

Ethnicity, Identity, Participation and Social Justice: A Constitution for New Nepal?

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1. Ethnicity and the Restructuring of the State

The 1990 Constitution of Nepal acknowledged the country to be ‘multi-ethnic and multi-lingual’. Yet it described the state as indivisible and sovereign and created a highly centralised government. It declared Hinduism as the official religion and made Nepali (in the Devnagari script) the sole official language. The King, closely associated with a particular religion and social structure, was described as the symbol of the Nepalese nation and the unity of the Nepalese people. It thus established (or more accurately endorsed) the exclusionary nature of the state, oriented towards the majority religion, the majority language, and the majority culture. The ‘first past the post electoral’ system restricted the access to, and participation of minority, marginalised communities in institutions of the state. The hegemony of the high caste elite, in control of major political parties, was to be preserved by prohibition of sectarian and ethnic parties. The people of Nepal were envisaged as a ‘collectivity’ and the assertion of identity on the basis of religion, caste or language was banned. A principle task of the state was the promotion ‘amongst the people of Nepal the spirit of fraternity and the bond of unity on the basis of liberty and equality’.

Nepal was not unusual in using the state to establish the hegemony of a particular elite or community and to create the entire population in its image (and in this respect the Constitution carried on a much older tradition of state formation in Nepal). However in recent years the legitimacy and fairness of this model of the ‘nation state’ has come under severe challenge in many parts of the world. The roots of discontent lie in the economic, social and political exclusion of communities and their members. There is a close correlation between poverty and ethnic minorities. Although a powerful case for a more inclusive state system is based on the threat to the culture of minority communities and therefore to their identity, self-respect and social orientation, many ethnic protests and insurgencies are less about the preservation of culture, religion or tradition than about the lack of access to the state and the economy. In this way ethnicity itself becomes a social and political force, a means to mobilise and organise members of the community, as its leaders advance claims for full participation in the affairs of the state.

In the present times, it has become exceedingly hard to resist such claims. They now find support in both moral and legal theories, on bases of justice and self-determination. The international community urges political leaders to agree on measures of self-government or power sharing, putting both the government and the insurgents under considerable pressure, as a way to resolve internal conflicts. Internal conflicts are fuelled by a deep sense of grievance and sustained by the easy access to supply of arms in international and regional markets. It is difficult today to suppress ethnic sentiments, demands and organisation—paradoxically, the more the attempts to suppress them, the stronger they become, with increasing capacity for disruption.

Consequently, in a number of states new norms, emphasising the virtues of diversity, and a re-conceptualisation of the political community and the division and sharing of sovereignty, have found their way into the constitution. Clear alternatives, based on the political and legal recognition of ethnic or 'national' communities, to the single nation state have emerged. This has drawn attention to different models or approaches through which ethnic claims and conflicts are mediated, some of which are now part of the discourse in Nepal as it enters the phase of negotiations on a new constitution.

II Different models of the state in multi-ethnic societies

There is a great variety in the constitutional arrangements of multi-ethnic states. However, for the purposes of discussion, such states can be broadly classified into two categories: (i) states which tend to disregard ethnic differences and to treat all persons as citizens with equal rights and obligations (some times described as 'the liberal' state); and (ii) states which are based on the political recognition of ethnic groups as rights-bearing entities ('ethnic-based states'). The latter can be sub-divided into two groups: one in which a majority dominates other communities ('hegemonic state') and the other which is more consensual and aims at power-sharing and proportionality ('consociational state').

In the liberal state, citizenship is the primary concept for a person's relationship to the state and is the basic building block for structures and procedures of state. All citizens, regardless of race, ethnic, religion, gender, origin or affiliations have equal rights and obligations. Ethnic or religious communities are not recognised as political or corporate entities; the state is neutral as between them (so that, for example, in a multi-religious country, the state is 'secular', with no religion offered a special status). But through the distinction between the public and the private spheres, diversity is tolerated, even valued, leaving the exercise of the freedom of religion, use of language, and enjoyment of culture to the private sphere (guaranteed by a bill of rights).

However, it has been said that the liberal state is in reality based on the assumption of cultural or 'national' homogeneity. It has been criticised for the disregard in practice of the values, culture and interests of minorities and for reflecting those of the majority community. The liberal state developed alongside the growing influence of the concept of 'the nation state' which is based on the theory that every 'nation' is entitled to its own state—for only in that way can its culture and distinctiveness be protected and promoted. The supporters of theory of the 'nation state' also argue that true solidarity and democracy can only be obtained in such a state, based on strong, natural (some even say, primordial) bonds among the people sharing a culture, history and values. However, today the option of the 'nation state' has largely been ruled out by the international community (but not completely as is evident from western pre-occupations in finding a solution to Kosovo). There are indeed numerous problems with the universalisation of the concept of 'nation state' (not least the definition of 'nation').

Some states have tried to meet the criticism that both in its structures and practices, the liberal state ignores minority cultures. In societies preceding the emergence of the paradigm of the modern state, with its predilection for uniformity in laws and policies, a diversity of cultures did and could exist (as is amply demonstrated by the history of South Asia). But the expansion in the role of the modern state subtly, and often

subconsciously, leads to the invasion of the majority culture into the public sphere. Some liberal states, aware of this criticism, have responded by promoting 'multi-culturalism', according some measure of recognition to cultural minorities (such as indigenous people or other vulnerable or disadvantaged communities). Canada is a good example of this trend as is India, while some other liberal states have tried to deal with the dilemma by the active cultivation by the state of 'civic' or 'secular' nationalism, of which France, embroiled in the controversy over the wearing of religious symbols in public schools, is an obvious example. Another example of the liberal state adjusting to multi-ethnicity is a re-examination of electoral systems, redefining the role of elections as the promotion of inter-ethnic integration and fair representation of minorities. However, under the impact of 'fundamentalist jihadi' politics, there is some reaction against 'multi-culturalism' and pressures for a reversion to liberal principles and a common national identity are growing.

In the ethnic- based state, ethnic groups are fundamental building blocks of the political system and many rights of citizenship can only be exercised through membership of an ethnic group. Citizenship rights are differentiated. Representation and participation are based on ethnic distinctions. Therefore group rights are frequently more important than individual rights. There is often explicit recognition in the public sphere of cultural differences between communities, blurring the distinction between the public and private.

There are fundamental differences between the hegemonic and consociational state. The primary characteristic of the hegemonic state is the dominance of one community over others, recognising them only if they submit to its rule. There have been numerous examples of this in history (including most imperial and colonial systems). Contemporary instances were apartheid South Africa where whites subordinated other communities to its control, and Israel today where citizenship of Arabs is tolerated only if they accept Jewish rule as manifested in many aspects of the state. Indigenous people complain that they have to accept the dominant values of the new settlers, able to negotiate only limited spaces in the interstices of the imposed state. Even where political rights are given to the subordinated communities, it is only as junior partners (examples could be Malaysia or Fiji where Indo-Fijians must submit to the leadership of indigenous Fijians). There are few advocates of the hegemonic state today, as it violates most notions of fairness and justice (and is frequently sustained only through major violations of human and group rights), although in practice some states do operate on this principle.

The consociational state, on the other hand, repudiates the dominance of one community over others, even if one community is a clear majority—it rejects majoritarian democracy. Instead, it is based on a partnership between all communities who must be represented in the legislature and the executive as such (that is, as distinct and separate groups). The central feature of the consociational state is power sharing. But it goes beyond power sharing to give each community a veto over critical legislative and executive decisions. The principal aspects of the consociational state have been outlined by its leading proponent, Arendt Lijphart, as follows (a) proportionality so that each community is represented in all state organs in proportion to its size of the total population; (b) power sharing in national government through a grand coalition; (c) self-government for communities through federalism or

autonomy; and (d) mutual vetoes vested in community representatives. Switzerland is often presented as a pre-eminent example of a consociational state.

Consociation has become popular with minorities and policy makers who have to patch a country together after prolonged, bitter and bloody conflicts. Belgium is a striking example of a modern state which turned its back on liberalism in favour of consociationalism. This approach has been applied in Bosnia-Herzegovina, Kosovo, Macedonia, Northern Ireland, Rwanda, and has been advocated in other conflict situations (e.g., Iraq). It lends itself to the wishes of minority groups if they are concentrated in separate geographical areas, for it has the attraction of self-government. Even if a community is dispersed, a measure of self-government can be achieved through cultural councils—which are an essential component of the Belgian solution.

But even the consociational model has problems: who are the communities entitled to a separate status, and how is membership in them to be defined? How stable are these communities? Frequently the approach operates only by imposing identities on people—like creating Bantustans, or treating the Fiji community descended from migrants of Indian origin as Indians when they want to be identified as belonging to Fiji. It assumes homogeneity of interests among the people of a community, when in fact there might be many different and conflicting interests among them. It tends to entrench and rigidify distinctions among people, and hinders political integration across communities or regions. The dominance of the ethnic issues keeps other critical issues off the agenda: social justice, gender equity, economic development, the concerns of trade unions, professionals, the disabled and the disadvantaged, etc. The focus is often on the larger communities and the interests of smaller minorities are often ignored. It places the individual at the mercy of the community, restricting her choices—in stark contrast to liberalism which seeks to enhance individual choices. Consociation also overlooks many aspects of public policy critical for ethnic accommodation, such as affirmative action, language, and culture. Recent applications of consociation have produced many layered and complex structures and decision making systems which had been hard to operate—and which depended on the very factors in whose absence consociation was seen to fill the void—the lack of trust and mutual confidence.

Defined in this way, the liberal and the consociational models seem in deep conflict. However, consociationalism is committed to human rights in general, and the most absurd features of it are moderated by the tension with human rights. Liberalism prides itself on its tolerance and the flowering of culture and arts (but in the private domain, although it is inching its way towards some recognition of diversity in the public sphere, providing a productive tension here also with diversity and universalism). Both systems can accommodate federalism or autonomy (although liberalism is weary of federations based on ethnicity). In practice many acceptable systems combine positive elements of both (such as India and South Africa, and perhaps Canada). In a situation of conflict, with the clash of different paradigms, the solution has often to be found somewhere along the spectrum linking the two. Given that competing claims are now made in the name of identity (national or particular), in both approaches, the answer is seen to lie in the balancing of different identities. Much of the academic debate on the relative merits of the two approaches is unnecessarily polemic and polarising—and unproductive. My own discussion of the

three approaches is used to illustrate possible orientation or approaches, and their specific institutional implications, not to compartmentalise devices and institutions.

More specifically, devices for accommodating diversity depend on factors of diversity such as culture, religion, language, history, and region. What is feasible depends on the configuration of ethnicity: the number and size of ethnic groups; the distribution of ethnic groups, whether compact or diffused; and whether differences between ethnic groups are cross cutting or overlapping. These factors are particularly important in Nepal which has a complex picture of ethnic differences as well as overlapping interests.

III Identity politics

The differences in the approach to multi-ethnicity depend on the understanding of the dynamics of identity politics, for it is in the name of identity that political claims are made or resisted. The hegemonic state is justified in the name of stability as well as the superiority of the dominant ethnic community. The consociation state is based on the recognition of the fundamental importance of community sentiment and solidarity, and the necessity to found democracy on the claims of communities. Without denying valid claims of identity, the liberal state values foremost the primacy of the individual and prefers to assign the pursuit of ethnic affiliations to the private sphere.

Claims of identity have come to play an important role in contemporary politics. Identity, it is claimed, is critical for a person's sense of belonging and orientation; the recognition of his or her ethnicity is an essential component of that person's dignity and self-respect. The denial of that identity is a manifestation of ethnic discrimination, the disparagement of other cultures and the disregard of the legitimate right for protection and development of communities adhering to those cultures. The new politics of identity and recognition is seen as emancipatory and empowering of the hitherto marginalised and oppressed communities; it is the weapon of the weak; redressing past injustice; and enriching society through diversity. These understandings of collective identities have led to the review of the underlying basis of the state and its institutional organisation, emphasising the need for the political recognition of differences and ways to promote co-existence of cultural and ethnic communities in peace and dignity. The result is an earnest examine of many traditional assumptions and institutions and procedures: modes of representation and participation in public institutions and affairs, structures and distribution of power, the place of culture in the public sphere, the settlement of competing claims of communities, and various other ways of accommodating ethnic differences, often under the rubric of 'unity in diversity'.

In the face of this pursuit, questions are being raised about the moral and political importance of identity defined in the above terms. There is no doubt that identity has become a mode of advancing various kinds of claims. The identity in question (linguistic, religious, historical) may not have deep roots, as constituting the self-perception or self-understanding. It may not have instrumental in defining the membership of the community, or indeed there may not even have been a community sharing that identity. From this perspective, 'identity' is manufactured, invented, manipulated, and becomes a means of political mobilisation. The ethnicisation of identity is the transformation of a social fact into a political force. On the grounds of identity (as a 'distinct people' or 'nation'), claims are made on behalf of the

community to political rights, perhaps even secession.

There are numerous studies of how the transformation takes place. It occurs through creating a consciousness among a group that they have a common past and a common destiny, based on religion, race, language, or some similar factor. This is done by emphasising factors which point to what the group has in common, and to demonstrate how these differentiate them from other communities. One consequence is to emphasise the singularity of identity: that is, one aspect of a complex identity is privileged at the expense of other factors. In colonial India, identities tended to be defined and propagated in terms of being Hindu or Muslim, despite the fact that Hindus were divided into many sects and cults, and that Hindus and Muslims living in different parts of India shared bonds of language or history. In asking the question, why should one element of identity be privileged above others, Elie Kedourie says, 'For such a claim to be convincing, it must also be proved that similarity in one respect overrides differences in other respects'. Thus internal differences within a group are glossed over, and differences between communities are emphasised, ignoring commonalities between them. In this way the variety and richness of factors that go into any identity are ignored, and thus the possibilities of alliances across communities are minimised. Every human being is a bundle of identities (derived from upbringing, education, profession, social status, culture, political persuasion, etc). The 'singularisation' of identity impoverishes the human person by (limiting her choices), and the community to which she belongs. Justified in the name of diversity, identity and cultures become a means of exclusion. It is said that the singularisation also denies the many bonds that unite us as human beings, and the many fruitful relationships or solidarity that can be built on them. In this way identity politics tend to fragment the political community, and as one set of identity politics are being negotiated, other communities are stimulated into their own political mobilisations.

The potential of ethnic or identity mobilisation depends on contextual factors: whether the community feels discriminated against, excluded, oppressed, its culture threatened, etc. These contextual factors change over time, and with it come shifts in identity. It is argued for this reason that identity politics do not recognise the fluidity of identity, and constitutional and political arrangements based on 'temporary' or passing identities tend to consolidate that identity or to place the arrangements at risk with shifts in identity. It is sometimes said that Pakistan was created on the bonds of religion but foundered on the bonds of language.

What implications for constitutions can we draw from this interpretation of identity? One is that identity as ethnicity is no longer about individual choices, but individual obligations inherent in membership of the community—which among other consequences, challenges the regime of human rights that form the bedrock of modern constitutions. The capacity of the state to protect the individual against certain forms of discrimination by the community is diminished. Another is that policy makers, who consider that some forms of recognition threaten political and social order, should pay more attention to the context: to discrimination, exclusion and oppression that lie at the root of identity politics. A third is that just as fragmentation of a political community is deliberate tactics, so can be the strengthening of national bonds. But a community which is fragmented cannot easily be brought together unless the underlying factors which promote singularisation of identity are tackled. The great anti-dote to singularisation is social justice, directed at ensuring fairness, equal

opportunities, affirmative action, respect for different cultures and traditions, and above all, inclusion, representation and participation.

Perhaps the most fundamental challenge to constitution making is that in situations like Nepal, the constitution is more than the rebuilding of the state. The building or rebuilding of the state assumes a prior agreement to come together, to form a political community. But when there is disagreement on the fundamental values of the state or there is no sense of belonging to a common political community, the task of the constitution is two fold. The first is the building of consensus, developing a framework for co-existence and co-operation among communities based on social justice, and the negotiation of national values and national identity. In short it is about nation building, in which the process is as important as the substance of the constitution. The second, state building ('restructuring of the state'), follows from the way the first task is resolved.

IV Ethnicity, identity and constitutional reform in Nepal

Superficially, there seems to be great change in the political situation in Nepal from the time when the 1990 Constitution was negotiated. At that time the principal pre-occupation of political parties was 'multi-party', parliamentary democracy and constitutional monarchy. Democracy was based on universal franchise (even if there were differences on the question as to who were entitled to be treated as citizens). There was broad agreement on the restrictions on the power of the king, inclusion of a bill of rights and directive principles to guide state policy, the establishment of an independent judiciary with the power to enforce the Constitution as the supreme law of the country, and a number of independent institutions to discharge politically sensitive functions, like elections and the audit of accounts of the state.

The 1990 was also pre-occupied by the concern with maintaining the traditional social character of Nepal. It declared Nepal a Hindu state (art. 1). The King must be an 'adherent of Aryan Culture and Hindu Religion' (art. 27)—at the same time the King is declared to be the 'symbol of the Nepalese nation and the unity of the Nepalese people'. The cow, sacred in Hindu thought but not other beliefs, was declared the national animal. Only one official language was recognised, Nepali in the Devnagari script. Proposals that Nepal should be declared a secular state in which the state and religion are separate and all religions are treated equally were rejected. Even the freedom of religion was restricted in order to preserve the dominance of Hinduism and traditional practices (such as untouchability): what is guaranteed to a person is belief or practice as 'coming down to him hereditarily having regard to traditional practices' (which seems both to deter conversion as well as safeguard practices which may be offensive to many, adherents and non-adherents alike). Proposals for minority rights, particularly related to their social advancement were also rejected, because the commission feared that their inclusion would promote ill feelings between different communities, threatening national unity. Instead the constitution enjoined the government to promote 'amongst the people of Nepal the spirit of fraternity and the bond of unity on the basis of liberty and equality'.

The constitution prohibited a political party 'on the basis of religion, community, caste, tribe or regionality' (art. 112(3)). An elaboration of this rule was the prohibition of any party which 'prejudicially restricts' membership on the basis of religion, caste, tribe, language or sex'. A party is also prohibited if its 'name, objective, symbol or

flag indicates as belonging to any particular religion or being communal or of a nature tending to disintegrate the country' (art. 113(3)). Such is the concern with communal harmony that even the right to move freely in the country and to reside in any part of Nepal can be denied if it 'disturbs harmonious relations subsisting among various castes and communities' (art. 12(2)(4)).

The character of the state, oriented towards the majority religion, the majority language, and the majority culture was exclusionary. The unitary nature of Nepal and the centralisation of power accentuated the consequences of the existing dominance of traditional caste and regional elites, and denied others the possibilities to determine policies at the local level or to use their language for official purposes.

So if we were to categorise the 1990 constitution in terms of the typologies of states, we would probably say that it is, in broad terms, liberal democratic in form (I say broad terms because it privileges one religious and one language groups) and hegemonic in practice. It seeks to set out universal values and protects individual rights (particularly of speech, expression and association) and formal equality before the law; it bestows universal franchise on the people; there is the separation of powers and checks and balances, and other artefacts of democracy. It shares with many liberal states the tendency to equate the beliefs and culture of the elite with the universal values and aspirations of the total populace; and it is perhaps less tolerant than some liberal states of civil society initiatives in the private sphere. But by creating democratic space, putting parties under the pressure of competitive democracy, and attempting to guarantee democratic rights of the people, it opened up possibilities of progressive change. The question whether it had the potential to grow into a social and inclusive democracy (as its supporters claim) or to condemn various communities to a further period of marginalisation and exploitation (and the ultimate delegitimisation of the state) as its critics claim, must remain unresolved, interrupted as it was by the Maoist insurgency.

But at least this much can be said. In a society which is neither liberal nor equalitarian, the formal equality that a constitution ensures is not sufficient to achieve these objectives. As Andre Beteille has said brilliantly, the constitution may show the nation values and the path to the future, but it is society which determines if and at what pace progress will be made (my paraphrase and less elegant than his original!). The 1990 Constitution was planted in social structures whose dominant values were anti-thetical to its liberal predispositions. Nor were political parties, its main beneficiaries, committed to a meaningful and participatory democracy; dominated by Brahmins and Chhetris (and to a lesser extent Newaris), they entrenched themselves even more as bastions of caste and sectarian privilege. The lesson of the failure of the 1990 constitution is that for a liberal constitution to succeed in multi-ethnic society, there must be real equality, of opportunity and access. That requires pro-active policies and affirmative action on the part of the state, the redistribution of resources, and the empowerment of the disadvantaged. This is particularly the case when the real problem is not legal or political but social. The marginalised communities constitute a majority and have enjoyed the right (and power) of franchise. Yet they have remained marginalised—because they have been socially dominated.

The aim of the Maoist insurgency was to challenge this dominance. Among the 40 point-demands that heralded the insurgency, Maoists asked for a new constitution

drafted by the people's representatives; the declaration of secularism; rights of succession to property of women; end of all kinds of exploitation and prejudice based on caste; abolition of the status of dalits as untouchables and prohibition of untouchability; the equal status of all languages, with education in the mother tongue up to middle-high school level; and decentralisation and local autonomy. These were perhaps not their central demands at the time, but by about 2000, formal links were established with dalits, janajatis and Madhesis, and various fronts were formed. Considerable emphasis was placed on a system of regional and ethnic autonomies and the right of cultural communities to keep or modify traditional religions and customs. By the time of negotiations with parliamentary parties on ceasefire and constitutional reform a few years later, the Maoist had developed a clear policy (on paper) on the 'national question'—and had attracted considerable support among the 'marginalised communities'. Proposals on the national question featured prominently in agreements between the seven party alliance (SPA) and the Maoists in the middle of the present decade.

There is now general acknowledgment that certain communities and regions have been marginalised and excluded from state, society and economy. The mandate from Janaandolan II is interpreted as a new regime of inclusion and social justice, to be introduced through a new constitution adopted by a constituent assembly. The first reference to the ethnic and minority issue was the in the Twelve Point Understanding between the Seven Political Parties and the Nepal Communist Party (Maoists) (22 November 2005), which emphasised the need for full democracy 'to resolve problems related to class, caste, gender, region and so on of all sectors including the political, economic and cultural'. The term that was used to describe how this would be achieved was the 'restructuring of the state'. The strategies for restructuring and the designation of its beneficiaries were elaborated in subsequent documents (particularly the Comprehensive Peace Accord 21 November 2006) and consolidated in the Interim Constitution (IC) which was enacted on 15 January 2007.

The IC and its agenda of constitutional reform hover, in print, between the liberal and the consociational, mediated by a political process with roots in the practices under the 1990 Constitution. The Preamble of the IC refers to the goals of 'the progressive restructure of the state in order to resolve the existing problems of the country based on class, caste, region and gender'. A major responsibility of the state is to 'carry out an inclusive, democratic and progressive restructuring of the State by eliminating its existing form of centralised and unitary structure in order to address the problems relating to women, Dalits, indigenous tribes, Madhesis, oppressed and minority community and other disadvantaged groups, by eliminating class, caste, language, sex, culture, religion and regional discriminations' (art. 33(d), see also art. 35(10) for affirmative action for these groups). The chapter on the form of state and local self governance calls, again, for the 'inclusive, democratic and progressive restructuring of the state' to bring about 'an end of the discrimination based on class, caste, language, sex, culture, religion and region by eliminating the centralised and unitary form of the state' (art. 138). A high level commission is to advise on how this might be done, although the final decision would lie with the CA (art. 138(2) and (3)).

The state is also bound to maintain conditions conducive to democracy 'through maximum participation of the people in the governance of the country by means of self-governance, based on tribe, language, culture and region' (art. 34 (5)). The

emphasis on diversity and self-governance is balanced by the responsibility to pursue a policy of strengthening the national unity of promoting healthy and cordial social relations, based on equality and co-existence, among the various religions, cultures, castes, communities and the equal promotion of languages, literature, scripts, arts and culture (art. 35(3)). The Preamble expresses people's commitment to democratic norms and values, human rights, the rule of law, progressive economic-social change, and the independence and integrity of the country. Other values which are mentioned in this chapter include social justice, access to health, education, food and shelter, and an open society (arts. 34 and 33(h)).

These aims, aspirations and responsibilities represent a different vision from that which inspired the 1990 constitution. It is however still (with the possible Maoist emphasis on ethnic autonomy) within the liberal paradigm, but a liberalism that embraces both diversity and social justice, and active state policies and interventions. The emphasis on the removal of discrimination and social exploitation that arise from social structures and uneven development will further the liberal agenda of freedom, choice and responsibility. The documents that encapsulate this vision are singularly short on modalities, and there is certainly resistance to 'collective' ethnic rights and associations. Even if it is necessary, as it might be, to adopt strategies of collective rights and preferences for a while, they can be accommodated within the parameters of a liberal society.

However, whether this mandate will be fulfilled and if so, in what ways, is still unclear. The inter-party agreements are so full of the most fantastic rhetoric, of people's sovereignty, participation, social transformation, equality, repeal of what are deep rooted practices and prejudices (which seem to favour those currently in power), that they must be taken with jarfuls of salt. There is deep scepticism about the willingness and the ability of the ruling consortium of 8 political parties to do much about social and political inclusion, led by broadly the same high caste leaders who elaborated the 1990 constitution with its hegemonic and centralist orientation. The central committees of all the major parties are made up overwhelmingly of Brahmins and Chhetris, even now. This scepticism has been reinforced by the way in which the Interim Constitution was negotiated and adopted, which excluded the meaningful participation of the marginalised groups. The Interim Constitution itself provides no clear indication of how it would bring about inclusion. Its phraseology about which groups are marginalised varies from article to article, giving no clear impression who would benefit from reforms. Apart from the commitment to eliminate the centralised state, it offers little in the way of specific devices for minority inclusion—and the original electoral system it incorporated has more to do with the concerns of the party leaders to maintain their dominance of the political process than any commitment to inclusive forms of representation (although it was forced, grudgingly, to concede a slightly more inclusive electoral system—still firmly under the control of traditional parties and their traditional leaders). Doubts about the commitment of the Maoists to this liberal model or even to the advancement of the marginalised communities persist, reinforced on a daily basis. In brief, the IC is long on promises, exceedingly short on delivery.

The resistance of the 8 party alliance to the participation of the marginalised communities in decisions about the future or to acknowledge the legitimacy of the claims of these communities has prompted vigorous development of ethnic politics

and organisations (and disrupted the national unity of the janaandolan). In this way the traditional elites, by their intransigence, have created a situation which was their worst fears. Smarting under their exclusion, dalits, janajatis, Madhesis, and women are formulating their own agenda and recommendations for the new constitution: fair and effective representation in state institutions, equality, affirmative action including 'reservations' or quotas, secure citizenship, a secular state, political recognition of the diversity of cultures and languages, and self-government through federal type autonomy, preferably based on language and ethnicity. Self-determination has become the leading principle of state re-organisation for many of them, understood in terms of group rights. Understandably the elite hitherto in positions of power is uneasy with this agenda, and not only because it would chip away at its privileges. Yet the factors and circumstances underlying this reform agenda are at the heart of Nepal's problems and will not go away. For stability and development, the constitution making process must deal with it. Nepal faces the challenge of squaring the recognition of diversity with the benefits of 'nation state' (community cohesion, common values, willingness to sacrifice for the common good, prospects of democracy, a common public space, the expression and development of culture).

In a word, the constitution making process is about identity in a New Nepal, which emphasises common bonds and interests while being respectful of difference. The new identity cannot be imposed but has to be negotiated. This is why the constitution making process has to be a great deal more participatory and transparent than has been the case so far. It is to this matter that I now turn, before examining the substance of a possible constitution.

V The Constitution Making Process

In post-conflict situation, a principal purpose is reconciliation of parties in conflict as well as of communities which have been torn apart by the conflict. When the conflict arose out of the exploitation of one or more regions or sectors of society, the emphasis is on social justice—and on inculcating self-confidence in marginalised groups. When a country is coming out of a dictatorship, the process should seek to empower people and educate them in the values and mechanisms of democracy. In almost all these cases, the country, or sections of the people, may be going through a crisis of identity, engaged in acts of redefining the nation and the state, balancing identities and concerns of different communities. Most of these objectives are best achieved through inclusive and participatory processes where all communities are able to advance and negotiate their claims—and a national consensus can emerge. Inclusiveness is often difficult, at least in the early stages of the process, when a country is coming out of internal conflict, as the parties to the conflict tend to dominate the process, with the help of their arms and their capacity to inflict violence and damage national peace and harmony. Such restricted participation often produces a narrow agenda, that of special concern to the warring factions, often ignoring fundamental problems of the country. Consequently lasting solutions are unlikely to be found if others are not brought in as speedily as possible.

The SPA and the Maoists pay great homage to the sovereignty of the people and the role of the people in the making of the new constitution. This was not surprising since they needed popular support to fight the monarchy, which had assumed the powers of the state. The Twelve Point agreement invited the participation of the people in the movement for the restoration of democracy. Their later agreement to elect a

constituent assembly to make the constitution also seemed to reflect people's participation. Maoists had agitated for a CA for a long time; as representing the people, it was the only vehicle for progressive constitutional change. The preamble of the IC refers to the 'basic rights of the Nepali people to frame a Constitution for themselves and to participate in the free and impartial election of the Constituent Assembly in a fear-free environment'.

But the framework for the making of the constitution as established by the IC falls well short of these statements. The process of drafting the IC itself was exclusionary, secretive, dominated by political parties whose legitimacy was increasingly questioned (the original drafting committee consisted of a small number of Brahmin, male lawyers). It is estimated that over 5000 submissions were made to the drafting committee by individuals and organisations; as in 1990, little attention was paid to them, they were marked confidential and public access to them denied.

When it came to the crunch, that is the composition of the CA, political parties made the decision directly themselves, and took refuge in an exclusionary system, using a voting system which would perpetuate the dominance of these parties. The delegates were to come into the CA through the good will of the parties and would be subject to their directions and discipline. Some amendments were made after protests (which included violence and even a mild degree of ethnic cleansing) by the excluded groups, but these have not satisfied them. Civil society leaders have also been excluded (even though in the rules whereby the old House of Representatives was transformed into the interim legislature, parties were obliged to bring in 48 members from civic, social and professional sectors as well as from the marginalised communities and regions—no party with the partial exception of Maoists honoured this, merely bringing in more party people as an exercise in party patronage). To add insult to injury, the IC maintains the 1990 constitution ban on parties espousing interests of women, dalits, janajatis and Madhesis. The CA will certainly not be grand gathering of the nation.

Nor is the procedure whereby these changes are being negotiated with the 'agitating' marginalised communities good for the process of forming national identity or the national constitution. These negotiations take between the 8 parties on the one hand and the 'agitating' community on the other. This sort of bilateral negotiations are inconsistent with the notion of a CA where all interest groups get together to examine all claims and to settle differences. Neither the 8 parties nor the interim government has any electoral mandate or legitimacy to negotiate these claims. This mode of negotiations also gives the impression that it is within the authority and grace of the 8 parties (for the most part representing the old elite) to make concessions to the marginalised communities—thus reinforcing the very forms of relations and hierarchies that are meant to be eliminated. And the willingness of the parties to change the constitution whenever it suits them as well as to challenge publicly and vociferously the principles and procedures they have enshrined in it, debases the very idea of a constitution (and of agreements laboriously and earnestly negotiated). It is not a good omen for the future as the carefully negotiated settlements at the CA are entrenched in the permanent constitution.

VI Substantive Provisions of the new Constitution

To return to the typology of multi-ethnic states, it is clear that none of the models by itself will suit the present circumstances of Nepal. One would have thought that the

hegemonic model, patent or disguised, would not survive the janaandolan II (but sometimes, as Gramsci reminded us, the old order refuses to die and the new one is not born—and I do not merely mean the monarchy). But its long term viability is unlikely. In the eyes of the marginalised communities at least, the old order is totally discredited. Nor do I think that some proposals for self-government on linguistic or ethnic bases are viable or will produce justice for the very communities in whose name they are put forward. Likewise, secession is an unlikely solution, nor is there any significant support for it.

So within the present borders of Nepal, a solution must be found that balances the interests in the integrity of Nepal with the particularity of specific interests. That should not be difficult (if negotiations are conducted fairly and honestly) as there is substantial agreement on many principles for the new constitution. It is not possible in this paper to elaborate what the specific provisions might be. Instead I indicate what the general approach might be.

The public debate on constitutional options has so far been rather impoverished. The future of the monarchy has pre-occupied many minds but little thought has been given to the future political system. There used to be much talk of inclusive democracy, although few could explain what this meant or how it would be achieved. There has been almost no discussion of what the state policies should be and how far the constitution should commit the state in this regard (the IC has a long list of ambitious, perplexing, confusing and contradictory set of state principles which no one, least of all its authors, takes seriously). Maoists who were expected to bring in a breath of fresh air and fresh ideas on the underlying problems of Nepali society and their transformation, have got bogged down in marginal issues (and are finding it extremely hard to adjust to democratic politics). The old guard seems to have no appetite for social or political change—or for genuine democracy, and their political parties have given no indication of their thinking on the future constitution. Civil society has been marginalised and has made little contribution to public discourses on the constitution. Other progressive forces are spending their energies on developing narrow ethnic agenda. Women, better organised than most groups, are obsessed with the gender issue to the exclusion of other fundamental issues that would have a major impact on women.

So the fundamental challenges facing the new constitution are not identified, much less addressed. The greatest focus has been on the ethnic factor, both as regards representation in the CA (negotiations on which have continued since the ill-fated electoral provisions of the IC) and rights and entitlements for the future. To return to my earlier analysis of the dynamics of ethnicity, ethnicity is most frequently a response to discrimination and deprivation. All the 'marginalised' communities have suffered in this way. For long they have asked for fair representation, fair treatment and fair opportunities. They have not rejected the state, but asked for their rightful place in it. Whether one looks at the statistics for the economy, education, public service posts, representation in the legislature or the government, the overwhelming impression is the monopolisation of power, authority and opportunities by Brahmins and Chhettris (and lesser extent Newaris). Dalits have been oppressed for centuries, janajatis' languages and cultures have been ignored, women suffer from extreme discrimination across the whole society, and Madhesis have for long felt that they were not accepted as Nepalis, and labelled them, disparagingly, as Indians. Most

people, especially in the rural areas, feel that they cannot communicate with state officials, most of whom do not speak local languages.

The fundamental factor that has given rise to the politics of ethnicity is this exclusion. With the janaandolan, there was hope of a new dispensation. But the SPA (later joined by the Maoists) dashed these hopes. Whether in the formation of government, or the process of making the IC, or its substantive provisions (particularly in the composition of the CA), or forums for decision making in the transitional period, or the declaration of public holidays hugely oriented to Hindu festivals despite declaration of secularism, the exclusion has continued. These groups have realised that their reasonable and legitimate claims receive any attention only if they are backed by organised force and the use of violence. Despite this intensification of ethnic consciousness and the willingness to use force, the principal goal of these groups is still inclusion in state and society. With a more enlightened leadership at the centre, these groups could have been included and integrated in the wider polity and there would have been little reason for demands of ethnic homelands, self-determination, and autonomy.

The constitution has to address these concerns of the marginalised communities in constructive ways, along the overriding principle of inclusion—and with representatives of these communities in the CA, as full members, not supplicants. There are no simple or uniform solutions. The complexity of the ethnic situation is bewildering. Nepal has a heady (but potentially productive) mixture of race, caste, class, region, gender, religion and ethnicity. There are more than 100 ethnic and caste groups, who speak more than 92 languages, and adhere to several religions. Population and resources are unevenly divided between regions, so that there are also social and historical differences determined by topography. But this fragmentation also means that there is no group which can be described as the majority. Hindus may be one sort of majority, but they are divided into sects, and speak different languages and come from different regions. The Nepali speakers constitute the largest linguistic group, but these speakers belong to different classes and religions. Dalits have certain common characteristics (including unfortunately social oppression) but they are divided by language and region (and even caste). Janjatis represent a variety of groups, in size and cultural traditions, and varying degrees of integration in modern economy and state structures.

Marginalised groups are united in their opposition to the present dispensation but divided (at least objectively) on what remedies and policies must be pursued. The inherent clashes in ideas, aims and practices of these communities mean that common devices may not suit every one, and some may indeed be in conflict. Federalism may make sense for the Madhesis, and perhaps the larger janjati groups, but it is unlikely to do much for dalits or women. More diverse language policies are likewise not a major concern of dalits or women. Dalits want the abolition of the caste system, while the agenda of other groups depends on the recognition of caste, ethnic and linguistic distinctions.

This complexity also suggests that there cannot be solutions based simply on ethnicity. There are more cross cutting than overlapping differences, but even this should not obscure the fact that on various points, the interests of Dalits, Janajatis, Madheses and women would conflict. And within even among the Bahuns and

Chettris, there are poor people whose needs must be addressed. So while ethnicity should not be ignored, constitutional reform must be tied, broadly, to social justice. The roots of the political and social problems that have caused such suffering to the people of Nepal in the last decade lie not so much in ethnic differences as in pervasive injustice, massive discrimination and exclusion, and the failure of the state to develop constructively the notion and institutions of a common political community.

So what must the new constitution do? It must abandon the assimilationist tendencies of the 1990 Constitution. It must seek national unity through the recognition of ethnic and other differences, but the recognition should be in forms that do not create barriers between different communities. The constitution should open up to diversity, of languages, religions, cultures. There is very considerable international experience that indicates that it is through policies that seek to include ethnic communities and yet recognise their distinct concerns that they are won over and are able to identify with the state, and that it exclusionary policies that alienate them and lead to demands for separatism. This much is also the experience so far in Nepal. Thus there is no conflict between national unity and recognition of diversity. Within this broad approach, I discuss some constitutional options that promote national unity through inclusive devices. The foremost of these is democracy which also provides the framework within which different communities and groups co-operate and negotiate differences.

Democracy

The first requirement is proper political representation and participation. All sectors of society and regions must be included in state institutions and in the political process (on some basis of proportionality). The first past the post electoral system is unsuitable for a multi-ethnic society; much better is some form of proportional representation. The electoral system must create incentives for political parties to woo minorities. People must have opportunities to take part in public affairs on a routine basis, not once every five years. And decisions must be made not only in Kathmandu, but at different levels and in different regions, and at levels as 'low' as villages. There must be full accountability to the people.

Inclusive democracy will require change in the habits of political parties which, on the one hand, seek to dominate all sectors of society (state and non-state) and on the other hand, resist inclusion in their internal structures. Party reform must accompany democratisation. A role for civil society and professions must be accommodated. Symbols of the state should be chosen to inspire the largest possible degree of affiliation and loyalty, not those which are divisive (why the cow as the national symbol? Why a national animal at all? Why not find ways to celebrate the rich diversity of Nepal's animals, fauna and flora?).

Fundamental Human Rights

There should be a strong bill of rights which protects religious freedom, cultural practices, language diversity, the freedom of association and expression. It must also require the state to ensure that steps are taken, progressively, to ensure to all the basic necessities of life, a life in dignity. And since there may be considerable emphasis on collective rights, the rights and choices of the individual should be secured. The necessity to balance individual and collective will become more pressing. There are now some well tried ways in which the balance can be struck.

Federalism

The constitution must address the specificity of injustices and remedies. It is necessary to move away from a vague and general notion of 'marginalisation' to the specific disadvantages that particular communities face. Take for example the case of federalism (the only specific issue which has been pre-determined). At first federalism was seen by many as a solution to ethnic discrimination and marginalisation, as the basis of self-determination and self-government. Article 138 of the IC says that federalism would bring to an end discrimination based on 'class, caste, language, sex, culture, religion and region'. It is unlikely that it would do anything of this kind. There is considerable controversy on whether the basis of federalism should be ethnicity ('cultural') or geography ('developmental'). Article 138 does not resolve this controversy, as it refers to both 'caste, language, and religion' and 'region'. The implication of the article might be that the distribution of power and self-government by themselves, on whatever basis, will bring about greater equality and fairness. But it is not clear that federalism can achieve simultaneously all the specified objectives (particularly regarding sex and class).

There are no significant areas where there is a concentration of a linguistic or religious community that could form the basis of ethnic self-government. If, as is being advocated, a group with 20% or so of the population of an area should be entitled to their own autonomy or self-government, this would form the basis of massive exclusion—what about the other 80%? Experience in ethnic based federations (e.g., Nigeria, Bosnia-Herzegovina, and Ethiopia) points to the dangers of exclusion (sometimes physical) of people different from the 'autonomous group' (in some Nigerian states for example, a 'certificate of local origin' has been established which deprive people from other parts of the country of some basic rights). Even if the country were divided into a large number of regions (which has its own problems of resources, capacity, and co-ordination—and the continued domination by a strong centre in Kathmandu), it is unlikely that every community which wants autonomy can have it.

It is important to state that federalism does not doom a country to conflict and disintegration (as some say in Nepal, and elsewhere). Many countries have achieved peace, stability and unity through the adoption of federal arrangements (India, Spain, Canada, Malaysia and Switzerland are obvious examples). Federations which have collapsed (and it is important to note that many which have collapsed, collapsed due to the forced abolition of the federal arrangements in favour of a unitary state) have tended to have mono-ethnic subunits and have not been animated by the federal principles of sharing power and tolerating differences.

There is no doubt that the Nepali state has to be loosened, and that some form of federalism and devolution is necessary. The justifications for this type of federalism or devolution—democracy, participation, responsiveness and accountability—and therefore the divisions of powers and institutional arrangements, are different from ethnic federations. Regional structures which embrace the full diversity of the region will provide a basis for collective decisions and promote a sense of common purpose

and, in due course, a common identity. A healthy and informed debate along these lines is underway—and increasing knowledge of the political and technical elements of federalism, which it is hoped will lead to sound and consensual decisions on the objectives and structures of federalism.

This inclusive approach to federalism should be applied to all the structures of the state. This is what was meant by ‘inclusive’ democracy. The marginalised communities have advanced proposals on how they can be included in the state system, including rules for representation, access to the public service, secure guarantees of citizenship, participation in public affairs, greater flexibility about language policies, preferential treatment where this is necessary, etc.

Language Policy

Questions of language and religion deeply divide multi-ethnic societies (as in Nepal itself). Many ethnic conflicts have their genesis in state language or religious policies and practices, as well as the mobilisation of ethnicity on the basis of language or religion. Both have implications for symbolic or psychic value and material advantage. To take language first. From a state’s perspective, language is important as the means to communicate with citizens, to promulgate laws, instructions and policies, to organise and manage the public service, to dispense justice, as medium for education, for interaction with the international community, and so on. For this purpose, it may prefer a single language for the business of the state, for convenience and expediency as well as savings on resources. A single language may also suit its purpose of ‘nation building’, as unifying diverse communities, living in different parts of the country, and increasing communication between them. From the point of view of citizens, language is critical in getting access to the state and its services, for lobbying the state or the public, and ultimately for participation in the affairs of the state. For communities languages are important vehicles for sustaining and promoting cultures and identities. Thus for citizens and cultural communities, a multiplicity of languages rather than a singular official language is preferred. The native speakers of an official language are generally at great advantage over others (who feel excluded from politics, education, culture, and access to employment or services).

Thus language policies can become very controversial. Considerable flexibility is needed to satisfy the needs of the state (in efficiency, economy, and national communication) and of individuals and communities (in terms of access, participation and recognition). There can be more than one official language (Switzerland has four), although it is not practical for economic and other reasons to have too many. For local purposes, including local administration, local languages can be used in addition to the official. People should be able to access emergency services in several languages. Language in educational policies can be related to the needs of communities (and sound educational practices, such as primary education in the mother tongue) as well as desirability of promoting knowledge of the official language. For broadcasting, print media, and for cultural activities, a variety of languages can be employed.

The IC has taken a progressive step in respect of language. While keeping Nepali as the only official language, it countenances the possibility of the use of ‘mother tongue’ in ‘local body or office’ as well as of basic education in the mother tongue. This does not go far enough. There is a possibility, not guarantee of the use of local

language; it depends on the legislature. Other steps can be taken. What about another official language? What about holding public service examinations in more than one language? What about requiring that public servants transferred to a region learn the local language and deal with the local population in that language as far as possible? How about ensuring access to the police and other emergency services in the 'mother tongue'? What about ensuring that opportunities to learn the official language/s are made available to all citizens? What about financial and other assistance to small linguistic groups to help maintain and develop their language and culture (so closely intertwined)? A federal system will open up other possibilities. Between the status for a language of being 'official' or 'non-official', there are many options; it is not all or nothing situation.

Religious Policy

Different considerations apply to policy about religion. A state needs a language or languages, for communication with the people, for legislation, for record keeping, etc. And which language is chosen has implication for material advantage: recruitment to the public service, employment in the private sector, access to education, particular higher education, mobility, etc. A state does not need a religion. And when it does have an official or 'established' religion, it tends to disadvantage members of other religions or beliefs (for example in Nepal the King had to be a Hindu and in many Islamic states the head of state or the prime minister has to be a Muslim). Some countries recognise only a limited number of religions for the purposes of status, benefits and worship (such as Israel). Symbols of the state are often tied to the dominant or official religion. Public holidays are largely related to the festivals of the dominant religion; and it is hard for followers of other religions to observe their festivals and rituals as these are not recognised by the state. Some states observe a strict separation of state and religion, so that the state cannot play any role in the affairs of any religion. Some states recognise no religion, but guarantee the freedom of religion and beliefs to all communities, and even provide subsidies to religious communities for social welfare or educational institutions. In some states, whether secular or not, the application of religious or community based personal laws (relating largely to marriage, custody of children and family property) to members of that religion or community are allowed.

So, as with language policy, it is not a matter of 'either/or'. The intensity of religious belief and fervour varies from country to country, and from community to community within a country. It is easy to mobilise protest on religious basis. In some countries, the question of conversion has become politically charged. And in matters of religions, outside forces are only too willing to intervene. Policies on religions also touch on the place of human rights, with the right to question religious dogmas and to protect individuals or groups against discrimination.

However, there are several approaches which satisfy the test of fairness. In principle it would seem that in multi-religious states, such as Nepal, it is best that there be some distancing between state and religion, and if the state does intervene in religion or religious matters, it should be based on principles which recognise each religion's right to equal treatment, and on fundamental principles of human rights. Apart from questions of the conscience of the individual or community, a state's religious policy has symbolic significance, touching on a person's or community's identification with the state. It is interesting that in South Asian multi-religious states, those with an

'official' religion have encountered serious political problems. We cannot expect loyalty from communities whose languages and religions are marginalised and when the symbols of the state personify the dominance of one particular language or religious community.

Affirmative action and social justice

The demand of most marginalised communities is for some form of affirmative action which will redress injustices of the past and enable them to catch up with the better off groups. The forms of affirmative action that have been most widely discussed are 'reservations' or quotas in the legislature, public services and educational institutions (largely on the principle of proportionality). The IC acknowledges the validity of these claims and requires the state to fulfil them. Already some legislative steps have been taken to implement them (as in amendments to the Civil Service Act, and the somewhat limited representation in the CA and less so in the interim legislature). Nevertheless they remain controversial and so far not much has been done to give practical effect to them.

There are undoubtedly strong arguments for affirmative action. The consequences of centuries of discrimination and oppression cannot easily be removed by 'natural' processes. Regardless of prohibitions of the law, the patterns of exclusion persist and even deepen (with new opportunities opened up by globalisation). Affirmative action by state and private institutions is necessary to move to a more just social order. This is recognised in many international and national instruments, and not as exceptions to equality before the law, but as fulfilling the requirement of equality. The moral case for affirmative action is overwhelming. But there is also a strong justification on pragmatic grounds. Affirmative action brings forth new ideas and vision (and a larger political agenda). It enables productive use of the energies and talent that have long lain buried. It gives a sense of dignity and purpose to communities hitherto denigrated. Continued discrimination and exclusion of specific communities is a sure recipe for conflict, and can lead to insurgencies and secessionist movements. Society ends up by paying a very heavy price for inaction.

Those who oppose affirmative action say that it is discriminatory; it excludes persons from state and educational institutions who are more qualified than some who are admitted. It also leads to inefficiencies as people are appointed or promoted to positions beyond their capacity—and the consequences are borne by the whole society. They say that the moral justification cannot stand in the face of the reality that the persons who benefit from affirmative action are already the better off members of the targeted community ('the creamy layer'). This produces internal divisions and hierarchies within that community. Although often presented as temporary measures, affirmative action has the tendency to be prolonged (and in some countries like India is still operative after 60 years of independence when it was given constitutional status). The result is the further entrenchment of caste or ethnic distinctions, rather than their abolition (especially with regard to legislative and employment quotas). They also say that affirmative action can be the source of conflict and instability as in course of time it leads to protests and even violence by those who are excluded (again the Indian experience is referred to).

It would be hard to deny that there is some truth in these criticisms. But some are less valid than others. Those who say that affirmative action creates disharmony among

communities (a frequent assertion in Nepal) are those who sit on the top of the heap; and seem to be unaware of the resentment that is generated by present inequalities. Those who say that affirmative action intensifies caste or ethnic distinctions are the very people who have in the past have imposed disabilities on the basis of these distinctions, and still have a vested interest in their perpetuations (minus affirmative action). Caste and ethnic identities have been intensified in many countries without reservations; perhaps because of the lack of reservations. Modes of mobilisation of electoral support in democracies in multi-ethnic societies ('vote banks') greatly stimulate ethnic consciousness. Political and administrative leadership has become more diversified and more representative. Persons from oppressed communities are beginning to exercise influence on policies, and even to wield political power.

Nevertheless, there are some forms of affirmative action that may be regarded as less objectionable than others. One of these is training and education which will enable persons from marginalised communities to compete with others. Another is favourable loans to facilitate their entry into commerce and professions. There are many voluntary modes of assistance: fair employment policies of corporations (backed perhaps by government regulations restricting contracts to fair employers), trust funds, and self-help by communities themselves.

But in these criticisms lie, although perhaps not intended, a deeper truth. Social justice oriented towards communities historically disadvantaged is only partial justice. The overwhelming characteristic of Nepal is poverty. There are poor and oppressed in every community and region. Poverty denies people's civil, political, social and economic rights. They also need to be rescued from poverty that they can live in dignity and comfort, fulfilling their potential as human beings. In the current pre-occupation with ethnic politics, these fundamental issues of justice have been obscured.

Without ignoring the many privations that members of the marginalised communities suffer, Nepal must develop policies of social justice formulated and administered on a non-ethnic basis, targeting sectors of society most in need. The IC has made a start with including social and economic rights in the enforceable bill of rights. In a country as poor and with disparities as sharp as in Nepal, policies of social justice are fundamental to nation building. The state's willingness to confront issues of poverty (in itself the most critical problem in Nepal) and its capacity for promoting development and fair distribution of resources will be crucial for the future of Nepal. The state will enjoy neither the loyalty of its citizens nor develop the capacity to build consensus and promote development if these matters are not fixed in acceptable ways in the months to come (and ultimately in the CA).

VI Conclusion

Ethnic consciousness is not yet at a stage where it will not permit fair and reasonable solutions. There is, over most of the country, as several opinion surveys have shown, a remarkable commitment to the notion of a united Nepal. For most people, a Nepali identity is stronger than ethnic or regional affiliations. But it may not always remain so unless their legitimate concerns are dealt with, in appropriate forums and through fair procedures. Nepal is at a critical stage in its history. It needs wise counsel and wise leadership, willing to listen to others.

