

OXFORD

Constitutional Design for Divided Societies

Integration or Accommodation?



Edited by
SUJIT CHOUDHRY

CONSTITUTIONAL DESIGN FOR
DIVIDED SOCIETIES:
INTEGRATION OR ACCOMMODATION?

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That conference generated two interrelated publication projects. A selection of the conference papers appeared in a special issue of the *International Journal of Constitutional Law* (I•CON) which was published in Fall 2007 (volume 5, number 4). This volume is much more expansive in scope, and is structured differently. It contains the papers which appeared in I•CON, and a large number of additional chapters which include an introduction and an overview chapter outlining the integration-accommodation debate which provides the intellectual framework for the entire volume.

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- Case No. U-44/01, Decision (Sept. 22, 2004)
- Case No. U-4/04, Partial Decisions I–II (Mar. 31, Nov. 18, 2006)
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PART I
INTRODUCTION AND
OVERVIEW

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Bridging comparative politics and comparative constitutional law: Constitutional design in divided societies

*Sujit Choudhry**

1. Introduction: Comparative constitutional law missing in action

The Human Development Report (HDR), published annually by the United Nations Development Programme, is an unlikely stimulus for reflection upon the state of the field of comparative constitutional law. Although the Human Development Reports take a broad understanding of development, constitutional law has never occupied center stage. However, the HDR 2004 is different. Entitled *Cultural Liberty in Today's Diverse World*, the HDR 2004 opens up by stating that “[m]anaging cultural diversity is one of the central challenges of our time”.¹ The report supports this contention by drawing on a wide range of examples, from disputes over official languages in Afghanistan and Sri Lanka, to the political representation of ethnic and religious minorities in Iraq and Fiji, to demands for asymmetric regimes of regional autonomy in Quebec and Catalonia, to the competing nationalisms of Northern Ireland, Bosnia-Herzegovina and Cyprus. The report goes further, and offers a particular diagnosis of, and set of solutions for, this phenomenon. In its view, these conflicts flow from a denial of “cultural liberty”.² As the report states, “[p]eople want the freedom to practice their religion openly, to speak their language, to celebrate their ethnic or religious heritage without fear of ridicule or punishment or diminished opportunity”.³ Among the solutions it proposes to counteract the denial of cultural liberty, constitutional

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¹ UNITED NATIONS DEV. PROGRAMME (UNDP), HUM. DEV. REPORT 2004: CULTURAL LIBERTY IN TODAY'S DIVERSE WORLD I (2004).

² *Id.*

³ *Id.*