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AVANT-PROPOS

Les Etats-Unis et l'Europe n'ont certainement pas le monopole du fédéralisme. L'Inde et le Nigéria sont deux exemples d'états fédéraux du Tiers-Monde, bien que la structure fédérale y fut en fait imposée en grande partie par le colonisateur européen - en l'occurrence par la Grande-Bretagne. Albert Johnson et Isawa Elaigwu décrivent l'évolution et les problèmes du fédéralisme aux Indes et au Nigéria.

La législation sur d'emploi des langues est un phénomène courant en Belgique. L'emploi des langues fait aussi souvent l'objet d'initiatives législatives à l'étranger. Joseph Turi examine le statut légal précis d'une langue et la façon dont fonctionne la législation dans la pratique.

L'américain Fukuyama annonça, principalement après l'effondrement de l'Europe de l'Est, la fin de l'histoire. Et de citer parmi les derniers foyers d'incendie qui pourraient entrer dans l'histoire : le nationalisme wallon. Ce fut le point de départ de quelques réflexions pour Bauduin Auquier.

Prof. K. Deschouwer,
Rédacteur en chef - Hoofdredacteur

INTEGRAL PROBLEMS OF PLURALITY : THE CASE OF CONTEMPORARY INDIA (1)

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Korte Inhoud

India werd in 1947 op federale basis georganiseerd. Sindsien is het politieke centrum steeds dominanter geworden, ten nadele van de deelstaten. Door bureaucratisering en zeer gepersonaliseerde politiek verloor dat centrum echter veel credibiliteit. Het werd steeds meer uitgedaagd door allerlei centrifugale krachten. Dit artikel geeft een overzicht van de diverse regionalistische tendenzen in het huidige India, een land dat verdelingen kent op basis van taal, religie, cultuur, traditie, economie, ...

Sommaire

En 1947, l'Inde fut organisée sur base fédérale. Depuis lors, le centre politique est devenu de plus en plus dominant, au détriment des composantes. A cause de la bureaucratisation et une politique très personnalisée, ce centre a toutefois perdu beaucoup de sa crédibilité. Il était de plus en plus défié par toutes sortes de forces centrifuges. Le présent article donne un aperçu des diverses tendances régionalistes au sein de l'Inde contemporaire, un pays qui connaît des divisions sur base de la langue, la réligion, la culture, la tradition, l'économie, ...

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(1) Paper presented at the conference "Federal-Type Solutions and their Implications for European Integration", October 28, 1989, College of Europe, Bruges. Revised version.

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Introduction

Contemporary India is witness to violent incidents in different parts of the country in which innocent lives are extinguished. These incidents are spurred either by separatism, or demand for separate identity, or linguistic chauvinism, or communal frenzy. The outcome of most of these is loss of life and destruction of private and public property. Most irreparable is the schism which has been created between different groups which constitute Indian society. Even when peace is restored, the result is only an uneasy calm awaiting another spark for ignition.

Diversity in sentiments, long-harboured prejudices, absence of a national outlook, a feeling of neglect, the urge to protect and preserve one's culture, language, and distinct identity, and economic and social backwardness are the primary causes for the current wave of unrest. Certain sentiments are centuries old, some are the result of partition, and some were caused by faulty planning and administration. In certain instances, the cause has been purely political. The reluctance to see reality has also been instrumental for discord and bloodshed. One wonders whether the current approaches initiated by the government are adequate enough to solve the problems.

The quasi-federal scheme of administration in India has been, over the years, steadily strengthening the Centre at the expense of the States. The process of centralization has not been free from consequent evils, two of which could be singled out as specific causes for the present day malady afflicting the nation. One is bureaucratization and the other is personality-oriented party politics. These two, reinforced by primordial forces, have been instrumental in causing much harm, many of which totally irreperable.

Over-centralisation has put a premium on the capabilities of the Centre and its leadership. At the opposite end, this has rendered the state leadership impotent and powerless. Traditional elite play their game at both ends. It was appeasement of the regional forces which led to the redrawing of the map of India on linguistic lines in 1956 (Vide Tables 1 and 2). But today more powerful forces have come to the fore with demands more damaging to the political system. If this is the scenario of contemporary India, what exactly ails her policy ?

Regionalism : The concept

What is true of national identity vis-à-vis regionalism (Pye : 1972) is also true of linguistic states and sub-regionalism in India. Sub-regional identities compete with linguistic ones, thereby causing tension and crisis. Regionalism in India is *"a political force generated and sustained by a variety of subjective and/or objective bases"* (Ramakant : 1983). Being a multi-dimensional phenomenon, it finds its expression *"in terms of its components at once geographical, historico-cultural, economic, politico-administrative and psychic"* (Narain : 1982). What is at the root of regionalism is the concept

of region which is basically territorial. A region is *"a nucleus of social aggregation for a variety of purposes"* (Majeed : 1984). Viewed negatively, regionalism is a threat to national integration and coherence. In a positive sense, it is the convergence of self-identity and a sense of fulfilment on the part of the people, affording them scope for the positive expression of the collective personality. It also helps to encourage political participation through regional mobilization, and the political elites of the region play an important role in this.

The Indian context

In India, regionalism has three major variations. The supra-state variety covers a group of people spread over more than one state. In inter-state regionalism, the boundaries of a region are coterminous with that of a state, and puts one or more states against another on specific issues thereby causing tension. The third type is intra-state regionalism in which a part of a state quests for self-identity and self-development, in positive terms, and the same viewed negatively, reflects a psyche of deprivation and/or exploitation of a part in relation to other parts of the same state (Narain : 1982). Intra-state regionalism emerges at sub-regional level. A sub-region is a relatively smaller area within a region which, for economic, geographic, historical, cultural, linguistic and social reasons, is aware of possessing a distinct identity (Majeed: 1984).

Pre-Independence India

In 1947, India was a stateless society, because it not merely was a primitive society which lacked political structures associated with the modern state, but it had a society which lacked a historical and legal tradition of the state as an institution acting in the name of political authority. This society did not have the tradition of continuous intellectual preoccupation with the idea of the state. The Western political traditions of regarding the state as an organic community, or as an instrument of will, or as a corrupting influence did not and could not permeate this tradition-bound society. Native thinkers like Vivekananda, Tagore, Gandhi, Bhave and J.P. Narayan expressed great antipathy toward state authority and they exalted the primacy of the society. Their ideological tradition of anarchism developed in opposition to the British Raj.

Since independence, and particularly after India became a republic, the wave of power politics became quite strong. The nation tried to achieve integration against the prevailing anarchist ideology that persistently called for decentralisation of political power.

During the days of the struggle for independence, the Indian National Congress (INC) was the rallying point for the struggle against British rule and it was recognised as the spokesman of revolt and common identity. The theme of national independence was the focal point around which both the elite and the masses were united. The mass movement launched by the INC was the framework within which the primordial differences among the people were submerged. The INC embodied and promoted a sense of national unity and identity.

Post-independence efforts

After independence, the INC was seized with the task of implantation and extension of a new state apparatus and the shifting of the loyalty of the people from an agitational movement to a stable governing regime. It was able to silence the little traditions of primordial loyalties by focussing attention on the problems of stabilization of the state. It also set for itself the twin goals of national integration and socio-economic development. The INC tried to lure away the individuals from their associational sentiments by declaring them all as citizens and offering the hope of socio-economic advancement through planning. When the primordialists hesitated to toe the line of the INC, the latter did not hesitate to use the political, legal, and even military instruments against them. The reorganisation of India on the basis of language in 1956, Nehru's assurance on the language question, and the Assam, Mizoram and Gorkha Hills accords belong to the first category, the Constitution (Sixteenth) Amendment of 1963 belongs to the second category and "Operation Bluestar" is testimony to the third category.

Primordial linkages

In India, primordial loyalties are represented by regional parties which operate within a limited geographical area and also by parties which transcend state boundaries. In the representation of interests, the regional

parties stand in sharp contrast to the national parties. Duverger classifies regional parties as minor parties and minorityminded parties. These, according to him, are of two distinct types - personality-minority parties and permanent minority parties. While the personality-minority parties are cliques of legislators, the permanent minority parties are deviational. Both these types have freely proliferated in free India.

The primordial groups were the first to demand regional identity and a personality of their own. For instance, the Jharkhand Party aims at establishing a Jharkhand state for a few million tribals who live on the plateau of Chotanagpur of Bihar and some districts of Orissa and Madhya Pradesh. The Akalidal, the political mouthpiece of the Sikhs, is a regional party with a religious base. The DMK in the south champions the cause of the Tamils. Shiv Sena stands for the Maharashtrians. Caste, language, and regionalism are uppermost in the agenda of the Telugu Desam of Andhra Pradesh and the National Conference of Kashmir. The Gorkhas demanded an autonomous region in the Darjeeling district of West Bengal. Every conceivable category of primordial sentiment has founded a regional party of its own.

Manifestations of regionalism

Regionalism as a country-wide phenomenon has assumed mainly four forms - demand for secession from the Indian Union, demand for separate statehood, demand for full-fledged statehood, and demand for favourable settlement of inter-state disputes. The DMK, the Akali Dal, the Mizo National Front, and the Nagas demanded secession at one time or another. The demand for the state of Andhra Pradesh was followed by similar demands in Gujarat, Punjab, Telegana and Vidharbha. An example of an Union Territory demanding and attaining statehood is Tripura. Regionalism was foremost in the boundary disputes involving Maharashtra and Mysore, Punjab and Haryana, and Tamil Nadu and Andhra Pradesh.

There is conflict between the nationalists and regionalists on six major areas. They are : the language policy, educational policy, resource allocation, centre-state relations, electoral competition, and control of mass media. The specifics are : Hindi language, Navodaya Schools, the Finance Commission, the National Development Council and Television. These have been the focal points for the wrath of the regional parties against the centre.

Of late, primordial tendencies have gathered strength and in many parts of the country the forces championing these tendencies have put and continue to put much stress and strain on the system. An illustrative selection of the manifestation of primordial passions is listed here.

a. The Buddhists of Ladakh (Kashmir)

The highly sensitive border district of Leh, surrounded by Pakistan, China and Tibet on three sides, is in the grip of a popular Buddhist movement, the like of which has never happened since the Dogra rulers of Jammu extended their empire to this trans-Himalayan region in the heart of Asia toward the middle of the last century. The movement is primarily directed against the alleged discrimination against the Buddhists by the Kashmir Government in Srinagar and centres round the demand for Union Territory status for Ladakh region, including the adjoining Kargill district. The movement which has claimed many lives, was launched to protect the Buddhists' cultural and religious identity and to ensure that they have a say in the governance of their affairs. They have gathered under the banner of the Ladakh Buddist Association (LBA) formed way back in April 1937 which had so far confined itself to religious activities. Inadequate share in State services and dental of proper plan allocations are two issues that are cited by the Buddhists to highlight administrative and economic indifference towards them. The Buddhists constitute two per cent of the State's population. The State has a predominantly Muslim population.

b. Separatism in the Kashmir Valley

The springboard for Muslim fundamentalism and anti-India passions in Kashmir is being provided by the Jamait-E-Islami (JEI) founded in 1941. The Jammu and Kashmir Liberation Front (JKLF) founded in 1964, has, as its objective, the liberation of Kashmir from India. Of late there has been a spate of violence in the valley and passions run high between the Muslims and other communities.

c. The Punjab problem

The Hindu and Sikh elites in Punjab have been trying to protect their respective interests through a communal nexus. The dynamics of communalism in this state can be understood only when one notices that the politics of Punjab has three dimensions : economics, political and ethnic.

The small-scale industries in Punjab have come to be identified as Sikh capital. Also, the landlords and rich peasants belong to the Sikh community. Many Sikhs have been persuaded to believe that monopolistic and big capital means Hindu capital. So industry-agriculture division corresponds to Hindu-Sikh distinction. As the wholesale trade is also an almost Hindu affair, the relationship between the peasantry and the trader is one of conflict. Since industrial development has not been commensurate with agricultural development the younger generation does not find employment and is easily attracted by fundamentalism. The over-all decay of the democratic system in the country, a decay which has been marked by personality-based politics, corruption in administration, and manipulation of people and issues, sent the youth towards fundamentalism which began emerging in all sections of Indian society in the 1980s.

Rise of fundamentalism in Punjab is not an isolated occurrence. It is part of the current resurgence of fundamentalism, which, to a great extent, may be said to have begun with the Meenakshipuram (Tamil Nadu) mass conversion in 1981 of a large number of Scheduled Caste people to Islam. It should, however, be noted that fundamentalism has not yielded any significant political returns. The genesis of fundamentalism could be traced to political economic and social ills and it draw its sustenance and momentum from religion.

The present crisis in Punjab is rooted in the demand of the Akali Dal for power and the hesitation of the Congress to accomodate the Akalis. Problems came to the fore after the decision to reorganise Punjab in 1966. As religion, language, caste, and class generally overlap in Punjab, the policies of the state have been dominated by communal considerations.

The Sikhs began to fear the loss of identity soon after independence as a result of the socio-political and economic consequences of partition. Having lost their sacred shrines and cultural centres in Western Punjab to Pakistan, the Sikhs tried to consolidate themselves in India. (They account for less than 2 % of the total population of the Country). The Hindus, belonging to the urban industrial and commercial groups, found their economic position being weakened by the Sikhs who were taking big strides in agriculture. The clash of political and economic interests made the two communities suspicious of each other, and hostile and aggressive mutually. The Arya Samaj, a Hindu organisation, emphasised that the problem for whose solution Guru Gobind

Singh created the Khalsa had been solved by the partition and hence the Khalsa has become redundant and therefore the Sikhs should return to the fold of the Hindu society. The Sikhs viewed this as an effort to deny them their cultural identity. The Arya Samaj and the Hindu Mahasabha leadership asked the Hindus domiciled in Punjab to keep their identity separate by declaring Hindi as their mother tongue. This segregated them further from the Sikhs. The Hindu leadership was also averse to the idea of a Punjabi-speaking state. The bilingual state gave them a position of political advantage.

The demands of the Akali Dal are also the demands of the Hindu formations, but they have been made to look sectional and communal. The Punjabi-speaking Hindus declared Hindi to be their mother tongue in a blatant political act to reduce the Sikhs to a permanent minority before post-partition Pubjab was divided into Punjab and Haryana. Falsehood has taken its toll. There has been a massive political failure in Punjab, because divisiveness became the instrument of governance. If the Sikh seeks the status of a holy city for Amritsar, he is not raising any strange demand. To this day solution to the problem remains elusive. Fear will stalk Punjab until sanity returns.

North-East India

North-East India is composed of the seven states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. It covers an area of 2,55,937 km^2, with a population of 26.5 million. The average density in the region is 104 persons per km^2 as against 201 for the whole country. States like Arunachal Pradesh, Meghalaya, Mizoram and Nagaland are peopled entirely by Hill Tribes. In Assam, Manipur and Tripura a substantial portion of the population is comprised of Hill and Plains Tribes.

In 1947, when India was on the threshold of independence, the whole of North-East India minus Manipur and Tripura was Assam. The dismemberment of Assam began almost immediately after independence. Sylhet, a predominantly Muslim area, went to East Pakistan (later Bangladesh). Almost immediately another piece of territory was taken over by the Kingdom of Bhutan because it was inhabited by Bhutanese. In 1947 the Nagas demanded independence for the Naga Hills district. Other Hill Tribes demanded independence for the hill areas from Assam. The Mizo National Front under Laldenga demanded independence for Mizoram.

The separatist movement received a spur when Assamese was made the official language of Assam. The immediate consequence of this move was the founding of a new political party styled as All-Party Hill Leaders' Conference (APHLC) and the demand for the separation of the hill areas from Assam and the formation of separate state.

The Government of India first conceded the demand of the Nagas for statehood. Then came Meghalaya comprising the districts of Khasi, Jaintia and Garo Hills. Subsequently, the Mizo Hills district was separated from Assam and was constituted into a Union Territory; in 1987 this was given statehood. Manipur and Tripura, which were earlier Union Territories, were later elevated as states. Arunachal Pradesh which was formerly known as North-East Frontier Agency (NEFA), was separated from Assam and constituted as a Union Territory first and then as a state. Dismemberment of Assam which began in 1947 ended by 1987. Has it really ended ? Cachar, which has a predominantly Bengali population, may secede from Assam and become a separate state. The Hill Tribes of Assam, the Karbis and Dirvaras, are demanding an Autonomous State. The plains tribe of Assam, the Bodos, are on a war path. Uppar Assam, Lakhimpur, Dibrugarh, Sibsagar and Jorhat may follow suit. Meghalaya is likely to demand for two administrative units. The tendency in the North-East today is separatism and not integration.

Norht-East India is a polyglot area. Its politics is determined by geography, ethnic and linguistic differences. It is inhabited by different races, speaking different tongues, and practising different religions. According to the linguistic survey of 1961, this region has 1,942 languages and dialects. Conflict in such an area is inevitable. Insurgency is the order of the day in most areas of the North-East.

a. The Bodos of Assam

During the past 40 years, North-East of India, which currently accounts for 7 states in the Indian Union, has been witness to the uprisings of the Nagas and Mizos, the Meitis in Manipur, the Tripuris in Tripura, the Khasis of Meghalaya, the Assamese, and now the Bodos.

The Bodo agitation is spearheaded by the All Bodo Students' Union (ABSU), and the demand is a separate state within the Indian Union. The Bodos are the largest single plains tribal community in the North-East. They are the true

Assamese - the original inhabitants of the region. The Baruahs, the Hazarikas, the Saikias and other communities came much later. While the Bodos estimate their strength at 4 million, their opponents put it at 2 million or about 8 per cent of the State's total population. The real reason for the Bodo agitation is not economic or political, but cultural and emotional. Basically it boils down to decades of neglect. The agitation of the Bodos has been inspired by the agitation launched in 1979 by the All Assam Students' Union, which lasted for six long years. The government, both at the centre and in the state, is in a fix. If the demand of the Bodos is conceded in an effort to stem the tide of violence and killings, it would serve as a cue to scores of other tribes to embark upon a similar path.

b. The Nagaland question

Nagaland has been the cradle of insurgency in the North-East since 1953-'54. On August 16, 1972, men of the outlawed Revolutionary Government of Nagaland (RGN) pledged to lay down arms and join the national mainstream. But the Federal Government of Nagaland (FGN) led by the London-based A.Z. Phizo still refuses to emulate RGN. Signing of the Shillong Agreement on November 11, 1975, signalled the return to normalcy in the state. But the National Socialist Council of Nagaland (NSCN), whose cadres have ties with the People's Republic of China, continues the struggle by following the hit and run strategy.

c. Problems of Tribals in Tripura

The problem of insurgency in the entire north-east has one common underlying factor : safeguarding the prominence of tribal society and its culture and preserving it from being swamped by non-tribal settlers from elsewhere in the Indian sub-continent.

In 1941, of the total population of 3,82,450 in Tripura, 1,92,250 were from 19 different tribes. Of these the major tribes were the Tripuri, Reang, Noatia, Jamatia, Halam, Mog, Lushai, and Chakma. But after partition in 1947, refugees from the then East Pakistan overran the tribal heartland and outstripped the tribal population. Four decades later, in 1981, the total population had risen to 20,53,058 of which the tribals numbered just 5,83,920. From 50.26 per cent in 1941 the tribals became a minority at 28.45 per cent in 1981. In short, the original tribal inhabitants now account for less than 1/3 of the population spread over 2/3 of the total area of 10,491 km^2.

Sensing the gravity of the problems they faced, the tribals formed the Tripura Upjati Juba Samithi (TUJS) in 1967. The same year the TUJS split when the more militant members decided to form the Tripura Sena (Army) to stage an armed uprising to win their rights. It immediately called for a review of the Tripura Land Revenue and Land Reforms Act which facilitated the change-over of tribal land to non-tribals. They also demanded that KOK Barak be made the official language of Tripura. Splits and violent expressions of dissent among the insurgents saw the formation of the Tripura National Volunteers (TNV). On February 4, 1987, the Centre declared the TNV an unlawful organisation under the Unlawful Activities (Prevention) Act. Inspite of TNV's commitment to violent strategies, both the Congress Party and the Communist Party of India (Marxist) have not spared any effort to woo the non-tribal voters. Though today the problem seems to have been put to rest, it is only a lull before the storm.

d. Meiti extremism of Manipur

Of all the states on India's eastern flank, Manipur has the closest cultural affinity with the rest of the country. Yet Manipur has spawned many violent separatist movements since the mid-sixties. The cult of separatist violence was introduced in Manipur by the Naga rebels who used this state as a transit point in their journey into Nurma and on to Southern China for training and arms. The Naga rebels were agitating for an independent state of greater Nagaland which included the Naga areas of eastern Manipur inhabited by the sub-tribes of Kabui and Tanhkhui. After trying unsuccessfully to combat the mounting menance of insurgency for almost ten years, the Centre declared the Manipur valley as a disturbed area in 1978. Two years later, the entire state was declared a disturbed area.

In October 1979 many of the separatist organisations which were operating from Manipur were declared unlawful. They included the Revolutionary People's Front, People's Liberation Army, People's Revolutionary Party of Kangleipak, the Kangleipak Communist Party, etc. The widespread use of the name Kangleipak by some of the organisations mirrors the mood of the insurgents. This was the name of ancient Pre-Hindu Manipur. All these organisations are dubbed as Meiti extremists. The Meitis are the original Manipuris of Tibeto-Mongoloid descent.

e. Discord in Assam

The United Liberation Front of Assam (ULFA) was founded on April 7, 1979, with the declared objective of *"liberating the people of Assam from the shackles of Indian imperialism"*. It does not recognise the Indian constitution and maintains that Assam and the north-east were, historically, never a part of India. It regards the Treaty of Yandboo between Burma and the British Raj to be the "darkest chapter in Assam's history", because it brought Assam under the British and subsequently Indian rule. The ULFA cadres swear by the principles of scientific socialism within the context of Assamese nationalism.

Problems elsewhere :

a. Demand of the Gorkhas

Darjeeling, proudly described as the "Queen of Hill Stations", was in the vortex of a violent movement - the agitation for Gorkhaland. It was on April13, 1986, that the movement, spearheaded by the Gorkha National Liberation Front (GNLF) started innocuously enough with a black flag demonstration on the Nepali New Year's day. The GNLF agitation, which began with the demand for a separate state for the Nepali-speaking Indians, has spawned a host of other demands as well.

b. Demand for Kolhanistan

Joining the seemingly endless procession of regions demanding separate statehood is the Kolhan area of Singhbum district of Bihar. Kolhanistan, as it has been christened by its supporters, comprises 1,400 villages in nine blocks, spread over 3,100 km^2. The problem is essentially one of neglect of the area by the Government of Bihar. This movement is yet to gather momentum.

c. Demand for Uttarakhand

The remote hilly areas of northern Uttar Pradesh are echoing to the call for a separate state, Uttarakhand. The cry is heard in the eight hill districts of Uttarkashi, Tehri Garhwal, Pauri Garhwal, Chamoli, and Dehra Dun in the

Garhwal and Nainital, Almora and Pitteragarh in the Kumaon division of the state. The Uttarakhand movement is yet to take on the overtones of the Khalistan, Gorkhaland, and Jharkhand agitations, and lacks their violent separatist character. But the basic ingredients are all there.

d. The Jharkhand Movement

The movement for a separate state for tribals cutting across the four states of Bihar, West Bengal, Orisa and Madhya Pradesh has been gathering strength for quite some time. The demand for a separate Jharkhand state is almost half a century old. It first raised its head in 1939 and manifested itself in the Santhal rebellion against the British. The proposed state will constitute 21 districts of the four states and have an area of 200,000 km^2. Tribals like the Santhals, Mahatas, Kurmis, etc., would account for almost 74 % of the total population of nearly 4 crores. Two factors that characterise the Jharkhand movement are the violent nature of the struggle and the lack of unity among its top leaders. Taking its cue from the successful agitation of the All Assam Students' Union, the All Jharkhand Students' Union (AJSU) has taken shape among the tribal students of the area. The genesis of the Jharkhand movement can be traced to the exploitation of the mineral and forest wealth of the area coupled with indifference towards solving the genuine grievances of the people of the region. Apart from occasional flare-ups the movement is yet to gather sustained violent momentum.

e. The DMK in Tamil Nadu

When the Dravida Munnnetra Kazhagam (DMK) - (Dravidian Progressive Federation), emerged as a separate party in 1949 in the State of Madras, it had no ideological differences with its parent body, the Dravide Kashagam (DK). The DK stood for the elimination of Brahminical dominance of the Tamil Society. The DMK had, as one of its major objectives, the creation of Dravida-Nadu (Dravidian State) comprising the southern states of Tamil Nadu, Kerala, Karnataka and Andhra Pradesh. In due course, the DMK had to abandon its secessionist demand. In the 1950s the party took up the task of purifying Tamil language of Sanskrit influence. In 1963 the DMK spear-headed the anti-Hindi agitation which began on November 7, 1963, and ended on January 26, 1965. In the 1967 General Elections the party was returned to power in the State. Currently the DMK confines itself to championing the cause of Tamil language and culture.

Consequent to the States Reorganization Act of 1956 the State of Madras was considerably reduced in its total area because parts of this State were aligned with the newly created States of Kerala and Andhra Pradesh. In 1969 Madras was renamed as Tamil Nadu, meaning land of the Tamils.

Conclusions

Of late, in different parts of the country, communal, religious, and linguistic clashes have been putting much strain on the system as a whole. This has been more pronounced in the north, barring a few exceptions. It is said that but for politicising the issues, matters would not have taken an ugly turn. Though these developments do not portend any immediate catastrophe to the political system, yet the seed has been sown for discord and dissensions within the society. Though the native practice of federalism as such has not yet been directly affected by these developments, considerable damage has been caused to the States and the credibility of administration at this level has become questionable.

Hard facts demand hard decisions. Violence never pays. This message has to be convincingly put across to the sectarian, sub-national, and communal elements. What is urgently needed is proper perception of the multitude of problems besetting different segment of the society and a systematic analysis into their causes. Stop-gap or piecemeal remedies cannot solve these problems. Unless concrete steps are taken to instill a sense of belonging in the minds of the less-fortunate in society, these problems cannot find lasting solutions.

If the Centre begins to pursue a policy of appeasement, then the demands would begin to overflow, and federalism would become meaningless. As a beginning, steps should be taken to set right the economic imbalance between and within regions, particularly between the depressed classes and others. Concrete action should be initiated for preserving the distinct cultural heritage and identities of minorities and the less-privileged segments of society. Politicising the non-political issues could only create more Punjabs.

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Table 1 : States before reorganization

Part A

1. Assam
2. Bihar
3. Bombay
4. Maghya Pradesh
5. Madras
6. Orissa
7. Punjab
8. The United Provinces
9. West Bengal

Part B

10. Hyderabad
11. Jammu & Kashmir
12. Madya Bharat
13. Mysore
14. Pepsu
15. Rajasthan
16. Saurashire
17. Travancore - Cochin
18. Vindhya Pradesh

Part C

19. Ajmir
20. Bhopal
21. Bilaspur
22. Cooch - Behar
23. Coorg
24. Delhi
25. Himachal Pradesh
26. Kutch
27. Manipur
28. Tripura

Part D

29. Andaman & Nicobar Islands

Table 2 : States reorganization, 1956

	SRC scheme	
	Area in km²	As implemented
Andhra Pradesh	64,950	105,963
Assam	89,040	50,043
Bihar	66,520	67,164
Bombay	151,360	190,919
Jammu & Kashmir	92,780	85,861
Hyderabad	45,300	--
Kerala	14,980	15,035
Madhya Pradesh	171,200	171,201
Madras	50,170	50,110
Karnataka (Mysore)	72,730	74,328
Orissa	60,140	60,136
Punjab	58,140	47,456
Rajasthan	132,300	132,077
Uttar Pradesh	113,410	113,409
Vidarbha	36,880	--
West Bengal	34,590	39,945
Delhi	578	578
Manipur	8,628	8,628
Andaman & Nicobar Islands	3,215	3,215
Himachal Pradesh	--	10,804
Tripura	--	4,032
Laccadive, Minicoy & Amindivi Islands	--	10

States Reorganization Commission, 1953-1955,
States Reorganization Act, 1956.

FEDERAL-TYPE SOLUTIONS TO PROBLEMS OF INTEGRATION : NIGERIA'S FEDERAL EXPERIENCE (*)

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Dit artikel bespreekt hoe federalisme, door de formele erkenning van regionale eigenheden, een bron van conflict kan zijn. Het kan echter ook een zeer geschikt institutioneel mechanisme zijn voor de vorming van compromissen en voor de creatie van een natie. Nigeria is voor beide een goed voorbeeld. Er wordt beschreven hoe het federaal systeem er geëvolueerd is, en vooral hoe de idee en de praktijk van het federalisme de vele regimewijzigingen en staatsgrepen overleefd heeft.

Sommaire

Le présent article démontre comment le fédéralisme, de par la reconnaissance des diversités régionales, peut être une source de conflit. Il peut cependant également constituer un mécanisme institutionnel très approprié pour la mise au point de compromis et pour la création d'une nation. L'exemple du Nigéria illustre bien les deux cas. L'auteur nous décrit l'évolution du système fédéral et démontre clairement comment l'idée et la pratique du fédéralisme a survécu aux nombreux bouleversements de régime et coups d'Etat.

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A. Introduction

In most multinational states, the search for appropriate solutions to problems of integration is usually a dominant feature of the political process. For some, federal-type solutions have been most helpful in coping with problems of state and nation-building. In others, the issues transcend types of governmental gird.

Issues of European integration are essentially supranational. The fact that quite a number of the member-states of the European Economic Community are multinational states is quite interesting. Equally interesting is the fact that while some multinational states in Europe opted for federal-type solutions to their problems of integration, others have not. But, the relevance of federal-type solutions to European integration is related to our definition of federalism and federal-type solutions and our perception of their functions in a transnational association.

Essentially, federalism as a system of government emanates from the desire of a people to form a union without necessarly losing their identity (1). It is a compromise solution in a multinational state between two types of self-determination - the determination to maintain a supranational framework of government which guarantees security for all in the State-nation or nation-state on the one hand and the self-determination of component groups to retain their individual identities on the other. Federalism is an attempt to reflect the diverse political, social, cultural and economic interests within the framework of a broader national unity (2). Basically, therefore federalism *"satisfies the need for cooperation in some things coupled with a right to separate action in others. Only federalism fulfils the desire for unity where it co-exists with a determination not ot smother local identity and local power"* (3).

To the extent that federalism provides for two types of self-determination, the European Economic Community as an emergent political community may find some comfort in federal-type solutions. These could be confederal or "loose" federal arrangements which provide for relative sovereignty of member of states as well as a European umbrella for all these states.

In Nigeria, the heterogeneity of the state and the political problem which emanated from this has become politically proverbial. The late 1950s had witnessed ethnic and geoethnic parochialism as groups competed to inherit political power from the colonial authorities. The security provided by

parochial political platforms for competition had led to pressures for the adoption of federalism and the gradual dismantling of unitary institutions such as the Nigerian Marketing Board, etc. For many Nigerians, federalism is an important mechanism for allaying their fears - fears of political and economic domination. As Nigeria's first Prime Minister once observed : *"I am pleased to see that we are all agreed that the federal system is, under the present conditions, the only sure basis on which Nigeria can remain united. We must recognize our diversity and the peculiar conditions under which the different tribal communities live in this country. To us in Nigeria therefore unity in diversity is an source of great strength, and we must do all in our power to see that this federal system of goverment is strengthened and maintained"* (4).

Why did Nigerians opt for a federal solution to their problems of integration or political association ? Was it an attempt to realize the ideals of a model of government or was it a compromise solution to some of the political problems which had emerged in the terminal colonial period ? Was the adoption of a federal solution the result of social forces at work in Nigeria ?

In our discussion of federalism in Nigeria we suggest that :

(i) if federalism is a mechanism for effecting political compromise in a multinational state, it is embedded with its own seeds of discord or conflict;
(ii) problems of Nigeria's federal compromise are historical and multi-dimensional;
(iii) on the horizontal plane, echoes of the past are very much around even if heard from within different structures - and these seem to detract from the goal of national unity or integration.

In Nigeria, as in all federal systems, federalism is a "paradoxical elixir" to be purchased from any political market. If it provides for the security and survival of a nation (because of the very compromise it is capable of effecting), it also safeguards self-determination by parochial subnational groups. As Shridath Ramphal (the Commonwealth Secretary-General) correctly observed : *"(...) the foundation of federalism must be laid in nationalism; but it cannot be ignored that at the heart of nationalism lies the concept of self-determination. It is however a concept of double application, secession is the claimed concomitant of self-determination, which can therefore help to destroy federalism just as it served to build it"* (5).

This observation is no less pertinent to Nigeria than it is to other federal systems.

We agree with Adebayo Adedeji that a *"federal system of government is the result of a compromise. It is a compromise between centrifugal and centripetal forces "* (6). This compromise is a form of balance between two opposing forces. There is no doubt that all federal systems experience adjustments, at different points in time, between these two extreme pulls. But the extent to which a federal system survives very much depends on the ability of the political elites in a centripetalism. Excessive pulls in favour of centrigugal forces may herald disintegration as Nigeria has painfully learnt. Yet, excessive pulls to the centre may challenge the very existence of federalism and the cocoon of security it provides for members of the society. It could also lead to disintegration as the bloddy massacres in Northern Nigeria of 1966 confirmed (7).

Let us state, for the avoidance of doubt, that conflict is the spice of every State. It tests the fragility or otherwise of the state and creates the basis for future amelioration or adjustments. However, conflicts beyond certain thresholds are detrimental to the very survival of the state precisely because it threatens the consensual basis of the association. We may also state that conflicts which emanate from non-recognition of others' claims issue of conflict (for example excluding others from sharing in crucial items of allocation) could be very dangerous for the system. Such conflicts mobilize total loyalties of the people and tend to defy all attempts at effecting compromise. The events which led to the Nigerian civil war is an example.

On the other hand, conflicts which result from the nature of distribution are less dangerous to the survival of the State. Since the claims of others are recognized in this case, the only issue of conflict is on how the item of conflict (such as allocatable items) are shared or how a conducive compromise is struck between competing claims.

If federalism was expected to assuage fears among Nigerian groups, if it was regarded as a partial protective political device, it was also embedded with its own seeds of discord. Nigeria's political history has witnessed a number of adjustments as she tried to strike a compromise between centrifugal forces and centripetal forces. In these adjustments the political pendulum has swung, at various times, to both extremes. It is this historical aspect of Nigeria's federalism that we now turn.

B. Ambivalent Integration

While it may not be useful to beat the colonial dead horse any more for ailments of Nigeria, one cannot agree more with James Coleman when he argued that the *"(...) present unity of Nigeria, as well as its disunity, is in part a reflection of the form and character of common government - the British Superstructure - and the changes it had undergone since 1900"* (8).

It may be argued that ambivalent integration under colonial rule was partly reponsible for generating fears and suspicions among Nigerians.

After the amalgamation of Nigeria in 1914, the colonial authorities made no effort to encourage horizontal interaction among the various groups. For understandable reasons such encouragement would have heralded the good riddance of the colonial masters from the scene as groups developed confidence in one another and basked in anti-colonial psychology.

Colonial rule encouraged vertical relationship between the local administrative units and the colonial centres of power. The result was that Nigerians of Northern and Southern provinces never had an opportunity to interact politically until 1947 (under the Richard Constitution). This led to suspicions and fears as people of one political unit found themselves interacting with one another as strangers. They had had no opportunity to build up mutual confidence among themselves through horizontal forms of interactions. This parochialism among Nigerian groups we shall call the parochialism based on Ignorance - for each group was ignorant of the other.

But between 1941 and 1956, it had become evident that the colonial administration would soon flod its political umbrella. Naturally, Nigerians "battled" for the inheritance of the colonial legacy to fill the political vacuum. In this competitive setting Nigerians withdrew into the cocoons of their ethnic or ethnoregional bed-fellows to organize in order to inherit political power form the colonial masters based on suspicions among Nigerian groups. This parochialism among Nigerian groups in the terminal colonial period, we shall call parochialism based on Awarness - of others in the competitive setting. It was this form of parochialism that goaded Nigerians to a choice of a federal system of government.

The 1954 Lyttleton constitution had witnessed the devolution of powers to the regions. By 1656 the regions had become full-fledged and autonomous units

in Nigeria's independence - and this provided an opportunity for her leaders to operate a federal constitution within the Westminster model of government inherited from Britain in the terminal colonial period.

By independence, there were two basic issues (generating fears and suspicions among Nigerian groups) which had been left unresolved :

(i) the structural imbalance in Nigeria's Federal system;
(ii) the differential spread in the pattern of Western Education.

It may be suggested that one of the problems in operationalising Nigeria's former constitution was the very federal structure within which Nigeria operated her federalism. The imbalance in the federal set up generated the fear of domination among various groups in the country (9). The Northern Region had 79% of the country's total area as compared to the Eastern Region's 8,3%, the Western Region's 8,5% and the Midwestern Region's 4,2%. By the census figure (10), the Northern Region accounted for 53,5% of the total population of Nigeria, the Eastern Region 22,3%, the Western Region 18,4% and the Midwestern Region 4,6%. Thus for the three Southern Regions, the federal structure as existed made it virtualy impossible for the South to control the political power at the centre, given the ethnoregional politics in the country (11). The South thus feared Northern political domination by population - the Tyranny of Population by the North.

The second major generator of fears among Nigerians was to be found in the relative coincidence of skills acquired through Western Education with ethnoregional boundaries. The Southern regions had a headstart over the Northern region in Western Education - mainly through Christian missionary institutions. Once Western Education became a passport into occupational roles in the modernizing sectors, inequality in its possession meant inequality in the socio-economic sector. The Northern Region, therefore, feared the tyranny of skills from the South. It sought to protect its civil service from being swamped from outside the region. The North feared the Tyranny of skills by the South.

We may, at this point, make another suggestion - that given this situation, there was a relatively delicate division of power between the North and South in the political system. The North's control of political power was counterbalanced by the South's monopoly of economic power in the country.

We may even go further to argue that contrary to Sklar's contention (12), the military coup in January 1966 tilted what had been a delicate balance on which Nigeria had been able to survive since independence. The concentration of political and economic power in the hands of Southern leaders had tilted the delicate Nigerian balance. Political power had been the North's safeguard against the South's economic and educational advantages (13). The South's advantages in bureaucracy (which if anything as strengthened in authority by the coup) was greatly augmented. The Northern region reacted violently as it saw its last card - the political card - suddenly taken away or rendered ineffective.

Thus, the federal structure and educational imbalance generated suspicions and fears. It is not necessarily important that there was actual domination. But it is important that Nigerian groups feared there was domination - for this influenced their actions and reactions toward one another.

These fears were behind the manifestation of centrifugal tendencies as each region demanded greater autonomy (which started during the constitutional conferences in 1950s) continued until the military intervention in Nigerian politics on January 15, 1966. We lack time and space to go into details, but illustrations of these centrifugal pulls in the First Republic abound. The crisis over 1962 and 1963 census exercices, the federal elections of 1964, the iron and steel complex squabble and attempts by regions to interfere in foreign policy (which was federally exclusive matter) (14) are illustrative of the politics of ethnoregionalism in Nigeria. This illustrates also the inability of the Federal Government to effectively control the regions, a situation which was aggravated by the relatively "loose" nature of Nigeria's federalism.

Thus, General Gowon was correct to observe on 26 May, 1968 that *"Under the old constitution, the regions were so large and powerful as to consider themselves self-sufficient and almost entirely independent. The Federal Government which ought to give lead to the whole country was relegated to the background. The people were not made to realize that the Federal Government was the real government of Nigeria"* (15).

The regions had gradually accumulated a reservoir of political autonomy which made them quite strong in their relations to the Federal Government(16). Actually, the regions had become so strong that there were talks of "the regional tail" wagging "the federal dog". At various times the regions had threatened to secede from Nigeria. They used the threat of secession

as a baton to extract concessions from the Federal Government. In 1950 the Northern delegation to the Conference threatened to secede unless the North was granted equal representation with the South (17).

Similarly, in 1953 the Western Region threatened to secede from Nigeria over the issues of revenue allocation and the carving out of Lagos as a Federal Territory (18). The Eastern region threatened secession in 1964, over the census figures and the Federal Elections. There have also been many accounts of the desire of the Northern Soldiers, who staged the July 1966 coup, to secede. In May 1966, Awolowo made his controversial statement that if the Eastern Region was allowed to secede, the West and Lagos would follow into secession (19).

However, the "tradition" of using secession as a potential instrument for political capital extraction from the federal government was side-tracked when the Eastern Region moved from this situation of potentiality to "Biafra" in May 1967. The very act of secession was a challenge to the process of state-building.

By 1965 it had become very clear that the ballot box and the future of plebiscitarian democracy had become bleak. A number of factors, discernible in the system, gave this indication - the breakdown of rules of the game of politics which profusely polluted the political stadium and (in the absence of avenues for political ventilation) made politics as dangerous for players as well as spectators; gross misuse of political power; misappropriation of public funds and widespread corruption among public officers; imprudent political and economic decisions in allocation of scarce but allocatable resources; erosion of the rights of individuals; disenfranchisement of Nigerian populace through blatant rigging of elections, conspicuous consumption of politicians amidst the abject poverty of the masses; and excessively powerful regional governments which threatened the relatively weak federal centre with wanton abandon.

Thus by the end of 1965 the first attempt at the use of the ballot box had been punctuated by crises. Nigeria's Federal experience had been chequered by centrifugal pulls in all directions. The politicians had failed to learn effectively the art of compromise, tolerance and participation which the new system required. As Professor Essien-Udom pointed out, federalism had a tremendous appeal in Nigeria *"(...) because the problem which it is capable of resolving is precisely that of guaranteeing a collective sense of security to the*

historic communities or at least some of them. But this preoccupation, judged from Nigeria's political history, had served to heighten the identity crisis, driving more and more Nigerians into seeking refuge in primordial communities, thus complicating the problems of national integration" (20).

Federalism which had been seen as a compromise solution to aggressive ethnoregionalism in Nigeria also had its side effects. It had helped to solidify regionalism and ethnicity. It was, therefore, no surprise to most Nigerians that the "bullet box" easily relegated the ballot box to obscurity in January 1966. The Westminster parliamentary system was brutally kicked to a fatal future (21).

The issue of centrifugal pulls did not end with the exit of civilian politicians. The military inherited the problems of a weak centre in a federal structure with strong regional political and social forces.

When the new politicians in "khaki" uniforms came in, they tried to cope with the problems which had plagued the Nigerian political system. By Decree N°1, 1966 Constitution (Suspension and Modification), the Federal Military Government assumed *"(...) the power to make laws for the peace, order and good government of Nigeria or any part thereof, with respect to any matter whatsoever"* (22). But in practice the regions maintained their autonomy under the new military governors despite the hierarchical military structure.

It took Ironsi five months to make up his mind to centralise political power in Nigeria. The Decree N° 34, Constitution (Suspension and Modification) 1966 (23) abolished the regions, established "groups of provinces" and introduced a unitary form of government into Nigeria's political arena. Furthermore certain grades of officers were to be absorbed into a nation service. Feeling grossly threatened by this action, the North reacted violently in one of the bloodiest forms of communal instability this country had ever witnessed.

Then came the second coup of July 1966 which was the North's vengeful coup. Like the January coup it was only partially succesful. The Eastern Region had not been involved in the coup. From then on, the political crisis took on additional dimensions of hostility between the Eastern Region and Federal Governments. At the instance of General Ankrah of Ghana, Nigeria leaders met at Aburi in January, 1967 (24). This led to a new political experiment in Nigeria's search for appropriate form of government.

Decree N° 59 had returned Nigeria to "Federalism" under the military. Now on March 17, 1967, Nigerian leaders found that they had to grapple with a confederal system as introduced by Decree N° 8, 1967 (25).

By the terms of this Decree the Central Government was rendered virtually at the mercy of regional governments. Major decisions on policies and appointements needed the concurrence of all Military Governors and the Armed Forces were to be decentralized into Area Commands.

For all practical intents and purposes, Nigeria became a confederal system. It took a political coup by General Gowon on May 27, 1967 (26) to end this impasse. Gowon created 12 states in Nigeria, thus attacking effectively one of the basic problems of Nigeria's Federal system - the imbalance in federal structure. But it came on the eve of secession and did not solve the immediate political problems, but had long-term effects. As from the date of creation of states to July 29, 1975 when Gowon was ousted in a bloodless coup, there was no doubt that he had effectively centralized political power. No state was in a position to threaten secession any longer.

Then came the Mohammed regime which shocked Nigeria out of its lethargy and gave a momentary sense of direction to the system. He succeeded in further strengthening the powers of the centre at the expense of states by creating 7 more states, thus bringing the total number of states to 19 (27). The takeover of state television stations is an illustration of centralizing trend in federalism under the military. On the symbolic level, state governments ceased to have state coats-of-arms. Obasanjo continued this process of centralization and followed the political programme of the military to its logical conclusion by the return to civilian rule, October 1, 1979.

On October 1, 1979 the military handed over power to civilians after thirteen years of rule. But the mutual suspicions among politicians and subsequent anti-democratic actions of most of them goaded the military to intervene in politics again in December 1983.

Under General Babangida's programme for a return to civil democratic polity, a new federal constitution (known as 1989 Constitution) has been promulgated after the deliberations of the Constituent Assembly. In addition, a two-party structure for electoral competition has been established with a view to compelling Nigerians to work with one another.

It is very interesting that except for brief period in 1966, Nigeria has always practised one form or the other of federalism. Even military administrations adopt moderated versions of federalism. Elsewhere we have argued that military administration is not necessarily incompatible with federalism (28).

C. Federalism and Nation-Building (29)

A discussion of federalism should also deal with horizontal dimension and the dynamics of inter-group relations.

Nation-building deals essentially with the process of creating unity out of a State - i.e. creating a NATION. It is in the *"formative years of nation-building, while the institutions of federalism develop strength and character and while the people of the federation enlarge their commitment to federalism itself and drive the foundations of their nationalism deep into it - it is in those early years that federalism stands most in need of protection against secessionist dangers. But these dangers are compounded, and the threat immeasurably enlarged, by two factors relevant to many federal experiments of the post-war era - the democratic system and pervasive poverty"* (30).

The secessionist threat to federalism has already been discussed. But perhaps one of the greatest reasons for the failure of Nigeria's first attempt at federalism was the absence of a sufficient political/ideological commitment to the primary concept or value of federation itself (31). While Nigerians opted for federalism out of inter-ethnic insecurity in the terminal colonial period, they failed to generate any commitment to federalism as goal or ideal and backed by comprehension of the very values of federalism. For politicians, federalism provided an opportunity to have ours, and do it our own way. It is not clear that, despite the resurgence of federal sentiments, many of its operators understood and felt committed to it, in the Second Republic.

This observation is important, because it reflects deliberate choice of federalism as a 'bargaining' mechanism as opposed to a 'hegemonic' mechanism (32) for resolving political conflicts. The constitution of 1979 made elaborate arrangements for sharing power, adjusting conflicting interests and permitting autonomous participation. But the majority of Nigerians have not yet imbibed sufficiently federal values which will promote effective inter-group unity.

As Aaron Wildavsky observed : *"Federalism is about cooperation, that is, the term and conditions under which conflict is limited. A federal regime therefore cannot be coordinated any more that it can be controlled or coerced. Federalisme requires maturity not hierarchy, sharing instead of monopoly of power"* (33).

Federalism is thus a mechanism for effecting a compromise. The act of compromise involves delicate balancing of conflicting interests. In Nigeria's erstwhile democratic setting the price of democracy seemed to have been the complication of coordinated efforts towards nation-building, in a way the Military rulers never found it. Secondly, the pervasiveness of poverty in Nigeria amidst plenty meant that conflicts over scarce but allocatable resources would take on greater saliency. The style of life of the politicians who wallowed in conspicuous consumption amidst the abject poverty of the masses dit not help the situation (34).

Let us take a look at the democratic federal setting again. As we observed earlier, there had been attempts in the constitution to regulate areas of conflicting claims for interests, decentralize authority and provide opportunities for participation. The concept of federal character in section 14/3 of the 1979 constitution is to provide for among group interests. This section provided for representation of various groups in public institutions in order to create a sense of belongingness. Section 14/5 had the same clause for the governments of various states as part of the fundamental obligations of governments of the federation.

Yet laudable as it was Nigerians have not yet been able to define appropriately the mechanism for effecting 'federal character'. Does it mean that every state must be represented ? Even then some minority groups may never get represented in federal or state institutions. If all states or local governments are to be represented, what happens to efficiency ? What happens when there are fewer vacancies than the number of states ? If 'federal character' does not mean equal representation of states but an attempt to ensure that one or two groups do not dominate a particular public institution, to what extent can one balance the situation without alienating others and inserting seeds of frustration into the institution. Yet 'federal character' is problematic because it is linked to Western Education which we discussed earlier. Only a sense of political community in which all share the bitter and the sweet in its common historical experience is likely to create a

sense of belongingness to the nation and minimize unnecessary fears and suspicions.

Other public policies were also introduced to promote a sense of mutual confidence in order to achieve some form of unity in the system. States had been created as a mechanism for effecting relative structural balance and reducing fears and suspicions of political domination among Nigerian groups.

The composition of the federal state as stated under Section 3, 1° consisted of nineteen states (35). But there had been numberous demands for the creation of additional states such as, Taraba, New Benue, Kohi, New Oyo, Delta, New Cross River, Anioma, Oshun, Okura, Ebonyi, New Anambra and other states. It was really interesting to watch the number of delegations, which had undertaken political pilgrimages to the centres of power in Lagos to state their cases - on television. Each delegation created the impression that its case was the most important case. Space constraints our treatment of reasons put forward by each delegation for creation of States. The important point is that these reasons were no different from those which have been advanced for earlier exercises in states creation (36). The regime of General Babangida however created two additional states in 1987, i.e. Katsina and Akwa-Ibom in an attempt to cope with the issue.

In addition, the Minority-Majority ethnic group cleavages of old were very much around and were rife in many political parties. At the NPN National Convention in June 1980 in Kaduna, the issue of election of candidates to National Offices brought minority-majority group conflicts to the surface. Ex-Governor Okilo in championing the cause of the minority states (37) accused members of his party of playing *"selfish and sectional politics"* and declared that some Nigerians were not yet rising above their *"selfish and tribal outlook"*. He challenged his partymen : *"We talk of federal character, why are you afraid of equality of states ? Come forward now and accept federal character and equality of states"* (38).

On another occasion, the fear that minority groups might gang up against the majority group led to Mallam Adamu Ciroma, the former Minister of Industries, issuing a warning (or was it threat ?). Mallam Ciroma had warned that any gang up by minorities would extract drastic reactions from majority groups. While there was no evidence of such a gang-up by majority groups, even if such a gang-up were possible, it is not clear that unity among majority

groups could be easily attained as a counteraction given their intrinsic but diverse interests. More often each majority group has found it easier to ally with some minority groups against other majority groups. Cases abound in Nigeria's political history, especially in the ethnoregional politics of 1960-65. Yet, perhaps more important is the fact that these fears were expressed. On February 6, 1981 *The Nigeria Standard* bases in Jos took on the 'battle' cry on behalf of minority groups in the editorial entitled - *The Tyranny of Hausa - Fulani Oligarchy.* This paper accused the *New Nigerian Newspaper* of the *"incorrigible and unabashed consistency with which (it) advances the cause of Hausa-Fulani monopoly of power in Nigeria"* (39).

In yet another editorial, *The Nigeria Standard* called on all minority groups to unite to save the country. In April 1981, ten legislators walked out of the House of Representatives in protest against *"the inclusion of Hausa, Ibo and Yoruba as media of communication in the new Standing Order"* (40). Mr. Agi referred to section 51 of the constitution as imposing *"cultural slavery on the people"* - while Mr. Zubairu threatened that *"minorities in the country would team up and form a political party to fight this issue if the situation is not changed"*. Again, like the majorities, the minorities have always found it difficult to unite. But it is interesting that the members who walked out were from different political parties. The "Wa-Zo-Bia" complex in Nigeria's linguistic domain (often displayed on the TV) is an illustration of the political arena (41).

The Majority-Minority issue defies balancing in a federal system yet a federal system provides for more compromise than a unitary system in this situation. The problem is not only at the national level. At the level of sub-national states, minority-majority conflicts go on. Perhaps only a sense of fairness and justice imbibed and practised over time can assuage the fears and suspicions which this political issue creates. Creation of additional states only creates 'new majorities' and 'new minorities', even though it lessens the level of intensity of conflicts. The issue is not additional states but how Nigerian leaders can prove that they are fair and just to all under their area of authority in order to alleviate existing fears and suspicions as well as establish mutual confidence among groups. States creation is more less a structural solution to structural ailments of the political system. While they may help to cope with other problems in the system, creation of additional states are no 'elixir' to cure all of Nigeria's political ills.

Finally the differential pattern in acquisition of *Western Education* (now a passport to social mobility) had always been a source of fear in the Old

Republic. It is very much around in the Nigerian political arena. The crises over admission of students into universities had led to the establishment of a central body - Joint Admissions and Matriculation Board (JAMB) by the Military Administration in 1977. Yet by 1979 there were widespread protests in parts of the country against the admission pattern into University by this agency. The widespread demands for the abolition of this body has led to the President's submission of a bill to the National Assembly for the establishment of University Entrance Examination Agency. This was aimed at returning admission of students to the University again. The demands for equitable admission formula still goes on and will still go on. The gap between the more advanced and less advanced states in acquisition of education is still there and may possibly widen. One cannot balance the system by holding static the educationally advanced states in order for the educationnaly disadvantaged states to catch up.

Quota system will keep out some of the most brilliant Nigerians from the advanced areas while it is no guarantee for closing the gap. Yet the widening gap between these areas only creates a reservoir of problems for greater crises later. The general argument is that money should be made available to enable them correct the imbalance. But as theorists of change argue, a headstart in education can hardly be slowed down. During one of his tours, former President Shagari chided Niger State When on his state visit to that State he advised that : *"those states which have been nicknamed 'educationally disadvantaged' should strive as much as possible to catch up with the more developed states... let me seize this opportunity to express the concern of my administration over the inability of your state to fill the quota allocated to it in the various government institutions"* (42).

Perhaps one compromise provided within the federal framework is that Niger State (just like other states) has the autonomy and power to do something about improving its level of education by not only investing more funds in it, but practically going out to encourage mass litteracy as ex-Governor Rimi did in Kano which even won for Kano State a United Nations Award.

On balance, therefore, it is in the dynamics of Nigeria's federalism that intergroup relations are likely to blow out of proportion in its intensity in the future. Some of the problems are life-long problems which cannot be solved but only coped with. But it needs the commitment of Nigerians to the federal system and determination to make adjustments to accomodate various group interests. They must realise that not all societal problems can be solved at

a time. Some problems defy concrete solutions in the short-term. There are situations which can only change with time. In other cases, there are no visible solutions and Nigerians must try to offer anodyne to soothe such pains and cope with them.

Echoes of the past are not too faint and the worries of many Nigerians about the survival of the experiment in Presential federalism beyond 1983, was proven right by the 31st December, 1983 military coup. Yet, it must be pointed out that Nigeria has come a long way from Ali Mazrui's stage of coexistence, through contact and may be said to be at the stage of compromise (43) in integrative relationship. Not only have Nigerian groups developed "sufficiently complex diverse and interdependent" relationships requiring peaceful reconciliation, the civil war forced Nigerians to discover many areas of compatibility, even if amidst diversity of identities and interests.

Identities in Nigeria have not coalesced - in fact they take on aggressive dimensions which simmer to the surface quite often. Then occasional upwelling may jolt the system from time to time. There are many waves to be encountered in Nigeria's process of nation-building. At times the ship may yet be badly rocked, but not completely destroyed. From such rough experiences, Nigeria may find new arenas for compromises and reconciliation. Federalism despite its self-contradictions is likely to serve useful functions of compromise for a long while yet.

Conclusion

In this paper we have argued that federalism has within it seeds of discords, even though it serves a mechanism for compromise. Then we went on to illustrate how this happened in Nigeria from a historical perspective.

Basically, we have attempted to show how federalism as a model of government can be used as a mechanism for effecting compromise in a multinational state and what problems emerge in the process. It may also serve as a useful integrative tool for supranational organisations, depending on the variants adopted.

In all federal systems there is a continuing process of adjustment and compromise. No federation has attained a perfect balance between centripetal and centrifugal pulls. Adjustment in one area may affect another area in

the federal scale. In Nigeria the politics of compromise in the federal context have been complex. Out of the various shocks to the Nigerian political system only federalism has survived. Both parliamentary and presidential systems have experimented with federalism. Perhaps the problem is more human than it is institutional. This is why it needs greater patience among all operators of federal-type systems.

Federalism (even given its problems) is likely to be used as a compromise mechanism by Nigerian groups for a long while.

NOTES

1. Literature on Federalism include (among others) : K. C. Wheare, *Federal Government* (1963 Edition) London : Oxford University Press, 1964; Carl Friedrich, *Trends of Federalism in Theory and Practice* (London : Pall Mall, 1968); Daniel J. Elazar, *The Politics of American Federalism* (Lexington, Mass: D.C. Health 1969). Ronald Watts, *Administration in Federal Systems* (London: Hutchinson Educational, 1970); James Sundquist, *Making Federalism Work* (Washington, D.C. : The Brookings Institution 1969).

2. It is interesting that while Nigeria was politically unitary under the British, it was very much administratively decentralized. While Britain always prefered to bequeathe a form of federalism to its ex-colonies, there was no doubt that Nigerians opted for Federalism between 1951-59 - as a result of mutual suspicions and fears of domination among Nigerian groups.

3. Mr. Shridath S. Ramphal, *Keynote Address* at the International Conference on Federalism held at the Nigerian Institute of International Affairs, Lagos, 10 May, 1976, p. 7.

4. Sir Alhaji Abubakar Tafawa Balewa, Mr. Prime Minister (Lagos : Government Printer, 1964) p. 2 - an address to the House of Representatives in September 1957 by Nigeria's Prime Minister.

5. Mr. Shridath S. Ramphal, *Keynote Address*, op. cit.

6. Adebayo Adedeji, *Federalism and Development Planning in Nigeria* in A. A. Ayida and H. M. A. Onitiri (eds.), *Reconstruction and Development in Nigeria : Proceedings of a National Conference* (Ibadan : Oxford University Press, 1971), p. 103.

7. The May 1966 Massacres of citizens of Eastern Nigeria Origin (especially Ibos) was Norhern reaction to Decree n° 34 which made Nigera a Unitary State. For the Northerners, federalism gave them relative control over their own affairs.

8. J. Coleman, *Background to Nationalism* (Berkeley : University of California Press, 1958), pp. 45-46.

9. See A.H.M. Kirk-Greene, *The Genesis of the Nigeria Civil War and the Theory of Fear*, (Uppsala; The Scandinavian Institute of African Studies, 1975), *Research Report* n° 27. Kirk-Greene uses the theory of fear to show some of the ethnoregional problems in Nigeria's federal network.

10. Please note that even the result of the 1963 census exercise was hotly disputed. See account in J.B. Makintosh, *Nigerian Government and Politics* (London : Allen and Unwin, 1966).

11. "Ethnoregionalism" is used to refer to the crystallization of the identity of major ethnic groups with the regional administrative boundaries. In Nigeria (during this period) there were three major ethnoregional groups: The Hausa/Fulani in the Northern Region; the Ibo in the Eastern Region; and the Yoruba in the Western Region. In such situations the desire to protect the interests of the major ethnic groups in that region in competition with those from other regions. The region as an administrative unit becomes the base for competition with other ethnic groups.

12. According to Sklar, with January 1966 coup *"political power had shifted away from the Northern rulers and their allies to a more progressive section of the population. The dangerous imbalance between legal and technological power had be corrected."* Richard L. Sklar *Nigerian Politics in Perspective* in R. Melson and H.Wolpe (eds.) *Nigeria : Modernization and the Politics of Communalism* (East Lansing : Michigan State University Press, 1970) p. 50.

13. It may be noted here that the South was not homogeneous - the East (Ibo mainly) and the West (Yoruba) had a legacy of Competition dating as far back as 1948. In the North, Many minority groups had protested against domination by the majority group and had violently agitated for more states.

14. An illustration of regional interference in foreign affairs is that while the Western and Eastern Regions welcomed Isreali aid and Israeli relations with Nigeria, the Northern Region refused to recognize the existence of Israel and to partake in the

sharing of such aid. See C.S. Phillips Jr., *The Development of Nigeria Foreign Policy*, (Evanston : North Western University Press, 1964) : J.P. Mackintosh. op.cit., p. 285.

15. General Gowon, Broadcast by the Head of the Federal Military Government and Commander-in-Chief of the Armed Forces of Nigeria on 26 May, 1968. See Federal Republic of Nigeria, *Faith in Unity* (Lagos : Federal Ministry of Information, 1970) p. 108.

16. It may be suggested that the constitution did not make the centre any weaker than necessary. The point was that the centre was weakened because of the socio-political constraints in which it had to operate vis-à-vis the large regions.

17. *Nigeria : Proceedings of a General Conference in Review of Constitution* (Lagos, 1958). Also quoted by T. Tamuno, *Separatist Agitations in Nigeria*, *Journal of African Studies*, Vol. 8, n° 4 (1970) p. 568.

18. Kalu Ezera, *Constitutional Developments in Nigeria*, (2nd edition) (London : Cambridge University Press, 1964) pp. 187-188. Awolowo sent the Governor a telegram as follows : *"... I challenge you to deny that people of the Western Region have the right to decide whether or not they will remain in the proposed Nigerian Federation."* If the Governor could not accept these challenge then he was to be rest assure that he had *"dealt a fatal blow to Nigerian unity"*.

19. Mackintosh. op.cit. (1966) pp. 557, 626. Also B. Dudley, *Instability and Political Order : Politics and Crises in Nigeria* (Ibadan, Ibadan University Press) p. 63.

20. E.E. Essien-Udom, *Nigeria - Colony to Nationhood*, *Afriscope*, 2, 1 (1970), p. 21.

21. See an interesting account of the Ghanian experience in Don. S. Roth-Child, *On the application of the Westminster Model to Ghana* in the *Centerniel Review*, Vol.IV, n° 4 (Fall 1960) pp. 465-438.

22. The Federal Military Government, *Constitution (Suspension and modification) Decree n°1, 1966.*

23. The Federal Republic of Nigeria, *Constitution (Suspension and modification) Decree n°34 1966* in *Laws of the Federal Republic of Nigeria*, 1966 (Lagos : Government Printer, 1966) p. A153.

24. See the Federal Republic of Nigeria, *Meeting of the Military Leaders* held at Peduase Lodge, Aburi, Ghana, 4 and 5 January (Lagos : Federal Ministry of Information, 1967).

25. The Federal Republic of Nigeria, *Constitution (Suspension and modification) Decree n° 8, 1966.*

26. *Sunday Times* (Lagos), 28 May 1967, p.1; *Sunday Post* (Lagos) 28 May 1967, pp.8-9 and *Federal Republic of Nigeria.* In this Broadcast Gowon declared a State of Emergency throughout the country and assumed full powers as Commander-in-Chief of the Federal Military Government. He also created 12 states out of the four regional structure - In the NORTH - Benue, Plateau, Kano, North-Western, North-Eastern, North-Central and Kwara States; the SOUTH - East Central, South Eastern, Rivers, Midwestern, Western and Lagos - States-Decree n° 14, 1967 States (Creation and Transitional Provisions) Decree 1967.

27. The seven new states were - Bauchi, Benue, Niger, Ogun, Gongola, Borno and Ondo States. There were created on 3 February, 1976.

28. Please see discussions in J. Isawa Elaigwu, *Nigerian Federalism Under Civilian and Military Regimes,* in *Publius, The Journal of Federalism* (Winter 1988) Vol. 18, n° 1, pp. 173-188.

29. By nation-building we refer to the progressive acceptance by members of the polity of the legitimacy of the necessity for a central government, and the identification (as a result of widening horizons of parochial loyalties) with the central government as a symbol of the nation (vertical relationship). Secondly, it involves the acceptance of other members of the civic body as an equal fellow members of a "corporate" nation - a recognition of the rights of other members to a share of common history, resources, values and other aspects of the state - buttressed by a sense of belonging to one political community (horizontal relationship). Nation-building therefore involves the creation of a political community that gives fuller meaning to the life of the State.

30. Shridath Ramphal, loc. cit. p. 7.

31. Ibid. p. 5.

32. See Donald Rothchild and Victor Olorunsola *Managing Competing State and Ethnic Claims* in Donald Rothchild and V. Olorunsola (ed.), *State Versus Ethnic*

Claims : African Policy Dilemmas (Boulder, Colorado : Westview Press, 1983.

33. Aaron Wildavsky, loc. cit., p. 95.

34. Nigeria is a country in which the gap between the rich and the poor is very clear. It is a country in which M.K. Abiola could donate 1 million Naira to a political party (NPN) a rally held in a surrounding marked by visible demonstration of abject poverty and at a time when workers were on strike for a minimum wage of 300 Naira.

35. Anambra, Bauchi, Bendel, Benue, Cross River, Gongola, Imo, Kaduna, Kana Kwara, Lagos, Niger, Ogun, Ondo, Oyo, Plateau, Rivers and Sokoto States.

36. These reasons includes :
    (1) Discrimination in the present geopolitical setting;
    (2) Possible instability if such states were not created - almost a threat;
    (3) Lack of opportunities for participation and access to scarce but allocatable resources;
    (4) Personal ambitions of individual elites - which are cloaked behind group interests etc.

37. Minority States are those composed of minority groups in the old four regional structure, such as, Niger, Benue, Plateau, Cross River, Rivers, and Bendel States, and now Kaduna and Akwa Ibom States.

38. *The Nigerian Tide*, July 1, 1980, p. 1.

39. *The Nigeria Standard*, 2nd February 1981, p. 1.

40. Ibid., April 4, 1981, p. 1-A member, Mr. Etienam, had proposed an amendment to the section 51 of the constitution which permited Ibo, Hausa and Yoruba as other languages to be used in the House. The walkout came as a result of the Speaker to allow a vote on the issue. The list of those who walked out cut across political parties - Mr. Etienam (NPN - Cross River), Mr. D. Zubairu (NPP - Kaduna), Mr. T.Egbuwoku (UPN - Bendel) and D. Princewell (NPN - Rivers).

41. 'Wa-Zo-Bia' is a TV language programme which translated literally means - 'Come' in Yoruba, Hausa and Ibo languages respectively. It is an attempt at teaching TV audience the three major Niger languages. A compromise in itself, it generated outcries against international cultural imperialism of the major linguistic groups.

42. *Sunday Standard* (Jos) May 17, 1981, p. 3.

43. Ali Mazrui, *Pluralism and National Integration* in Leo Kuper and M.G. Smith (eds.) *Pluralism in Africa* (Berkley : University of California Press, 1971) p. 334. Prof.Mazrui identifies four stages of interrelationship in the process of national integration viz:
    (1) Coexistence - which is "the minimum degree of integration mere coexistence of group within the same borders and the groups need not know of each other's existence.
    (2) Contact - at this second stage, at least groups have "minimal dealings with one another or communication between each other - which need not be friendly.
    (3) Compromise - here "the dealings between groups have become sufficiently complex, and interdependent to require a climate of peaceful reconciliation between conflicting interests." Even though groups still have distinct identities, "the process of national integration has now produced a capacity for constant discovery of compatibility."
    (4) Coalescence - is the final stage in which identities coalesce, "rather than merger of interests". Society is getting "technically complex and functionally integrated." Diverse interests emerge with blurring of identities, but "the conflict of interests is no longer a conflict between two identities."

F. FUKUYAMA, LA FIN DE L'HISTOIRE ET LES WALLONS

Bauduin AUQUIER
Etudiant en 3è Licence en droit, UCL

Korte inhoud

Het artikel van Francis Fukuyama over "het einde van de geschiedenis" heeft heel wat stof doen opwaaien. Als mogelijk overblijvend conflict voor morgen ziet Fukuyame het nationalisme, en hij vermeldt met name het Waals nationalisme. In dit artikel wordt nagegaan in welke mate er inderdaad sprake kan zijn van een Waals (en Vlaams) nationalisme, en welke de effecten ervan zijn op de lopende staatshervorming.

Rares sont les articles tels celui de Francis Fukuyama qui suscitent un aussi vif débat. L'excellente revue Commentaire (1) a publié l'article, qui fait tant de bruit aux USA, de cet universitaire et haut fonctionnaire américain : *"La fin de l'histoire ?"*. Ce débat a ainsi gagné l'Europe francophone et même la Belgique emboîte le pas (2).

Le constat de départ de Fukuyama est assez simple : depuis plusieurs mois, les grands conflits dans le monde s'apaisent. Chacun sent intuitivement qu'un processus de cohérence apparaît ; on assiste à "la victoire éclatante du libéralisme économique et politique" : l'idée, la civilisation occidentale, s'imposent partout. Les seuls et fabuleux mouvements dans l'Europe, anciennement de l'Est, sont les plus vigoureux éloges de la démocratie libérale.

Pour l'auteur, on assiste ainsi au stade final de l'évolution de la démocratie libérale occidentale comme forme finale de gouvernement humain. C'est le moment final de l'évolution idéologique. C'est le retour de l'idée de la fin de l'histoire développée en son temps par Hégel. Fukuyama fait alors un détour par A. Kojève, l'un des meilleurs intérprètes de Hégel à ses yeux, pour lequel

la fin de l'histoire hégélienne, avant que le détermisme ou l'historicisme des lecteurs marxistes n'obscurcissent l'oeuvre, est le constat ou l'idée que l'Etat moderne trouve son fondement dans le souci de respecter la liberté et l'égalité et de ce fait, d'universaliser ces idées. C'est en quelque sorte la prééminence du monde idéal sur le monde matériel, le temps où la conscience est le moteur de l'histoire humaine, où elle est cause et non effet. Le marxisme a tenté de reléguer le patrimoine culturel, l'idéologie, l'esprit dans une superstructure, l'homme n'étant qu'un être matérialiste à la recherche d'une maximalisation du profit.

Selon Kojève toujours, cet Etat universel et homogène est libéral, il reconnaît et protège les droits de l'Homme, et démocratique, il n'existe que par le consentement des gouvernés. Les mouvements à l'Est infirment cette idée de maximalisation, de matérialisme. Pourquoi ces pays ne réagissent qu'aujourd'hui alors que la faillitte économique était patente pour qui voulait bien le voir, il y a 30 ou 40 ans déjà ? Ces mouvements doivent donc être expliqués sur un autre plan. Il s'agit, dit l'auteur, de la victoire d'une idée sur une autre.

Cette première partie de l'article de F. Fukuyama est séduisante. Quelle joie en effet de voir pour les défenseurs de la liberté le modèle démocratique et libéral, l'économie de marché considérés comme le raffinement extrême de toute société. Mais cette analyse en termes de fin de l'histoire rencontre deux contradictions chez l'auteur.

D'abord, posée par Hégel en 1806, cette fin de l'histoire a connu bien des vicissitudes. L'auteur lui-même convient qu'elle a dû affronter d'autres modèles de société que le libéral. Elle a parfois, pour un temps, perdu la lutte. Qu'est-ce donc que ce modèle de perfection qui se fait détrôner, s'il est infaillible. Le modèle pour excellent qu'il soit a connu des errements. Il n'était donc pas au stade ultime. Ce ne serait à défaut d'un stade lors d'une progression linéaire, qu'un moment dans un cycle. Mais il y a alors une autre contradiction. Ce modèle fini, achevé, parfait, autant de synonymes, ne connaîtrait de ce fait aucune évolution ultérieure. Il n'y a donc pas lieu à réflexion critique sur lui-même ! N'est-ce pas l'essence même du totalitarisme ? Voilà la victime devenue bourreau !

Le texte et les idées de Fukuyama partent d'une analyse lucide : le modèle libéral est ce qu'il y a de mieux pour l'heure. C'est une chose. La fin de l'histoire en est une autre ! dangereuse.

Comme le dit Jean-François Revel (3) très justement, cette victoire du libéralisme est surtout virtuelle et morale et pas encore une réalité concrète. Car des défis, il y en eut et il y en aura.

Fukuyama relève, à juste titre que cet Etat universel et homogène a dû rencontrer plusieurs défis qui entendent proposer une alternative au libéralisme ou, à tout le moins, condamner ce libéralisme. Deux sont virtuellement écartés, deux autres restent à venir. Quels sont-ils ?

Le premier fut le fascisme, prônant un Etat fort, ancré dans un sentiment d'exclusivisme national. L'analyse eut mérité un peu plus de nuances. Le nationalisme du nazisme n'a que peu à voir avec celui des fascismes observateurs de Mussolini, Franco ou même Vichy. Il eut les reins brisés en 1945, davantage, souligne Fukuyama, en raison de son manque de réussite que pour la réprobation morale qu'il suscite. Ce point est lumineux. Il faut en conclure qu'une résurgence n'est pas exclue.

Restait l'autre défi, autrement coriace, le communisme. Si elle n'est pas morte, cette idéologie est à tout le moins à genoux. Ce régime a échoué dès le début en matière économique. Il a fallu plus longtemps pour admettre l'échec politique. Les mouvements à l'Est démontrent la caducité de ce régime qui pourrait retarder sa mort par un retour des conservateurs au pouvoir, mais nullement éviter à terme, sa disparition.

Pour l'auteur, il reste deux défis. Le premier, moins important à son estime, est la religion. Défaut du sytème, la vacuité spirituelle des sociétés libérales, engoncées par un certain matérialisme, a laissé un espace libre pour un fondamentalisme religieux qu'il soit musulman, juif ou chrétien. Toutefois, ces mouvements se caractérisent bien davantage par le rejet d'un modèle de société que par la proposition d'une alternative. Ils semblent de ce fait, avoir en leurs flancs les causes de leur échec. Je voudrais être aussi optimiste que l'auteur. Mais le fondamentalisme musulman semble posséder des réserves qui lui assurent un "avenir radieux".

Reste le quatrième défi dont rien n'annonce la disparition prochaine : le nationalisme ! Cette doctrine, dit Fukuyama, n'a pas de contenu politique si ce n'est le désir négatif d'indépendance par rapport à un autre groupe et l'auteur de citer quelques foyers de conflits : les Palestiniens, les Kurdes, les Sikhs, les Azeris et ... les Wallons !

Je voudrais cependant revenir sur le sympathique compliment de la conclusion : les Wallons assimilés aux Palestiniens, Kurdes et autres Tamouls ? Des nationalistes donc ? On pourrait songer à une erreur du traducteur ou à une confusion de l'auteur.

Cet amalgame est un peu facile ; il ne me semble pas témoigner d'une approche nuancée de la situation, d'autant qu'en la matière, si nationalisme il y a, les Flamands sont tout à fait à la hauteur des Wallons.

Le nationalisme wallon ou flamand est, je le crains, une réalité et, pire même, le moteur des réformes institutionnelles. Celles-ci présentent les deux traits minimaux du nationalisme : exacerbation du sentiment national avec rejet, à l'intérieur, de tout qui ne s'y associe pas et d'autre part, désignation d'un autre (ou de plusieurs autres), à l'extérieur, contre lequel l'on s'affirme. C'est l'ennemi, le bouc-émissaire.

La réforme de l'Etat est un phénomène génétiquement belge. Le 11 janvier 1990, nous avons fêté le bicentenaire du traité d'union des Etats Belgiques unis. C'était en quelque sorte une réforme de l'Etat, dans un sens confédéral, en réaction au diplôme impérial du 1er janvier 1787 par lequel l'Empereur Joseph II réformait déjà l'Etat dans un sens très centralisateur. Il y eut un essai plus concluant en 1830, et depuis 1970, bien d'autres réformes encore.

Aucune de ces réformes ne s'est opérée au terme d'un vaste débat, au-delà du monde politique. Nos soucis étaient et restent plus pragmatiques. Ainsi, le 11 janvier 1790, le jour même du traité d'union, la première résolution de la Belgique indépendante fut relative aux moyens d'améliorer le commerce. L'un des premiers actes des révolutionnaires français fut l'adoption d'une déclaration des droits de l'Homme. Autres lieux, autres moeurs !

Dans l'actuelle réforme de l'Etat, le débat est sommairement réduit à deux conceptions : l'une, unitariste, reste attachée au centralisme étatique, l'autre qui se nomme fédérale, revendique un transfert accru des compétences vers les communautés et les régions. Il existe toutefois une troisième voie qui revendique elle aussi l'appelation fédérale et qui se démarque de la première en lui reprochant son refus de prendre en considération la diversité du Royaume mais qui se démarque aussi de la seconde en lui reprochant son (sous-)nationalisme souvent virulent, parfois borné.

Dans le sens de cette troisième voie, l'on pourrait formuler de multiples reproches à la réforme de l'Etat. Elle est certainement très compliquée et non pas simplement complexe. Elle est aussi coûteuse, ce qui s'explique par un certain folklore politique (cfr. les deux ministres de l'enseignement pour la communauté française). L'appellation de communauté "française" d'ailleurs est fausse, démontre une connaissance lacunaire de cette langue qui est la sienne et lui vaut quelques bonnes tranches (méritées) de ridicule, surtout en France. Mais ce n'est pas là l'essentiel.

Les deux maux de ces nouvelles collectivités politiques sont leur dualisme mal fondé et leur besoin de légitimation aux conséquences néfastes.

L'Etat réformé est bâti sur un mode dualiste. La Belgique est un pays qui a la chance d'avoir trois langues officielles. Une petite minorité germanophone qui a donné les plus grands gages de loyauté au Royaume mais que l'on considère cependant comme quantité négligeable. Une très forte majorité néerlandophone, près de 6 millions de personnes, et une forte minorité de francophones, 4 millions.

De ce fait et de l'idée d'évidence admise depuis l'apparition du nationalisme et du concept d'Etat-nation à la révolution française, il ne peut exister qu'un peuple dans un Etat. C'est tout logiquement que l'on s'efforça de bâtir la réforme de l'Etat de manière telle que les Flamands soient ensemble, puisqu'ils forment un peuple, et les Wallons du leur pour la même raison, de la même manière que l'Autriche-Hongrie fut assassinée en 1919 (4).

La Constitution et les lois spéciales et ordinaires de réformes institutionnelles consacrent ce principe. Ce dualisme est donc essentiellement personnel et accessoirement territorial : le critère de division est l'appartenance linguistique.

Techniquement, les régions sont des collectivités territoriales mais la délimitation de leur base territoriale s'opère en fonction des critères de répartition linguistique. Pour les communautés, le principe est plus net encore : le critère premier est l'appartenance linguistique.

Cette division personnelle pose d'insolubles problèmes pour les régions limitrophes. C'est l'aporie du nationalisme : la plupart des frontières intra-européennes sont le fait du hasard et rarement sinon jamais la limite

culturelle entre deux peuples. Il n'existe pas plus de frontière linguistique sociologiquement certaine en Belgique. Toute la frontière linguistique, donnée juridique arbitraire, est jalonnée des célèbres communes à facilités. La région bruxelloise, où se retrouvent néerlandophones et francophones, est elle aussi élaborée, pour partie, sur la séparation en commissions communautaires.

A l'instar des séparations sur base raciale ou religieuse, la séparation linguistique me semble critiquable au regard de l'article 14 de la Convention européenne de sauvegarde des droits de l'Homme. Mais il y a plus. Le citoyen belge qui s'installe dans une autre collectivité est l'autre, l'étranger, puisque sa langue n'est pas celle qui fonde la collectivité où il s'installe. Bâtir un Etat fédéré au regard d'un critère personnel donc exclusif de l'altérité est pour le moins nationaliste !

Cela m'amène à la question de la légitimation. L'Etat n'en a plus besoin, il a presque 160 ans ; nos provinces peuvent alléguer une légitimité plus ancienne car elles renvoient, certes avec d'importantes modifications aux principautés de l'Ancien Régime. En revanche, les communautés et les régions, créées de toutes pièces, ont un cruel besoin de se légitimer.

Contre l'autre langue : elles ont trouvé dans la division linguistique un terreau remarquable, par le rejet de cet autre, l'agresseur permanent. Mais il leur faut plus. Contre l'Etat central, il leur faut sans cesse davantage de compétences pour justifier de leur utilité ; il leur faut accentuer l'interventionisme pour convaincre de leur nécessité. C'est ainsi qu'elles ont exigé et obtenu des compétences internationales, fait sans précédent dans les annales du droit constitutionnel comparé. Des compétences en matière étrangère, c'est là le signe de la souveraineté ; il ne s'agit plus de fédéralisme mais de confédéralisme. Chaque réforme depuis 1970 a accru les compétences fédérées, 1980, 1988, et en 1990 le pouvoir résiduaire ?

Il est à noter que c'est sans difficulté logique aucune que ceux-là qui défendent en Belgique un (sous-)nationalisme revendiquent, dans le même temps, l'idée fédérale européenne.

Mais c'est surtout contre la démocratie que se fait cette réforme. Les exemples sont multiples : interdiction de présenter des listes bilingues, refus de partis politiques communs aux deux entités nationales, interdiction

d'obtenir des documents administratifs dans sa langue, expulsion d'un sénateur flamand du conseil régional Wallon parce que les étrangetés du système électoral l'y on amené, multiples réformes constitutionnelles sans l'avis et parfois contre l'avis de la nation. Il faut d'ailleurs remarquer que la plupart des réformes furent le fait d'un tout petit nombre de personnes, jamais plus de vingt, hauts responsables politiques et leurs conseillers, et qu'elles furent ensuite imposées au Roi et au Parlement, sous peine d'expulsion du parti pour les parlementaires récalcitrants.

L'allusion au nationalisme des Wallons par Fukuyama n'est pas sans fondement, mais il devrait s'adresser autant aux Flamands qui dans leur genre sont de vrais nationalistes. Sur le plan interne, ils ont éjecté la présence francophone (cfr. l'expulsion de l'aile francophone de l'université catholique de Louvain) et sur le plan externe, ils ont imposé l'idée d'une Belgique à deux vitesses dont le poids mort est naturellement la Wallonie.

Loin d'apaiser les conflits linguistiques, les collectivités nouvelles sont fondées sur la division et la recherchent en tant qu'elle conditionne leur légitimité.

Il existait cependant, et il existe toujours, une autre optique : l'idée fédérale réalisée par les provinces. Ces collectivités territoriales ont des structures existantes, sans souci de légitimation ; elles sont territoriales et sans référence aux appartenances linguistiques. Rien n'empêche le maintien d'une collectivité de type communautaire, mais plus légère sans doute, pour les matières strictement culturelles afin de répondre utilement à la diversité culturelle du pays. La petite taille des provinces a le double avantage de posséder des dirigents proches de la population et donc mieux contrôlables par l'électeur et, d'autre part, elles n'ont pas le poids suffisant pour paralyser l'Etat.

Il serait dommage de voir que le premier pays du continent à avoir démontré dans les faits l'Etat libéral, précédé en cela des seuls Angleterre et USA, soit en 1990 miné par un retour de flamme nationaliste.

Enfin, espérons que tant l'article de Fukuyama que les problèmes de la troisième phase de l'Etat suscitent les débats qu'ils méritent. La réforme de l'Etat n'est pas le monopole des seuls présidents de parti.

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LANGUAGE CONFLICTS SEEN FROM A LEGAL STANDPOINT

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Korte Inhoud

Er wordt heel wat wetgevend werk verricht op het gebied van taalgebruik. Het doel ervan is veelal het geven van een oplossing voor problemen die rijzen uit contacten tussen verschillende talen, en de daaruit voortvloeiende conflicten en ongelijkheden.
Dit artikel biedt eerst een typologie van taal-wetgevingen. Vervolgens worden, geïllustreerd met concrete gevallen, drie fundamentele vragen besproken :
1) Welke is de legale betekenis en reikwijdte van "taalrechten" ?
2) Heeft de wetgeving betrekking op de taal zelf of op de gebruiken ervan ?
3) Wat is de preciese legale betekenis van "taal" in de taalwetgeving ?

Sommaire

Beaucoup de travail législatif est fait en matière d'emploi des langues, souvent dans le but de résoudre des problèmes soulevés par les contacts entre différentes langues et les conflits et inégalités qui en découlent. L'article ci-dessous présente d'abord une typologie des législations linguistiques. L'auteur en arrive ensuite à trois questions fondamentales, illustrées d'exemples concrets :
1) Quelle est la signification juridique et la portée des "droits linguistiques" ?
2) La législation porte-t-elle sur la langue même, ou sur ceux qui en font l'usage ?
3) Quelle est l'exacte signification juridique de "langue" dans la législation linguistique ?

Introduction

The Tower of Babel is unquestionably the most interesting and timeless language problem there is. Today, who knows how many thousands of languages are spoken throughout the world because, among other things, of the difficulty of defining a language in linguistic terms (1).

Why, then, do states make language issues such a significant sphere of legislative activity ?

Significant language legislation presupposes the simultaneous presence of contacts, conflicts and inequalities among languages within a given political context in which objectively and subjectively dominant and dominated languages, and therefore linguistic majorities and minorities, coexist in a problematic situation.

The basic goal of all language legislation is to resolve, in a certain way, the linguistic problems which arise from these linguistic contacts, conflicts and inequalities, by planning or laying out the status and use of the languages present according to certain rules or by following certain criteria.

On the one hand, language legislation is broken down into two categories, depending on the field of application : legislation dealing with the official use of languages and that dealing with non-official use of languages.

On the other hand, language legislation can be divided into four categories, depending on its function : official language legislation, normalizing language legislation, standardizing language legislation and liberal language legislation.

Language legislation typology

"Official language legislation" is the term applied to any legislation whose purpose is to make official one or more designated languages in the official spheres of legislation, justice, the public administration and education. One or more designated languages can be made official in various ways : by formally terming them official languages or national languages, by designating them as "the" language(s) of certain official domains, or by granting them a legally superior status compared to other languages.

As such, the formal granting of official status to one or more named languages does not necessarily give rise to significant legal consequences. The legal meaning and scope of the notion of official language will depend on the actual legal treatment of the language in question.

In some situations, the granting of official status to one or more named languages in a given political context produces no more than a psychological impact which, nonetheless, should not be neglected.

"Normalizing language legislation" is the term applied to legislation whose purpose is not only to grant official status to one or more named languages, but also and especially to normalize these languages in the non-official spheres of work, communications, culture, trade and business.

To normalize one or more named languages means to make them the normal and usual languages of a country or a region with a view to making them eventually the common language or languages. It goes without saying that where a language is a genuine common language, the normalization function serves no purpose.

"Standardizing language legislation" is the term applied to language legislation whose purpose is to standardize one or more named languages in very specific and sharply demarcated, generally official, spheres. This standardization function, which is applied especially in the official usage sphere or in non-official technical terminology, must be applied with a great deal of caution and in accordance with linguistic usage, for reasons that can easily be imaged.

"Liberal language legislation" is the term applied to language legislation whose purpose is to enshrine, in a certain way, explicitly or implicitly, the legal recognition of linguistic rights such as, for instance, certain provisions of the constitutions of India, Singapore and Yugoslavia (2).

Language legislation in Canada, Québec and other countries

The 1977 Charter of the French Language, popularly known as Bill 101, a classic example of essentially normalizing language legislation, embodies the four functions described above. This makes it an almost unique case of exhaustive language legislation, taking into account, of course, the division

of powers and linguistic provisions provided under the Canadian Constitution. Bill 101 is designed specifically, on the one hand, to make official, normalize and standardize French in Québec and, on the other, to legally acknowledge, in an almost always impersonal and rarely personal way, as well as in an unequal and incomplete way, the general right to a designated language, French, the specific right to certain designated languages, including English and certain Amerindian languages, and the more or less limited right to certain non-designated languages. Here indeed is proof that these four functions are not neccessarily incompatible with each other.

The 1969 Canadian Official Languages Act, for its part, is a classic example of official languages legislation since it is essentially designed, within the sphere of federal jurisdiction, to grant official status to the country's two languages, French and English. That is why it recognizes the lingusitic rights to only "two" languages. Moreover, the new (1988) federeal Bill C-72, on the country's official languages, goes somewhat beyond the sphere of official language use.

With respect to language legislation elsewhere in the world, a 1979 United Nations study, the Capotorti Report, summarizes the situation very well, more specifically concerning the use of minority languages. Although the report is not complete in itself, it notes that in the realm of non-official language use, *"the information obtained failed to reveal any instance (in the world) showing that the rights of individuals belonging to linguistic minorities to use their own language outside of official use had been forbidden or placed under legal restrictions"* (translation). In the realm of official use of languages, the report notes that *"in some countries, minority languages are very widely used for official matters, while in others, their use is limited to certain specific activities"* (translation) (3).

Juridico-linguistic problems

All language legislation raises a number of juridico-linguistic problems. Among the most important ones, the following, which are interdependent, are particularly worthly of mention :

I. What are the legal meaning and scope of the expression "linguistic rights" ?

II. When language legislation is designed to cover a specific language, does it cover the language as such or the speakers of that language ?

III. When language legislation is designed to cover a specific language, what are the legal meaning and scope of the language in question ?

I. The legal meaning and scope of the expression "linguistic rights"

To better understand the legal meaning and scope of the expression "linguistic rights", a brief examination of four decisions, one European and three Canadian, is required. More specifically, we shall examine the 1968 decision of the European Court of Human Rights in a case concerning certain aspects of Belgium's regime governing language of instruction (4), two decisions of the Québec Court of Appeal in the Devine and Ford cases, handed down December 22, 1987 (5), and four decisions of the Supreme Court of Canada, dealing with language rights in Manitoba, handed down June 13, 1985, the MacDonald and Société des Acadiens cases, handed down May1, 1986, and the Mercure case, handed down February 25, 1988 (6).

In the 1968 European decision, the Court indeed said that the linguistic rights were not fundamental rights. However, the point at issue in this decision was official language use, more specifically the linguistic rights in the field of education. In the two Québec decisions, the Québec Court of Appeal said the linguistic rights were fundamental rights which implicitly are an integral part of freedom of speech which in turn is explicitly recognized and protected in Canada and Québec as a fundamental right. However, in both these decisions, the question at issue involved the non-official use of language and more particularly the linguistic rights in the fields of advertising and commercial signs, as well as in business names.

It seems to me that these decisions point out that, for all practical purposes, the linguistic rights become specific to one or several designated languages in the sphere of official use of languages. This is easily understandable under the circonstances, since a state cannot, in practice, use the languages of all its citizens and consequently may limit itself, if need be, to its official language or languages or to some languages, in one way or another.

Moreover, a linguistic right that is specific to one or several designated languages, in official use, is not necessarily a fundamental right in itself. This emerges from the Supreme Court of Canada's decision in the MacDonald case. The Court decided that the right to use French or English in the judicial sphere in Canada, in accordance with the written provisions of the Canadian Constitution, is not necessarily a fundamental right in itself, but rather a

historical right. Further, according to the Supreme Court, the right to be heard in any language before a Canadian court would be a fundamental right arising from common law and as such, could not be subject to a derogatory clause passed by the federal Parliament or a provincial legislature since it is almost "inconceivable" that they would completely suppress this type of fundamental right.

In its reference concerning language rights in Manitoba, the Supreme Court stated : *"The importance of language rights is grounded in the essential role that language plays in human existence, development and dignity. It is through language that we are able to form concepts, to structure and order the world around us. Language bridges the gap between isolation and community, allowing humans to delineate the rights and duties they hold in respect of one another, and thus to live in society..."*. In addition, in the Société des Acadiens case, the Court stated that : *"... language rights belong to the category of fundamental rights"*, while in the Mercure case, it stated that *"Language rights constitute a well known type of human rights"* (translation) and that *"Rights concerning the French and English languages are essential to the nation's health"* (translation) (7).

A distinction must therefore be made between the linguistic rights to "a" language, which are eventually historial rights, and the linguistic rights to "the" language, which are necessarily fundamental rights.

In principle, the right to "a" language or to several designated languages and the right to "the" language, provided it is recognized, should include in official language use not only the rights to express oneself and communicate, but also the right to demand to be heard and served in the language or languages used.

Moreover, in non-official language use, the right to demand to be heard and served in a given language should be attenuated in linguistically unilateral situations and recognized conditionally in linguistically bilateral or multilateral situations.

II. Does language legislation cover a language as such or the speakers of that language ?

When language legislation is designed to cover a specific language, does it cover the langauge as such or the speakers of that language ? As it happens,

this is not a question of secondary importance, but rather a fundamental issue which has been considered by judges in France and in Québec.

There have been a large number of decisions in France on this issue and, until quite recently, they were virtually unanimous that the French language law, specifically Law n 75-1349 of December 31, 1975 essentially covered only Francophone speakers of the language as consumers. Two decisions of the Cour d'appel de Paris (Paris court of appeal - criminal division) the first in the France-Quick case (1984) (8), and the second in the Steiner case (1985) (9), are mainly responsible for entrenching this position. This manner of interpreting French language legislation was reflected in a flexible and conciliatory application of linguistic legislation.

However, in a decision handed down October 20, 1986 in the France-Quick case, the Cour de cassation (supreme court - criminal division) stated that the purpose of French language legislation was essentially to protect and promote the French language (10).

This means that for all practical purposes, the December 31, 1975 French law is a public policy law, with all the resulting formidable legal consequences. One of the first consequences of this decision was the ruling of the Cour d'appel de Versailles (Versailles court of appeal - criminal division) in the France-Quick case, June 24, 1987, in which French language legislation was interpreted and applied in a manner that was both rigid and flexible (11).

However, it could well be that the tendency evident in the decision of the Cour d'appel de Versailles will remain an isolated case if one takes into account, for instance, the three recent judgments, of the Tribunal de Police de Paris (Paris court of first instance - criminal division), the first on September 15, 1987, in the Au bon marché case (12), the second on November 10, 1987 in the Régie autonome des Transports Parisiens case (13), and the third on November 24, 1987 in the Aeroflot Airlines case (14).

In the first case, the Court, while finding the shopkeepers concerned guilty of having used a label written in English only, stated *"that it is appropriate, however, to grant the benefit of the doubt to those who have taken steps to correct the situation as soon as they became aware of it"* (translation).

In the second case, referring to bilingual signs written in English and French, placed on Paris busses, in which the English text is given greater prominence

than the French, the Court stated that : *"The preponderance of the volume of writing in the foreign version, attributable to the objective of encouraging which is certainly praiseworthy in terms of the general national interest does not imply any priority of use for this version over the French version"* (translation).

In the third case, the Court agreed that the expression "Soviet Airlines" is the denomination of a typical product and as such complies with the provisions of French language legislation.

In all three cases, the Tribunal de Paris acted as if the French Law of December 31, 1975 was not a public policy law and thus for all practical purposes disregarded the October 20, 1986 decision of the Cour de cassation. It may be that the Tribunal de Paris acted in this way because, in any event, a language law whose object is the language and, therefore, an object which is difficult to appropriate legally, must be interpreted and applied in a flexible and conciliatory manner, especially in the sphere of non-official language use (15).

There have been two important decisions in Québec, the first by the Montréal Court of sessions of the Peace, in the Sutton case on February 23, 1983 (16), confirmed in Superior Court that same year (17), and the decision of the Québec Court of Appeal in the Miriam case, March 22, 1984 (18).

In both these decisions, the judges stated that in certain specific situations, "Bill 101" applies to Francophones only if they explicitly demand to be served in French, hence the conclusion that Francophones can forgo these rights, which evidently assumes that "Bill 101" is not considered a public policy law.

Moreover, in a 1984 decision in which the parties involved did not even invoke the relevant provisions of Québec's language legislation, the Québec Superior Court stated that a photocopy machine maker, whose machines were supplied with instructions in English only, could not be held responsible for the death, in 1980, of an apparently unilingual Francophone worker as a result of careless use of the machine. The Court held that *"the English language evidence given by the victim is contradictory"* (19). True, the Québec Court of Appeal overturned this decision on May 8, 1985, but not because the warnings on the photocopier were written in English, but rather because these English-only warnings were not "relevant" (20).

To conclude, I believe language legislation should include a provision stating clearly whether or not it is a public policy law. However, in addition, where there is doubt, it is preferable that it not be considered a public policy law, to avoid the formidable legal consequences resulting from the interpretation and application of any legislation of this kind.

There is another highly interesting Québec decision in this field. The Gingras v. Robin case involved an incident which occured in 1980 and was decided in 1984. As a result of the incident, an unilingual Francophone employee was severely burned while using a dangerous product the instructions for which were written in English only. Although the relevant provisions of Québec language law were not invoked by the parties involved, the Court convicted the company which sold the product, not because the instructions were written in English only, but because it had given a verbal explanation in French of how to use the product which was completely inadequate. In this instance, the following statement by the Court is very interesting : *"I am inclined to say that when a hazardous product is purchased, the user has an obligation to have the text translated before using the product if he does not understand English, and an obligation to follow the instructions"* (translation) (21). The Court also states : *"The quality of product 528 is not at issue. Neither is the adequacy of the instructions on the container ... The defendant's guilt does not rest on the fact that product 528 was made available"* (22).

Moreover, it should not be overlooked that in Québec's legal context, which is remarkably complex because, for instance, it has both Common Law and Civil Law origins and structures, a criminal offence does not automatically give rise to a civil offence, in contrast to the situation under French law in which there is a connection between civil and penal actions. This is why, in the 1779 Dominion Ginseng case, tried under civil law, the Québec Provincial Court acquitted a company which sold products whose labels were in violation of the relevant provisions of section 51 of Bill 101. The Court considered that this section does not constitute a public policy law and does not prohibit the sale of products whose labels do not comply with "Bill 101". According to the Court, sanctions, if any, could only be penal (23).

In short, if language laws are interpreted and applied in a flexible, conciliatory, and restrictive fashion, particularly in the field of non-official language use, it is because of the fundamental premise at the outset that these laws are designed essentially for the speakers of a language as consumers, or

because language is a phenomenon which is very difficult to appropriate legally.

It is clear that from a legal point of view, language law has a relatively minor impact. However, the situation is quite different when it comes to a language law's psychological impact, which is frequently very significant. Despite the fact that according to a 1985 report of the Québec Bar Committee on Legislation, "Bill 101" is a classic example of "vague and obscure" legislation, it must be recognized that this legislation has had and continues to have a remarkable psychological impact of Québec (24). That is why there can be and in fact are language policies throughout the world with or without language legislation.

III. The legal meaning and scope of a language covered by a language law

When language legislation in France and Québec decrees, for instance, that certain advertising or commercial documents must be written in French, what is meant by the expression "in French" from a strictly point of view ? In other words, when is a text considered to be displayed in French and when is it not considered to be displayed in French, from a legal point of view ?

This is the most interesting question in the juridico-linguistic field and one on which judges in France and Québec have spoken time and again.

To better answer this fundamental question, the following two main rules underlying all legislation of a linguistic nature must be established :
1) language legislation never requires absolutely that a language be used; this requirement arises only when a legal deed or fact covered by a language law is performed or must be performed;
2) language legislation only covers a language to the extent that the language includes any linguistic meaning which can be legally appropriated, that is relatively appreciable or quantifiable or relatively translatable or understandable in a given language. Consequently, anything linguistically neutral or artificial or arbitrary or fantastic or absolutely incomprehensible or untranslatable in a given language, since it cannot be legally appropriated, is not covered by the provisions of language legislation.

Having said that, a text is legally displayed in French when it generally satisfies the following four conditions; the French text is a written text; the French

text is essentially, but not exclusively, in French; the French text is a relatively understandable or intelligible text; the French text is formally French; in other words, the language as medium, not a message, is covered by all language legislation. The linguistic content of a legal text or document is possibly covered by non-linguistic legislation such as the penal and civil codes.

Similarly, a text is legally considered not to be displayed in French when it is both relatively understandable or intelligible in another language and relatively translatable into French.

There are five interesting French decisions on this issue. In the Balignant case of March 13, 1984, the Tribunal de Police de Paris found the accused guilty for having published an advertisement in Le Monde in English only : *"Whereas the sentence employed in the advertisement 'we are looking for fluent English speaking secretaries' unequivocally means "nous recherchons des secrétaires parlant l'anglais courant"'*. The decision was upheld by the 11th Chambre de la Cour d'appel de Paris, October 11, 1984 (25).

In the Steiner case, December 1, 1984, the Tribunal de Police de Paris made the following statement concerning the expression "Show-Rooms Steiner": *"Whereas, in addition, the word show, which is found in all good French language dictionaries, is easily understandable by everyone; that the expression show-room, designating a place, is not likely to offend a consumer, particularly since this special place is designed for a well defined clientele which knows what it is looking for; whereas there is no French translation for the expression show-room and it would be inquisitorial and abusive to impose on the Société Polytechnique du Siège the terms 'hall' or 'salle d'exposition' if it considers that show-room better corresponds to show it displays and sells its products"* (26). The Cour d'appel de Paris upheld this decision on November 27, 1985 (27).

In the France-Quick case, the Cour d'appel de Paris, in a decision handed down December 14, 1984, acquitted a company accused of having used the following terms and expressions : "Giant", "Big", "Bigcheese", "Fishburger", "Hamburger", "Cheeseburger", "Coffee-drink", and "Milkshake" because, *"in the particular situations, the expressions were either fantastic or understandable by French consumers"* (28). True, this decision was reduced by the Cour d'appel de Versailles, in a decision on the same case handed down June 24, 1987 (29). In this decision, the Cour d'appel de Versailles concluded that these terms and expressions did not fall within the

French language, contrary, it added, to the expression "plum-pudding" and "spaghettis". On October 20, 1986, the Cour de cassation overturned the decision of the Cour d'appel de Paris and referred the case to the Cour d'appel de Versailles (30).

In its decision in the France-Quick case, the Cour de cassation affirmed, without going into too much detail, that only some terms and some expressions were fantastic and thus legally acceptable in French.

There are four relevant decisions in Québec, the first and second decisions concerning the Charles Gagnon case, the third concerning the Hobbytronique case and the last one concerning the Restaurant Dunns Inc. case. In the first decision, on April 9, 1986, the Québec Court of sessions of the Peace had found the owner of a hotel guilty for having posted the term "office" instead of "réception" (31). Upon appeal, the Québec Supérior Court, on December 15, 1986 acquitted the motel owner, having decided that under the circumstances the term "office" constituted a Québec expression not prohibited under the law (32). The case is now before the Québec Court of Appeal.

In the third decision, August 16, 1985, the Québec Superior Court acquitted a company accused of posting commercial messages apparently in English only, because of the reasonable doubt it had over the linguistic meaning of the said messages (33). In addition, the Court concluded that under the circumstances, this kind of case was "minimal" and needlessly "irritating".

In the fourth case, dating from January 23, 1987, the Montréal Court of session of the Peace acknowledged that the expression "smoked meat" was, for all practical purposes, French, in spite of the fact that the Office de la langue française had normalized the expression "boeuf mariné" for the purpose (34). In the opinion of the Court, the expression "smoked meat" is understandable by Québec consumers !

Why do judges display so much caution and tolerance (and, why not, so much common sense) when it is a question of legally defining a language in its specific linguistic manifestations ? There are, of course, many reasons. First, taking what has previously been said into account, the natural conclusion is that the linguistic phenomenon is difficult to appropriate legally. That is why, in general, the term "mother tongue" is avoided in language legislation, because that concept is also difficult to appropriate legally. That explains

why, indeed, the state relies on the statements of the persons involved when, for whatever reason, it must take that concept into account and also why the state prefers the expression "language of usage". Furthermore, legal norms and jurists are generally closer to custom than are grammarians and linguistic norms to usage. Jurists are very sensitive to custom and to usage, as are socio-linguists. Custom (legal) and usage (linguistic) are the spheres of freedom and tolerance.

Also, legal norms are otherwise more restrictive than linguistic norms, which is why caution is needed in their application. Finally, the model for the jurist who conceives, drafts, interprets and applies legal norms is the product administrator or reasonable person, who is by no means perfect. On the other hand, grammarians adopt the model student as their norm. This is why, allowing for exceptions, the quantity or presence of a language is generally covered by language legislation, rather than the quality or correction of a language. This explains, again allowing for exceptions, why language legislation does not cover barbarisms, borrowings and solecisms, especially in non-official language use. The quality or correction of the language is the domain of the school, persuasion and example.

Moreover, it should not be believed nor should the impression be given that this is a recent phenomenon or problem. The ancient Greeks spent much time quibbling over the benefits or detriments of the analogy understood as an almost religious respect for the rules of grammar and of linguistic tradition and of the anomaly seen as a synonym of linguistic freedom and creativity(35). For reasons which remain obscure, Caesar, who in his own way was both a jurist and a linguist, gave his support to the analogy (36). In the Middle Ages, Dante wrote a remarkable book on the subject : *De Vulgari Eloquentia* (37). And what can one say of the Greek Constitution, which came into effect in 1952, and stated that *"the official language of the country is the language in which the Constitution is written"* (38) ! It could not be named, because the Greek language did not have the same meaning for the Greeks! Furthermore, that section prohibited any attempt to corrupt the official language ! The historic polemic between classical Greek and demotic Greek has given way to the inevitable victory of demotic Greek.

Conclusion

To conclude, it should be emphasized that while language law is accompanied by social crisis, it is also true that it is accompanied by hope in society. Indeed, the attempt to resolve social conflict by law in general, and by language law in particular, is certainly the most attractive and fortunate course of action. In spite of everything, language remains a field of freedom and law, a field of tolerance, particularly today when there is increasing recognition, albeit timid, of linguistic rights. Language remains a valuable universal tool of expression and communication, both individual and collective, which is relatively peaceful and only rarely used as a tool of war.

Since linguistic rights may be both individual and collective, belong equally to language minorities and majorities, are tied in a complex way to the concepts of national culture and identity, and language is difficult to appropriate legally, it follows that all language legislation should be conceived, drafted, interpreted and applied in a prudent and reasonable way if it is to be both respected and respectable.

To do so, language law, to the extent it includes both legal norms and linguistic norms, must be the joint work of jurists and linguists, not only to produce more elegant language legislation, but especially so that it is, finally, more easily applicable and applied and so that, under certain conditions of course, linguistic rights, and hence the right to be different, become an explicit and concrete reality. It is no longer appropriate to simply prohibit, in a negative way, all forms of linguistic discrimination. Rather, it is time to promote, in a positive way, linguistic rights. As the Québec Court of Appeal stated in 1987, in the Devine and Ford cases (39), language non-discrimination does not prevent the use of a language being prohibited in certain fields, in contrast to linguistic rights which disallow this form of prohibition.

This recognition must be expanded further and further, while avoiding the pitfalls of linguistic statism. After all, we do not want a return to Robespierre who, in a decree of 28 Prairial of the second year of the one and indivisible Republic, stated : *"Citizens, the National Convention has sensed the importance of a law on the instruction of French for Citizens in various departments where different dialects are spoken. In a republic which is one and indivisible, there must be one language. A variety of dialects belongs to federalism and is a sign of tyranny; it must be utterly broken since it could be put to use by those of ill will"* (40).

Notes

1. Breton, R. (1983), *Géographie des langues*, Paris, 117.
2. Turi, J.-G. (1977), *Les dispositions juridico-constitutionnelles de 147 Etats en matière de politique linguistique*, Québec, CIRB, 83-92, 137-139, 159-162.
3. Capotorti, F. (1979), *Etude des droits des personnes appartenant aux minorités ethniques, religieuses et linguistiques*, New York, 81.
4. Case concerning certain aspects of Belgium's regime governing language of instruction, July 23, 1968, (1968), *Annuaire de la Convention européenne des droits de l'homme*, 833.
5. - Devine v. Attorney General of Québec, C.A. n° 500-09-000513-820.
   - Attorney General of Québec v. Ford, C.A. n° 500-09-000109-850.
6. - Re *Manitoba Language Rights*, (1985), 1 S.C.R., p. 721. See especially p. 744.
   - Société des Acadiens v. Association of Parents, (1968) 9, 1 S.C.R., p. 549. See especially p. 578.
   - MacDonald v. City of Montréal (1986), 1 S.C.R., p. 460. See especially pp. 500-501.
   - André Mercure v. Attorney General of Saskatchewan, decision n° 19688. See especially p. 32 (opinion of Mr. Justice La Forest).
7. See note 6 for references.
8. Decision n° 1327/84, December 14, 1984, 13th Chambre des appels correctionnels, Section B, Cour d'appel de Paris.
9. Decision n° 851233, November 27, 1985 of the 13th Chambre des appels correctionnels, Section B, Cour d'appel de Paris.
10. Decision n° 85-920-934, October 20, 1986, of the Chambre de criminelle de la Cour de cassation.
11. Decision n° 69-87, June 24, 1987, 7th Chambre de la Cour d'appel de Versailles.
12. Judgment n° 123-307, September 15, 1987, Tribunal de Police de Paris.
13. Judgment n° 129-670, November 10, 1987, Tribunal de Police de Paris.
14. Judgment n° 131-254, November 24, 1987, Tribunal de Police de Paris.
15. Because of the nature of the linguistic phenomenon, which is difficult to appropriete legally; see below, pp. 8-11.
16. R. v. Sutton, (1983) C.S.P. 1001.
17. 1983, C.S., decision of August 15, 1983, n° 500-36-000136-831.
18. S.C.F.P. v. Centre d'acceuil Miriam, (1984) C.A. 104.
19. Provencher v. Adressograph-Multigraph du Can., C.S. January 23, 1984, n° 500-05-011333-810, p. 11.
20. Provencher v. Adressograph-Multigraph du Can., May 8, 1985, n° 500-09-000249-847, p. 9 (opinion of Judge Bisson).
21. Gingras v. Robin C.S., decision of August 31, 1984, n° 750-05-000021-815, p. 25.

22. See note 21, p. 31.
23. Dominon Ginseng v. Yvon Brouard, C.P., decision of October 11, 1979, n° 200-02-005210-788.
24. Québec Bar, *Report of the Committee on Legislation*, Montréal, 1985, p. 7.
25. Decision published in *Le Monde*, August 16, 1985, p. 5.
26. Decision n° 148-705, December 1, 1984, of the Tribunal de Police de Paris.
27. See note 9.
28. See note 8.
29. See note 11.
30. See note 10.
31. Attorney General of Québec v. Charles Gagnon; decision n° 200-27-005463-855.
32. Charles Gagnon v. Attorney General of Québec; decision n° 200-36-0000035-86.
33. Unreported decision, (1985) C.S., n° 200-36-254-857.
34. Attorney General of Québec v. Restaurants Dunns Inc.; decision n° 500-27-008735-864.
35. Rey, A. (1987), *Equilibre et déséquilibre lexical* (paper presented in San Sebastian in September 1987, at the proceedings of the 2nd World Congress of the Basque Language).
36. Caesar (1976), *De Analogia*, Rome.
37. Dante, A. (1957), *De Vulgaria Eloquentia*, Le Monnier, Florence.
38. See note 2, p. 80 (section 107 of the Greek Constitution).
39. See note 5.
40. Document in the archives of the Commissariat général de la langue française, Paris.

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