GROUP DIFFERENTIATION IN LIBERAL SOCIETY

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A Thesis

Submitted to the School of Graduate Studies

in Partial Fulfilment of the Requirements

for the Degree

Master of Arts

McMaster University

November 1982

MASTER OF ARTS (1983)
(Sociology)

McMASTER UNIVERSITY
Hamilton, Ontario.

TITLE: Group Differentiation in Liberal Society

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NUMBER OF PAGES: iv, 108

Abstract

This study is concerned with the contradiction in liberal-democratic society between the persistence of group inequalities on the one hand, and the firm commitment to individualism on the other. Individualism requires that group inequalities be absent, and that "particularistic policies" be avoided. Consequently, liberal governments tend to either ignore the issue of group inequality or abandon the liberal framework in order to deal with it. By examining the communal structure in pre-liberal societies, and the nature of modern-day support for particularism, it has been found that the norm of universalism is to be preferred. The Indians in Canada have been used as an example illustrating the effects of a particularistic policy when applied in a liberal context. An analysis of the Indian case suggests that legal group differentiation does not reduce group inequality even within a liberal framework. The argument is advanced that a "liberal" solution to this problem is possible. Since liberal theory has been mute on this point, a solution is worked out by exploring what is consistent with classical liberal foundations as laid down by John Locke. In general, group differentiation may be practised in a qualified way provided it remains the exception, and is not established as a new norm.

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CHAPTER ONE

Statement of the Problem and Plan of the Work

Contemporary liberalism has been accused of ignoring group
inequalities, and consequently, of neglecting a fundamental social
reality. This is a particularly strong charge when one considers the
implications the presence of group inequalities has for the liberty of
the individual - the central concern of the theory. Liberal govern-
ments, notably, have been experiencing difficulty in coping with this
problem such that socio-economic inequalities are either left entirely
alone to run their own course, or else non-liberal policies are
utilized in an effort to control and minimize these inequalities.
Laissez-faire liberals have "tended to deprive politics ... of its
prestige as the predominant means in the implementation of human
values",[1] but their modern counterparts overestimate the efficacy of
legal-political corrections.

In its original inception, liberal philosophy never envisaged
the possibility of total equality - indeed, it began as "perhaps an
elitist tradition".[2] The question remains unanswered: are there any
inequalities which are legitimate? (As both Locke and Spinoza asserted,
liberalism can accommodate whatever nature demands.) It may be that the
belief that all inequality is a social construct produces an unending
struggle to attain goals which can never be met.

As a result, liberal theory has come under heavy criticism to

the point where, in some quarters, it has been totally abandoned. While this charge is understandable, is it in fact true? Does liberalism lack a cogent approach to the treatment of the group inequalities which have developed - or which have failed to disappear - under its hegemony? If it has not attempted explicitly to confront the issue because of an assumption that the free market will gradually render most group differences irrelevant, does this mean that it cannot resolve the issue at all? Is it necessary for a government to implement non-liberal policies in order to realize liberal goals i.e. to prevent the emergence of a caste structure? Is group legislation to obtain equality legitimate? Is there any reason to suppose that group legislation would be more successful now in obtaining equality than it has been in the past?

In its most extreme formulation, classical liberalism focussed entirely on the individual. Indeed, in pre-liberal societies, group differentiation was the norm. There were no universal rights, only collective prerogatives. By examining the case of the Jews in the Ottoman Empire, a striking contrast between communalism and the liberal solution can be brought forth, thereby demonstrating that group rights are perfectly compatible with individual oppression. If the modern variation of group heterogeneity were realized, it seems reasonable to expect that a system similar in negative features to the Ottoman Empire, or worse, would follow.

Once the form of differentiation in pre-modern communal society has been established, the substance of liberalism as it was developed by Locke will be discussed. The liberal state was based on a separation between state and society; this "secularization" of government was

consistent with and followed from the belief that the individual possessed natural rights. The state was to protect and preserve these rights, which it could hardly hope to accomplish if it succumbed to partisan interests. The chief object of the liberal state was to eliminate persecution. In this way, diverse groups may yet coexist in an atmosphere free from widespread individual grievances, constant political uprisings and overall turbulance. Without the use of a powerful army, regular state executions to set examples, and state manipulation of the economy, society was supposed to be able, in theory, to regulate itself. This "self-regulation" of society would produce only legitimate manifestations of inequality - legitimate because they would be the result of objective, hence natural, conditions. In other words, the rationale of the liberal state was to eliminate that kind of state interference which would favor one (religious) group rather than another and hence cause inequality that would be unnatural i.e. not independent of political control. Total equality, then, was never the goal of the liberal state. It sought to eliminate only the inequality which was unrelated to differences in ability or talent; the abilities which would be valuable would be defined by the market. According to liberal thought, to attack that inequality caused by the differences in human ability was to attack part of the individual's natural rights (i.e. his nature).

The universalism characteristic of modern liberal legislation, in contrast to the particularism of previous periods, excludes, at least in theory, public caste systems. The existence of group rights, of course, is incompatible with the universalism of modern law. The state cannot protect both individual and group rights - the two may conflict,

for an individual is also a member of a group or a number of groups; at any rate, they would work at cross-purposes to each other.

Notwithstanding the fact that the spirit of modern legislation is centered around individual rights, does it follow that a liberal democratic regime is incapable of differentiating between groups? While group rights are not the prevalent norm, the existence of identifiable groups themselves must attract the attention of any responsible government. Ethnicity, age, gender, morbidity and military service to the state are used to characterize groups of this sort. Group differentiation, then, is practised but not as a central principle. Recognition of group entities can exist without any loss to the individual's political power and can be incorporated under liberalism. They become mutually exclusive only when group differentiation becomes politically central rather than peripheral.

The knowledge that groups exist suggests that a purely individualistic approach on the part of governments to human needs and problems is inadequate. On the other hand, to propose the institution of group rights to which liberalism is totally opposed may very likely undermine the validity of individual rights. The thesis which will be advanced is that a reexamination of liberal theory will reveal that it is able to accommodate the needs of groups as well as individuals. Although founded on the premise that the individual has rights, liberalism can respond to the needs of groups under certain conditions. In this way, individual rights and liberties do not run the risk of becoming secondary or obsolete, but justice can be done to the actual differences between groups. The fact is that collective distinctions have not disappeared to date, despite

the best efforts of liberals, and it is not essential to liberalism that they should disappear.

Group differentiation is legitimate when it is used to protect individuals from the harmful consequences which would result were a universal law applied. These consequences arise from the existence of special needs which an abstract, universal law can account for only with the greatest difficulty. Group differentiation is inimical to liberal democratic principles when its effect is to establish certain groups as legally and politically superior to others. Children, for instance, provide one of the clearest examples of the need for special status. Children have almost no civil rights in criminal law, but they are not subject to the same penalties and expectations of adult offenders. To abolish their differential status in the hopes of securing a more absolute equality would constitute a form of oppression since the inherent inferiority of children must be recognized by a just law. Just law must take due account of the circumstances - in the most comprehensive sense - of the people concerned.

The distinction between the general rule and the exception needs to be restored. The notion of special needs which is compatible with individual rights and yet averse to pure individualism points to this distinction. Of course, once special needs become transformed into special rights, this distinction would be lost, and the liberty of the individual, no longer assured. As a corollary to the above, the question of whether these needs are permanent (such as those connected with age) or transitory (such as those connected with ethnicity), and the grounds for determining what a liberal government could do to meet these needs, will be discussed.

NOTES

1. Seliger, 1968, p. 20.
2. Lipset, 1960, p. 97.

CHAPTER TWO

The Communal Structure of Pre-Liberal Societies

The recognition of individual rights as an immutable fact
redefined the limits of power and obligation between governmental
authority, society and individuals. Prior to this liberal concept,
there were different rights for different groups. Each group possessed
a separate mode of life based on their distinct religions; and consequent-
ly, group differences being all-encompassing, particularistic law was
easily established. The Ottoman Empire represents the most clear example
of legal group differentiation which altogether by-passes a concept of
individual rights, its policy towards groups was considered the most en-
lightened of its day; and moreover, it provides information on the
development of group rights until their culmination. Group rights were
the basis of toleration in Ottoman society and its pillar of strength in
contrast to the identical role of individual rights in modern liberal
society. A comparison between these two types of differentiation should
be valuable in throwing some light on their methods and bases of operation,
as well as their relative merits and flaws.

The millet system was the form of social organization through which
the Ottomans maintained control of an extremely heterogenous population.
By dividing the religious and ethnic groups into various "millets", the
Ottomans transformed the people they conquered into cooperative subjects;
and with the least amount of disruption, they united several diverse

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peoples into an empire. This chapter will deal with how the millet system was established, its legal significance, and the manner in which it worked throughout its course in time.

The state of the Jewish millet will be given special attention owing to the fact that traditionally Jews were treated on a collective basis - indeed, according to Baron, the Jewish minority served as the model for legislation concerning religious dissenters[1] - and so, the essence of group differentiation may be best understood by examining the case of the Jews.

The term "millet" is used in the sacred Muslim text, the Koran, to denote religion. However, as Gibb and Bowen explain, "the abstract term 'religion' is never clearly divorced from the body of its adherents", so "millet" also means "religious community".[2] It was specifically the Muslims who constituted the religious community since the Sacred Law of Islam regards all non-Muslims as "infidels".[3] The members of those non-Muslim communities which enjoyed protected status were called "dimmis". The extension of "millet" to encompass these protected communities was apparently an Ottoman innovation. The origin of the system itself, however, lay in the universal practice of the Roman and medieval empires to allow subject communities the freedom to follow their own laws and customs under an authority who was responsible to the ruling power.[4] The millet did not comprise an homogeneous ethnic group or language group, nor was it territorially based. Each millet contained a number of communities isolated from one another with different social, political and economic privileges, held together by an ecclesiastical administration.[5] "Millet", then, refers to the aggregate of self-governing communities under the

purview of a single religious authority.

The first Ottomans were not a tribe but a band of nomadic and semi-nomadic Turks: "a party of fighting nomads on migration, a voluntary organization under a chosen leader, which anyone could join."[6] As these Turks possessed "no identity themselves beyond that of a fighting force loyal to a particular commander",[7] and were primarily interested in booty and tribute, their capacity to assimilate alien peoples to themselves was enormous.[8] Along their route into Central Asia and Eastern Europe, they came into contact with Buddhism, Manichaeism, Judaism, and Christianity - absorbing elements from each. Competition with the Mongols forced them into Arab countries where they converted to Islam. The Muslim religion, which rests on a code of behavior that demands implicit obedience and few decisions, seems to have been compatible with the general outlook on life that can be expected of a war band.[9] As every Muslim was obliged to engage in "Holy War" against non-believers,[10] adopting Islam provided these Turks with a religious as well as territorial incentive for going to war. Finally, converting to Islam was strategically beneficial for it quickly united conquerors and conquered into one cohesive body.[11] The religion of Islam, it should be noted, "laid down exact rules for all the concerns of life",[12] and was therefore as much the law as the religion for Muslim peoples. When large populations of non-Muslims came under Ottoman control, there arose the problem of how to ensure their civil obedience to a religious code of law. The solution chosen by the Ottomans was the millet system.

It might be helpful at this point to clarify the meaning of "Ottoman" and the implications it has for the level of assimilation

possible. The Ottomans were one of many Turkish groups, and the term "Ottoman" is a political rather than an ethnic concept.[13] While the Ottomans spoke a hybrid language borrowing heavily from Turkish, Persian, and Arabic, the ruling class regarded themselves as simply Ottomans and Muslims. "Turk" meant peasant or yokel. So while religious and ethnic solidarity existed between the different Turkish groups, "this literate urban governing class considered the people they called Turks as country bumpkins and creatures of coarser clay. With the exception of men of religion, and of a few of remarkable military or administrative ability who rose to positions of authority and literacy, every ethnic Turk remained fixed in his place in the rigid social system".[14] In short, the idea of a Turkish nationality was unknown. This is not to say that the Ottomans were not conscious of their ethnic individuality, for in the Ottoman court the "Turkish element" was distinguished from the "Arabo-Persian tendencies".[15]

In their relations with non-Muslims, the Ottomans used religion - and unavoidably ethnicity - to determine social standing. "The status of the individual Dimmi ... derives exclusively from his membership of a protected community."[16] So it can be seen from this that the Ottomans sought to differentiate themselves first according to religion, and second, according to class. It could happen that non-Muslims were better educated and wealthier than Muslims, yet they remained the social inferiors of Muslims. As "representatives of infidelity", they were held in low esteem, entitled only to a level of toleration granted them by the Prophet, which could be more charitably interpreted sometimes than other times, depending on the general social mood.[17] Although "Ottoman" was a

political term distinguishing the ruling Muslim class from all others,
assimilation was not as possible as that term might suggest. Paul
Rycant's seventeenth-century statement that what the English call
"Naturalization [and], the French, Enfranchisement ... the Turks call
becoming a Believer"[18] is an exaggeration. While anyone could adopt
Islam, a distinction between free-born Muslims and Christian-slave
Muslims was maintained. For instance, the property of a Christian-slave
Muslim, upon death, reverted to the state, not even the Christian millet;*
whereas, a free-born Muslim could dispense of his property as he chose.[19]
Therefore, assimilation, in the sense of achieving full legal-political
equality with Ottomans by adopting Islam and entering the ruling class
(as was done by the Christian administrators**), did not take place. A
non-Muslim, however, could achieve legal-political equality with a Muslim
Turk upon swearing allegiance to Muhammad and relinquishing his property
to his former community,[20] but such incidents were rare for "to convert
individuals was to uproot them, and often to be unable to replant them
in a native community ...."[21]

The idea that "Ottoman" was a purely political ideal needs to be
qualified. A political ideal cannot entail ascriptive characteristics.
Religion and class can be ascribed characteristics, and when intertwined
with ethnicity, this is especially true. To be "Ottoman" was not simply
to possess a certain kind and degree of culture, it was to be Muslim.

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*The absence of this property "right" was based on his being a
slave. Normally converts lost their property to their millet.
**These are to be distinguished from the administrators for the
Christian millets who were not members of the Ottoman Ruling Institution.

But to be Muslim was not simply to believe in Muhammad, but to be of the community that believed in Muhammad. While anyone could declare allegiance to Muhammad and thereby become a Muslim in the religious and legal sense, membership in the Muslim community was not open. Consequently, the political essence of the term "Ottoman" is such that it does not coincide with any purely ethnic boundaries. The question remains: why was the Muslim community closed to the new believer; why did the Ottomans not urge their conquered subjects to assimilate and sustain a class barrier alone?

One might argue that, in fact, ethnicity played a primary role, that ethnic prejudices were inherent and religion was but a device to practise discrimination which might otherwise not be seen as legitimate. However, this is doubtful. According to Hirschberg, good relations between the Jews and Arabs, at least, existed prior to the arrival of Muhammad and deteriorated only after "due to the inevitable contest between Muhammad and the Jewish tribal chiefs, and subsequently between a developing and increasingly institutionalized Islam and Judaism".[22] So it would appear that tribal loyalties only strengthened because of religious differences. Perhaps it is plausible to suggest, since religious conversion was not believed entirely the result of free choice (owing to other factors i.e. legal status, influencing the decision besides considerations of private conscience), that the convert was always regarded with suspicion, so it would be useful to maintain a distinction which would separate the trustworthy from the non-trustworthy. However, whether some suspicions existed or not, if this was the heart of the matter, it would have been necessary to deny the new Muslims political

control altogether; instead, Christian-slave Muslims came to comprise the army and they practically controlled the Ottoman administration.[23] It was with respect to their "individual property rights" that they suffered discrimination. Of course, this concept did not exist among the Ottomans as a "natural right" of the individual. The Ottomans enjoyed property rights on an individual basis because they were Ottomans; it was not their's by virtue of their humanity. If the individual _dimmi_ lost his property to his millet, it was because the group had obligations to the state which it could only continue to meet, if _its_ rights were protected. Therefore, it is not strictly-speaking correct to say that non-Muslims and new Muslims were "discriminated against" in this respect - the Ottomans could not be said to deny rights to others of which they had no concept. Since neither inherent ethnic prejudices nor distrust for religious converts accounts for the persistence of religious-ethnic distinctions, an explanation must be sought elsewhere.

The new believer could not become a full member of the Muslim community for two reasons. The one political, in that group rights which were the basis for stability and unity within the Ottoman state had to be protected, and the other economic, in that a major source of revenue during the period of consolidation was the taxes levied from the non-Muslim millets. Substantial numbers of converts from the millets would therefore have seriously eroded state incomes.[24] Of course, how money could and could not be raised was determined to a degree by religious law, probably to the great displeasure of the Ottomans who could do nothing to alter this circumstance fundamentally.

The Ottoman economy was organized in part on a cash basis (the

slave Household had to be paid in coin by the Sultan), and in part on a feudal basis - the "timar-system". However, as the slave Household expanded, the need for cash became acute. Up until this time, the sources of imperial income permitted by religious law were sufficient. These were the millet taxes, twenty per cent of all war-spoils (which soon dwindled to nothing), and income from various monopolies. But by the end of the fifteenth century, it was necessary to raise new taxes based on the Sultan's authority. This was not entirely legitimate but became more and more commonly employed.[25]

One can see how, at first, when Islamic law was rigorously adhered to by the authorities, the Ottoman state must have been a better place for non-Muslims to live than was Europe. In fact, the peasantry benefitted under the new regime which protected them from exploitation by local authorities, and was interested in keeping taxes low.[26] But as the Sultans deviated from this original practice to meet new needs, the peasantry became an impoverished and discontented group - Muslim and non-Muslim alike.[*] Once the non-Muslim communities became organized into the Ottoman administrative machinery with a fixed amount of poll-tax due from each which inhibited the individual's movement between millets, assimilative tendencies were checked.[28]

When the Ottomans conquered territories predominantly Christian, they were confronted with the new problem of how to acquire the cooperation of the Christian majority without simultaneously losing the cooperation

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[*]The Muslim millet did not pay a tax, but Muslims were still taxed. The ruling class alone, Muslim or non-Muslim, was exempt from payment of taxes. Obviously, the lower classes of non-Muslims were hit the hardest.[27]

of the mass of Muslims in their Asiatic provinces. They could not become Christian to accommodate their Christian subjects as they had earlier adopted Islam to be united with their Muslim subjects. Some minor attempts were made to synthesize Christianity and Islam, mostly in jest, which of course proved fruitless. To complicate matters, there was also widespread dissension within Islam itself. The effect was that the sultans abandoned "their earlier eclecticism in favour of a particularly rigid and exclusive Sunnite version of the Moslem faith which, while it forbade persecution of Christian subjects, at the same time discouraged any programme of mass conversion of Christian peoples to Islam."[29] Later in the sixteenth century, competition with the powers of Christian Europe was to make "it essential for the sultans to identify themselves more strenuously than ever as champions of their adopted religion."[30] The solution was to grant the conquered peoples the right to keep their religious customs. This was more than any European power would allow at the time, so their non-Muslim subjects were satisfied; and by assigning the non-Muslim millets a lower status, the Ottomans were also able to retain the loyalty of their Muslim subjects.[31]

Religion, then, played the primary role in determining social and legal status. Religion was also a part of ethnicity - it defined the community. Indeed, to the Ottomans, all the members within a millet were alike; they "took little or no cognizance of ... national or racial differences."[32] Former religious ties had to be preserved to meet economic needs; the manner in which they could be met had previously been established by religion, and religion served the political ambitions of the Ottomans. The maintenance of group boundaries during the construction of the Empire

was a goal agreeable to the broadest majority; in this respect, measures

to prevent assimilation were a political rather than economic choice,

compatible with the aspirations, ideas, and values of the people at the

time - Muslims guarded their privileged position from any attempt to

blend "high" origins with "low", and non-Muslims valued their relative

political independence and religious freedom. Assimilation was not

promoted because it would have harmed government, Muslim and millet

interests.

Dimmis, the members of protected religious groups, were living

for centuries in the area which the Ottomans invaded. The Ottomans, by

designating a collection of these "millet", demonstrated an acceptance

of certain other religions as legitimate - albeit inferior to Islam -

since a generous interpretation of "millet" was adopted. The practise of

tolerance towards such autonomous communities was continued by the

Ottomans who went still further and built their administration around the

millets.[33] This formalized Muslim-dimmi relations, and gave them a

central place in the Ottoman social structure. The presence of non-

Muslim groups was no longer an anomaly in the Ottoman Islamic Empire as

it was in the Arab-ruled states before. Group differentiation became the

rule in what had always been a corporatively organized society with a

tradition of exclusivity. The isolation of communities from one another

has been summed up by Hirschberg:

> "No one familiar with the Jewish sources of the period
> will be surprised that they contain almost no reference
> to personal relations between the Jews and the non-
> Jewish society within which they lived. Similarly,
> Arab-Muslim writers almost completely ignore the
> existence of non-Muslim communities, mentioning them
> seldom and only incidentally. This attitude is a true

> mirror of reality. Such was the way of life of medieval
> man in the East. Relationships of blood, origin, and
> religious and communal affiliation were paramount, and
> only what went on within their purview was of real
> interest. Even important political events were passed
> over in silence if they did not affect members of the
> group."[34]

The preceding gives an overview of how an ethnically diverse population became bound up with the Empire. Religious law was of singular importance in the formation of Ottoman society which was "divided along religious lines into the favored Muslims and the tolerated scriptuarians; along occupational lines into the rural and urban populations; and along social and economic lines into the upper and lower classes."[35] Assimilation was not only discouraged through informal sanctions, but formal barriers were set up to prohibit it. By assigning rights to communities, the Ottomans ensured the preservation of the then existent groups, and the dimensions along which future social conflict would center. The political order which the Ottomans inherited was not a cohesive one: the perpetuation of the structures which justified this disunity meant that the Empire's stability would depend on the Ottomans' capacity to superimpose a unity on it. Had formal, institutional barriers not been created at all, the new emergent order may not have served Ottoman interests better, but it could not have served them worse. As the Empire declined, the Ottomans found their power base fragmented into many parties against them and against each other. Frictions were most intense between religious groups.

The framework of Ottoman society and the place of non-Muslims within it remains to be carefully examined. What was the legal status of the millets, in theory and in practice?

When a people voluntarily surrendered to Muslim forces, according to Islamic law, they were entitled to _dimmi_ rights.[36] Muhammad, in his war against the Jews of Khaybar, established a contract with them which applied to Christians as well that "served as binding legal precedent for all agreements with both in conquered territories ...."[37] The terms of the agreement were that a poll-tax, specified by the Koran itself was to be paid by non-Muslims, and in turn, "the protection of the _dimmi_, the jizya-paying subject, was incumbent on the authorities and on the individual."[38] While this general rule always held true, other legislation was used for determining the policy towards a given community.[39]

The Muslim ruler, then, in exchange for payment of the poll-tax and land tax assured the _dimmis_ protection of their lives, their liberties, their property to a degree and allowed them to practise their religions. They were also required to comply with various restrictions designed to mark them off as an inferior caste. These restrictions included legal disadvantages - for instance, they could not testify against Muslims, and the Muslim murderer of a _dimmi_ was not punished with death - stipulations on dress such that they could even be distinguished from each other, and a ban on riding horses, carrying weapons and the building of churches and synagogues.[40] However, concessions were made in the case of the privileged classes which "in exchange for their subservience" had special rights given to them.[41] Indeed, an upper class _dimmi_ lived more like a Muslim than a _dimmi_, being exempt from tax, and dress codes; and being in his whole manner of living less restricted. This, of course, would not be an inconsistency from the Ottoman point of view wherein class and religion had equal impact: if religion separated the Ottomans from their subjects, class

could unite them; if class separated them from their subjects, religion would unite them. Consequently, one cannot infer that accounts of the oppression of the dimmis include all non-Muslims regardless of class.

While it is not the purpose of this work to deal with the tenets of the Islamic faith - in fact, "much of the confusion in interpreting Ottoman social history has derived from excessive reliance upon Ottoman laws and Islamic theories [which tend] to confound the ideal of the Empire with the real"[42] - those elements which have a direct bearing on the millet system will be reviewed.

Muhammad had said, "O Infidels, I do not adore what you adore, and you do not adore what I worship; observe you your law, and I will observe mine ...."[43] The Sacred Law of Islam, "legislated" by Muhammad, was called "Sharia".[44] It was considered, in theory, complete in its guide for the regulation of man's relationship with man and with God; it influenced the legal, religious, social, ethical and economic life of the Muslim people.[45] Gibb and Bowen point out the two aspects which differentiate it from Western systems of law. First, Islamic law "is the product of juristic speculation, not statute-law; the state accepted it, and itself derived its legal sanction from it, but had little share in shaping it or deter- mining its methods and decisions", and second, "the basis of the system is not legal at all, but ethical ...."[46] Since obedience to the Sharia depended on faith, it could only be effective with Muslims. Consequently, there were different legal codes followed by each religious community.[47] While the Sharia could have been made effective with non-Muslims - indeed, recourse to it was had in suits between persons of different faiths[48] - it would have gone against its "spirit" in doing so, for the Sharia defines

actions as either "obligatory, recommended, indifferent, objectionable, prohibited", and its penalties, if laid down at all, are religious rather than civil.[49] Concerning penalties, it is interesting to observe that if a criminal was not found, his whole community could be held responsible by the civil authorities, and the severity of the punishment depended on whether the guilty party was male or female, free or slave, married or unmarried, Muslim or non-Muslim.[50]

Also, it is likely that the role of customary law had an influence on the high degree of independence allotted the millets.

> "Tax and population surveys in particular gave rise to suggestions for new laws. When the Ottomans undertook such a survey in a newly conquered region, their first step was to ascertain the pre-conquest laws and customs of the area. They did not seek to annul all the laws, customs and institutions of conquered territory but preferred to maintain many local usages, hoping thereby to avoid the unrest that might follow the sudden introduction of a new system. Furthermore, experience had taught them that drastic change brought a decrease in tax revenues. In these areas the commissioner of the survey merely abolished those practices which were contrary to the [Sharia] and Ottoman legal principles. The others he recorded and forwarded to the capital for the sultan's approval."[51] (emphasis added)

In addition to the Sharia and customary law, Ottoman society was regulated by the Kanuns, the written decrees of the Sultan. These were not seen as forming a body of secular law or as relevant in cases outside the Sharia's scope. The Kanuns amplified matters not explicitly treated in the Sharia, and therefore were supposed to be consistent with it.[52] Despite legal restraints on the Sultan's power, he was an absolute monarch; there was only one case in the conquest era of a Sultan being forced to abdicate.[53]

The Ottoman political system was divided into the Ruling Institution

and the _Ulema_. The military and civil authorities composed the former,
and the experts in religion, justice and education, the latter. The
recruits for the Ruling Institution, who were obliged to accept the status
of slaves, were the male children from the Orthodox Christian millet
acquired through the _devsirme_ system. This method of enrolment was con-
trary to the Sacred Law since it abrogated the agreement with the _dimmis_
guaranteeing them certain "protections".[54] This was the only regular
interference by the Ottomans in millet life.[55] While the use of slaves
in the army and administration was not itself a new practice, it had never
before been true that free Muslims were at a disadvantage with Christian
slaves in their bid for these posts. The Ruling Institution was almost
fully manned by Christian slaves. The _Ulema_ on the other hand was open
exclusively to Muslims. Its authority in political affairs, over time,
was greatly circumscribed by the Sultan. A sharp division between the
sacred and profane became apparent as the Ulema's practical authority over
the Sultan declined. There was, as in Europe of the same period, a nascent
secularization with the Muslim Turks increasingly excluded from the
exercise of real power.[56]

In its ideal form the Ottoman legal system, with respect to its
religious code of duties, was extremely detailed, but in its application,
in its permitting "anything" the Sultan wills and deems necessary which
does not noticeably contradict the Sharia, was flexible and situationally
determined beyond all comparison with Western law.

The Ottomans made exceptions into rules and therefore every differ-
ence could be accommodated. Since the greatest differences existed between
groups rather than within them, every community, under this legal system,

was assured special attention:

> "Where each group was relatively small, its general
> interests were more readily grasped, and the individual,
> in his obvious dependence upon the group and the closeness
> of his relations with its other members, was more fully
> conscious that his own welfare was bound up with that of
> the group as a whole. There was thus an intimacy in the
> administration of Muslim law, a regard for the relevance
> of each case to the interests of the community, great or
> small, which is totally opposed to the impersonality of
> Western 'Justice' ...."[57] (emphasis added)

In sum, the features of Islamic religion specifically necessary
to understanding the millets stem from the theoretical supremacy of
religious, particularly Muslim, law. The Sultan's authority was based on
religion; it was incumbent on him to avoid any open abrogation of the
Sharia, however inconvenient it might prove to be lest his own position
be undermined. Nevertheless, in practice, the Sharia was insufficient for
the governance of an empire. As a result, a body of civil regulations
grew up which both supplemented and sidestepped the Sharia. Enforcement
of civil and religious law, as they related to the millets, was largely at
the discretion of the rulers. Although a core of unchallengeable precepts
did exist, this core could be more or less closely observed depending on
the benevolence of the Muslim community and of the Sultan. Generally,
policy dictated an indifference to the internal workings of the millets,
but provision was made for the supremacy of Ottoman law in cases of con-
flict. The treatment of each millet by Ottomans varied from community to
community, and from generation to generation, but in governing relations
between the millets and the central authorities, the law continually
stressed the collective responsibility of the millets for their members'
conduct.

Excluding the Muslim millet,[*] there were three official millets in the Ottoman Empire: Greek Orthodox,[**] Gregorian Armenian (which included all "unclassified subjects"[***]), and Jewish. The Catholic and Protestant communities were not recognized as "millets", perhaps because they were initially too few in number; and Catholicism, specifically, was the religion of the "Franks" who were the hereditary enemies of Islam. These communities, although tolerated, were at a distinct disadvantage compared to those with official recognition.[60]

While the Patriarch was the only legitimate head of the Orthodox millet, there was in fact an "oligarchy of patriarchs", each controlling millet activities within his city or area. Apparently, this pattern was repeated with some variation in the other millets.[61] It should be noted that polytheism, with a few exceptions, was not among the religions toler-ated: its advocates were either forced to convert to Islam or die. The "People of the Scripture", on the other hand, were permitted, within limits, to keep their religious practices. After polytheism was suppressed, the "People of the Scripture" became the sole infidels in the realm. They were, then, no longer regarded as members of religions aligned to Islam through certain similarities, but as members of religions completely opposed to Islam, and their social position deteriorated accordingly.[62]

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[*] The word "millet" was generally understood to refer to non-Muslim collectivities; hence, this usage departs somewhat from the norm, but is convenient.

[**] This was the most important non-Muslim institution.[58]

[***]Indeed, "the Armenian became as it were the millet of Heretics, into which such incompatibles as Catholics, Nestorians, and Jacobites were thrown together."[59] This was to have disastrous consequences for the Armenians.

In general, as the sixteenth century approaches, around the time when the Empire was at its height, the situation for the _dimmis_ worsens.[63] Evidently, the Ottoman sultans applied the principles of the millet system to non-Muslim communities even before the capture of Constantinople in 1453, when the millets first received official recognition and extensive powers were consigned to their religious leaders.[64] But if 1453 represents the "beginning" of the millet system, and the turn of the seventeenth century saw its rapid decline, it can be concluded that the millet system was effective for about two hundred years, after which it ceased to benefit in any sense the minority groups in the Empire.[65] Ultimately, the only interests served by the millet system were those of the Muslim Turks who wished to preserve their hegemony within the Empire at its expense. To the extent that the Empire's unity was compromised, it can be said that the Ottomans, too, did not benefit from the millet system.

The case of the Jewish millet, its status at the time of the formation of the Empire (approximately 1300-1600), and when the Empire was in its decline (approximately 1600-1900), will be used to illustrate the development of the millet system as a whole. Despite differences in status, organization and customs between the communities within a millet, and between the millets themselves, the _dimmis_ shared more in common than otherwise; and while it would be interesting to examine each millet, it is not necessary for an understanding of how the millet system progressed. As a rule, the area under concern was confined to Europe, since the further out one moves from the capital, the less significant Ottoman policy becomes in inter-group relations.

At the start of the Ottoman Empire, the _dimmi_ subjects formed the

majority. As a result, the Jews did not feel themselves to be the outcasts in Ottoman society that they were in Byzantium.[66] Initially the policy of the Ottomans towards their religious minorities was so enlightened compared with that of Christian Europe in the fifteenth century, that a large number of Jews migrated into the Empire to escape persecution, forced conversions, and economic restrictions. Indeed, the Ottomans welcomed the Jews, favoring them over the Christians who were considered more likely to betray them in a cause against Christian states. Notably, it was the Chief Rabbi who at this time obtained "a seat on the Imperial Divan next to the Mufti; and (such a thing had never been known to history before) with precedence over the Greek Patriarch".[67] Needless to say, his influence improved the overall status of the Jewish millet.

The Jewish millet contained four divisions: the "original" communities which were divided doctrinally into Rabbinites and Karaites – these absorbed most of the immigrants; the Ashkenazim who were immigrants from Germany; and the Sephardim – fugitives from Spain and Portugal – who also organized themselves apart from the rest. The Sephardim broke into smaller sections according to regions and even cities of origin.[68] Interestingly, when "the differences in language, culture, economic circumstances and religious customs which justified the existence of a separate organization of the immigrants immediately after their arrival became obliterated, the original dividing walls did not disappear ...."[69]

While this internal fractioning was taking place, the millet itself remained intact, and its affairs continued to be overseen by the Chief Rabbi.[70] The first Rabbi was appointed by the Sultan, but every other Rabbi was elected into office by the Jews themselves, upon confirmation by the

Ottoman Court.[71] The Rabbi's role changed from generation to generation.

At one time, it was the responsibility of the Rabbi to collect the taxes

of the Jews, but as the Jewish population increased and diversified, and

"internal discipline - the fruit of long tradition" weakened,[72] this

function was performed better by a secular bureaucracy. Also, the role

of representative for the Jews ceased to be the Rabbi's, rather "the

various tax-collectors, toll-farmers, cashiers and bankers of pashas,

insofar as they were non-Muslims, were the natural spokesmen of their

communities by virtue of these functions and their influence at court."[73]

The Chief Rabbi's powers went from nearly exclusive responsibility

for the enforcement and administration of Jewish law, broad civil powers

over his own congregation,[*] and even prerogatives involving tax assessment

of the Jews,[**] to a much reduced role as the mere adjudicator of disputes

affecting the millet as a whole.[76] Perhaps the growing complexity of

millet affairs led to their devolvement onto a secular authority, or

perhaps the Ottomans, concerned by the concentration of traditional

authority and legal power in the hands of the Rabbi, chose to establish

a competing appointive position to dilute the potential threat offered

by the head of a millet.

In short, the internal governance of the millet was conducted by

the local administrators, religious and secular, whose powers were under

the general jurisdiction of the Chief Rabbi. His powers were later greatly

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[*]This measure of local autonomy which was reinforced over time was
the beginning of "a process exactly the opposite of millet-making."[74]

[**]The amount which the millet as a whole had to pay was imposed by
the Ottomans.[75]

curtailed by the secular representatives of the millet. The Ottomans left the control of the millet to its leaders provided their members obeyed the tax and dress regulations, and stayed out of trouble with Muslims. All disputes between _dimmi_ and _dimmi_ were handled according to religious and customary law by the millet's own courts, although they could be heard in a Muslim court as well. The nature of millet government can be aptly described as "a Beggars' Democracy - a politically irrelevant form of self-government."[77]

The Jews fulfilled a vital economic role in the Ottoman order, "they provided precisely that element which was most necessary to the ill-balanced state - a class of city-dwellers, merchants and craftsmen, who could practice the handicrafts that the Turks so painfully lacked and, moreover, prevent commerce from being entirely in the hands of those whose interests were specifically anti-Turkish."[78] Indeed, the Jews controlled the wholesale commerce of the Empire, as well as the collection of customs.[79] They were, also, preferred as physicians and interpreters, and as Muslims could not work in gold and silver, trades connected with these became the monopoly of non-Muslims.[80] While the Jews (and Christians) were permitted membership with Muslims in the industrial and commercial guilds, the value of the guilds as "instruments of 'social fusion' between Muslims and non-Muslims",[81] and as vehicles for social and economic advancement, are negligible. Most guilds were locally based, restricted in number, organized along denominational lines, and not all crafts were open to non-Muslims.[82] Nevertheless, during this period of expansion, the _dimmis_ enjoyed economic prosperity - opportunities were available, and their richer co-religionists exerted their influence on their behalf.

In fact, as there was no hereditary aristocracy, aside from the
Sultan and his family, opportunities for vertical mobility were numerous.[83]
In a letter, written by the Holy Roman Empire's ambassador to Constantin-
ople in 1555, the following is stated:

> "It is by merit that men rise in the service, a system
> which ensures that posts should only be assigned to the
> competent.... Those who receive the highest offices from
> the Sultan are for the most part the sons of shepherds or
> herdsmen.... These are not our ideas, with us there is
> no opening left for merit; birth is the standard for every-
> thing; the prestige of birth is the sole key to advancement
> in the public service."[84]

These "sons of shepherds and herdsmen" were the slaves acquired through the
devsirme system, which, as mentioned earlier, only affected the peasantry
of the Orthodox millet. The dimmis of the Jewish and Armenian millets were
excluded from such enslavement or advancement (depending on the view taken)
possibly because the Sultans sought to give the devsirme "a colour of
legality which obliged them to restrict the conscription to the European
provinces, which had recently enough formed part of the Domain of War...."[85]
At any rate, it is significant that this system was later overthrown by
the Muslims when they became the majority in the Empire. "... the prepon-
derance of Muslims in the population of the Empire made the reservation of
high office to persons of dimmi birth seem far more illogical, and even
preposterous, to the Muslim population than before. Hence there came about
the Muslim revolt against this reservation that ushered in the period of
decline."[86] From then onward, the badge of dimmi inferiority was strictly
established.

In the large towns, the different communities were segregated into
"quarters". This was not imposed by the State, but was more a part of the

"natural" growth of the city - non-Jews lived in the Jewish quarter, and Jews outside of it, if desired.[87] So the existence of a "quarter" was not, at first, resented by the Jews. However, when segregation became enforced, the Jewish quarter degenerated into a ghetto.

> "The assertion that the walls served to protect the Jews against mob violence was incapable of divesting this segregation of its humiliating character which was also not lessened by the fact that not only the Jewish quarters in the major towns were surrounded by walls. A wall of contempt separated the 'quarter' from the 'city' even where no actual walls existed."[88]

This is what became of the Jews' and Christians' "right of residence" based on the Koran.[89]

Out of this period of expansion and consolidation, when the millets experienced relative good fortune, came another period, one characterized by a "contemptuous half-toleration" for dimmis.[90]

A comprehensive review of all the forces contributing to the decline of the Empire would be a major undertaking in itself. For the present purpose, it is sufficient to note that the decline of the Empire, and of the millets within the Empire, occurred together. Especially relevant to the millets, however, were the demographic changes which commenced at the zenith of Ottoman power, and which themselves may have hastened the fall.[*] These were the large influx of immigrants which were classified into one of the three existing millets (regardless of whether or not the mix was compatible), instead of receiving separate millet ranking, and the acquisition of Arab

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[*]In the sixteenth century, the population of the Ottoman Empire increased by forty per cent in the villages and by eighty per cent in the towns. The government became aware of its population excess after 1570.[91]

lands which made the majority within the Empire for the first time

Muslim.[92] The first of these furthered dissension within the millets,

the latter, between them.

The conquest of Muslim-dominated territories transformed the

"frontier state" into an "Islamic Caliphate", and the "result of the new

consciousness of the Ottoman rulers was to raise the religious law of

Islam to a position of prime importance in the administration of the

state."[93] The elevation of Islam was accompanied by a commensurate waning

in tolerance among Muslims for their dimmi populations.

In the seventeenth century the integrity and efficiency of the

Ottoman Government perished. As the central administration became more

debilitated, so the management of the millets became more corrupt:

> "The upper clergy, often in league with the Ottoman officials,
> bled the people financially. Moreover, the millets offered
> 'convenient opportunity' to the great powers for intrigue
> among the minorities."[94]

There was a section within the Orthodox millet which supported the Ottomans

in order to enhance its own political power within the State, hoping

eventually to control it and convert it into a "reborn Byzantine Empire."

However, the entire millet could not take concerted action on this, and as

many of its members were found guilty of disloyality, the Orthodox millet

lost the confidence of the Muslims. The Armenian millet, also, deterior-

ated, with perhaps the exception of its Catholic community which progressed,

"at the expense of most of, if not all, the others."[95]

Similarly, the Jewish millet lost its influence in the Ottoman

administration. It was the result, partly of Muslim bigotry, and partly

of an upsurge in "Messianism" among themselves.[96] Given the political

autonomy enjoyed by the millets, it is understandable that the absence of strong Ottoman leadership would bring about the popularity of such movements which raise the hopes and ambitions of a people.

With the doctrine of "nationalism" spreading throughout Europe, it was not long before its effect was felt by the subjects of the Ottoman Empire. Apparently, "the millets made it possible for the seeds of nationalism to take root more easily ..."[97] but obviously the Muslim Turks could not incorporate all its principles. In a sense, the Empire already was a nation-state - extending democratic rights to non-Muslims would have meant the surrender or at least compromise of Turkish nationalist claims.

Nevertheless, to placate nationalist sentiments among their minorities, and to avoid major insurrections, the Ottomans introduced reforms in the millet system. Oddly enough, these reforms did not make preparation to dismantle the millet system, but only to reaffirm it on a new plane. The Ottomans sought to overcome the abuses of power through the increase of lay control in millet affairs. New constitutions were drawn up for the Greek Orthodox, the Armenian Gregorian, and the Jewish millets between 1862 and 1865. These were essentially an attempt to institute democratic principles such as popular representation into the operation of the millets without removing the Chief Rabbi and Patriarchs as the civil authorities in their respective millets and as the supreme spiritual heads.[98] In other words, the exclusivity of Muslim society was to persist.

While discrimination continued, conditions for minorities did improve somewhat by the middle of the nineteenth century. Following the Reforms of 1839, the British ambassador writes in 1867:

"To those who remember what Turkey was thirty or forty years

ago, the improvement in the position of the Christians
and in particular the change in the bearing towards them
of the Sovereign, and the High Ottoman functionaries,
appear immense.... All posts under the Government are
nominally open to Christians; but, in fact, they are never
placed in the highest posts, nor are the offices which are
confided to them by any means so numerous or so important....
In some tribunals, and in some cases, Christian evidence is
still not received or not allowed due weight.

The Christians pay a special tax in lieu of being subject
to the conscription. Thus they share neither the horrors
nor the burdens of military service, and, as matters now
stand, have small reason to desire to do so. In short, very
little progress has been made towards enabling the Christians
to feel that the Ottoman Government is, as regards them, a
national Government. They submit to it as a less evil than
anarchy and confusion; and each Christian race appears to
value it chiefly as a safeguard against what appears to be to
each the great object of dread, the domination of any of the
other Christian races in the Empire."[99]

The special tax referred to is the poll-tax, newly interpreted. In this

way, the Ottomans could maintain their incomes from the millets with a

"legitimate" excuse:[100] officially, dimmi status no longer existed.[101]

In general, as demands for equal rights became stronger, the pers-

onal safety of non-Muslims decreased. This was more true with the Chris-

tians than with the Jews.[102] Growing nationalism among the Armenians

provoked massacres by the Turks, the greatest occurring in 1915, when the

whole Armenian population was deported to Syria and Mesopotamia, costing

an estimated 600,000 lives.[103]

During the nineteenth century, it became common for non-Muslims

to secure the protection of one of the European states under the capitu-

lation treaties. These treaties granted extra-legal privileges to

foreigners. For instance, they were exempt from personal taxes, and they

could not be prosecuted by government officials without permission from

their consuls.[104] Evidently, the distance between "protection" and "equality" was so great that the transition required some "new" protections for non-Muslims.

> "Oriental Jewry became aware that they were no longer able to exist in Muslim lands either as a separate group or as Jewish individuals, and most of them drew the only possible conclusion. Part of them felt that, as a group, they were deprived of their legal status, stripped of the framework to which they were accustomed, bereft of the right to react like any other community. Some, again, realized that if they remained they would never be accepted as equals...."[105]

In light of the numerous national "questions" which sprang up, it was to be expected that the Ottomans would adopt a policy aimed at preventing Jews from settling en masse in Palestine. As of 1881, the Ottomans allowed Jewish immigrants entry into the Empire provided that they adopt Ottoman nationality, and settle anywhere but in Palestine. The Ottoman Government "had good reasons for its opposition and these reasons grew stronger with the passage of time. It knew of Herzl's ideas well before the Zionist Movement was founded."[106] While some Jewish nationalists did become Ottoman subjects, the majority did not, preferring instead the privileges and immunities given to Europeans under the Capitulations. The Government bungled in its objective to keep Jews out of Palestine. According to Mandel, "benefitting doubly from the Millet system on the one hand and the Capitulations on the other, they quite consciously set about laying the basis for an independent Jewish existence in the country."[107]

The millet system existed as late as 1918, when the Turks finally founded a nationally homogenous Turkish state.[108]

The millet system represents a clear example of legal group differentiation. In this case, groups were separated according to religion,

largely an ethnic characteristic. They were further separated by locale
and class. The establishment of the millets effectively assimilated
groups rather than individuals to Ottoman society. Under this system,
each group was tied together through its mutual affiliation with the one
group powerful enough to keep the others in their place. No group may
threaten the other, and none may challenge the controlling group's power.
The individual's allegiance did not have to change when his group became
incorporated in the Empire: he remained responsible to his group, which
in turn, was collectively responsible to the authorities. The individual's
status was a direct consequence of his membership in a group; his whole
life revolved around the community to which he belonged. However, the
prosperity of his community depended on circumstances beyond his and his
community's control. The millet system maintained the group's corporate
identity and its political impotence. It was not possible to advance as
a group since this meant infringing on the prerogatives of other groups;
yet, it was also not possible for groups to dissolve. With such impedi-
ments to social change, it is a small wonder that when the Empire collapsed
after centuries of existence numerous national groups emerged.

The millet structure was basically autocratic. It integrated
urban and rural communities with different languages and customs through
a hierarchy of religious authorities. These were under the command of
the Ottomans and through their influence the Ottomans exercised control
over everyone in their Empire. Religion, of course, was exclusive, and
those who could not be bonded by it were joined together by class and
occupation. These cross-cutting cleavages existed between groups rather
than individuals, and by negotiating with and managing the leadership of

these various groups, the Ottomans governed their Empire.

When the millet system began it was merely an extension of the legal group differentiation which had been practised earlier under the auspices of the Christian states with Jews, and under Islamic rule prior to Ottoman ascendency. What was essentially new about the millet system of the Ottomans which distinguished it from other forms of legal group differentiation was that it made the individual's membership in the group compulsory, since the power of the millet authorities was reinforced by state sanction. Previously, those who "assimilated", or rather converted to escape the onerous tax payments, were not accepted by the larger society but were nevertheless able to leave the confines of their own group. On the one hand, the discriminatory laws i.e. dress regulations, taxes, pressured the minorities to assimilate; on the other hand, the fact that social equality was unattainable upon converting to Islam, caused many to return to their former religions.[109] However, once millet principles were applied, the government expressed its endorsement of the exclusivity of Islam (which perhaps it could not alter in any case, but if it was inalterable, it would still not have required the government's support), and informal barriers gave way to formal ones. Individuals continued to convert but they were fewer and as this produced conflicts in millet relations, the Ottomans discouraged it.

The development of the Jewish millet shows that what originated as a model for toleration degenerated eventually into an instrument for oppression. The reasons for the millet system's decay were environmental and structural. As Ottoman sovereignty receded, all the subject communities which relied on the justice and protection of the host society, were

left to defend themselves. Of course, the greatest advantage was taken of the weakest groups - the dimmis. The success of the millet system depended on how well the Ottomans could keep each millet in its own sphere. When the Muslims became the most powerful group, they reasserted their "right" to rule, abolished the Slave Institution, and relegated the millets to a position of true subordination. The Ottomans collaborated with them to legitimate their own position as the leaders of an Islamic state. Islam provided non-Muslims legal protection, however this was insufficient: the law was the same when they were permitted near equality with Muslims, and when they were massacred by the thousands. But the politics of nationalism and the religion of Islam combined to make both the social equality of the former, and the legal protection of the latter unobtainable. Although even before the rise of nationalism, toleration had been reduced to a minimum.

The millet system was desirable to the Ottomans because it allowed them to rule their subjects without assimilating them. The strengths of this system were that it made no demands on groups to change which meant that the transition to Ottoman authority would be easy and free of rivalry; it minimized competition between groups because all were equally weak and restricted to their respective spheres by the ruling group; it facilitated unification of the Empire by generating support on the part of non-Muslims who saw this as an improvement in their political position; and it allowed amply for religious toleration. The Muslims could well tolerate "non-believers" who offered them no further resistence and paid the premium. Non-Muslims, however, considered the exchange reasonable: they were allowed to live in peace; they were exploited less than would be the case under

their feudal lords; and the reminders of their inferior status were only intermittant.

The weakness of the millet system was its inability to adjust to social change. It was capable of dealing with the conflicts between rulers and ruled, and between subordinate groups of fairly equal status. Once the Muslim Turks and Arabs became an important force in the Empire, relations changed to that of stratification between groups. Ottomans, as always, were at the top but beneath them there was a hierarchy of competing groups with differential power. The millet system, designed to prevent conflict, then became a vehicle for new conflicts which it could not handle. Since the relationships between groups had been institutionalized, spontaneous reactions to environmental changes were not feasible. Instead, the new conflicts were fostered by the millets which actively interfered with their resolution.

In the following chapters the implications the millet system has for legal group differentiation in general will be discussed: whether or not legal group differentiation and authoritarianism are linked (as they appear to be), and therefore would prove incompatible with liberalism.

NOTES

1. Baron, 1962, v. 3, p. 120
2. Gibb & Bowen, 1957, v. 1, p. 2, p. 212, n. 1
3. Vucinich, 1965, p. 23
4. Gibb & Bowen, 1957, v. 1, p. 2, p. 212, also, n. 1
5. Vucinich, 1965, p. 60
6. Coles, 1968, p. 71; Vucinich, 1965, p. 10
7. Coles, 1968, p. 71
8. ibid.
9. Lewis, 1971, p. 11
10. Vucinich, 1965, p. 23
11. Lewis, 1971, p. 11
12. Stavrianos, 1957, p. 17
13. Vucinich, 1965, p. 10
14. Lewis, 1971, p. 19
15. Vucinich, 1965, pp. 67-68
16. Gibb & Bowen, 1957, v. 1, p. 2, p. 212
17. ibid., p. 208; Baron, 1962, v. 3, p. 124
18. Rycant, 1971, p. 79
19. Gibb & Bowen, 1957, v. 1, p. 2, pp. 28-29
20. Baron, 1962, v. 3, pp. 143-144
21. Gibb & Bowen, 1957, v. 1, p. 2, p. 251; see also Baron, 1962, v. 3, pp. 126-127
22. Hirschberg, 1969, p. 125; see also Baron, 1962, v. 3, p. 98
23. Gibb & Bowen, 1957, v. 1, p. 1, pp. 42-43
24. Hirschberg, 1969, p. 132; Baron, 1962, v. 3, p. 96
25. Inalcik, 1973, p. 109; Gibb & Bowen, v. 1, p. 2, pp. 1-18
26. Inalcik, 1973, p. 13; Gibb & Bowen, v. 1, p. 2, p. 237
27. Vucinich, 1965, p. 56
28. Gibb & Bowen, 1957, v. 1, p. 2, p. 257
29. Coles, 1968, p. 72
30. ibid.
31. see Coles, 1968, pp. 72-73 for a different interpretation
32. Gibb & Bowen, 1957, v. 1, p. 2, p. 234
33. see Gibb & Bowen, 1957, v. 1, p. 1, 2
34. Hirschberg, 1969, p. 129
35. Vucinich, 1965, p. 53
36. Gibb & Bowen, 1957, v. 1, p. 2, p. 216, n. 2
37. Hirschberg, 1969, p. 125
38. Hirschberg, 1969, p. 125
39. Gibb & Bowen, 1957, v. 1, p. 2, p. 211
40. ibid., p. 208; Hirschberg, 1969, pp. 127-128
41. Vucinich, 1965, p. 56
42. ibid., p. 53
43. Rycant, 1971, p. 99
44. Lewis, 1971, p. 27
45. ibid.
46. Gibb & Bowen, 1957, v. 1, p. 2, p. 114
47. ibid., p. 212

48. Vucinich, 1965, p. 38
49. Gibb & Bowen, 1957, v. 1, p. 2, p. 118
50. Inalcik, 1973, p. 74
51. *ibid.*, p. 71
52. Gibb & Bowen, 1957, v. 1, p. 1, p. 23
53. *ibid.*, pp. 35-38
54. *ibid.*, p. 43; p. 2, p. 81
55. Lewis, 1971, p. 40
56. Gibb & Bowen, 1957, v. 1, p. 2, p. 79
57. *ibid.*, pp. 120-121
58. Vucinich, 1965, p. 61
59. Gibb & Bowen, 1957, v. 1, p. 2, pp. 221, 232
60. *ibid.*, pp. 214, 222, 232, 245
61. Vucinich, 1965, p. 59
62. Gibb & Bowen, 1957, v. 1, p. 2, p. 208
63. Hirschberg, 1969, p. 128
64. *ibid.*, p. 186; Gibb & Bowen, 1957, v. 1, p. 2, p. 214
65. Gibb & Bowen, 1957, v. 1, p. 2, p. 241
66. *ibid.*, p. 217
67. Roth, cited in Stavrianos, 1957, p. 22
68. Gibb & Bowen, 1957, v. 1, p. 2, p. 219
69. Hirschberg, 1969, p. 150
70. *ibid.*, pp. 185-186; Gibb & Bowen, 1957, v. 1, p. 2, p. 219
71. Gibb & Bowen, 1957, v. 1, p. 2, p. 219
72. Hirschberg, 1969, p. 188
73. *ibid.*, p. 189
74. Gibb & Bowen, 1957, v. 1, p. 2, p. 226
75. *ibid.*, pp. 216-217
76. see Hirschberg, 1969, p. 188 for an example
77. Wittfogel, cited in Vucinich, 1965, p. 70
78. Roth, cited in Stavrianos, 1957, p. 22
79. Gibb & Bowen, 1957, v. 1, p. 2, p. 240
80. Hirschberg, 1969, p. 140
81. Vucinich, 1965, p. 63
82. *ibid.*
83. *ibid.*, p. 55
84. de Busbecq, cited in Stavrianos, 1957, pp. 3-4
85. Gibb & Bowen, 1957, v. 1, p. 2, p. 223
86. *ibid.*, p. 226
87. Baron, 1962, v. 3, pp. 144-145; v. 5, pp. 79-81
88. Hirschberg, 1969, p. 155
89. *ibid.*, p. 129
90. Gibb & Bowen, 1957, v. 1, p. 2, p. 233
91. Inalcik, 1973, p. 46
92. Gibb & Bowen, 1957, v. 1, p. 2, pp. 231, 224
93. Inalcik, 1973, p. 34
94. Vucinich, 1965, p. 60
95. Gibb & Bowen, 1957, v. 1, p. 2, pp. 238, 239, 244
96. *ibid.*, p. 243
97. Vucinich, 1965, p. 60

98.   *ibid.*
99.   Lyons, cited in Stavrianos, 1957, p. 44
100. Gibb & Bowen, 1957, v. 1, p. 2, p. 252
101. see 1839 and 1856 Reforms, cited in Stavrianos, 1957, pp. 41-43
102. Hirschberg, 1969, p. 211
103. Enc. Brit., v. 1, p. 525
104. Hirschberg, 1969, p. 214
105. *ibid.*, p. 225
106. Mandel, 1974, p. 328
107. Mandel, 1975, p. 43
108. Vucinich, pp. 110-115
109. Baron, 1962, v. 3, pp. 126-127

CHAPTER THREE

The Modern or Liberal Framework

The Ottoman millet system became obsolete when the natural rights

doctrine triumphed in the West. The belief that the individual possessed

certain equal rights in a state prior to the formation of society ruled

out the legitimacy of caste distinctions. The American Declaration of

Independence, using Lockean principles, states: "We hold these truths to

be self-evident, that all men are created equal, that they are endowed by

their Creator with certain unalienable Rights, that among these are Life,

Liberty and the pursuit of Happiness."[1] Locke's Letter on Toleration

represents the classical position of liberalism on the relation between

the individual and society; and, it is the most politically effective

expression of the natural rights doctrine. The following will be a re-

capitulation of what Locke had to say about the status of groups and the

limits of government. While Locke's discussion is concerned entirely with

religious groups,[2] these can be regarded as models under which other kinds

of communities or corporate bodies may be comprehended. The utility of

the liberal formula for attaining that equality and liberty which is

possible within social existence will then be evaluated. It will be seen

that, notwithstanding the strong individualistic elements of liberal

theory, it can accommodate group needs. Moreover, it would appear that

liberal theory offers the best compromise for recognizing and dealing with

group variation without simultaneously promoting or furthering group

inequalities and harming individual liberties.

This is not to suggest that the practices of current liberal governments are dealing adequately with group problems, or that they are even dealing with them in a liberal way, but rather that a workable liberal solution can be constructed. The need for such a solution is evident considering the fact that group inequalities continue to exist in countries which have been liberalized.

In Locke's theory, society consists of groups which are to be treated as essentially private and voluntary associations.[3] These include the Church and the family. The creation of a "private sphere", wherein differences can be tolerated and free associations permitted, expanded the individual's scope for independence without however destroying the possibility of a basis for social cohesion. In fact, in Locke's milieu, religion had ceased to be a vehicle for producing harmony within the state, and its privatization would thus have the effect of weakening its capacity to fragment the commonwealth, although for centuries it exerted an irresistible unifying power. Liberalism, however, does not stand at all for pluralism, where the autonomy of each group may be absolute.[*] The privatization of groups entails their subordination to the natural rights state which has the exclusive right to determine and enforce the laws and standards to which all must conform.[5] Naturally, for a liberal system to

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*...if the law of toleration were once so settled, that all churches were obliged to lay down toleration as the foundation of their own liberty...."[4]

function, the state cannot be controlled by any group* for its own

caste-like interests, which gives rise to the idea that liberal govern-

ments are group-blind; and hence, impotent, of necessity, in coping with

different group needs. In fact, as is apparent from the Letter, privati-

zation requires simply that no government be allowed to pass a law which

attacks the individual rights of the members of another group. A magis-

trate does not have the right to impose "laws upon his subjects, which

neither was in the constitution of the government granted him, nor ever

was in the power of the people to grant".[6] Awareness on a political

level of the needs of groups is permissible within liberalism since this

does not create or increase disadvantages but offers relief from those

already in existence, however caused. It should be understood that treat-

ment for the elimination of group disadvantages does not involve trans-

forming them into new advantages which would require some form of

particularism.

If churches, ethnic groups, etc. are to be viewed as private

associations, then individuals have the right to exclude others from them

and the right to refuse to be included in them, but such exclusion or

inclusion of the individual from any group cannot affect his civil

liberties, derived as they are from his natural rights which a liberal

government is obliged to protect.[7] According to Locke, the commonwealth

is "a society of men constituted only for the procuring, the preserving,

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*It is questionable that a coalition of groups, even one which
provides that all groups are represented and perpetually equal (whether
in fact or only perceived to be) could exist in a liberal state, since
ascriptive groups might develop inordinate powers over the individual.

and the advancing of their own civil interests ... life, liberty, health, and indolency of body; and the possession of outward things, such as money, lands, houses, furniture, and the like."[8] This is the business of government, then. The "business of laws is not to provide for the truth of opinions, but for the safety and security of the commonwealth, and of every particular man's goods and person."[9] However, since morality and politics are inseparable, it follows that "a good life, in which consists not the least part of religion and true piety, concerns also the civil government; and in it lies the safety both of men's souls, and of the commonwealth. Moral actions belong therefore to the jurisdiction both of ... the magistrate and conscience."[10] Consequently, a common morality is specified: peace, industry, and honesty must be valued.[11] These values, Locke argues, are either supported by or can be consistent with all religions, including paganism, and since it is obvious these values are indispensible to social harmony in general, they could conceivably be upheld without any religious backing. So it is not essential that a government concern itself with anything besides men's civil interests in order to maintain peaceful social coexistence. The "church itself is a thing absolutely separate and distinct from the commonwealth .... He jumbles heaven and earth together, the things most remote and opposite, who mixes these societies; which are in their original, end, business, and in every thing, perfectly distinct ...."[12] It is not so much that moral issues are irrelevant to political life, quite the contrary, in fact; but problems of this nature can only be resolved within a climate where toleration and liberty exist.[13]

Locke nevertheless did allow government the authority to "intervene" in the affairs of private associations where the general welfare would otherwise be threatened.[14] It might be added that without this provision government would be deprived of its ability to govern. Nothing can be transacted in a religious society "relating to the possession of civil and worldly goods. No force is here to be made use of upon any occasion whatsoever; for force belongs wholly to the civil magistrate, and the possession of all outward goods is subject to his jurisdiction."[15] Consequently, "idolatrous churches" are to be tolerated, for were the magistrate capable of suppressing an "idolatrous church", he would be able to suppress an orthodox one as well.[16] If, however, a church is guilty of attacking the civil rights of others, the magistrate would have the right to punish the offenders.

In sum, for Locke, state and society, or public and private interests, had to be distinguished. Make groups private associations, give each individual the same rights,[17] and the capacity of each for self-determination will be restricted only by his own will and ability. Inequalities which issued from these differences were natural or ineradicable, and in contrast with all other causes of inequality, just. Moreover, discriminating on this basis could not have been without a view to its utility; if society as a whole was to prosper, individual achievement must be rewarded.[18] It is sufficient for government to ensure equality in civil matters; beyond these, it is for the individual to work out his own salvation. "Whatsoever things are left free by law in the common occasions of life, let them remain free unto every church in divine worship."[19] What does not affect the civil rights of others does not

concern the state.

Locke, clearly, expected groups in a liberal society to be free
and voluntary associations, just as, in theory, the state is the product
of a social contract. Civil or legal equality, however, becomes inade-
quate when this condition does not obtain. Neither pre-liberal nor post-
liberal political philosophies make reference to the separation between
state and society; however, while only a liberal regime makes private
associations possible, this does not obscure the fact that groups exist
which are more than simply contractual, such as the family, for instance.
As a result, it may be necessary for liberal governments to deal with the
consequences of this circumstance - where positive restrictions act on
the individual which are unrelated to his potential.

Locke did not formulate, in any way, a specific solution to the
problem of group inequality since liberty was the main goal; it was
necessary to put an end to religious persecution. Equality was introduced
into the theory as a justification for liberty. Consequently, the problem
of group inequality was only indirectly addressed. The emphasis was on
the removal of barriers, on limiting authority - all of which would tend
to produce that equality which was being suppressed by artificial or
purely social devices - rather than on the promotion of a particular kind
and degree of equality. However, a policy addressing group needs - where
a set of individuals suffer from the same restrictions unrelated to their
different potentials - would be consistent with liberal theory provided
it does not interfere with the operation of the equal opportunity system.

NOTES

1. Encyclopedia Americana, 1980, p. 591
2. Locke, no year given, pp. 7, 11, 32, 34
3. Locke, p. 7
4. Locke, p. 32
5. Locke, pp. 22, 28-29
6. Locke, p. 29
7. Locke, p. 10
8. Locke, p. 5
9. Locke, p. 27
10. ibid.
11. Locke, p. 35; see also p. 4
12. Locke, pp. 13, 26
13. Locke, pp. 13, 18, 23, 26, 33
14. Locke, p. 22
15. Locke, p. 9
16. Locke, pp. 23-24
17. Locke, p. 34
18. Goldstene, 1977, p. 59; see also Hobhouse, 1964, p. 70: "Social distinctions can only be founded on common utility."
19. Locke, p. 34

CHAPTER FOUR

Objections to Liberalism - Part I

Today the classical liberalism of the seventeenth and eighteenth

century is under attack from both radicals, who are in the main opposed

to the individualism of the liberal order, and liberals, who expect to

retain liberal principles by using non-liberal means. The former

critique focusses on liberalism's failure to actualize socio-economic

equality; and the latter, on its failure to assist in the maintenance of

ethnic culture. The liberal prerequisite for legal equality is inadequate

and non-liberal solutions to the group problem are proposed instead.

These range from the mildest version which stands in support of affirmative

action programmes to the most extreme form which recommends replacing the

free-market economy with a centrally planned one. On the issue of

preserving ethnic identity, different degrees of pluralism, such as multi-

culturalism and consociationalism, are advocated. While these criticisms

confront different aspects of the group problem[*] in modern society, they

share the view that some form of social engineering - whether it be

economic redistribution, quota systems, or group rights - is necessary to

create a more humane society for the individual.

The following is a synopsis of the theoretical arguments favouring

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[*]Throughout this work, "group problem" refers to the presence of
caste-like inequalities.

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greater social equality. Some of these contend that equality can only be achieved by the overthrow of the liberal state; others consider equality attainable through more modest schemes, albeit illiberal ones.

The meaning of "social equality" involves an array of intangible goods, not the least of which is culture. However, solutions dealing with the preservation of various ethnic cultures will be treated separately in chapter five, strictly in terms of their bearing on the Canadian Indians - a particularly small minority, important for its extraordinary legal and social position within Canadian society. The Indians may be viewed as representing a model of legal group differentiation in liberal society comparable to the model of the Jewish millet in pre-liberal society. The proper place for ethnic culture within a liberal framework is more apparent when the implications of particularism and universalism can be contrasted in actual cases. By discussing this aspect of the group problem through direct application to a group, the theoretical confusion surrounding the concept of culture can be avoided, and the best solution identified. Obviously, no solution can be considered acceptable which does not address the needs of what is perhaps the most disadvantaged group in our society. Moreover, the Indian case may serve to underline some of the inconsistencies between theory and practice.

Expanding the Liberal Horizon

In classical liberal theory there is no "right" to socio-economic equality. Locke and Madison, notably, argued the very opposite - the right to inequality.

> "The diversity in the faculties of men, from which the
> rights of property originate, is not less an insuperable

obstacle to a uniformity of interests. The protection
of these different faculties is the first object of
government. From the protection of different and unequal
faculties of acquiring property, the possession of different
degrees and kinds of property immediately results...."[1]

According to the liberal ideal of "equal opportunity", socio-economic in-

equalities are accountable by the differences between individuals and

therefore legitimate. However, social discrimination can persist under

liberal systems in spite of legal equality; indeed, one type of discrimin-

ation is ordained to prosper better under liberalism - merit, as defined

by the market - but this does not prevent other forms of discrimination

from also being employed. Just as classical liberals believed legal

equality alone would produce, in general, that social inequality which is

caused by differences in ability, so contemporary liberals and radicals

believe that any action which promotes social equality must serve the

best interests of individual liberty; or, at least, not be at odds with

them. Individual liberty becomes secondary to social equality since, to

an extent, individual liberty depends on social equality.

"... some measure of initial equality of condition would
seem to be a necessary component of equal opportunity.
Otherwise, the degree of inequality of results in one
generation will inevitably create privileges which will
affect the degree of inequality of opportunity in the next.
It seems clear, then, that a large degree of distribution
according to need is a prerequisite for anything beyond
purely formal equality of opportunity. It is for precisely
this reason that egalitarians such as R.H. Tawney have
insisted that opportunities to 'rise' are not a substitute
for practical equality and that unless there is a large
amount of equality of social condition in the first place,
equality of opportunity is an illusion."[2]

In a similar vein, Krouse writes:

"... the liberal-democratic commitment to full individual
equality of civil and political citizenship, when properly

> unpacked, requires a commitment not merely to formal
> equality of abstract right before the law but also to
> effective material equality of economic and social
> power - in our time, to democratic socialism."[3]

While it makes obvious sense that individual liberty could be threatened

by insufficient social equality,[*] it is questionable whether social

equality, if enforced, can be compatible with individual liberty.[5]

Non-liberal Proposals

A policy may be classified "non-liberal" when it perverts the

efficacy of the merit system in practice, regardless of its intent.

Essentially, non-liberal proposals derive from two underlying philosophi-

cal positions. The first seeks to restore the equitable balance which

would now exist had the merit system not been affected by human prejudices

in the past or in the present, but the means selected could erode

individual rights. The second rejects the merit principle altogether as

a foundation of equitable distribution, and prefers instead to posit one's

humanity as the only just criterion by which to allocate resources. By

eliminating the merit system, it is assumed that "individual class biases"

will be controlled by the majority; a collective bias, if one remains,

would be acceptable because it would not be class-based. The former

position is embodied in affirmative action programmes designed to create

"fair competition", and the latter, in the demand for the abolition of

all competition.

"Affirmative action" or "preferential hiring" or "positive

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[*]"Thomas Jefferson wrote to James Madison, whenever there are
unemployed poor 'it is clear that the laws of property have been so far
extended as to violate natural right.'"[4]

discrimination" are used interchangeably to refer to the programme which implements the national equal employment opportunity (EEO) policy.[7]

> "The aim of equal opportunity legislation in the U.S.,
> Canada and Britain is to remove intentional (direct)
> or unintentional (indirect) discrimination in the re-
> cruitment and staffing policies and practices of
> employers which have adverse or 'disproportionate'
> effects on the utilisation of specific groups and
> which are unrelated to actual job performance. Clearly
> the objective of the legislation is to promote what is
> considered to be more equitable distribution of employ-
> ment and career opportunities for those in the identified
> groups who are discriminated against for non-functional
> reasons."[8]

"Discrimination" was defined by the courts at one time as "unequal treat-ment", which meant that "the employer was allowed to impose any require-ments, as long as they were imposed on all groups alike."[9] It has since evolved into the concept of "indirect discrimination" when it was found that "many of the most common requirements, such as education and testing, had unequal effects on various groups, even though they were imposed equally on all groups."[10]

Among the criticisms levied against affirmative action programs, such as its debatable record for success, the bureaucratic complexities of enforcing hiring quotas, and the high social cost of retraining, etc.,[11] the single most serious criticism by far hinges on the "conflict of rights" controversy. The oft-recurring argument that affirmative action is, in effect, "reverse discrimination",[12] has placed the Equal Employment Opportunity Commission very much on the defensive. According to the Commission's interpretation of Title VII of the Civil Rights Act of 1964, amended in 1972,[13] it "does not believe that there is a legitimate concept of 'reverse discrimination' under Title VII, but that discrimination

against all people is what the statute proscribes."[14] While doubtlessly this is true, the qualification needs to be made that it can only protect the rights of different people at different times.

> "In the present instance the two rights conflict - to adopt preferential hiring is to override W's right, to refuse to adopt it is to deny B's right. The preceding arguments against preferential hiring rest on the fact that such a policy overrides (and thus violates) someone's rights. But, in fact, someone's rights will be overriden both by the adoption of a policy of preference and by the non-adoption of such a policy."[15]*

If this is the case, one has to wonder what the basis could have been for making the decision to implement AA programs in the first place. It would seem that the rights of the members of some minority groups were considered more important for the present time because their lobbying for attention and redress was seen to deserve or require some action. However, the resultant policy, whatever it might accomplish, was irreconcilable with the existing conception of "fair competition". While negative discrimination[16] continues to operate in the market economy and needs to be corrected, the idea that positive discrimination was an appropriate means by which to do this is illiberal. The rights of individuals will, at times, be subservient to the "social good", and the sacrifice need not always be voluntary. But the sacrifices which can be expected must originate in the "rule of law" and cannot be arbitrarily decided.[17] Moreover, the "social good" must be defined so as to include the welfare of all individuals. The argument might be made that all individuals benefit

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*This is a case where a qualified individual is refused employment because the employer is restricted by a 'quota system'.

from AA because it is in the interests of general social stability.
However, not only does this demand of people a sophisticated and developed
sense of self-interest, but more importantly, it introduces into the
liberal framework new elements: the rights of any individual may be
suspended at any time the state deems necessary; although two things are
guaranteed which presumably make it acceptable, it can happen to everyone
alike, and the individual rights of everyone will _always_ be incompatible,
so the will of the state will prevail to impose order.[18]

What perhaps is the most ironic, however, is that AA programs are
sometimes viewed favourably precisely because they are unsuccessful.

> "'Reverse discrimination' implies that preferential
> affirmative action is now doing to us white males what
> we did to the blacks _et al._ .... But in what sense are
> we planning to systemmatically insult white males and
> put them in the lowest caste in society? .... Will it
> make white male unemployment double that of blacks and
> will it reduce white male salary to 60 per cent of that
> of blacks? ...."[19]

By implication, this author suggests that AA is permissable because it is
no real threat to the present hierarchical structure of society. On the
other hand, supposing AA were to have this effect; what would be done?
Logically, whites would then be eligible for preferential treatment in
what might prove to be a never-ending cycle as long as every group cooper-
ates - this would be an equality of sorts. But obviously, this is not
the quality desired. So, at one point, when equal representation was
attained, AA would cease until the equilibrium began to deteriorate. Of
course, it must not be forgotten, that every individual - indeed most -
would not benefit at all from AA programs which require that only a
certain quota of minority members be present at the top socio-economic

levels. For example, if, say 10 per cent of all doctors were blacks, and 5 per cent Puerto Rican, and so on, depending on their relative sizes in the population, does not mean that the majority of blacks and Puerto Ricans will no longer live in slums. The Equal Employment Opportunity's Act, as it is endorsed by AA programs is elitist in its plan, but not elitist in the liberal sense. There are a number of reasons for this: its emphasis on the ascribed characteristics of the individual, its rigidity in terms of its deliberate attempt to establish one particular kind of equality i.e. equal ethnic representation, and the casual attitude it fosters towards individual rights in principle i.e. instead of the individual making a sacrifice under exceptional circumstances, it becomes the right of the state to expect individuals to make sacrifices routinely. Defending this position, Maguire states,

> "Life in a just society requires sacrifice even from the guiltless .... Individualism argues against this, saying that Wilbur's right to meritocratic competition cannot be overshadowed by social goals. That represents a different theory of justice, and one which, I shall argue, is so shallow that it could not sustain a viable society."[20]

Once the rights of some individuals are regarded secondary to the rights of other individuals, it becomes an easy feat to step on all individual's rights, no matter what. Maguire goes on to state,

> "Even if Wilber was the victim of affirmative action and not the victim of the myriad undetectable biases that always operate in hiring and admissions, the rejection can still be justified ...."[21]

Inequality, according to liberal theory, on the other hand, was consistent with the rights of all individuals because it was conceived in the following way:

"It would indeed be a privilege if, for example, as has
sometimes been the case in the past, landed property
were reserved to members of the nobility. And it is
privilege if, as is true in our time, the right to
produce or sell particular things is reserved to particular
people designated by authority. But to call private
property as such, which all can acquire under the same
rules, a privilege, because only some succeed in acquiring
it, is depriving the word 'privilege' of its meaning."[22]

While this argument is directed specifically to the question of property

rights, it can by extension be applied to all those rights which in

liberal society may differ in degree of attainment. The problem with

this idea of "competing under the same rules" is that it is not discrimin-

ating enough - greater and finer distinctions between persons need to be

made if actual justice, as opposed to formal justice, is to be achieved.[23]

"To produce the same result for different people; it is necessary to treat

them differently. To give different people the same objective opportuni-

ties is not to give them the same subjective chance."[24]

The flaws in the liberal scheme are evident, but whether AA will

rectify them is doubtful. The argument that AA is not "reverse discrim-

ination" rests primarily on the fact that the influence of AA does not

significantly alter the "results" of the selection system. Whether its

inefficacy is attributable to the economic recession of the 1970's,[25] or

failure on the part of the government to make provisions for its adequate

enforcement,[26] etc., it remains that the "process", if not the "results"

of selection itself is being altered - and with no definite gains. The

transformation of this process is contrary to liberal goals; however,

were the results to be affected (e.g. were ethnic and sex stratification

eliminated), the upshot would be compatible with liberal-democratic goals.

The notion of "equality of opportunity" has come under heavy criticism for not reflecting the practice in reality, or for entailing a principle of "competitive individualism" which <u>ought</u> <u>not</u> to be practised in reality.

> "Competitive individualism is bad, these critics say, because it erodes or destroys any possibility of a sense of community, which is essential to a truly democratic society, and because of its invidious cruelty."[27]

It is these critics who, unlike the supporters of AA, advocate the abolition of all competition which merely functions to perpetuate inequalities; and therefore, must be fundamentally averse to liberty, since no inequality can be legitimate in their view. For them "the solution is not to abolish affirmative action but to create an economic environment in which it can be much more effective than it is now ...."[28] In other words, the object is to replace "equality of opportunity" - distribution based upon desert - with "equality of results", which refers to a more egalitarian pattern of distribution based on personal need.[29] As individuals cannot take credit for the talents which they possess naturally and develop only as members of society, they are not entitled to receive rewards for their merit.[30] It might be added, though, that the individual can take no more credit for his needs than for his abilities; both are composed of innate and social elements. Moreover, while theoretically the market defines merit, no such impersonal mechanism can exist for need. In the absence of this impersonal mechanism, the potential for abuse is increased. Who will decide when a need has been fulfilled, assuming "need" has been defined? The concept of "relative deprivation"[31] has enlarged our understanding of

what the term "need" comprehends. The minimum need for food and shelter is already provided in Western society, but the presence of other attractive consumable goods creates new "needs". Evidently, everyone will "need" and have a "right" to whatever is available, not merely a right to "equal access"* to these goods. In order to meet this "fundamental right", scarce goods would have to be either destroyed or, where possible, mass produced. And, as Harrington himself asks, what about the "need" for "exclusive neighbourhoods, 'fine' schools ... - there is no way, even with constant growth, to satisfy the demand."[33] The "solution" advanced seems to be that no one will have these "needs" fulfilled; the right to such "needs", defined by the individual, will not be granted.

Radical egalitarians contend that early liberals,

> "had no glimpse of the fact that private control of the
> new forces of production, forces which affect the life
> of every one, would operate in the same way as private
> unchecked control of political power .... They failed
> to perceive that social control of economic forces is
> equally necessary if anything approaching economic
> equality and liberty is to be realized."[34]**

Consequently, radical egalitarians often intend to preserve certain elements of individualism, eg. "equality of opportunity to develop one's talents",[36] but they perceive this "moderated" individualism as part of an economy oriented to socialism.[37]

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*As Charvet points out, absolute equality of opportunity is absurd since associations with others can never be made equal.[32]

**Tocqueville was aware of the danger presented by the growth of the manufacturing classes, but he thought, of course, that the more associations there were, the less likely one would be able to dominate the others.[35]

Indeed, notwithstanding man's social nature, which radical egalitarians often treat at great length, it is in the name of individualism that the market economy is attacked, whether by radicals or by "revisionist liberals".

> "... as corporate power grows, opportunity recedes,
> particularly the opportunity to freely enter the
> market with a minimum of financial resources. What
> opportunity remains is corporate ...."[39]

Or, responding to leftist critics, Amdur states:

> "Inequalities become impermissable, then, as soon as
> they reach the level at which the self-respect of the
> worst off begins to decline. In a just society, levels
> of inequality will depend on how sensitive those near
> the bottom are to the existence of large disparaties.
> If it could be shown that all inequalities of wealth
> and income have grave consequences for the self-respect
> of the least advantaged, then Rawl's theory would
> require complete economic equality."[40]

According to Macpherson,

> "... any adequate twentieth-century democratic theory
> ... must assert <u>an equal effective right of the members
> to use and develop their human capacities:</u> each must
> be enabled to do so, whether or not each actually does
> so."[41]

Moreover, for Macpherson,

> "substantial equality in liberty and personal rights
> ... is inconsistent in a capitalist market society."[42]

Finally, Gutmann states:

> "I know of no firmer grounds upon which liberal egali-
> tarians can persuasively criticize Marx than by intro-
> spection and by rejection of the practical possibility
> of establishing or of recognizing a society in which
> everyone's nature is socially realized .... And if, as
> a result of egalitarian alterations in economic insti-
> tutions, people do freely distribute goods according
> to the real nature of individuals, we would have no reason
> to object to the resulting distribution."[43]

Overall, the more radical the view, the more the dialogue centers on establishing collective power with wide redistributive functions; the less radical, the more the focus is on individual rights and self-actualization.[44] In the last analysis, then, both radicals and "revisionist liberals" are prepared to eliminate the market economy for the sake of _individual_ fulfillment. For classical liberals, of course, the possibility of separating the market economy and individual liberty was never the subject of much speculation.

The big bonus in abolishing the "rights of property"[*] rests "upon the possibility of transcending social conflict, thereby eliminating the need for external constraints on individual behavior in protection of rights and liberties...."[46] Alienation and conflict are products of the capitalist economy which increase along with the expansion of the market, and this proves that markets cannot "solve their own social problems."[47] However, if the market is in need of democratic control so that social conflict might cease, it is not clear how this greater economic power of the state can be followed by a reduction in its political power. In essence, the radical position seems to be that, if everyone were to share equally in the society's wealth, there would be no grounds for dissension, and the state's coercive role will be rendered superfluous. But the application of this idea is difficult to follow given our present

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[*]"This is a system under which a man is free to acquire by any method of production or exchange within the limits of the law whatever he can of land, consumable goods, or capital; to dispose of it at his own will and pleasure for his own purposes, to destroy it if he likes, to give it away or sell it as it suits him, and at death to bequeath it to whosoever he will. The State can take a part of a man's property by taxation."[45]

understanding of individual human nature as distinct from the group.
The suggestion that human nature would change with changes in the forces
of production and distribution is not supported by any evidence whatso-
ever.

Liberalism and democracy have been viewed as necessarily incom-
patible. Wolfe states, "But with the exception of civil liberty,
liberalism and democracy work toward quite contrasting goals."[48] This
view fails to grasp the extent to which liberty does depend on equality
of condition which Tocqueville, for example, recognized.[49] Liberalism,
however, is not an egalitarian doctrine, not because it finds "economic
inequality" inherently "natural and desirable",[50] but rather because
scarcity is natural and government engineering is undesirable (where it
interferes with the merit system).[51*] Danford asserts that "a species
of equality - and not merely equality of opportunity - does indeed lie
at the core of Smith's justification of his political economy."[54] If
this is true, capitalism is egalitarian in its implications. In fact,
free-market competitive capitalism "has historically proven itself the
most reliable and powerful engine of equality ever devised."[55] Liberal-
ism, although not identical to democracy, is (to the extent that it is
connected with capitalism) compatible with it. Wolfe's assumption, of
course, is that liberalism must be discarded wherever it harms democratic
aspirations. Liberalism, however, is founded on the equality of natural

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*Nevertheless, "Tocqueville, like Locke, justifies the unequal
distribution of wealth not only by its natural origin, but also by its
contribution to the well-being of society as a whole."[52] (emphasis
added) And Danford writes, "Liberty is justified by the fact that it
increases the society's wealth and prosperity."[53]

rights which implies a limit to the maximum power any individual or group may exert. In the absence of such a limit, it is doubtful whether democracy could be valued.

NOTES

1. Hamilton et al., 1901, pp. 44-51
2. Joseph, 1980, p. 396
3. Krouse, 1980, p. 453
4. cited in Maguire, 1980, p. 69
5. for a different view see Wolfe, 1977, p. 7
6. Fullinwider, 1980, p. 9; Jain et al., 1980, p. 109
7. Stewart, 1980, p. 870
8. Jain et al., 1980, p. 108
9. Jain et al., 1980, p. 109
10. ibid.
11. see Jain et al., 1980; Beller, 1980
12. see Glazer, 1975
13. Jain et al., 1980, p. 108
14. Johnson, 1980, p. 113
15. Fullinwider, 1980, p. 49
16. Glazer, 1975
17. Hayek, 1944, pp. 72-87
18. see Durkheim, 1933, pp. 5ff; see also Halevy, 1960
19. Maguire, 1980, p. 170
20. Maguire, 1980, pp. 55-57
21. Maguire, 1980, p. 98
22. Hayek, 1944, p. 80
23. Hayek, 1944, p. 79n
24. Hayek, 1944, p. 79
25. Beller, 1980, p. 379; see also Feagin, Feagin, 1978, pp. 150-151: "the data on actual changes in the work force reveal a mixed picture."
26. Jain et al., 1980, p. 112
27. Danford, 1980, p. 677
28. Harrington, 1980, p. 46
29. Joseph, 1980, p. 398; Gutmann, 1980, p. 109
30. see Amdur, 1980, p. 328
31. see Gurr, 1970
32. Joseph, 1980, p. 385
33. Harrington, 1980, pp. 45-46
34. Dewey, 1935, p. 37
35. Zetterbaum, 1967, p. 97
36. Joseph, 1980, p. 399
37. Hobhouse, 1964, p. 6; Gutmann, 1980, p. 153
38. Lowi, 1969, p. 9
39. Goldstene, 1977, p. 71
40. Amdur, 1980, p. 326
41. cited in Gutmann, 1980, p. 150
42. cited in Gutmann, 1980, p. 148
43. Gutmann, 1980, p. 116
44. see Gutmann, 1980, p. 156
45. Hobhouse, 1964, pp. 51-52
46. Gutmann, 1980, p. 153

47.   Lowi, 1969, p. 25
48.   Wolfe, 1977, pp. 6-8
49.   Zetterbaum, 1967, p. 56; Tocqueville, 1945, vol. 2, pp. 99-104
50.   Danford, 1980, p. 676n
51.   see Zetterbaum, 1967, p. 57
52.   Zetterbaum, 1967, p. 127n
53.   Danford, 1980, p. 693
54.   Danford, 1980, p. 675
55.   Danford, 1980, p. 676n

CHAPTER FIVE

Objections to Liberalism, Part II

In the previous chapter non-liberal proposals to check the
persistence of group inequalities in democratic societies were put forth.
These revolved around the issue of general material equality; that is,
make opportunities or conditions more equal (eg. education, income) and
other differences, such as those which resulted from unequal associations,
would balance themselves out being more or less evenly distributed
between groups. In this respect, the radical and liberal revisionist
points of view are at least consistent with classical liberal notions,
although they favour factual socio-economic equality as opposed to the
"equal access" to goods and services made possible by legal equality.
Where they depart from classical liberal notions is in their insistence
on using one variant or another of social "engineering", without which
complete equality (realistically defined) would be unattainable.[*]

Government, of course, was not conceived by Locke to be a passive
body, but its sphere of activity was limited. Essentially, the rational
faculty of each individual being equal, it was for the individual to
decide where his true interests lay and to plan his own destiny. Where
the pursuit of these interests had a harmful effect on the welfare of

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[*]Unless combined with genetic engineering, where the only
differences remaining would be those of sex and age.

others, or where the survival of the whole state depended on some service from its members - these were the grounds upon which the state could legitimately make demands on the individual's life and freedom. Consequently, a liberal government cannot practise "social engineering" techniques, since this would diminish the individual's authority over his own life. "Social engineering" refers to those government actions which overtly or covertly undermine individual rights i.e. the merit system. They do not refer to government actions which transfer tasks, individuals could perform themselves, to the government; although possibly harmful in some ways, they do not constitute a form of "social engineering".

The concern of the present chapter is the popular claim that groups, too, have "rights". The legal equality of the liberal order is presumed inadequate, not because it fails to ensure socio-economic equality, but because it does not assist in the maintenance of ethnic culture. The cry for "group rights" derives its strength from the premise that social equality, if it is not to be a hoax, necessarily involves the right to preserve one's cultural heritage. This right is acknowledged under liberalism; hence, individuals are protected against discrimination, but their culture is not thereby preserved, it is merely given the conditions wherein it <u>may</u> be preserved.[*] It is interesting to note that the current support for group rights is a new phenomenon. It is not the group rights of pre-liberal societies which are being sought but the group rights which are alleged to be an extension and embellishment of present

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[*]The provision of other conditions i.e. limiting interaction between groups, would go farther in preserving cultures. Of course, a liberal government is required to uphold the right to free association.

individual liberties. This raises the question of whether a policy of legal group differentiation previously known only to authoritarian regimes can be combined with the values and assumptions inherent to liberal democracy without actually compromising the liberal order. The theoretical ramifications of the concept of "culture" will not be delved into here, but rather, by examining a concrete case of ethnic group differentiation in modern society, the question of where ethnic culture belongs in a liberal framework and what substance there is to the radical critique* in general can be seen.

The millet system in the Ottoman Empire was described as an example of group differentiation in pre-liberal society. Whatever unique features it is found to possess, it shared with all pre-liberal societies the fusion of religion and politics which produced no general right to toleration, but instead allowed for the extension of various privileges to different ethno-religious groups.[1] The modern state, however, is based, as has been shown, on the doctrine of natural individual rights that points for its actualization to the separation of state from society (religion); consequently, all groups, communities or corporate bodies - such as a church or an ethnic group - acquire the status of private associations within the commonwealth. On these premises, it becomes difficult to understand how the native people in Canada could have been granted group privileges. Apparently group differentiation cannot be dispensed with altogether by any government; if this is so, then what form

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*Whether in favour of socio-economic equality or group rights - all radicals and liberal revisionists attack the individualism of the modern state.

of group differentiation might a liberal government adopt? Can it rely

on the old model of legal group differentiation which was characteristic

of preliberal states, or must it devise a new model for itself? The

Indians in Canada represent a case of legal group differentiation in

modern society and should be able to provide some further insights into

the nature of such differentiation.

Case of the Indians in Canada

The discussion of the Indians in Canada will involve primarily a

review and critique of two possible solutions to the problem of minority-

group status in liberal democracies: multiculturalism and consociational-

ism. It will be shown that, to date, the "special status" of the Indians

has not had the effect of raising them to a level of socio-economic

equality with other Canadians; it may even have been an impediment to

their development in this respect.[2] On the other hand, whether complete

legal equality, without any additional concessions, would have been more

advantageous to Indians is questionable. It should be pointed out that

the "special status" of Indians has not kept their ancestral way of life

intact either. Consequently, "group rights" cannot be asserted in the

interests of serving equality, or in the interests of preserving culture

for which a concomitant policy of group autonomy would seem in order.

Needless to say, under these circumstances, a society would not be liberal

any more than was Ottoman society.

In general, the unique legal status of the Indians is "contrary

to the civil rights of Canadians",[3] and the individual Indian.[4] Under the

Indian Act, Indians cannot own and control land. "The provisions of the

Indian Act do not give native people equality .... It cannot be said

that an Indian has equality before the law if he cannot enjoy his

property and if he has to depend on a Minister in Ottawa to exercise and

make decisions on his behalf."[5] While the Act is subject to interpreta-

tion, according to Wuttunee, "the land is not owned by the Indian bands

but, rather, it is held in trust for their use and benefit .... Legally

the Indians, by virtue of the Indian Act, are lawfully in possession of

land on a reserve only with the approval of the Minister and only if it

has been allotted to him by the Council of the band."[6] The Band Council

may not be the most fair or administratively competent body in these

matters.[7] Moreover, the Indian Act prevents the property of an Indian

on a reserve from being subject to seizure. Wuttunee's perspective on

this is worth quoting. He states:

> "In their ordinary business dealings, the natives tend
> to hide behind the Indian Act, thereby depriving non-
> Indians of their basic civil rights. The sections of
> the Act dealing with special exemptions for natives
> when it comes to enforcement of judgements by non-
> Indians, is a detriment and a disadvantage to the
> ordinary band member who is trying to be successful in
> the business world. These sections should be repealed,
> putting him on the same basis as any other Canadian.
> It is no wonder that banks and business people will
> not deal with Indians, because when it comes to
> enforcing their rights, businessmen are deprived of
> the right to enforce judgements and seizure."[8]

Wuttunee also argues that the residents of most reserves are denied

adequate police protection. "They are being denied basic civil rights

to live peacefully in their homes without being disturbed by drunks or

petty criminals. It almost appears that the government is not concerned

whether or not Indians kill each other off."[9]*

Perhaps the legal disadvantages of the Indians have been summarized best by the Honourable Jean Chretien who said in a speech,

> "Under the Indian Act there is no escape from the maze.
> The red tape jungle was built into the Act to protect
> the Crown - the people of Canada if you like, from the
> dangers inherent in trusteeship and to protect the
> Indians from being hoodwinked out of their land."[10]

While these legal drawbacks exist, however, there are some

benefits to retaining the legal distinction between Indians and other

Canadians; hence, the emergence of "Red Power" or "Citizens Plus" advo-

cates. Indians can be divided into those who are registered, of which

some are under treaty; those who are enfranchised who relinquished their

legal status as Indians; and the Metis who never had the status of

registered Indians.[11] The protagonists of "Red Power", who are strongly

opposed to the implementation of the reforms put forth in the White Paper,

state the following:

> "To us who are Treaty Indians there is nothing more
> important than our Treaties .... Under the guise of
> land ownership, the government has devised a scheme
> whereby ... our people would be left with no land
> .... Yet, what Indians asked for land ownership that
> would result in Provincial taxation of our reserves?
> What Indians asked that the Canadian Constitution be
> changed to remove any reference to Indians or Indian
> lands? What Indians asked that Treaties be brought
> to an end?"[12]

In brief, this statement points to the heart of the issue. Indians,

although they have adapted and are capable of independence, wish to

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*For a detailed discussion of the legal confusion surrounding the
Indian Act see W.I.C. Wuttunee's book, Ruffled Feathers: Indians in
Canadian Society, 1971, pp. 77-111.

preserve as a _privilege_ what was originally a _necessity_ for survival.

The grounds for their special status are no longer justifiable, but for

registered Indians under treaty, the maintenance of Indian status has a

utilitarian value. The mere presentation of such a statement indicates

that Indians are ready for full legal equality: they have made the trans-

ition to modern life and know how to use politics to achieve self-serving

ends. Treaties ensure the following benefits:

> "(a) To have and to hold certain lands called 'reserves'
> for the sole use and benefit of the Indian people for-
> ever and assistance in the social economic, and cultural
> development of the reserves.
>
> (b) The provision of health services to the Indian people
> on the reserve or off the reserve at the expense of the
> Federal government anywhere in Canada.
>
> (c) The provision of education of all types and levels to
> all Indian people at the expense of the Federal government.
>
> (d) The right of the Indian people to hunt, trap and fish
> for their livelihood ...."[13]

As Wuttunee points out, this interpretation "is a generous one on the side

of the Indian people" and is open to question.[14]

The preceding gives a general picture of what Indian status in-

volves, both good and bad, and what the contest between the Government and

certain Indian organizations is about. Then there are "support systems"

available to Indians which are outside the contest - grants for the

purchase of furniture and low interest rate loans are offered, for

instance. These are not disputed and are helpful to Indians beginning

life in the city.[15]

Finally, it is interesting that those Indians who strive to per-

petuate Indian status define individual freedom as the freedom to leave

the group rather than the freedom to stay with the group.

> "If one of our registered brothers chooses, he may renounce
> his Indian status, become 'enfranchised', receive his share
> of the funds of the tribe, and seek admission to ordinary
> Canadian society. But most Indians prefer to remain
> Indians."[16]

This represents the reverse of the liberal order wherein the privatization

of groups means the individual is free but may belong to a group.

According to Red Power advocates, an individual must belong to a group,

but may choose to be free. In Ottoman society where the latter was the

common practice, individuals rarely opted to be "free", and the few who

did stood on shaky ground. Of course, in modern Canadian society, the

choice is a real one,* at least so long as group membership functions

within a liberal framework.

Multiculturalism and Consociationalism, Applied to the Indians

Every ethnically diverse society dedicated to democratic principles

will be faced with the question of how to achieve socio-economic and

political equality between its groups. The answer generally given in the

West has been that total assimilation[17] is the best way to prevent ethnic

stratification from developing. This, as a solution, is misleading in

that it conflicts with the liberal right of free association. (Of course,

total assimilation may nevertheless occur on an individual basis or with

some groups.) Another reason for rejecting total assimilation as a

solution is the loss of identity or anomie it entails for "marginal"

individuals when their group's special institutions and symbols are destroyed.

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*This could be debated.

Multiculturalism and consociationalism represent models of
political integration practised by liberal regimes, i.e. Canada and
Belgium respectively, which do not demand cultural assimilation. In theory,
these models, while seemingly similar to the kind of assimilation which
classical liberalism envisaged, are not identical to it. According to
the theory of multiculturalism, culture comes first, and so the law is
obliged to accommodate cultural differences. However, this is not the
way multiculturalism is applied in Canada; groups bring their cultural
practices in line with the law. Classical liberalism stood for political
(not cultural) assimilation. Homogeneity was required in all aspects of
public life; in short, there had to be conformity to the law. But
diversity, whether religious, ethnic, racial, linguistic, etc. which
occurred in the private sector had a right to exist.

The merits of consociational democracy will be considered
essentially as an extension of multiculturalism. Consociationalism has
been identified as one device for reducing ethnic conflict by giving
formal political expression to each group in order to preserve national
unity. However, its adequacy as a solution and its applicability to all
but the most qualified of conditions remain doubtful.

The theory of consociationalism does not accept that cultural
fragmentation must lead to conflict but insists that:

> "distinct lines of cleavage among subcultures may
> actually help rather than hinder peaceful relations
> among them. Because good social fences may make good
> political neighbours, a kind of voluntary apartheid
> policy may be the most appropriate solution for a
> divided society. Political autonomy for the different
> subcultures is a crucially important element of a con-
> sociational system, because it reduces contact, and
> hence strain and hostility, among the subcultures at
> the mass level."[18]

A consociationalist recognizes that economic integration and political integration are not necessarily linked; in fact, increased contacts or "transactions" may aggravate tensions, if the society consists of separate groups which adhere to incompatible values. For example, Ottoman society consisted of groups with different religious codes which could never be combined because religion was inseparable from ethnicity. Social stability can be preserved by reducing the frequency of transactions at the mass level while increasing institutional contacts among elites. Classically, consociational governments come into being in nations where all subcultures either are, or _perceive_ themselves to be, roughly equal in size and power.[19]

This approach assigns a political role to ethnic differences and represents an attempt to manage conflict by giving full institutional expression to all contending parties. However, the doctrine is not without its detractors. Raymond Breton, for instance, advances the thesis that parallel institutional structures hinder individual integration by making the control and relative strength of ethnic organization, of whatever kind, an issue.[20] The "degree of parallelism", Breton asserts, "has an impact on the kinds of matters that become issues between ethnic communities as well as on the character of the accompanying social bargaining processes taking place between them." If there is a high degree of duplication of social structures for each ethnic group, then stratification, mobility, division of labor and even race and language relations themselves will take on different characteristics. "Under high parallelism, the interest would tend to be in organizational control rather than in the conditions of individual mobility as such. The concern is at least with organizational survival if not with organizational growth."[21]

The reserve system and other institutions for Indians provide interesting illustrations of Breton's theory. Highly segregated, the Indians nevertheless do not possess parallel institutions because, almost without exception, <u>administrative control remains with non-Indians</u>. In the main, Indians themselves neither own the businesses which service Indian communities and offer what employment there is - although this situation is slowly changing through the introduction of cooperatives - nor are they represented on most of the government bodies, including schools, police, and social welfare organizations with which Indians are in daily contact.[22] The purpose or effect of parallel institutions is to render the need for interaction outside one's own ethnic group superfluous. This has not occurred with Indians, despite their isolation on reserves, they depend on the institutions of white society. Contact with whites remains minimal but it is far from superfluous. Parallelism is low in the case of Indians because of the highly paternalistic involvement of Euro-Canadian society at every level of Indian culture. This involvement has led to the establishment of Indian communities as - in Breton's words - "political or administrative dependencies" whose "development as a corporate organization can be closely controlled."[23] Similarly, the creation of small scattered reservations which can neither be territorially expanded nor consolidated has had the effect of restricting the right of association and preventing Indians from acquiring (or retaining) a coherent territorial base[24] which could have been used to set up a separate political state or consociational system when necessary or desirable. The result has been to hinder parallel institutional development even in those spheres (such as entertainment) where Euro-Canadians

are not involved and where a clear need for these amenities exists.
Breton's theory, then, accounts for the inadequate development of Indian
institutions in a country where high parallelism exists for other ethnic
groups in the private domain, and for the shift in Indian concerns to
group dynamics and collective treatment.

Consociationalism has been hampered by whites' unwillingness or
inability to permit the development by Indians of separate institutions
serving their community, which could have been extended into a political
role. Despite the fact that whites originally conceded the advantages to
both groups of minimizing transactions by segregating Indians on the
reservations, they did not grant them - or anyone else - political
autonomy, an action which surely would have been detrimental to the
establishment of a liberal order. The universalistic basis of the liberal
state calls for the removal of obstacles to individual advancement; where
ethnic boundaries have a political function, they can be regarded as such
an "obstacle". The Indians do not enjoy political autonomy; nevertheless,
they have been excluded from Euro-Canadian society and its benefits.
Possibly a distinct legal status for the Indians would have served them
better had they had sufficient political power to set the terms of the
contract. Of course, native culture is never able to compete in the long
run with more developed cultures, unless perhaps they form a sizeable
majority. For this reason, legal differentiation for native peoples -
who cannot be in a position to negotiate as equals - should be bypassed
altogether; they require special aid and not special laws, since their
unequal status is temporary. In fact, their human rights are more in
danger of being attacked than are those of other members in the society,[25]

and so, they should not be legally <u>excluded</u> from the mainstream.
Certainly natives could not be allowed to vote initially, but at the
same time, Indian and Canadian identity should not be mutually exclusive.
However, because Indian identity has been enshrined in the law, legally
one can only be <u>either</u> Indian <u>or</u> Canadian; one can be "publicly" an
Indian, or "privately" an Indian. Eventually, if liberal requirements
are met, Indian identity will be a private matter. If not, and such a
situation were to be maintained indefinitely, one would expect one choice
to become "real", while the other existed only on paper. Once a majority
decide, it is merely a question of time before it becomes conventional to
select one option over the other.

It is not likely that consociational theory, if implemented today,
would have any significant effect on Indian status. One of the prerequi-
sites of a working consociational democracy is that the minorities must
all be at approximately the same level of influence. Where the size or
even the growth of the ethnic group is in flux, as it is in Lebanon,
conflict or civil violence may result.[26] Currently, Indians are neither
powerful nor numerous enough to constitute a viable base for ethnic
politics. Also, they lack the geographic concentration into "cantons"
needed for an effective consociational system. The problem of minority-
group status is only irresolutely taken care of by the adoption of con-
sociational practices.

Multiculturalism is but one type of assimilation which has been
identified as characteristic of Canadian society; the other two are "anglo-
conformity" and "melting-pot".[27]

During the "settlement" period (1867-1920), when the predominant mode of assimilation in English-speaking Canada was "anglo-conformity", immigrants were expected to renounce their ancestral culture and accept the values of the "Anglo-Saxon" group; there was no toleration of ethnic diversity aside from the British-French duality.[28] The late 1920's marked the emergence of another form of assimilation later called "melting-pot". At this time, no one culture was more esteeemed than any other; it was anticipated that a new Canadian type would emerge out of the blending of various cultures together.[29] Whether assimilation along these lines actually took place is not the point; rather, these methods of assimilation represent primarily what people thought was happening, or expected to see happen.

From this period up until the 1960's, attitudes toward immigration and ethnicity underwent various transformations in emphasis. However, by the 1950's and 1960's a new attitude of greater tolerance came into being which was to pave the way for multiculturalism. This attitude, as Palmer observes, was the result of many factors "including not only the post-war revulsion against racism in the aftermath of Hitler's treatment of the Jews, but the decline of Great Britain as a world power, and the cultural relativism taught by modern sociology and anthropology."[30] Despite these changes, Indians did not come to the attention of white Canadians to any great extent because of their isolation on reserves.

Unlike the previous two types of assimilation, multiculturalism does not entail total or cultural assimilation, in theory. Multicultural-ism "postulated the preservation of some aspects of immigrant culture and communal life within the context of Canadian citizenship and political and

economic integration into Canadian society."[31] Prime Minster Trudeau

outlined the objectives of his policy which were:

> "First, resources permitting, the government will seek
> to assist all Canadian cultural groups that have demon-
> strated a desire and effort to continue to develop, a
> capacity to grow and contribute to Canada, a clear need
> for assistance, the small and weak groups no less than
> the strong and highly organized."
>
> "Second, the government will assist members of all
> cultural groups to overcome cultural barriers to full
> participation in Canadian society."
>
> "Third, the government will promote creative encounters
> and interchange among all Canadian cultural groups in
> the interest of national unity."
>
> "Fourth - and this is a longstanding function of govern-
> ment - the government will continue to assist immigrants
> to acquire at least one of Canada's official languages
> in order to become full participants in Canadian society."[32]

Evidently, then, multiculturalism is an elaborate scaffolding for bicul-

tural assimilation. The fact that the Prime Minister explicitly states

that "full participation" in Canadian society is dependent upon, at least,

a certain degree of cultural assimilation indicates that, in its political

application - as distinguished from its theoretical development - multi-

culturalism entails not just structural but cultural assimilation. It is

a variant of the melting-pot theory; from many different heritages a new

Canadian type will emerge. Under this interpretation, multiculturalism

encourages "those members of ethnic groups who want to do so to maintain

a proud sense of the contribution of their own group to Canadian society."[33]

(emphasis added) This is a far cry from the more obvious interpretation,

under which multiculturalism is a device for "the preservation and sharing

of cultural heritages."[34] Indeed, without a concomitant policy of

multilingualism - which would discourage structural assimilation - it is difficult to understand how any real cultural pluralism can be maintained.[35] Clearly, on paper, multiculturalism is a new and original doctrine, but in practice there is little to distinguish it from its predecessors.

As it exists in Canada today, multiculturalism does not alleviate the problems of disadvantaged ethnic groups. The policy, of itself, does not alter their socio-economic position. It is concerned with the promotion of cultural "growth", and assumes every cultural group is in the same situation, and defines "growth" in the same way. However, the problems and needs of the Indians are unique. "Indian self-awareness" has not reduced alcoholism or unemployment on the reserves, or raised Indian status in the eyes of Euro-Canadians. Indian status remains among the lowest in the country.[36]

Cultural pluralism advances freedom only in an environment which upholds individualism. When, in contrast, ethnic allegiances are legitimated, then competition for the resources of a society (such as jobs) will be along ethnic lines because discrimination in hiring and the like will be practised. Consequently, Jewish firms, Black firms, and Indian firms will arise, each servicing its own segment of the society and each reflecting the distribution of wealth and power in the general community. For an individual to become upwardly mobile in this kind of fragmented economic scheme, he must change his ethnic identification, if that is possible.

Multiculturalism, because it relies on informal inputs to the political elite, makes it easy for the isolated and disorganized group to be neglected. In the Canadian system, one elected minister represents

all ethnic interests, and not even the full spectrum of these interests but only those cultural interests which do not conflict with other government objectives. Since this minister is elected, it is natural for him to seek to appease his largest and most vocal constituency. Hence, the Secretary of State for Multiculturalism will be more receptive to Ukranian demands than to Indian needs.

Fortunately, Indians are represented by another government body. The Department of Indian Affairs and Northern Development might be seen as a form of consociational representation for Indians, but where the constituency of an ethnic party in a consociational democracy is the ethnic group, John Munro's constituency is not the Indians. Consequently, this Minister's task is to demonstrate to the public (not to the Indians) that his Department is competent to handle Indian affairs.

The official policy of multiculturalism, when applied to the Indians, simply preserves their differential and disadvantaged status. Although it is a relatively new doctrine, its tenets have always been applied to Indians by the Indian Affairs Branch and other government bodies.[37] Despite an overt commitment to a policy of amalgamation, government practice has always been to maintain Indians as a distinct and cohesive group. "Government officials did not propose to break up the reserves or to allow Indians to scatter at will - an action that would certainly have advanced the process of assimilation."[38] Ironically, the chief cultural differences between contemporary Indians and the larger society is the existence of the Indian Affairs Branch as a regulatory body.[39]

Scholars have repeatedly noted the "appalling conditions" under which Indians live.[40] According to Robertson, Indians are living at an acceptable level, if one is using 1885 rural Canadian standards. There are 35,000 illiterates among adult Indians. Malnutrition is endemic; alcoholism, petty crime and disease are widespread.[41]

The raison d'etre of the Indian Affairs Branch is the preservation of Indianness.[42] Hence, actions have been taken to ensure that Indian groups remain legally defined entities. Despite the prevalence of inter-marriage and the destruction of Indian kinship patterns, bureaucrats continue to impose an official definition of Indian status.[43] The government perpetuates the band as a unit through such devices as separate administration and the granting of tax free status to Indians who live and work on reserves.[44] As a result, Indians have developed what Robertson calls a "patient mentality"; Zentner, for instance, observes that there are no social sanctions used against deviants by Indians because this is regarded as the government's prerogative.[45] Such economic and psychological dependency has made the Indians "afraid of freedom".[46] Indians are an institutionalized administrative entity, and Indian group formation occurs because of external forces such as the entitlement to government aid.[47]

Even among Indians, there is a myth of idyllic Indian communal life,[48] a myth fostered by the law which freezes relationships.[49] Braroe and Robertson cite numerous instances of individualism and private enter-prise operating on the reserves but perverted by the restrictions of the Indian Act.[50] Significantly, it has been demonstrated that most Indians neither have any knowledge of their own folklore and rituals, nor do their

traditions have any impact as normative values.[51] Hawthorn goes so far

as to assert that no culture has been transmitted intact, but rather that

Indians perceive a distinct "cultural tradition".[52] In this respect,

Dunning states that the most meaningful way "to analyze present day

Indian contact society is perhaps in terms of social interaction, social

sanctions and social organization rather than by accounting for cultural

phenomena."[53]

> Harp and Hoflay define the "culture of poverty" as,
>
> "characterized by a low level of organization ... not
> integrated with the major institutions of society and
> containing a deep rooted hostility towards representa-
> tives of the larger society - social workers, politicians,
> police - and [containing] persons within the culture
> who possess feeling of hopelessness, dependence and
> inferiority."[54]

The "cultural" behavior of Indians, seen in this light then, is really

"normal behavior of the class."[55] According to Dunning, speaking of the

Pine Tree Ojibwa specifically, "these persons who appear to have lost the

essence of their traditional culture and who themselves would have been

lost in the larger population but for government protection, might be

termed Indian Status Persons rather than Indians."[56] The "Indian Status

Person" is defined as:

> "the person who lives and depends on government grants
> in various forms to support his marginal subsistence
> level of living. Occasional wage labour increases his
> income, but the solid, one might say overwhelming basis
> for security appears to be not the group of interrelated
> families sharing a common history, culture and residence,
> but the land itself with the implication of a paternal
> government in the form of the agent who will not see him
> starve on the land."[57]

This evidence is not intended to minimize the extent of the

cultural revival movement which Hawthorn identifies.[58] However, the impetus of this movement (in the United States, at least) comes from educated, urbanized Indians. Ethnic mobilization reflects an attempt to personalize the urban environment.[59] It is an urban phenomenon and largely unrelated to government activities. Indeed, there is no correlation between revivalist activity and economic development except where the revival stems solely from Indian initiatives without government input.[60]

Consequently,

> "Indian leaders are trying to persuade Government officials that Indians can manage businesses successfully, that the Indian Act must be changed, and that it is out of step with Indians' new priorities that Ottawa is giving the eight bands $48 million for social services this year but only $4.7 million for economic development. 'The whole idea seems to be to keep Indians on welfare so that bureaucrats can have jobs. Before several Manitoba bands took over their own schools, set up their own police and ... family services, there were 705 people in the Department of Indian Affairs in Manitoba to serve 50,000 Indians. And there are still 705 today .... Not one has left.'"[61]

Notwithstanding the liberal phraseology in which multiculturalism is couched, it is basically a conservative policy, holding as it does that non-rational, traditional ties and practices ought to be perpetuated irrespective of individual decisions as to which parts of one's culture deserve maintenance. The alleged persistence of aboriginal personality structures as manifested in a distinct culture could be used as an argument for unequal access to social institutions, either by the host society or the minority group. Hence, for Indians, Indian culture is threatened by attempts to provide basic municipal services such as running water and flush toilets to the reserves - Indians perceive the extension of provincial services such as these as an assault on a fundamental aspect

of their culture which is their _special_ relationship with the federal government.[62]

An American anthropologist has discussed the "policy implications" of multiculturalism as follows:

> "If one approaches the problem of cultural change from a position which emphasizes continuity or persistence, rather than change and emergence, one will probably be drawn toward a conservative apologia supporting the status quo. If one accepts a live-and-let-live ethic of cultural dualism, and the native culture can be shown to function as a viable and distinctive way of life, such a position follows quite logically. This, I believe, is the burden of Lurie's plea for looking at the sunny side of life on the reservations (1962: 831-832). On the other hand, if evidence suggests that native culture is no longer viable or distinctive, but rather a poverty-ridden sub-system that has already become part of the larger society, an ethic of justice and equality will force one to ask what its actual position is within the larger system. If it is merely a depressed part of the larger society, one is required, if one is consistent, to advocate elimination of such differences. Which is to say that economic dualism disguised as cultural dualism is a fraud."[63]

In fact, Indian communities are in their own way trying to right themselves after being thrown off balance by the reserve system and by the obsolescence of government sponsored economic activities. The Hay River Reserve is one of many which is "disbanding itself".[64] Indian awareness of the practical need for acculturation led in 1976 to the withdrawal of funds devoted to a college for native studies in Quebec on the grounds that the money could be better spent elsewhere.[65] Similarly, Hawthorn states that despite a few protests, the majority of Indian parents favour integrated education in normal provincial schools simply because they realize that their children will emerge better educated, although less distinctly "Indian" in language and conduct.[66] But the involvement of

the Indian Affairs Branch in this process can severely hamper its smooth operation; in some Western reserves, the local school system needed twenty-five years to recover from IAB interference.[67] The notion that difference in academic achievement between Indian and non-Indian students is a cultural difference can function to "keep Indians down" by viewing the problem to be beyond human control. In fact, the difference in academic achievement appears to be best accounted for by socio-economic factors. There is little to motivate Indians to struggle on towards higher education. "The few persons who become successful usually leave the community and as they tend to identify with the outside world, they are socially lost to the community. The real example of adult behavior comes from the remainder who have stayed on in a subsidized and marginal economy. This is not conducive to academic achievement."[68] Moreover, Nagler's study indicates that Indians who live in close proximity to urban centers show higher incidences of acculturation to the urban industrial complex than their rurally isolated counterparts.[69]

Reserves, depending on their location and resources, are, generally-speaking, not economically viable units. Indeed, they were originally intended to operate as government-owned farms[70] even though some are situated on land not suitable for farming.[71] Even at that time, when Indians were being transformed from nomads into agriculturalists, their economy was out of date. Once again, with the second revolution underway – the trend towards industrialization – Indians find themselves, having become proficient at farming, still economically behind the times.[72] Many reserves cannot provide the jobs, the training, the income, etc., which would enhance opportunities for upward mobility. As already

mentioned, they were set up with one specific way of life in mind - a way of life which, in many cases today, guarantees poverty. The effect of government policy has been to transform the Indians into a rural peasantry.

Owing to the built-in economic limitations on most reserve communities, the "trend is to off-reserve migration".[73] Indeed, for the last twenty years, Indians have been urbanizing at an ever increasing rate.[74] In 1972, over a quarter of Canadian Indians were living off the reserve, and although more recent figures are not available, it is probably safe to assume that "the majority of the Indian population inexorably shift to the cities."[75] If Canadian policy towards Indians is not to prove inadequate once again, this reality must be recognized. A multicultural policy would be better suited to handling the problems of reserve Indians rather than urban Indians, for the individual Indian who is separated from his "officially recognized" group becomes a cultural anomaly. Like the Indian Affairs Branch, for most of its existence, multiculturalism has emphasized the passive prevention of abuse rather than the active promotion of change.[76] As a result, the "charter rights" of Indians are "turned into a millstone" which retards their development.[77] In short, the application of multiculturalism to Indians is obsolete, as the present issue is "the appearance of Indian poverty in Canadian cities."[78]

The most successful Indians in urban life are those who have experienced extensive and prolonged exposure to city living from an early age.[79] Government efforts to "stream" Indians into integrated schools, integrated retraining programs and the like have been advantageous to

Indians where these programs are a part of a service available to all citizens.[80] As it is, "native people form the hardcore of the urban dispossessed .... The Indian subculture is not merely low in status and income; it is not merely at the bottom of the pile; its situation is becoming increasingly worse."[81] Multiculturalism is a policy only of benefit to those who are already well on the way to structural assimilation and economic integration. As such, it has no relevance or utility to Indians themselves. Once economic well-being has been secured, the preservation of minority-group culture itself must be left for the most part to the members of the culture concerned. A liberal government must refrain from acting in this area because the interests of the individual and the cultural group may be at variance; however, it is obliged to protect minority-group members from unlawful discrimination; their culture has a right to exist in a liberal society. This position assumes that structural assimilation is at least as desirable, if not more desirable, than cultural preservation.

While a liberal government cannot impose legal ethnic group differentiation, it cannot be rigid about its commitment to universal ideals either. Strict observance to universal ideals, especially at the time of conquest, would have caused the Indians extraordinary hardship.

The liberal answer to minority-group problems has been unsatisfactory. To ignore the group is not always to help the individual. In the case of the Indians, this shortcoming was perceived, and a liberal government extended special privileges to a group. Granting the Indians "group rights" - for the individual who became enfranchised could never return to the reserve and was legally cut off from the group[82] - did not

bring the group to a level of socio-economic equality with others in the society, nor has it preserved the original dignity of the culture.

Multiculturalism <u>as it is applied</u> illustrates the relationship between minorities and the state as defined by classical liberalism. "Melting-pot" and "anglo-conformity" theories of assimilation, however, are not inconsistent with classical liberalism. All three policies specify that full participation in political life ought to be open to all its citizens. Even "anglo-conformity", while it is the most demanding in that it penalizes group variation which appears on a private level, is not so different from the others; it merely intensifies a process which seems to occur in any case.[83] It seems logical that, in any liberal society, either a majority or a ruling minority will determine the norms; whereas, in a closed, caste-like system, which minimizes competition, the broadest diversity could be tolerated.[84] It could still be argued though that the ideology of multiculturalism, unlike "anglo-conformity" and "melting-pot" viewpoints, serves to encourage group variation in private matters; consequently, its desirability <u>there</u> may further tolerance towards those differences which may then be more freely manifested in public life.

NOTES

1.   see Fustel de Coulanges, 1956
2.   see Wuttunee, 1971
3.   Wuttunee, 1971, p. 87
4.   Wuttunee, 1971, p. 81
5.   Wuttunee, 1971, p. 25
6.   Wuttunee, 1971, pp. 77, 78
7.   Wuttunee, 1971, p. 80
8.   Wuttunee, 1971, pp. 83-84
9.   Wuttunee, 1971, p. 92
10.   cited in Wuttunee, 1971, p. 29
11.   Wuttunee, 1971, p. 24
12.   cited in Wuttunee, 1971, pp. 41-42
13.   Wuttunee, 1971, pp. 44-45
14.   ibid.
15.   see Wuttunee, 1971, pp. 125ff
16.   cited in Wuttunee, 1971, p. 43
17.   Enloe, 1973, p. 59
18.   Lijphart, 1971, p. 11
19.   Lijphart, 1971, pp. 11-14
20.   Breton, 1978, pp. 148-157
21.   Breton, 1978, pp. 150-153
22.   Hawthorn et al., 1958, pp. 65ff, p. 89
23.   Breton, 1978, p. 154
24.   Breton, 1978, pp. 153-154
25.   see Davis, 1977, pp. 476-477 who offers a different interpretation:
      "... this epidemic, as well as the general state of despair and
      disorganization among the Cintas Largas and Surui tribes, could be
      directly related to the 'integrationist' policies of FUNAI [National
      Indian Foundation of Brazil]. Although land protection is stipulated
      in the Brazilian constitution, these Indians were without any
      effective protection of their lands, and were suffering the worst
      effects of uncontrolled contact with outsiders ... where Indian
      land rights conflict with the interests of large, multinational or
      state-owned mining companies, or with the plans of the National
      Highway Department, FUNAI has been unable to fulfill its constitu-
      tional mandate to Indian tribes."
26.   see Lehmbruch, 1974, pp. 90ff
27.   Palmer, 1976a, pp. 81-118
28.   Palmer, 1976a, p. 85
29.   Palmer, 1976a, pp. 90-96
30.   Palmer, 1976a, p. 99
31.   Palmer, 1976b, pp. 489-490
32.   cited in Munro, 1976, p. 123
33.   cited in Palmer, 1976a, p. 105
34.   Government of Canada, 1980, pp. 475ff
35.   for an opposing view see Munro, 1976, pp. 124ff
36.   Pineo, 1977, p. 149

37. Robertson, 1970, p. 117
38. McQuillan, 1980, pp. 393-395
39. Dunning, 1974, p. 83
40. see for instance Robertson, 1970, pp. 13-15, 117ff; James, 1972,
     pp. 227ff; Zentner, 1972, pp. 214-227
41   Robertson, 1970, pp. 28, 135, 142, 143, 223, 235, 272, 276;
     Dunning, 1974, pp. 79, 81; James, 1972, pp. 227ff
42. Dunning, 1974, p. 60
43. Dunning, 1974, pp. 66-80
44. Dunning, 1974, pp. 81-82; Robertson, 1970, p. 121; James, 1972,
     pp. 227-228
45. Robertson, 1970, p. 55; Zentner, 1972, pp. 214-227
46. Robertson, 1970, p. 71
47. Nagler, 1972, p. 287
48. Robertson, 1970, p. 110
49. Braroe, 1972, p. 262
50. ibid.; Robertson, 1970, p. 255
51. Dunning, 1974, p. 69
52. Hawthorn et al., 1958, p. 39
53. Dunning, 1974, p. 73
54. cited in Nagler, 1972, p. 141
55. Dunning, 1974, p. 77
56. Dunning, 1974, p. 84
57. ibid.
58. Hawthorn, 1966, pp. 120-121
59. see for instance Glazer and Moynihan, 1963
60. Hawthorn, 1966, pp. 120ff
61. Globe and Mail, 1982, p. 3
62. Hawthorn, 1966, pp. 396-397
63. James, 1972, p. 239
64. Robertson, 1970, pp. 204ff
65. Native Perspective, 1977, p. 8
66. Hawthorn, 1966, pp. 35-36
67. Robertson, 1970, pp. 263-269
68. Dunning, 1974, p. 79
69. Nagler, 1972, p. 140
70. Robertson, 1970, p. 80
71. McQuillan, 1980, p. 396
72. Robertson, 1970, p. 278
73. Hawthorn, 1966, p. 399
74. Nagler, 1970, pp. 67ff
75. Dosman, 1972, p. 8
76. see Hawthorn, 1966, pp. 367, 368
77. Hawthorn, 1966, p. 396
78. Dosman, 1972, p. 8
79. Nagler, 1970, pp. 31-67
80. Dosman, 1972, pp. 99ff; Nagler, 1970, pp. 27ff; Hawthorn, 1966,
     pp. 35-36
81. Dosman, 1972, p. 8
82. Wuttunee, 1971, p. 85
83. see Reitz, 1980
84. Rose, 1974, pp. 408ff

CHAPTER SIX

Towards a Liberal Solution

Consociationalism, and multiculturalism in its theoretical

formulation, are each non-liberal solutions to the problem of social

inequality within a multi-national state. This is not to suggest that

they are incompatible with liberalism - surely, Canada and Belgium

continue to be thought of as liberal democracies. The practice of group

differentiation characteristic of pre-liberal societies assumes a

different form in a different context. The millet system belonged to an

authoritarian state; consociationalism and multiculturalism appear in

modern liberal states (although consociationalism and multiculturalism

could belong to an authoritarian state as well). When the doctrine of

individual rights is strictly upheld, the nature of group life adjusts

itself accordingly. However, the question remains whether the practical

implementation of these theories, in general, might not culminate as a

form of group differentiation similar to the millet system over the long

term, or possibly a system wherein the positive attributes of both pre-

liberal and liberal societies were absent.

What could a liberal government do to help its minority groups?

Mill on Assimilation

Mill's discussion of nationality represents the clearest liberal

statement on the subject of groups and their treatment. The only group

comprehended is the "nation", and where such a group exists self-consciously, "there is a _prima facie_ case for uniting all the members of the nationality under the same government ...."[1] However, the issue of the nation's right to political autonomy never arose under liberal governments until the present day, since liberal government and national governments were usually identical. Indeed, according to Mill, "it is _in general_ a necessary condition of free institutions that the boundaries of governments should coincide _in the main_ with those of nationalities."[2] (emphasis added)

Where Mill makes exceptions to this rule, it is obvious that he speaks not of a policy of mutual toleration, but of a policy of assimilation. He states:

> "Whatever really tends to the admixture of nationalities,
> and the blending of their attributes and peculiarities in
> a common union, is a benefit to the human race. Not by
> extinguishing types, of which, in these cases, sufficient
> examples are sure to remain, but by softening their extreme
> forms, and filling up the intervals between them."[3]

The interest in effecting similarities between different groups is related to the requirements of the liberal state itself which cannot "function" where "each fears more injury to itself from the other nationalities than from the common arbiter, the state."[4] Individualism, or liberalism, could not operate under a circumstance where group loyalties are imperative.

Mill affirms the liberal belief that where a government "assigns no privilege to either nation, and chooses its instruments indifferently from all", group boundaries will break down and a common identity will emerge.[5] For Mill, "if the era of aspiration to free government arrives before this fusion has been effected, the opportunity has gone by for

effecting it."[6] In other words, if along with the indoctrination of individual rights, group boundaries remain fixed, then the state will collapse into many smaller states, or will remain united but not under a liberal government.

This raises the question: why does a policy of toleration apply to religious groups but not national groups? Mill obviously equated nationalism with particularism; in fact, they are separable. Liberalism can tolerate those national differences which do not lead to, or require, particularism. In short, every group must accept individual rights as opposed to group rights, and cannot appeal to the government to further the distinct goals of the group where these conflict with the rights of individuals. Group rights, if administered with strict equality, ultimately break down into individual rights; any other formulation requires particularism.

Analysis of the Preceding

As seen from Mill's position on nationality, what group variation exists within liberal society must be consistent with universalism. Canadian Indians are an example illustrating the effect of legislated distinction given to an ethnic group within the context of universalism.[*] The fact that the Indian problem persists and may even be worsening indicates the failure of legal ethnic group differentiation in liberal society. This might be attributable to the fundamental liberal assumption of equal access. Given that legal group differentiation has some

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[*]Similarly, the Quebecois, after 200 years of legal differentiation, remain structurally disadvantaged.[7]

meaningful effect for the group, it is necessary that this access be either more or less than the norm. Consequently, some inequity must result and the group in question or other groups will suffer.

While the granting of special status to Indians has not led to socio-economic equality between Indians and other Canadians, it remains possible that group rights, if administered to every ethnic group, could help improve the economic condition of those groups, provided their political power is approximately the same. However, this would strengthen the political role of group membership which is so inimical to liberalism (although it may be that liberalism is resilient enough to withstand some non-liberal policies). The foundation would then be established upon which a latter-day variant of the "millet system" could develop.

The criticism that liberalism does not guarantee the maintenance of minority-group culture is valid. A liberal-democratic government cannot promote the minority culture of an ethnic group at the expense of the majority.* But the right of the group to self-determination is newly conceived in modern times. Radicals who advocate "group rights" do not plan to lose their individual rights in the process; what else does "Citizens Plus" mean? Given these priorities, the liberal response to the call for preserving ethnic culture is still the best one possible. However, group differentiation may be necessary for other problem areas

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*Nevertheless, this was attempted in Quebec and has backfired on the English community; now, evidently, the Quebecois have to be reminded that the "English minority is a legitimate part of the Quebec community", and trying to limit its size represents "a type of fine-tuned social engineering that is not a legitimate goal."[8]

besides cultural development; for instance, social and economic
disadvantages may plague a group. Consequently, while a liberal govern-
ment cannot grant formal ethnic group rights, it cannot (and need not)
abandon group differentiation entirely either.

A Liberal Solution

A liberal government can accommodate the needs of groups. This
would involve the restoration of the distinction between the exception
and the rule; the needs of extreme cases could thereby be met without
altering the norm.

The criterion for determining whether a deviation from the norm
might be given formal expression is the nature of the inequality concerned;
namely, whether it is natural or conditional. If the assumption is made
that ability is evenly distributed throughout the human race, then the
"inferiority" of a particular ethnic group at one point in history cannot
be the result of permanent characteristics which it possesses. This is
why Indian status, codified into law, has been so harmful. Their condition
at the time of contact with the white settlers from Europe was bound to
change. The fact that all Indians shared the same disadvantages was owing
to their common way of life which differed from that of the Europeans.
The condition of children and the aged, on the other hand, which warrants
legal recognition will always be the same, i.e. one of special disadvantage
in relation to the remainder of the male population regardless of culture,
time period, etc.

It is essential that transitory differences be given attention
without being treated as permanent states. For instance, mechanisms

already exist within Canada to facilitate ad hoc or emergency responses
to specific problems. Recent immigrants are provided with language
training and other support in order to reduce their disadvantages vis-a-
vis the remainder of society; yet, there is no conception of "immigrant
rights". The same sort of approach could be applied to ethnic groups.
It is only in this way that individual potential can be given room for
development, since ability will vary within an ethnic group. The goal
should always be to find specific prescriptions for specific problems
rather than trying to generalize the problem to include everyone.
Multiculturalism can be seen as such an attempt: when French was made
the second official language in Canada in order to settle the dispute
between the French and the English in Quebec, almost every ethnic group
suddenly "needed" official recognition of their culture. As a result, a
policy of bilingualism became transformed into a policy of multicultural-
ism which addressed only spurious problems. In the case of the Indians,
this tendency to generalize can be seen again. While it seems reasonable
that a policy of segregation was initially good, since it encouraged
settlement of the country[9] and protected the Indians from exploitation,
it was redundant to set up a distinct legal category for the group which
was bound to carry consequences for the future - when none of the initial
circumstances would be any longer relevant. Consequently, segregation
for the Indians continues although it only prolongs and exacerbates their
poverty at the present time. In fact, it is lamentable that instead of
phasing out the Indian Affairs Branch, Red Power advocates seek to replace
the Branch "with an administration operated by Indian associations"[10] -
since the purpose remains identical, it is not clear how this change would

help the Indian people as a whole. In meeting group _needs_, a liberal
government should strive to benefit the majority of its members, and not
just a select few.

For those, like children and the aged, who fall into exceptional
classes, provision in law can and must be made. "Rights" for these
"groups" could exist, since such divisions cross-cut all other boundaries,
and would therefore be consistent with universalism. The question of
whether women belong in an exceptional class cannot be answered within
the scope of this work. While "women's rights" would not be the least
incompatible with universalism, they may not have the effect of eliminating
sexual inequality. The existence of natural or permanent differences may
not be relevant in every situation or at all times; the exact opposite is
the case with children and the aged whose inequality is the result of
natural causes alone. Women, on the other hand, may be disadvantaged by
roles ascribed to them as well as by innate differences (on which agree-
ment is wanting); special problems originating from each of these sources
would have to be treated differently, the former being transient, and the
latter permanent. This will have to be left for future research to
resolve.

NOTES

1.   Mill, 1910, p. 361
2.   Mill, 1910, p. 362
3.   Mill, 1910, p. 364
4.   Mill, 1910, p. 361
5.   Mill, 1910, p. 366
6.   _ibid._
7.   see Smiley, 1976, especially chapter five; Guindon, 1978; Porter, 1965
8.   Spectator, 1982, p. 2
9.   Wuttunee, 1971, p. 111
10.   Wuttunee, 1971, p. 6

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