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Sujit Choudhry (Ed.), Constitutional Design for Divided Societies: Integration or Accommodation?

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Reviewed by Laurence Cooley

PhD candidate,
Department of Political Science and International Studies,
University of Birmingham

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Sujit Choudhry's edited volume brings together legal scholars, political scientists and political theorists to consider the debate over the efficacy of integration and accommodation as broad approaches to constitutional design in divided societies. As Choudhry correctly notes, to say that a society is divided implies more than simply to suggest that it is diverse, since "it is hard to imagine a state today that is not diverse" on ethnic, linguistic, religious or cultural grounds. Instead, divided societies are those in which "these differences are politically salient – that is, they are persistent markers of political identity and bases for political mobilization" (p. 5). The key aim of the book, then, is to explore whether, in such societies, constitutional design should reflect the principles of integration or accommodation – that is to say, whether constitutions should be designed so as to attempt to transcend or to institutionalise difference.

The book follows a three-part structure. The first part comprises an introductory chapter by Choudhry and an overview of the integration-accommodation debate by John McGarry, Brendan O'Leary and Richard Simeon. This is followed by four chapters on theoretical perspectives on integration and accommodation. Alan Patten sets out an alternative to the dichotomy between universalism and difference inherent in the integration/accommodation debate; Will Kymlicka contributes a chapter on the internationalisation of minority rights; Sujit Choudhry examines the relevance of the Canadian model; and Richard Pildes considers the implications of arguments about the constructed and potentially fluid nature of ethnic attachments for constitutional design. The final part of the collection is dedicated to a number of case studies. Jacques Bertrand writes on Indonesia; John Boye Ejobowah on Nigeria; Anver Emon on constitutionalism in the Muslim world; Yash Ghai and Jill Cottrell on Fiji; Michael Keating on Spain; John McGarry and Brendan O'Leary first

on Iraq and then on Northern Ireland; Christina Murray and Richard Simeon on South Africa; and finally Stephen Tierney on Scotland.

The editor's introduction begins by arguing that legal scholars have tended to play a marginal role in debates concerning constitutional design in divided societies, especially in comparison to political scientists and political theorists. In doing so, the editor makes a convincing case for greater engagement between scholars of constitutional law and political science, which this book certainly provides. Choudhry then moves on to introduce what is perhaps the key debate concerning constitutional design for divided societies – that between Arend Lijphart and his fellow supporters of consociational conflict management and Donald Horowitz and other advocates of centripetal approaches designed to encourage inter-ethnic cooperation. He then sets this in the context of the broader debate over integration and accommodation.

McGarry, O'Leary and Simeon's chapter provides an excellent summary of the debates that exist both between and amongst advocates of integration and accommodation in divided societies. Their classification of integrative and accommodative responses to diversity deserves to be widely read, particularly in combination with McGarry and O'Leary's previous influential taxonomy of conflict regulation strategies (McGarry and O'Leary, 1993). Perhaps McGarry, O'Leary and Simeon's most interesting contribution is their suggestion that both consociationalism and centripetalism should be considered strategies of accommodation, thus reserving use of the term integration for republican, socialist and liberal strategies to discourage voting along ethnic lines. This stands in contrast to the depiction of centripetalism as a form of integrative power-sharing elsewhere in the literature (see, for example, Sisk, 1996; Kettley, 2003), although they do state that it "belongs toward the integrationist end of accommodationist approaches" and that "if the line between these two categories is seen as blurred, centripetalism arguably straddles it" (p. 55). McGarry, O'Leary and Simeon go on to consider when integration and accommodation are most appropriate. They suggest that the former is suitable in societies characterised by cross-cutting cleavages, where minorities are small and territorially dispersed, and for voluntary immigrants. Accommodation, by contrast, is more suitable when minorities are larger, territorially concentrated and when they are national minorities rather than immigrant groups.

This is followed by a chapter by Alan Patten in which he argues that instead of thinking dichotomously about constitutional and institutional responses to ethnocultural division, we should adopt a four-fold distinction, further differentiating the politics of universalism into disestablishment and nation building, and the politics of difference into equality of status and cultural preservation. Having outlined this distinction, Patten argues that it enables us to take a more nuanced look at the politics of divided societies. He gives the example of language rights in Canada, arguing that whereas Charles Taylor has previously suggested that the debate over language rights is one between advocates of a politics of universalism and a politics of difference, it is in fact better viewed as an internal debate within the politics of difference, between cultural preservation and equality of status.

Will Kymlicka's chapter seeks to highlight the increasing role of the international community in the promotion of particular strategies of integration and accommodation. Drawing on his recent work on the international promotion of minority rights (see, for example, Kymlicka, 2007), Kymlicka examines the case of the United Nations, which he argues has tended to promote integration in the case of minorities but accommodation when it comes to indigenous peoples. He also examines the case of the Council of Europe and OSCE's failed attempts to establish a norm of territorial autonomy.

This is followed by an interesting contribution by Choudhry in which he highlights Will Kymlicka's personal role in the promotion of multinational federalism, providing a refreshingly

reflexive take on the role of scholars in political debates about integration and accommodation. This is placed in a wider discussion of the Canadian debate about multiculturalism, including the Canadian constitutional crisis of the 1990s. Choudhry points in particular to the difficulties posed by minority demands for constitutional change.

Completing the theoretical perspectives section, Richard Pildes argues in his chapter, 'Ethnic identity and democratic institutions: A dynamic perspective', that scholars and constitutional engineers have too often presumed ethnic identities to be static. He contends that focus often switches to constitutional design in divided societies only at moments of crisis and, since this is when identities appear to be most fixed, constitutional responses tend to be based on a static view of identities as they appear during the crisis. This has led scholars to view integration as unrealistic in the short term, even if it is desirable in the long run. Yet, as Pildes argues, the problem here is that while integrationist approaches are most likely to fail at moments of state formation, accommodationist approaches often mitigate against longer-term integration. His aim is therefore to examine those accommodationist approaches which are most likely to allow for a move towards integration over time.

A number of themes introduced in the theoretical section of the book run through many of the case studies. McGarry and O'Leary's chapter on Northern Ireland, for instance, picks up Kymlicka's focus on the role of the international community by highlighting the role of external actors in the promotion of consociational power-sharing in this case. Perhaps the most prominent theme emerging from the case study chapters, though, is that in practice, integration and accommodation are not mutually exclusive strategies. Many of the cases discussed could not easily be placed in McGarry, O'Leary and Simeon's classification of state responses to diversity, suggesting that the latter should be seen as made up of ideal types rather than empirically observable, comprehensive and mutually exclusive strategies. In highlighting the possibility of mixed designs, the case studies provide fascinating empirical insights to complement the theoretical chapters of Patten and Pildes. In this vein, Jacques Bertrand suggests in his chapter on Indonesia that "the most effective way to proceed is to adopt mixed strategies, implementing strong accommodationist measures to reduce conflict with specific groups while pursuing a more general integrationist approach" (p. 231). This flexible approach has, he suggests, eased tensions between the Indonesian centre and its regions, while maintaining integrationist tendencies at the state level. While arguing that this approach has been successful in reducing conflict in Indonesia, Bertrand is also realistic about the continued possibility of tensions with Aceh and Papua.

John Boye Ejobowah's chapter provides an interesting insight into the case of Nigeria, which was once held up as a model of successful constitutional engineering in a divided society. Ejobowah argues that the Nigerian case demonstrates the feasibility of combining integrationist and accommodationist elements of constitutional design, although he suggests that this has not been a strategy entirely free of problems. He argues that the integrationist components have proved to be problematic, particularly because of the system of patronage that exists in Nigerian politics. Ejobowah's suggested solution to this problem is not the abandonment of integration, but rather the adoption of complementary accommodationist measures including a rotational presidency and the devolution of resources.

Anver Emon's chapter on the limits of constitutionalism in the Muslim world makes for interesting reading, illuminating how, in the post-colonial world, nationalist movements have looked to history to provide national identity, such as through the adoption of Shari'a law. Emon highlights numerous problems, illustrated with fascinating examples from Saudi Arabia and Egypt concerning the payment of wrongful-death damages and the repair of Coptic churches. These have resulted from the extraction of pre-modern legal rules "from a prior context that gave them a certain meaning at one time" and their insertion "piecemeal into a state context to give Islamic content to a present-day

nation state” (pp. 284-85). He argues that to rely solely on the theories of integration and accommodation is insufficient in this context, since this assumes a determinancy of values which ignores the historical contingency of Shari‘a.

The chapter on Fiji by Yash Ghai and Jill Cottrell reviews the country’s three constitutions of 1970, 1990 and 1997, charting the fate of consociational and integrationist elements. While the authors make clear their preference for more thoroughly integrationist strategies, their discussion of the distrust between indigenous Fijians and Indo-Fijians that stems from the British colonial ‘divide-and-rule’ strategy is sobering. Ghai and Cottrell lament that “[e]veryone seems to have fallen into the habit of viewing issues through the racial prism rather than, say, the national interest” (p. 313), and it is clear they blame this, at least in part, on Fiji’s constitutions, which have privileged racial identities over others and have been based on the assumption that Fiji’s racial communities are homogenous and antagonistic to one another. The chapter concludes with an observation that the promise to move to a non-racial electoral system by the leader of the 2006 coup, Frank Bainimarama, may take Fiji in the opposite, integrationist, direction. Developments since the publication of the book, such as the recent decision to postpone the 2009 elections and other controversies surrounding Bainimarama, cast doubt on this however (see, for example, Davis, 2009).

Michael Keating’s chapter on Spain raises the issue of what he terms ‘plurinational’ states – that is to say states which are neither multinational in the sense of having constituent nations, nor multiethnic, but rather “in which there exist not just competing nations, nor even just competing definitions of the boundaries of those nations, but competing conceptions of the meanings of nationality itself” (pp. 316-17). He argues that Spain is such a state. Whereas the majority of its citizens identify as Spanish nationals, there are those who identify solely with minority nations but also, importantly, those who identify with both. Keating discusses developments in Catalonia and the Basque Country at length and is generally positive about attempts to accommodate minority nationalisms in these regions, highlighting in particular the role of informal mechanisms of accommodation.

In the next chapter, John McGarry and Brendan O’Leary offer the view that Iraq’s 2005 constitution should be regarded as establishing a form of liberal consociation, and then argue that this is the best option for constitution-builders seeking to stabilise the country. McGarry and O’Leary’s second empirical chapter subsequently provides a robust defence of their long-standing support for consociational measures in Northern Ireland which engages forcefully with their critics but is also honest about some of consociational theory’s traditional lacunae, such as neglect of the role of external actors.

Christina Murray and Richard Simeon’s chapter considers why post-Apartheid South Africa has not been characterised by such deep ethnic divisions as many commentators had anticipated prior to the transition to democracy. They argue that, while the division between black and white South Africans remains significant, predicted ethnic conflict within the black majority has not emerged. They point to the effectiveness of the African National Congress’s strategy of limiting the institutionalisation of ethnicity in the public sphere but recognising difference in the private. Their discussion is particularly interesting given the status of South Africa as a key focus of attention in the debates between Arend Lijphart and Donald Horowitz in the 1980s and early 1990s (see Lijphart, 1985; Horowitz, 1991) – a debate which Murray and Simeon appropriately recount in their discussion.

Finally, Stephen Tierney considers the case of Scottish devolution as an example of plurinational constitutional engineering, and the challenge posed to constitutionalism by sub-state nations. He argues that the Scottish devolution settlement provides an example of an unstable model, with the

UK remaining significantly centralised despite the autonomy granted to Scotland. Also included is an interesting discussion of the push by sub-state nations for representation in European institutions, which Tierney argues has been frustrated because of the continuing dominance of states in the EU system. However, he argues that, despite this frustration, Scottish independence is unlikely in the short term due to the continued relevance of nested and mixed British/Scottish identities. Tierney also makes an interesting theoretical point in suggesting that accommodation is often an inappropriate term in this context since sub-state national actors challenge the hierarchical relationship that the word 'accommodation' suggests.

A number of relatively minor overall criticisms could be levelled at the book. Firstly, as with many edited volumes, the originality of the contributions varies, with a number of chapters being near reproductions of articles that have previously appeared elsewhere. Secondly, given the length of the book and the breadth of its coverage, a concluding chapter by the editor would have been welcome. Choudhry's introductory chapter includes a useful summary of the main arguments of each of the following contributions, but this discussion would have perhaps been better placed and expanded upon in a separate conclusion.

Overall though, *Constitutional Design for Divided Societies* is an excellent collection of essays and merits the attention of all researchers interested in issues surrounding constitutional law, minority rights and ethnic conflict. While Choudhry's book clearly does not offer a resolution to the integrationist-accommodationist debate, one senses that it does help to move the discussion on somewhat, with a number of the contributions questioning the rigidity of this strict dichotomy and others demonstrating that, in practice, constitutional arrangements can be hybrid, combining elements of integration and accommodation. The book therefore merits the attention not only of political scientists and constitutional lawyers, but also practitioners. While it provides no easy answers for constitutional engineers in search of solutions to deep ethnocultural divisions, Choudhry's edited collection offers hope that, with time, the political salience of these divisions can be reduced through skilful and innovative constitutional design that achieves a balance between accommodation and integration.

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