

## 8 From group rights to individual rights and back: Nepalese struggles over culture and equality

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### **Introduction: Nepal's South Asian context**

'Cultural rights are now widely recognized as deserving the same protection as human rights.'<sup>1</sup> So says an authoritative recent UNESCO publication, which is examined in detail by Eriksen in chapter 6. The rise of this kind of rights discourse, with its emphasis on the rights of minority cultures, is, as the introduction to this book charts, a global phenomenon; arguably it is itself an aspect of globalization. This discourse of cultural rights is problematic on several counts. Within liberal political and juridical theory it presents a fundamental challenge to more traditional ways of conceiving rights. Are there any cultural rights?<sup>2</sup> Do only individuals have rights or should groups defined by a shared culture be granted rights that would enable them to impose their standards on the individuals who belong to them? Furthermore, the term 'cultural rights' can mean both (1) rights to culture, i.e. to maintain cultural differences, with state and legal support if necessary, and (2) differential rights to political and economic resources on the basis of cultural difference. Perhaps most problematic of all, this discourse assumes that every group possesses a shared and distinctive culture which marks it off from other groups. In fact, in actual social situations, as opposed to the thought experiments of philosophers, what is to count as cultural difference, and who can claim it, are highly political and often fiercely contested questions – a contention that will be amply illustrated, I hope, by the case study presented in this paper.

The recent history of Nepal illustrates both the problems and the temptations of 'rights talk' rather well. Throughout this time Nepal has defined itself as a Hindu state, though how that has been understood, and the degree to which it has been contested, have varied considerably. I will sketch the last 150 years of Nepali history and the three contrasting models of the political organization of culture that have prevailed in this period. In doing so, I attempt to show how the language of cultural

rights has entered Nepali politics – what it is arguing *against* and what it is arguing *for*.

In traditional Nepal cultural difference was not relegated as a principle of social organization to marginal populations: it, along with the idea of hierarchy, was the key criterion by which the pre-modern Nepali state sought to organize society and rule over it. People had duties, as well as rights, as members of groups defined by their hereditary recruitment and by their relationship to the dominant division of labour. It was taken for granted that such groups had their own distinctive 'customs' or culture. In English these groups are usually known as castes or, in the case of more peripheral groups, as tribes. The most influential theorist of this division of labour is undoubtedly Louis Dumont in *Homo Hierarchicus* (1980). Critiques of *Homo Hierarchicus* have been many and varied, but Dumont's central contention that the dominant value of the caste system is and was hierarchy cannot, I think, be gainsaid.<sup>3</sup> The present paper is centrally concerned, then, with the transition from a fundamentally hierarchical situation to one in which equality, both of individuals and of groups, is the dominant value.

Another theme is the growing salience of religion rather than culture, or religion *as* culture, as a principle of identity. In the traditional situation religious identity was largely implicit for most of the population. Now that cultural differences are being eroded, religious allegiances have become both more self-conscious, more problematic, and much more politicized. In Europe most states are either secular republics or, if there is a connection between the state and a particular religion, as in England, the connection has been diluted so much in practice that it is no longer highly contentious. By contrast, in South Asia nationalism is relatively recent and, despite the best efforts of secularists such as Nehru, has taken a predominantly religious form (van der Veer 1994). As the frequency of constitutional amendments and new constitutions shows, the constitutional position of religion is a significant and sensitive issue in all the countries of South Asia.

India is officially a secular republic, with equal treatment of all its citizens guaranteed by the Constitution.<sup>4</sup> Pakistan, by contrast, came into existence because of Islam. Its successive constitutions have all guaranteed that Pakistani laws must not contradict Islam. Islamization has frequently been high on the political agenda and the controversy has often been over how, not whether, to implement it. Perhaps in reaction to the Pakistani experience, the constitution of Bangladesh enshrines secularism as a fundamental principle, though this has come under attack from Muslim activists. In Sri Lanka, the adherents of all four widely practised religions (Buddhism, Hinduism, Islam and Christian-

ity) are supposed to enjoy equal status, but Buddhism has been given special status under the Constitution – a crucial step in the development of the ethnic war in the island.

Nepal is different from all of these examples because it was never formally a part of the British Empire. Although subject to various restrictions (for example, not being allowed direct diplomatic relations with other powers), it was not dictated to on internal affairs, as were the Indian princely states. From the 1930s Nepal was permitted to have an ambassador in London. Thus, as will be explored below, there was an important continuity between the period before 1950 and the Constitutions of 1960 and 1990: namely, the definition of Nepal as a Hindu state. That Nepal is, and has been, the world's only officially Hindu state is a matter of pride for many Nepalis, but has been increasingly controversial, especially since 1990.

The discourse of civil rights first began to arrive in Nepal early in the twentieth century. The autocratic Rana regime of the time was extremely sensitive to the slightest criticism, which it suppressed ruthlessly. At the same time, the Rana Prime Minister, Chandra Shamsher, abolished slavery in 1924, for which he was much praised by the British. From the 1930s to the 1960s, increasing numbers of Nepalis studied in India and imbibed the discourses of nationalism, Marxism, and civil rights which flourished there. Since that time many have continued to go to India, but increasingly others have headed for the West or the ex-Soviet bloc; nowadays the undisputedly most popular destination is the USA. The younger generation and the politically active today self-consciously align themselves with global developments, whether in music, fashion or human rights.

Within the lifetime of today's older generation, two radically different conceptions of individual and social rights have held sway within Nepal: a hierarchical, caste-based model, which reached its apogee in the Rana period, and a modernizing, individualist model, downplaying ethnic diversity, which was most characteristic of the Panchayat period (1960–1990). During the last ten or fifteen years a third, multiculturalist model has begun to be pushed by ethnic activists and has begun to receive some, though as yet limited, official recognition. In my conclusion I offer some reflections on its merits, but also on its contradictions and possible dangers.

### Culture and Identity under the Rana regime (1846–1951)

The present state of Nepal was created in the late eighteenth century from geographically and ethnically highly diverse territory stretching

Table 8.1. *Five basic categories of Nepalese castes and ethnic groups according to the Law Code of 1854 (after Höfer 1979: 46)*

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I.	Wearers of the sacred thread ( <i>tagadhari</i> )
II.	Non-enslavable alcohol-drinkers ( <i>na-masinya matwali</i> )
III.	Enslavable alcohol-drinkers ( <i>masinya matwali</i> )
IV.	Impure but touchable castes ( <i>pani na-calnya choi chito halnu-na-parmya</i> )
V.	Impure and untouchable castes ( <i>pani na-calnya choi chito halnu-parmya</i> )

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from Tibet in the north, through the rugged middle hills to the strip of Gangetic plain (the Tarai) in the south. The Rana regime began when in 1846 Jang Bahadur seized power by summoning all the leading nobles to a meeting and having loyal soldiers kill them all in the infamous Kot massacre. For the following 105 years he, his brothers, and their descendants held the hereditary prime ministership and, with it, all real power. The kings were reduced to the status of closely guarded figure-heads.

By 1850 Jang Bahadur Rana had secured his position in Kathmandu and embarked on a trip to England and France (Whelpton 1983) – the first South Asian prince or king to breach the Hindu taboo on travelling across the ocean. The British government took care to impress on him its economic and military power. In France he was also impressed by the Code Napoleon, and this is supposed to have been the model for his National Legal Code (*Muluki Ain*) (Shaha 1982: 70). Although promulgated in 1854, it was not actually printed until 1870, shortly after the introduction of the first printing presses into Nepal (Hutt 1988: 132). Inspired by a Western model it may have been, but in its content the Legal Code was thoroughly traditional (Whelpton 1991: 218). All the groups in the country were classified into five hierarchically ranked divisions (see Table 8.1). In his thorough and seminal study of the resulting countrywide single caste hierarchy, András Höfer emphasizes that there is no indigenous distinction between caste and ethnic group or tribe (Höfer 1979: 46): all are equally *jat* ('kind' or 'species'). The ethnic groups or 'tribes' of the Nepalese middle hills were slotted into the hierarchy at levels II and III, placing them above the Untouchable service castes of the dominant Parbatiya group (level V) but below the Brahmans and Chetris (level I). They had little choice but to accept the ritual and social superiority of Brahmans and others. At the same time, they had the possibility of collective promotion from level III to level II.

The rights and duties of those subject to the Code were largely determined by their *jat* membership. No member of categories I and II could be enslaved. No Brahman was subject to capital punishment.

Although the Legal Code stated that occupation should not be governed by caste (ibid.: 119), in fact the law courts did support caste-exclusive occupations until the end of the Rana period: a non-Chitrakar who took up religious painting could be fined, for example. There were also numerous punishments for sexual liaisons across caste boundaries, the worst being reserved for those between low-caste men and high-caste women.

Professions were treated, in fact, like traditional customs. Anything established as a custom or ritual traditional among a given group was permitted, and deviation could be punished. When five Newars were ordained as Buddhist monks by a Tibetan lama in 1926, what incurred the wrath of the Rana authorities, leading them to expel the five from the country, was that one of them (Mahapragya, 1901–78) came from the Shrestha caste, mostly Hindus by tradition. On the other hand, Shresthas who traditionally received the ritual of tantric initiation from Buddhist priests rather than from (Hindu) Brahmans were explicitly given permission by the Legal Code to continue doing so (Höfer 1979: 160).

Thus, the Legal Code of Jang Bahadur Rana attempted to regulate the interactions and behaviour of all the subjects of the House of Gorkha on the following assumptions:

- 1) that everyone belonged to one and only one *jat*;
- 2) that people should only marry other members of the same *jat*;
- 3) that no one should adopt a profession that was traditionally the exclusive practice of another *jat*;
- 4) that all *jats* fall into one of the five major categories, and that rights, duties and punishments should be determined in accordance with that status.

The details of the Code dealt with the anomalies and the practicalities of operating on these assumptions, for example, what was to happen in the case of inter-caste unions.

At the same time as its legal system operated on the assumption that each caste had its specific duties, or *svadharma*, the Rana regime also encouraged certain pan-Hindu values and practices. Foremost among these were the worship of cows and of Brahmans. Axel Michaels (1997) has shown how the Nepalese state, beginning in 1805, tried to introduce a ban on slaughtering cows to those, such as the Tamangs, Bhotiyas, and other populations with a tradition of eating beef. Essentially, the state compromised by imposing relatively small fines for the *unintentional* killing of a cow, as opposed to capital punishment or (after 1854) life imprisonment for doing so *intentionally*. (After 1990 the sentence still stands at twelve years in prison.) Consequently these populations were

able to continue eating beef as long as the cow fell 'accidentally' to its death and was not intentionally killed.

As far as 'worshipping Brahmans' was concerned, the state did not impose cultural practices on its subjects, but rather led by example. In fact many non- or semi-Hindu populations were likely to have already been introduced to caste practices by the arrival of Untouchable castes in their locality: principally Damai (tailors), Kami (blacksmiths), and Sarki (leatherworkers). These were specialists whose services were welcomed. Interaction with them had necessarily to be carried on in Hindu terms, at least in public. This meant refusing water from their hands and keeping them outside their houses. Had the 'tribes' or ethnic groups of the hills not done so, they would themselves have fallen to the level of Untouchables. Nick Allen has elegantly described, for the case of the Thulung Rai, the gradual and almost imperceptible way in which this Hinduization occurred, with the people concerned lacking the concepts even to articulate how they had moved over a number of generations from viewing Brahmans as a separate people to accepting them as a superior caste (Allen 1997).

In addition to the right to carry on one's traditional customs provided they did not offend the elite too radically, there was also the right to change one's customs, with royal approval. Thus there are numerous examples of upward mobility where particular groups, including sometimes Brahmans themselves, petition to be allowed to give up certain customs, such as cross-cousin marriage or eating beef carrion, classed as low by Brahmanical norms (Pfaff-Czarnecka 1997: 428–32). By this means, there was a slow process of Sanskritization – the gradual and piecemeal adoption of Hindu practices – throughout the country.

Another way in which the state attempted to unify the country was by encouraging a single festival, Dasain, at the end of the harvest. Each local headman was expected to stand in for the king in the leading role. Ritual roles were distributed on a caste basis, with more demeaning roles being ascribed to 'tribals' or low castes (Pfaff-Czarnecka 1993). At the same time, the emphasis on animal sacrifice in Dasain – buffaloes in great number in royal centres, a goat for each individual household – engendered a Tibetan Buddhist counter-movement: many Tibetan Buddhist monasteries carry out rituals on behalf of the slaughtered animals and to make up for the sin of the killing.

By supporting Brahmans and Hindu renouncers; by enforcing, at least symbolically, universal cow worship; by giving caste distinctions the force of law; and by making Dasain a ritual of hierarchical inclusion for all their subjects, the elite of the nineteenth-century Nepalese state did more than merely endorse and perpetuate the cultural differences of

the various peoples who were their subjects. It aspired to incorporate them into a single hierarchy. Thus the elite legitimated itself, and marked itself off from British and Muslim-dominated north India, with a self-consciously Hindu model of social order, thereby giving a substantial impetus to a process of Sanskritization that had already begun in some places before the eighteenth century (Whelpton 1997: 43). Many members of the 'tribes' or ethnic groups in the middle hills adopted both the language (Nepali) and the culture of the dominant group in the Rana period. By comparing the 1990 ethnicity figures with those for mother-tongue, Whelpton (1997: 59) estimates that language-loss among the major groups of the Nepalese hills has reached 68 per cent among the Magars, nearly 50 per cent among the Gurungs, 34 per cent among the Newars, 16 per cent among the Rais, 14.5 per cent among the Limbus, and 11 per cent among the Tamangs.

#### **The Panchayat period: modernization by traditional means**

The fall of the Rana regime is seen by Nepalis today as the end of a period of severe autocracy that was wholly deleterious to the country; the period after 1951 was experienced, and is still remembered, as a great liberation. However the first multi-party election in 1959 was quickly followed by their abolition and the introduction of a non-party, authoritarian regime: the Panchayat system. Although condemned as 'fascist' by its opponents, it would be wrong to see the Panchayat regime as having been as violent or as arbitrary as Rana rule.

The Panchayat regime went through a number of changes in the three decades between 1960 and 1990. Most importantly, student protests in 1979 led to a referendum in 1980 on whether to continue with the non-party system. Although the Panchayat system emerged the victor, with 55 per cent of the votes, the King conceded the principle of direct elections to the National Assembly. Before that, in accordance with the Panchayat ideology of building from the bottom up, which was supposedly in line with traditional Nepali national character, there had only been indirect elections, with village representatives nominating district-level representatives, who in turn selected national representatives.

Despite these developments, it is fair to say that there was a single guiding ideology of the Panchayat regime which persisted, with, no doubt, changes of emphasis throughout its thirty years. The regime itself attempted, through the official media and school system, to propound the need for such an ideology, which can be summed up as economically developmentalist, culturally integrationist and politically monarchical. It

had a number of key elements, of which the following appear to have been the most important:<sup>5</sup>

- 1) leadership of the king, as the bringer and guarantor of 'democracy';
- 2) a system of bottom-up representation on the basis of what were argued to be genuinely Nepali village-level councils (*panchayats*), rather than through the supposedly foreign notion of political parties;
- 3) economic development (*bikas*), towards which aim all institutions were supposed to be subordinated;
- 4) equality of all citizens;
- 5) unity of the nation, as expressed in the slogan 'One language, one dress, one country' (*ek bhasa, ek bhes, ek des*), and the importance of 'building nationalism' (that is, feelings of national identification);
- 6) the banning of any non-governmental organizations, such as independent trade unions, that would represent sectional interests and increase internal conflict; they were replaced with official, supposedly non-political and non-conflictual 'class organizations' (*bargiya sangathan*) for youth, peasants, workers, women, students and ex-soldiers (Joshi and Rose 1966: 406–10);
- 7) Hinduism as the official state religion, with Buddhism, Jainism and Sikhism seen as branches of Hinduism;
- 8) respect for traditional customs.<sup>6</sup>

There were bound to be tensions between these different items. Most obviously, the new value of equality was hard to reconcile with the 'traditional custom' of hierarchical exclusivity, as dramatically symbolized by the continued exclusion of Untouchables from the national shrine, Pashupati (Joshi and Rose 1966: 474; Höfer 1979: 204).

At the same time, the new regime did enact several modernizing legal measures, such as a law enabling unmarried women over the age of thirty-five to inherit a share of the ancestral property (Gilbert 1992) and several measures collectively referred to as Land Reform (1963–4). Under the latter, restrictions were placed on the amount that any individual could own (the rich registered land in the names of all the members of the family) and land rents were fixed in law, thus greatly reducing the tenant's traditional obligations. Both of these were signs of new values. The increasing monetization of the economy, especially in the Tarai and the cities, coupled with increased levels of education and a gradual decline in deference, inevitably brought new values in their wake.

Thus, the Panchayat period combined formal legal equality (but without any measures of positive discrimination), endorsement of traditional customs and religion, and an aspiration to national integration by means of the adoption of Parbatia culture by minorities. With the

collapse of the regime in 1990, it became evident that this had been no solution to the problems of cultural diversity, but had simply deferred them.

As with the treatment of low castes and excluded ethnic groups, the issue of conversion, as Richard Burghart has discussed, raises the serious question of how far pre-modern Hindu notions still applied, and whether there was individual freedom of religious expression. While individual practice of non-Hindu religion was legal, 'disturbing society' by causing people to convert was illegal, which led the British Liberal MP for Liverpool, David Alton, to protest at the treatment of Christians in Nepal in 1986. On this Burghart commented:

What Alton did not recognize, and possibly could not as a Liberal MP, was that the Kingdom of Nepal was not a civil society. Religious beliefs in Nepal are not merely a private matter between 'a man and his Maker' . . . Rather society itself is an auspicious ritual unit. Religious conversions . . . disturb society as a whole. Something resembling religious tolerance exists in Nepal, but the constraints that operate on it are not the laws of contract appropriate for civil society. (Burghart 1996: 197)

In short, in the Panchayat period, the laws restricting employment to hereditary occupations, and punishing intermarriage between previously separate groups, had been rescinded, but religion had still not become entirely a matter of individual choice.

No one today wishes for a return to the Rana period, but there are many ordinary people who began to feel, not long after 1990, that things were better under the Panchayat regime: there was less corruption, less inflation, less disorder. However, the leading politicians of the Panchayat period do not, as yet, openly campaign for a return to the non-party system; officially their party, the National Democratic Party, has accepted the multi-party system and seeks success within it.

### Post-1990: claiming new collective rights

In 1989–1990 a 'People's Movement' overthrew the by then morally bankrupt Panchayat regime.<sup>7</sup> A new Constitution in 1990 placed sovereignty firmly with the people, while confirming the position of the king. The old definition of Nepal as 'an independent, indivisible and sovereign monarchical Hindu Kingdom' was changed to 'a multi-ethnic, multilingual, democratic, independent, indivisible, sovereign, Hindu and Constitutional Monarchical Kingdom'.<sup>8</sup>

It is clear from this definition that ethnic and cultural differences have been given a legal and political recognition that was wholly lacking during the Panchayat period. The Constitution, while specifying Nepali



as the 'language of the nation' (*rastrabhasa*), designated all languages spoken as mother-tongues in the country as 'national languages' (*ras-triya bhasa*), and as such guaranteed the right to primary education in these languages. As far as I know, however, there is only one private school, funded by a Japanese social service foundation and with a large number of children from deprived backgrounds, where primary education is given in Newari. All other schools continue to teach in Nepali or, increasingly, in the rapidly expanding private sector, in English.

Meanwhile, from 1994 Radio Nepal started to broadcast the news for five minutes a day in languages with more than a million speakers.<sup>9</sup> The 1990 Constitution gives further support to a policy of multiculturalism in Section 26, subsection 2:

The State shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the national unity by promoting healthy and cordial relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their language, literatures, scripts, arts and cultures.

Thus, alongside the entirely new recognition given to different cultural groups and to the necessity of promoting their cultures, the Constitution commits the state to a policy of national unity. It is a question of 'unity in diversity'. Furthermore, to the disappointment of many Buddhist and ethnic activists, the Constitution continues to define the kingdom as Hindu, despite an enormous demonstration demanding a secular ('religiously nonaligned') constitution. In short, the drafters of the constitution did not feel that they could place the term 'multi-religious' alongside 'multi-ethnic' and 'multi-lingual'. This failure led to an enormous increase in accusations of 'Brahmanism' (pro-Brahman policies and Brahman domination), charges further fuelled by the eventual introduction of news read in Sanskrit on the radio and the introduction of compulsory Sanskrit in schools. Secularists argued that non-Hindus were condemned to second-class citizenship and that therefore the Constitution was not fully democratic. Development expert and Newar activist Keshab Man Sakya declared that the Constitution instituted government 'by the people, of the people, for the Brahmins' (Sakya 1990: 10).

A range of groups, with different claims, have come forward to take advantage of the new multicultural situation after 1990. At the least contentious end of the spectrum, the Royal Nepal Academy has begun a new multilingual journal, *Sayapatri*, which publishes scholarly and literary articles both in Nepali and in other national languages with a parallel Nepali translation. A National Ethnographic Museum has been proposed, and agreed in principle by the government, in which all sixty-

nine recognized ethnic groups and castes will be represented: the plot of land will be in the shape of the country, with a house for each group in its own traditional style. Despite the latter being a key demand of the activist groups, both initiatives have worked with the government and have attempted to be both multiculturalist and inclusive.

More oppositional, but still non-political in that it refuses to align itself with any political party, is an organization, formed in 1990, that calls itself in English the Nepal Federation of Nationalities (NEFEN), and in Nepali the Nepal Janajati Mahasangh (literally 'Union of Janajati Groups of Nepal'). As its English name suggests, it is supposed to be a federal umbrella group bringing together one representative member organization for each 'nationality' or *janajati* in Nepal, with more than thirty such ethnic organizations having joined by July 2000. The term *janajati* is a neologism that has come to be used for what used to be called 'hill tribes' and non-caste peoples of the Tarai. It excludes the Parbatiya castes, both the dominant Brahmans and Chetris, and their associated Untouchable castes (categories I, IV and V in Table 8.1), as well as the many castes of the more elaborate social hierarchy of the Tarai. These groups are supposed to be the non-indigenous incomers to Nepal, and NEFEN aims to speak for all the other, supposedly indigenous, groups. NEFEN is strongly anti-Hindu and anti-Brahman in its ideology; it aims to combat Brahman domination of the political, legal and administrative machinery, and to undo what it diagnoses as the cultural influence of Brahmans and Hindus on its member groups. It excludes Untouchables from membership but is willing to ally with Dalit (Untouchable) organizations in pursuing its aims.<sup>10</sup>

The essential issues, from NEFEN's point of view, can be seen in a survey by Nanda Kandangwa (1996: 25–30) of the three main parties' positions on twenty crucial questions. The questions were:

- proclamation of a secular constitution;
- end to linguistic discrimination;
- conversion of the upper house into a House of Nationalities;
- the right to self-determination;
- the right to the income from natural resources and the land;
- teaching in the mother-tongue;
- the right to use mother-tongues in the civil service entrance examinations and in courts and government offices;
- the right to have programmes, announcements and news in mother-tongues in the mass media;

- the provision of special arrangements to encourage *janajati* students in higher and technical education etc.;
- an end to compulsory Sanskrit [in secondary school];
- an end to the news in Sanskrit; conversion of the Sanskrit University into a campus for all languages, and conversion of the Sanskrit College and students' hostel into a college and hostel for students of all languages;
- the necessity of making government power and the running of the government public [that is, not confined to one group];
- protection and development of the places and items of cultural, archaeological, historical and religious importance to indigenous/*janajati* people;
- establishing institute(s) for the study of indigenous/*janajati* religion, culture and language;
- establishing an organization for the economic development of indigenous/*janajati* people;
- protection, development and management of indigenous intellectual property rights;
- giving guarantees of the human rights of indigenous/*janajati* people;
- giving national recognition of the culture and social values of indigenous/*janajati* people;
- to make corrections by rewriting and analysing the history, census data and numbers of indigenous/*janajati* people;
- that the government should use its influence to implement the UN's Decade of Indigenous Peoples.

It is no coincidence that these questions are in line with global discourses on cultural rights: they are derived and translated directly from them. Many of the activists working with or in NEFEN have studied and worked abroad and even those who have not are well attuned to international human rights issues. Access to the internet is easy in Kathmandu. One of the principal aims of organizations such as NEFEN is invariably to maintain contact with like-minded international bodies, to attend conferences abroad, and to invite international observers to attend their conferences in Nepal. In December 1996, for Human Rights Day, NEFEN published a Nepali translation of the Charter of the Indigenous-Tribal Peoples of the Tropical Forests; earlier the same year, the Nepal Tamang Ghedung, the NEFEN member-body for the Tamangs, which is run out of the same office as NEFEN itself, published a pamphlet containing Nepali translations of the Universal Declaration of Human Rights, the UN Minority Rights Declaration, the

UN Draft Declaration on the Rights of Indigenous Peoples, and the International Labour Organization's Convention on Indigenous and Tribal Peoples.

The awkward way in which the term *adivasi* ('indigenous', literally 'original dweller') has been incorporated into the ethnic activists' discourse is witness to the dependence of that discourse on international initiatives. The term *janajati* is also a neologism, unused and largely unknown even in activist circles before 1990. It has been adopted, by NEFEN and others, to pick out just those groups that are not part of the dominant 'Hindu' social order. The stress on indigenousness came later, with the UN's declaration of a Year of Indigenous Peoples in 1993. NEFEN argues that the two terms, 'indigenous' and *janajati*, refer in the Nepali context to the same people, but this overlooks the awkward fact that many *janajati* groups, or sections of them, have well-known myths locating their origin outside Nepal.

Alongside the politically non-aligned NEFEN, there are many much more radical bodies. Ethnic political parties such as the Mongol National Organization and the Nepal Rastriya Janajati Party, were refused recognition by the Election Commission in 1991 (Bhattachan 1995: 132; Whelpton 1997: 59). Other movements, such as the Khambuwan, Limbuwan, and Magar Liberation Fronts, claiming to speak for Rais, Limbus, and Magars respectively, have never sought electoral approval. Suresh Ale Magar, an outspoken proponent of ethnic rights, has established an Akhil Nepal Janajati Sangh or All Nepal Nationalities Organization (ANNO): unlike NEFEN, it is not a federal, officially non-political body, but is on the contrary a unitary organization aligned with the Maoist United People's Front (Bhattarai), also known as the Communist Party of Nepal (Maoist), led by Baburam Bhattarai and 'Comrade Prachanda' (Pushpa Kumar Dahal). The Maoists currently (1998–2000) control large parts of the western hills of Nepal. Bhattarai himself lives underground, but is widely assumed to be in Kathmandu, since his articles appear frequently in the national press and his rebuttals appear almost immediately. In his search for allies to overthrow the parliamentary regime, Bhattarai has aligned himself with ethnic activists such as the Khambuwan Liberation Front, and claims that he favours autonomous ethnic regions. Bhattarai was rather prescient when he declared, in a seminar in Delhi in 1990, years before the present Maoist agitation began:

Whereas the obscurantist forces headed by the king would try to put the clock back, the new ruling combine is a bundle of contradictions and a vascillating lot with more or less the same social base as the previous regime. The high democratic expectations of the long suppressed masses and the genuine

aspirations of the ethnic, linguistic and regional minorities would exert tremendous pressure in the days to come upon the new regime. It is extremely doubtful whether anything quite short of a radical restructuring of the polity and the economy of the country can cope with the problems of such magnitude. (Bhattarai 1990: 17)

Support for this comes from the opposite end of the political spectrum. Pashupati Shamshere Rana, who was a powerful minister in governments of the 1980s and is now one of the leaders of the 'right-wing' National Democratic Party, writes in support of positive discrimination in favour of disadvantaged communities:

There is little doubt, that, whatever the perils, whatever the costs, the inescapable challenge of the day is to establish a more universal and assimilative pattern of institutional development, and a more egalitarian sharing of both economic and political benefits of development . . . The privileged castes and classes must rise above their narrow interests to espouse the cause of the disadvantaged and underprivileged to provide them with not merely equal but enhanced opportunities for improving their lot . . . Our multi-party democracy must create a multi-ethnic power structure. (Rana 1998: 82)

#### From castes to ethnic groups: common assumptions

What all Nepali political parties, pressure groups and revolutionaries seem to agree on is an essentialist view of the cultural divisions they argue over. All seem to agree that everyone in the country

- (1) belongs to one and only one ethnic or caste group;
- (2) is born into that group;
- (3) cannot change their group.

There are two further universal assumptions, one procedural and one normative:

- (4) though some groups are big and others small, they can, for practical purposes, be treated as groups of the same logical order;
- (5) all groups should be treated equally.

For external sociologically inclined observers these assumptions are highly contestable and cannot be accepted as an analytically adequate description of how the social system operates or has operated, though they *do form* part of the folk model by which people guide their own conduct. Assumption (3) was refuted by the Ranas themselves, who raised their status from ordinary Chettri to that of the royal caste, Thakuri, by adopting the title 'Rana', forcibly marrying their sons and daughters to the children of the king's family, and adopting a prestigious Rajput genealogy linking them to India (Whelpton 1991: 187, 190–1). Likewise there have always been examples of inter-caste marriage or

concubinage, with the offspring absorbed either into the father's or into the mother's caste, depending on the circumstances of the case. Assumption (4) creates many problems for analysis: for example, many small castes have in fact already disappeared.

Assumption (5) marks a radical departure from the traditional situation, although it is today generally agreed that the old ideology of hierarchy must be rejected. For the ethnic activists, introducing real equality implies removing the special status of Hinduism and introducing measures of positive discrimination to overcome the entrenched, privileged position of the Brahmans. For those who oppose such measures it is enough that such privilege is no longer upheld by law, and they see the status of Hinduism in the Constitution as a simple reflection of the majoritarian position of Hindus in the country. The census statistics on religion are bitterly contested, with non-Hindus, especially Buddhists, claiming that the number of Buddhists has been deliberately massaged down in successive censuses and that Hinduism has been used as a default category into which anyone who does not insist that they are something else is placed.

The argument about equality between what were previously hierarchically ranked social units reappears *within* different groups. For example, the Gurungs have two ranked divisions which many Gurung activists now claim to have been foisted upon them by Brahmans (Macfarlane 1997). The Newars of the Kathmandu Valley have a complex caste hierarchy of twenty or more castes in the largest settlements (Kathmandu, Lalitpur and Bhaktapur) (Gellner & Quigley 1995). Newar cultural and ethnic activists have long sought to bring about more 'unity' and were therefore dismayed when, in the aftermath of 1990, many Newar castes, and especially the largest, peasant caste, the Jyapus, began to organize caste associations which threatened that unity. This soon generated other organizations (Newa De Dabu, Newa Mahaguthi) that attempted to bring together all the different Newar organizations, including these caste associations, on the basis of equality, just as NEFEN aims to bring together all Nepal's 'nationalities' (*janajati*) on the basis of equality.

Similar arguments setting those who wish for unity on an individualist basis against those who argue that true unity can only be achieved by the recognition of previously stigmatized constituent parts occur both at the national and at the intra-ethnic level. At the national level, those against granting ethnic rights argue that conceding them would encourage communalism and undermine nationalism. They are countered with the argument that the best way to build national unity is to strengthen the constituent parts of the nation, namely the ethnic groups; otherwise,



they argue, the inbuilt inequalities of the present situation will eventually lead to the emergence of ethnically based violence as in Sri Lanka or the former Yugoslavia. In exactly the same way, Newar ethnic activists who are unhappy at the emergence of caste associations within the Newars are faced with the argument that only by recognizing the distinct and previously stigmatized identity of large groups like the Jyapu cultivator caste can their sense of identity as Newars and as Nepalis be properly founded; and there is, it is argued, no contradiction or conflict in asserting, and feeling pride, in these various identities, each of which operates at a different level.<sup>11</sup>

Despite these differences, all agree that ethnic groups and castes exist. The facts that there are numerous intermarriages, that there are many marginal cases of people who do not fit easily into one of the categories, or belong to more than one, are treated as insignificant exceptions. Nationalists still argue that there is a common culture (at least in the hills, if not extending to the Tarai), but do not carry the argument against the ethnic activists onto a more conceptual level. They do not try to argue that hybridity is a more appropriate concept for understanding the history and development of Nepal, that ethnic or caste purity are ideological figments which hide a history of intercaste mixing. Concern with hybridity, as Friedman (1997: 72) remarks, has remained restricted to a few cosmopolitan intellectuals. Instead the debate in Nepal is largely about statistics: is more than 90 per cent of the country Hindu, or is the true figure (including only Brahmans and Chetris) 30 per cent? It was only after the census of 1990 that figures were released for different castes and ethnic groups. Debates over the figures are bound to intensify.

The position of those who oppose the demands of ethnic activists today has been succinctly summarized by Krishna B. Bhattachan. He claims that there are thirteen 'fallacies' or 'myths' which the ruling class has propagated over the last 200 years and which have marginalized ethnically based demands:

1. Inter-caste and ethnic harmony or unity in diversity is a main feature of Nepalese society;
2. Social and cultural diversity is a problem, not a resource, for development;
3. Bahuns and Chetris have contributed most in the process of the making of the Nepali State;
4. Positive discrimination/reservation system/affirmative action, federalism, right to self determination/self-rule/local level autonomy disintegrates Nepal;
5. Equality of opportunity shall take care of all kinds of inequalities;
6. The economic success of the Thakalis, Mananges [sic], and Sherpas are not because of State policies;

7. If ethnic groups are backward it is because of their choice to remain in their own cultural cocoons;
8. Nepali language and Hindu religion have been accepted spontaneously by all ethnic groups;
9. Either everyone or no one is indigenous in Nepal;
10. Ethnic line [that is, pushing the ethnic line] invites riots, violence and disintegration;
11. There is no correlation between ethnicity and development and/or under-development;
12. Ethnic issue is a Western import/support with a motivation of destabilization in Nepal;
13. Ethnic problem is non-existent but it has been over inflated by some ethnic leaders to self-serve their narrow interests. (Bhattachan 1997: 119–20)

### Conclusions

I have outlined three different models of the relationship between culture and political incorporation, corresponding to three periods of recent Nepalese history: the hierarchical, caste-based model of the Rana period; the citizen-based, developmental and culturally homogenizing model of the Panchayat period; and the as yet unrealized, and perhaps unrealizable, multicultural, 'different but equal' model of the ethnic activists of today.<sup>12</sup> All three models entered Nepal from outside and were reworked to suit local conditions. Expectations of the government were, of course, very different in these three historical periods. In the Rana period, the government made demands (of corvée labour, taxes, participation in rituals) and the people obeyed; after the devastating earthquake of 1934 many refused to take the government assistance offered for rebuilding their homes because they believed that it was sinful to take the king's property. Today, by contrast, after several decades of developmentalist, top-down ideology, which has inculcated the idea that Nepal is one of the world's poorest countries, people have come to believe they have a right to government and foreign aid to provide for basic needs – an expectation which is still far from being met.

The three models I have depicted are, it must said, heuristic: the first two were certainly dominant in the periods referred to, but they were not uncontested and they were not adhered to equally by everyone. The second and third models, though both claim or claimed to be founded in the specificities of Nepali history and society, are strongly influenced by norms introduced from outside South Asia. The first two models were imposed from above, whereas the third is being claimed by activists and has so far largely been resisted by the state.<sup>13</sup>

In all three models, the position of Hinduism, and the relation of other religious traditions to it, is central. Hinduism was the main means

of legitimation for the Rana regime, and the law of the country was framed explicitly in Hindu terms. All other religious traditions had to accept these terms, and even Muslims are governed by Hindu-derived family law (Gaborieau 1993). In the Panchayat period, the state was still proud to call itself the only Hindu kingdom in the world, and the official doctrine was that Buddhism, Jainism and Sikhism were 'branches' of Hinduism; only a minority of Buddhist activists were seriously offended by this. In practice, secularism was pervasive, and the role of Hinduism in actual government was less than, for example, that of Islam in Pakistan (Gaborieau 1982). Today the continued official status of Hinduism in the Constitution, and the lack of recognition of Nepal as a multi-religious country, is highly controversial. One of the principal aims of ethnic activists is to try to construct a national anti-Hindu coalition across all the divisions of religion, geography, language, culture and politics.

How far, and in what ways, the third, multiculturalist model should be put into practice is, I have tried to show, a matter of crucial and immediate concern in Nepal. How far should the state go in recognizing different cultural groups and giving them rights as groups?<sup>14</sup> In a symbolic sense the state has already recognized that the country is divided into sixty-nine castes and ethnic groups of vastly differing sizes. Some have their own language and some do not, but all are assumed to have their own cultural traditions worth representing in a National Ethnographic Museum. Given the figures in the 1990 census, it would be hard for the state not to go some way towards acknowledging diversity.<sup>15</sup> At the same time such an approach is necessarily fraught with difficulties. Any attempt to grant serious recognition to cultural rights requires hard choices about which cultural units to accept and which to overlook; whatever choices are made, someone is bound to be offended.

In the Nepalese case a new national tradition might usefully include a stress on both cultural and biological hybridity. If the elite could abandon its traditional concern with purity, there might be much to gain. Whelpton (1997: 73) has suggested that it is time for the royal house 'to reclaim its Magar heritage' – in other words, to acknowledge that it is descended not only from prestigious Rajput forebears in India, but also from the Magar 'tribe'. Gurung heroes of Nepali history, written out of Panchayat history books, could be reincluded in official accounts (Onta 1996). Primary teachers in government schools could be permitted to use the local language alongside Nepali in order to explain the (Nepali-language) school textbooks, as currently happens in the one existing Newari-language school.

Another radical move might help, though it is perhaps naïve to expect

the Nepalese state to embark on a conceptual innovation that has not been tried, or even to my knowledge suggested, in the 'developed' West, either among census-takers or among the arbiters of ethnic monitoring.<sup>16</sup> In order to defuse the numbers game, people could be permitted to tick more than one box in the questions on ethnic or caste identity or on religious affiliation; for many people ticking both 'Hindu' and 'Buddhist' boxes would be a truer reflection of their actual religious practice and, given encouragement to do so, there might be many who would prefer to claim a dual ethnic identity, or none at all (like the pre-conflict Bosnians who returned their ethnic group in Yugoslav censuses as 'human being' and the US citizens who wrote in 'earthling').<sup>17</sup> Thus, alongside a strategic admission that distinct cultural traditions exist within Nepal, all of which, as many now argue, should be acknowledged as authentically Nepali, the government could simultaneously push the idea that it is legitimate, indeed meritorious, for individuals to claim allegiance to more than one such tradition or to none. Different cultures would then have rights, but only individuals would be able to claim those rights, with no one being able to force another into a cultural straitjacket. This would require the brave conceptual leap of reversing millennia of stress on the value of purity and the shame of mixture, but it would have the virtue of carrying the battle effectively against the ethnic activists who have, in practice, accepted the traditionalist model of separate groups while rejecting its hierarchical and integrationist components. Such a strategy would also have the merit of reinforcing an old, relatively tolerant South Asian tradition of making matters of linguistic and cultural choice effectively the decision of the household, subject only to local opinion.

Whichever solutions are attempted, it is clear that Nepalis face a predicament that is common in many other places. At the very time when many minor cultural differences are being eroded and when it makes sense to speak of an emerging global culture, other cultural differences are being politicized as never before. A large part of this has to do with the replacement of hierarchical ways of thinking about cultural difference with egalitarian ones, at least within formal and public forms of political discourse, and a key causal factor here is the power that democratic political rituals give to previously suppressed majorities.

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Whether one restricts oneself to detached analysis or indulges in offering advice as well, there is bound to be fierce criticism from some quarters, so it may not be wholly redundant to insist that I alone should be held responsible for the shortcomings which undoubtedly remain, as well as for the opinions expressed.

## NOTES

- 1 Pérez de Cuellar *et al.* (1995: 282).
- 2 This is the title of Kukathas' interesting article (1992). For a recent attempt to provide a typology of cultural rights, including a critique of some of Kukathas' ideas, see Levy (1996).
- 3 For a small sample of the critiques, see Appadurai (1986), Marriott (1992), Quigley (1992), Raheja (1988).
- 4 There has been some attempt to express the equality of all India's communities in the selection of its presidents: three Brahmins have been interspersed with a high-caste Hindu, two Muslims, a Sikh, a middle-caste Hindu, and a low-caste southern Hindu. But in one sense the unequal, or at least different, treatment of its citizens is also ensured because they do not all live under the same civil law: the price of obtaining Muslim leaders' allegiance to the new Indian state was to permit the continuation of the British colonial practice of separate personal legal codes for Muslims, Hindus, Christians, Parsis, and Jews (Sikhs counted as Hindus). Although much modified from the colonial era, Muslim leaders have resisted fiercely anything that might seem like an encroachment on Muslim difference in this area. Today the secular status of the Indian Republic is, in fact, highly controversial, because it is questioned by the BJP, currently the largest political party, which would like to give Hinduism special status.
- 5 There was no primer or 'little red book' of Panchayat ideology, but the elements I have listed can be found in school textbooks and were the themes taken up on official holidays and in politicians' speeches.
- 6 For interesting accounts of the Panchayat ideology, see Borgström (1980), Gaborieau (1982), and Pigg (1992).
- 7 For accounts of this movement, see Bonk (1990), Brown (1996), Hacchethu (1990), and Raeper and Hoftun (1992).
- 8 From the official English translations of the 1962 Constitution (modified in 1980) and 1990 Constitution (Gellner 1997: 6).
- 9 This followed the report of the Government Commission on Policy towards National Languages (Rastriya Bhasa Niti Sujhav Ayog). For details, see Gellner (1997: 6) and Sonntag (1995).
- 10 See Gellner *et al.* (1997) for more on the new term, *janajati*, and on NEFEN. NEFEN defines *janajati* and *adivasi* as 'falling outside the Hindu 4

*varna* scheme' and 'indigenous', respectively. They are taken to have an identical reference in the Nepali context.

- 11 This argument is examined in greater detail in Gellner (1999).
- 12 In drawing up these three models, my indebtedness to the work of Pfaff-Czarnecka (1997, 1999) should be clear. In terms of Walzer's typology of states (1997), the Rana regime was a sub-species of multinational empire; the Panchayat regime was an attempt to forge a nation-state on the basis of the Parbatias' language and culture; and the multiculturalists of today are aiming at some form of consociation.
- 13 It would be wrong to assume that these models were internally entirely consistent or without tensions. The Rana model had problems welding a geographically and culturally disparate country into a single hierarchical order; numerous anomalies perforce remained. There was also a contradiction between its forthright traditionalism and the first hesitant steps that were taken during the Rana period to build a sense of national identity and to propagate Nepali as the national language. The Panchayat model was undeniably modernizing and moved in the direction of individual rights. But the inheritance of ancestral property remained collective: all extant male heirs had and still have a right to an equal share of inherited property. Daughters had no such right, and it is in the post-1990 era that the first attempts to introduce corrective legislation have been made. The multiculturalist model is by no means the only or dominant one after 1990. Conventional surveys of human rights focus entirely on individual rights (Upadhyaya *et al.* 1997), and it is left to the ethnic activists to argue for collective rights.
- 14 The Maoist rebels have promised a high degree of ethnic autonomy and many ethnic activists are tempted by these promises, as well as by the ever new depths of corruption to which politicians of all political parties seem determined to sink, to throw in their lot with them.
- 15 In December 1998 the Ministry of Local Development did indeed announce that official status would be given to sixty-one *janajati* groups. A National Committee for Development of Nationalities, chaired by the Minister for Local Development, has been set up to target development programmes, scholarships, research, cultural programmes and seminars at the members of these groups.
- 16 According to newspaper reports the 2001 UK census will include the categories 'Irish' and 'mixed race' for the first time.
- 17 Friedman (1997) is contemptuous of such discourses of hybridity, considering them implicated in the essentialism they reject; he also points out that the adoption of such discourses by the elite in Central America has been a means of defusing ethnonationalist resistance from below. On the US census, see Yanow (1998).

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