federal arrangement.

Federalism Requires True Fiscal Decentralization

Whether a state exhibits true federal characteristics is substantially determined by the fiscal resources at the regions' disposal. The number of powers constitutionally granted to a subunit is of no consequence if its government does not have the resources to carry out its duties. Ethiopia is notably unitary despite the federal administrative structure within its constitution, for example, partially because the regional governments rely heavily on the central government for redistributed fiscal resources. Regions have constraints on their powers of taxation and may only borrow money with federal approval; some regions can generate enough revenue to cover only ten percent of their expenditures.³⁷ Fiscal dependence constrains policy making powers. It enables



central government interference in the regions, and can easily frustrate electorate satisfaction with the regional governments who are unable to provide the services they need. Regions need to have sufficient expenditure freedom and administrative capacity and should be able to tax or receive unconditional transfers from the central government.³⁸ In states with bicameral legislatures, added fiscal security can be given to the regions by requiring all budget bills to be passed by the region-based chamber.

Fiscal decentralization must be considered in reference to other elements of the federal structure and the state context. One study found that the likelihood of ethnic rebellion increases with fiscal decentralization when there exists a high degree of inter-regional inequality, especially when territorial divisions match ethnic divisions. Unalleviated inter-regional inequality also increases the chance of ethnic rebellion when territorial and ethnic divisions coincide. Increased fiscal transfers to subunits, however, reduce the chance of ethnic protest when the groups are regionally concentrated.³⁹ In many contexts, the central government can improve the sense of unity by taking on the responsibility for protecting macroeconomic stability, using transfers to ensure regional equality, and using targeted and matching grants both to promote the core national objectives and encourage regions to provide public goods that have a natural and positive spillover effect in other regions.⁴⁰

Resource Allocation Can Strain State-Region and Inter-Regional Relations

States rich in natural resources may suffer destabilizing effects if the resources are naturally unevenly distributed. Such states may also experience increased tension between the central and regional governments as each competes to control the financial benefits from the resources. Prevalent corruption can easily eat away at the profits at either the regional or central level and doubly so if the money passes through both sets of hands. Allowing the center to control resource revenues may consolidate its control and even encourage development of a national identity. If conducted improperly or controversially, however, it can do precisely the opposite. It may exacerbate tension between resource-rich and resource-poor regions, threatening to reignite overlapping ethnic divisions or to perpetuate regional dissatisfaction with the center.

Iraq presents a unique system of resource allocation. The 2005 Constitution uses the supremacy of regional law to provide relative regional control over the lucrative natural resources within the country. Regional law prevails where



competences are shared between the state and the regions (such as with natural resources), so if there is a resource revenue allocation dispute between a region and the center, the regional law reigns. Some criticize these provisions as decentralizing and causing Baghdad and the non-oil producing regions to be at the mercy of the oil-producing regions. If other factors fall into place, such provisions may also allow the Shiites to construct a nine-province region and control all of the country's oil.⁴¹

III. The Situation in Burma

Burma's history as a single state has been checkered with disunity and mismanaged accommodation of varied groups of people. The current military regime has pressed for a centralized, unitary state, and many view their resulting policies as a form of "Burmanization".⁴² The military and those possessing political power are overwhelmingly from the Burman ethnic group, which can easily compound problems related to the existence of severe ethnic conflict and the objective dearth of ethnic representation or consideration of cultural protection and respect. Granting ethnic groups greater representation and self determination through decentralized federal government could alleviate some of these societal problems.

Distributing power between the ethnic groups in a manner that satisfies everyone would be one of the trickiest tasks for designing a federal state. While outdated and imprecise census figures fail to provide an accurate representation of Burma's ethnic composition, an estimated 68 percent of the population is Burman. Substantially-sized ethnic minority groups are geographically concentrated in the border areas of the country. Some of these groups exist within their own state, which loosely aligns with the approximate ethnic boundaries. Others have never had their own state, and some either have only a small population or are not geographically concentrated. Within the states are sub-regional minorities. Furthermore, categorizing people by ethnicity is not a simple task, as intermarriage is common and there is dispute about the anthropological development of various groups; some groups could be claimed by different ethnic categorizations.

Achieving the ideal politically stable version of Burma's future may be constrained by the current political situation, the inevitable transition period, and the tensions and fears that pervade society. A promising and not impossible theory suggests that Burma's minority tensions are not due to entrenched



incompatibility but are instead in response to military atrocities since the time of independence.⁴³ This may or may not be so, but the Karen in particular have hoped for their own independent state since they were promised as much by the British in return for military support during World War II. Overcoming the devastation and distrust developed during the world's longest running civil war would require numerous compromises and guarantees. Sensitivity to the needs, fears, and aspirations of the Karen and other marginalized minority ethnic groups would likely demand a particularly unique set of federal institutions, but a foundational combination of internal self-determination and substantial autonomy offers a lot of promise.

Ethnofederalism May Be a Viable Option for Burma

One option for decentralizing Burma would be to partition the state into regions divided along the existing geographic lines of the larger ethnic groups. Devolving power to the regions would then allow ethnic leaders to govern their people in their chosen language and according to their cultural traditions, granting regions cultural autonomy. Many federal states choose to grant their regions policy making powers in such areas as family law, education, and local economic development. Such a system allows regions to educate their children in their native language and manage the natural resources and traditional trades and professions according to the needs of the local population.

Ethnically-aligned regional division in Burma threatens two primary forms of dissatisfaction. The Burman majority could feel slighted at the federal level if they are represented as a region on equal footing with other regions; due to their large population size, they may feel their region should have greater power. On the other hand, if the size of the Burman region earns it greater weight than other regions at the federal level, the other regions may feel unfairly marginalized. Either the larger or smaller ethnic groups would rationally be dissatisfied with either representation scheme, so institutional compromise would be necessary to compensate the slighted group.

Establishing one political region per sizeable ethnic group can give the groups equal representation in institutions based on regional status. Alternatively, it could enable a more flexible representation scheme based partially on population and partially on regional status. Using a 100-member legislative chamber as an example, the Burman region could have 27 representatives while the largest



minority regions could have 18 representatives each and the smaller regions somewhat fewer respectively. This prevents dominance by a single ethnic group but does not entirely deny the largest group its majority status.

With regional identity based on ethnicity, ethnic minorities within each region would require special protections at the sub-regional level in order to maintain respect for their cultural and political needs. Either the federal government can guarantee these protections (as occurs in the United States with the specially protected Native American population), or a combination of an individual and group rights-oriented constitution with a strong, independent, and non-corrupt judiciary at the regional level can do so. Both require a well-developed rule of law to fairly assess and remedy ethnic marginalization.

In the case of a consociational democracy, the compromising required for a grand coalition to succeed could prove difficult in Burma's situation. Additionally, because long-term satisfaction with the political situation depends in part on satisfaction with the predetermined allocation of proportional representation, the ability to compromise within the grand coalition could easily become captive to this. In other words, it is unlikely that all groups will be content with the number of representatives they are apportioned, and those who are dissatisfied with the strength of their representation in the grand coalition may in response adopt a strategy of frustrating compromise and increasing veto use.

Proportional ethnic representation in the civil service and military is an important additional factor for achieving widespread satisfaction with consociational democracy in Burma. Because the military has played such a central and tense role in Burma's recent history, it will likely be instrumental to any successful outcome to provide a way for the military to become ethnically integrative. It is, after all, extremely important to avoid the perception of military occupation by another ethnic group, particularly one with substantial political power. Building a multiethnic leadership could both reduce the likelihood of a premature military coup in response to separatist sentiment and help prevent the perception of occupation of one ethnic group's homeland by another group. Initiatives such as proportional admission into the military academies could certainly help in the longer term. While immediate proportionate ethnic representation within



one of the strongest institutions in Burma is not feasible, concrete efforts to remedy the situation may be enough to satisfy those concerned. Lawmakers may consider an affirmative action system to increase diverse representation and then leave open the idea of a corresponding phase out period to be evaluated in light of the level of success of societal integration and development.

Heterogeneous Divisions Are Unlikely to Succeed in Burma

A second option for dividing Burma into an effective regional system would be to strive for a cross-cutting alliance incentive structure by breaking states down along non-ethnic lines. Considering Burma's pre-colonial history and the entrenched ethnic identification over the past several decades, however, this option is unlikely to suit Burma well. The geographical concentration of several substantially-sized ethnic groups and the prevalence of mutually unintelligible languages create logistical complications for satisfying the cultural needs of the people. Since many primary languages in Burma are mutually intelligible, this would threaten to frustrate the timely provision of services as well as to pave the way for feelings of domination by the group whose language is chosen to be the lingua franca. If such a division could be achieved, however, it would be more likely to provide a long-term strategy to make the electoral system less ethnic based and would pave the way for a more majoritarian system that is "color blind" but not oppressive of smaller minority groups. If this is not feasible or desirable, the alternatives create a risk of long term resentment by the Burmans, who would be denied rule by majority, unless their interests are noticeably protected and satisfied in other ways. This may be achieved by altering the degree of decentralization within the federal state.

Federalism Is Not Perfect but It May Succeed in Burma

It is important to keep in mind that federalism is not a fix all and may simply not be appropriate for certain societies. The failures of federalism in Yugoslavia and Czechoslovakia prominently demonstrate that decentralization cannot hold all states together. Combining federalism with pre-established regional parties may threaten greater conflict, which could be particularly dangerous in Burma because of how much time regional parties – often with their own armies – have had to become an entrenched part of the society. Half-hearted federalism



and transitional period vulnerability to ethnic separatist mobilization might also threaten failure.

While loyalty to a state cannot be created by force, a federal structure that respects minority rights and grants internal self-determination to autonomous regions can create ways for such loyalty to develop naturally. In Burma, ethnicity-based regions can offer much coveted ethnic self-determination. If an electoral system and distribution of shared and self rule can strike a balance between increased minority representation and a sustainable majority level of influence, then federalism may provide Burma with a cohesive state.

(Endnotes)

¹ Kristin M. Bakke and Erik Wibbels, "Diversity, Disparity, and Civil Conflict in Federal States", *World Politics* 59:1 (Oct. 2006), citing William Riker, *Federalism: Origin, Operation, Significance* (Boston: Little, Brown and Company, 1964) p.11.

² Dawn Brancati, "Fueling the Fire or Dampening the Flames of Ethnic Conflict and Secessionism?", *International Organization* 60:3 (Summer 2006).

³ Jean-Pierre Tranchant, "Decentralization and Ethnic Conflict: The Role of Empowerment", Munich Personal RePEc Archive (May 2007), p.2.

⁴ Jenna Bednar, "Federalism as a Public Good", *Constitutional Political Economy* 16 (2005) p.193.

⁵ Bakke, *supra* note 1, at 15.

⁶ See Charles R. Hankla, "When is Fiscal Decentralization Good for Governance?", *Publius: The Journal of Federalism* 39:4 (6 Nov. 2008) p.635.

⁷ See Donald L. Horowitz, "Patterns of Ethnic Separatism", *Comparative Studies in Society and History* 23:2, (Apr. 1981) p.165. See also Brancati, *supra* note 2.

⁸ See Nicholas Charron, "Government Quality and Vertical Power-Sharing in Fractionalized States", *Publius: The Journal of Federalism* 39:4 (8 June 2009).

⁹ See Hankla, *supra* note 5.* Note in this specific case that the term "state" is not given the same meaning as elsewhere in this paper. Here it refers to the sub-national units of the United States of America as opposed to a meaning similar to the term "country". "States' rights" is a phrase with a particular meaning in American constitutional law.

¹⁰ Patrick Monahan, *Essentials of Canadian Law: Constitutional Law* 2d (Toronto: Irwin Law Inc., 2002) p.105.

¹¹ See, e.g., Ronald Watts, "Models of Federal Power Sharing", *International Social Science Journal* 53:167 (16 Dec. 2002); Henry E. Hale, "Divided We Stand: Institutional Sources of Ethnofederal State Survival and Collapse", *World Politics* 56:2 (Jan. 2004).

¹² See Richard Simeon, "Constitutional Design and Change in Federal Systems: Issues and Questions", *Publius: The Journal of Federalism* 39:2 (6 Mar. 2009).

¹³ See generally Martin Dent, "Federalism and Ethnic Rivalry", *Parliamentary Affairs* 53:1 (Jan. 2000); Donald L. Horowitz, "The Many Uses of Federalism", *Drake Law Review* 55 (Summer 2007).



¹⁴ Alem Habtu, "Multiethnic Federalism in Ethiopia: A Study of the Secession Clause in the Constitution", *Publius* (Oxford University Press 2005), p.315-16.

¹⁵ See Charron, *supra* note 7, at 1.

¹⁶ See Hale, *supra* note 11.

¹⁷ See Zachary Elkins and John Sides, "Can Institutions Build Unity in Multiethnic States?", *The American Political Science Review* 101:4 (Nov. 2007).

¹⁸ See Horowitz, "The Many Uses of Federalism", *supra* note 13, at 960.

¹⁹ *Id.* at 961-62.

²⁰ See Steven Ian Wilkinson, "India, Consociational Theory, and Ethnic Violence", *Asian Survey* 40:5 (Sep. – Oct. 2000) p.778.

²¹ See generally Donald L. Horowitz, "Democracy in Divided Societies", *Journal of Democracy* 4:4 (Oct. 1993).

²² See *id.* at 28-30.

²³ See Charles E. Ehrlich, "Democratic Alternatives to Ethnic Conflict: Consociationalism and Neo-Separatism", *Brooklyn Journal of International Law* 26 (2000–2001).

²⁴ See Donald L. Horowitz, "Conciliatory Institutions and Constitutional Processes in Post-Conflict States", *William and Mary Law Review* 49, p.1216-17.

²⁵ See generally *id.* at 1217-18.

²⁶ See *id.*

²⁷ See Horowitz, "Conciliatory Institutions", *supra* note 24 at 1221.

²⁸ See Adeno Addis, "Deliberative Democracy in Severely Fractured Societies", *Indiana Journal of Global Legal Studies* 16:1 (Winter 2009) p.67.

²⁹ See Elkins, *supra* note 14.

³⁰ See Horowitz, "Conciliatory Institutions", *supra* note 24 at 1222.

³¹ See Josef Silverstein, *The Struggle For National Unity in the Union of Burma*, Doctoral Thesis for Doctor of Philosophy at Cornell University (Sept. 1960) p.293.

³² See Bednar, *supra* note 3.

³³ See Kevin Roust and Olga Shvetsova, "Representative Democracy as a Necessary Condition for the Survival of a Federal Constitution", *Publius: The Journal of Federalism*, 37:2 (27 Mar. 2007).

³⁴ See *id.*

³⁵ See Brancati, *supra* note 2.

³⁶ See Horowitz, "Democracy in Divided Society", *supra* note 14, at 30.

³⁷ See Kidane Mengisteab, "Ethiopia's Ethnic-Based Federalism: 10 Years After", *African Issues* 29:1/2 (2001) p.23.

³⁸ See Hankla, *supra* note 5.

³⁹ See Bakke, *supra* note 1.

⁴⁰ See Hankla, *supra* note 5.

⁴¹ See John McGarry and Brendan O'Leary, "Iraq's Constitution of 2005: Liberal Consociation as Political Prescription", *Oxford Journals* 5:4 (2007).

⁴² Ashley South, "Karen Nationalist Communities: The 'Problem' of Diversity", *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 29:1 (Apr. 2007), p.61.

⁴³ Harn Yawngwhwe and B.K. Sen, "Burma's Ethnic Problem is Constitutional", *Legal Issues on Burma*, No. 11 (Apr. 2002).

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