

Managing linguistic nationalism through constitutional design: Lessons from South Asia

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How should constitutional design respond to competing claims for official language status in countries where there is more than one language, whose speakers are concentrated in a specific territory, and hence, where more than one language is a plausible candidate for use in public services, public education, legislatures, the courts, and public administration? This is one of the most pervasive and pressing constitutional problems of modern political life. It has been largely ignored in the literatures on comparative constitutional law and constitutional design. This article therefore turns to constitutional practice, and focuses on South Asia, where linguistic nationalism has been one of the principal forces shaping constitutional developments for over sixty years. South Asia has been a constitutional laboratory on questions of linguistic nationalism, and vividly illustrates both that it is possible to manage linguistic nationalism through constitutional design, and conversely, that the cost of getting official-language policy wrong can be very high.

Introduction

How should constitutional design respond to nationalist mobilization on the basis of language? More specifically, how should constitutional design respond to competing claims for official-language status in countries where there is more than one language, whose speakers are concentrated in a specific territory, and, hence, where more than one language is a plausible candidate for use in public services, public education, legislatures, the courts, and public administration? This is one of most pervasive and pressing constitutional problems of modern political life. Contemporary examples of linguistic nationalism are found in a wide variety of contexts, spanning the developed and developing world, within

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well-established liberal democracies, states in the midst of civil war, and formerly authoritarian regimes in the midst of democratic transition.

In Belgium, a century of battles over the official status of French and Flemish has led to the transformation of the state's constitutional structure. The country has evolved from a unilingual, unitary state to a complex federation combining an overlapping and interlocking set of regional governments (two) and self-governing linguistic communities (three) with a strongly territorial approach to official-language policy and executive power sharing along linguistic lines at the center. In Catalonia and Quebec, there are ongoing debates regarding the role of Catalan and French as the principal languages of economic, social, and political life; both of these movements arose as defensive responses to nation-building enterprises focused on central institutions operating in Spanish and English, respectively. In Eastern and Central Europe, linguistic nationalism has been at the root of many recent conflicts. Toward the end of the Soviet era, many socialist republics enacted language laws that withdrew official-language status from Russian and conferred it on the titular language of the republics; at the same time, these countries established linguistic competency requirements for public employment and public office. Language laws in Georgia and Moldova were major factors contributing to the armed conflicts in Abkhazia, Ossetia, and Trans-Dniestria. In Turkey, where official unilingualism is entrenched constitutionally, a consistent claim of Kurdish nationalists has been for minority-language education in Kurdish majority regions, as well as for official-language status for Kurdish in the central government. The recent decision of a Kurdish legislator to speak in Kurdish in Turkey's parliament provoked an outcry by Turkish nationalists, who asserted that "[i]f you destroy the language unity, you . . . have destroyed the unity and togetherness of the nation itself."¹

Language clearly raises constitutional issues of the highest political importance. Indeed, the failure to manage linguistic conflict through constitutional design has the potential to lead to an escalating set of demands—for official-language status in shared institutions, to territorial autonomy, and, ultimately, to secession. In cases where it has proven impossible to resolve the variety of constitutional claims advanced in the name of language through democratic politics, political actors have turned to violence and civil war. But what is striking is that, despite their salience, these issues have attracted relatively minimal attention in the literature on both comparative constitutional law and constitutional design. The former has been preoccupied with the relationship between universal human rights, democracy, and judicial review within a liberal democratic constitutional order—that is, the “rights revolution.” What is noteworthy is the absence of any sustained scholarly debates in the legal literature over official-language policy, even under the misleadingly narrow rubric of language rights. This stands in stark contrast to the detailed attention devoted to

¹ Sabrina Tavernise, *Kurdish Speech Defies Turkish Taboo*, N.Y. TIMES, Feb. 25 2009 at A6.

fairly specific questions, such as the debate over the adoption of justiciable bills of rights, the institutional arrangements for the enforcement of such a constitutional text (judicial supremacy and its alternatives, centralized vs. diffused systems of judicial review), socio-economic rights, the horizontal application of bills of rights to private relations, and the use of comparative materials in constitutional interpretation.²

The lack of any extended treatment of linguistic nationalism in the literature on constitutional design is even more striking. For the past three decades, a major question in comparative politics has been constitutional design in divided societies. A divided society is a political community in which various forms of ascriptive differences, such as ethnicity, race, religion, and/or language, have served as the basis of political mobilization—in short, where diversity has become a reason for political division. There is no shortage of constitutional prescriptions for managing divisions of these sorts, such as electoral system design, the structure of and relationship between the executive and the legislature, federalism, and legal pluralism. Nonetheless, the specific problem of linguistic nationalism and the range of constitutional strategies to respond to it have attracted no sustained analysis. Indeed, Arend Lijphart's *Democracy in Plural Societies*³ and Donald Horowitz's *Ethnic Groups in Conflict*⁴—the two classic texts in the field, which have set the parameters of the debate for over three decades—barely mention it. By contrast, Lijphart, Horowitz, and a legion of scholars have spilled a vast amount of ink on comparatively narrow issues, such as the choice between the alternative vote and proportional representation.

Rather than relying on the literature, we must turn to constitutional practice and work from the ground up, to understand the causes of linguistic nationalism, the constitutional claims advanced in its name, and the range of constitutional options for addressing it. A useful place to focus is South Asia. It is not hard to understand why. In South Asia, linguistic nationalism has been one of the principal forces shaping constitutional developments for over sixty years. In preindependence India, political mobilization led by Urdu-speaking elites ultimately led to the partition of the subcontinent and the creation of Pakistan. During the debates surrounding the adoption of India's Constitution, the move to make Hindi the sole official language of the central government produced the greatest conflict in the Constituent Assembly. Demands by non-Hindi speakers led to the creation of linguistic states in the 1950s and 1960s.

While India has been relatively successful in managing linguistic difference, other countries in South Asia have been far less so. In Sri Lanka, linguistic nationalism has been at the heart of ethnic conflict since the 1950s. The choice

² For an extended discussion, see SUJIT CHOUDHRY, *RETHINKING COMPARATIVE CONSTITUTIONAL LAW* (unpublished manuscript, on file with author).

³ AREND LIJPHART, *DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION* (Yale Univ. Press 1977).

⁴ DONALD HOROWITZ, *ETHNIC GROUPS IN CONFLICT* (Univ. Calif. Press 2d ed. 2000).

of Sinhala as the official language of government services and public sector employment fueled an escalating series of demands by the Tamil-speaking community for language rights, federalism, and, ultimately, secession. A final settlement of the conflict that does not directly address the claims of Tamil speakers is doomed to failure. Pakistan is also a cautionary tale. Of the many axes of conflict between East and West Pakistan immediately after independence, an important one was language. The establishment of Urdu as Pakistan's sole official language was a factor that led to the secession of East Pakistan and the establishment of Bangladesh. In the constitutional transition currently underway in Nepal, Hindi speakers in the southeast are demanding an end to Nepali's status as the sole official language.

Indeed, it would be no exaggeration to claim that in South Asia language has been the single most important force driving the reconfiguration of political space in the modern era. For that reason alone it would be worth detailed comparative study. Moreover, South Asia, home to a fifth of the world's population, is worthy of careful examination because it has been a constitutional laboratory on questions of linguistic nationalism, and vividly illustrates both that it is possible to manage (though not solve) linguistic nationalism through constitutional design and, conversely, that the cost of getting official-language policy wrong can be very high.

Thus, one intellectual agenda I want to pursue is to come to grips with linguistic nationalism through a sustained engagement with South Asia. Another is to change how we read South Asia in the field of comparative constitutional law. Our field is vibrant but narrow, not only in its substantive focus on the rights revolution but also in the jurisdictions that command central attention. The literature is organized around a standard and relatively limited set of cases: South Africa, Israel, Germany, Canada, the United Kingdom, New Zealand, and the United States. South Asia, for the most part, has been neglected. This may be part of a broader failure to engage with South Asia in a range of related discussions, such as the relationship between religious diversity and liberal democracy, as Martha Nussbaum has recently lamented.⁵

The only country in the region that has generated a body of high-quality comparative constitutional scholarship is India. What is striking, though, is that the study of India is largely informed by the questions raised by the constitutional law and politics of the principal jurisdictions around which the field is structured. For example, Marc Galanter's study of affirmative action in India, *Competing Equalities: Law and the Backward Classes in India*, was motivated, in part, by contemporaneous debates over race and affirmative action in the United States.⁶ Gary Jacobsohn's *Wheel of Law: India's Secularism in Comparative Constitutional Context* examines the relationship between state and religion in

⁵ MARTHA NUSSBAUM, *THE CLASH WITHIN: DEMOCRACY, RELIGIOUS VIOLENCE AND INDIA'S FUTURE* (Harvard Univ. Press 2007).

⁶ MARC GALANTER, *COMPETING EQUALITIES: LAW AND THE BACKWARD CLASSES IN INDIA* (Oxford Univ. Press 1984).

India; part of his reason for studying India was that similar issues were of central importance to Israel and the United States, with which he draws comparisons.⁷ Sandra Fredman's *Human Rights Transformed: Positive Rights and Positive Duties* examines the jurisprudence of the Indian Supreme Court on socioeconomic rights in detail.⁸ Still, this book is best understood as the latest contribution to a line of scholarly inquiry launched by the debates surrounding the inclusion of socioeconomic rights in the South African constitution in the mid-1990s, not by the Indian jurisprudence which originated a decade earlier.

In sum, comparative constitutional interest in India is centered on affirmative action, state and religion, and socioeconomic rights largely because those areas are of interest in the principal jurisdictions around which the field of comparative constitutional law has been constructed. However, rather than letting other jurisdictions exclusively set the intellectual agenda for the study of India, in particular, and South Asia, more generally, we should also attempt to understand South Asian cases on their own terms. If we look at South Asian constitutional materials, we find that language has been at the very heart of constitutional law and politics. Not only will pursuing this strategy sharpen our understanding of South Asian constitutional law and politics, it will also place South Asia at the center of a broader conception of the field, one that addresses a wider range of issues and a more encompassing set of jurisdictions.

1. The politics of linguistic nationalism in South Asia

South Asia is a vast geographic region consisting of several countries with distinct constitutional regimes and traditions; they differ, most notably, with respect to the existence of politically neutral militaries, the balance between civilian and military rule, and the extent to which political competition is marked by free and fair elections and peaceful transitions of power.

South Asia is clearly not a single state whose constitutional development can be understood as a unified, integrated phenomenon. To be sure, constitutional developments in different jurisdictions have been linked. Most of the countries of the region were former British colonies. Both India and Pakistan emerged from the constitutional order of British India through a single legal process and were the products of competing nationalist mobilizations and constitutional demands within the same political space and directed at the same audiences. Indeed, the eventual secession of Bangladesh from Pakistan can be understood as the constitutional dénouement of the conflation of religious with linguistic difference within British India, as is suggested below.

⁷ GARY JACOBSON, *WHEEL OF LAW: INDIA'S SECULARISM IN COMPARATIVE CONSTITUTIONAL CONTEXT* (Princeton Univ. Press 2003).

⁸ SANDRA FREDMAN, *HUMAN RIGHTS TRANSFORMED: POSITIVE RIGHTS AND POSITIVE DUTIES* 124–149 (Oxford Univ. Press 2008).

More often than not, at most, neighboring jurisdictions have been sources of lessons learned, models to be followed, and cautionary tales of dangers to be avoided. In the 1950s, Pakistani leaders referred to contemporaneous Indian debates concerning linguistic federalism as a reason to reject the demands of Bengali speakers in East Pakistan for the redistribution of political power and to condemn “provincialism” as the stepping-stone to secession. Conversely, constitutional actors in Sri Lanka and Nepal now look to Indian federalism as a fund of positive ideas for how to restructure those unitary states along federal lines in order to dampen and diffuse secessionist political mobilization.

Thus, in the drive toward synthesis and abstraction—necessary to draw broader lessons from South Asia for constitutional design—one must be careful not to obscure particular national constitutional histories and the range of contingent factors that underpin them. That said, it is possible to draw some general propositions from the South Asian constitutional experience, with respect to (a) the political sociology of linguistic nationalism that is the source of competing claims to official-language status and (b) the specific constitutional claims that flow from a claim to official-language status.

Political elites who control the central government have tended (a) to describe the adoption of a single official language at the center as furthering a civic, integrative conception of citizenship and (b) to criticize demands for official-language status by members of regionally based linguistic minorities as grounded in a primordial, ethnic nationalism.

How should we understand and evaluate multiple and potentially conflicting claims for official-language status? Clifford Geertz offered an answer, in an essay written against the backdrop of the rise of political mobilization on the basis of race, language, and religion within newly independent states in Asia and Africa.⁹ These states, on Geertz’s account, faced a conflict between “primordial and civil sentiments.”¹⁰ Civil sentiments are instilled by the political leadership of the newly independent states, which seeks to generate a form of political identity rooted in equal citizenship and shared political institutions extending over the state’s entire territory. These sentiments derive from both the struggle for independence and the drive for political consolidation in the postindependence period. Primordial sentiments, by contrast, are “the product, in most cases, of centuries of gradual crystallization” and long predate the establishment of new states.¹¹ They are deeply “rooted in the nonrational foundations of personality,” represent an “unreflective sense of collective selfhood,”

⁹ CLIFFORD GEERTZ, *The Integrative Revolution: Primordial Sentiments and Civil Politics in New States*, in *THE INTERPRETATION OF CULTURES* (Basic Books 2d ed. 2000).

¹⁰ *Id.* at 261.

¹¹ *Id.* at 268.

and “have an ineffable, and at times overpowering, coerciveness in and of themselves.”¹²

The process of state consolidation does not create primordial attachments but merely revives them—what Ron Suny colorfully terms the “sleeping beauty” theory of nationalism, whereby nations are awoken from their slumber.¹³ It is the clash between civil and primordial attachments that explains nationalist challenges to the territorial integrity and political sovereignty of states, since, unlike other kinds of loyalties, which presuppose the nation, they “involve alternative definitions of what the nation is, of what its scope of reference is.”¹⁴

Geertz’s analytical categorization is both descriptive and evaluative. Clearly, he is an advocate of civil sentiments and a sharp critic of primordial sentiments, though he offers little by way of argument for this normative stance. To supply this argument, we need to turn to political theory. The contrast Geertz draws between primordial and civil sentiments maps closely onto a distinction drawn by political theorists between ethnic and civic nationalism. The most well known recent formulation of this distinction was made by Jürgen Habermas, between *Shickalsgemeinschaft* (ethnic nationalism) and *Verfassungspatriotismus* (constitution patriotism or civic nationalism).¹⁵ According to the ethnic conception, political communities are imagined as emerging from peoples or nations united by a common bond that exists independently of and prior to the creation of a political community and which is the object of loyalty, belonging, or identification. In its extreme versions, the ethnic conception defines nations in terms of descent and precludes the acquisition of membership by outsiders. More moderate formulations define the nation in terms of a shared language, history, religion, and/or cultural traditions, allowing for persons who lack these characteristics to embrace them and become members of a political community. For the ethnic nationalist, citizenship in a political community tracks membership in the underlying nation, and political communities are valued because they are the means whereby a nation ensures its survival through the state.

According to the civic conception, a political community is based not on a prepolitical bond but, rather, on an allegiance to shared principles of political justice flowing from a liberal political morality and to a common set of political institutions through which those principles are realized. A political community is imagined as a voluntary association of citizens considered free and

¹² *Id.* at 259 and 277.

¹³ RON SUNY, *THE REVENGE OF THE PAST: NATIONALISM, REVOLUTION, AND THE COLLAPSE OF THE SOVIET UNION* (Stanford Univ. Press 1993).

¹⁴ GEERTZ, *supra* note 9, at 261.

¹⁵ JÜRGEN HABERMAS, *Citizenship and National Identity*, in *BETWEEN FACTS AND NORMS* 491, 492, 500 (William Rehg trans., MIT Press 1996).

equal, who constitute a political community because of a shared belief that they should associate for political ends. In Ernest Renan's memorable phrase, the nation is a daily plebiscite whose existence depends on the will of its members. Citizenship can be held by any person willing to affirm and uphold the principles of political justice that lie at the foundation of the political community.

The most recent discussions concerning the civic and ethnic conceptions of nationalism have revolved around, first, the normative question of their ability to serve as bases for political legitimacy in societies that aspire to be liberal democracies and, second, the sociological question of whether they can provide sufficient social unity for a liberal state to realize many of its most important objectives. Many of these discussions have concerned states where the existence of a single, national community has not been at issue—for example, Germany, Hungary, and Poland. Rather, what has been at dispute is the identity or character of that nation. However, these analytical categories have also been applied to the analysis of the rise of substate nationalism, notably in Eastern and Central Europe during the transition from communist rule. One of the notable features of that transition was the rise of nationalism on the part of ethnic minorities in multiethnic states, which culminated in the disintegration of the three communist federations—Yugoslavia, the Soviet Union, and Czechoslovakia. Some scholars—notably Tom Franck—have interpreted nationalist conflict in Eastern and Central Europe through the lens of the civic–ethnic distinction and have argued that the nationalisms of ethnic minorities were ethnic and primordial and, by implication, that the nationalisms of the states of which those minorities were a part were civic. It followed that, because substate nationalisms were ethnic and hence illiberal, they lacked legitimacy.¹⁶

South Asian constitutional politics on the question of official languages illustrates how the political elites who dominated central institutions deployed these analytical categories to frame and structure their constitutional claims long before more recent debates and applied them, specifically, to the issue of language. Statewide nationalisms have been described and defended as civic in character, whereas substate nationalisms have been labeled as ethnic or primordial and criticized for that reason. The best example comes from India, although a similar story could be told about Sri Lanka and Pakistan. In the 1950s, the question of official languages was the major issue of Indian constitutional politics. The question of language figured centrally in two interrelated debates regarding constitutional design: (a) what the official language of the central government should be and (b) whether the boundaries of states should be drawn to ensure linguistically homogenous populations—namely, the debate concerning linguistic federalism.

¹⁶ Tom M. Franck, *Tribe, Nation, World: Self-Identification in the Evolving International System*, 11 *ETHICS AND INT'L AFFAIRS* 151 (1997).

The Indian Constitution, in force since 1950, has an extensive set of provisions regarding the language of central institutions. Of particular interest here is article 343, which sets the official language of the “Union”—that is, the central government. Article 343(1) provides that the official language of the central government shall be Hindi; however, article 343(2) immediately qualifies this command by providing that “the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement of this constitution” for fifteen years—that is, until 1965. Moreover, under article 343(3), Parliament has the authority to extend indefinitely the fifteen-year time limit on the phasing out of English in the operations of the central government. Article 348 provides that the language of the Supreme Court and high courts would continue to be English until otherwise enacted by Parliament, and it puts no time limit on this provision. Article 348 provides that English remains the language of legislative enactments (bills and acts) until otherwise decided. The Indian Constitution also regulates the language of intergovernmental communication, stipulating, in effect, in article 346 that states could choose to communicate with the center in Hindi or English. Finally, article 344 required the president by 1955 to constitute an official languages commission to make recommendations with respect to the progressive use of Hindi and restrictions on English as official languages of the central government.

These provisions were the culmination of nearly three years of debate in the Indian Constituent Assembly, which met from 1946 to 1949 and straddled India’s transition from a British colony to independent state. They embody a compromise. According to Granville Austin, in his account of the adoption of the Indian Constitution, the official language of the central government was the single most divisive issue in the Indian Constituent Assembly.¹⁷ At the time of independence, the official language of British colonial administration and the legal system was English, a language that was spoken by less than 1 percent of the population. The questions were: (a) whether to replace English, fully or partially, with an indigenous language as the central government’s official language and (b) which indigenous language(s) should receive official-language status. Within the assembly, there were two main positions. On the one side were those who wanted Hindi to become the official language of the central government and the legal system. Hindi was spoken by over 40 percent of the population and was India’s most widely spoken language. They favored the immediate adoption of Hindi, or a very short transition period, after which English would no longer be used. On the other side were those who envisioned that both English and Hindi would be official languages of the central government. The final version of article 343 set up a transition to Hindi and established a default rule in favor of the end of the use of English, though it allowed Parliament to extend the use of English through legislation, thus shifting the

¹⁷ GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* (Oxford Univ. Press 1966).

burden of legislative inertia onto those who wished to preserve the use of English. Moreover, the final version of article 343 did not accord any official status in the central government to the major regional languages.

Now let us turn to linguistic federalism. Prior to independence, British India was a complex mixture of regional subdivisions, each with its own internal constitutional structures and relationship to the British Crown. The two principal types of units were the seventeen provinces, administered by British colonial authorities, and the over-six-hundred princely states, nominally self-governing allies of the British Crown which, technically speaking, were free to choose between India, Pakistan, or independent statehood, though most either chose or were coerced to join India. Given India's vast size and population, federalism came to be accepted—reluctantly by those who viewed a unitary state as essential for pursuing economic development and preserving India's territorial integrity—as an unavoidable necessity. Moreover, given the enormous number of political units, varying considerably in size, the territorial rationalization of these units was a matter of some urgency, which could not be postponed for very long if India's federal institutions were to become established.

However, the question that generated intense controversy at the time was whether provincial boundaries would coincide with linguistic boundaries. Although there are several hundred languages and dialects spoken in India, there were (and remain) approximately a dozen regional languages, each spoken by millions of individuals and many of them accompanied by scripts and literary traditions that, in some cases, long predate and, at independence, were of much greater sophistication than Hindi. Very few speakers of these languages also spoke Hindi, and, indeed, the principal languages of South India are radically different from Hindi and from entirely distinct linguistic families. In addition, these languages were (and remain) spoken in fairly compact linguistic regions. At independence, some Indian states, such as West Bengal and Orissa, were linguistically homogeneous, while many others, such as the Bombay and Madras provinces, were not. In some cases, linguistic groups were divided by provincial boundaries; in other cases, more than one linguistic group occupied the same province.

Since 1920, the Congress Party had consistently been committed to the creation of linguistic provinces, in which there would be a clear linguistic majority whose language would be the sole official language. Indeed, for internal purposes, the Congress Party itself was organized on federal lines, where its subunits were organized along regional-linguistic distinctions rather than according to the internal political boundaries of British India. The champion of this move was Gandhi, who regarded it as essential for transforming the Congress Party from an elite-led English-speaking organization into a mass political movement, which would only be possible if it operated in regional vernaculars. Moreover, the Congress Party made specific proposals regarding the creation of particular provinces. The party maintained this position until independence in 1947. However, the trauma of Partition led the Congress Party to oppose linguistic provinces out of a fear that they would fuel secessionist

mobilization in India's border states and doom the country to disintegration. As a consequence, the Constituent Assembly decided to not draw interstate boundaries to coincide with linguistic boundaries.

These two aspects of Indian constitutional design are distinct but interconnected. Indeed, to the political elites in the central government, they were part of an integrated constitutional strategy. The goals were to create a unified nation-state, whose central institutions would soon operate in a single, indigenous language, and to prevent future threats to India's territorial integrity by deliberately choosing not to create federal subunits that were linguistically homogenous and could generate subnational political identities. The fear was that such subunits could undermine citizens' loyalty and shared sense of national identity. Congress Party leaders distinguished between civic and ethnic/primordial nationalism and criticized the latter in order to justify, simultaneously, the adoption of Hindi in central institutions and the rejection of linguistic federalism. The clearest statement of this viewpoint can be found in the 1948 *Report of the Linguistic Provinces Commission* (the Dar Commission), appointed by the Constituent Assembly to consider the issue of linguistic provinces.¹⁸ The Dar Commission described the demand for linguistic provinces as a form of "parochial patriotism"¹⁹ that was rooted in ancient, primordial identities—a "centuries-old India of narrow loyalties, petty jealousies, and ignorant prejudices engaged in a mortal conflict"—and which relied on a view that "language in this country stood for and represented the culture, tradition, race, history, individuality and, finally, a sub-nation."²⁰ It contrasted this with "Indian nationalism and Indian patriotism,"²¹ the existence of which was relatively recent and modern—that is, the product of "[t]he work of sixty years of the Indian National Congress."²² Reorganizing the states on linguistic grounds posed a number of risks. Rather than dampening subnational sentiment, "there could not be a better way"²³ of fueling "sub-national bias."²⁴ This would lead the subnation "to regard [both] the minority living in that province and people living outside it as not their own," meaning that "it will only be a question of time for that sub-nation to consider itself a full nation."²⁵ This would "be the death-knell of Indian nationalism."²⁶

¹⁸ LINGUISTIC PROVINCES COMMISSION, REPORT OF THE LINGUISTIC PROVINCES COMMISSION (Govt. of India Press 1948).

¹⁹ *Id.* ¶ 13.

²⁰ *Id.* ¶ 143.

²¹ *Id.* ¶ 133.

²² *Id.* ¶ 143.

²³ *Id.* ¶ 128.

²⁴ *Id.* ¶ 129.

²⁵ *Id.* ¶ 127.

²⁶ *Id.* ¶ 143.

Moreover, acceptance of the principle of linguistic provinces would lead “many other communal groups” to advance similar claims, which would “set the ball rolling for the disintegration of the entire country.”²⁷ Thus, “[i]f India is to live, there simply cannot be an autonomous State anywhere in India for any group, linguistic or otherwise; and no sub-national province can be formed without preparing the way for ultimate disaster.”²⁸ And while the question of the official language of the central government was not part of the Dar Commission’s mandate, it went out of its way to address the issue, underlining the interconnection between the two. Thus, the rejection of linguistic federalism and the building of a singular Indian nation went hand in hand with “a general recognition that India should have a strong Centre and a national language.”²⁹ Prime Minister Jawaharlal Nehru, the dominant presence in Indian politics during this period, also viewed the issues as tightly connected, with his overarching goals being “to preserve the union” and “to oppose anything, to refuse to initiate anything, that would weaken India’s unity.”³⁰

Demands for linguistic federalism do not pit the building of modern nation-states against the preservation of primordial ethnic sentiments. Rather, they reflect competing nation-building projects at the subnational level that parallel statewide nation building in terms of their goals and means.

This way of understanding the political sociology of competing nationalisms in multilingual states with large, regionally concentrated linguistic minorities—as a competition between a statewide civic nationalism and a substate ethnic or primordial nationalism—is deeply misleading. Rather, in many cases, substate nationalisms advance the same goals and adopt the same means for realizing them as statewide nationalism. These conflicts come into particularly sharp focus in debates over official languages. States anchor the choice of an official language in the service of particular goals flowing from a more general commitment to liberal democracy. As we will see, the most effective critiques of those statewide policies that confer official status on one or very few languages in central institutions also invoke precisely those same goals in order to challenge the designation of official languages. Moreover, substate nationalisms often arise as defensive responses to statewide nationalisms. Thus, while central elites may wish to dichotomize between what Charles Taylor has described as the “politics of universalism” and the “politics of difference,”³¹ with civic or statewide nationalism corresponding to the former

²⁷ *Id.* ¶ 139.

²⁸ *Id.* ¶ 141.

²⁹ *Id.* ¶ 9.

³⁰ ROBERT D. KING, *NEHRU AND THE LANGUAGE POLITICS OF INDIA* 131 (Oxford Univ. Press 1997).

³¹ CHARLES TAYLOR, *MULTICULTURALISM AND THE POLITICS OF RECOGNITION* 37–38 (Princeton Univ. Press 1994).

and substate nationalism to the latter, the case of official languages suggests that while this distinction may be rhetorically powerful it does not withstand careful scrutiny. It is more useful, instead, to think of substate nationalism as the *politics of sameness*.³²

Once again, the best illustration of this point comes from India. To understand the impetus behind the designation of Hindi as the single official language in central institutions, consider the socioeconomic topography of language use at the end of British rule in India. As Jyotirindra Das Gupta and John Gumperz explain, the picture was extremely complex.³³ Sanskrit was in use for liturgical and for limited, “high” literary purposes. Persian, originally the dominant language of public administration, was replaced by English in the early nineteenth century. There were various regional languages, each with a script, grammar, and literary tradition—for example Marathi and Bengali in the north, Tamil in the south—which were mutually unintelligible. In addition, there were specific *bazaar* languages, “used for rather limited transaction purposes among the various local communities in market relations,” such as Hindustani, the precursor of both Urdu and Hindi, as well as “special parlances” used by “commercial or artisan castes” to preserve market monopolies.³⁴ Most individuals lacked written literacy and lived in an oral universe.

As Das Gupta and Gumperz argue, “these language varieties formed a single communication system.”³⁵ But linguistic stratification both reflected and reinforced a highly segmented and hierarchical distribution of political and economic power by providing access to some groups and denying access to others on the basis of race, caste, occupation, and region. This pattern of language competency is a world away from what one would associate with a modern, liberal democratic state. Language served as a barrier to economic and social mobility. Occupational barriers tied to linguistic competence were difficult to surmount in the absence of public education and could only be overcome through personal apprenticeships that were the nodes of patronage networks. Since government records—for example, of landholdings—were written in languages that colonial subjects could not understand, access to public administration could only occur through literate intermediaries. Mass democratic participation was difficult to envision in these circumstances. Indeed, if India’s colonial status stood in the way of subjects’ path to becoming citizens, language was a barrier to equal citizenship.

³² For a similar idea, see Stephen Tierney, *Giving with one hand: Scottish devolution within a unitary state*, 5 INT’L J. CONST. L. (I•CON) 730 (2007).

³³ JYOTIRINDRA DAS GUPTA AND JOHN J. GUMPERZ, *Language, Communication and Control in North India*, in LANGUAGE PROBLEMS OF DEVELOPING COUNTRIES 151 (Joshua A. Fishman et al. eds., John Wiley 1968).

³⁴ *Id.* at 155.

³⁵ *Id.*

Against this backdrop, official-language policy was envisioned as doubly transformative. It was meant to achieve nothing less than simultaneously dissolving India's preexisting political-economic order while knitting together a single, unified national population capable of mutual intercourse in politics, the economy, and public administration. In particular, linguistic homogenization was justified as furthering three important objectives: enabling democratic participation, improving the efficiency of public administration, and enhancing social and economic mobility. When central elites invoked civic nationalism in constitutional debates over official-language policy, it was with these particular goals in mind. Let me consider each in turn.

First, consider democratic citizenship. John Stuart Mill formulated an argument on the link between linguistic uniformity and democracy, in chapter 16 of *Considerations on Representative Government*:³⁶

Free institutions are next to impossible in a country made up of different nationalities. Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion necessary to the working of representative government, cannot exist. The influences which form opinions and decide political acts are different in the different sections of the country. An altogether different set of leaders have the confidence of one part of the country and of another. The same books, newspapers, pamphlets, speeches, do not reach them. One section does not know what opinions, or what instigations, are circulating in another. The same incidents, the same acts, the same system of government, affect them in different ways; and each fears more injury to itself from the other nationalities and from the common arbiter, the state. Their mutual antipathies are generally much stronger than jealousy of the government. . . . [I]t is in general a necessary condition of free institutions that the boundaries of governments should coincide in the main with those of nationalities.

One of Mill's arguments in this passage is the importance of linguistic unity to democratic deliberation. On Mill's account, democracy occurs through, and depends on, public discussion that occurs not just among elites but at a mass level, within a broad cross section of citizens. Public debate depends on mutual comprehension. Although simultaneous translation may be possible with certain, limited institutional contexts—such as a legislative assembly—at a mass level it is not. Similarly, while bilingual or multilingual elites can serve as conduits for reason giving between different linguistic communities, this is a poor substitute for public discussion among citizens. Thus, the liberal democratic case for linguistic nation building is to strengthen liberal democracy, which will be difficult to operate in a context where people “read and speak different languages.”

³⁶ JOHN S. MILL, *CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT* 310 (Harper and Brothers 1862).

Benedict Anderson has made a similar argument, though with a slightly different emphasis. Whereas Mill addressed the role of a shared language in democratic deliberation, Anderson's concern is with its impact on the development of a common national identity, which, in turn, is a precondition for democratic politics.³⁷ For Anderson, nation building involves the inculcation of a shared sense of membership in a common political community consisting of individuals who have never met and would never meet. A nation is a so-called "imagined community" of co-nationals. In Anderson's account, the development of standard languages has a tremendous impact on the rise of a "national consciousness".³⁸

Speakers of the huge variety of Frenches, Englishes, or Spanishes, who might find it difficult to understand one another in conversation, became capable of comprehending one another via print and paper. In the process, they gradually became aware of the hundreds of thousands, even millions of people in their particular language-field, and at the same time that *only those* hundred of thousands, or millions so belonged. These fellow-readers, to whom they were connected through print, formed, in their secular, particular, visible invisibility, the embryo of the nationally imagined community.

Second, there is administrative efficiency. Linguistic homogenization is part and parcel of the process of administrative consolidation and the growth of the modern apparatus of the state. Across Europe, Africa, and Asia, the creation of modern states has entailed what Michael Hechter has usefully termed "the replacement of indirect with direct rule."³⁹ Whereas under systems of indirect rule states ruled subjects through bilingual intermediaries who communicated in both the language of central administration and the local vernaculars, under "direct rule" states governed their subjects directly through communication and command and without intermediation. Linguistic uniformity made it possible for states to communicate directly with citizens and for a growing civil service to communicate internally. As Eric Hobsbawm has argued, communication was important in a system of direct rule, because, as the apparatus of the state grew, subjects "came into regular contact with the national state and its agents: through the postman, the policeman or gendarme, and eventually through the schoolteacher; through the men employed on the railways . . . not to mention the garrisons of soldiers."⁴⁰ Legal uniformity also facilitated the

³⁷ BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGINS AND SPREAD OF NATIONALISM* (Verso 2d ed. 1991).

³⁸ *Id.* at 44.

³⁹ MICHAEL HECHTER, *CONTAINING NATIONALISM* (Oxford Univ. Press 2000).

⁴⁰ ERIC J. HOBBSBAWM, *NATIONS AND NATIONALISM SINCE 1780: PROGRAMME, MYTH, REALITY* 81 (Cambridge Univ. Press 2d ed. 1992).

geographic growth and deepening of public administration. As James Scott has explained, this was part of a larger project of “rationalizing and standardizing what was a social hieroglyph into a legible and administratively more convenient format.”⁴¹ Thus, linguistic standardization can be regarded as a strategy akin to the creation of standard weights and measures, uniform regulations, and a common currency.

Finally, let us turn to economic and social mobility. Ernest Gellner has offered an economic interpretation of linguistic homogenization.⁴² For Gellner, a modern economy demands both “occupational mobility” in the context of “an unstable, rapidly changing division of labour,” with a high level of “literacy and technical competence,” and geographic mobility of labor. These demands can be met through a conscious policy of creating a “national education system, a pyramid at whose base there are primary schools, staffed by teachers trained at secondary schools, staffed by university-trained teachers, led by the products of advanced graduate schools.”⁴³ This system provides standardized education in a common language across the entire state, while the resulting linguistic homogenization provides the mobile, flexible, and literate workforce necessary for a modern economy. This homogenization also enhances economic opportunity and social mobility by broadening the range of employment options available to individuals. In the absence of mass literacy in a common language, opportunities and mobility would be stratified on the basis of language and geography.

These explanations and justifications for linguistic homogenization were framed principally against the backdrop of nineteenth-century Europe, where they had been integral to the consolidation of France and Germany, in particular. However, to political elites in most postcolonial contexts in the mid-twentieth century, the same arguments justified policies of linguistic homogenization. The designation of a single official language for central government institutions—Hindi in India, Urdu in Pakistan, Sinhalese in Sri Lanka—was expressly defended on these grounds. In India, the fullest presentation of these arguments can be found in the *Report of the Official Language Commission* in 1956 (the Kher Commission). The commission linked the problem of linguistic homogenization squarely to the demands of a modern state, noting:

Language is the main or almost sole instrument of inter-communication in a civilised society; modern Governments concern themselves so intimately and so extensively with all aspects of social and even individual existence that inevitably in a modern community the question of the linguistic medium becomes an important matter of concern to the country’s governmental organization. In the conduct of legislative bodies,

⁴¹ JAMES C. SCOTT, *SEEING LIKE A STATE: HOW CERTAIN SCHEMES TO IMPROVE THE HUMAN CONDITION HAVE FAILED* 33 (Yale Univ. Press 1999).

⁴² ERNEST GELLNER, *NATIONS AND NATIONALISM* (Cornell Univ. Press 1983).

⁴³ *Id.* at 32 and 34.

in the day-to-day dealings with citizens by administrative agencies, in the dispensation of justice, in the system of education, in industry, trade and commerce; practically in all fields in which it has to interest itself in modern times, the State encounters and has to tackle the problem of the linguistic medium.⁴⁴

The Kher Commission's argument for Hindi, largely articulated in terms of democracy, proceeded in two stages.

First, the commission made the case against the retention of English in central institutions. Although the commission recognized that English had become the lingua franca among Indian elites, who otherwise spoke mutually unintelligible Indian languages, it posited that English could no longer retain this role because literacy in English was confined to a tiny segment of the population (less than 1 percent). The retention of English would be fundamentally inconsistent with the democratic assumptions underlying India's postindependence Constitution. English was suitable for colonial administration but not for India, because "[t]he British Government had a different relationship with the masses of India" than India's government.⁴⁵ The commission continued:

Our Constitution has enfranchised the entire adult male and female population of the country, thus bringing into being the largest democratic electorate ever witnessed throughout history. . . . The Indian citizen of today has potentially a greater stake and through his elected representatives the final voice in the affairs of the Government of the country as sharply contrasted with the position under the foreign and non-democratic government of the past. The British Government, since they [*sic*] did not draw their power from the people of the country or depend for its exercise on majorities in parliamentary legislatures, could afford to conduct the administration in a language that was not understood, and could never come to be understood, by the vast masses of the country. Today when every citizen is a potential beneficiary of our welfare State and has a vote to exercise, it is manifest that the business of Government can be carried on only in a language or languages which admit of the possibility of each citizen taking an intelligent interest in the affairs of the State and exercising his power of franchise with understanding.⁴⁶

The retention of English was fundamentally incompatible with the immediate extension of the franchise to hundreds of millions people who had lacked it previously, given that English speakers were but "a small coterie isolated from

⁴⁴ OFFICIAL LANGUAGE COMMISSION, REPORT OF THE OFFICIAL LANGUAGE COMMISSION (Govt. of India Press 1956) at 11.

⁴⁵ *Id.* at 35.

⁴⁶ *Id.*

the stream of life of the remaining Indian community.”⁴⁷ If English were retained, the Kher Commission asked rhetorically,

Does it not constitute inherently a grave danger to the smooth and peaceful working of the democratic processes, which are in operation all over the country at all levels of its political life from village panchayat to the Parliament, that the functioning of all superior administrative personnel and of law courts and of everybody of importance and authority in public life, should be in a language outside the comprehension of practically the entire population affected? We have no doubt whatever that anybody who views this prospect realistically would come to the conclusion that it is of the highest and most urgent significance that this dichotomy between the various authorities and so to say their “subjects,” which is basically inconsistent with the main principles on which the country’s polity is founded, should be removed as rapidly as it may be feasible to do.⁴⁸

This was the democratic case against English. It also made the brief for an indigenous language as the official language. Still, it did not address whether there could be one or more such official languages, and, if there should be a single official language, which one it should be.

So the Kher Commission then proceeded to make the case for Hindi as the sole official language of the central government. The principal—and indeed, the only—reason offered by the commission for Hindi was that it was the most widely spoken language in India, although it conceded that it was the mother tongue of a large minority (42 percent), not a majority. No claim was made as to Hindi’s superiority. That is, the reason to adopt Hindi was “not because it is better developed than the other regional languages are; not because a greater or more varied wealth of literary output is available in it.”⁴⁹ The commission also posited that Hindi was closely related enough to several North Indian languages (Marathi, Gujarati, Bengali) that competence could be easily acquired. The obvious difficulty this posed is that Hindi was completely unrelated to South Indian languages (for example, Tamil), whose representatives had argued that there should be two official languages, one North Indian and one South Indian, for the central government. The commission categorically rejected this argument, since the South Indian languages were themselves mutually unintelligible, so selecting one would raise the question of the others. Thus, the commission concluded, there was no alternative to Hindi, and, indeed, its adoption was essential to “maintaining the country’s political unity and integrity.”⁵⁰ To those who were unable to speak it, the Commission stated

⁴⁷ *Id.* at 253.

⁴⁸ *Id.* at 42.

⁴⁹ *Id.* at 37.

⁵⁰ *Id.* at 50.

that “[w]hatever grievances, real or fancied, may be entertained by some persons in regard to the relative pulls and weightages in favour of particular regions in our political life, and whatever views may be entertained as to how any such real or imaginary imbalance should be redressed, the need for a common linguistic medium and the inevitability of Hindi having to fulfil that need, are incontrovertible.”⁵¹

The response to the democratic case for Hindi came in the dissents to the Kher Commission report. What is striking is that they do not raise arguments concerning the symbolic or cultural significance of other regional languages as reasons to reject Hindi’s exclusive official-language status. Rather, the critiques parallel the democratic justifications for linguistic homogenization, arguing that such a policy would have undemocratic consequences by redistributing political power. In particular, linguistic exclusiveness would immediately consolidate political power in the hands of a Hindi-speaking elite and withdraw it from non-Hindi speakers. Thus, there would be “Two Classes of Citizens in India—Class I Citizens with Hindi as their language, obtaining an immense amount of special privileges by virtue of their language only, and Class II Citizens who will be suffering from permanent disabilities by reason also of their language.”⁵² The undemocratic effects of Hindi would be seen in Parliament, where it would be “frankly anti-national to conduct the affairs of the Nation through a language which the greater part of the peoples in India cannot follow or effectively handle.”⁵³ The distributional effects of official-language status for Hindi would be so severe, and so instant, that they would amount to “Hindi Imperialism”⁵⁴ and throw into question the good faith of its proponents—Hindi-speakers themselves—who might have framed a policy “primarily for their own advantage.”⁵⁵

The dissenting reports also linked the issue of the language of the center with the structure of Indian federalism by characterizing the demand for linguistic states as a defensive response to the official status of Hindi at the center—that is, “the direct result of the move to replace English by Hindi and to give Hindi a position of privilege” in central institutions.⁵⁶ Moreover, linguistic federalism followed a parallel, democratic logic. Thus, if Hindi speakers sought official-language status for Hindi at the center, they

should not feel distressed or sorry or angry if the example . . . is sought to be scrupulously followed and emulated by the people of the non-Hindi States.

⁵¹ *Id.*

⁵² *Id.* at 276.

⁵³ *Id.* at 303.

⁵⁴ *Id.* at 318.

⁵⁵ *Id.* at 298.

⁵⁶ *Id.* at 285.

There, naturally by the same arguments—and particularly the argument that we must meet the masses of the people, our new masters, through their own mother-tongues—the various regional languages will be used as the most natural thing as official languages of their respective states, and in all possible contexts.⁵⁷

Finally, on the issue of national unity, the dissenting reports argued that, far from preserving national integrity, insisting on Hindi alone at the center would have the perverse effect of undermining it: “The intransigent use of Hindi . . . will split up India into a series of independent linguistic States. . . . The Unity of India . . . will be seriously hampered and perhaps destroyed.”⁵⁸ Since the rejection of linguistic states and the adoption of Hindi at the center were part of an integrated constitutional strategy of state consolidation, this critique—if correct—has significant implications for the lessons we can draw for constitutional design.

Underlying political competition over official-language status is economic competition over public sector employment, which fuels political mobilization on the basis of language.

Charles Taylor has written:

if a modern society has an “official” language, in the fullest sense of the term, that is, a state-sponsored, -inculcated, and -defined language and culture, in which both economy and state function, then it is obviously an immense advantage to people if this language and culture are theirs. Speakers of other languages are at a distinct disadvantage.⁵⁹

But to what kind of advantage or disadvantage does Taylor refer? In this particular essay, he did not say. However, in *Multiculturalism and the Politics of Recognition*, he argued that the significance of official-language policies is primarily, even exclusively, cultural. His principal example was Canada, where official-language policy lies at the very heart of Quebec nationalism. Thus, the goal of Quebec’s language laws was “cultural survival,” understood not in the weak sense of “having the French language available for those who might choose it” but in the strong sense of “making sure there is a community of people here in the future that will want to avail itself of the opportunity to use the French language.”⁶⁰ Thus, “[p]olicies aimed at survival actively seek to *create* members of the community, for instance, in

⁵⁷ *Id.* at 298.

⁵⁸ *Id.*

⁵⁹ CHARLES TAYLOR, *Nationalism and Modernity*, in *THE MORALITY OF NATIONALISM* 31, 34 (Robert McKim & Jeff McMahan eds. Oxford Univ. Press 1997).

⁶⁰ TAYLOR, *supra* note 31, at 58–59.

their assuring that future generations continue to identify as French-speakers.”⁶¹

Yet official-language policies confer a much broader set of advantages and disadvantages. The democratic objection to linguistic homogenization focused on the impact of official-language policies on opportunities for political participation, for example, by restricting access to public office, be it membership in legislatures or public sector employment. However, public sector employment is also valuable for economic reasons. Indeed, across South Asia, underlying political competition regarding official-language status has been economic competition for white-collar public sector employment. Economic competition, not radical cultural difference, has been the principal force fueling political mobilization over official-language policies as applied to public sector employment. Indeed, one Indian commentator, writing in the 1960s at the height of the debates over article 343, observed, at the end of a lengthy, formalistic analysis of the constitutional treatment of official languages, that “jobs have mainly been in the background of linguistic agitations.”⁶²

Why has economic competition for white-collar jobs been such an important driver of official-language policy? There is a cluster of mutually reinforcing reasons. As Myron Weiner explained,⁶³ demand for these kinds of employment opportunities has increased dramatically in twentieth-century South Asia because of increased social mobility, which, in turn, was a function of increasing participation in education, especially secondary education. The growing proportion of youth completing advanced studies was made possible by a deliberate public policy decision to expand the availability of public education in the vernacular. The result was a marked shift in the character of employment aspirations, “from the unskilled to the skilled labour markets, and from the labouring classes to the middle classes.”⁶⁴ Education also fueled the migration of the newly literate, with youth flocking to urban centers in search of employment opportunities not available in rural areas. Once they arrived, they found that access to those opportunities was in short supply. It was this demographic—unemployed, newly educated youth, literate in the vernacular, and concentrated in urban areas—that fueled demand for access to white-collar employment opportunities. Although there was demand for both public and private sector employment, desire for the former was particularly acute. In the developing societies of South Asia, the state sector has accounted for a larger share of GDP than in economically advanced democracies. This has increased the economic value of public sector employment for white-collar workers

⁶¹ *Id.* at 58–59.

⁶² RAM GOPAL, *LINGUISTIC AFFAIRS OF INDIA* 248 (Asia Pub. House 1966).

⁶³ MYRON WEINER, *SONS OF THE SOIL: MIGRATION AND ETHNIC CONFLICT IN INDIA* (Princeton Univ. Press 1978).

⁶⁴ *Id.* at 284.

relative to private sector options, which offered less stability and were not as remunerative. Finally, in newly established democracies, public sector employment was a source of prestige and status.

What is the link to official-language policy? The choice of an official internal working language of public administration creates unequal access to white-collar public sector employment. It is one way (although not the only way) in which an ethnic division of labor can be created and sustained. Consequently, as economic competition for these employment opportunities emerged, it was translated into a political demand for policies to redistribute those opportunities from one linguistic group to another by modifying the existing language policy. Examples abound from across South Asia.

In fact, on closer examination, South Asia presents three categories of policy status quo against which economically motivated linguistic mobilization occurred in the arena of public sector employment. In the first category, the status quo was the colonial language (for example, English in Sri Lanka). In the second, it was a vernacular (Urdu in Pakistan). In the third, it was a combination—that is, public administration was conducted in a complex combination of the colonial language and the vernacular (in many provinces in British India, for example). The ability of a linguistic group to translate economic demands into political action is a function of the underlying distribution of political power, which is often dramatically transformed as a result of democratization (as a result, say, of decolonization). While some linguistic mobilizations fit Weiner's model of "sons of the soil"—economic competition between an upwardly mobile indigenous population against an elite that has migrated into the region—this story only accounts for a subset of the total cases.

Consider Sri Lanka.⁶⁵ As was not the case in India, during the framing of the Sri Lankan constitution, there were no divisive debates over language. Indeed, Sri Lanka's 1946 postcolonial constitution is entirely silent on the issue of official languages, leaving the matter to statute. Under British colonial rule, the language of public administration had been English, and the assumption was that this would continue after independence. This was supported by the Tamil and Sinhalese elites who led the move for independence and who were both English speaking. However, the colonial experience laid the foundation for future linguistic conflict, because the degree of participation by the Tamil minority in the colonial administration was much higher. Whether this was a deliberate product of a colonial divide-and-rule strategy or the rational response of Tamils from the northeast to the relatively poor prospects for agriculture on that part of the island, relative to the Sinhala-speaking areas which were better suited for farming, is a matter of some dispute. In the postindependence period,

⁶⁵ STANLEY TAMBIAH, *SRI LANKA: ETHNIC FRATRICIDE AND THE DISMANTLING OF DEMOCRACY* (Univ. of Chicago Press 1991); NEIL DE VOTTA, *BLOWBACK: LINGUISTIC NATIONALISM, INSTITUTIONAL DECAY, AND ETHNIC CONFLICT IN SRI LANKA* (Stanford Univ. Press 2004); K. M. DE SILVA, *REAPING THE WHIRLWIND: ETHNIC CONFLICT, ETHNIC POLITICS IN SRI LANKA* (Penguin 1998).

the dominance by Tamils in white-collar public sector employment—and the professions, more generally—continued.

This changed dramatically in the 1950s and 1960s, when Sinhalese nationalist parties took power and mobilized the Sinhalese majority around a project of linguistic nation building. One pillar of this project was the 1956 *Official Language Act*, which declared Sinhala to be the sole official language. Sinhala became the official internal working language of government, of written communication between the government and the public, and of the all-important civil service examination, which had the effect of restricting access to state employment to Sinhala speakers. Later, the *Language of the Courts Act* expanded the official-language policy to make Sinhala the sole working language of the courts in 1961. Perhaps the most fateful decision taken under the rubric of the Sinhala-only policy was with respect to university admissions, which, at first, consisted of differential admission standards for Tamil and Sinhalese students, followed by a system of district quotas, both of which had the effect of dramatically reducing Tamil participation in higher education. The *Official Language Act* was superseded by section 7 of the 1972 Constitution, which constitutionally entrenched Sinhala as Sri Lanka's sole official language.

Both sets of policies operated to redistribute economic opportunities away from Tamils to Sinhalese. What accounted for the dramatic shift in language policy? The answer lies in the emergence, after independence, of increased competition for white-collar employment. This was itself a product of important changes in primary and secondary education that began in the late 1930s and continued through the 1940s and 1950s. Prior to independence, formal education had been available only to the privileged few. The period immediately preceding and following independence witnessed a dramatic increase in access to education. Education was provided in the vernacular, which created increased demand for access to higher education and for white-collar public sector employment. The new entrants into the labor pool were predominantly Sinhalese, which created the political incentives for Sinhalese political parties to compete with each other on modifying the rules governing access to universities and government employment. Describing the latter, Stanley Tambiah explains its mass political appeal:

there is . . . a marked, even excessive value in Sri Lanka placed on white-collar employment. . . . For “white-collar status,” though only achieved by a minority, is nevertheless the aspiration of all those shut out from achieving it. The rice farmer, the harbour worker, the peon, the bus driver, all want their children to be pen-pushers. Such an aspiration can therefore serve as the clarion call for political mobilization and action on a mass scale, even though the prizes are few. Indeed, precisely because they are few and reflect the scarcity of a zero-sum game.⁶⁶

Religious conflict should not be confused with linguistic conflict.

⁶⁶ TAMBIAH, *supra* note 65, at 74–75.

An additional example of competition for public sector employment (discussed below) leads to a further observation regarding political mobilization on the basis of religion. Religious conflict is an ongoing fact of political life in South Asia. In recent years, it has led to mass violence, as occurred tragically during the Hindu-Muslim riots in Gujarat in 2002. Indeed, as Kanchan Chandra has observed, Hindu-Muslim violence is sufficiently frequent in India that it has generated a growing literature which lies at the intersection of South Asian studies and the study of ethnic violence.⁶⁷ There is a religious dimension to the conflict in Sri Lanka, given the increasingly close association of Sinhalese nationalism with Buddhism. Nevertheless, we should not, therefore, conclude that every political claim voiced in the name of religion is an accurate reflection of the underlying pattern of political mobilization. Indeed, first in British India and, later, in Sri Lanka, conflicts that—from a superficial perspective—appear to be religious in nature were and are, in fact, about language. The difference between rhetorical justification and political sociology is critical for constitutional design, because the options for dealing with religious and linguistic differences are very different.

Perhaps the classic example of this kind of elite-led nationalist mobilization is the rise of Muslim nationalism in preindependence South Asia. As Paul Brass sets out in his authoritative account, leaders of this movement in Pakistan often invoked radical religious and cultural differences between Hindus and Muslims as justification for the partition of the Indian subcontinent into India and Pakistan. Muhammad Ali Jinnah, the leader of the All-India Muslim League and the founder of Pakistan, declared in a 1940 speech that

Islam and Hinduism . . . are not [merely] religions in the strict sense of the word, but are in fact different and distinct social orders . . . [t]hey neither inter-marry, nor inter-dine together and, indeed, they belong to two different civilisations which are based mainly on conflicting ideas and conceptions. . . . [they] derive their inspirations from different sources of history. They have different epics, their heroes are different. . . . Very often, the Hero of one is a foe of the other and likewise their victories and defeats overlap. To yoke together two such nations under a single state, one as a numerical minority and the other as a majority, must lead to a growing discontent and final destruction of any fabric that may be so built up from the government of such a state.⁶⁸

⁶⁷ Kanchan Chandra, Book Review, 65 *J. ASIAN STUD.* 207 (2006); PAUL R. BRASS, *THEFT OF AN IDOL* (Princeton Univ. Press 1997); PAUL R. BRASS, *THE PRODUCTION OF HINDU-MUSLIM VIOLENCE IN CONTEMPORARY INDIA* (Univ. of Washington Press 2003); ASHUTOSH VARSHNEY, *ETHNIC CONFLICT AND CIVIC LIFE* (Yale Univ. Press 2002); STEVEN WILKINSON, *VOTES AND VIOLENCE* (Cambridge Univ. Press 2004).

⁶⁸ PAUL BRASS, *LANGUAGE, RELIGION AND POLITICS IN NORTH INDIA* 122 (Cambridge Univ. Press 1974). For useful debate on the Brass thesis, see Francis Robinson, *Nation Formation: The Brass Thesis and Muslim Separatism*, 15(3) *J. COMMONWEALTH & COMP. POL.* 215 (1977); and Paul Brass, *A Reply to Francis Robinson*, 15(3) *J. COMMONWEALTH & COMP. POL.* 231 (1977).

However, scholars have long questioned Jinnah's claim. For many years, scholars have argued that partition was a product of the differential impact of religious institutions and new opportunities for economic mobility. On this argument, both Muslims and Hindus were economically backward under British rule but responded differently to new opportunities for education and British employment. Muslims were less likely than Hindus to take advantage of these opportunities for economic advancement because of the opposition of orthodox Muslim clerics "to modern secular education."⁶⁹ The increased power of Muslim clerics was a product of religious revivalism that took place in the nineteenth century and worked to accentuate religious and cultural differences between Muslims and Hindus. The mass political mobilization of Muslims occurred as a response to their economic disadvantage and took the form of demands for guaranteed representation in education, administration, and politics. The opposition of Hindus to these demands led Muslims to demand the partition of the subcontinent, which culminated in the creation of Pakistan and India.

However, a closer examination of the historical record led Brass to conclude that although religious and cultural differences existed in the preindependence period, the principal basis of nationalist mobilization was language, and while the drive for Pakistan was fueled by Muslim masses in response to their economic disadvantage it was led by a largely secular, urban, Muslim elite intent on preserving its dominant status. Prior to British rule, the language of public administration for the Mughal Empire had been Persian, but the lingua franca of Muslim elites was Urdu, which was written in Persian (or Arabic) script. After establishing control over Northern India, the British initially replaced Persian with English and Urdu in 1837. This offered an immediate advantage in public sector employment to Urdu speakers, who were disproportionately from the Muslim elite. The response from educated, urban Hindus was a movement to replace Urdu with Hindi, written in the Devanagari script, as the language of public administration. The basis for this movement was that Hindi was much more widely spoken than Urdu. Muslim elites opposed this move, noting that the ability to read Devanagari was confined to Hindu elites "whose interests alone would be served by its official use."⁷⁰ This movement succeeded in stages, with the steady replacement of Urdu with Hindi by British colonial authorities in the preindependence period. Paul Brass explains the economic considerations that underlay this political conflict:

[B]ehind the dispute between the supporters of Hindi in Devanagari script and Urdu in Persian script . . . there lay a cleavage between the aspirations and interests of educated Hindus and Muslims. Educated Hindus wanted to secure official recognition for Devanagari so that the cultural aspirations and employment opportunities for Hindus might be

⁶⁹ *Id.* at 120.

⁷⁰ *Id.* at 133.

better served thereby. Educated Muslims wanted to preserve the official dominance of Urdu because Indo-Persian culture, which they favoured, and their employment opportunities would also be enhanced thereby. Though the Hindi appeal was couched in terms of the interests of the broad masses of the majority . . . the two movements were led primarily by educated members of the two communities. . . .⁷¹

Indeed, this battle over language occurred during a period when the gap between the languages of urban elites and those of rural masses was growing. In sum, the drive for the creation of Pakistan was based on the failure of Urdu-speaking elites to preserve the dominance of Urdu in British India. As a consequence, they shifted their objectives to the creation of a state—Pakistan—in which Urdu would be the official language. A notable feature of the movement for Pakistan was that the main opposition from within the Muslim community came from Muslim clerics, whose principal objective was the preservation of the system of religious personal law within India. Indeed, the fact that Islam was not the basis of elite mobilization is illustrated by the eventual secession of East Pakistan, now Bangladesh. The first grievance articulated by East Pakistani elites was the choice of Urdu as sole official language of central institutions. Urdu was spoken by only a handful of people in East Pakistan. The creation of Bangladesh illustrates both the importance of Urdu to the movement for Pakistan and the relative unimportance of a shared religious identity (Islam) to this particular nationalist movement.

2. Constitutional design: Managing linguistic nationalism

Now that we understand the political sociology of political mobilization on the basis of language, how should constitutional design respond? In particular, does the South Asian constitutional experience offer any lessons learned, models to be followed, and, equally importantly, dangers to be avoided?

Liberal neutrality is a nonoption with respect to language.

The last point—that it is important to filter political rhetoric and, in suitable cases, to distinguish political mobilization on the basis of language from that based on religion—prompts an important question about constitutional design. Are the constitutional strategies we use to respond to political mobilization on the basis of religion available in the case of language? The answer to that question depends on whether there is a conceptual difference between religious and linguistic divisions. If there is none, then, ultimately, the value of distinguishing religious from linguistic political mobilization is important as a matter of political sociology but immaterial as a question of constitutional design. Conversely, if there is a conceptual distinction between the two, then there may be important implications for constitutional design.

⁷¹ *Id.* at 134.

Liberal political theory's strategy for preventing various social divisions from translating into political divisions is the principle of neutrality. As a principle of constitutional design, neutrality emerged in Europe from the religious wars of the seventeenth century. European states were wracked by religious conflict over which religion should be the official state religion and, in particular, whether the religion of the ruler should be the official religion of the state and its subjects. The solution for achieving political peace was to reverse the shared assumptions of the warring parties and adopt the principle of neutrality. Neutrality, in fact, combines two interrelated principles, nonendorsement and noninterference. Nonendorsement is synonymous with the notion of anti-establishment in American constitutional doctrine, or the separation of church and state, and holds that there is no official state religion. Noninterference is doctrinally elaborated in American constitutional law under the rubric of free exercise, and it requires that the state neither interfere with nor support the religious identities of its citizens. Overall, as a constitutional strategy for managing the threat posed by religious diversity to social peace, neutrality leaves religion a matter for the private sphere and creates an open cultural marketplace for religious identities and adherents, all of which occurs within a framework of human rights and the rule of law. The state is indifferent as to whether particular religious identities flourish or die out. Religious identity is irrelevant to the rights and obligations of citizenship.

But religion is no longer and, indeed, never was the only form of diversity that could likewise serve as a basis of political mobilization. Rather, in what I have elsewhere termed "divided societies," ethnic, linguistic, religious, racial, or cultural differences are politically salient—that is, they are persistent markers of political identity and bases for political mobilization.⁷² Ethnocultural diversity translates into political fragmentation. In a divided society, political claims are refracted through the lens of ethnic identity, and political conflict becomes synonymous with conflict among ethnocultural groups. So the liberal impulse is to extend and generalize the treatment of religion to other kinds of social divisions in order to diminish their capacity to structure conceptions of interest and political debate, and, indeed, to prevent them from engulfing political institutions. Thus, in the same way that the liberal state is neutral on matters of religious identity, it can be similarly neutral with regard to race and ethnicity. Brian Barry has termed this broader constitutional strategy "privatization," whereby potentially politically divisive forms of identity are excluded from politics and made irrelevant to the operation of liberal democratic institutions.⁷³

⁷² SUJIT CHOUDHRY, *Bridging Comparative Politics and Comparative Constitutional Law: Constitutional Design for Divided Societies*, in *CONSTITUTIONAL DESIGN FOR DIVIDED SOCIETIES: INTEGRATION OR ACCOMMODATION?* 3, 4 (Sujit Choudhry ed., Oxford Univ Press, 2008).

⁷³ BRIAN BARRY, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Harvard Univ. Press 2001).

So the question for constitutional design is whether the strategy of neutrality or privatization can be extended to competing linguistic nationalisms. Can the state be neutral on the question of language? The answer is no. The state need not choose an official or established religion, ethnicity, or race in order to discharge its functions. However, it must choose a language, or a limited set of languages, in which to operate. Those languages are official for that limited but important purpose. The reason is that communication is essential to the functioning of any state, liberal democratic or otherwise. Communication occurs between institutions and officeholders within a state—between legislatures and executives and courts, among parliamentarians, civil servants, and judges, and so on. It also takes place between various state institutions and citizens, through the provision of public services, the administration of justice, and public education. To reason by analogy from religion or race and adopt a policy of *laissez-faire* in the case of language would be a recipe for chaos. To be sure, as I will argue below, there is latitude within *some* envelopes of state activity to be broad in the scope of official languages. However, for most state functions, there are limits, because language functions as a coordinating device that permits collective deliberation and decision making. Fiscal and technological constraints render translation an impractical means for offsetting the loss in coordination resulting from linguistic divergence.

Disaggregate official-language status into its constituent components.

Designating an official language, or a set of official languages, raises the question of what official-language status actually means. It is sometimes thought that once a language receives official status, it can and should be used across all areas of government activity on a footing of equality with other official languages, if any. However, for the purposes of constitutional design, it is useful to disaggregate the choice of official language into a number of distinct institutional contexts, in which the scope for linguistic choice and the consequences of those choices are rather different.

Alan Patten and Will Kymlicka provide a useful taxonomy of the distinct institutional contexts in which the choice of official language must be made.⁷⁴ The salience of these distinctions arises from the constitutional politics in multilingual societies, because demands for official-language status are often themselves institutionally differentiated. Thus, states must choose an official language for (a) legislatures, (b) courts, and (c) the executive. With respect to the last category, a further distinction can be drawn between the internal language of government and the language of public services. In the realm of public services, debates over the language of public education have been particularly fraught in many societies and at all levels. With respect to primary and

⁷⁴ ALAN PATTEN & WILL KYMLICKA, *Introduction: Language Rights and Political Theory: Context, Issues, and Approaches*, in LANGUAGE RIGHTS AND POLITICAL THEORY (Alan Patten & Will Kymlicka eds., Oxford Univ. Press, 2003).

secondary education, the arguments are largely framed in terms of cultural survival. At the postsecondary level, the issue is the intimate connection between the availability of postsecondary education in a language and the language of the public sector and the economy. Indeed, it is possible to pursue the strategy of disaggregation even further than Patten and Kymlicka do. For example, the Kher Commission drew a distinction between the deliberative dimensions of the legislative process and the formal legal texts that are debated during the legislative process and which are its products.⁷⁵ The former refers to the language of parliamentary proceedings, including debates in the legislature and its committees. The latter refers to bills, amendments, and statutes.

How official-language policy should be framed in any particular country will be a highly contextualized decision, depending on a number of factors, such as the number of candidate official languages, how developed the vocabularies of those languages are, fiscal constraints, the availability of translation, and so on. But the value of disaggregating the question of official-language status is that it highlights how the range of choice is quite different in different institutional contexts. South Asia furnishes a number of examples that illustrate these points.

Nontechnical discussions of the official language of “government” often fail to distinguish the internal working language of public administration from the language of public services. The former concerns the internal language of government communication; the latter concerns the external language of government communication. In general, the pressure toward linguistic homogeneity is stronger for the former than the latter. From a practical standpoint, the state is limited in its ability to function internally in more than one language because civil servants must be able to communicate with each other. Translation for communication among monolingual civil servants in a multilingual administration is both time-consuming and costly. In the context of developing countries, these challenges are even greater. A vivid illustration of the pressure toward the choice of a very limited set of languages for internal government communication in the face of considerable linguistic diversity can be found in the case of India. Recall article 343(1), which provides that Hindi shall be the language of the central government, that there would be a phase-in period of fifteen years from the commencement of the Constitution in 1950, and that, at the end of that period, Parliament could legislate to extend the use of English indefinitely. As detailed below, this is precisely what Parliament did, through the *Official Languages Act of 1967*. Since the central government operates in two official languages, one way to interpret this constitutional compromise would be as an illustration of institutional multilingualism. However, another way to read this is as a convergence on only two languages, in the face of India’s enormous linguistic diversity. The Eighth Schedule to the Indian Constitution formally recognizes twenty-two “official” languages, although only one of these—Hindi—is the internal working language of government

⁷⁵ OFFICIAL LANGUAGE COMMISSION, *supra* note 44, at 150–171.

(remarkably, English is not on the list). The convergence upon two main official languages at the national level has occurred, notwithstanding massive linguistic diversity that generated considerable political conflict and pressure against linguistic homogenization.

The internal working language of government can be contrasted with the language of public services, which has understandably been a flashpoint of linguistic conflict in multilingual societies. The inability of citizens to communicate with public authorities may pose insurmountable barriers in accessing public services. For example, in East Pakistan, in the years following the creation of Pakistan, a major complaint was “[t]he fact that the Pakistan Government used only English and Urdu on postage stamps, postal money order forms and currency” as well as other government forms.⁷⁶ Indeed, the issue runs deeper than the mere denial of access to public services. Beyond those immediate effects, the failure to provide public services in languages that recipients can understand may fuel a sense of alienation and the feeling that governing institutions are neither their own nor directed toward their welfare. There is an important link, here, between the language of government services and the language of public sector employment. If services are provided in a single official language, which happens to also be the language of the dominant group, and competence in that language is used for public service recruitment, then this state of affairs, from the perspective of speakers of other languages, transforms the relationship of citizen and state into the colonial one of ruler and subject. The allegation of internal colonialism remains a complaint in Nepal and Sri Lanka precisely for this reason.

As it turns out, the scope for linguistic choices in external communication is broad. In theory, governments may communicate with their citizens in a broad range of languages, all of which carry official status for that limited but important purpose, even while maintaining a very limited number of official languages for internal communication. This constitutional strategy has been adopted in India. Indeed, the Kher Commission, which otherwise promoted a single official language for internal communication, was a strong proponent of this idea. Thus, it recommended that central government departments be internally organized on a regional basis, and that, within a given region, “communication with the public . . . must be conducted in the language most convenient to the people of the different regions respectively.”⁷⁷ However, “[w]ithin the department itself . . . in the communication between the regional formations and the headquarters organisation and the regional formations *inter se*, the linguistic medium to be used would, of course, be the Union language.”⁷⁸ In fact, the internal communication now takes place in

⁷⁶ ANWAR DIL & AFIA DIL, *BENGALI LANGUAGE MOVEMENT TO BANGLADESH 141* (Ferozsons 2000).

⁷⁷ OFFICIAL LANGUAGE COMMISSION, *supra* note 44, at 117.

⁷⁸ *Id.*

Hindi or English, depending on the specific department. In sum, the commission continued, “these departments will have to be organized on a bilingual basis permanently in the sense of using the Hindi language for purposes of internal working and the respective regional languages in their public dealings in the respective regions.”⁷⁹

The distinction between internal and external communication is analytically useful because it forces constitutional designers to pose the right questions. However, its application in particular institutional contexts can be far from clear-cut. Consider the court system. On the one hand, there is a great deal of internal communication within a hierarchical judicial system—between judges and court staff, among judges on multimember courts, between lower and higher courts in the appellate process, and in common law systems, between courts of the same level or between higher courts and lower courts in order to make possible a doctrine of precedent. This creates extreme pressure for linguistic uniformity. The impetus toward legal certainty is an additional factor increasing pressure toward the designation of a sole official language. On the other hand, the distinctive feature of the judicial system is that much of the communication that is internal is also simultaneously external—to the parties in the particular proceeding and, more generally, to future litigants through the case law of the courts. Indeed, its external character is integral to its legitimacy.

The Indian Constitution grapples with these competing imperatives in an interesting way. The language of the court system has its own provision, article 348. Article 348(1) retains English as the language of the Supreme Court and high courts until Parliament legislates otherwise. This establishes a default rule in favor of the indefinite use of English, in contrast to article 343, which requires Parliament to legislate to preserve the official role of English. The system of high courts is organized on a state basis. Article 348(2) authorizes the use of Hindi or any other official state language in a state high court by a state government with federal consent. However, such an order does not affect “any judgment, decree, or order passed or made by such High Court.” Thus, article 348 disaggregates the question of the official language of court proceedings into the language of *deliberation* and the language of *outcomes* or decisions. The former can be multilingual while the latter, for the sake of the unity of the judicial system, cannot. It is important to understand what official-language status for deliberation means. It is not merely the use of translation for parties and witnesses who do not speak the language of the proceedings. It is much more. The entire proceeding can function in the official language, in all its respects, including the hearing itself—the written and oral arguments of counsel, questions from the judge, and so forth.

⁷⁹ *Id.*

The disaggregation of official-language status complicates the simple equation of federalism with multiple official languages. The principal reason for linguistic federalism is to allow different language groups opportunities for white-collar public sector employment.

The disaggregation of official-language status into a series of discrete institutional choices leads to another issue, the relationship between language and federalism. The equation of multiple official languages with federalism is widespread throughout South Asia. The linguistic reorganization of the Indian states, the secession of East Pakistan, and the demand for a Tamil majority province or independent homeland in Sri Lanka are examples. In current constitutional debates in Nepal, it is often assumed that adopting multiple official languages would or should necessarily go hand in hand with the adoption of a federal structure.

The link between federalism and multiple official languages is fueled, in part, by the assumption that official-language status cannot be disaggregated. If the public sector consists of a single, indivisible linguistic zone across all areas of government activity, the thinking goes, then the only way to create multiple official languages is to multiply the number of such zones through federalism. But once it is recognized that there are, in fact, a series of distinct spheres in which the choice of official language becomes an issue, the link between official language and federalism becomes much more complex. As a conceptual matter, it is possible for there to be multiple official languages without a federal constitution. For instance, in the realm of public services, it is possible for a national government to provide public services in different languages throughout the country, tailored to the needs of local populations. A national judicial system could operate in a similar manner, for example, with respect to languages in which there is a sufficiently developed legal vocabulary. So, too, with primary education, which could entrench the right to mother tongue education with or without federalism. Likewise, with the availability of simultaneous translation, the national legislature could operate in multiple official languages.

However, what is less divisible is the internal working language of public administration. Much more so than in other spheres, there is a zero-sum aspect to the designation of an official language in this sphere; there are clear winners and losers. If economic competition over scarce but valuable white-collar employment opportunities has been the driving force underlying political competition regarding official-language status, then where we see demands for linguistic federalism, we should expect to see them coupled with concerns about access to public sector employment. As a matter of constitutional design, the creation of multiple public sectors offering white-collar employment opportunities, through linguistic federalism, is one means by which to break out of a zero-sum game.

This is one way to understand the Indian experience with linguistic states. As discussed above, the Constituent Assembly rejected drawing state boundaries

along linguistic lines. However, two sets of provisions ensured that the issue of linguistic provinces would soon thrust itself onto the constitutional agenda. First, the Constitution did not stipulate the language of the states. Rather, article 345 authorized state legislatures to “adopt any one or more of the languages in use in the State or Hindi” as an official language. Moreover, under article 345, the status quo regarding the use of English would remain in place until legislation to the contrary was enacted. Article 345 ensured that state legislatures would have to debate both which regional language(s) would receive official status and/or whether to withdraw official status from English. Second, the Constitution provided for a very flexible procedure for the creation of new states. Article 3 granted plenary authority to Parliament to “form a new State by separation of territory from any state or by uniting two or more States or parts of States or by uniting any territory to a part of any State” through ordinary legislation. The low procedural hurdles for creating new states meant that if the choice of official language could not be resolved at the state level, within existing state boundaries, the debate over state official language would be transformed into a debate over redrawing of state boundaries, which would be thrust onto the national political agenda.

The rejection of linguistic states began to unravel in the late 1940s, even before the Constitution was adopted.⁸⁰ The report of the Dar Commission, although accepted by the Constituent Assembly, did not resolve the issue. There was disappointment, nowhere more so than in the south. This is also where the opposition to the adoption of Hindi as the official language of the central government was most intense, owing to the vast linguistic divide between South and North India. The Congress Party responded by creating the Congress Linguistic Provinces Committee, which, in 1949, opened the door to linguistic states and specifically recommended creating Andhra State (later renamed Andhra Pradesh) by severing the Telegu-speaking parts from Madras State, the remaining portions of which would have a Tamil-speaking majority. Four years later, in 1953, Andhra State was created. Once that precedent was established, it sparked a “chain reaction of linguistic state movements” across India.⁸¹ As a consequence, in the same year that Andhra was created, the central government created the States Reorganization Commission, with the mandate of recommending both the principles for redrawing state boundaries and the specific boundaries of new states. There was a sharp disjunction between the views of the commission on these two issues. On the one hand, it stated “it is neither possible nor desirable to reorganise States on the basis of the single test of either language or culture” and that “a balanced approach to the whole problem is necessary in the interests of our national

⁸⁰ JOAN BOUNDRANT, *REGIONALISM VERSUS PROVINCIALISM: A STUDY IN PROBLEMS OF INDIAN UNITY* (Institute of International Studies 1958).

⁸¹ *Id.* at 45.

unity⁸²—that is, while the commission accepted that language would be a factor in drawing state boundaries, it would not be the sole basis for doing so. On the other hand, however, it recommended “the redrawing of India’s political geography along lines which more or less coincided with many of the linguistically based demands.”⁸³

And so the report launched a process that would fundamentally alter the internal constitutional architecture of India. Based on the commission’s recommendations, Parliament created new states in 1956: Assam, Bihar, Bombay, Jammu and Kashmir, Kerala, Madhya Pradesh, Madras State (later renamed Tamil Nadu), Mysore State (later renamed Karnataka), Orissa, Punjab, Rajasthan, Uttar Pradesh, and West Bengal. Two of these were multilingual, Bombay and Punjab. However, they would be short-lived. In response to Gujarati and Marathi linguistic mobilization, Bombay was divided into Marathi-speaking Maharashtra and Gujarat in 1960. Shortly thereafter, mobilization by Punjabi-speaking Sikhs led Punjab’s division into Hindi-speaking Haryana and Punjab in 1966. The Indian case—entirely ignored in the comparative constitutional law literature—is, without a doubt, the most significant restructuring, through a constitutional process, of political space in modern times in response to competing linguistic nationalisms through a constitutional process occurring under the rule of law and without recourse to violence on a mass scale.

Economic competition over public sector employment was an important political factor throughout. As Krishna Mukerji, writing in 1955, observed on the drive for linguistic federalism:

Let us be frank and accept the Dal-Roti basis of this enthusiasm. . . . It is the middle class job hunter and place hunter and the mostly middle class politician who are benefited by the establishment of a linguistic state, which creates for them an exclusive preserve of jobs, offices and places by shutting out, in the name of the promotion of culture, all outside competitors.⁸⁴

There are many specific examples that illustrate this general point. In Assam, educated Bengalis dominated government departments under British rule.⁸⁵ Assam was colonized by the British in the early nineteenth century and became part of the Bengal Presidency, with its capital in Calcutta. Because of radical differences between the structure of the preexisting bureaucracy and the norms of British administration, the latter found it easier to adapt administrative

⁸² STATES REORGANIZATION COMMISSION, REPORT OF THE STATES REORGANIZATION COMMISSION para. 162 (Govt. of India Press 1955).

⁸³ BOUNDRANT, *supra* note 80, at 51.

⁸⁴ KRISHNA MUKERJI, REORGANIZATION OF INDIAN STATES 31 (Popular Book Depot 1955), *cited in* SELIG HARRISON, INDIA: THE MOST DANGEROUS DECADES 90 (Princeton Univ. Press 1960).

⁸⁵ GOPAL, *supra* note 62, at 249; WEINER, *supra* note 63, at 75–138.

structures from Bengal, staffing them with Bengalis, so that “[b]y the beginning of the twentieth century the doctors, lawyers, teachers, journalists, clerks, railway and post office officials, as well as officers of the state government were Bengali Hindu migrants.”⁸⁶ Bengali and English became the official languages of Assam. After independence, an aspiring Assamese middle class, the product of a massive increase in access to education, sought entry into these professions. The state’s official language became a major source of controversy, leading to demands that Assamese replace English and Bengali as the official language of the state and leading to riots in 1960s and 1970s. A similar story can be told about Andhra Pradesh, which was created from the Telegu-majority areas of Madras State. Although Madras State contained both Telegu and Tamil speakers, white-collar public sector employment was dominated by Tamils, a legacy of the British colonial preference for Tamils.⁸⁷ Telegu speakers agitated for a state in which they would constitute a majority, with Telegu as its official language, allowing them to redistribute these opportunities for their own benefit.

Linguistic federalism alone will not answer fully to the demand for white-collar public sector employment. To the extent possible, such opportunities should be offered at the center as well, to bind regional linguistic minorities to the state as a whole. This is another way of thinking about federalism as a system combining self-rule and shared rule.

The impetus toward linguistic federalism is very strong because of the relative indivisibility of the internal working language of government, which determines the language of white-collar public sector employment. The question is whether this is a sufficient response to the demand for white-collar employment. One way to read the Kher Commission report is that it thought this response would suffice. As it said, “the solution of the language problem lies in the Union language and the regional languages entering, in their appropriate fields, on the inheritance which will befall to all of them with the displacement of the English language from the unnatural position that it occupies in the country’s life.”⁸⁸ In short, linguistic federalism should relieve political pressure on the center over the choice of official language there.

Nevertheless, what is striking about South Asia is that linguistic federalism has been an insufficient response. Take the case of Pakistan. At independence, the Pakistan Constituent Assembly adopted a resolution setting out a series of guidelines that would govern the framing of Pakistan’s first postindependence constitution.⁸⁹ These guidelines envisioned a federal form of government for

⁸⁶ WEINER, *supra* note 63, at 93.

⁸⁷ Marshall Windmiller, *Linguistic Regionalism in India*, 27 PACIFIC AFFAIRS 291, 304 (1954).

⁸⁸ OFFICIAL LANGUAGE COMMISSION, *supra* note 44, at 37.

⁸⁹ BASIC PRINCIPLES COMMITTEE, INTERIM REPORT OF THE BASIC PRINCIPLES COMMITTEE (1950), *cited in* BASIC PRINCIPLES COMMITTEE, REPORT OF THE BASIC PRINCIPLES COMMITTEE i, 80 (Govt. of Pakistan Press 1952).

Pakistan. Pakistani political leaders made it clear that, at the very least, the Bengali-speaking areas of East Pakistan would be a single federal subunit, and that the official language of that province would be Bengali. Speaking in Dacca, East Pakistan in 1948, Jinnah stated that “[w]hether Bengali shall be the official language of this province is a matter for the elected representatives of the people of this province to decide.”⁹⁰ However, Jinnah also made it clear that “the State Language of Pakistan is going to be Urdu and no other language,” because “[w]ithout one State Language, no Nation can remain tied up solidly together and function.”⁹¹

Despite the fact that the provincial government would operate in Bengali, Bengali speakers, nonetheless, demanded equal status for Bengali in central institutions. A particular concern was the language of public service examinations. History loomed large. One of the first acts of British colonial authorities after the conquest of Bengal in the 1750s was to shift the official language of government from Bengali to English. The result was the immediate and mass dismissal of Bengali civil servants. The fear was that if Urdu were imposed in a parallel fashion, “it would be a reiteration of the former repressive colonial policy.”⁹² Bengali-speaking university students were particularly adamant, accusing the proponents of Urdu of a “great conspiracy which aims at reducing East Bengal to the state of a colony.”⁹³

Many analyses of the secession of East Pakistan have placed considerable emphasis on the failure of the Pakistani constitutional order to provide for fair political representation. In particular, the argument is that while the citizens of East Pakistan constituted a clear majority of the population, by deliberate design, equal numbers of seats in the federal legislature were allocated to East and West Pakistan, which had the effect of excluding East Pakistanis from wielding public power at the center. However, the reality is more complex.⁹⁴ While the rules allocating legislative seats departed significantly from representation by population, East Pakistanis, in fact, held significant numbers of seats in the federal cabinet. Where they lacked representation was in the senior ranks of the civil service and the military. It was this lack of representation that generated resentment among East Pakistanis, as they became “increasingly conscious of the fact that it was not the politicians but the Civil and Military Elites who were playing the main role in the decision-making process.”⁹⁵

⁹⁰ DIL & DIL, *supra* note 76, at 610.

⁹¹ *Id.*

⁹² *Id.* at 134.

⁹³ *Id.* at 175.

⁹⁴ MUHAMMED A. QUDDUS, *PAKISTAN: A CASE STUDY OF A PLURAL SOCIETY* 110–120 (Minerva Associates 1981).

⁹⁵ *Id.* at 115.

Although Bengali speakers held senior positions in the provincial civil service, this was insufficient, because of the considerable powers wielded by the federal government. One commentator suggested that had the “Bengalis’ demand for more representation in the Civil Service of Pakistan” been met from the outset, the “Bengali discontent would not have reached the proportion of the late 1960’s”⁹⁶ and secession might not have occurred.

India provides another example. Recall that the demand for linguistic states, although initially rejected, was later accepted in practice and implemented in 1956, 1960, and 1966. The result was to expand, dramatically, the opportunities for white-collar public sector employment in the states. Yet there still remained enormous opposition from South India—where linguistic reorganization first began and was completed by 1956—to Hindi as the sole official language of the center, even as the deadline loomed for the full transition to Hindi in 1965. In Tamil Nadu, “the state erupted in language riots. Several students burned themselves to death, protesting the moves of the national government.”⁹⁷

The issue that generated the greatest dispute was the language of public service examinations for the elite All-India Administrative Service (IAS). Indeed, this issue was dealt with in more detail than any other by the dissenting reports to the Kher Commission. The reason is that the constitutional status of the IAS is unusual.⁹⁸ On the one hand, the central government sets the criteria for selection and chooses and trains IAS officers. On the other hand, most IAS officers are assigned to work in state governments, where they typically occupy the most senior posts. Indeed, they must master the relevant official state language. Following constitutional convention, IAS officers in so-called “state cadres” are subject to control by the state executive (not the central government), which makes them members of the state bureaucracy. However, the jurisdictional divide between recruitment (central) and control (state) still leaves significant power in the hands of the central government.

At independence, the IAS exams were administered in English. The Kher Commission recommended, as a corollary of the transition to Hindi created by article 343, that Hindi eventually become, after a transitional period, the exclusive language of central public service examinations. The dissenting members of the Kher Commission argued, in response, that the effect of this change would be to give permanent advantage to Hindi speakers in recruitment to the IAS, to the lasting detriment of non-Hindi speakers. This was especially true in the south, because of the vast linguistic gap between Hindi and

⁹⁶ *Id.* at 120.

⁹⁷ Atul Kohli, *Can Democracies Accommodate Ethnic Nationalism? Rise and Decline of Self-Determination Movements in India*, 56 J. ASIAN STUD. 325, 334-5 (1997).

⁹⁸ Beryl A. Radin, *The Indian Administrative Service (IAS) in the 21st Century: Living in an Intergovernmental Environment*, 30 INT’L J. PUB. ADMIN. 1525 (2007).

the South Indian languages. Given the central role of IAS officers in state bureaucracies, the result, again, would be neocolonial. “You will have to pay a tax to keep yourself, your language and culture and your material advantages, permanently under the subjection of another language, and naturally, also of the people who speak it,” reasoned one dissenting member.⁹⁹ The dissenters pushed for the retention of English. Newly empowered elites in the states linked the language of the IAS exam to the drive for linguistic federalism and demanded that the IAS exam be offered in every major regional language.

As the deadline for implementing article 343 in 1965 approached, the central government sent conflicting signals.¹⁰⁰ On the one hand, the *Official Languages Act of 1963* retained the status of English as an official language of public administration. On the other, many government departments began to accelerate the transition to Hindi as the internal working language of government, so that “[e]verywhere, the idea gained ground that . . . Hindi was going to be sole official language of India.”¹⁰¹ This provoked enormous controversy, nowhere more so than in Tamil Nadu, one of the first linguistic states created. Violent protests were led by university students, which led to riots over two months in which sixty-six were killed. In the end, as part of the broader decision to postpone, indefinitely, the implementation of article 343, the adoption of Hindi as the language of the IAS exams did not proceed. The status of English was strengthened by the *Official Languages Act of 1967*.¹⁰² The act preserves the status of English in the central government—including in IAS exams—by granting a statutory veto on the continued use of English to each non-Hindi speaking state.¹⁰³ The fracturing of the party system at the national level and the rise of regional parties and coalition government make the repeal of this veto exceedingly unlikely.

As David Laitin argues, this outcome was likely the result of the manner in which the Congress Party, regional elites, and the central bureaucracy played the game of linguistic rationalization.¹⁰⁴ One key factor was the intransigence of the central bureaucracy, which continued to work in English and quietly but firmly opposed the use of Hindi in public administration. Another was, of course, the violent opposition from South India, which threatened to spark the secession of Tamil Nadu. The university students who led the protests were particularly concerned about the impact on their

⁹⁹ OFFICIAL LANGUAGE COMMISSION, *supra* note 44, at 302.

¹⁰⁰ JYOTIRINDRA DAS GUPTA, LANGUAGE CONFLICT AND NATIONAL DEVELOPMENT: GROUP POLITICS AND NATIONAL LANGUAGE POLICY IN INDIA 234–259 (Univ. of California Press 1970).

¹⁰¹ *Id.* at 237.

¹⁰² The Official Languages Act, No. 19 of 1963 §3(1); available at <http://indiacode.nic.in/>.

¹⁰³ *Id.* §3(5); HANS DUA, LANGUAGE PLANNING IN INDIA 230 (Harnam Publications 1985).

¹⁰⁴ David Laitin, *Language Policy and Political Strategy in India*, 22 POLICY SCIENCES 415 (1989).

careers. Tamil speakers were disproportionately represented in the central bureaucracy because of their command of English, and the concern was that article 343 would effectively end Tamil representation in the central bureaucracy. These riots were an important factor in forcing the hand of the central government and led to the deferral of the implementation of article 343 and the retention of English and Hindi as official working languages of the national government.

From the perspective of constitutional design, the Indian solution is a desirable one, for the following reason. Federalism is a system of shared rule and self-rule. The shared-rule aspect of federalism has been conceptualized, generally, in terms of fixed regional representation in central government institutions, such as the legislature (representation by population in the lower chamber, an upper chamber with representation structured on regional lines), membership on the constitutional court that adjudicates federal-state disputes (as in Canada), and so forth. But open access for members of regional minorities to the central bureaucracy is vital as well. Moreover, access must actually be open; language rules can serve as *de facto* barriers to participation by vast numbers of individuals in the governance of the shared state. Not only does this respond to a demand to have access to important employment opportunities; it also binds speakers of regional languages to the institutions of the central state and, through employment, inculcates a sense of shared identity. Thus, individual economic self-interest can be harnessed to further the political objective of state consolidation.

A contingent factor that has made this possible was the availability of a link language, English. The fact that English is not identified with a dominant linguistic group has enabled it to serve as a meeting ground for members of different linguistic groups within public administration at the national level. Where such a link language is unavailable, this strategy might simply be impossible. And so the puzzling point about the scholarship on the Pakistani experience is the absence of any sustained discussion of the need for a link language to serve as the medium of communication within the federal civil service. Moreover, this option might be more difficult to implement for the one country in South Asia which was not colonized by the British—Nepal—and which, therefore, has limited experience with English-language public administration.

3. Conclusion

Sunil Khilnani recounts how, in the late 1940s, observers of South Asia made a pair of predictions.¹⁰⁵ They predicted that India was too diverse, religiously and linguistically, to consolidate, successfully, as a democracy. They also predicted that the countries on India's periphery, notably Pakistan, were much more likely to succeed, because they were much less diverse along precisely the

¹⁰⁵ SUNIL KHILNANI, *THE IDEA OF INDIA* xii (Penguin 1997).

same dimensions. As the decades wore on, the pessimism remained. In 1960, Selig Harrison wrote:

Nowhere do so many linguistically differentiated peoples, all of them so self-aware, all numbered in millions and tens of millions, confront each other within a single national body politic. The prospect that “anarchy,” “fascism” and “totalitarian small nationalities” will each torture this body politic, at one time or another in the decades ahead, is a measure not of some endemic Indian incapacity but of the challenge built into Indian nationalism.¹⁰⁶

On these accounts, linguistic federalism, far from being the solution, was the problem.¹⁰⁷

At the dawn of the twenty-first century, however, the opposite is true. India is the relative success story, and it is surrounded by states under extreme stress. Sri Lanka has been mired in conflict for more than a half century over the official status of Tamil and Sinhala, which ultimately led to a civil war that has run for over a quarter century. Shortly after independence, Pakistan became embroiled in an internal political conflict, with significant linguistic dimensions, that led ultimately to the secession of a state containing the majority of its population. Neither state has consolidated democratically. India has. Although India faces enormous difficulties, in terms of governance, the rule of law, respect for human rights, and threats to secularism, it alone in South Asia has successfully managed—if not solved—linguistic conflict through constitutional design. A combination of strategies has yielded a relatively stable constitutional arrangement that has eliminated what were potentially the greatest threats to India’s territorial integrity. As Pratap Mehta wrote on the occasion of the fiftieth anniversary of the report of the States Reorganization Commission, linguistic federalism in particular spared India from “civil war.”¹⁰⁸

Earlier this decade, it was frequently remarked that India’s political leadership was the very embodiment of the country’s religious diversity. India’s prime minister, Manmohan Singh, is Sikh; its president, Abdul Kalam, was Muslim; the head of the Congress Party, Sonia Gandhi, is Roman Catholic. What was not observed, though equally important, was that all three came from different linguistic communities—the Punjabi-speaking Singh, the Tamil-speaking Kalam, and the English-speaking Gandhi. Not one is a native Hindi speaker. The fact that this did not merit comment—against the backdrop of the 1950s and 1960s, when linguistic issues were at the center of Indian constitutional politics—shows how far this issue has receded in importance.

¹⁰⁶ HARRISON, *supra* note 84, at 4.

¹⁰⁷ *E.g.*, Paul Friedrich, *Language and Politics in India*, 91 *DÆDALUS* 543 (1962).

¹⁰⁸ Pratap Mehta, *Babble of Babel*, *INDIAN EXPRESS*, Nov. 2, 2006, available at <http://www.indianexpress.com/news/babble-of-babel/15801>.

But South Asia also illustrates the perils of mismanaging linguistic nationalism through constitutional design. In Sri Lanka there has been a history of escalating demands: for official-language status for Tamil in the institutions of a unitary state; to a weak form of devolution in which Tamil would be the language of public services and the court system in the Tamil-majority areas of the north and east; to linguistic federalism; and, ultimately, to secession and independence. At each stage, these demands have escalated because of the unwillingness to accept or implement any change to the Sinhala-only policy of the Sri Lankan government.

To be sure, there are lenses other than language through which to view the constitutional politics of federalism in South Asia. For example, there have been extensive debates over the democratic virtues of federalism. The controversial issue, here, has been the invocation of article 356 of the Indian Constitution to place state governments under direct central rule in the event of the “failure of constitutional machinery” in a state or to dissolve a legislative assembly and hold new elections. These powers were abused by central governments for many years for partisan advantage to favor the governing party at the national level. For many years, article 356 was not subject to judicial oversight. The results for Indian federalism were disastrous. Indeed, the failure of linguistic federalism to quell separatist sentiment in Punjab may be traceable, in part, to the use of article 356 by the Congress Party for narrow electoral purposes in the 1970s and 1980s, with terrible consequences. Although the conflict in Kashmir is unique in South Asia, the use of article 356 for partisan purposes fueled a similar downward spiral.¹⁰⁹ The Supreme Court of India’s recent moves to restrain the exercise of article 356 to protect federalism appear to have altered the dynamics of political competition at the state level, and have empowered states relative to the national government.¹¹⁰ A parallel debate is currently underway in Sri Lanka, where a similar power has also been abused in Sri Lanka’s scheme of devolution, though the courts have not asserted control. If a fully federal Sri Lankan constitution is an integral part of peaceful settlement to conflict on the island, then this is an issue that must be squarely addressed.

Likewise, the benefits of federalism for interjurisdictional competition have emerged since the early 1990s. The dramatic reduction in central economic regulation—that is, the end of the so-called license raj, whereby the location of enterprises were determined by central authorities in Delhi—coupled with a reduction in fiscal transfers from the center to the states have led to a change in

¹⁰⁹ James Minor, *Making Federalism Work*, 9(3) J. DEMOCRACY 21 (1998).

¹¹⁰ S. R. Bommai v. Union of India, (1994) 3 S.C.C. 1; Rameshwar Prasad v. Union of India, A.I.R. 2006 S.C. 980. For commentary, see Shubhankar Dam, *Can a Legislative Assembly Function Without an Executive Government Under the Indian Constitution?*, 2008 PUB. LAW 224; Soli Sorabjee, *Decision of the Supreme Court in S.R. Bommai v. Union Of India: A Critique*, (1994) 3 S.C.C. (Jour) 1.

the character of interstate competition. Political competition was formerly “vertical,” with states competing at the center for fiscal transfers and favorable regulatory decisions. However, it has now become “horizontal,” with states competing with each other for private and foreign investment, made possible by the increased policy space created by the end of the license raj and driven by the need to replace central transfers.¹¹¹ The result has been a significant transfer of power from the center to the states.¹¹²

Thus, focusing on linguistic nationalism in isolation is an abstraction. Nevertheless, it gives us critical leverage on an issue that has been the principal driver of the reconfiguration of political space in South Asia since the end of the British colonial period but which has been largely invisible in comparative constitutional law, more generally, and in the subliterate on South Asia, in particular. Although the possible constitutional strategies for responding to it will not be applicable without modification to other countries, at least they identify the relevant issues and can serve as useful tools to reason toward what *might* work.

Let me conclude with a suggestion regarding a practical context in which this comparative constitutional agenda could get off the ground within South Asia itself. India is the dominant power in South Asia. Its fate is inextricably tied to those of its neighbors, whose political instability has manifested itself through refugee flows and terrorist attacks. Moreover, India increasingly finds itself in competition with China for influence in the region and competes in the same currency—namely, economic and military assistance. But there is an alternative. India’s regional foreign policy could be built around its constitutional structure. Its constitutional design—including how it has managed not only linguistic nationalism but also political competition and civilian rule—could serve as a source of soft power and influence, given its relative success in addressing the problems that have bedeviled its neighbors. Precisely how the link between constitutional strategy and foreign policy would be framed is best left to another occasion.

¹¹¹ Aseema Sinha, *The Changing Political Economy of Federalism in India: A Historical Institutional Approach*, 3 INDIA REV. 25 (2004); LAWRENCE SÁEZ, FEDERALISM WITHOUT A CENTRE 135–163 (Sage 2002).

¹¹² Pratap Mehta, *India: Fragmentation Amid Consensus*, 8(1) J. DEMOCRACY 56 (1997).