DRAFT HANDBOOK ON
VALUES FOR LIFE IN A DEMOCRACY

Edited by
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The opinions expressed in this work are those of the authors and do not necessarily reflect the official policy of the Council of Europe
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THE AIMS AND STRUCTURE OF THIS BOOK

Although the International Human Rights instruments which have emerged since 1945 are intended as a check on the actions of governments and can only be used to bring a legal claim against public bodies, they also require states to promote human rights as well as refrain from abusing the rights of their citizens. It is also clear from the preambles to these documents that they are concerned not only with how individual human beings should be treated by the state and other organs of society but also how people should behave towards one another.\(^1\)

However, for this to happen, it is necessary to take steps to ensure that these rights, and the values which underpin them, take a hold in society; that each and everyone of us has a sense of ownership over them and sees them as expressions of the broad principles on which not only public but also private life should be based.

In recent years, a variety of resources have been produced by governments, intergovernmental organisations and NGOs which are aimed specifically at raising public awareness about human rights. Most of these materials are designed to develop young people’s knowledge about their various rights; the key international declarations and conventions; the intergovernmental bodies which have been set up to monitor and protect people’s rights, and the NGOs which also monitor abuses such as Amnesty International and Human Rights Watch. But human rights are framed in an abstract and legalistic language which tends to be remote from people’s experiences of everyday life. In the view of the authors of this current publication, we are all more likely to make connections between the Declarations, Conventions and Constitutions drafted by lawyers and ratified by politicians, on the one hand, and our everyday experiences and dealings with each other if we have a clear understanding:

- of what life can be like when certain rights are denied to some or all of us; and:
- why people have struggled and continue to struggle - to acquire certain rights or to prevent the further abuse of people’s established rights.

This entails a shift of emphasis from the “rights” dimension to the “human” dimension of human rights. As Eleanor Roosevelt, when she was still Chair of the United Nation’s Commission on Human Rights, observed in 1958 in her address to the UN:

“Where, after all, do universal rights begin? In small places, close to home…[T]hey are the world of the individual person; the neighbourhood he lives in, the school or college he attends, the factory, farm or office where he works. Such are the places where every man, woman or child seeks equal justice, equal opportunity, equal dignity without

\(^1\) The necessity of taking steps to build a culture of human rights in each society became increasingly apparent after 1945 as evidence emerged of the extent to which civil society in totalitarian states was penetrated by the organs of repression. For example, in Germany between 1933 and 1945 under National Socialism, hundreds of thousands of people were employed in the agencies which enforced repression; others voluntarily spied on their neighbours and betrayed them to the authorities, ordinary businessmen tendered for contracts to supply equipment to the death camps, travel agencies organised transport to those camps, some medical doctors and scientists ignored their professional codes of ethics to assist in the extermination process, and so on. The involvement of civil society in the organs of repression continued in the occupied states during the Second World War and subsequently in Communist regimes.
discrimination. Unless these rights have meaning there, they have little meaning anywhere”.

So, what we have tried to do here is develop a resource that encourages users to:

- develop their own point of view in relation to other opinions and perspectives;
- think about clashes of values and human rights issues and how they might be resolved in ways that are fair, balanced and proportionate;
- empathise with other people’s points of view (even if one does not agree with them);
- engage in dialogue over disputed issues rather than in monologues based solely on their own point of view or cultural perspective;
- set particular issues and debates into a wider historical, cultural and global context.

There are three main target groups for the resource:

- 16-25 year-olds not only in formal education but also those participating in informal groups within youth work and the voluntary sector;
- professionals working with 16-25 year-olds in these settings;
- those who are involved in the training of these professionals.

The resource itself comprises three inter-related elements: this book, a timeline poster and a series of discussion cards.

The Book

This is structured around Key Questions and Case Studies. The Key Questions approach fundamental issues associated with core European values and universal human rights, particularly when they may be in conflict with each other. The discussion around each Key Question attempts to explore the different positions and opinions rather than promote a specific point of view. For each Key Question, there are also several Case Studies that look at particular events, developments or circumstances where some people have asserted one particular right or value and others have asserted another. The discussion of each case study provides a timeline of the issue, an outline of what is under dispute and a selection of different viewpoints. The objective here is to promote discussion and explore ways in which issues like this might be resolved.

Two other points should be emphasised about the structure and content of the book. First, this book has not been designed to be read from cover to cover. You could begin with any key question or case study although we would suggest that if you are a professional working with groups of young people then it would be advisable to read the introduction before looking at one of the case studies or using the discussion cards. Second, the book is not intended to be comprehensive either in terms of the topics covered or the areas of Europe from which the case studies have been drawn. What we have tried to produce here is a template that professionals working formally and informally with young people in areas like citizenship, human rights education, community education, social education, modern languages, European
studies, life skills, etc could use to develop similar materials around other key questions, issues and case studies.

**The Timeline Poster**

This is a wall chart which, when unfolded, provides a timeline. There are three parallel strands here:

- Important historical developments which have shaped our thinking about the relationship between governments and their citizens, the rights and responsibilities of citizens and the ways in which we should treat each other in our day-to-day relationships. These include the overthrow of tyrants and absolute rulers through revolution and civil war but also demands for the vote by ordinary people, the emancipation of serfs and slaves, the desire to regulate the practice and conduct of war and to prevent the victims of war from being badly treated by the conquerors, and even the desire to protect people, animals and the natural environment from the worst excesses of urbanisation and industrialisation.

- Important developments in our thinking about human rights and core values such as justice and freedom.

- Important international measures (such as Declarations, Conventions, Treaties and Bills of Rights) which have been introduced in order to protect human rights and ensure that some of the worst abuses of human rights will never happen again.

**The Discussion Cards**

This is a series of cards on a range of different issues relating to civil rights, social and economic rights, cultural rights and children’s rights. The cards are designed to introduce discussion on each issue, provide useful background information and different perspectives and points of view. They are designed to stimulate further thought and discussion in a group setting.

Robert Stradling & Christopher Rowe
Strasbourg, 2007
INTRODUCTION: Cultural Identities, Shared Values and Citizenship

Robert Stradling

The Idea Of Citizenship

When we say that someone is a citizen we usually mean that they are a member of or “belong to” a particular state: a citizen of France, a citizen of Romania, a citizen of the Czech Republic, and so on. As a citizen of that state, he or she enjoys the rights and privileges of membership and also the responsibilities and obligations that come with that membership.

It would seem therefore that citizenship is a legal status. But it has never been quite as simple as that. If you are a tourist in another country, you will share many of the responsibilities and obligations of a citizen of that country. You will be expected to obey that country’s laws, recognise the authority of the police and the courts, give evidence in court if you witnessed a crime, not get involved in spying or other activities against the regime, not insult the national flag or other national symbols, and show respect for the culture and religious practices of people who live there. At the same time, as a visitor to that country, you would still expect to exercise many of the freedoms which citizens enjoy, the same right to legal representation if accused of a crime, the same right to a fair trial, the same consumer protection and similar entitlements to medical treatment.

It is clear then that the jurisdiction of the State is applied to everyone who happens to be within its territorial borders regardless of whether or not they were born there and regardless of whether or not they are a citizen of that State. Of course, there are some differences between the rights and responsibilities of the tourist and those of the permanent or long-stay resident in a country. The latter is far more likely to have a job, own property and send their children to school and in return they will be expected to pay taxes and social insurance or social security contributions. They will probably also be entitled to join a trade union or other associations and pressure groups that could protect their interests.

However, unless that long-stay resident in a foreign country becomes a naturalised citizen, they will not have the right to vote in local and national elections and they would not be expected to do military service. This distinction highlights two other criteria of citizenship which are usually introduced into any discussion of what it means to be a citizen: participation in public life and allegiance to the state. The citizen is more than just a subject of the State. The subject also has legal status with rights, privileges and responsibilities that have been granted by the monarch, the dictator or the autocrats who rule the country. But, in other respects, the subject is passive. The citizen, on the other hand, has the right to participate in the decision-making process either directly as in the city states of ancient Greece, or indirectly through elected representatives as in modern mass democracies.

This notion of active participatory citizenship has always meant more than just the casting of a vote in periodic elections. This idea of citizenship in action was probably best described by the Athenian Pericles more than two millennia ago:
“Our constitution is called a democracy because power is in the hands not of a minority but of the whole people. Everyone here is equal before the law, and no one, so long as he has it in him to be of service to the state, is kept in political obscurity because of poverty….. Here each individual is interested not only in his own affairs, but in the affairs of state as well: even those who are mostly occupied with their own business are extremely well-informed on general politics. We Athenians, in our own persons, take our decisions on policy or submit them to proper discussions: we do not think there is an incompatibility between words and deeds, since the worst thing is to rush into action before the consequences have been properly debated”.

Of course, it should be pointed out that the citizenry of ancient Athens excluded women and slaves but, in every other respect, the fundamental principles are there: active participation in public affairs, public discussion and debate before decisions are taken and everyone’s vote counting equally regardless of status or wealth. Undoubtedly, the scope for direct participation in public affairs has become more limited in modern mass democracies which tend to have large state bureaucracies and where the decisions that have to be taken are increasingly technical but, at the same time, the emergence of mass political parties and interest groups, mass media and the Internet have combined to provide new ways of enabling the citizen to participate, exercise influence and engage in the discussion of public issues and policies.

This brings us to the third possible criterion of citizenship: allegiance. When someone seeks to acquire citizenship through the process of naturalisation - in other words, where someone who was born in another country becomes a citizen of the country in which they now choose to live - they are often asked to sign an oath of allegiance to their new country. In becoming naturalised, the immigrant acquires the same political and civil rights and responsibilities as a citizen by birth. In some countries, they even allow their naturalised citizens to have dual citizenship. That is, they are a citizen of the country of their birth (or their parents’ birth) and a naturalised citizen of the country in which they now live.

But this does not always mean that their legal status is exactly the same as the status of a citizen born in that country. For example, if war breaks out between their country of origin and the country in which they are now a naturalised citizen, they may find that some of their rights and freedoms are withheld because the government is not sure about their loyalty. They may, for instance, find themselves arrested and interned as security risks regardless of whether or not they are naturalised citizens in the country in which they now live. It is also the case that, in many countries, naturalised citizenship may be withdrawn if the naturalised citizen commits a serious crime or becomes involved in a plot against the regime. By contrast, in modern times at least, the citizen by birth is unlikely to have his or her citizenship withdrawn whatever crimes they commit, even if the crime involves treason.

Why should the State make this distinction between the rights of citizens by birth (or by descent from parents and grandparents) and the rights of dual citizens and naturalised citizens? Rightly or wrongly, when the State makes this distinction, it is assuming that legal status is not sufficient to guarantee either the good conduct of a naturalised citizen or his or her loyalty to the State. In some circumstances, such as hot and cold wars, international terrorism or conflicts in neighbouring countries, the State - and many of the people who live in it - may begin to question the allegiance of some of its citizens if it is thought that they may have conflicting loyalties.
So what is the basis of that allegiance? In recent times, the bond that has united the citizens of a particular state has usually been their nationality, a common history and shared cultural traditions. It is no accident that the modern idea of citizenship - with its emphasis on rights and obligations – has developed alongside the emergence of nationalism and popular democratic control (the idea that it is the will of the people that gives a government legitimacy rather than God or the regime’s capacity to coerce everyone). In modern times, “the People” has usually meant “the nation” although sometimes it has been used to describe people whose religion or ethnicity has transcended national borders. For example, the term “pan-Arabism” emerged as a reaction against the imposition of territorial borders by colonial powers in the 19th and early 20th Centuries.

It is clear that, when citizenship is linked to identity and cultural heritage in this way, some people will be included and some will be excluded. Is that inevitable or is it possible to also think in terms of a citizenship which is more inclusive, more universalistic?

This is the intention behind the idea of European citizenship. It begins with the question: Can people have a sense of belonging to and identifying with something larger than the nation state? The idea of a united Europe of some kind has been around for over 80 years now. In 1923, Count Coudenhove-Kalergi wrote a book called Pan-Europa which argued for a European Federation. Six years later the French socialist, Aristide Briand, called for a European Federal Union. Although both ideas gained some popular support at the time, the Wall Street Crash, the economic recession and political and international developments in the 1930s which led to war, soon put a stop to any further thinking about federation.

Just after the Second World War, Winston Churchill made a speech in Zurich where he called for “a United States of Europe”. This reflected a view that was growing across war-torn Europe and in 1949 the Council of Europe, comprising 11 member states, came into being, based at Strasbourg. Within a year, it had produced the European Convention on Human Rights and then set about establishing the means by which these rights could be protected, including the European Commission of Human Rights (1954) and the European Court of Human Rights (1959). Whilst these developments did not create a federal level of citizenship or a new kind of transnational allegiance, it did provide the citizen with an opportunity to appeal to the European Court when he or she believed that their universal rights had been denied by their national government or law courts.

The Council of Europe has also played an important role in the promotion of cultural rights, including the recognition of the rights of minority groups, the protection of heritages, the expression of cultural identities and the right of access to other cultural and technological resources. This, in turn, has broadened the context for thinking about European citizenship so that it now includes not only the traditional rights and privileges of the citizen in a democratic state but also the third dimension of the general right to have one’s culture and heritage recognised. In the highly diverse societies in which most Europeans now live, this notion of cultural citizenship could become increasingly important as a means of generating a sense of belonging, particularly amongst groups who often feel marginalised by the dominant cultural groups.

The other key development towards greater European integration in the period just after the Second World War was the growth of economic cooperation within Western Europe which led gradually to the establishment of the European Union. In 1951, six countries set up the European Coal and Steel Community [ECSC] to coordinate production and industrial investment. Six years later, the ECSC became the European Economic Community [EEC]
and, over the 30 years, the membership expanded from six to 12. In 1987, the 12 members of
the EEC signed the Single European Act and the EEC became the European Union [EU]. The
Maastricht Treaty, which was signed in 1991, then paved the way for the enlargement process
through which the former communist states of Central and Eastern Europe could join the EU².

Since one of the four main institutions of the European Union is the European Parliament,
with direct elections held every five years in which the citizens of every member state can
vote and elect their own representatives, there is clearly a potential for the development of a
European citizenship that transcends nationality. However, to date, there has not been much
evidence of this happening on a wide scale. The turnout for European elections is usually low
and the vote often reflects people’s concerns with national rather than European issues and
their attitudes to the national government of the day.

Although there is support in some member states for more political integration - in May
2000, for example, the then German Foreign Minister, Joschka Fischer, argued the case for a
full European Federation with its own government and parliament - there is also widespread
opposition to national governments ceding much more national sovereignty to the institutions
of the EU.

At present, it would seem therefore that most progress has been made in developing the rights
dimension of European citizenship but the evidence of active participation in public life at the
European level is more limited and, as yet, there is little evidence of a clear sense of
allegiance at the European level strong enough to transcend other loyalties, particularly
allegiance to the nation state.

However, this rights-based concept of European citizenship which has emerged since the
Second World War – and which has been expanding to incorporate not only civil and political
rights but also social, economic and cultural rights is interesting for two reasons. First, by
shifting the emphasis from national rights to universal human rights, it has shifted the focus
from citizens as “the people” - or the nation – to citizens as “persons”. Second, it has opened
up the possibility that citizens across Europe might share an allegiance to these human rights
which might transcend national borders.

Furthermore this rights-based concept of European citizenship has not simply been an
academic exercise. One of the core activities of the Council of Europe over the last 50 years
or so has been to elaborate the concept by developing a broad network of so-called “European
standards” through nearly 200 conventions and agreements and hundreds more
recommendations³. Since 1949 these common standards, covering almost all areas of public
and private life and relations between individuals and the state (except in the military and
economic fields) were largely introduced into the legislation and practices of all 47 member
states of the Council of Europe, and, most recently, in the Eastern and South Eastern
European countries since 1989-90.

² A legal definition of European Citizenship within the European Union can be found in Article 17 of
the Treaty establishing the European Community. It states that any person holding the nationality of an
EU member state shall be a citizen of the Union. This entitles that person to move freely within the EU,
vote and stand as a candidate in elections to the European Parliament, petition the European Parliament
and received protection from the diplomatic or consular authorities of any EU member state when they
are in a third country.

³ These recommendations have not been binding instruments on governments but they do represent a
‘common policy’ and the Committee of Ministers asks the government of each member state to ‘inform
it of the action taken by them’ on these various recommendations.
But, even if we assume that the peoples of Europe are aware of these rights and are committed to them, is this sufficient to generate a sense of belonging to a wider European community in the same way that citizens of a nation state feel that they belong to a particular political and cultural community? Or are they too culturally diverse for this to ever happen?

**European Citizenship and Cultural Identities**

For much of the 20th Century, many of the social, ethnic, religious and cultural divisions and conflicts which have shaped the history of Europe were present but hidden – simmering under the surface. This was because their presence was masked by the all-embracing ideologies of the Cold War which dominated international relations and even everyday life. However, some of the old social and cultural divisions reappeared after the break-up of the communist bloc in the last decade of the 20th Century.

At the same time, the rest of Europe was also becoming more ethnically and culturally diverse, partly because of increased population movement within Europe, particularly from east to west, and partly because of increased immigration from outside Europe, particularly from the former colonies after they became independent in the mid-20th Century.

Cultural diversity, in itself, does not necessarily create a problem. Problems arise where:

- The majority feel threatened by the beliefs, values and way of life of a particular minority;
- A minority feels threatened by the beliefs, values and way of life of the majority;
- A minority feels marginalised, and discriminated against or feels that their cultural traditions are not respected by the government or by the majority community;
- A minority seem to exclude themselves and opt-out of any participation in the community.

In these circumstances, governments become concerned about the increasing potential for social tension, even conflict, particularly in Europe’s larger cities where the social and cultural mix often seems to be highly volatile. The issue then is how best to create the conditions which will ensure peaceful and constructive coexistence between the diverse communities in each society.

One response from governments has been to introduce more policies aimed at addressing the social and economic deprivation of the more marginalised minority groups. However, it may also be necessary to examine why these groups appear to be disaffected with and feel excluded from democratic pluralist politics. After all, the basic principle of pluralist democracy is that it is supposed to permit the peaceful coexistence of different interests and convictions within the same political community. Undoubtedly, there is scope for more political reforms to make pluralism more inclusive. Critics point to the fact that some groups find it more difficult to get air time on the mass media to present their case or that the spokespersons who do appear on television are not representative of their communities. They also argue that, in modern pluralist democracies, groups need a high level of resources and organisational skills and a network of connections within the political system in order to exercise any influence over the political process.
Finally, the critics also argue that pluralist democracy emerged at a time when people made a clear distinction between public life and private life. Matters of faith and identity were kept outside the political arena, while the interests competing for influence tended to be social and economic. In a multi-cultural, multi-ethnic society, it may be more difficult to retain that clear distinction between the public and the private and then the question arises as to how effectively the political system can cope with identity politics.

It has also been argued that more inclusive policies and reforms to the political system will not be sufficient to ensure that all people feel a sense of belonging and allegiance to the community in which they now live. This has led to a much greater focus on citizenship education than was the case 25 years ago. But this raises the issues of what will be the basis for that allegiance; what, other than self-interest, would bind people to a community if they do not share the same history, heritage and cultural traditions as the majority of people living there?

Some have argued that citizenship education and the process of becoming a naturalised citizen should inform the newcomer about the community they have joined so that they can become better integrated. Others argue that all of us - and not just the immigrant population - need to be more aware about what it means to peacefully coexist with people from other backgrounds, cultures and traditions.

This brings us back to the issue with which we ended the previous section. Is it possible to shift the focus from “people” to “persons” and generate a sense of belonging or allegiance to a political culture based around universal human rights?

**Human Rights and Core Values**

The only problem with generating a sense of allegiance to universal human rights is that very few rights could be said to be absolute. There are exceptions such as the prohibition of torture and slavery, but generally you will find that the International Conventions on Rights (and most countries’ Bills of Rights) will specify certain conditions where it might be acceptable to deny someone a specific right. Take, for example, freedom of movement. This is a right that all people enjoy who live in the states which signed the European Convention on Human Rights.

However, if there was an earthquake or a hurricane, it would be wholly reasonable for the police to suspend that freedom temporarily to prevent looting, to ensure that no-one else gets hurt, and to enable the emergency vehicles to get access to injured people. Another example might be freedom of association. The right to form a political party, for instance, might be restricted if one of the aims or policies of that party is to abolish all other political parties or associations and create a one-party state. In most countries, we would also expect that some of our basic civil and political rights might be temporarily suspended in times of war or national threat.

There are also lots of circumstances where two or more rights may conflict with each other. The rights of a minority culture to continue its traditions, customs and religious practices may conflict with the rights of an individual member of that group if he or she chooses an alternative way of life or religion. Freedom of speech may not always be permitted if a public speech incites others to attack people because they have different beliefs or belong to
different ethnic group. Similarly, we may not be allowed to say in public what we think if it
libels some other person or offends them.

In everyday life, therefore, we find that we are often being asked to consider the
consequences of our actions before exercising our rights and, if we choose to ignore the
consequences, we may find that we are the object of widespread social disapproval or we may
even find ourselves in the law courts.

Rights tend to be highly specific, relating to particular circumstances and problems. Most of
them, for historical reasons, also relate to the conduct of the state and its institutions towards
its citizens and the citizens of other states. We need to look deeper. We need to look at the
values which underpin these rights, that is, the values which are concerned with:

- How we treat each other, even when there are fundamental differences between us
  and we disagree with each other about many things that we hold to be important.

- How we resolve conflicts and disagreements between us when they arise.

The authors of this book have identified a number of core values which we think perform
these twin functions in everyday life as well as in the way the institutions of the democratic
state are supposed to treat the citizen. We have described them as “procedural values”. We
mean by this term the values that should guide the way we proceed in our dealings with each
other at the level of the individual, the group, the community or the nation.

These procedural values are ethical values and they are also at the core of the practice of
democratic politics. They are the values which enable us to talk to each other, live alongside
each other and try and find compromises and solutions to our common problems without
either resorting to violence or refusing to interact with each other in any way. They are also
the values which enable us to live together even when we fundamentally disagree with each
other on religious, political and ideological grounds.

We have used everyday language to describe them rather than use the more precise definitions
of political philosophy because we believe that they are values which do not just belong to the
political arena. They can also guide the ways in which we relate to each other at every level of
social interaction and communal living. We would argue that the following are the most
fundamental of these procedural values:

**Dignity:** All people have an equal entitlement to respect because of their humanity rather
than because of their importance, status or wealth.

**Reciprocity:** Treating someone else in the same way as one would wish to be treated.

**Fairness:** A way of making decisions or passing judgment impartially, without
discriminating between people who are equally deserving or in need and without knowing
whether the outcome will be to one’s own benefit.
Toleration: The degree to which we accept the right of others to express alternative ideas and opinions which we may disapprove of, without attempting to force them to change their point of view.4

Freedom: To be able to take action for oneself and others and to make choices between real and realistic alternatives without being coerced.

Respect for Reasoning: A willingness to give reasons why one holds a particular point of view and to give reasoned explanations for one’s actions, and also to expect others to do the same.

Respect for Truth: A willingness to be honest and truthful in our dealings with others and to expect the same truth and honesty from them unless they give us good cause to doubt them.5

It should be emphasised that this is not a book about procedural values. The case studies (and the accompanying discussion cards) are intended to encourage the user to apply these values to a variety of issues where human rights conflict. Just as we learn skills by practising them so we acquire these procedural values by practising them.

That is why this book and the discussion cards that accompany it put so much emphasis on exploring alternative perspectives on a range of important contemporary questions and issues. You may have already formed a point of view on some, even all, of these topics. We are not attempting here to persuade you that there is a correct or preferred view on each and every one of these issues. What we do hope is that you will be willing and prepared to test your opinions against those put forward by others who may disagree with you and that you will accept that they hold those views sincerely and may have good reasons for seeing things differently from you. In doing so we hope that you will gain a better understanding of their views and your own.

4 Toleration does not prevent us from expressing our disapproval of certain opinions or from seeking to persuade people to agree with us.

5 We cannot take part in any kind of social interaction, fairly, freely, with toleration and reciprocity, without good faith and that good faith depends on our willingness to be honest and truthful and on the willingness of the others we are interacting with also to be honest and truthful with us. Of course, in public life, there may be certain circumstances where the truth cannot be told (to respect confidentiality, to prevent serious harm being done, etc) but then the reasons for withholding the truth should be capable of being publicly justified and scrutinised.)
**KEY QUESTION ONE: How is the ordinary person to be protected against the arbitrary power of the state?**

Mihai Manea and Christopher Rowe

Democracy is based on the principle that the people hold power over legislators and the government. Power and civic responsibilities are exercised in the name of all citizens, through their freely elected representatives. Democracy is the institutionalisation of individual freedoms. In any democratic state, therefore, while respecting the will of the majority, it is vital to protect the rights of individuals and minority groups. True democracy cannot be based on the “tyranny of the majority”.

Citizens do not only have rights – they have the responsibility to participate in the political system, and to accept the rule of law. In its turn, the State has the responsibility to uphold the rule of law, in accordance with established, open procedures and refraining from the arbitrary use of state power. The history of the last 50 years or so has seen many instances of such arbitrary use of state power and human rights violations; the usual justification for such actions being either the will of the majority of the people, or overriding concerns about national security.

As a result, a tension exists between the agents of the state, claiming the right to suspend civil liberties in the face of emergency situations, as opposed to organisations (both within individual countries and through supranational bodies such as the European Court of Human Rights) set up to defend the rights of citizens and to hold state agencies to account. This tension between state and citizens can be illustrated by some significant examples: the rights of individuals to be exempted from national laws in order to protect their human rights; the treatment of prisoners and terror suspects; and the rights of individuals placed in psychiatric hospitals.

The role of the European Court of Human Rights also illustrates the tension that can exist between national governments and supranational organisations. Set up to implement the principles of the Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the ECHR rules on complaints against human rights violations brought by states, groups or individuals. Its rulings have often shaped the changing relationship between the citizen and the state - often involving matters of religious faith, intellectual freedom and moral philosophy.

The most stark example of the relationship between state and citizens is the question of the rights and treatment of prisoners. It can be argued that prisoners are, by definition, guilty of crimes and have properly been denied their liberty by being locked up – and yet prisoners, being totally under the power of the state, have special rights to be protected. This right to protection is not only against direct physical abuse and bad treatment, it also involves protection from neglect, isolation or loss of dignity.

Many international organisations exist to uphold the rights of prisoners – Amnesty International, the International Convention on Civil and Political Rights, the United Nations Standard Minimum Rules for the Protection of Prisoners, and so on. According to the Universal Declaration of Human Rights, “all prisoners shall retain their human rights and fundamental freedoms”. In other words, being a prisoner does not mean that you cease to be a citizen.

The reality is often different. Conditions of detention vary from country to country, and from facility to facility, but standards are often low. Many prisons are affected by severe overcrowding, decaying infrastructure, poor education and medical care, abuse by guards and
prisoner-on-prisoner violence. In some countries, a culture of secrecy makes it impossible to even determine what the total prisoner numbers are. Sub-standard conditions are often concealed from public scrutiny. There are frequent outbursts of prison violence. Such as the incident in which at least 25 prisoners were killed in a riot at Bogotá’s Modelo prison. In some instances, prison deaths receive little public attention and are regarded almost as routine.

The treatment of prisoners is one of the issues where there is a danger of the “tyranny of the majority” overriding the rights of individuals or minority groups. Public attitudes to prisoners often suggest “they deserve punishment”, or “the money should be spent on more important things”. Such attitudes are often reflected in the treatment of prisoners of war or terror suspects detained without trial. Some argue they are an enemy and a threat – the state “cannot afford” to respect their civil liberties above the safety of the majority. Abuses have occurred without much public outcry. Amnesty International has stated that the treatment by the United States of prisoners detained after the wars in Afghanistan and Iraq, at Guantanamo Bay or at Abu Ghrain, has emboldened abusive regimes and weakened human rights around the world.

There are less dramatic ways of infringing the rights and protection of prisoners. The prison population in many countries includes a higher-than-average proportion of people suffering from tuberculosis, or from AIDS, or from mental health problems, or from drug addiction or from low educational attainment. The responsibility of the state is not only to protect the majority from suffering harm at the hands of criminals – it is also the responsibility of the state to protect the criminals while they are in the charge of the state.

An important aspect of this responsibility concerns people incarcerated in psychiatric hospitals. Even those citizens who are mentally ill continue to be citizens. Patients in psychiatric hospitals, or other similar institutions such as asylums or the mental ward of general hospitals may be there for their own protection, either in the long term because of a permanent condition, or temporarily in the hope of recovery. Equally, they may be held there for the protection of the wider community. There have been several cases in recent years where innocent people have died as a result of violent attack by someone with a psychiatric disorder. It is not always possible to establish the correct balance between the rights of the individual and the safety of the public.

Mental hospitals have existed for centuries. The first known asylum, Bethlem Royal Hospital (“Bedlam”), was founded in London in 1247. For most of Europe’s history, conditions in mental institutions were cruel and inhumane. The mentally ill tend to be regarded with fear and lack of understanding by “normal” citizens. Despite some honourable exceptions, such as Philippe Pinel, the superintendent of the Asile de Bicêtre in Paris in the 1790s, and his assistant, Jean-Baptiste Pusin, mental institutions remained merely repositories for the mentally ill, outside mainstream society.

Another reason for the low priority given to mental health was that inmates of mental institutions tended to be mostly from the lower classes. This is because most were not admitted voluntarily but committed by a court order. State hospital patients tended to be those without status or money; wealthier families were able to provide private care and to avoid the social stigma of being labelled a “public menace”. Only in the later 20th Century, partly as the result of the dissemination of the work of theorists such as Sigmund Freud and his successors, has there been a change in public attitudes – though any such change remains patchy and far from complete.

From the mid-1940s, new methods were invented for treating the mentally ill. This represented progress, in that hopes were raised for curing mental illness and enabling patients to return to a normal life in the community; even though the methods used (such as electric or
insulin shock therapy, and frontal lobotomy brain surgery) are now seen as primitive and barbaric. New psychiatric drugs, such as thorazine, revolutionised patient care and allowed the number of people detained in institutions to be reduced. Along with medical advances, social and political attitudes were altered, for example the “Care in the Community” programme launched in Britain.

Although psychiatric science has advanced, the question of the rights of the mentally ill is still complex and controversial. Can mentally ill people be given treatment, or deprived of their liberty, without giving their consent? Are mentally ill people capable of giving consent in a meaningful way? Should it be the child or the parents who decide whether drugs are used to quieten “anti-social behaviour”? Or does the decision lie with the state?

There are disturbing precedents to suggest that the state cannot, and perhaps should not, be entrusted with such decisions. Totalitarian regimes have employed psychiatric care for evil purposes. In Nazi Germany, mental institutions were used for the repression of political dissidents and “asocial” people. They were deemed insane because of their misguided opinions, or dangerous because they might infect others. From 1939, the Nazi regime began a secret campaign to put to death those who were mentally handicapped and were to be eliminated because they would be a threat to the “biological purity of the race”. Communist regimes also used psychiatric hospitals to deal with political dissidents.

Such abuse of psychiatric hospitals can be very convenient for any state wishing to repress opposition. Sophisticated drugs may be used as a means of interrogation, or in order to destabilise a prisoner’s personality. Labelling people as mentally ill avoids the difficulties of proving guilt at a public trial. It is effective in stigmatising and subordinating opponents. It can be used to keep people locked up indefinitely. And because of these factors, and because there are such examples of the abuse of state power, even the actions of democratic governments can arouse suspicion.

In recent times, some campaigners have advocated the abolition of long-term hospitals for the criminally insane. They argue that the legal defence of insanity should no longer be allowed and that that those currently categorised as criminally insane should be placed either in a regular prison if guilty of a crime; or in a regular hospital if they are innocent victims of illness.

The role of the state in the treatment of the mentally ill remains controversial and difficult. Michael Perlin, an international expert on mental disability law, has said that: “These issues should matter to all citizens who take human rights seriously, and to all who care about those who are still locked away in facilities that violate any sense of public decency. Circumstances I have seen around the world are beyond shocking to the conscience; and this should be puzzling, because psychiatric treatment is medical treatment, supposedly for benevolent purposes”.

The treatment of the mentally ill is just one more example of the difficulties of establishing the ideal balance between the rights of the state and the rights of the individual citizen. The unjustified use of state power can lead to terrible consequences. Innocent individuals and minority groups can lose their liberty, be cut off from friends and family, or be denied the basic rights everybody else can take for granted in a democracy. And yet, the state does carry the responsibility of protecting all its citizens, collectively as well as individually. If a mental patient is placed back in the community and murders an innocent bystander, the state is held responsible. If a terror suspect is let go because there is insufficient evidence for a trial and then blows up 200 passengers on a train, the state is responsible for that, too.

So, setting out the right principles is one thing; implementing them perfectly in a democratic society is something else – especially when governments have to live under the constant
scrutiny of newspapers and the broadcast media who are always full of the wisdom of hindsight. There are no easy answers, except the basic answer that all citizens and all governments should search for the best balance possible between rights and responsibilities.
CASE STUDY 1: The case of extraordinary renditions in the “War on Terror”

Christopher Rowe

Timeline

1993: Islamist militants organised an attack on the World Trade Center in New York. This attack accentuated American concerns about the growing threat from anti-western jihadists.

September 1995: The first known case of rendition was an Egyptian terrorist suspect, Talaat Fouad Qassem, arrested by Croatian police with the help of intelligence provided by the CIA. He was interrogated by American agents on a ship in the Adriatic Sea and then handed over to the Egyptian mukhabarat to be interrogated. His fate remains unknown.

11 September 2001: Nearly 3000 civilians were killed in co-ordinated terrorist attacks on the World Trade Center in New York and other targets in Washington. The Bush administration planned drastic measures to combat terrorism, including the invasion of Afghanistan.

October 2001: Mamdouh Habib, a suspect holding both Egyptian and Australian passports, was detained in Pakistan and then flown to Egypt for interrogation. Later, a private plane flew him to a US base in Afghanistan, from where he was transferred to Guantanamo Bay.

2002: The captured Al Qaeda leader, Ibn al-Shaykh al-Libi, was rendered to Egypt, where he was allegedly tortured. Information gained by his interrogators formed part of the evidence used by the Bush administration to justify the invasion of Iraq.

September 2002: A Syrian-born terrorist suspect, Maher Arar, was seized in New York and flown to Syria for interrogation. After his release, Arar claimed he had been tortured. Later, in February 2005, a Washington Post article about his case aroused a public debate in the US.

February 2003: A terrorist suspect, Hassan Mustafa Osama Nasr, “Abu Omar”, was kidnapped in Milan by Italian agents working with the CIA and flown to Egypt.

December 2003: US agents seized Khalid-el-Masri, born in Lebanon but a German citizen, from a bus he was travelling on in “the former Yugoslav republic of Macedonia”. El-Masri was flown to Afghanistan where he claimed that he was drugged and tortured. There were strong protests on his behalf from the German government. He was released without charge.

7 July 2005: 56 civilians lost their lives after a series of suicide bombings in central London. After the event, the British security forces were widely criticised for perceived failures to gain sufficient intelligence about the bombers to prevent the attacks from taking place.

November 2005: the German newspaper, Handelsblatt, reported that the CIA was using an American military base in Germany for rendition flights without informing the government.

7 July 2006: The Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe published its report and recommendations concerning “alleged secret detentions and unlawful transfers between member states of the Council of Europe”.
10 January 2007: a headline in Spiegel Online announced: “A Milan prosecutor is making the CIA nervous. Despite the opposition of his own government, he wants to indict 26 US agents and five Italian secret agents for the kidnapping of a terrorist suspect, Abu Nasr. Rome and Washington would prefer that the embarrassing trial would just go away”.

June 2007: Dick Marty, Swiss rapporteur for the Council of Europe Committee on Legal Affairs and Human Rights issued his final report on investigations into the involvement of European countries in extraordinary renditions.

What is in dispute here?

The controversy about extraordinary renditions concerns the balance between human rights and the duty of the state to protect its citizens. This controversy includes legal, moral and practical issues. What is the legal status of “extraordinary renditions”? Are they legal under US or international law? Can they ever be morally acceptable? Are they a necessary and effective means of protecting the mass of innocent citizens against acts of terrorism?

It is difficult to disentangle the precise legal definition of “rendition” from its associations with other issues such as deportations or torture. “Rendition” is not new. It means the act of handing over, or “surrendering” a person from one jurisdiction to another – as in extradition, which is an open procedure sending a suspect to a state where he or she has been accused of a serious crime. “Extraordinary rendition” is a secret procedure and does not yet have an agreed definition in international law. “Rendered” persons are often sent to states where there would be no legal basis for extradition. Unlike extradition, the secret nature of renditions means that there is no opportunity for suspects to make a legal appeal against it.

“Extraordinary rendition” is also different from deportation. Persons may legally be deported from a country back to their country of origin for a variety of reasons – but many renditions involve suspects who were captured by agents working in a foreign country; or were sent for secret interrogation not to their home state but to a completely different country. There is also the UN Convention Against Torture stating that suspects should not be deported if they are in danger of being tortured or executed. The controversy about extraordinary renditions has been further complicated by the accusation that renditions are invariably associated with torture.

When the “war on terror” began with the invasion of Afghanistan, the main concern for human rights campaigners was the treatment of “illegal enemy combatants” in the detention centre at Guantanamo Bay. Then, in 2004 and 2005, several reports drew attention to covert rendition flights, and particularly the role of European governments in cooperating with the CIA to allow these “ghost flights” to use European airfields and other facilities to transport suspects to third party countries for special interrogations. Human rights protests aimed at two chief targets: firstly against US actions as morally unjustified and illegal under international law; secondly against the active cooperation with the US by European governments.

In 2004, the British Ambassador in Uzbekistan, Craig Murray, expressed his concerns about rendition flights bringing suspects for interrogations taking place in Uzbekistan. The British government reprimanded Murray for making unauthorised public statements and he resigned in October 2004. In July 2006, the Council of Europe Committee on Legal Affairs and Human Rights issued a report attacking “secret detentions and unlawful transfers of suspects between member states”. In Milan in January 2007, Italian prosecutors began legal proceedings against Italian and American agents for their role in kidnapping and rendition flights. In June 2007, Dick Marty, Swiss rapporteur of the Committee on Legal Affairs and
Human Rights, gave a final report on its investigations, stating that sufficient evidence had been found to prove the allegations of renditions involving European countries were credible.

Human Rights campaigners argue that prosecutions such as the one in Milan are merely small, belated steps towards righting a great wrong. They want more and deeper investigations and maximum public exposure of the findings. On the other side, are those such as Silvio Berlusconi, Tony Blair and governments of some Eastern European states, who believe that only decisive and united action by Europe and the US can win the “war on terror”. For them, investigations into the dark corners of rendition flights are merely a distraction from the vital tasks of defending innocent citizens.

At the heart of the controversy about renditions are moral issues about secrecy, detention without trial and torture. Human rights activists claim that the chief reason why the US renders suspects to “third party” countries is that the intelligence services in those countries use extreme methods of interrogation that would be unlawful, or highly embarrassing, if carried out in the United States; and enable torture of suspects that would be illegal in the US. Defenders of rendition claim it is a totally separate issue from torture; and that it is effective because the questioning of suspects is carried out by interrogators with expert language skills and cultural insights not available in the US.

Another issue is the detention and transporting of suspects in secret without trial. It has long been a key legal principle that those accused or suspected of evil intentions have the right to be charged with a specific crime or released after a limited time under arrest. Accused persons should have the right to a legal representative; and for their friends and families to know where they are. This does not apply to the suspects secretly transferred by rendition flights.

The case against renditions is not only on moral grounds but also on practical considerations. In the past, many suspects have been “interned” without trial – Germans in Britain or Japanese in the United States during the Second World War, for example, or suspected IRA terrorists in Northern Ireland in the 1970s. Such precedents might suggest that internment is invariably ineffective because there were so many instances of people being detained on the basis of unreliable information. In Northern Ireland, for example, internment was credited with gaining many new recruits for the republican cause. Similarly, critics of extraordinary rendition argue that they simply do not work.

They claim many “terror suspects” have been innocent victims of mistaken identity or false accusations. Further, they claim that intelligence gained by extreme interrogations is actually worthless because suspects are driven to confess to crimes they have not committed, or to give information they know to be untrue. One example of this was the capture of an Al Qaeda leader, Ibn al-Shaykh al-Libi, in 2002. He was rendered to Egypt and allegedly tortured there. Information gained from his interrogation was used by the Bush administration to support the case for invading Iraq. Al-Libi later claimed he had made up the “information” about links between Al Qaeda and Saddam Hussein’s regime just to get the interrogations to stop.

It is not unusual to hear some world leaders argue that special measures are effective in the “war on terror” and can be justified by the desperate need to protect people from the unprecedented dangers posed by international terrorism - the human rights of terror suspects must be balanced against the rights of the mass of ordinary law-abiding citizens to live their lives without being attacked by suicide bombers. Legal rights and civil liberties have often had to be curtailed in the crisis situation of war, it is argued – the defence of civilians against acts of terror is equally necessary. But this argument depends above all upon the supposition
that the use of emergency measures like renditions is actually effective in neutralising the terror threat.

The case that renditions and secret detentions are counterproductive even on practical grounds can be extended further. Many observers consider that the use of secret special measures outside the usual judicial system only undermines public support and respect for the law. It weakens faith in democracy, both in the Muslim world and in the West. Such actions may actually create many more new terrorists than would be neutralised by renditions. And yet … such arguments still need to be balanced against the arguments of those who say that the world has changed and that the great majority of ordinary people would enthusiastically give approval to any special measures if it could be demonstrated that those measures had been important in foiling another plot like that of 11 September 2001. Or would they?

Is there an alternative position which does not assume that there is a simple, stark choice between effectively countering terrorism or protecting the human rights of the terrorist? There is no doubt that much work has been done already to develop an alternative position. The Council of Europe Convention on the Prevention of Terrorism, for instance, is based on the principle that it is possible and necessary to counter terrorism while respecting human rights, fundamental freedoms and the rule of law. Some commentators have also argued that terrorism cannot be effectively brought to an end without addressing the issues and concerns which have led people to turn to terrorism in the first place. Other commentators have argued that terrorism is a crime and should therefore be treated like other crimes. This calls for effective policing rather than a large-scale military response. In the following section you will find a range of different views on these issues. Some of these are controversial. Some represent the views of leaders in the countries which spearhead the current “war on terror”. Some represent the views of critics of the position adopted by those governments. What do you think?

A variety of viewpoints

Advice to President Clinton from his Vice-President, Al Gore, during a private White House discussion about the intended abduction of a suspected terrorist and its standing in international law:
“That’s a no-brainer. Of course it will be a violation of international law. That’s why it has to be a covert action. But the guy is a terrorist. Go grab his ass.”

A comment attributed to a former CIA case officer, Bob Baer, in 2006:
“If you want a serious interrogation, you send the prisoner to Jordan. If you want them to be tortured, you send them to Syria. If you want someone to disappear, you send them to Egypt.”

Comments in July 2005 by Craig Murray, British Ambassador in Uzbekistan, from August 2002 until he resigned in October 2004:
“I saw intelligence material passed to the CIA and MI6 by the Uzbek security services. Much of this material I knew to be incorrect. The intention was invariably to exaggerate the Islamist threat in Uzbekistan and to link Uzbek opposition to Al Qaeda. The head of CIA station said the material was probably obtained under torture but the CIA did not see this as a problem.”

An article by David Ignatius in the Washington Post, 9 March 2005:
“In 30 years of writing about intelligence matters, I have never encountered a spook who didn’t realise that torture is usually counterproductive. Professional interrogators know how
people will confess to anything under intense pain. Information obtained under torture thus tends to be unreliable – in addition to being immoral.”

At the end of the same article, Ignatius wrote:
“Before you make an easy judgement about rendition, you have to answer the disturbing question put to me by a former CIA officer: ‘Suppose Mohammed Atta had been captured by the FBI before 11 September 2001? Under US rules at the time, this man who plotted the suicide attacks probably could not have been held or interrogated in the United States. Would it have made sense to render him to another place where he could have been interrogated in a way that might have prevented 9/11?’ That’s not a simple question for me to answer, even though I share the conviction that torture is always and everywhere wrong.”

A report on “Outsourcing Torture” from Human Rights Watch in 2006:
“Even if a person is suspected of being a terrorist, it is illegal to send him or her to a place where there is a risk of torture. Governments are aware of the legal ban on sending suspects to such countries and they seek written guarantees – so-called ‘diplomatic assurances’ that the suspect will not be tortured if transferred. But such guarantees are insufficient.”

The US Secretary of State, Condoleezza Rice, replying in December 2005 to criticisms of US policy:
“Renditions take terrorists out of action. Renditions save lives.”

Jamie Gorelick, a former US deputy attorney general and a member of the 9/11 Commission, attempted to explain the difficulties of finding a fair and effective way of dealing with suspected terrorists:
“It’s a big problem. In criminal justice, you either prosecute the suspects or let them go. We can’t always do that with people who you think may be really dangerous. But if you have treated them in ways that won’t allow you to prosecute them, you end up in this legal no man’s land. What do you do with these people?”

Comments made in January 2007 by a German prosecutor, Eberhard Bayer:
“Of course it is true that we are dealing with big political issues here. But even if a crime is a political one it still remains a crime.”

The view of a former CIA lawyer, John Radsan in 2006:
“As a society, we have not yet figured out what the rough rules are. There are hardly any rules about how to deal with illegal enemy combatants. It’s the law of the jungle. And, right now, the United States is the strongest animal in the jungle.”

The report by the Council of Europe’s Parliamentary Assembly Committee on Legal Affairs and Human Rights in July 2006, concerning “alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states”:
“The Committee has found cause for concern about the conduct of the United States and of EU member states. It recommended the establishment of: common measures to guarantee more effectively the human rights of persons suspected of terrorist offences captured in, detained in or transported through Council of Europe member states; and the inclusion of a set of minimum requirements for human rights protection clauses in agreements with third parties, especially those concerning the use of military installations within the territory of Council of Europe member states.”
What Do You Think?

- If you were the chief legal adviser to the government and you received warnings of an imminent terrorist attack, would you have authorised “special interrogations” of suspects regarded by the intelligence services as possessing vital information?

- If you were a Muslim person of moderate views, how would you react to the news that one of your neighbours had disappeared and was thought to have been transferred abroad by a rendition flight?

- Can it ever be justified to hold prisoners in custody for an unlimited time without bringing them to court?
CASE STUDY 2: When a totalitarian regime is overthrown, should the secret police files be destroyed or should the archives be opened so that society can confront its past?

Mihai Manea and Robert Stradling

Background

Any totalitarian regime wants to control every aspect of everyday life. As human rights activist Rainer Hildebrandt observed in 1948, every communist country required a secret police in order to control the population. Most regimes, including liberal democracies, have intelligence-gathering departments that keep an eye on the activities of some individuals and groups that are considered to be subversive or a threat to national security. The main differences between these organisations and the secret police forces in totalitarian regimes lay in:

- the scale of their operations,
- the extent to which they were constrained by the law,
- the extent to which they were held accountable by the democratic process and an independent judiciary,
- the extent to which their activities are and were limited by the regime’s commitment to individual human rights.

The question of scale is significant here. The secret police in totalitarian regimes cannot function effectively without employing or coercing hundreds of thousands of people to act as its “eyes and ears” – informers prepared to pass on information about the activities and opinions of their neighbours, work colleagues, teachers, even family members. This was not just a familiar phenomenon in Communist regimes. It is believed that, in pre-revolutionary Tsarist Russia, the police had spies in every housing block in St Petersburg and Moscow. The Gestapo adopted similar tactics, both within the Third Reich and in the countries which were occupied during the Second World War.

During the Cold War era two of the world's most feared secret police forces, besides the Committee for State Security (KGB) in USSR, were the GDR's Stasi, and Romania’s Securitate. The Ministerium für Staatssicherheit (MfS), popularly known as the Stasi (from the German word Staatssicherheit or ‘state security’), was the secret police and intelligence organisation of the German Democratic Republic (GDR). Founded in 1950, it was modelled on the Soviet Ministry for State Security (MGB) which preceded the KGB. The Stasi's motto was "Schild und Schwert der Partei" (Shield and Sword of the Party), which demonstrates its connections to the Socialist Unity Party of Germany (SED), the name adopted by the German communists when the Communist Party merged with the Social Democrats in the Soviet zone of occupied Germany in 1946.

The Securitate (the Romanian word for Security) was the secret police force of Communist Romania. Its official name was Departamentul Securităţii Statului (State Security Department). It was officially founded, with close guidance from Soviet KGB officers, on 30 August 1948 to "defend democratic conquests and guarantee the safety of the Romanian Peoples' Republic against both internal and external enemies". In proportion to Romania's population, the Securitate was the largest secret police force in the Communist bloc.
The Stasi had influence over almost every aspect of everyday life in the German Democratic Republic. By 1989, it is estimated that the Stasi had 91,000 full time employees and 300,000 informants. Additionally, Stasi resources were used to infiltrate and undermine West German government and intelligence. In Romania it has been estimated that the Securitate employed about 14,000 full-time agents, plus 400,000-700,000 part-time informants. Although the exact number of collaborators fluctuated throughout the 1970s and 1980s, the figures are high for a country with a population of about 22 million.

Timelines

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<thead>
<tr>
<th>The Stasi in the GDR</th>
<th>The Securitate in Romania</th>
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<tr>
<td><strong>1945:</strong> Defeated Germany divided into four zones of occupation. The Soviet zone includes most of Eastern Germany.</td>
<td><strong>1945:</strong> A soviet-backed government is installed in Bucharest.</td>
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<td><strong>1946:</strong> After the Communist Party did badly in the first post-war German elections, the USSR called on the German Communist Party leader, Walter Ulbricht, to bring about a merger with the Social Democrats in the Soviet zone. This led to the creation of the Socialist Unity Party (SED)</td>
<td><strong>1947:</strong> King Michael of Romania abdicates and the Romanian People’s Republic is proclaimed.</td>
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<td><strong>1948:</strong> USSR cut off all transport links between Berlin and the West. This led to the Berlin airlift to bring in supplies to the Western-controlled sectors of the city.</td>
<td><strong>1948:</strong> The Securitate is formed with guidance from Soviet KGB officers. First Director was General Gheorghe Pintilie (known as Pantiusa) with two Soviet officers as deputy directors.</td>
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<td><strong>1949:</strong> The USA, France and the UK agreed to the creation of the German Federal Republic (FDR) from their three zones of occupation. The Soviets responded by setting up the GDR in the eastern sector.</td>
<td><strong>1951:</strong> An expanded Securitate began to systematically arrest alleged opponents of the regime – “class enemies” - who were sent to special prisons, usually without any warrant, trial or inquiry.</td>
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<td><strong>1950:</strong> Stasi was founded with Wilhelm Zaisser as Director and Erich Mielke as Deputy Director.</td>
<td><strong>1964:</strong> The Romanian government declared a general amnesty and 10,014 people were released from the special prisons. But arrests for “conspiring against the social order” continued. There was a massive increase in the Securitate’s use of informants.</td>
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<td><strong>1953:</strong> Zaisser was replaced by Ernst Wollweber who resigned after four years as Director of the Stasi.</td>
<td><strong>1965:</strong> Nicolae Ceausescu became Communist Party leader and head of state.</td>
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<td><strong>1957:</strong> Erich Mielke became Director and pursued a more active policy of infiltration of West German political and economic circles by Stasi informers and spies. The foreign intelligence section of the Stasi (the HVA) rapidly expanded under its head, Markus Wolf.</td>
<td><strong>1980s</strong> Dissent amongst Romanians became more widespread as the economic situation worsened and people were experiencing food shortages and power cuts. The Securitate launched a major campaign across the country to stamp out dissent.</td>
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6 Source: The Cold War International History Project, Woodrow Wilson Center, Washington DC, USA
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<th>1969: The West German Social Democratic Party (SPD) led by the former mayor of West Berlin, Willy Brandt, came to power in a coalition with the Free Democrats and introduced a policy of Ostpolitik – to improve relations with the Soviet bloc, especially the GDR.</th>
<th>1987: Army forces and Securitate violently broke up workers’ demonstrations in Brasov.</th>
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<tr>
<td>1974: Willy Brandt was forced to resign as West German Chancellor as a result of a spy scandal. It was revealed that one of his most trusted aides, Günter Guillaume, had been passing intelligence back to the Stasi.</td>
<td>1989: Units of Securitate sent to Timisoara in Transylvania to put down demonstrations against government policy. They fired on people and 17 demonstrators were killed.</td>
</tr>
<tr>
<td>1970s: The Stasi was actively supporting left-wing terrorist groups such as the Red Army Faction. They also organised the rescue of Chilean politicians after the military coup d’état which brought General Pinochet to power.</td>
<td>Dec 1989: Events in Timisoara triggered off protests across Romania and led to pitched battles between demonstrators (including soldiers) and the Securitate in Bucharest. The Communist dictatorship of Ceausescu was overthrown; he and his wife were arrested, tried and executed on 25 December.</td>
</tr>
<tr>
<td>1986: Markus Wolf was succeeded by Werner Grossman.</td>
<td>1990: Elections held and Ion Iliescu, leader of the National Salvation Front became the new President. The Securitate was disbanded and replaced by the new Romanian Intelligence Service.</td>
</tr>
<tr>
<td>1989: The Stasi was re-named the Office for National Security.</td>
<td>2003: Romanians voted in referendum on a new constitution in preparation for joining the European Union.</td>
</tr>
<tr>
<td>Sept. 1989: Demonstrations against the GDR regime were broken up by security forces in Leipzig.</td>
<td>April 2005: Romania signed the EU accession treaty</td>
</tr>
<tr>
<td>10 Nov. 1989: The Berlin Wall was opened and 200,000 East Germans crossed into West Berlin.</td>
<td>2006: An official report says that up to two million people were persecuted or killed by the former Communist authorities.</td>
</tr>
<tr>
<td>3 Oct. 1990: East and West Germany were re-united for the first time since 1945.</td>
<td>January 2007: Romania joins the EU.</td>
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**What is in dispute here?**

No one seriously disputes that the secret police in totalitarian regimes have played a significant role in violating people’s civil and political rights and in creating a climate of fear and distrust amongst the population. There was also little dispute within most of the former communist countries about the need to disband the security forces which had served the old regimes, even if they were replaced by new intelligence-gathering organisations.

The issues that divided people at this time, and ever since, were concerned with whether:

- any actions should be taken against the officers who had worked for the security services;
- the files kept on hundreds of thousands of ordinary citizens should be destroyed or scrutinised to identify both the informers and their victims;
- any actions should be taken against people currently in positions of authority who had collaborated with the former regime, particularly with the security forces;
- any actions should be taken against the members of the public who had acted as informers.

These are issues that arise after the downfall of any regime where people’s rights have been consistently violated. There was little debate about what should be done in Germany and Italy after the Second World War. The decisions were taken by the occupying powers although the extent to which former Nazis and Fascists were removed from positions of authority varied, depending on which occupying power was in control. A similar process of dealing with collaborators happened in most of the countries that had been occupied by Axis powers. Perhaps one of the ironies of this in some former communist countries is that the decisions to hand over lists of wartime Gestapo collaborators to the new communist secret police significantly enhanced the power of the latter in the 1940s and ‘50s.

The issue also arose in Portugal and Spain in the period after the dictatorships of Salazar and Franco had come to an end. It then arose again in South Africa after the banned opposition parties were legalised and the African National Congress and the Inkatha Freedom Party cooperated with the Afrikaner-dominated white government to introduce a new multi-racial democratic constitution.

In recent European history, there seem to have been six different solutions to this issue and in some cases post-transitional governments have used a combination of two or more of them, depending on the seriousness of the degree of collaboration. The first of these is “the terror”, characterised by mass arrests, executions, imprisonment without trial or exile. While “the terror” is most commonly associated with the French Revolution, it was also employed with a similar degree of ruthlessness by the Bolsheviks, both against anti-revolutionaries after the Civil War and also against those who they alleged to be opponents of modernisation, even if they were in the Communist Party.

A second option has been criminal prosecutions. Punishments have tended to vary from execution and long prison sentences for the most serious offences to loss of property for profiteers and loss of jobs for minor officials.

The third option - offering unconditional amnesty to all those who held positions of authority under the old regime or collaborated for their own gain or acted as informers - has seldom been employed but it was the option chosen by the first democratically-elected government in post-Franco Spain. This was widely described at the time as the “forgive and forget” option. It was made possible because members of the last Franco government took an active role in negotiating the transition to democracy.

The fourth option – the truth and reconciliation commission - was the one adopted in South Africa after the ANC had come to power through democratic elections. Here Archbishop Tutu and President Mandela played an important role in mobilising public support for this approach rather than vengeance against the former oppressors and their collaborators. The objective here was to bring the victims and the perpetrators together before the commission to talk about what had happened and then to bring about a reconciliation between them.

The fifth option is the one adopted in Greece when the Greek Republic was declared. The files were taken out of the archives and burned in public so that no-one could ever use them to threaten, pressurise or blackmail anyone because of their past.
The final option is the approach which has been widely used in Central and Eastern Europe since the end of communism. This is commonly known as “lustration”. This word is derived from the Latin word “lustratio” meaning purification by religious rites. This word, in turn, is derived from the Latin word “lustro” meaning to review or examine. By the mid-1990s, so-called “lustration laws” had been introduced in the Baltic States, Czech Republic, Slovak Republic, Hungary, Poland, Germany, Romania, Bulgaria, Albania, Russia and Ukraine.

In most of these states, the laws that were passed enabled a government department, parliamentary committee, or independent commission to examine the files in the archives of the secret police, and in some cases the Communist Party, to check if anyone holding or seeking public office had previously worked for the secret police or collaborated with them (or with agents of the Soviet Union) as informers. In some cases, this process has led to someone being prosecuted. In other instances, the named individual has been disqualified from holding public office for a fixed period of time. Most commonly the individuals concerned have been “outed”, i.e. publicly named and shamed but without any further action being taken. Indeed, this has increasingly been used as a potential political weapon by both government and opposition parties. Interestingly, in most Central and Eastern European countries, neither membership of the Communist Party in the past nor the holding of public office under the Communists, has disqualified those individuals from holding public office in the present era.

What have been the main arguments for actions such as lustration and criminal prosecutions to be taken against the informers and collaborators with the old communist regimes?

First, it was argued that although democratic institutions had been established and the new governments had come to power through free and fair elections the state apparatus, the local administrations and the trade unions had remained virtually identical to the bureaucracy that had been in place under the old regime. It was assumed that these people would slow down the reform process, even subvert it.

Second, it was also argued that the lustration process would ensure that the new political elite would also be untainted by the past.

Third, it was argued that it was important that everyone should learn the truth about the past. There were two motives at work here. People had been living under a totalitarian regime which had claimed a monopoly of truth and used censorship, misinformation and the security police to sustain its monopolistic power. It was understandable therefore that ordinary people would want the archives to be opened up so that they could find out who had reported them to the authorities. At the same time, supporters of lustration also argued that there was a right to information issue here as well: the right to know what information about themselves was held on record and the right to know about the background of election candidates before deciding whether or not to vote for them.

Fourth, it was argued that lustration was a necessary process in building up trust in the new regime and in the people who now held high office.

Fifth, it was widely argued that, if the secret files were not opened up and examined and the results of that examination made public, then there was a real risk that some
people seeking public office would be open to blackmail and vulnerable to pressure once they held positions of authority.

Sixth, in some states, particularly those annexed by the Soviet Union (e.g. the Baltic states), lustration was also seen as part of the process of verifying the individual’s loyalty to the post-1989 state, particularly where individuals may have been serving officers in the KGB or other soviet organisations under the previous regime and were suspected of anti-state activities since 1989-90.

Finally, it was also argued that a proper, legal lustration process would calm down the kind of over-heated mutual denunciation by competing politicians which took place in most Central European countries in the first few years after the democratic transition.

What kinds of arguments were put forward by the critics of lustration?

First, in a number of former communist countries purges of the secret police and other departments involved in internal security had been carried out in the months after the transition and before the lustration laws were passed. Whether or not those who remained in the state apparatus would have subverted the democratic process cannot really be answered since not many were removed from office as a direct result of lustration rather than the earlier purges.

Second, since in a number of countries the communist party was not banned and continued to contest elections, and in some cases joined other political parties in coalition governments, it is not clear to what extent the lustration process ensured that political elites emerged that were untainted by the past. Certainly some critics of lustration argue that, in practice, it never served this purpose.

Third, some critics have argued that lustration laws violate people’s human rights. The Helsinki Committee for Human Rights which was originally established to monitor human rights violations in communist countries has argued that no person should be criminalised or punished for an alleged offence committed under the previous regime which was not in fact an offence punishable by law under that regime. This, argues the Committee, would be a case of making something illegal retrospectively, which the various International Conventions on Human Rights regards as a rights violation. They also observed that the lustration process puts the onus on the person who has been indicted to prove his innocence rather than requiring the committee which has named him or her to prove guilt. In their view, it would be extremely difficult, when examining files collected under a totalitarian regime, to draw a clear distinction between the innocent and the guilty in a situation in which many persons might be both.

Fourth, some critics have also argued that it might be very unwise to rely on any files that were produced by security police when the motives of those compiling an individual file were not known. What they are referring to here was the widespread practice of security police inventing negative information about individuals who were critical of the regime or even of a particular policy so that they could be liable to blackmail.
Finally, some critics argued that lustration could undermine public trust in the new democratic regime if they felt that politicians were using the archives to dig up information to discredit their opponents and critics.

A variety of viewpoints

The writer and first President of the Czech Republic, Vaclav Havel, expressed the argument for a lustration process:

“…our society has a great need to face that past, to get rid of the people who have terrorized the nation and conspicuously violated human rights, to remove them from the positions that they are still holding”.

but he was reported later as saying:

“I believe that the call for revealing the names of all those who were somehow connected with the police—regardless of when and why—is very dangerous. This is a bomb that can blow [up] any moment and once again poison the social climate, introduce elements of fanaticism, misdeeds, illegality, and injustice…We must be able to face our past, name it, draw conclusions from it and mete out justice; but this has to be done honestly, with consideration, tact, generosity, and imagination. Those who admit their guilt and expiate should be forgiven.”.

Jorge Semprun, a Spanish author, described why many in post-Franco Spain wanted to put the past behind them:

“If you want to live a normal life, you must forget. Otherwise those wild snakes freed from their box will poison public life for years to come”.

Quoted in Adam Michnik & Vlaclav Havel, Confronting the Past, 1993.

A top-ranking official in the Czech Interior Ministry explained how his office viewed lustration.

“I believe that those who knowingly collaborated, even if they did nothing harmful, even if they were just playing games, should be lustrated…We are attempting some kind of moral cleanup here, to clean the society of those who morally compromised themselves. And one of the criteria we’re using is that people should not have knowingly collaborated with the StB—it’s as simple as that.” (Lawrence Weschler, The Velvet Purge (1992).

The position presented to the Polish Senate was:

“The removal of former agents and collaborators of the security services from important state functions, together with the enactment of legal measures to prevent them from assuming such functions in the future, is a basic requirement of justice and an essential condition for the safe development of democracy in Poland.” (Charles Bertshci, East European Quarterly, XXVIII (1995).

The British historian who specialises in the modern history of Central and Eastern Europe, Timothy Garton Ash, made the following comment about lustration laws:

“After 1989, the (roughly speaking) left-liberal, post-Solidarity leaders advanced several arguments for not making a public reckoning with the communist past, including lustration.
They were initially in a coalition government with communists, who had just peacefully conceded power, and the Red Army was still there. There were more urgent things to do: building a market economy, a liberal democracy and the rule of law. Beyond that, some of them - such as Adam Michnik, the influential Solidarity activist and political writer - argued for doing it “the Spanish way”. Like Spain after Franco, Poland after Jaruzelski should let bygones be bygones. This approach can now be seen to have failed. In fact, about the only place I know where it has succeeded is Spain - and even there, only at a price. In every other country where the nasty past was not confronted, it is still plaguing current politics.”


The academic and former European Commissioner, Ralf Dahrendorf, has suggested that:
“a country following a period of totalitarian or dictatorial rule should first lay the foundations for the future, then turn to tackling the past. First build your liberal democracy, market economy and the rule of law, as West Germany did in the 1950s and Poland in the 1990s; then address the issues of the recent past.”

The International Labour Organization has criticised certain lustration laws on the grounds that they
“may violate fair employment laws, especially if the individual is not afforded the right of appeal before removal from his position.”

Adam Michnik, one of the leaders of the opposition to communist rule in Poland, suggested that:
“it is absurd that the absolute and ultimate criterion for a person’s suitability for performing certain functions in a democratic state should come from the internal files of the secret police”

Joanna Rohozinska, East European Democratic Centre in Warsaw, Poland, also picks up the concern raised by Michnik:
“[What is] puzzling, is the inclination to take ..........files from the former regime in general at face value. While the system was in power, it certainly bred suspicion and distrust of authority, even for those working within it. Why put stock in the products of such a discredited system now?”

She then used the experience of Lech Wałęsa, the Solidarity leader in Poland, when documents were revealed that apparently implicated him as a collaborator with the secret police:
“In Wałęsa's case, the evidence involved questions surrounding the identity of an informant named ‘Bolek’, who worked for the secret services from 1970 to 1976...... During the trial, a SB report from 1985 concerning the fabrication of documents designed to compromise Wałęsa by insinuating connections with the Communist special services was revealed. According to the report, the SB had created false documents for years, including fictitious anonymous information, allegedly authored by Wałęsa under the pseudonym ‘Bolek’ and payment receipts for his services. It was shown that these materials were used within Poland and abroad, and were even sent to the Nobel Peace Prize Committee in 1982 in an attempt to compromise Wałęsa's
candidacy (where they must have had some effect since his candidacy was put off for a year)..... the court cleared Wałęsa”.

**Milos Zeman, in a speech on the lustration process to the Czech Federal Assembly in 1991 emphasised:**

“[If] a candidate runs for public office, his eventual voter has the full right to know all relevant facts about the candidate, and I also consider a relevant fact the information whether he was, or was not a collaborator of StB, whether he has a criminal record, or whether he suffers from unrecoverable diseases. On the other hand, it is the free will of voters whether they will elect such a candidate.”

**In response to criticisms that the motivation behind lustration in the Czech Republic was vengeance, Vojtech Cepí, Justice of the Czech Constitutional Court responded:**

“If revenge had been our motivation, there are more effective ways of going about it that inflict a far greater sanction than symbolic acts of condemnation, lustration and restitution.”

**What do you think?**

Across Europe, from Northern Ireland to Kosovo, people are still trying to come to terms with the recent past and with the terrible things which people have done to each other, regardless of whether they were neighbours, colleagues or holding positions of authority and trust. What should they do:

- Should they, in the name of justice and human rights, throw open the archives and publicly confront the things that people have done to each other?    or
- Should they burn the archives, try to forget what has happened and concentrate on making sure such events never happen again?
KEY QUESTION TWO: Does the state need to protect people from themselves?
Robert Stradling

The state is the political organisation which has a monopoly over the use of legitimate force in a particular territorial area. Today, increasingly, that territory coincides with a geographical area which contains a nation and so we commonly use the term “nation state”. But, historically, that has not always been the case. We have had city states like ancient Athens or medieval Florence. We have had small states ruled by princes or dukes rather than monarchs. Territories have been conquered and ruled by an external power, and some states have created vast empires which needed to be governed. Even today, we can point to some states, mostly former colonies, which contain several large nationalities and where anarchy or civil war is only prevented either because those in power have more weapons and security forces than the others or because the people living in that territory have agreed to some system of government which they feel does not discriminate against some national groups and in favour of others.

In the previous key question, we saw that there has been an ongoing struggle over the centuries between those who have power and those who do not. In many ways, the political history of the world throughout the ages has revolved around that struggle and the successful and unsuccessful attempts by the ruled to protect themselves from the exercise of arbitrary power by the rulers, whether the regime or state was a monarchy or dictatorship with one absolute ruler, an autocracy ruled by an elite or occupying power, a theocracy where the religious clerics made the decisions, or a democracy based on an idea of popular sovereignty where the government in some way represents “the will of the people”.

This notion of popular sovereignty - of government by and for the people – emerged during the Enlightenment and found its first real expression in the period after the French Revolution. By the middle of the 19th Century, more and more people wanted to live in nation states where they could vote for their leaders and these leaders would be representative of people like themselves – same nationality, similar social backgrounds.

Of course, at that time, “the people” did not necessarily mean everybody. It meant those who were believed to have a stake in the political system – the tax payers, the owners of property, farmers, businessmen, factory owners and employers. The kind of state they wanted was one that would keep the national borders secure from any threat posed by foreign powers, protect their property, maintain law and order, keep taxes low and enable them to get on with living their lives and running their businesses with the minimum of state interference. In other words, they wanted the role of the state to be severely restricted.

Mostly they wanted a strict line to be drawn between what they thought was the public sphere of life and what was the private sphere. Issues associated with religion, morality and economics were thought to be private and not the business of the state. But, even then, people tended to be rather ambivalent about this distinction and many would still support legislation that imposed their particular view of morality on the rest of society by, for example, prohibiting prostitution, homosexuality, gambling, blasphemy, and so on.

After the Great War of 1914-1918 and the Russian Revolution of 1917, attitudes towards the role of the state changed once again. When the Tsarist order was overthrown in Russia in 1917, the Russian bourgeoisie hoped that it could be replaced by the kind of liberal,
constitutional state that had emerged elsewhere in Europe in the late 19th Century. However, the chaos of war, the shortage of food and other essentials, the rising cost of everything and the closing down of factories because of lack of raw materials meant that the public mood became more radical and more hostile to a liberal democratic solution to their problems. The main beneficiary of this changing mood was the Bolshevik Party which proposed to end the war, introduce major social reforms, grant land to peasants, hand over the factories to the workers and transfer political power from the bourgeoisie to the workers’ soviets.

The revolutionary mood spread to other parts of Europe, particularly in those countries that had been defeated in the Great War, such as Germany and Hungary. Even in the countries that had been victorious, there was deep resentment and a widespread desire for social and political change. The men who had fought in what many believed was a futile war, and the women who had run the domestic industries during the war, were not prepared to accept the restoration of the old pre-war order. They wanted the vote and other civil and political rights. It is no accident that the right to vote was extended to almost all adults in so many countries during the 10 years after the end of the First World War.

The spread of socialist and communist ideas and the impact of the economic depression in the 1920s and early 1930s meant that many people who had only just gained the right to vote wanted the state to do more to protect people from the effects of poverty, unemployment and ill health. The economic depression that began in the United States and then spread throughout the world between 1929 and 1933 was something for which most liberal democracies were poorly prepared. They had assumed that the state could do very little to intervene in such a situation and that they had to wait for the economic markets to revive and for market forces to resolve the crisis.

However, President Franklin D. Roosevelt came to power in the United States in 1932 with a package of welfare and economic policies – that came to be known as the New Deal - that were designed to intervene in ways that would protect the weak, provide people with work and a minimum wage and stimulate the economy. By the mid-1930s, most western governments were actively intervening in their economies.

That does not mean that more state intervention was universally welcomed. Businessmen, in particular, reacted very negatively to this expanded role for the state. In some countries, they sent their money abroad where they thought it would be safer and, in the United States, business fought every aspect of President Roosevelt’s New Deal programme and officials working for the administration were denounced as crypto-communists (i.e. secretly communist while publicly denying it).

After the Second World War, most of Europe was devastated. More than 30 million people were killed, many others were displaced persons and refugees, there were food shortages and industrial production was only a third of what had been produced annually before the war. Financial assistance from the United States was crucial but European governments also needed to invest in their economies, modernise, provide the elderly and those injured during the war with pensions and introduce some kind of welfare system to guarantee a basic level of health and social security. They went about this process in different ways but it meant that governments of all political persuasions – conservative, liberal, social democrat and communist – had to be more interventionist in social and economic life.

Since that time, the debate about the role of the state and where the dividing line should be drawn between the public sphere and the private sphere – where the state has no role to play -
has continued. Perhaps the most extreme version of this was the emergence of the totalitarian state in the 20th Century. A system of government which shares some common features with dictatorships and autocracies - such as an official ideology, government dominated by one political party and one ideology, a large secret police force and total control of the army. But, in addition, it has some unique characteristics that justify the term “totalitarian”.

Traditionally, the totalitarian state has also sought to infiltrate and control almost every aspect of people’s private lives as well – the workplace, the home, the school, their religious practices and the clubs and associations to which they belong. An earlier chapter looked at how control of the mass media and the role of the secret police and their army of informers are crucial to the continued existence of a totalitarian state.

However, over the last 50 years, we have also seen that not only totalitarian states but also liberal democracies have tended to become increasingly involved in more and more aspects of our private lives than ever before. Probably, most people in liberal democracies now accept that the state should not just be concerned with national security, maintaining law and order, protecting people’s property and ensuring that their civil and political liberties are protected. There is a widespread recognition that the state also has a role to play in meeting people’s needs, reducing poverty and preventing one group from discriminating against other groups on the grounds of race, ethnicity, religion, physical and mental disabilities, gender or sexual preferences.

Most would also agree that the state has a role to play in regulating some of the activities of industry and commerce to ensure that people are not cheated or defrauded when they pay for goods and services and to make sure that the production of goods and foodstuffs does not damage people’s health or their environment. Indeed the International Declarations and Conventions on Human Rights now require all the states who have signed up to them to guarantee a whole range of people’s social and economic rights (as we have seen elsewhere in this booklet).

Pause for a moment and try to draw up a list of some of the different ways in which your freedom of choice has been restricted by legislation. You will probably have thought of laws about, for example, riding a motorcycle without a crash helmet, not wearing a seatbelt when driving in a car, consuming or supplying drugs like cannabis, ecstasy, marijuana and heroin, smoking cigarettes in a public place, getting drunk, parking in an unauthorised place, travelling on public transport without a ticket, having more than one husband or wife, truanting from school, nudity at public beaches, burning the national flag, the practice of prostitution or practising a number of professions, such as the law, teaching and medicine without a licence.

Why has the introduction of such laws been controversial and on what grounds have they been fiercely debated?

The traditional liberal position is that the state has a right to intervene in people’s private lives by prohibiting certain kinds of behaviour if this would prevent Person A from doing harm to Person B but it does not have the right to intervene if the only person likely to be harmed is Person A himself. However, liberals who take this line usually accept that there are certain exceptions to this. For example, it may be legitimate to intervene and prevent Person A from doing something if he or she does not fully understand the risk they may be taking or if they have severe learning difficulties and are not able to understand the risks involved. For similar
reasons, liberals usually accept that there may be circumstances where young children may need to be protected in case they do harm to themselves.

At the heart of this argument is the belief that, wherever possible, the state should avoid intervening in people’s lives. They should be free to exercise their personal autonomy or right to make their own decisions on matters that affect only them (or themselves and their families) and do no harm to anyone else.

However, where you stand on an issue like this rather depends on what you mean by “harm”. In this context, the term “harm” has never been used just to refer to physical injuries. 19th Century liberals expected the state to take action to prevent people from suffering loss through having their property stolen. They also recognised that harm can be done to someone’s reputation if they are slandered or libelled in some way and that laws should be passed to protect a person’s reputation from false accusations and false statements about them.

Being slandered can cause emotional or psychological harm and, in the 20th Century, we have seen the introduction of an additional liberal argument for state intervention. In this case, it would be to prevent offence being given to a particular social group. Most modern liberal democracies now include legislation to prevent people from acting or saying things in ways that are likely to give offence. Usually included here are actions and statements that are racist or sexist or are likely to be offensive to a particular ethnic or religious group.

Some have also argued that there may be circumstances where the state should intervene to prohibit something from happening even though people are not harmed, physically, psychologically or economically, and their personal autonomy is not limited in any way. This is where behaviour is morally repugnant because it violates the dignity of the people concerned.

Think of the case of slavery. The liberal argument for prohibiting slavery is that the slave has no, or very limited, personal autonomy and that there are likely to be circumstances in which the slave suffers harm as well. Now, for the sake of argument, imagine a society in which slavery is still practised, and then imagine a situation in which a poor beggar, living in a society where the rulers still practise slavery, offers himself as a slave in return for a cash payment which he can give to his family to help them. Having gained the trust of his owner he comes to be treated as one of the owner’s family. He eats with them, he is paid for his services and can send this money to his own family. He is not mistreated and he has as much freedom to make decisions about his life as those who work for the owner as freemen and freewomen.

So in this particular situation the slave does not experience any physical or psychological harm as a result of being a slave and has more autonomy to make decisions than when he or she was a poor but free beggar. If asked, this slave would probably say that he was better off now, his family was better off, slavery was his choice and he now has more autonomy than when he was a beggar. So does that make slavery more acceptable? The answer most of us would probably give is that slavery is still morally repugnant because it is a violation of each person’s dignity, even if the slave does not suffer harm or experience any significant loss of personal autonomy.

Are there other actions or circumstances that could also be regarded as morally degrading or repugnant even if the individual person involved is not forced into doing it, is economically
better off as a result and is not offended by the actions which she or he does? Some would argue that prostitution also comes into this category but there does not seem to be the same degree of consensus in society about its prohibition as there is about the prohibition of slavery.

In recent times, there has also been a debate about what is sometimes described as a victimless crime. That is where the state has introduced legislation to enable people to be prosecuted for actions that do no actual harm to others. A typical example that is often given by political activists who fear that people’s freedoms are being eroded is where laws have been passed to enable local authorities to fine people who have parked their cars in unauthorised places. Another example often quoted is legislation requiring riders of motor cycles to wear crash helmets.

The critics have coined the word “paternalism” to describe legislation of this kind. In other words, they claim, the state is treating us all like children who cannot make sensible decisions for ourselves. They would argue that, if a motorcycle rider, who is riding without a crash helmet, has a serious accident, then the only person harmed is the rider and therefore riders should be able to decide for themselves whether or not to wear a helmet.

The counter argument to this is that the situation is nearly always more complicated than the opponents of legislation on crash helmets acknowledge. An accident of this kind will almost always have consequences for others as well as for the rider. There will be the possible trauma of others involved in the accident. There will be the consequences for the rider’s family. Police will be called out to the accident. If the rider is injured, an ambulance will be called as well. Then there will be the cost to the health service if the injured rider requires hospitalisation and an operation. That, in turn, will mean that there is a cost to taxpayers as well. This is known as the “public charge argument” in favour of restrictions on personal autonomy and freedom.

Interestingly, it is rare for governments to be consistent in applying the case for state intervention to prevent people harming themselves. For example, the argument for requiring motor cycle riders to wear crash helmets could also be applied to the smoking of cigarettes. If there is clear evidence that there is a high risk of lung cancer from smoking tobacco, then it could be argued that cigarettes should be banned on the grounds that large numbers of smokers requiring treatment is a major cost to the health service and therefore to tax payers. But, in practice, governments have tended to stop short of banning cigarettes. Instead, they try to discourage people by printing health warnings on each cigarette packet and raising taxes on them to make them very expensive.

Increasingly, governments are also beginning to ban the smoking of tobacco in public places as well as to prevent smokers from polluting the air and possibly increasing the risk of others suffering from what is known as “passive smoking”, i.e. inhaling someone else’s cigarette smoke. Similarly, whilst it is known that eating a lot of food with a high fat content significantly increases the likelihood of heart disease, governments have not considered banning such foods but preferred instead to provide the public with information about the risks involved and leave them to make up their own minds.

One of the reasons why governments can be inconsistent on these issues is that they make a judgment in each case on what is likely to be the public response. There is a recognition that sometimes prohibition can be counter-productive. The obvious example of this is the prohibition of alcohol in the United States in the 1920s. It drove the production and
consumption of alcohol underground and a whole criminal underworld emerged in order to meet the large and increasing demand for prohibited alcohol.

To conclude, then, if we look back at what has happened over the last 150 years, we can see that, in every country, the role of government has expanded enormously. Most people now want a lot more from government and have been prepared to pay a larger proportion of their income in taxes in order to pay for these additional services. What has happened is that the concept of “protection” has evolved. Now we not only want the government to protect us from fear, threat, disorder and crime, we also want to be protected from poverty, homelessness, pollution, preventable illnesses and diseases, and the effects of economic inflation and unemployment. People may still argue about the extent to which people want the state to intervene in their lives but there is no doubt that the principle of some level of state intervention is now generally accepted. Gradually the debate has shifted and focuses increasingly on:

**The limits of state intervention.** Which aspects of our lives are none of the state’s business? Will criminalising certain activities be effective or counter-productive in changing people’s behaviour? How far does one have the right to be different or even to harm oneself? To what extent should people be left free to do what they want if others are not harmed?

**The extent to which we can say that people have actually consented to certain freedoms being restricted.** The idea of consent here is very important since in a democracy the legitimacy of the state is based on the consent of the people. So, if the government party did not say at an election that it would introduce a particular law, and there was no referendum to ask the public if they wanted such a law, then has the electorate consented to it? Some would argue that regular free and fair elections give the government the right to act on our behalf and not seek our permission for every piece of legislation. Others argue that, where a law is clearly controversial, the government needs to consult the public before it acts.
CASE STUDY 3: The banning of tobacco smoking in public places
Mihai Manea and Robert Stradling

Background

Most modern societies have introduced policies of some kind which are designed to restrict the smoking of tobacco. These usually include:

- a tax on tobacco to make cigarettes more expensive and thereby reduce demand and consumption;
- a health warning on packets of cigarettes to inform the smoker of the risk to their health;
- health education in schools about the risks to long-term health of smoking;
- public health campaigns using the mass media;
- a ban on advertising on television and public advertising boards;
- a ban designed to prevent cigarette companies from advertising their products through sponsorship of sporting events.

Increasingly, employers and owners of entertainment and public transport facilities have voluntarily introduced smoke-free spaces or even banned smoking on their premises altogether. However, in recent times, a number of European governments have either introduced or are debating an official ban on smoking in workplaces, offices, public buildings, cafés, restaurants, theatres, cinemas and other public places.

Pope Urban VII issued the world's first known public smoking ban (1590), as he threatened to excommunicate anyone who “took tobacco in the porchway of or inside a church, whether it be by chewing it, smoking it with a pipe or sniffing it in powdered form through the nose”. But, as the timeline below shows, it is only very recently that governments have started to consider more general bans on smoking in public spaces.

Timeline

1 January 2004: The Netherlands banned smoking in certain public areas such as railway stations and offices but, in places such as hotels, bars and restaurants, controls on smoking remained voluntary.

March 2004: Ireland banned smoking in bars, restaurants and enclosed workplaces. People smoking in these places face a fine of up to €300.

5 April 2004: Malta introduced a ban on smoking in public places.

1 June 2004: Norway announced a ban on smoking on the streets and in bars and cafes.

August 2004: Montenegro introduced restrictions on tobacco advertising and banned smoking in public places.

10 January 2005: The Italian government introduced a smoking ban in all enclosed public spaces with a fine of €275 for smokers who ignore the ban.
1 January 2006: Spain banned smoking in offices, shops, schools, hospitals, cultural centres and on public transport. Belgium banned smoking in enclosed workplaces but separate smoking rooms were allowed in catering establishments.

March 2006: Scotland introduced a ban on smoking in public places.

Summer 2006: The Croatian Government announced it would pass a new law banning smoking in public places but later decided a new law was not necessary and that existing restrictions on smoking in workplaces should be enforced more effectively.

5 September 2006: Restrictions on smoking introduced in Luxembourg but separate smoking rooms permitted.

December 2006: The coalition federal government in Germany revised its proposals to ban smoking in public places because they might be unconstitutional. It decided instead to leave the decision to the 16 federal Länder.

January 2007: Ban on smoking in public places introduced in Lithuania.

22 March 2007: Germany’s 16 Federal Länder agreed to ban smoking in restaurants and bars but separate smoking rooms were permitted.

April 2007: Restrictions on smoking in public were introduced in Wales and Northern Ireland. Restrictions also introduced in the Czech Republic.

22 April 2007: The German federal health ministry introduced a bill to ban smoking on public transport and in federal buildings.

1 June 2007: Finland and Iceland introduced restrictions on smoking in public.

5 June 2007: Estonia banned smoking in cafes, restaurants, bars, nightclubs and on public transport. Smokers who ignore the ban face a fine of €80.

16 June 2007: The French Prime Minister announced that a ban on smoking in offices, schools and public buildings would be introduced in February 2008.

July 2007: Restrictions on smoking in public were introduced in England.

What is the issue here?

Three main arguments are usually given in favour of smoking bans. The first is that it would reduce the number of adults suffering from heart disease, bronchitis, emphysema, impotence, lung cancer, arterial narrowing and other diseases caused by smoking. There is often a secondary issue here about the need to reduce the cost of providing health care, particularly where the diseases and health problems are preventable. A second argument frequently given for banning smoking in enclosed public places is that it would prevent non-smokers from having to inhale other people’s smoke. Recent medical research has shown that passive or second-hand smoking (i.e. smoke passively inhaled by non-smokers after it was exhaled by active smokers) causes the same problems as direct smoking, including lung cancer,
cardiovascular disease and lung ailments, bronchitis or asthma. In 2002, a study by the International Agency for Research on Cancer of the World Health Organization concluded that non-smokers are exposed to the same carcinogens as active smokers.

A third argument for smoking bans asserts that restrictions on smoking in cafes, bars, restaurants and other enclosed spaces where the public gather can substantially improve the air quality in such establishments. Some research has also shown that improved air quality results in decreased toxin exposure among employees in offices.

Smoking bans have been criticised on a number of grounds. The most common criticism is phrased in terms of a general dislike of government regulation of personal behaviour. One version of this argument which is frequently expressed in the United States and other countries where there is a long libertarian tradition, such as in the United Kingdom, is that smokers who freely choose to smoke and are harming themselves, have the right to do so, in the same way that they are free to choose to take their own lives. Those who adopt this line tend to argue that the prohibition of smoking creates a “victimless crime”. In order to do this, they usually have to challenge the research on the risks of ill health through exposure to passive smoking.

Another “rights-based” version of the argument against bans on smoking in bars and similar public venues is that it violates the owners’ property rights. Here the argument is that workers and customers who enter a private establishment or household that permits smoking are said to have implicitly consented to the rules set by the owner of the establishment. So, for these opponents of a smoking ban, this is a problem of individual rights, the relationship between the citizen and the state, just as the anti-smoking lobby focus on the rights of the non-smoker to a non-polluted and healthy environment.

Representatives of the tobacco manufacturers and retailers and of the catering and entertainment industries often argue that smoking bans seriously affect their business and hint at the hypocrisy of governments whose revenue is significantly increased through taxation on tobacco products. Indeed, in some countries, it appears that the authorities do little to actually enforce their smoking prohibitions, but continue to profit from tax on tobacco products.

Finally, there are those opponents of smoking bans and other measures to reduce smoking who argue that they are not effective in reducing the numbers of people who smoke. They point to the examples where the percentage of smokers in the population has remained the same or only dropped by a small amount after the introduction of a smoking ban. For example, in Ireland, the proportion of people who were regular smokers remained roughly the same in spite of the ban. Similarly, they point out that the high cost of a packet of cigarettes in Norway and the increase in price by 20% in France in 2003 did not noticeably reduce the numbers of smokers in those two countries.

On the other hand, those in favour of smoking bans and other anti-smoking measures point out that in Italy tobacco retailers experienced a 20% fall in sales of cigarettes after the ban had been introduced. Some researchers have also indicated that there is evidence in some countries, such as the United Kingdom, that bans on smoking in public places may lead to more smoking at home and in the streets and car parks outside cafes, bars, restaurants and workplaces.

**A variety of viewpoints**
Irish Prime Minster, Bertie Ahern, speaking in 2004 about his government’s decision to introduce a smoking ban in public places said:

“Health and quality of life issues are important to people in their place of work….Being in a room in which there are smokers means being exposed to at least 50 agents known to cause cancer and other chemicals that increase blood pressure, damage the lungs and cause abnormal kidney function.”

Dr Peter Maguire, Northern Irish member of the British Medical Association’s Science Committee, referring to the introduction of a smoking ban in Ireland said:

"As an Irishman, who in the name of God would have thought the Irish would be the first in Europe to ban smoking in public places? It's a national hobby in Ireland."

Norwegian Health Minister, Dagfinn Hoybraten, said that a smoking ban is needed in Norway:

“to protect people who work in the catering industry from the effects of second-hand smoke…[The] change was not conceived to reduce smoking, but [he hoped it] would be a positive secondary effect.”

A spokesperson for Freedom2Choose, a pressure group in the UK which has lobbied against a smoking ban, argued that steps could be taken to encourage people to stop smoking without resorting to legislation:

“We are opposed to an outright ban on smoking in public but we’re not opposed on health grounds. Nobody is stupid enough to think that smoking is good for you, but we see a ban as a sledgehammer to crack a nut”.

A spokesperson for ASH, a pressure group which has lobbied for a smoking ban in Scotland, saw the ban as a means of improving everybody’s quality of life:

“Tobacco has done so much damage to Scottish society, these new laws will help us to improve everyone’s quality of life. ASH Scotland strongly endorses this move from the Scottish Executive. It is a bold and radical proposal to find a Scottish solution to a Scottish problem”.

The director of Forest, a pro-smoking pressure group in the UK stated that his organisation would continue to oppose a smoking ban even after it had come into law in Scotland:

“The executive has `decided to snub the silent majority in favour of the vociferous anti-smoking minority…This is not the end of the smoking debate. It has only just begun.”

A nightclub manager in Oslo, contemplating the effect of the smoking ban in Norway, said:

“We hope that business won’t be hit…It’ll take a few months to find out, but the biggest uncertainty is how the law will be applied. Will we lose our licence if someone has a cigarette and we can’t persuade them to stop?”.
A representative of the Scottish Licensed Trade Association, which represents those who are licensed to sell alcohol and food to the public, expressed their concern:

“We’re very disappointed but we’re not surprised. It seems the priorities of the executive are to criminalize ordinary people in pubs instead of tackling real crime in our cities and towns. We will continue to fight this decision. We owe that to the licensed trade, which after today [when the smoking ban came into force] could be decimated.”

A spokesperson for the British Heart Foundation in Scotland said:

“We hope the ban will encourage smokers to give up smoking and significantly reduce their chances of coronary heart disease.”

Evidence of the impact of smoking bans on the catering and entertainment industries has tended to be contradictory.

The Irish Licensed Vintners Association, which represents the majority of businessmen licensed to sell alcohol on their premises commissioned research on the economic impact of the smoking ban on their industry:

“Research carried out by the marketing research company, Behaviour and Attitudes, confirms the negative economic impact of the Smoking Ban on the Dublin licensed trade, with turnover down by as much as 16%, and overall employment levels cut by up to 14% since the introduction of the Smoking Ban.”

On the other hand, research carried out by researchers from Harvard University on the impact of a smoking ban in Massachusetts, USA [introduced in July 2004] found that:

“Analyses of economic data prior to and following implementation of the law demonstrated that the Massachusetts state-wide law did not negatively affect statewide meals and alcoholic beverage excise tax collections.” [i.e. tax revenues increased because sales had increased].

What Do You Think?

Some people say that the role of government is to protect its citizens from the actions of others rather than to protect us from ourselves. Others argue that a range of government measures, including laws, to persuade people to live healthier lives and make safer choices are in the interests of everyone. What do you think?
CASE STUDY 4: The Right to Live and the Right to Die

Mihai Manea & Robert Stradling

Background

The European Court of Human Rights (ECHR) is based in Strasbourg. It was created to rule on alleged violations of the human rights set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the various amendments and protocols that have been added since that time. Although each member state of the Council of Europe can propose a judge to preside at the European Court, they are not there to represent their own countries’ national interests. They are expected to be impartial and independent.

In recent years, more and more European citizens have brought their complaints of alleged violations of their rights to the Court. For instance, in just four months in 2003-2004, the Court dealt with more then 7,300 cases.

The European Court of Human Rights has dealt with many important cases. In 1999, for the first time since the Russian military invaded Chechnya, the Court in Strasbourg agreed to hear cases of violation of human rights submitted by Chechen civilians against the Russian Federation. In 2003 and 2004, the court ruled that “sharia is incompatible with the fundamental principles of democracy”, mainly because the sharia rules on basic women’s rights and religious freedoms violate human rights as established in the European Convention on Human Rights. In 2004, a woman whose pregnancy had been wrongly terminated in a French hospital took her case to the Court after French courts had ruled that the doctor could not be prosecuted for homicide as the foetus did not have a right to life which was separate from that of the life of its pregnant mother. The European Court upheld the ruling of the French courts and set a precedent on the legal status of the unborn baby across Europe. The Court ruled that the accidental abortion of the foetus during an operation on the mother did not constitute manslaughter of the foetus.

This particular case brings us to what is still perhaps one of the most controversial areas of human rights: the right to life. Article 2 of the European Convention on Human Rights states that:

“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of the court following his conviction of a crime for which this penalty is provided by law.”.

As you can see from this, the people who drew up the Convention in 1950 were expected to take into account the fact that a significant number of member states still executed criminals found guilty of murder and treason and their police and security forces carried weapons which they might be expected to use in times of war or self-defence or when trying to arrest a violent criminal or trying to quell a riot or insurrection. Since 1950, public opinion on capital punishment and on the powers of police and security forces has changed. Protocol 6 to Article 2 calls on member states to restrict the use of capital punishment to times of war and national emergency and the more recent Protocol 13 has called for the total abolition of capital punishment, even in wartime. Most European states have agreed to this, but capital punishment has been retained by three of the most powerful states in the world: the USA,
China and the Russian Federation (although in Russia there is a moratorium – or suspension of the death penalty for an agreed period of time - which has been renewed until at least 2010).

In addition to capital punishment, there are a number of other issues associated with the right to life which are proving controversial. These include abortion, medically-assisted suicide, euthanasia⁷ and embryonic stem cell research⁸.

This case study will focus on the ethical debate surrounding the issue of voluntary euthanasia. We will explore the arguments on both sides, as they emerged in the case of a terminally ill British woman, Diane Pretty, who was in the advanced stages of motor neurone disease. She attempted to get legal immunity from prosecution for her husband if he helped her to end her life. Immunity was refused and she appealed to the High Courts and ultimately took her appeal to the European Court. The judges there ruled unanimously that the refusal of the British courts to allow Diane's husband, Brian, to help her to die did not contravene her human rights.

**Timeline of the case**

**November 1999:** Diane Pretty is diagnosed with motor neurone disease, a degenerative illness which progressively affects the muscles causing increasing paralysis as the patient loses mobility in the limbs and difficulties with speech, breathing and swallowing, even though her mental faculties are not affected. There is no cure.

**March 2000:** Diane was confined to a wheelchair.

**June 2000:** Diane’s husband, Brian, wrote to the British Prime Minister asking for a change in the law so that he could assist his wife to end her life once her condition became too bad to carry on and her muscles were so wasted that she could not commit suicide without assistance. The law in the UK is very clear on this. Anyone who helps another to die, even a loved one, would be committing an offence punishable by imprisonment.

**August 2001:** Mrs Pretty wrote to the head of the Crown Prosecution Service which is responsible for reviewing criminal proceedings by the police in England and Wales and which makes decisions on whether or not to prosecute in the most complex and sensitive cases. She asked him to grant her husband immunity from prosecution if he helped her to commit suicide. Her request received public support from a number of civil rights organisations in the

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⁷ **Euthanasia:** sometimes called mercy killing. It describes the act of killing or allowing someone to die painlessly when they are suffering from an incurable and progressively worsening disease or condition.

⁸ **Embryonic stem cell research.** Human stem cells have been used for some time in medicine to test new drugs and to transplant tissues and organs into people whose skin tissue or vital organs have been permanently damaged. But human stem cells require donors and these tend to be in short supply. Embryonic stem cells, as their name suggests, are derived from embryos that were fertilised artificially in a clinic just a few days earlier. Potentially there is no limit to the number of stem cells that could be reproduced in this way. Each cell is capable of long-term self-renewal. Once transferred to a culture dish, they will keep growing and dividing. After a while, they can be clustered with other cells to form different types, such as muscle cells, blood cells, nerve cells, etc that might then be used to treat different diseases. The ethics of doing this and whether or not the 5-day-old embryo is a living thing (which could have developed into a foetus if it had been transplanted into a human uterus has become the subject of a major political, moral and scientific debate).
UK, including Liberty and the Voluntary Euthanasia Society (VES). The Director of Public Prosecutions (the DPP) acknowledged the “terrible suffering” which she and her family were experiencing but said that he could not grant immunity from prosecution to her husband in these circumstances.

31 August 2001: A High Court Judge in England granted Mrs Pretty the right to challenge the DPP’s ruling in the courts.

18 October 2001: Three High Court judges rejected Diane’s appeal that the DPP’s ruling was an infringement of her human rights, particularly her right to self-determination and her right to be protected from inhuman or degrading treatment. The judges rejected her appeal concluding that the UK was not yet ready to accept the idea of assisted suicide.

November 2001: Diane Pretty then took her case to the highest appeals court in the UK but the five senior judges who reviewed her case, confirmed the decision of the High Court. Diane announces that she will now make one last appeal, this time to the European Court of Human Rights in Strasbourg.

19 March 2002: Mrs Pretty was now so ill that she had to travel to Strasbourg by ambulance. Her case was heard by seven Human Rights judges and the hearing lasted 90 minutes.

29 April, 2002 The Human Rights judges announced that they had unanimously rejected Mrs Pretty’s appeal. In their verdict, they acknowledged that “The Court could not but be sympathetic to the applicant's apprehension that without the possibility of ending her life she faced the prospect of a distressing death” but concluded that “to seek to build into the law an exemption for those judged to be incapable of committing suicide [without assistance] would seriously undermine the protection of life…..and greatly increase the risk of abuse”.

3 May 2002: Diane Pretty was admitted to a hospice with breathing difficulties.

11 May 2002: Mrs Pretty slipped into a coma and died at the hospice with her husband at her side. In a statement issued later, he said that “Diane had to go through the one thing she had foreseen and was afraid of – and there was nothing I could do to help.....And then for Diane it was over, free at last”.

What is in dispute here?

Our concern here is only with what is either referred to as “voluntary euthanasia” or “assisted suicide” and applies only to those people whose illness is terminal and who have become so incapacitated that they are no longer physically able to take their own lives but they are still sufficiently mentally competent to express the wish to die (or have made it clear in advance that they wish this to happen once they have lost both their physical and mental capacity to die by their own hand).

In the 1970s and ‘80s, there were a series of legal cases in the Netherlands which led to guidelines being produced in 1984 that removed the possibility of Dutch physicians being prosecuted for euthanasia if the patient was competent to make a voluntary and informed decision to die, the patient’s suffering was unbearable and the physician’s prognosis⁹ was confirmed by another physician.

⁹ Prognosis: forecast of the outcome of the disease.
In 2001, the Netherlands legalised physician-assisted suicide. Since then, around 4000 terminally ill patients each year have requested their doctors to end their lives with a lethal injection that kills in minutes. Similar legislation was introduced in Belgium later in the same year. In Switzerland, there is no law that actually permits assisted suicide by doctors or family members for terminally-ill patients but the authorities generally regard it as a humane action and prosecutions are rare and only where it can be proved that the person helping someone to die has done so for personal gain. There are now a small number of organisations in Switzerland, such as Dignitas, which will ensure that a terminally-ill patient is examined by a doctor to assess their medical condition and then the patient is provided with a cocktail of drugs or pills which will kill them. The death is witnessed by two people and then the authorities are informed of the death.

The case which Diane Pretty and her advisers presented to the judges at the European Court of Human Rights argued that the UK government, by denying her husband immunity from prosecution if he assisted her to commit suicide, was violating five of her human rights.

First, she claimed that the value of personal autonomy or self determination (being able to freely choose for yourself what you do with your life) was fundamental to Article 2 of the European Convention on Human Rights, which guarantees the right to life. If this was the case then, she argued, this should also include the right to end her life when she chose in a manner of her own choosing once this was preferable to carrying on living.

Second, she argued that the UK government was violating Article 3 - which prohibits inhuman or degrading treatment or punishment – because they were condemning her to a prolonged life of extreme pain and intolerable suffering.

Third, because suicide was no longer illegal in the United Kingdom since the Suicide Act of 1961, her right to respect for private life (Article 8) was being violated since she was too ill to be able to commit suicide without the assistance of her husband.

Fourth, Mrs Pretty claimed that her right to freedom of conscience was being violated because she was being prevented from practising her belief in voluntary euthanasia for the terminally ill.

Finally, Diane Pretty argued that she was being discriminated against (Article 14) because, under the 1961 UK Suicide Act, a physically healthy person could legally commit suicide whereas she was not allowed to end her life because she was physically unable to do so without assistance.

Her advisers argued that, in the United Kingdom, there was often a discrepancy between what the Suicide Act of 1961 said and what actually happened in practice. While the Act legalised suicide, it stated that assisting another person’s suicide was a crime to be punished by 14 years imprisonment. At this time, it was common practice in British hospitals for doctors to write “Do Not Resuscitate” [or DNR] on the notes of some patients who were elderly and frail. Others have given terminally-ill patients overdoses of painkillers knowing that this will kill them.

There have also been numerous instances where doctors have switched off life-support machines at the request of patients who were in a permanent coma. And yet, by the year 2000, only one doctor, a consultant rheumatologist, had been convicted of attempting to perform a
mercy killing. He had injected a 70 year-old, terminally-ill patient with potassium chloride which stopped her heart. She was in constant and extreme pain and frequently begged her doctor to end her life. He was found guilty but given a suspended sentence, the Medical Council only reprimanded him and he continued to practise medicine. There have also been several cases where non-medical persons who have ended the suffering of close family members have been charged with murder but juries have been unwilling to convict them.

In response to Mrs Pretty’s appeal, the seven European Court judges ruled that Article 2 of the European Convention on Human Rights had not been violated. That it was “a distortion of language” to argue that the right to life could also include the right “to choose death rather than life”. Whilst acknowledging that without the chance of being assisted to end her life “she faced the prospect of a distressing death”, they did not believe that this meant that the state was making her endure “inhuman or degrading treatment”.

Further, they did not consider that a law “designed to safeguard the weak and vulnerable” and “designed to reflect the importance of the right to life by prohibiting assisted suicide” could be said to violate Article 8: the right to the respect for private life. They also ruled that Diane Pretty’s freedom of conscience had not been violated since Article 9 was not intended to cover every possible action that might be motivated by a belief. Finally, the judges also ruled that the UK Suicide Act of 1961 did not violate Article 14 of the Convention prohibiting discrimination since it was reasonable in drafting a law to include exemptions because of the risk of abuse by those who offer assistance. In short, the Court had more or less ruled that, in certain circumstances, the right to life had primacy over these other rights.

However, the debate continues. At the opposite ends of the spectrum are two positions which are unlikely to find much common ground between them. At one end is the “pro-life” position, adopted by, for example, the Catholic Church, that suicide is a sin and that it is equally sinful to assist someone else to commit suicide. At the other end of the spectrum is the “pro-choice” position: that a person, who is terminally ill, understands the prognosis of their illness and is mentally competent to make a decision should have the right to choose to die with dignity at a time of their choosing and in a manner of their choice. In those circumstances, and in a country where suicide is legal, then, they argue, it would be immoral to use the law to prevent them from being helped to exercise that free choice.

Within the medical profession, there is also a debate going on between those who argue that as doctors they have pledged themselves to do everything possible to sustain life and those who argue that there are circumstances where it would be immoral to prolong the suffering of someone who is, in any case, terminally ill.

However, in the middle of that spectrum are a lot of “grey areas” which people are still debating. For example, those opposed to voluntary euthanasia often argue that modern medicine is so advanced now that no one needs to die while suffering from intolerable pain and distress. The supporters of mercy killings argue that the side effects of such treatments, including nausea, incontinence, permanent drowsiness and possibly, in the later stages, total dependency on a mechanical respirator reduces a patient’s quality of life to the point where it is not really worth living, especially without any hope of improvement.

Some opponents of voluntary euthanasia also challenge whether we can always be sure that a dying person’s request to be helped to die is genuinely voluntary and made by a person who is mentally competent, especially if they are in permanent pain and taking drugs which can leave them mentally confused. In response, the “pro-choice” supporters tend to argue for a
“cooling off” period before the termination of life is permitted in case the individual changes his or her mind. They also argue that people should have the right to make “advance declarations” of what should happen in the event that they later become terminally ill and lose their capacity to make an informed decision.

Some people, particularly in the medical profession, have introduced a distinction between “mercy killing” and “allowing someone to die”, by which they mean not resuscitating someone or switching off a life support system. This is sometimes described as “passive euthanasia”, presumably because the intention is to “let someone slip away” by removing the artificial means of supporting them rather than to actively kill them. However, others have argued that this is a false distinction since either way the intention is still to bring about the end of someone’s life.

Finally, some people argue that, once a society agrees to voluntary euthanasia, even with all the safeguards, it is setting foot on a “slippery slope” that will inevitably lead to non-voluntary euthanasia where the deaths of terminally-ill people will be assisted even if they are not mentally competent or physically able to give their consent. Then, so it is argued, the possibility of euthanasia will be extended beyond the terminally ill to include people in a permanent coma and even those who are severely disabled. Those who favour voluntary euthanasia usually respond to this by questioning why anyone who favours voluntary euthanasia on the grounds that people should have the right to freely choose how to end their lives would be in favour of people being killed even though they had not exercised this choice.

A variety of viewpoints

A member of the UK Voluntary Euthanasia Society (VES) – an organisation set up in 1935 by doctors, lawyers and church representatives – offers a personal view of the case for voluntary euthanasia:

“VES campaigns to put the wishes of terminally ill patients first. A ‘good death’ is one which complements rather than clashes with our vision of ourselves. Because we are all individuals, we must be allowed to make choices about what for each of us, is a good death. This requires a two-way dialogue with our doctors, where our wishes about our own lives are respected. Doctors must realise that, where they are unable to cure, they must offer acceptable alternatives – alternatives which are acceptable to us. The desire to have control over our lives is a fundamental part of our humanity.”

Tamora Langley, quoted on the BBC News website, 19 March 2002.

An alternative position is offered by a spokesman for the Pro-Life Alliance [PLA] – an organisation set up to oppose the legalisation of any medical procedures which terminate life, such as abortions and euthanasia. It has also contested elections as an issue-based political party:

“The drive for legalised euthanasia shares common roots with the legalisation of abortion in 1967” [in the UK]. “Promoters of these practices take a utilitarian view of human life rather than viewing all human life as uniquely created and deserving of absolute respect. We know that, in order to legalise abortion, individuals began by breaking the law in order to change it….We are being ‘softened-up’ by these heart-rending cases” [such as that of Diane Pretty] “in order to achieve a change in the law…..The PLA supports the extension of large-scale funding of hospices that provide care for terminally-ill adults, children and infants. The
science of pain relief within the hospice movement provides the opportunity for dignified death rather than the starving and dehydrating to death via so-called passive euthanasia.”

Mike Willis, Chairman of the Pro-Life Alliance, quoted on the BBC News website, 28 March 2000.

Rachel Hurst, the director of a pressure group, Disability Awareness in Action, welcomed the judgment of the European Court of Human Rights in the Diane Pretty case:
[It would be] “very wrong for justice to say in certain circumstances people can die. It would be a slippery slope and many people who did not want to die could be affected”.

In 2005, a select committee of the British upper parliamentary chamber, the House of Lords, when considering a Bill on Assisted Dying for the Terminally Ill, argued that palliative care for the terminally ill should always be available but some dying patients did not want more care, they wanted an assisted death:

“The demand for assisted suicide or voluntary euthanasia is particularly strong among determined individuals whose suffering derives more from the fact of their terminal illness than from its symptoms and who are unlikely to be deflected from their wish to end their lives by more or better palliative care”.

For the last 10 years, opinion polls have consistently shown a high level of public support for voluntary euthanasia. For example:

A survey carried out in 1996 found that:

“82% of respondents believe people suffering from painful, incurable diseases should have the right to ask their doctors for help to die”.


A National Opinion Poll Survey carried out in the UK in September 2004 showed that:
“82% of British people support a change in the law on assisted dying and 47% would be prepared to help a terminally-ill loved one to die at their request”.

The General Secretary of the Royal College of Nursing [RCN], Beverly Malone, said in September 2004, that the RCN opposed any legislation to permit assisted dying for the terminally ill:

“The RCN policy of opposing assisted dying is crucial to protect the nurse-patient relationship. We know that nurses deliver the vast majority of patient care and are trusted advocates for the people they look after. Anything jeopardising that trust would undermine the foundations of our relationship with patients and could have potentially disastrous consequences for nursing, our patients and their families”.

In 1997, Annie Lindsell, who died later that year of motor neurone disease, went to the High Court in the UK to establish the principle that doctors could legally administer life-shortening drugs for the relief of mental as well as physical distress. She said at the time that:

“The outcome was an important victory for patient autonomy and human rights and hoped it would mean brave doctors would no longer have to fear prosecution by the police.”

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10 Palliative care means treatment that relieves suffering but does not effect a cure.
However, Michele Wates, who has had multiple sclerosis for over 20 years, was concerned about some of the possible implications of legalising assisted dying for the terminally ill:

“As someone with a long-term progressive illness and as a campaigner for the rights of disabled people, I argue that we should regard with extreme caution the language of anti-discrimination, choice and human rights frequently used by those who promote the notion of legalised assisted killing…….If a non-disabled friend, who does not, as far as either of us is aware, have a serious illness, were at some point in the future to become depressed and suicidal, doctors would seek to treat them for depression. If I, as a person with a serious, progressive illness, were to become suicidal, it would be a matter for debate…..as to whether I should be treated for depression or assisted to die at my own request. The difference is that I, unlike my friend, could argue that I was suffering unbearably as a result of my illness and that my illness is terminal. The argument would then come down to whether the professionals concerned agreed with me at that point that my illness is ‘terminal’, that my ‘suffering’ is caused by my illness, and that my suffering is indeed ‘unbearable’. In my friend’s case, there would be no such discussions to be had…..I am seeking to ensure that in the future I will have the same assurance as my friend that, were I to become suicidally depressed, doctors would …treat me for that depression …..rather than seeing it as their task, or even their legal obligation, to assist me in carrying out my wish to die.”


What do you think?

Suppose you were a Deputy in the Assembly or a Member of Parliament and you were approached by a non-governmental organisation [NGO] who wanted you to support their call for legislation to permit medical staff and close relatives to assist a terminally ill person to die without fear of prosecution for murder or manslaughter. How would you respond? What would be the main arguments that you would introduce to support your position.

If you live in a country such as the Netherlands, where legislation already exists to permit voluntary euthanasia, then how would you respond as a Deputy or MP to an NGO that was asking you to support their demand that this particular Act should be repealed and voluntary euthanasia should be made illegal once again.
KEY QUESTION THREE: Do we have the right to freely express ourselves in any way we wish?

Robert Stradling

The simple answer to this question is “Yes”. Unless you are physically incapable of speech or other forms of communication, then there is nothing to stop you saying what you think, and even if you are physically unable to express your opinions, there is nothing to stop you from thinking them. However, what governments and other people with power or authority over us can do is punish people for their opinions, beliefs or ideas after they have expressed them and this may deter many of us from saying what we think.

As a result, the history of the last 500 years or so has been marked by periods when people who did not want to conform to the established beliefs, values and ways of doing things in their society struggled for greater freedom of personal expression. Sometimes these were religious non-conformists struggling against accusations of heresy by the established church. Sometimes they were scientists like Galileo, brought before the Inquisition for claiming that the sun does not revolve around the earth. Sometimes they were artists, writers and performers facing censorship of their work by the state or the church. Often they were political reformers and rebels seeking to limit the powers of authoritarian monarchs and governments.

However, there have been important moments in modern history when the right to freedom of expression captured the imagination of ordinary people as well as political activists. The first period when this happened was in the late 18th Century when there were popular uprisings against despotism and arbitrary rule. In 1776, the 13 American colonies, having fought a war of independence, signed the Declaration of Independence which ended their ties to the British Crown.

Over the next decade, a debate continued between those who wanted some kind of central government that could ensure that the 13 new states could act together to protect themselves from foreign powers and those who feared that central government would restrict the rights and liberties of the individual. Eventually, the US Constitution, which was agreed in 1787 and the 10 amendments to it which were agreed in 1791, guaranteed the rights of the individual to freedom of speech, religion, assembly, a free press, the right to keep and bear arms, the right to trial by an impartial jury, protection from cruel and unusual punishments, and so on.

In 1789, the French Revolutionaries, seeking protection from despotic rulers, published The Declaration of the Rights of Man and of the Citizen, which stated that “The free communication of thoughts and of opinions is one of the most precious rights of man”. The terror which followed the French Revolution eroded many of these rights in practice, especially the right to freedom of speech. Nevertheless, the principle was now established and became one of the cornerstones of the constitutions which were introduced through reforms and revolutions in so many countries over the next 150 years. But, in almost every country, there continued to be a tension between the desire of the state to fully exercise its power and authority and the desire of ordinary citizens to exercise their right to freedom of expression.

At no time was this tension more apparent than in the first half of the 20th Century, when many liberal democracies ruled by constitutionally-elected governments were replaced by
dictatorships and totalitarian governments. The atrocities which happened in two world wars and the deaths of millions in the Holocaust because of their race and the deaths and human treatment of many others in the concentration camps and the labour camps because of their nationality, ethnicity or political beliefs led governments in 1945 to seek a means to prevent these terrible atrocities from ever happening again. In 1948, the Universal Declaration of Human Rights was adopted by the United Nations General Assembly and, two years later, on 4 November 1950, the European Convention on Human Rights was agreed. In Article 10 of that Convention, it stated:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”.

The international conventions and treaties on human rights which emerged after the Second World War can only be directly enforced against governments not individual people. As noted earlier, they were primarily concerned with protecting the individual citizen from corrupt, tyrannical and despotic government. But, over the last century the debate about freedom of expression has also been concerned increasingly with protecting the individual’s right to express unpopular opinions which are contrary to prevailing public opinion. As the 19th Century philosopher, John Stuart Mill, put it:

“If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind”.

This brings us to a very important aspect of the whole debate about freedom of expression. It is not likely that anyone would want to stop someone from expressing the opinion that “flowers are beautiful” or “a walk in the park on a summer’s day is a nice thing to do” even if they disagreed with such views. They simply would not feel strongly enough about such opinions as to want to suppress them. But, if someone said something that was deliberately intended to shock or offend a group of people or they made fun of others’ religious beliefs or way of life, then there is a much stronger likelihood that some of these people who have been shocked or offended might want to stop that person (and anyone else with similar opinions) from expressing his or her views in public. Would they be right to do so?

The traditional liberal position presented by philosophers like J.S. Mill is that the only circumstance in which it would be legitimate to limit free speech would be if the expression of certain opinions might lead to people being harmed and their other human rights being violated. A typical example often quoted here is that it would be a misuse of the freedom of speech if someone ran into a theatre and shouted “Fire”, even though there was no fire, and this then led to mass panic and people were seriously hurt. But we are now used to a number of other circumstances in which most people would think it was right that freedom of speech was constrained. For example, we have laws preventing people from being libelled; laws which make blackmail a crime; laws which prevent companies from lying about their products and laws which prevent them from advertising dangerous products to children.

Most people today would accept that there are legitimate circumstances where freedom of expression could be restricted to prevent harm to others. But people are still divided on some issues. For example, some people argue that pornography should be banned because they believe that those who view it are corrupted by it. Some people would also ban television programmes and films showing acts of violence because they believe that some viewers, especially young people, would copy this violent behaviour. A third issue relates to what is often referred to as “hate speech”. This is where a person or group makes a public speech
designed to stir up hatred against another person or group which could then lead to that person or group being attacked or treated badly or their rights being violated in some way.

The problem with all three issues is that those who have supported restrictions on free speech in such circumstances have found it difficult to establish a clear causal link between the speech or form of expression and actual harm to others. The evidence of people being harmed or corrupted by pornography or violent films is weak and contested by experts. Where it is possible to make a direct link between someone’s speech and harm being done to a group of people, then in most societies there already exists legislation which covers this. It is usually referred to as incitement to violence or riot. The problem arises where people wish to ban all so-called “hate speeches” on the grounds that they might lead to attacks on other people but there is no evidence that such attacks have happened or there is no evidence that the perpetrator of an attack had listened to the “hate speech”.

More recently, some have argued that there are situations where freedom of expression should be restricted not because the expression has led to actual harm being done to someone or some group, but because the expression or speech has caused offence. They recognise that causing offence is less serious than causing actual harm. But, nonetheless, they argue that “offence” could be sufficient grounds for restricting freedom of expression. But what if the people who claim to be offended are simply being over-sensitive? Suppose they claim the right to hold views which are offensive to others but demand that views that are offensive to them are censored? Suppose the views that are claimed to be offensive are held by many other people to be justifiable criticisms?

All societies have some laws which restrict freedom of expression in circumstances where it is widely thought that the expression might give offence. For example, many societies have laws prohibiting blasphemy and sacrilegious acts; i.e. forms of expression which insult or offend someone’s religion and religious beliefs. Most countries stop people from doing things which might be offensive to the majority of people, such as being naked in a public place.

Generally this “offence principle” is only applied in circumstances where offence is unavoidable. For example, a book or a film may be offensive to some people but they do not have to read or view it. It may present more of a problem if the film is shown on television at a time when most people are likely to be watching. So, the decision to limit freedom of expression on the grounds of the offence it causes tends to depend on the context: how many people are likely to be offended, could they have avoided the offensive material, what were the motives of the person who produced that material, and so on. In other words, there is no universal, hard and fast rule about offensiveness. It all depends on the circumstances.

Nevertheless, in most liberal democracies today, some forms of expression have been banned, not because they cause harm or unavoidable offence to some people but because these expressions are not consistent with some other fundamental values in a liberal democracy. For example, there might be a case in a liberal democracy for denying someone an opportunity in public to make a speech which encouraged others to be intolerant of the values and way of life of a minority, or to violate their rights as a citizen in any other way.

Many European states now have laws of this kind. For example, France has laws which prohibit public speech or writings that deny the Holocaust or that incite racial and religious hatred or violence against people because of their sexual orientation. Denial of the Holocaust is also banned in Austria. Germany has restrictions on hate speech, including neo-Nazi ideas. The Parliament of the United Kingdom has also passed laws prohibiting incitement to racial and religious hatred.
Essentially, this means two things. First, it means that, in a liberal democracy, freedom of expression does not have a special privilege that places it above other rights and values. But it is an important right that needs to be protected from those who would seek to deny it to some or all of us. Second, it means that those who wish to either deny freedom of expression to some people on a particular matter or who wish to continue to express their views even if they offend or demean others have to state their case. They cannot simply claim that they have a universal right to do something (whether this is to say what they think or to protect their religious views from being criticised by others). They must convince the rest of us that their claims are more valid than those of the others who oppose them.

The American philosopher, Stanley Fish, has observed that, in a pluralist democracy characterised by a diversity of groups, interests, values and ways of life, “[free speech is] not always the appropriate reference point for situations involving the production of speech”. Wherever the right to say what you think is challenged, then we need to examine the consequences of expressing one’s views or not expressing them and whether or not more is to be gained or lost by preventing these views from being expressed.

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CASE STUDY 5: Free Speech or Religious Offence: The Case of the Danish Cartoons mocking the Prophet Mohammed

Robert Stradling

Timeline of the Issue

July 2005: Danish Muslim leaders met the Danish Prime Minister to complain about press coverage of Islam. The PM, Anders Fogh Rasmussen, responded that the Danish Government cannot tell newspapers what to print and not print.

30 September 2005: After a Danish author, Kare Bluitgen, complained that he was unable to find an illustrator for his book about the Prophet because of the Islamic tradition forbidding the portrayal of his image, the Danish newspaper, Jyllands-Posten, wrote an editorial criticising self-censorship in the Danish media. This was accompanied by 12 cartoons produced by anonymous artists. Some of the images were not particularly critical of Islam, some were clearly provocative, including an image of the Prophet wearing a turban that appears to be a bomb. Other cartoons also associated Islam with terrorism.

17 October 2005: The Egyptian newspaper al Fagr reprinted some of the cartoons and described them as insulting and “a racist bomb”. The paper predicted a public outcry, but there were few protests at this time.

20 October 2005: Ambassadors to Denmark from 10 Islamic countries requested a meeting with the Danish Prime Minister to complain about the cartoons.

December 2005: A delegation of Danish Muslim leaders went to the Middle East to discuss the issue with political leaders and Islamic scholars. At a meeting in Mecca of the Organisation of the Islamic Conference (OIC), concern was expressed at “rising hatred against Islam and Muslims”. The cartoons were described as “desecration of the image of the Holy Prophet Mohammed”.

10 January 2006: The Norwegian newspaper, Magazinet, reprinted the Danish cartoons.

26 January 2006: Saudi Arabia recalled its ambassador from Denmark. Libya closed its embassy there. Boycotts of Danish goods spread from Saudi Arabia and Kuwait to other Arab countries.

30 January 2006: Jyllands-Posten apologised for any offence which the cartoons had caused, having previously refused to apologise. The statement said: “In our opinion, the 12 drawings were sober. They were not intended to be offensive, nor were they at variance with Danish law, but they have indisputably offended many Muslims for which we apologise”. The Danish Prime Minister welcomed the apology but defended the freedom of the press.

1-2 February 2006: Some newspapers in Austria, France, Germany, Italy and Spain reprinted the cartoons.

4-14 February 2006: Islamic protests, including attacks on Danish embassies, took place in Afghanistan, Indonesia, Iran, Iraq, Pakistan, Lebanon and Syria.
17-19 February 2006: 16 demonstrators were killed by police when attacking Christian communities in the Nigerian city of Maiduguri. Police opened fire on protesters and used tear gas to disperse them in Pakistan. Denmark temporarily closed its embassy in Pakistan. Over a period of six months, a total of 139 protesters were killed in clashes with police and security forces, mainly in Afghanistan, Libya, Nigeria and Pakistan.

What was in dispute here?

The controversy started as an attempt by a Danish newspaper to see if Danish cartoonists would self-censor their work for fear of reprisals by Muslim radicals. This took place within the context of concern being expressed by some people working in the Danish media following the murder of the Dutch film maker, Theo van Gogh, and an assault on a lecturer at the University of Copenhagen because he had read extracts from the Koran to non-Muslim students. At first, there was very little interest in the cartoons outside Denmark. It only became an international news story after a group of Danish Muslim leaders went to the Middle East to discuss the cartoons with government representatives there.

The condemnation of the cartoons at the OIC meeting in Mecca, followed by attacks on Danish embassies and the boycott of Danish goods, made it into an international issue and then the cartoons began to appear on the Internet and were reprinted in newspapers in some other European countries. This, in turn led to an escalation in the response by more radical Moslems, who saw the cartoons as yet one more example of a growing tendency in the west since the bombing of the World Trade Center on 11 September 2001 and the subsequent “war on terror” to demonise Islam and to portray Muslims as terrorists.

By this stage, the editors of European newspapers who were reprinting the cartoons were either arguing that this was an important issue about freedom of expression and freedom of the press or they were saying that, while they found the cartoons offensive or distasteful (and would not have done what Jyllands-Posten did in the first place), they were now publishing them because this had become a major international story of great public interest. Some Muslim critics of Jyllands-Posten, particularly of the Sunni persuasion, emphasised that it was blasphemous for anyone to produce an image claiming to be of the Prophet Mohammed. Most Muslim critics, however, concentrated on the “messages” in the cartoons which they perceived to be overwhelmingly insulting to Islam and the Prophet. While a few extremists made death threats against the editor of Jyllands-Posten and the cartoonists and others attacked and burned Danish embassies, others simply called on the Danish Government to disassociate itself from the cartoons and the newspaper which had published them.

As the issue escalated, other western governments began to issue statements. One of the first was the State Department of the US Government which criticised the cartoons as an unacceptable incitement to religious hatred. Others were not quite so openly critical of Jyllands-Posten but tended to adopt the line that freedom of speech and freedom of the press were important rights but they had to be exercised responsibly and, in this instance, they believed that those newspapers which had published the cartoons had been irresponsible in exercising their right to free expression. This, in turn, led to criticisms from some western observers that western governments were not doing enough to defend the rights of freedom of expression and a free press. Interestingly, some Christian groups who had become increasingly concerned about the decline of Christian values in the west and plays, films and
publications which they regarded as blasphemous were sympathetic to the complaints from Muslim groups.

At the same time, divisions also emerged between liberal Muslims, many of them living in Europe, and those who adopted a more traditional, fundamentalist position. In London, for example, in March 2006, there was a march organised by Muslims protesting against the cartoons and a march organised by Muslims who supported freedom of speech.

**A variety of viewpoints about the issues associated with the cartoons**

An extract from the editorial in Jyllands-Posten which accompanied the cartoons:

“The modern, secular society is rejected by some Muslims. They demand a special position, insisting on special consideration of their own religious feelings. It is incompatible with contemporary democracy and freedom of speech, where you must be ready to put up with insults, mockery and ridicule. It is certainly not always attractive and nice to look at, and it does not mean that religious feelings should be made fun of at any price, but that is of minor importance in the present context. [...] we are on our way to a slippery slope where no-one can tell how the self-censorship will end. That is why Morgenavisen Jyllands-Posten has invited members of the Danish editorial cartoonists union to draw Muhammad as they see him.”

Ten Ambassadors from Arab Countries based at embassies in Copenhagen issued a written statement on 20 October 2005:

“We deplore these statements and publications and urge Your Excellency’s government to take all those responsible to task under the law of the land in the interest of inter-faith harmony, better integration and Denmark’s overall relations with the Muslim World.”

The Danish Government responded by letter to the Ambassadors saying:

“...freedom of expression has a wide scope and the Danish Government has no means of influencing the press. However, Danish legislation prohibits acts or expressions of blasphemous or discriminatory nature. The offended party may bring such acts or expressions to court, and it is for the courts to decide in individual cases.”

A Muslim writer based in London, Ziauddin Sadar, drew a parallel between the Danish cartoons and the anti-Semitic images that emerged in Germany in the 1930s and went on to argue that:

“Freedom of speech is not about doing whatever we want to do because we can do it. It is about creating an open marketplace for ideas and debate where all, including the marginalised, can take part as equals.”

The Secretary General of the Arab League, Amr Mousa, also drew a parallel with Anti-Semitism and accused the West of double standards when it came to freedom of expression:
“What about freedom of expression when Anti-Semitism is involved? Then it is not freedom of expression. Then it is a crime. But when Islam is insulted, certain powers …raise the issue of freedom of expression. Freedom of expression should be one yardstick, not two or three.”

The Egyptian Minister of Foreign Affairs, Aboul Ghait, wrote to the Danish Prime Minister and the Secretary General of the United Nations explaining that what was needed was:

“An official Danish statement underlining the need for and the obligation of respecting all religions and desisting from offending their devotees to prevent an escalation which would have serious and far reaching consequences.”

Thomas Kleine-Brockhoff, the Washington Bureau Chief of the German news weekly, Die Zeit, explained his journal’s decision to reprint the Danish cartoons:

“When the cartoons were first published in Denmark in September, nobody in Germany took notice. Had our publication been offered the drawings at that point, in all likelihood we would have declined to print them…out of a sense of moderation and respect for the Muslim minority in our country. News people make judgments about taste all the time. We do not show sexually explicit pictures or body parts after a terrorist attack. We try to keep racism and anti-Semitism out of the paper. Freedom of the press comes with a responsibility. But the criteria change when material that is seen as offensive becomes newsworthy. That’s why we saw bodies falling out of the World Trade Center on Sept. 11, 2001. That’s why we saw pictures from Abu Ghraib. On such issues we print what we usually wouldn’t….To publish, does not mean to endorse. Context matters.”

A State Department spokesperson, Sean McCormack, presented the official line of the US Government on the controversy surrounding the cartoons:

“Anti-Muslim images are as unacceptable as anti-Semitic images, as anti-Christian images or any other religious belief. But it is important that we also support the rights of individuals to express their freely held views.”

A journalist based in the United States, Christopher Hitchens, who tends to write from a right wing, libertarian perspective, responded to the State Department’s statement as follows:

“How appalling for the country of the First Amendment [protecting freedom of speech and the freedom of the press] to be represented by such an administration.”

The French Foreign Minister, Philippe Douste-Blazy, expressed the view that:

“Freedom of expression confers rights, it is true – it also imposes the duty of responsibility on those who are speaking out.”

Maryam Namazie, an Iranian Human Rights activist, now living in Britain, spoke at a rally in London on 25 March 2006 on why she opposed calls to take action against those who published the cartoons:

“Defining certain expressions and speech as sacred is merely a tool for the suppression of society. Saying speech and expression offends is in fact an attempt to restrict it. And of
course what is held most sacred and deemed to offend the most, especially in this New World Order, is criticism and ridiculing of religion and its representatives on earth. Why do it if it offends? Because it must be done. Because ridiculing is a form of criticism, a form of resistance, a serious form of opposing reaction……..It must be criticised and ridiculed because that is how, throughout history, society has managed to advance and progress.”

However, the author of a biography of the Prophet Mohammed, Karen Armstrong, took a different view of how the modernising process takes place:

“Each side needs to appreciate the other’s point of view. I think it was criminally irresponsible to publish these cartoons. They have been an absolute gift to the extremists - it shows that the West is incurably Islamophobic……On the other hand, in a secular Europe, freedom of speech has developed as one of our sacred values. We fought hard for it, but we have to remember it carries responsibilities. For example, do we have a right to say whatever we want even if it is false and dangerous? We are seeing here a clash of two different notions of what is sacred and this is part of the modernising process.”

What Do You Think?

- If you had been the editor of a European newspaper, would you have published the Mohammed cartoons or would you have regarded it as irresponsible?

- Do we have an obligation to think about how our opinions might offend someone else before we express them publicly or is it more important that people say what they think regardless of the offence it causes and the consequences that may arise?

- Was the reaction to the cartoons in parts of the Muslim World understandable and reasonable given the offensive and insulting nature of the content or was it out of proportion to the offence?
CASE STUDY 6: The right to march to commemorate one’s cultural history: the case of Northern Ireland

Robert Stradling

Timeline:
The events in Northern Ireland over the 40 years of “The Troubles” (beginning in the late 1960s) cannot be understood without taking a long time perspective.

15th-17th Centuries: Henry VIII, King of England, after a military occupation of Ireland, also named himself King of Ireland in 1534. His successors continued to increase their power in Ireland mainly through giving land to English Protestant settlers. Attempts to establish Protestantism in Ireland led to frequent revolts by the Irish Catholic population.

1685-1690: After James II became King of England and Scotland in 1685, growing popular dissatisfaction with him and his Catholic supporters led English Protestants to invite Prince William of Orange to take the throne. James II fled to Ireland and organised a Catholic army to support his claim to the British throne. Many Protestants, especially in the north of Ireland supported William of Orange. In July 1690, William’s army defeated James’ army at the Battle of the Boyne just north of Dublin. This battle is still commemorated today on every July 12th when the Orangemen (as the Ulster protesters who supported William called themselves) march throughout the province to mark the decisive defeat of James II.

18th Century: During this period, a series of laws were passed that disadvantaged Catholics in Ireland – they could not hold public office, vote or serve as members of parliament, enter the legal profession, carry weapons, etc.

1801: An Act of Union was passed which abolished the Irish parliament and formally united Ireland with Great Britain to become the United Kingdom.

19th Century: Throughout the 19th Century, there were Irish protests and revolts because of a series of famines and because many Irish tenants were evicted from their homes by English landlords and forced to emigrate to the United States, Canada and Australia.

1888 –1914: In the second half of the 19th Century, there was a growing movement in Ireland for self government (or “Home Rule”). After two unsuccessful attempts to introduce legislation for Irish Home Rule in the British Parliament, a third Home Rule Act was approved by Parliament in 1912. In January 1913, the Protestant Ulster Volunteer Force (UVF) was formed to use force to resist the changes that had been introduced.

1914 – 1920: In 1913, many Irish Catholics formed the Irish Volunteers (IV) to counter any use of force by the UVF. In 1916, some members of the IV proclaimed an Irish Republic and seized Dublin’s General Post Office. Fighting between the IV and British forces lasted five days. The rebel volunteers surrendered but those who had taken part in the Easter Rising came to be known amongst the Catholic supporters as the Irish Republican Army (IRA). In May 1916, 15 of the captured rebels were executed, the others were imprisoned.

1920 –1922: The British Government divided Ireland into two areas (partition) and introduced a separate parliament for each. The parliament in Dublin served 26 Irish counties, mainly in the south and mainly Catholic. The parliament in Belfast served six northern
counties, where the majority of Protestants lived. The 26 counties formed the Irish Free State. The other six counties remained in the United Kingdom. Violence broke out in the north as Catholics showed their opposition to partition. As British forces left Ireland, a year-long civil war broke out within the Irish Free State between those who supported partition and those who wanted a united Ireland.

1968-69: In reaction to ongoing discrimination against Catholics in Northern Ireland a Civil Rights Association was formed which was influenced by similar developments by black activists in the USA at that time. Several civil rights marches were held which were broken up by the police with excessive force. In 1969, the marches organised by the Protestant Orange Order, used by some to also express their opposition to the civil rights movement, led to riots and also to counter-demonstrations. The Northern Ireland Government called for British troops to be sent in to put down the riots. Barricades were set up in the Catholic area of Derry and, to avoid bloodshed, the British troops took no action to remove them. The barricaded areas came to be known as “no go areas”. At the same time, the IRA split into two factions: the Official IRA and the more hardline Provisional IRA.

January 1972: A march organised by the Civil Rights Association to protest against the introduction by the British Government of internment without trial for para-militaries was held in Derry although it had been banned by the government. British soldiers manned barricades to prevent the march accessing the city centre. In a confrontation the troops opened fire and killed 14 protesters. This came to be known as “Bloody Sunday”. After this, Catholic support for the Provisional IRA increased dramatically and soon after the Northern Ireland government was suspended and the province went back to being ruled directly from London.

November 1974: The Provisional IRA launched a bombing campaign in Northern Ireland and in the rest of Britain and the British government responded by introducing a Prevention of Terrorism Act which allowed suspects to be detained without charge for up to seven days. This was followed throughout the 1980s by protests and hunger strikes by IRA prisoners. More violence broke out in the province by both the IRA and Ulster Loyalist groups such as the UVF.

1996 – 1998: Peace talks were held, chaired by the US Senator, George Mitchell, and eventually the IRA announced a ceasefire and, after prolonged discussions, a Peace Agreement was reached at Easter 1998 which was supported by a large majority of the electorate in a referendum.

1997: Because one of the main sources of tension between the republican nationalists and the loyalists were the marches and parades through the other community’s area to commemorate key events in their history the British Government set up the Parades Commission, a quasi-judicial organisation, to decide whether or not restrictions should be imposed on any marches or parades.

What was in dispute here?

The roots of the bitter troubles which have so affected people’s lives in Northern Ireland over the past 40 years are deeply buried in Ireland’s past: the seizure of land in Ireland by Norman-English nobles in the 12th and 13th Centuries; the divisions which emerged after the English Tudor monarchs claimed the throne of Ireland and then encouraged English protestants to settle there to help control the Catholic Irish population; the later wave of settlement by
Scottish Protestants in the province of Ulster in the north of Ireland; the defeat of the Catholic King James II in 1690 at the Battle of the Boyne, 20 miles to the north of Dublin, by the forces of the Protestant Prince William of Orange who had supplanted James on the British throne; the centuries of anti-Catholic discrimination which then followed; and the division of Ireland into two parts in 1922, with six counties remaining in the United Kingdom and the others forming the Irish Free State which later became the Republic of Ireland.

All these events and developments contributed to the emergence of two communities in Northern Ireland with very different world views: the majority (but only in the north) who were Protestant, pro-Unionist (i.e. supporting the Union with the rest of the United Kingdom) and loyal to the British crown; and the minority (but part of the majority in the rest of Ireland) who were Catholic, republican and Irish nationalists who believed in a united Ireland.

For over 300 years, these two world views have influenced where people live, worship, go to school and university, work and meet, and, in the last 100 years, they have also strongly influenced how they vote and who they vote for. As the BBC Ireland correspondent, Dennis Murray, once put it:

[The victory of William of Orange in 1690] “was more than 300 years ago but might as well be the day before yesterday in Northern Ireland terms”.

Marches and parades have long been a way in Northern Ireland through which the past has been commemorated, particularly by the Protestant loyalists (the Catholic nationalists have also used marches as a form of protest). Every year, for example, the Orange Order, with a membership of over 75,000 protestants, organises marches around the “The Twelfth” to commemorate William of Orange’s victory on 12 July 1690 and other significant events in Protestant history, such as the apprentice boys of Derry closing the city gates against James II’s army.

Throughout the winter, the Orange Order Lodges drill and rehearse for the marching season in July, when thousands of men dress up in their best dark suits, bowler hats, furled umbrellas and orange sashes and march behind a pipe and drum band, singing traditional Ulster Protestant songs such as “The Sash My Father Wore” and “The Billy Boys”, along a route which had been decided as long ago as the late 18th Century.

In 1996, one of the oldest parades, first held in 1807, became a flashpoint which led to trouble across the province. For many years, the Portadown Orange Order had marched from its Lodge in the town centre out along the Obins Road to the parish church in the village of Drumcree and then returned to the town centre along the Garvaghy Road. Protestants saw the march as a traditional expression of their culture while most Catholics either ignored the parade or went on holiday for the weekend. But attitudes hardened in the 1960s. Until then the Garvaghy Road had been a country lane but, in the late 1960s, a housing estate was built along the road with homes for about 6,000 people, mostly Catholics. The Obins Road had also become a predominantly Catholic residential area.

At the same time, Catholic frustration against the discrimination they were experiencing boiled over into protests and then violence with paramilitary activity intensifying on both sides. During the height of the troubles, the march continued but with a massive police and army presence and opposition from the nationalists. In 1996, the Catholic residents of Garvaghy Road and Obins Road expressed again their demand that the Orange march should be re-routed to avoid their estates and this time the police agreed and laid down an alternative route for the march both to Drumcree Church and back into Portadown. A security cordon was placed across the Garvaghy Road to prevent the marchers from entering but loyalist groups attacked the police and this also sparked off trouble elsewhere in Northern Ireland.
As a direct result of the violence and ongoing tension, the British Government in 1997 set up the independent, non-governmental quasi-judicial organisation in Northern Ireland called the **Parades Commission**. It was given the power to set conditions on any parade or march if it was anticipated that it could lead to disorder, conflict or tension in the area where it was planned to take place. Any decision which is taken by the Parades Commission is legally binding on the marchers and their organisers and on the residents of the areas where the marchers are due to parade.

The Parades Commission upheld the decision to ban Orange marches along the Garvaghy Road. Each year, since then, the organisers of the parade seek permission to march along their traditional route and each year the Commission refuses permission. Each year, the marchers leave Drumcree Church and march down the hill to a bridge which leads to Garvaghy Road and there they are stopped by the security forces.

Since 1997, the Parades Commission has also re-routed marchers elsewhere in Northern Ireland or introduced other restrictions. Their decisions have often been seen by one side or the other as contentious. Perhaps one of the most controversial of these was a parade in the Whiterock area of West Belfast which, traditionally, had involved the Orangemen marching from the loyalist Shankill Road through a barrier in Workman Avenue – which separated the loyalist community from the nationalist community and then along the mainly nationalist Springfield Road.

The Parades Commission decided in 2005 to prevent the Orange Order from gaining access to the Springfield Road and this led to police officers being fired on and attacked with petrol bombs and blast bombs. It was also followed by rioting and violence in loyalist and nationalist areas across Belfast. The total cost of the disturbances was estimated to be €4.5 million. In 2006, the Commission decided to allow just 50 marchers from one Orange Lodge to parade down the Springfield Road while the rest of the parade would go through the alternative route used in 2005. Although this decision was criticised by some loyalists and nationalists, the parade passed off peacefully.

When marches or parades are disputed, both sides assert that their rights are being infringed. Those who want to march claim that it is part of their right to assemble, their right to freedom of expression, and their right to freedom of thought and religion. At the same time, people who do not want marches or parades to pass through the community where they live claim the right to freedom from intimidation and harassment and the right to privacy. In situations like this, any human rights documents such as the European Convention on Human Rights and the UN International Convention on Civil and Political Rights can provide a framework for debate but do not, in themselves, provide a solution.

The Northern Ireland Parades Commission suggests one possible way of trying to resolve conflicts such as this but its effectiveness depends on both the will of the community as a whole to accept a compromise and a perception on both sides that the Commission is impartial and independent from interference by government and representatives of all sides.

**A variety of viewpoints about the issues**

The leader of the Social Democratic Labour Party in Northern Ireland (which gets most of its electoral support from the Catholic nationalist community) gave his view in 1994:

“People [in Northern Ireland] don’t march as an alternative to jogging. They do it to assert their supremacy. It is pure tribalism, the cause of troubles all over the world.”
Drew Nelson, The Grand Secretary of the Orange Order in Northern Ireland and a member of the Northern Ireland Assembly, gave a different perspective:

“The marches are a celebration of our continued survival as a community in this island and of our freedom to express our culture in this way.”

The Chairman of the Northern Ireland Parades Commission, Roger Poole, gave his reasons for continuing to restrict the Orange Order parade in Portadown as follows:

“It is our hope that an accommodation can be reached in Portadown which will bring long-term stability……Currently, we believe that a parade along the Garvaghy Road may serve to destabilise the situation in that area. We are committed to facilitating a process of dialogue and mediation which I genuinely believe can help resolve this long running issue.”

A spokesperson for the nationalist Garvaghy Road Residents’ Association, whilst welcoming the Commission’s decision to continue to restrict the route of the Orange Order march in Portadown, still questioned the neutrality of the Commission in 2006:

“Few, if any people, expected the present commission to overturn almost eight consistent rulings prohibiting Orange marches from Garvaghy Road…..However, this decision does not alter the fact – the widely held view amongst the nationalist community, that this Commission is clearly imbalanced in terms of make-up and representation.”

In 2005, the Deputy Leader of the Democratic Unionist Party, Peter Robinson, publicly stated that unionists should not support the Parades Commission:

“This unelected and unaccountable Quango11 has made inconsistent determinations, punished those who obey the law by banning their parades and thus rewarded those who engage in violence and has encouraged dialogue and then thrown it back in people’s faces.”

A spokesperson for the Orange Order, when asked about the violent response by loyalists to the Parades Commission’s decision to stop marches from going down the nationalist Springfield Road in West Belfast in 2005, said:

“It’s the frustration of Protestant people as to what they can do to have their ordinary voice heard. We just feel so frustrated that there is a cultural veto through the Parades Commission for the republican, nationalist community.”

After the 2006 parade in the Whiterock area of West Belfast passed off peacefully, some community representatives welcomed the new spirit of compromise and conciliation but others, whilst relieved that the previous year’s violence had not been repeated, still believed that their side had had to make more concessions than the other:

Tommy Cheevers, a member of the North and West Belfast Parades Forum said:

“If we can achieve a peaceful summer we’ll have played our part…One side cannot have a veto and it has to be done in a spirit of compromise and accommodation, it can’t be just one side’s story told here.”

The leader of the Ulster Unionist Party, Sir Reg Empey, responded:

“Congratulations are due to a number of people whose work has contributed to a peaceful Whiterock parade which….could result in a peaceful summer for 2006.”

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11 A Quango is a quasi-autonomous non-governmental organisation – a term often used by critics who believe that a certain NGO is not impartial and has been set up to do the government’s bidding.
Drew Nelson, spokesperson for the Orange Order, talked of Protestant concessions:
“It was a hard decision …to limit the numbers [of marchers] walking through the Workman Avenue gates on to the Springfield Road, but nevertheless [the Orange Order was] prepared to make sacrifices”.

Tom Hartley, Sinn Fein councillor in Belfast (i.e. the party with the strongest nationalist support), saw the Parades Commission’s decisions as biased:
“It will not be lost on the wider nationalist community that, in the first test for the Parades Commission, which of course includes Orange Order members and sympathisers, they have decided to directly reward last year’s violence and intimidation with a parade along the Springfield Road.”

What Do You Think?
Are there any circumstances where a community – whether it represents the majority or a minority - should NOT be allowed to exercise its cultural rights by publicly celebrating its history and cultural traditions?

Would you hold the same opinion on this issue regardless of whether the community wishing to celebrate its history and cultural traditions was the majority or a minority?

If the minority in question are people who were born outside the country (or whose ancestors came from another country) wished to celebrate their cultural traditions by marches and public events AND some representatives of the majority population did not approve of this, should they still be allowed to go ahead with their march?
KEY QUESTION FOUR: Does everybody have the right to live where they wish?

Christopher Rowe

The simple answer to this question would seem to be “Yes”. It can be argued that it is a basic human right to be left alone to live in peace in the place you regard as home. It is plainly wrong to force people to leave their homes and to deny them the right to return there. Democratic societies always have the responsibility to ensure freedom of movement and freedom from fear. And yet the issue is not a simple one. Most legal rulings have derogations to allow for special circumstances\(^\text{12}\). There are also many important practical and moral factors limiting the freedom to live where you choose. Above all, there are conflicts between rival freedoms – when one person’s choice of where to live involves the denial of the same choice to others.

The history of the last 500 years or so has been marked by many instances of people being uprooted from their homes as the result of violence that was either ordered by the government or was something that was allowed to happen because the government was guilty of failing to protect its citizens. The Jews were expelled from Spain by government decree in 1492. Many of their descendants were expelled once more when their new home, Salonica, came under Nazi rule after 1941. Many Huguenots were forced to emigrate from 17\(^\text{th}\) Century France. Petty criminals were transported to Australia from 18\(^\text{th}\) Century Britain. Tsarist Russia sentenced thousands of prisoners to be sent to Siberia. Stalin later sent millions to the gulags. In the 1940s, Stalin forcibly deported whole communities such as the Crimean Tartars.

More than five million European Jews died in the Holocaust. Millions more were forcibly displaced from their homes and fled elsewhere. 700 000 Palestinians were forced into exile after the formation of the state of Israel in 1948 – 50 years later, there were nearly four million Palestinian refugees claiming the right of return. In the Balkan Wars of the 1990s, huge numbers of people became victims of “ethnic cleansing”. The so-called Marsh Arabs of southern Iraq were deliberately displaced by Saddam Hussein’s policy to drain the marshes that were the basis of their existence.

The moral lessons to be drawn from cases such as these seem to be clear-cut. The people who were displaced were being denied their basic freedom to live where they wished, along with other basic freedoms such as religious belief and cultural identity. It seems easy to identify the innocent victims and to condemn the evil perpetrators.

However, there have been important moments in history when displacement has been accidental and where the moral position is less clear.

At the end of the Second World War, for example, millions of refugees moved westwards as the Red Army invaded Germany. The political borders of the Soviet Union and Poland were moved far to the west and many ethnic Germans became homeless. After the changes in Eastern and Central Europe in 1989, it was difficult to argue that the right of these ethnic Germans to return to their old homes should override the rights of the Polish people who had been living there for two generations. In the same way, the strong moral case in favour of a safe national homeland for Jews conflicts directly with the rights of displaced Palestinians.

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\(^{12}\) The term ‘derogation’ is used where a law, regulation or legal ruling does not apply under certain specified conditions. For example, a government may sign an International Agreement or Convention which states that people cannot be detained indefinitely without trial but there may be certain exceptions, such as the internment of foreigners from a country with which the host country is at war.
It is also true that governments can sometimes have valid reasons to force people to move against their will – to make way for something that will benefit the wider community, such as burying a valley under a new reservoir, or demolishing houses to make way for a new road or for vital new housing development. In such cases, it is plainly important to balance the rights of individuals or small groups against the rights and economic interests of the majority. There cannot be an absolute right to stay where you have always lived; or to go back to the home from which you or your forbears were displaced.

Equally, it is not possible to claim an absolute right to choose to move to make a new home elsewhere. The core of the problem is the conflict between the rights of incomers and the rights of those already living there. Sometimes when such conflicts arise from ideas of “civilised” peoples colonising “primitive” lands, there is an obvious conflict between people claiming the same land. One example of this is the settlement of the American West in the 19th Century by pioneers (many of them escaping from persecution) at the expense of the indigenous American Indians. Another is the displacement of the aboriginal people of Australia to make way for British settlers.

Both these examples reveal the ways in which moral perceptions change over time. When the flood of immigration into Australia and the American West began, most Europeans believed that the settlers were bringing the benefits of modern progress to “empty” or “backward” territories. In recent times, there has been much greater appreciation of the rights and values of indigenous peoples; and much more criticism of the harmful consequences of their displacement.

Other issues are less clear-cut but nonetheless difficult to resolve. Some places have to be protected from the undesirable effects of development and population growth. This can apply to historic towns, or areas of outstanding natural beauty, or nature reserves protecting wildlife. Sometimes, governments restrict the influx of people because of worries that too rapid population change might lead to social tensions.

Most people today, therefore, would accept that there are legitimate circumstances where freedom of movement could be restricted to prevent harm to others. But people are still divided on some issues. For example, international law requires that asylum-seekers must be accepted and absorbed into democratic societies and many people would argue that there is a moral imperative to protect innocent victims from persecution. However, others, including some European governments, claim increasingly that it can be difficult sometimes to differentiate the genuine asylum seeker from the economic migrant who claims to be fleeing persecution. They usually go on to argue that immigration must be strictly controlled in order to prevent excessive social and economic pressures on the host communities from destroying social cohesion. These issues are made more complicated and more intense by questions relating to ethnic and cultural differences.

Many people argue that the traditional approach to asylum-seekers was based on relatively small, and thus manageable, numbers; and belonged to a time when it was much more difficult to travel vast distances. In recent times, they argue, the mass movement of refugees caused by regional wars, as well as the much greater ease of international travel, has produced a situation in which it is simply not possible to extend protection to all those under threat. This problem has been intensified by the emergence of illegal trafficking of people by unscrupulous organisations.

As we have already seen, the debate about asylum-seekers is also bound up with economic migration. The vast gulf between wealthy and poverty-stricken societies means that there is a huge and growing number of economic migrants willing to take great risks in order to gain jobs and homes in affluent developed economies. Many people claiming to be asylum-seekers
are actually pursuing economic advancement – they will travel through many countries where they could be safe in order to reach the destination they feel would provide the maximum economic opportunity.

Economic migration is a classic example of the balance between the rights of the individual as against the rights of the community. Many economists argue that economic migrants invariably bring benefits to the societies that accept them. The dynamic economic growth of the United States in the second half of the 19th Century and the first half of the 20th Century is one example of this. The growth and economic success of the European Union owes much to freedom of movement.

Yet arguments such as this do not lead to the conclusion that people have an absolute right to live where they wish. Rather, they suggest that a balance exists between those wishing to move and those considering whether or not to receive them. Almost all governments have established systems to manage the process of economic migration. These systems include quotas to limit overall numbers; and differentiation between prospective migrants according to the skills that are needed most.

There are also sensitive political difficulties. Questions of immigration are easily mixed with questions of ethnic or cultural differences. Those opposed to immigration are frequently accused (sometimes but not always justifiably) of doing so for motives based on prejudice and discrimination. This has made it very difficult for politicians and journalists to address immigration policies because of the dangers of becoming accused of xenophobia.

One particular issue concerns the right of the host country to deport illegal immigrants and failed asylum-seekers, who frequently appeal against their removal and claim protection under the European Convention on Human Rights. Such appeals are often lengthy, expensive and politically controversial. In recent years in Britain, for example, influential pressure groups have emerged. On one side, human rights groups speak up for the rights of those facing deportation; on the other, Migrationwatch UK campaigns for tougher controls and for Britain to opt out of the ECHR. Similar concerns about immigrants possibly undermining social cohesion have been expressed in France, Spain and Italy.

This brings us to a very important aspect of the whole debate about freedom of movement and the right to live where you choose. In an ideal world, it would be relatively easy to agree on the general principle that people should be left alone to live in peace and should have the freedom to travel in peace. It can be claimed that:

“Everyone has the right to freedom of movement, without interference by public authority and regardless of frontiers”.

But there are clearly practical considerations that make this principle impossible to sustain. The rights of one individual or group cannot be upheld always and everywhere, regardless of circumstances. It can be claimed that:

“If all mankind wished to live in the most beautiful place in the world, it would lose its beauty and become despoiled by overcrowding, pollution and conflict”.

It would appear that defining the right to live where you wish, as with so many rights, can only be based on a balance between rights and realities. Most people would agree that individuals should be able to live in their own way wherever they wish. But most people would also agree that it is the responsibility of governments to ensure economic prosperity and social cohesion. Striking the right balance between the rights of the individual or of minority groups on the one hand, as opposed to what might be the “tyranny of the majority” on the other hand, remains endlessly complex and difficult to achieve.
Essentially this means two things. First, it means that, in a liberal democracy, freedom of movement and residence does not have a special privilege that places it above other rights and values. But it is an important right that needs to be protected from those who would seek to deny it to some or all of us. Second, it means that those who wish to deny freedom of movement have to prove their case. Governments and pressure groups cannot simply claim that they have a universal right to remove people or to prevent them from moving to new homes because they feel like it, or because their country is “full”. They must provide convincing, valid reasons for denying the rights of others.

References


CASE STUDY 7: Political refugees or economic migrants? Europe’s changing response to immigration

Robert Stradling

Timeline:

1st Century AD: Failed rebellions against the Roman Empire led to many Jews fleeing their homeland and settling round the Mediterranean and in Central and Eastern Europe

1492: Jews were expelled from Spain after the Christian Reconquista.

1618-1648: The Thirty Years War sharply reduced the population of Northern Europe and left millions seeking refuge from devastation.

1845-1847: Famine in Ireland caused mass emigration. During the next fifty years, millions of economic migrants left Europe for North America and other overseas destinations.

c1890-1914: Political and religious persecution in Central and Eastern Europe caused mass emigration of Jews and other groups of religious and political refugees.

1914–1920: The First World War caused enormous migrations of people. Many soldiers were trying to get home and millions of civilians, forced from their homes by the fighting, had become refugees. The Russian Revolution in 1917 and the collapse of the Ottoman and Austro-Hungarian empires also added to the millions on the move.

1921-1923: The League of Nations, established by the Peace Conference after the war, set up the High Commission for Refugees led by the Norwegian polar explorer, Fridtjof Nansen, to assist the many Russian, Armenian, Assyrian, Turkish and Greek refugees who were displaced by war, revolution and the political changes which were taking place immediately after the war.

1930: The High Commission for Refugees was replaced by the Nansen International Office for Refugees. It introduced the international Nansen Passport for refugees and stateless citizens and, in 1933, persuaded 14 of the League of Nations member states to sign the Refugee Convention – the first attempt to establish international human rights on the treatment of refugees.

1933-1939: The rise to power of the National Socialists in Germany led to a rapid increase in refugees and this led to the League of Nations creating a special High Commission for Refugees coming from Germany in 1933. The scope of the High Commission was extended to Austria and the Sudetenland late in the 1930s.

1938–1939: Hundreds of thousands of Spanish Republicans fled to France after being defeated by Franco’s Nationalist forces.
31 December 1938: The Nansen Office and the High Commission were replaced by the Office of the High Commissioner for Refugees.

1939-1945: By the end of the war, Central and Western Europe was full of refugees. Many were soldiers and prisoners of war trying to get home. But even more were civilians fleeing the invading forces and national minorities leaving the countries they had settled in before any reprisals were taken against them. In all 50 million people were left homeless by the war: of which 25 million were in the USSR and 20 million in Germany.

1943: The Allied forces created the United Nations Relief and Rehabilitation Administration (UNRRA) to provide help to the refugees and displaced persons in the areas being liberated from control by Axis forces.

1945-1947: United Nations established. In 1946, the UN set up the Commission on Human Rights which, a year later, produced the UN Declaration of Human Rights. The International Refugee Organization (IRO) was set up by the UN to finish the work of the UNRRA in resettling European refugees after the war.

1947: The partition of the Indian sub-continent into India and Pakistan created 18 million refugees as Muslims living in the new India were exchanged with Hindus and Sikhs living in the new Pakistan. Twenty-five years later, many Bengalis rebelled against Pakistani rule and over 10 million Bengalis sought refuge from the fighting in neighbouring India.

1948-1949: The proclamation of the State of Israel led to the first Arab-Israeli War and led to hundreds of thousands of Palestinians seeking refuge in neighbouring Arab states. Many of their descendants still live in the refugee camps that were created in 1948. Before 1948, there were over three quarters of a million Jews living in Arab states, descendants of people who had lived in the region for over 2,500 years. After the first Arab-Israeli War, many of them also became refugees.

14 December 1950: The UN set up the Office of the High Commissioner for Refugees (UNHCR) to take over the work of UNRRA and the IRO not just in Europe but around the world. The work of the UNHCR continues today.

1950-1953: The Korean War created over one million refugees.

1951: The UN issued the UN Convention Relating to the Status of Refugees (the Geneva Convention) which established the circumstances under which a person qualified as a refugee and proclaimed the rights which accompanied that status.

1960s: Thousands of non-Communist Chinese migrated to Hong Kong.

1975-1980: When South Vietnam fell to North Vietnamese communist forces, many refugees tried to escape by boat, which gave rise to the phrase “boat people” at that time. Most eventually emigrated to the United States, Canada and France.

1960–1990: The colonisation of Africa in the second half of the 19th Century created administrative borders that often included peoples from different tribes, languages and customs. After independence was achieved in the 1950s and ‘60s, most of the newly created countries were ruled by Western-educated elites who had embraced the idea of nationalism and wanted to create nation-states along western lines. This often led to internal conflict and
civil wars and, by the mid-1980s, 12 wars had been fought in Africa and 13 heads of state had been assassinated. From 1968-1992, the number of African refugees increased from 860,000 to 6,775,000. Many of them sought asylum in neighbouring African countries.

1990s: A decade when conflict around the world created millions of refugees. In Europe, there were the refugees from the conflicts in the former Yugoslavia. In the Middle East, there was the fall-out from the Iran-Iraq War and then the First Gulf War arising from the Iraqi invasion of Kuwait and also the conflict in Afghanistan.

2000-2005: Since the start of the new millennium, the Middle East and Africa have continued to be the main sources of refugees seeking asylum in Europe, particularly refugees from Iraq and Afghanistan and from the conflicts in the Sudan, Lebanon, Angola, Somalia and Rwanda.

What is in dispute here?

In 2005, there were 8,661,994 people in the world who were officially classified as refugees under the 1951 UN Convention relating to the Status of Refugees. That is anyone who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country”.

Since 1951, the categories of people who are now entitled to the protection of the United Nations High Commission for Refugees (UNHCR) has been expanded to include stateless persons (who do not have a recognised nationality) and displaced persons seeking to return to their country of origin or who are displaced within their own countries due to war or civil war. If we include all of these categories, and the people who are applying for political asylum in another country, then the total number of persons about whom the UNHCR was concerned in 2005 was just over 21 million. At that time, 772,592 people were asylum seekers and of these around one third were seeking asylum within the European Union.

Where do all these refugees come from? In the 1990s and in the first five years of the 21st Century, the largest groups of refugees were escaping conflict in:

- **Africa**: particularly from Angola, Eritrea, Liberia, Rwanda, Sierra Leone, Somalia and Sudan.
- **Middle East**: particularly from Afghanistan, Iraq and Lebanon
- **Europe**: particularly from Bosnia and Herzegovina, Croatia, Serbia and Montenegro.

In addition, many other refugees were fleeing from countries that were stable but where they were suffering persecution and the constant abuse of human rights.

Most refugees tend to seek sanctuary in neighbouring countries where they will find a similar way of life and people who speak the same language or practise the same religion. This is very clear if you look at Table 1, which shows the 12 countries with the largest numbers of refugees in 2005. Countries such as Pakistan, Iran and Saudi Arabia received most of their refugees from Afghanistan, Iraq and the Occupied Palestinian Authority. Albania received most of its refugees from Kosovo. The refugees to Chad, Kenya, Tanzania and Uganda mainly came from neighbouring African countries. The United States now takes many of its refugees from Latin America. Over the last decade, Germany and the United Kingdom, on
the other hand, have received refugees from a wider variety of sources: the former Yugoslavia, the Middle East, Africa, Asia and the former Soviet Union.

Table 1: Countries which had received the largest numbers of refugees by the end of 2005

<table>
<thead>
<tr>
<th>Rank Order</th>
<th>Countries receiving refugees</th>
<th>Number of refugees by the end of 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Pakistan</td>
<td>1,084,694</td>
</tr>
<tr>
<td>2</td>
<td>Iran</td>
<td>974,302</td>
</tr>
<tr>
<td>3</td>
<td>Germany</td>
<td>700,016</td>
</tr>
<tr>
<td>4</td>
<td>Tanzania</td>
<td>548,824</td>
</tr>
<tr>
<td>5</td>
<td>United States</td>
<td>379,340</td>
</tr>
<tr>
<td>6</td>
<td>United Kingdom</td>
<td>303,181</td>
</tr>
<tr>
<td>7</td>
<td>China</td>
<td>301,041</td>
</tr>
<tr>
<td>8</td>
<td>Chad</td>
<td>275,412</td>
</tr>
<tr>
<td>9</td>
<td>Uganda</td>
<td>257,256</td>
</tr>
<tr>
<td>10</td>
<td>Kenya</td>
<td>251,271</td>
</tr>
<tr>
<td>11</td>
<td>Saudi Arabia</td>
<td>240,701</td>
</tr>
<tr>
<td>12</td>
<td>Armenia</td>
<td>219,271</td>
</tr>
</tbody>
</table>

Although the definition of a refugee is very clear in the 1951 Geneva convention and subsequent UN protocols and conventions on the status of refugees, there has been a growing tendency, within the European Union, particularly in the West European member states with a long history of offering asylum to political refugees, to blur the distinction between “asylum seekers” and “economic migrants”. This tendency to use the two terms as if they were interchangeable is most apparent in the mass media but it has also increasingly emerged in the public statements of many politicians [see e.g. the quotes below from the British press and from Nevzat Soguk].

It is not difficult to see why the blurring of this distinction has happened. It is not surprising, for example, if those responsible for border control question why someone travels thousands of kilometres to Western Europe to seek asylum when most of his or her compatriots seek refuge in a neighbouring country. Similarly, the statistics for applications for asylum over the last 30 – 40 years tend to show that they decrease during times of economic recession and increase during periods of economic growth which would suggest that applicants may be escaping war or political persecution but their choice of asylum country is also economically motivated. In the United Kingdom, for example, applications were low in the 1970s and early 1980s but increased dramatically from 3,998 in 1988 to 44,840 in 1991 to 98,900 in 2000 and peaked at 103,080 in 2002. However, while this rapid increase in asylum applications certainly coincided with a period of economic growth, it is also undeniable that it coincided with conflict in the former Yugoslavia, the Middle East, and in several African states.

The United Kingdom provides an example of the blurring of this distinction between political refugees and economic migrants across Europe. In the UK, this blurring of the distinction also coincided with an increasingly restrictive policy on other immigrants. After the Second World War, faced by a shortage of unskilled labour, the British Government offered free entry and citizenship to people from its former colonies (now the Commonwealth). Those
privileges came to an end through a series of legislative changes introduced by various British Governments between 1962 and 1993.

In the 1960s, the political debate in the UK about immigration focused on the perceived threat which immigration from the Indian sub-continent, the Caribbean and Africa posed to racial harmony. In support of this view, policy makers pointed to so-called “race riots” in some British cities and the rise of right-wing political parties and movements who were opposed to any further non-white immigration. In 1972, the European Commission publicly criticised the UK legislation on immigration as “racially discriminatory”.

From the mid-1970s onwards, UK Governments – and governments of other ex-colonial powers in Europe - began to use a two-fold argument for denying entry to immigrants, particularly from Asia and Africa. First, there was the risk of intensified racial conflict. Second, there was the argument that the political refugees were choosing to seek asylum in Western Europe – often after travelling through other countries that could have offered them asylum – was for economic reasons.

At this point, the focus in the public debate on political asylum shifted from the reason why people needed to leave their country of origin to the reason why they wanted to enter another country. The popular press in the UK (as can be seen from the quotes below) began to equate the term “asylum seeker” with “economic migrant” and then started adding the adjective “bogus”. As the numbers of asylum applications continued to rise throughout the 1990s, the popular right-wing press ran a campaign claiming that Britain was “a soft touch”, i.e. a country which put few obstacles in the way of would-be asylum seekers.

In practice, while the UK received the highest number of asylum applications in the European Union, in 2000, over 64% of them were rejected. By 2005, the rejection rate was up to 85% and the number of applications that year had fallen to 23,750. Perhaps it is not surprising that one British observer noted that, if this was evidence of “a soft touch”, then it must be “an iron fist in a velvet glove”.

By 2001-2002, a set of myths had emerged about “typical asylum seekers” and the London-based Public Information Office of the UNHCR found it necessary to issue a briefing to counter these myths. To counter the popular myth that Britain was being “flooded” with bogus asylum seekers, the UNHCR pointed out that the number of political refugees accepted was only 0.5% of the UK population. To counter the myth that “Britain was top of the Asylum League”, they pointed out that the UK currently ranks ninth within the EU in terms of applications per head of population.

Since the enlargement of the European Union, the debate has shifted once again. There is now less emphasis in the popular right-wing press on asylum seekers – bogus or genuine – and rather more emphasis on the numbers of migrant workers from Eastern Europe seeking employment in Britain and whether they are pricing British workers out of the job market by working for lower wages.

**A variety of viewpoints about the issues**

**Article 33 of the 1951 Geneva Convention on Refugees states that:** “No Contracting State shall expel or return a refugee….to the frontiers of territories where his life or freedom, would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.

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According to research carried out by the UK Government in 2002, around 53% of refugees to Britain have academic qualifications while over 65% speak two languages as well as their mother tongue. The same research [Glover et al] showed that people born outside the UK, including refugees, contributed more to the economy in taxes and national insurance than they consumed in benefits and public services. The net gain to the UK economy from the immigrants of employable age in 1998-99 was approximately €4 billion. [Glover et al, Migration: and economic and social analysis, Research, Development and Statistics Directorate, Home Office, UK 2001]

Liza Schuster, Centre on Migration, Policy and Society, Oxford University writes:

“In seeking to assert control over their borders, European states have developed regimes, sets of practices that once would have only been possible in war-time, but that today are considered ‘normal’, part of the everyday experience of hundreds of thousands of people across Europe. The practices selected include forcible dispersal, detention and deportation. ….For the governments who have introduced them……[these are] necessary instruments in pursuit of a government’s responsibility to maintain the integrity of its borders. However, these measures only seem reasonable until one imagines using them against one’s own population.”

Sarah Spencer, Director of Citizenship and Governance at the Institute of Public Policy Research in the United Kingdom:

“The lesson of history is that immigrants and refugees can bring significant benefits, economic and cultural. While public debate on this issue is yet again dominated by proposed legislation to impose ever tighter restrictions, it is a lesson that appears to have been lost.”

In January 2003, UK Prime Minister, Tony Blair, suggested that Britain might withdraw from its obligations under the European Convention on Human Rights:

if its “latest wave of asylum reforms failed to stem the flow of unfounded asylum seekers”.

The UK Prime Minister during the 1970s and 1980s, Margaret Thatcher, expressed her concern about immigrants and refugees:

“People are rather afraid that this country might be rather swamped by people of a different culture”.

The United Nations High Commission on Refugees (UNHCR), commenting on proposals by the EU to control immigration more effectively:

“As a result of [EU member states] increasingly restrictive immigration policies, resorting to the services of smugglers has often become the only viable option for many genuine asylum-seekers who seek sanctuary in the European Union.”

Ruud Lubbers, former UN High Commissioner for Refugees, feels that governments are concentrating on how to manage the symptoms rather than the causes that create refugees:
“I really wonder how governments can justify spending millions on reinforcing borders, on all kinds of deterrence measures, on custody and detention centres, on all these costly domestic approaches, yet they refuse to invest in tackling the problem at source, where solutions should begin.”

The more right-wing popular press in the United Kingdom have consistently called for tougher policies on immigration including refugees seeking asylum in the UK using language that implies that the refugees are seeking entry under false pretences:

“At last someone’s had a concrete idea on what to do about illegal immigrants. Fly them back where they came from in RAF transport planes.” Editorial in The Sun newspaper, 24 May 2002;

“Refugees will join the rising number of criminals and drug addicts living in country communities.” Daily Mail, 15 July 2000;

“Britain tops the asylum league”. Daily Express 1 March 2002;

“UK confirmed as asylum capital”. Daily Mail, 28 February 2002.

Wendi Adelson, of the University of Miami Law School, writing of the attitudes of the UK press towards asylum seekers in the early 2000s:

“The British press depicts a situation where the majority of individuals attempting to migrate to Britain are poor, often from Britain’s former colonial holdings, and in search of economic betterment……In reality, the largest number of asylum seekers to Britain in 2003 came from Iraq, Zimbabwe and Afghanistan; while all three are developing countries in the global south, it is more likely that war and politics impelled their migration than the search for economic improvement.”

Another academic, Professor Nevzat Soguk of the University of Hawaii, and a specialist in migration studies, writing in 1999, also comments on public perceptions and the way in which the mass media presents issues about migration and asylum seeking in such a way that challenges the legitimacy of migrants from the developing south to be treated as political refugees:

“Words and phrases like poverty, the South, tide, flood, fortress, plague, invasion and many more all converge to produce images of two unassimilable desire-worlds that stand in contradiction to one another. One is the prosperous, secure and democratic world of the West European; the other is an amorphous tide, a flow that is besieging Europe from all directions and forcing it to become a fortress in self-defence.”

Looking at the statistics on asylum seekers for 2005, the UN High Commissioner for Refugees, Antonio Guterres said:

“These figures show that talk in the industrialised countries of a growing asylum problem does not reflect the reality…Indeed, industrialised countries should seriously ask themselves whether by imposing ever tighter restrictions on asylum seekers, they are not closing their doors to men, women and children fleeing persecution……With the numbers of asylum seekers at a record low, industrialised countries are now in a position to devote more attention to improving the quality of their asylum systems, from the point of view of protecting refugees, rather than cutting numbers…Despite public perceptions, the majority of refugees in the world are still hosted by developing countries such as Tanzania, Iran and Pakistan.”

What Do You Think?

Some people think that European governments need to do more to reduce the numbers of people entering their countries illegally who then claim political asylum, while others think
that European governments are spending too much on reducing the numbers of immigrants and not doing enough to protect refugees who are escaping political or religious persecution and torture. What do you think?

Is it possible or useful or relevant to try to distinguish between asylum seekers and economic migrants?
CASE STUDY 8: The process of becoming a minority

Introduction

Almost every state in Europe contains one or more ethnic and cultural minorities. Some are indigenous or native to a particular land, such as the Saami in northern Scandinavia. Some are described as indigenous minorities. That is, they have inhabited the land in a particular area for thousands of years and chosen to retain a certain distinctiveness, usually in terms of their language, culture and heritage.

Many minorities are migrants. Some will be economic migrants seeking a better way of life; some will be refugees from persecution and oppression; some will have moved to their new home when that country was occupied or annexed by forces from their native land. Some, are returnees, expelled from the country they have lived in for many years because they were associated with “the enemy” or the oppressors. Some, like the “Pieds noirs” in France and former colonials elsewhere in Western Europe, returned to their homelands yet found themselves treated as if they were different, even a relic of a previous time.

Some others find that minority status is thrust upon them. In modern times this has usually happened in the following circumstances. In some cases it has happened because the victors after a war have re-drawn the boundaries of a country and the inhabitants of an area or region now find that they are citizens of a different or new nation state. In other cases it has happened because an empire, colonial power or federation has broken up and the military and administrative officials and their families who have remained are now a national and cultural minority.

Sometimes the so-called minority is actually a numerical majority, like the blacks in South Africa during the Apartheid era. This highlights an interesting characteristic of the term “minority group”. It tends to be applied to any group that is disadvantaged in terms of political power, wealth, employment, education and social status, even if it is a numerical majority within the population and indigenous to that country. Another important feature of the term is that minority group membership is not only attributed to a people because of certain shared characteristics (ethnicity, religion, language, culture or lifestyle), it may also be widely used by its members to enhance their sense of identity and solidarity.

Over the last 50 years or so, the recognition that most minorities are disadvantaged and marginalised by the dominant majority populations has led to demands for more protection. This, in turn, has led to international conventions to establish the civil, political, cultural, economic and social rights of minority groups. In some cases, governments have responded by introducing what is often referred to as affirmative action - policies designed to redress the disadvantages, usually by establishing quotas of places for minorities at universities and for jobs in public services.

Generally, however, although more is now being done to protect the rights of minorities, their status in most societies seems to be under continuous scrutiny. In some stable liberal democracies, governments have been expressing concern about the extent to which various minorities have integrated with the rest of society. This concern usually coincides with a downturn in the economy, increased unemployment or unrest and conflict breaking out between the different social groupings.

In countries which have recently undergone major political changes - as happened in some Central and Eastern European states after the fall of communism - the new governments were often concerned about the allegiance and loyalty of some minorities, especially if they
belonged to a national group which forms the majority in a neighbouring state. This concern sometimes fuelled nationalistic and xenophobic attitudes during political and economic crises or rising tension with neighbouring states.

Below, we have three mini case studies to illustrate some of the issues associated with minorities. They focus in particular on the process of “becoming a minority”. The first is about the “Pieds noirs” in France – the white settlers of French origin who were repatriated after Algerian independence. The second case is about the Germans who remained in western Silesia in Poland after the Second World War, at a time when millions of Germans were either being forcibly repatriated to Germany from Central and Eastern Europe or were fleeing ahead of the Red Army. Now this remnant in Silesia appears, in the words of the author, to be “a ‘natural’ component of the population” in that region.

The final case study is of Bosnia and Herzegovina (BiH) where the population is made up of three large national groups, none of which constitutes a numerical majority, and other small minorities such as the Roma and Jews. Conflict and then civil war was sparked off by the break-up of the former Yugoslavia in the 1990s and the intervention of neighbouring states. After the international community became involved, hostilities eventually ceased and the Dayton Peace Agreement, signed in Paris in 1995, brought in an international peacekeeping force and created the Office of the High Representative to oversee the implementation of the civilian aspects of the Dayton Accord.

After the mini case studies, we have a rather different kind of activity to stimulate discussion about some of the issues that arise in countries where tensions break out between different ethnic and national groups. In spite of the fact that the example - an imaginary country called Ubia - has three large minorities and no numerical majority, it is not Bosnia and Herzegovina. For one thing, the minority populations of BiH are far more geographically spread than the populations of Ubia. It also shares some characteristics with a lot of different places around the world: BiH, Cyprus, Lebanon, Kosovo, Nagorno-Karabakh, Northern Ireland, Rwanda, etc. The activity is designed to encourage you to think about the problems involved in attempting to bring about the conditions for peaceful coexistence and cooperation in circumstances such as this.

The “Pieds noirs” in France
Jean Petaux

The term Pieds-noirs" (literally black feet) describes, in very general terms, the French population living in Algeria who arrived in mainland France in the great repatriation that followed immediately after the proclamation of Algeria's independence on 3 July 1962. The term was initially pejorative but was rapidly adopted and claimed by the French of Algeria themselves, since it enabled them to re-establish a special identity for themselves, thus distinguishing them from Algerians living in France, either as immigrant workers or as "Harkis" (Algerians who had fought as auxiliaries in the French army against the independence supporters of the FLN), and from the mainland French.

A caste-based society until 1962

The figures available to historians on this French population in Algeria before the separation of 1962, which put an end to France's only real colony of settlement between 1830 and that date, are somewhat variable. Specialists quote the statistic recorded in 1960 of 1,021,047 persons (including about 130,000 Jews) in the whole of Algerian territory, including the
Sahara, alongside 9,487,000 Algerian Muslims. In a first research study in 1958, the young sociologist, Pierre Bourdieu, defined Algerian society as a caste-based one, in which the French naturally constituted the superior caste. But this group was itself extremely divided according to origins, since many foreigners – Spanish, Italians, Maltese and even Germans – had emigrated to Algeria in the 19th Century. Under a law of 1889 applying the *jus solis* principle, their children automatically became French.

These new French entered the category of so-called French by origin by merging with them via the traditional republican routes of school and military service, not to mention the shared experience of two world wars. At the same time, this group of the population retained its original sub-cultures by keeping alive certain traditions and cultivating strongly distinctive features. This phenomenon was reinforced by the fact that each of these communities settled more or less distinctly in one or other of the major towns and cities, such as Algiers, Oran and Constantine.

**The French in Algeria – a socially heterogeneous group**

One particular representation of the French in Algeria was to treat them all as part of the settler community, and more particularly the colonial elite, and to consider them socially and economically homogeneous and mutually supportive. These images are partly erroneous. In 1954, 75% of the 354,500 economically active French in Algeria were in paid employment (64% in mainland France). Of these employees, 70% had fairly modest jobs, as manual workers and clerical-type staff. Only 32,500 of this same group were in agriculture, including 18,400 with their own farm or holding (9.1% of the active population compared with 26.2% in mainland France in that same year of 1954). On the other hand, government employees were much more frequent in Algeria: 28% of the active population in 1954, compared with 12% in mainland France. This significant percentage of *Pieds-noirs* in the civil service or state-run enterprises was to ease their reintegration when they moved to France in 1962.

**A large-scale return in a very short period**

At the start of the 1960s, the authorities in mainland France and Algeria began to notice a regular and continuous inflow of French from Algeria to the northern Mediterranean shore. After May 1962, the inflow became a flood, partly following the Evian agreements signed by the belligerents on 18 March 1962 but also as a result of the climate of violence, accentuated by the "scorched earth policy" of opponents of Algerian independence. Between 1 April and 31 December 1962, 936,231 persons left Algeria for France, to become the repatriated settlers from Algeria, soon referred to as the *Pieds-noirs*.

**Rapid social integration in France while retaining a strong identity and culture**

The first few years of their return to France were a painful experience for a group of people traumatised by this tragic outcome, who saw their repatriation as the punishment of history and considered themselves to be the victims of high politics, and in particular of General de Gaulle's policy of abandoning Algeria. But, thanks to the strong economy in the France of the 1960s, this new influx of manpower was rapidly absorbed. However, their material integration would never cure the *Pieds-noirs* of a real sense of nostalgia and frustration, made worse by the feeling that they were misjudged by their mainland compatriots. These treated them either as a privileged group who had outrageously exploited the Muslims of Algeria until the latter were forced to expel them, or as second-class French, who had hardly arrived in the country before they were claiming comparable, if not superior, occupational and social positions to the home population.
Hardly surprising then that the French of Algeria should strive to keep the flame of their individual and collective memory burning, through their cultural lives. In the south of France and the Paris region, where most of them settled, numerous festivals and similar events were established. One example is the annual gathering in Nîmes, where the Virgin of Santa Cruz, itself brought back from Oran in 1962, attracts numerous expatriates grouped by specific towns, neighbourhoods and villages of Algeria. Witness also certain emblematic figures of popular culture with whom this group identifies: the singer Enrico Macias, the actors Roger Hanin, Robert Castel, Guy Bedos and Marthe Villalonga, the film maker Alexandre Arcady and so on.

A number of writers have perpetuated the written memory of a minority that constantly seeks to rediscover an identity in relation to a lost land. Albert Camus, who died in 1960, is a symbolic if distant figure of this period. Marie Cardinal has helped to keep alive an intense and unifying memory of the happy days of the Algerian pieds-noirs between 1914 and 1962 while, more specifically, André Chouraqui, has done much to safeguard the memory of the Jews of Algeria, a quite distinct group within the pied-noir minority.

The slow reconstruction of a history suspended in time and a memory reconciled
More and more Pied-noir families have made the return journey, accompanied by second and third generations for whom Algeria is a totally foreign land but one whose memory is constantly evoked. Nothing now distinguishes these families from the rest of the mainland population, yet family recollections and a collective memory passed down through generations have kept intact a desire to return among the oldest and a shared desire to realise their family history among young people who have never known the land of their ancestors. Now that bilateral relations between France and Algeria are once more on a more normal, if still chaotic, footing, these journeys into the past are proliferating. They put the seal on a form of reconciliation to a communal memory for a group of French who have never really recovered from their history.

These shared reunions are an opportunity for genuine fraternisation between both shores of the Mediterranean. It allows the Pieds-noirs finally to turn the page on this sad chapter and come to terms with the past, which is now dead and gone. For Algerians, it is an opportunity to reweave the threads of an individual and collective memory that official history, too long imbued with a specific ideology and geared to a specific purpose, sought to ignore or distort by treating every French person in Algeria as an absolute tyrant and every Pied-noir as a combination of colonialist exploiter and self-confessed racist.

The Germans in Poland – the example of Silesia
Jacek Wódz

Silesia is a very distinctive region. On the one hand, it is “typical and representative” of Europe and, on the other hand, it is a patchwork of national and ethnic groups resulting directly from its history, mainly during the 19th and 20th Centuries. A vast swathe of Europe was divided between three great empires at that time: German, Russian and Austro-Hungarian. In the eastern part of Silesia, we find the Dreikaiserecke (“triangle of three emperors”) where, for over a 100 years, these empires bordered on one another. And, as if the region's history was not complicated enough, the development of the south was heavily influenced by Czech culture at that time.
It should also be noted that the massive shift of the Polish-German border at the end of the Second World War (from east to west) left a deep imprint on the make-up of the region's population. The Germans, in the majority in the central and western part, fled the advancing soviet army. Those who stayed were obliged to leave, initially on the orders of the Russian army and later by decision of the Polish civil authorities. That happened in 1945 and, in the years that followed, particularly in the region's central and western areas (Opole Silesia and Lower Silesia), their place was taken by Poles who had been forced to leave the former Polish territories in the east taken by the USSR.

The communist regime that governed after 1945 froze any debate on the status of Poland's German minority, and it was not until after 1989-90 that the issue resurfaced and national and ethnic identities in Silesia were defined and redefined. In Upper Silesia and Opole Silesia, we can list five different identities, and the process of national and ethnic self-definition of certain social groups is not yet complete. The majority are Polish but there are also groups defining themselves as Polish-Silesian, Silesian-Silesian (or simply Silesian with no indication of any dominant German or Polish cultural preference), German-Silesian and of course German. Those who define themselves as Germans outright, while being Polish citizens, live mainly in the western part of Upper Silesia (more or less the Katowice voivodeship, or province) and Opole Silesia. There are very few of them in Lower Silesia (Wroclaw voivodeship).

After the democratisation in Poland (1989-90), the associations of Polish citizens of German nationality gained public recognition, but not without some difficulty. That recognition is especially conspicuous in Opole Silesia, where a substantial group made up of that minority now lives. It has two deputies in the national parliament (Sejm) and several representatives on the regional council (sejmik) and also strongly influences decision-making at the level of the different communes within the voivodeship. The German minority is a visible player in the political life of the Opole voivodeship, and there is no doubt that civic rights for its members are fully recognised. In Upper Silesia, this minority is clearly in evidence especially at the local level and in cities such as Katowice.

In terms of activity in the public sphere, social, charitable and cultural associations enjoy a high profile mainly in the voivodeship of Opole and in Upper Silesia in cities such as Gliwice and Katowice. Their areas of interest include Polish-German reconciliation. They frequently refer to European values and seek grants from various European funds.

So, in brief, what is life like in Silesia for a member of the German minority? The answer is fairly good since, within the region, this minority is regarded as a “natural” component of the population. But it has to be said too that certain nationalistic ideas at the national level (and non-existent in the region) are worrying for this minority. When there are social conflicts in Silesia, a spirit of reconciliation and dialogue naturally comes to the fore and makes it possible to resolve them locally.

**Bosnia and Herzegovina**  
**Damir Agicic**

Bosnia and Herzegovina had a long tradition of living in a multi-denominational and a multi-national community. For centuries, the territory of Bosnia and Herzegovina (BiH) was on the border of the Byzantine and Western European spheres of influence and the beginnings of Islam in the country are linked to the rule of the Ottoman Empire. The rule lasted from 1463
until 1878 when the Ottoman province was occupied by the Austro-Hungarian Empire, based on the decisions of the Berlin Congress. The Austrian authorities encouraged the creation of a joint Bosnian nation which would include all the population of the province, but the attempt failed. By the end of the 19th Century in Bosnia and Herzegovina, a Serbian national consciousness had developed amongst the Orthodox inhabitants and a Croatian consciousness amongst the Catholic ones. At first, the Muslims sided with the one or the other ethnicity. It was only in the second half of the 20th Century that a separate Muslim nation appeared.

In the Serbian national consciousness and, to a lesser degree in Croatian consciousness, a Christian-Muslim antagonism plays an important part, as well as the tradition of the struggle against the Ottoman conquerors. Although the vast majority of the Muslim population of Bosnia and Herzegovina are domestic Slavs by origin and come from the islamised inhabitants of Bosnia and Herzegovina and not Ottoman settlers, in the perception of their Christian neighbours, they are often identified with the heirs of the Turks.

On the other hand, the beginning of the Croatian-Serbian conflict regarding the affiliation of Bosnia and Herzegovina dates from the late 19th Century. Each of the two neighbouring nations believed that the territory of BiH should belong to it: due to historical claims, as well as the presence of the Serbian, or the Croatian population on its territory. This conflict assumed a bloody shape during the Second World War when the Croatian ustasha regime harassed Serbs, and Serb guerrilla chetnik units retaliated against the Croatian and Muslim civilian populations.

In socialist Yugoslavia, the same conflict – present not only on the BiH territory - hibernated under the veil of the official brotherhood and unity of the Yugoslav peoples. Among the republics of SFRY, Bosnia and Herzegovina represented a true “miniature Yugoslavia”, because a very mixed population of wide variety in terms of their national and religious belonging lived there.

<table>
<thead>
<tr>
<th>The ethnic composition of the population of BiH in 1991:</th>
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<tr>
<td>Muslims</td>
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<tr>
<td>Serbs</td>
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<td>Croats</td>
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<td>Yugoslavs</td>
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Socialist Yugoslavia was a totalitarian state where the entire government was in the hands of the Communist Party. Until his death in 1980, the decisive role was played by the Communist leader, Josip Broz Tito, and a personality cult was created around him. After Tito’s death, the Yugoslav state fell into an economic and political crisis. On the one hand, the weaknesses of the Socialist economy became visible and, on the other hand, brotherhood and unity lessened and certain nationalisms surfaced. As elsewhere in Europe, at the end of 1980s, the Communist regime in Yugoslavia was facing collapse.

Many nations, each for their own reasons, were dissatisfied with the Yugoslav state. Different political powers were aiming either to reform the federation in the light of decentralisation or to secede its republics. Serbia, under Slobodan Milošević and the Yugoslav People’s Army
dominated by Serbs, stood against the secession of other republics, especially those with parts of the Serb population. The war which took the world by surprise started in Croatia in 1991 and in Bosnia and Herzegovina in 1992. The international community reacted reluctantly and belatedly to the atrocities happening in those wars.

The war in Bosnia and Herzegovina lasted four years and it saw the conflict of the Bosniacs and Croats - who favoured the independence of the republic - against the Serbs who were trying to prevent it. Later in the war, there was a conflict between the Bosniacs and the Croats. Therefore, the three largest national communities of Bosnia and Herzegovina were in conflict with each other. Many war crimes were committed during the war, international conventions were violated, ethnic cleansing and genocide were perpetrated.

“Ethnically cleansed territory” became an ideal for nationalists of all sides. Attempts were made to erase the presence of “the others”, not only by banishing people but also by demolishing the traces of their presence, especially their places of worship. Some towns inhabited by mixed populations were divided in two parts (Sarajevo and Mostar).

The case of Sarajevo became particularly interesting. Located in a long and narrow valley, it was besieged by Serb forces. The Serbs were deployed on the surrounding hills which enabled them to bomb the city easily with shells. Some outskirts of Sarajevo were under Serb control and Serb snipers were shooting from the upper floors of tall apartment buildings. The city soon experienced shortages of food, water and firewood. At the same time, it was not only the Bosniacs living in the city but the Croats and Serbs as well. A portion of the latter remained in Sarajevo under the siege of their fellow Serbs.

It is interesting to note that all sides in Bosnia and Herzegovina were invoking the right of a nation to self-determination. The key difference between the belligerents was in how they interpreted that right. The Bosniacs (as well as the Croats at the beginning) regarded it as a right of the BiH population as a single body that voted, in a referendum, for independence and the inalterability of the borders of the former Yugoslav republics. This is one of the fundamental principles of international relations in the modern world.

The Serbs believed the Serbian people in BiH had the right to decide whether they wanted to remain living in Bosnia. They boycotted the independence referendum and tried to establish military control over as much territory as possible, intending to annex it to Serbia. In doing so, they persecuted non-Serbs and committed ethnic cleansing since the population of Bosnia and Herzegovina was highly mixed before the war and there was no compact territory inhabited mainly by Serbs and next to the Serbian border, which could be easily annexed.

It is an oversimplification, but it could be argued that Bosnia and Herzegovina has been experiencing an intensive clash between two of the most important ideas and ideals of the 20th century. On the one hand, there is the idea of the multicultural civic society based on democracy and tolerance. On the other hand, there is the idea and ideal of self-determination leading to an ethnically distinct nation state. This fundamental division, despite 10 years of international administration in Bosnia and Herzegovina since the end of the war, remains the basic conflict within Bosnian and Herzegovinian society.

Fragments of private letters¹³:

Sarajevo, 3 April 1994

“Sarajevo is destroyed a lot … It cannot be described. Trams operate, but are passing under the chetnik skyscrapers where, two months ago, snipers did a very good job, which means that not a fly could pass alive, let alone a man, or a tram (a crowded one). But still, the trams are passing, and cars. It does not mean this will last long. Little before our arrival, a tram was shot at and two women were killed, but people have lost sensitivity because life is so cheap around here.”

Sarajevo, 28 July 1994

“Sarajevo is in a panic because the road (the one we came on) is closed as well as the airport. Prices are already up and you can feel that something is going to snap again. In my latest letter, I wrote I was waiting for the shooting to start again. Snipers are slowly moving into action again. They haven't got the green light yet, but they have got the amber one for sure … Of course, it is enough for a few people to get wounded and some killed.”

Sarajevo, 2 March 1993

“Being in Sarajevo today means defying Fascism, working means building a free state and shooting means destroying chetniks who don't deserve to be treated as humans. What I can tell you is a story from the frontline because each part of Sarajevo today is a frontline.”

Zenica, 7 January 1994

“Don't listen to all the rumours about us in Zenica, I mean, there are certain problems, you know while you were here, but we can still move around, going into the town or to the church is not banned yet, I am still working, I haven't lost my job, I'm just on unpaid leave because I asked the manager for it, for the winter, and he let me. I should go back to work on 15 February if we don't leave Zenica by then, I applied for a Convoy to Zagreb. I and the children applied and Zdravko can't go because they are not letting the fit for military service. He will follow me when he gets the chance.”

What Do You Think?
This is an activity designed to stimulate group discussion.

A short history of Ubia.
Ubia is an imaginary country but it shares certain characteristics with several real countries around the world. As you can see from the map it shares borders with two much larger countries – Ossia and the Republic of Oksidia. It also shares a coastline with both of these neighbouring states.

The east of the country is mainly agricultural, the north west is mountainous and the south west is more industrial. There are five large cities in Ubia and several smaller towns. The two largest are Colonis, the capital city, which was founded during the Roman Empire, and Portomaz, a busy international port. Both are multicultural cities with people from the three main minorities and also from other nationalities and religions.
The population of Uibia is around 3.2 million and mainly made up of three large ethnic minorities who tend to form the majority population in the three main regions of Uibia. The *Theos* first migrated to the Ubian region about 300 years ago to escape religious persecution in their own land. They settled at first in and around Portomaz and then gradually moved into the mountainous area to the north-west, which is very similar to their original homeland. Although many of the *Theos* are direct descendents of the original migrants others living in Uibia are converts to the *Theos* religion.

Most of the south west of the country is populated by people of *Oksidan* origin. In the distant past, the border between Uibia and Oksidia was not as clearly established as it is now. In 1919, after the peace treaties at the end of World War I, a clear border was drawn up between the two countries which meant that people with a shared ethnicity, language and heritage lived on both sides of the border. A similar development happened in eastern Uibia with *Ossians* living on both sides of the border after the 1919 treaty.

Throughout Uibia’s history, there have been periods of peace and periods when relations between Oksidia and Ossia were tense and conflict would spread into Uibia. In the 17th Century, the Kingdom of Ossia tried to establish an empire across the whole region. Uibia was invaded and became part of Greater Ossia. After a prolonged war between Ossia and Oksidia the independence of Uibia was restored by the Great Powers, although the Ossian nationalist movement which emerged in the 19th Century revived the dream of a Greater Ossia including Uibia.

Oksidia and Ossia fought on opposite sides in both the First and Second World Wars and the fighting spread into Uibia on both occasions. This was partly because civil war broke out between the different minorities but also because both sides wanted to gain control of the rich coal, iron ore and oil deposits in the south west of Uibia.

Ten years ago the Nationalist Party came to power in Ossia and revived the idea of a Greater Ossia. *Ossian* nationalists across the border in Uibia complained that they were being persecuted by the *Oksidan-Theos* coalition government that was running the country and called on their neighbour to invade and help them gain control. Civil war broke out again between the *Ubi Ossians* on one side and the *Theos* and *Ubi Oksidans* on the other. The Ossian government supplied weapons and military support and the Republic of Oksidia mobilised its troops along the border with Uibia.

After two years of fighting, a UN Commission persuaded the leaders of the different factions within Uibia and representatives of the governments of Ossia and Oksidia to sit down together and discuss a possible Peace Agreement. Eventually it was agreed that a north-south peace line would be drawn from Portomaz down through Colonis to the southern border and this would be policed by UN peacekeeping forces. At the same time, a European Union Commissioner was appointed to establish an international team to help run Uibia until conditions for peaceful coexistence and cooperation could be established.

**Your Task**
Imagine you are part of the team invited to advise the European Union Commissioner on how to create the conditions that could lead to peaceful coexistence and cooperation between the different ethnic minorities in Uibia so that, eventually, elections could be held and a government elected that would be recognised as legitimate by all sides, including the international community. What would your advice be?
NOTES: You will need to consider a lot of questions and issues:

Do you, for example, concentrate on restoring law and order, getting essential services running and start re-constructing the economy and only then start thinking about restoring democracy or do you start by bringing together a group from all sides to draw up a new constitution so that elections can be held as quickly as possible?

Do you set up a Transitional Government of un-elected people who are acceptable to the different minorities and are willing to work together? If you do that, do you set a timescale and a deadline for restoring democracy?

Do you work closely with local warlords and militia leaders in each region to establish local governments first before trying to set up a national government?

Do you opt for a federal constitution similar to Switzerland or Canada where the different ethnic groups have a large degree of autonomy over their own regions? If so, how do you deal with national issues, such as transport, communications, taxation, foreign relations? How do you protect the rights of minorities in each region? What if the party that is elected in one region wants to secede from the federal state of Ubia and join Ossia or the Republic of Oksidia?

Do you opt for some kind of power-sharing system of government, as in Northern Ireland, where the different minorities will have some places in the government regardless of how many votes they win at national elections? If so, how are you going to persuade former enemies to sit down and work together? What can you do to encourage cooperation amongst people who do not trust each other?

KEY: Ethnic majorities in Ubia

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KEY QUESTION FIVE: Can there be a just war?

Jean Petaux

The Christian origins of “just war”

In the first three centuries of Christianity the Church tended to follow the pacifist teachings of Jesus Christ. But St Augustine was not only a Christian he was also a Roman citizen and he tried to reconcile the pacifism of early Christianity with the obligation of a Roman to fight for his country when required to. He attempted to do this through the idea of a “just war”. He described peace as the universal aim of the city of God:

“We do not seek peace in order to be at war, but we go to war that we may have peace.”

He thought that war was always a sin but sometimes it was a necessary sin in order to remedy worse sins. If war succeeded in this objective and brought about peace, order and stability then it could be justified. He also went on to say that:

True religion looks upon as peaceful those wars that are waged not for motives of aggrandisement or cruelty, but with the object of securing peace, of punishing evil-doers, and of uplifting the good.

Eight centuries later another Christian theologian, St Thomas Aquinas, further developed the thoughts of St Augustine on the nature of a “just war”. Peace, he argued, cannot be imposed or obtained through fear. There has to be concord or agreement between those who were in conflict with each other. Peace, he argued, requires us to be “at peace with ourselves”, with all our different appetites being in harmony. This is how peace is truly achieved. War is always, of course, waged by those seeking peace for themselves, but a just war is possible in defence of peace in general. Aquinas believed that war can be morally acceptable, but, to be so it must meet three conditions:

1. Authority. War is not a matter for private individuals. It is waged for the public good (a just cause), and has to be decided on by those responsible for that good. So, declaring war is the prerogative of the sovereign or government responsible for the common good.

2. Just cause. According to St Augustine, a just war is one that “avenges wrongs, when a nation or state has to be punished”. He believed that there were three just causes for war: self defence, punishing people who have done wrong, restoring people, land or property wrongly taken by others. St Thomas Aquinas wrote in the same vein, saying that it was just to attack those who deserved it because of some fault of theirs. It was later that the famous four conditions for a just cause were added, and these have been regularly taken up in Catholic doctrine, including the very latest papal texts:

- The damage inflicted by the aggressor on the nation or community of nations must be lasting, grave, and certain;
- All other means of ending the aggression must be shown to be impractical or ineffective;
- There must be serious prospects of success;
- Using arms must not cause graver evils or disorders than does the evil that is to be eliminated.
According to this view war can be seen as an act of justice only if (a) the people or nation against whom the war is fought have committed serious wrongs against others (b) all other means of bringing them to account have been tried and failed and (c) the force that is used is in proportion to the wrongs they have committed.

3. **Just intention.** Even then, having a just cause or reasons for going to war is not enough. The intentions of those who fight a war against wrongdoers must also be just. As St Thomas Aquinas put it, the intention must be to promote good or to avoid evil.

### The contemporary approach

Two general principles are accepted by the international community, and underpin some of the international conventions and treaties which are designed to reduce the likelihood of wars breaking out and to regulate the conduct of war when it happens: **discrimination** and **proportionality**.

**Discrimination** requires the belligerents to differentiate between civilians and military, and to attack only the latter. A strike affecting an innocent third party is tantamount to an attack on that person, which is a violation of the right to wage war.

**Proportionality**, is not quite the same. It requires only that the reaction is proportionate to the aggression. There should not be massive reprisals for a minor act of aggression; a border skirmish should not lead to the use of weapons of mass destruction, and so on.

Where these two principles are ignored by one or more sides in the conflict you have a situation of total, all-out war, a fight against a whole nation, without any distinctions and by every available means.

Michael Walzer, one of the main just war theorists in modern times, has returned to the three main questions that are fundamental to the ‘just war’ theory:

- Are there just causes for going to war?
- Is the war conducted in a just way?
- Will the peace agreements be fair to all parties?

From these three questions he derived a number of assertions:

1. War, if it is to be just, must be started as a last resort, which means that all non-violent possibilities must have been considered beforehand.

2. In principle, only the international community, represented by the United Nations and its Security Council, is entitled to authorise a war. In practice, there may be a widespread international belief that all other attempts to stop the aggressive actions of a country or alliance have failed but the use of legitimate force against the aggressors is blocked because one member state exercises its right of veto. Or, alternatively, a major power declares war, in spite of the opposition of the international community, in the knowledge that it is too powerful to be stopped. In either case the issue of legitimate authority for going to war is raised.

3. The likelihood that such a war will succeed must be greater than the damage it causes. The violence used during the conflict must be proportionate to the damage suffered, and a distinction must be made as far as is possible between...
civilian populations and military aggressors. A real problem arises during guerrilla-style action, for then it is difficult to distinguish between civilians and military.

4. The ultimate aim of such armed intervention must be the restoration of peace.

**Anti-terror activities and the “just war” concept**

In a 1999 recommendation, the Parliamentary Assembly of the Council of Europe described an act of terrorism as “any offence committed by individuals or groups resorting to violence or threatening to use violence against a country, its institutions, its population in general or specific individuals which, being motivated by separatist aspirations, extremist ideological conceptions, fanaticism or irrational and subjective factors, is intended to create a climate of terror among official authorities, certain individuals or groups in society, or the general public”.

Michael Walzer points out that, generally speaking, action against terrorism is not an act of war, but a policing activity, and that a police campaign against terrorism is, by its very nature, likely to be more limited than a war on terrorists waged by the military.

Referring to the categories that he had identified in relation to acts of war, he says that a just war against terrorism must be proportionate to the acts committed. He advocates making a distinction between civilian and military victims of terrorism, or between combatants and non-combatants.

It nevertheless remains the case that the means employed by democratic states in their fight against terrorism must not be contrary to the values upheld by those same states, as they would otherwise become terrorist states themselves. This means that regardless of the methods used by the terrorists there is no justification for the police or security forces of a democratic state using means that would violate the basic civil and political rights of the terrorists. That would mean that there is no justification for the democratic state, which is also a signatory of the UN and European Conventions on Human Rights, using torture, arbitrary detention, arbitrary executions without trial, excessive force, violence against the family and relations of the terrorists, and so on.

**What do you think?**

Can you think of any international wars or civil wars in recent times that would meet the criteria of a “just war” as outlined above?

Can you think of any circumstances where the actions of terrorists against their own or a foreign state could be described as a “just war”?

Can you think of any circumstances in which the actions taken by a democratic state against the threat of terrorism could be described as a “just war”?
CASE STUDY 9: The “War against Terror”

Robert Stradling

Background

The term “war on terror” was coined by President George W. Bush to describe all the measures which the US Administration and its coalition partners introduced following the coordinated attacks on the World Trade Center in New York and the Pentagon in Washington on 11 September 2001. The measures taken ranged from increased security at airports to military action against states such as Iraq which the US Administration believed were sponsoring global terrorism.

Not long after the attacks on the World Trade Center, President Bush described the war on terror as an open-ended ideological struggle that “will not end until every terrorist group of global reach has been found, stopped and defeated”. He subsequently explained that:

“today’s war on terror is like the Cold War. It is an ideological struggle with an enemy that despises freedom and pursues totalitarian aims...I vowed then that I would use all assets of our power of Shock and Awe to win the war on terror. And so I said we were going to stay on the offence two ways: one, hunt down the enemy and bring them to justice, and take threats seriously; and two, spread freedom”.

Although the events of 11 September 2001 aroused a great deal of sympathy around the world for the United States and many states quickly initiated measures to counter the possibility of similar acts of terrorism, some of the steps taken by the Bush administration soon proved controversial and the debate about whether or not a pre-emptive war against Afghanistan and Iraq, the Guantanamo Bay detention centre and the so-called “extraordinary rendition” of terrorists (see Case Study 1) were justifiable or represented violations of international law and human rights conventions.

Timeline


20 September 2001: President Bush delivered an ultimatum to the Taliban regime in Afghanistan to hand over Osama bin Laden and the other al-Qaeda leaders suspected of planning the 9/11 attacks.


13 December 2001: Following repeated calls in the 1990s from Osama bin Laden and certain Islamic fundamentalist groups based in Pakistan for a jihad against India, an attack was carried out on the Indian Parliament.

14 December 2001: The first video by Osama bin Laden was released. In this, he talked about the 9/11 attacks and threatened continued jihad against America and its allies.
October 2002: The US government alleged that Iraq poses a global threat because it could use weapons of mass destruction to support terrorism. UN Resolution 1441 was passed unanimously by the Security Council and called on Iraq “to comply with its disarmament obligations or face serious consequences”. Saddam Hussein then allowed UN inspectors to access Iraqi sites. The US Congress authorised President Bush to use force if necessary to “prosecute the war on terrorism”.

22 October 2002: Mounir al-Motassedeq went on trial in Germany accused of membership of a terrorist cell. He was found guilty in 2003 and sentenced to 12 years. Another court then ordered a retrial at which he was sentenced to 15 years in prison on 19 August 2005.

29 October 2002: A bombing in a Bali nightclub killed 202 people. On the same day, Chechen separatists seized a theatre in Moscow taking members of the audience as hostages and demanding the withdrawal of Russian troops from Chechnya. On the third day of the siege, special forces pumped gas into the theatre’s air conditioning system and then entered the building. According to official figures, 39 terrorists and 129 hostages were killed.

20 November 2002: The US Administration announced that it had assembled a “Coalition of the Willing”, i.e. states prepared to support a war against Iraq if it did not agree to all its weapons of mass destruction being destroyed.

1 March 2003: Khalid Sheikh Mohammed, believed to be one of the al-Qaeda planners of the 9/11 attacks, was captured in Islamabad in Pakistan.

20 March 2003: The invasion of Iraq by coalition forces began.

1 May 2003: President Bush claimed victory for US-led coalition forces in Iraq.


27 June 2003: Ali Abdul Rahman was arrested in Saudi Arabia and accused of planning the 12 May bombings.

13 December 2003: Saddam Hussein was captured by US forces.

15 December 2003: Suicide bombers attacked two synagogues in Turkey.


11 March 2004: Ten bombs exploded on four early morning commuter trains travelling into Madrid. 191 people were killed and 1,800 injured.

22 April 2004: Two suspected terrorists who were arrested in Spain were charged with helping to plan the 9/11 attacks. On 26 September, a Spanish court found them guilty and they were sentenced to jail.

1 May 2004: A British newspaper published pictures of an Iraqi prisoner who said he had been beaten by British troops.

25 August 2004: A Pentagon investigation concluded that the abuses of prisoners at Abu Ghraib were due to individual misconduct, lack of discipline and poor leadership.

1 September 2004: Pro-Chechen rebels took 1,200 hostages at School Number One in Beslan, North Ossetia in the Caucasus region of the Russian Federation. After three days, a gunfight started between Russian security forces and the hostage takers and 344 civilian hostages were killed, including 186 children.

15 January 2005: US soldier, Charles Graner, was sentenced to 10 years in prison for abusing Iraqi detainees.

7 July 2005: In London four suicide bombers set off their bombs on three underground trains and a bus and 52 people were killed and 700 injured.

January 2006: A video was released in which Osama Bin Laden offered the United States a truce if they changed their Middle East policy. The offer was rejected by the US administration.

4 May 2006: Zacarias Moussaoui was jailed for life in the USA for his role in the 9/11 attacks.

8 June 2006: Abu Musab al-Zarqawi, self-styled leader of al-Qaeda in Iraq, was killed in a US air strike.

29 June 2006: The US Supreme Court ruled that terrorist suspects held at Guantanamo Bay could not be tried by military tribunals.

July 2006: Following the killing of three Israeli troops by Hezbollah, Israel invaded southern Lebanon where Hezbollah has several bases.

30 December 2006: Saddam Hussein was executed for crimes against the Iraqi people.


What is in dispute here?

Terrorism is not a new international concern. Governments have tended to use the word as a label for any group prepared to use violence - assassinations, kidnappings, hostage taking and bombings – to achieve its political ends when they feel that peaceful change is not possible through the normal political processes. In this respect it is worth remembering that some individuals who became highly respected statesmen, such as Nelson Mandela in South Africa, Menachem Begin in Israel, Jomo Kenyatta in Kenya, were either detained or hunted as terrorists when they were younger. It is not unusual in modern times for yesterday’s “terrorists” to become tomorrow’s government.

However, the idea of putting pressure on the government, an occupying power or the international political community by spreading fear and alarm amongst the ordinary
population, usually through indiscriminate and unpredictable violence, really developed in the second half of the 20th Century. After the Second World War, the Middle East became a hotbed for terrorism. Jewish terrorist groups such as Irgun Zvai Leumi and the Stern Gang used acts of terror against British and Arab targets to put pressure on the British to withdraw their troops from Palestine prior to the creation of the state of Israel.

The Arab-Israeli war which followed and the displacement of many Palestinians then helped to create the conditions in which terrorist groups emerged and gained popular support. Throughout the 1970s and ‘80s, supporters of the Palestine Liberation Organisation (PLO) hijacked aircraft to publicise the Palestinian case and to put pressure on the international community to take action on their behalf.

In Europe itself, a number of left-wing terrorist groups emerged in the 1970s to challenge the social and political order. These included the Red Brigades in Italy, Action Directe in France and the Red Army Faction in West Germany. However, since the early 1980s, terrorism has tended to be linked to:

- opposition to the global economic and political power of the United States;
- opposition to Israeli occupation of the West Bank (and to the existence of the state of Israel) with the emergence of groups such as Hamas and Hezbollah;
- nationalist aspirations, such as the Provisional IRA in Northern Ireland, ETA in Spain or the Chechen separatists in the Russian Federation.

Whilst established governments usually make no distinction between terrorist and criminal acts and seek to deny the terrorist “the oxygen of publicity”, there is no doubt that most contemporary terrorist groups have emerged from communities and populations that feel powerless and helpless and feel that no-one listens to them and that their previous efforts to use peaceful, legitimate forms of negotiation and political action have not been taken seriously by those in power.

At the same time, three factors have also contributed greatly to the impact of terrorism in recent times. The first of these is technology. Even small terrorist cells with very few resources can get hold of weapons or manufacture explosives that can do great damage when used in public spaces. Also modern communications technology has helped them to plan their activities without being detected.

The second factor is the publicity which they now receive from the global mass media. An explosion or a kidnapping or an assassination will get such widespread coverage in the media that its impact will be international. The aircraft crashing into the World Trade Center in New York meant that the everyday experience of catching a plane or a train changed for everyone. The impact was global.

The third factor has been the rise of a new phenomenon in recent years – state sponsorship of terrorism. During the Cold War, the superpowers were prepared to provide financial and material support to certain terrorist groups if this suited their global strategic objectives. It is ironical that the current US administration criticises other nations for providing this kind of support to Osama bin Laden and al-Qaeda when they used to enjoy US support for their terrorist actions in Afghanistan when it was occupied by Soviet troops. Today, it tends to be certain states in the Middle East who appear to be providing support and a safe haven for Islamic fundamentalist groups prepared to engage in terrorist acts in the region and elsewhere in the world.
Over the last decade, the nature of terrorism appears to have been changing. No-one was prepared for the scale of the attack on the World Trade Center or the number of deaths and casualties. It is also clear that some terrorist groups can now get their hands on highly sophisticated weapons. When five members of a Japanese cult released the gas Sarin on the Tokyo subway in 1995, killing 12 people and injuring others, this raised the possibility of terrorist groups using weapons of mass destruction in the future.

The emergence of suicide bombers amongst the Palestinian population on the West Bank and then in Iraq after the war also introduced a new phenomenon - the amateur terrorist. Previously intelligence services had invested a lot of resources in the surveillance, infiltration and gathering of information about terrorist cells; now the terrorist could be anyone on the street, bus or train. As Brian Michael Jenkins of the RAND Corporation – a US organisation which carries out research on terrorism and counter-intelligence – has pointed out: “investigations of ‘terrorist activity’ moved from preventive to reactive”.

Some observers have suggested that, because of this new phenomenon, it has become more difficult for intelligence services to target their resources on individuals and terrorist cells and, soon the public begins to regard whole communities as potential terrorists leading to greater intolerance and the alienation of the young people within those communities. Zbigniew Brzezinski, a former US security adviser, has recently observed: [The “war on terror”] “has bred intolerance, suspicion of foreigners and the adoption of legal procedures that undermine fundamental notions of justice. Innocent until proven guilty has been diluted if not undone, with some – even US citizens – incarcerated for lengthy periods of time without effective and prompt access to due process. There is no known, hard evidence that such excess has prevented significant acts of terrorism, and convictions for would-be terrorists of any kind have been few and far between.”.

This highlights the ongoing debate which has been sparked off by the American and international response to the events of 9/11, especially the enhanced domestic security, the military occupation of Afghanistan and Iraq, Guantanamo Bay and the cooperation by some European countries in the US policy of rendition where suspected terrorists are secretly sent to another country for interrogation, possibly using methods which would be illegal in the USA.

On one side, there are those who argue that the risk that terrorists might use similar methods or even weapons of mass destruction indiscriminately against civilian populations is so great that extraordinary measures are called for. In their view, the possibility that a terrorist group might use weapons of mass destruction on an innocent population calls for the suspension of suspected terrorists’ civil rights and might even involve new limitations on the civil liberties of the whole population in order to reduce the risk.

On this basis the UK Prime Minister in 2006, Tony Blair, argued that “We hear an immense amount about their [i.e. terrorists] human rights and their civil liberties. But there are also the human rights of the rest of us to live in safety”. President Bush has adopted a similar line in a number of public speeches, arguing that the policy of detaining and questioning suspected terrorists outside the United States - which had been criticised by the United Nations Human Rights Committee – was justified on the grounds that “These are dangerous men with an unparalleled knowledge about terrorist networks and their plans for new attacks” and that “the security of our nation and the lives of our citizens depend on our ability to learn what
these terrorists know.... We’re getting vital information necessary to do our jobs, and that’s to protect the American people and our allies.”.

On the other side, there are those who argue that the detention in Guantanamo Bay and other detention centres in Iraq and Afghanistan of persons who fought for the Taliban or the Iraqi army or are suspected members of al-Qaeda and other terrorist groups violates their civil and political rights, including their right to a fair trial before an independent tribunal and their right not to be detained indefinitely. Critics of the US Administration, including the UN Commission on Human Rights and Amnesty International, also argue that the circumstances of the prisoners’ detention, including prolonged solitary confinement, the interrogation techniques which are used and the practice of extraordinary rendition are violations of the Convention against Torture and the Geneva Conventions on the treatment of prisoners of war.

In response, the US Administration, the Pentagon and a number of independent American observers have argued either that the prisoners are “unlawful combatants” not prisoners of war and are therefore not protected by the Geneva Conventions or, more recently, that the relevant articles in these Conventions are “vague and undefined and each could be interpreted in different ways by American or foreign judges” (President Bush, 6 September, 2006).

The question of how to treat persons suspected of planning or carrying out terrorist acts in the homeland (as opposed to acts carried out in a foreign country or war zone) has also generated an ongoing public debate. Just 45 days after the al-Qaeda attack on the World Trade Center, the US Patriot Act was passed, which gave U.S. law enforcement agencies new powers for fighting terrorism in the USA and abroad. These included more powers to detain and deport suspected persons and to access people’s telephone and email communications and their medical, financial, and other records.

A year later, the Homeland Security Act was passed which created a new Department of Homeland Security with new powers to monitor the activities of US citizens as well as visitors. Both pieces of legislation had their critics within the USA who felt that they would imperil such constitutional rights as freedom of speech, religion and assembly, the right to privacy and the right to counsel and a fair trial.

In the United Kingdom, the government responded to the events of 9/11 by bringing in emergency laws to allow terrorist suspects to be detained without trial. This process, known as internment in the UK, had previously been used during the Second World War to detain fascists and other suspected enemies of the state, and it was reintroduced in the 1970s to detain members of the Provisional Irish Republican Army and the Ulster Volunteer Force in Northern Ireland.

This had not previously posed a problem but, in October 2000, the UK passed the Human Rights Act which incorporated the European Convention on Human Rights into British law. On that basis internment could only be reintroduced if Parliament voted to opt out of Article 5 of the European Convention which states that: “Everyone arrested or detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial”. The Convention includes a clause in Article 15 that enables a member state to opt-out of Article 5 or other Articles “in time of war or other public emergency threatening the life of the nation”. This stated intention by the UK Government proved highly controversial both in Britain and elsewhere in Europe.
In 2001, the UK Government introduced the Anti-Terrorism, Crime and Security Act which allowed the government to detain indefinitely any non-British citizen suspected of being a terrorist and also allowed them to freeze bank accounts and seize other financial assets that might be used by suspected terrorists. This Act was superseded by the Prevention of Terrorism Act in 2005 which allowed the government to impose “control orders” that would restrict an individual’s liberty for the purpose of protecting members of the public from a risk of terrorism.

The critics, while acknowledging that there was a real terrorist threat, argued that these new government powers could increase the likelihood of miscarriages of justice and that the best way of dealing with suspected terrorists was through the courts using normal legal procedures. The most common defence of the new legislation was that the need to protect the freedom of British citizens to go about their lives without fear of terrorism or the threat of terrorist acts was more important than the civil rights of a small number of suspected terrorists.

A variety of viewpoints

Defining the terrorist can be quite difficult.

Professor George Lakoff at Berkeley, University of California, has argued that:

“Wars are conducted against armies of other nations. They end when the armies are defeated militarily and a peace treaty is signed. Terror is an emotional state. It is in us. It is not an army. And you can’t defeat it militarily and you can’t sign a peace treaty with it.”

Former US National Security Adviser, Zbigniew Brzezinski, takes a similar line:

“Constant reference to a ‘war on terror’ did accomplish one major objective: it stimulated the emergence of a culture of fear. Fear obscures reason, intensifies emotions and makes it easier for demagogic politicians to mobilize the public on behalf of the policies they want to pursue. The war of choice in Iraq could never have gained the congressional support it got without the psychological linkage between the shock of 9/11 and the postulated existence of Iraqi weapons of mass destruction.”

Ken McDonald, head of the Crown Prosecution Service in the UK, is firmly of the view that terrorists are criminals not soldiers and that the UK response should be:

“Proportionate and grounded in due process and the rule of law........On the streets of London there is no such thing as a war on terror. The fight against terrorism on the streets of Britain is not a war. It is the prevention of crime, the enforcement of our laws, and the winning of justice for those damaged by their infringement.”

On the other hand, Brian Michael Jenkins of the RAND Corporation highlights the problems that can arise from either defining terrorists as criminals or as prisoners of war:

“If terrorism is considered a criminal matter, we are concerned with gathering evidence, correctly determining the culpability of the individuals responsible for a particular act, and apprehending and bringing the perpetrators to trial. Dealing with terrorism as a criminal
matter, however, presents a number of problems. Evidence is extremely difficult to gather in an international investigation where all countries may not cooperate with the investigators. Apprehending terrorists abroad is also difficult. Moreover the criminal approach does not provide an entirely satisfactory response to a continuing campaign of terrorism waged by a distant group, and it may not work against a state sponsor of terrorism. If, on the other hand, we view terrorism as war, we are less concerned with individual culpability. Proximate responsibility – for example, correct identification of the terrorist group – will do….The focus is not on the accused individual but on the correct identification of the enemy.”

The process of the so-called “war on terror” since the events of 11 September 2001 has proved controversial. The case for indefinite detention of suspected terrorists and for the use of interrogation methods that critics would regard as violating the suspects’ civil rights has been made by the US Administration and numerous advisers.

One of these former US Government advisers, Jay Farrar of the Center for Strategic & International Studies, Washington D.C., draws a parallel between the detainees in Guantanamo Bay and people who are “stateless”:

“These ‘detainees’ [at Guantanamo Bay] skirted international norms and abandoned their rights as sovereign nationals when they chose to participate in the stateless pursuit of terrorism. [They have] moved from one recognised nation state to another in an effort to frustrate and evade international laws that could be invoked to hold them accountable for their actions…..In the aftermath of the attacks of 11 September, the United States has chosen to redefine the status accorded to international terrorists and their non-state sponsors….They are now being treated accordingly, and will be held accountable within the framework they created and chose.” Interviewed by the BBC on 16 January 2002

By contrast, the human rights NGO, Amnesty International argued that:

“Amnesty International considers those held in Guantanamo are presumed to be prisoners of war. If there is any doubt about their status, it is not the prerogative of the US secretary of defence or any other administration official to make this determination. According to Article 5 of the Third Geneva Convention the US must allow a ‘competent tribunal’ which is impartial and independent, to decide on their status. This is also the position held by the International Committee of the Red Cross (ICRC), the most authoritative interpreter of the Geneva Conventions.” Interviewed by the BBC on 16 January 2002

Adam Roberts of Oxford University argues that there is a precedent for denying prisoner-of-war status to terrorists, noting that the UK government did not classify members of the provisional IRA as prisoners of war but:

“It did recognise that international standards in the treatment of prisoners – particularly no torture – did apply to them.”

However, the Report of Manfred Nowak, UN Special Rapporteur for the UN Commission on Human Rights, focused on the treatment of detainees in the Guantanamo Bay centre:

“The executive branch of the United States Government operates as judge, prosecutor and defence counsel of the Guantanamo Bay detainees: this constitutes serious violations of various guarantees of the right to a fair trial before an independent tribunal as provided by
Article 14 [of the International Convention of Civil and Political Rights]…..Attempts by the United States Administration to redefine ‘torture’ in the framework of the struggle against terrorism in order to allow certain interrogation techniques that would not be permitted under the internationally accepted definition of torture are of utmost concern…..The lack of any impartial investigation into allegations of torture and ill-treatment and the resulting impunity of the perpetrators amount to a violation of Articles 12 and 13 of the Convention Against Torture.”

An official spokesman for the UK Prime Minister, defending the Government’s intention to introduce legislation to indefinitely detain suspected terrorists, said:

“Britain is closed to terrorism, and we will take whatever action we can….People will object to it, but we are absolutely determined to get the balance right between human rights, which are important, and society's right to live free from terror.”

Liberty, the UK-based Human Rights organisation, expressed concern that the anti-terrorism legislation in the UK (2005) ran the risk of giving the executive:

“sweeping statutory powers to impose severe restrictions on individual liberties [that would then] be applied in an arbitrary, unfair and disproportionate manner…with little substantive judicial supervision”.

The UK Minister of State for Community Safety, Crime Reduction, Policing and Counter-Terrorism told a parliamentary committee in 2005 that:

“Dealing with the terrorist threat and the fact that at the moment the threat is most likely to come from those people associated with an extreme form of Islam, or falsely hiding behind Islam, if you like, in terms of justifying their activities, inevitably means that some of our counter-terrorist powers will be disproportionately experienced by people in the Muslim community.”

Yahya Birt, Research Fellow at The Islamic Foundation in the UK, and a converted Muslim, expressed concern that discussion about cultural diversity in Britain will be redefined by reference to terrorism:

“The most important point that British Muslims can make is to assert that [issues like multiculturalism] cannot be completely redefined by reference to terrorism for the simple reason that whatever the causes of disaffection or disadvantage are among Muslim communities, there is no causal conveyor belt leading inevitably to the London attacks”.

Tariq Ramadan, President of the European Muslim Network, also expressed concern about the risk that a simplistic analysis of the nature and causes of terrorism in multicultural societies can also lead to simplistic assertions about entire minority communities:

“On December 8 last year, Tony Blair called on minorities to conform to ‘our essential values’, stating that they have ‘a duty to integrate’. The Muslim community, because it is perceived as ‘badly integrated’, has become suspect. But this cannot justify sweeping measures applied to an entire segment of the population on the basis of a misdiagnosis. The vast majority of British Muslims have absolutely no problem with the British values cited above. Their cultural and religious integration is already a fact, as proven by the millions of
citizens who live peaceably in this country. The problem today is not one of ‘essential values’, but of the gap between these values and everyday social and political practice. Rather than insisting that Muslims yield to a ‘duty to integrate’, society must shoulder its ‘duty of consistency’. It is up to British society to reconcile itself with its own self-professed values; it is up to politicians to practice what they preach.”

**What Do You Think?**

Do you think, as some people do, that the need to protect ordinary people from the threat of terrorist action is more important than the civil rights of a small number of suspected terrorists or do you think, as others believe, that suspending the rights of a small number of possible terrorists is the first step on the slippery slope to everyone’s civil rights being threatened?
CASE STUDY 10: Cultural monuments or human lives? The case for the protection of cultural property

Christopher Rowe

Timeline

February 1944: Allied forces advancing into northern Italy were held up by strong German defences of the Gustav Line on the ridge at Monte Cassino. Allied commanders thought, wrongly, that the historic Benedictine monastery at Cassino was being used as part of the military defences. Heavy bombers attacked the monastery and it was almost totally destroyed.

August 1944: The German officer in command of Paris, General Choltitz, was ordered by Hitler to destroy the city before German forces withdrew. Choltitz disobeyed the order.

February 1945: Mass Allied bombing raids badly damaged the historic city of Dresden in Saxony. Nearly 30,000 civilians died and numerous historic monuments were destroyed. Later, between 1996 and 2006, the ruined Frauenkirche was rebuilt by an international team of architects, as a symbolic act of reconciliation and international peace.

August 1945: The historic seaport of Nagasaki in southern Japan was obliterated by an atomic bomb, shortly after the first atomic bomb had been dropped on Hiroshima.

Winter 1991-1992: The historic seaport city of Dubrovnik in Croatia was bombarded for several weeks by Serb forces. Many buildings were damaged and there were strong international protests against the destruction of cultural heritage.

August 1992: The National Library in Sarajevo was bombarded by Serb artillery during the siege of the city and almost totally destroyed by fire. 1.5 million books were burned.

November 1993: The historic Stari Most, the old bridge over the Neretva river at Mostar, was destroyed by Croatian forces. The bridge had been a cultural landmark since its original construction in 1566. Work to rebuild the bridge began in November 2004.

September 2000: The Israeli politician, Ariel Sharon, made a controversial visit to the site of the Al Aqsa mosque in Jerusalem. The mosque is part of the Noble Sanctuary that has particular importance in the eyes of Muslims; it stands on the site of the Temple Mount that has particular significance for Jews. There were Muslim concerns that Israeli construction work on the site would weaken the foundations of the Al Aqsa mosque. Sharon’s visit inflamed religious tensions and helped to bring about the second Palestinian intifada.

March 2001: The Bamiyan Statues – huge historic Hindu monuments set into a cliff face in the mountains of the Hindu Kush – were destroyed on the orders of the Taliban regime in Afghanistan on the grounds that the statues represented an “infidel” religion. This deliberate act of destruction provoked a storm of international protest and condemnation.

November 2002: There were strong Serbian protests against the United Nations peacekeepers in Kosovo for allowing the destruction of the Serbian Orthodox church of St Basil of Ostrog.
April 2003: Following the US-led invasion of Iraq and the toppling of Saddam Hussein, there was a period of lawlessness during which the national museum in Baghdad was extensively looted and many priceless works of art were stolen or destroyed. The American authorities were widely criticised for failing to prevent this.

February 2006: The famous Golden Mosque at Karbala in Iraq, an especially holy shrine for Shia Muslims, was badly damaged in an attack blamed on Sunni extremists attempting to provoke civil war. In the days that followed, there were many reprisals against Sunni mosques.

What is in dispute here?

The controversy about cultural property is all about balancing the value of precious objects against the value of human lives. In war, should commanders risk greater loss of life by taking steps to protect cultural monuments? In peace, should governments allow the protection of cultural monuments to take priority over economic progress? In matters of religion, should the cultural property of rival religions always be accorded equal respect?

It is important to distinguish between acts of deliberate destruction on the one hand and accidental damage on the other. In some cases, the destruction of cultural monuments is a calculated act of war, consciously promoting nationalist or religious conflict. At other times, the tragic destruction of cultural heritage occurs because of what is termed “collateral damage” in wartime – or because of the drive for modernisation and progress, as older buildings are torn down to be replaced by newer ones.

It is also important to define carefully what “cultural property” actually is. As well as great buildings such as churches, palaces and museums, there are often humbler smaller vernacular buildings such as old village houses that can be of great cultural and historical significance. There are many historical examples, such as 19th Century Paris and Vienna, where great cultural monuments were built on the ruins of earlier structures that would now be regarded as immensely valuable cultural heritage if they had not been knocked down in the name of progress. Over time, perceptions often change about what cultural property deserves to be admired and protected.

Sometimes cultural heritage is to be found not in buildings or artefacts but in landscapes. In most countries, national parks have been established to prevent the spoliation of beautiful and historic landscapes by unsuitable development or settlement. Nor is it always something as extensive as a national park. Sometimes it can be a single tree. At the height of the siege of Sarajevo, people desperate for fuel came to cut down a tree for firewood. A woman resident in the nearby block of apartments frantically tried to prevent them – for her the tree was precious and timeless, the one spiritual thing in a concrete war zone.

The concept of cultural “property” also raises questions about who actually owns the property. It is often argued that great cultural monuments belong not just to the country or civilisation in which they are located but to the wider world. In recent years, many sites have been designated as having World Heritage status. Many cities have a history and an identity that combines different religions and cultures. One of the great dangers intensified by wars, especially ethnic and civil wars, is that cultural property becomes “ethnicised” – labelled as being representative of one culture to the exclusion of all others.
On one level, the debate is about the right balance between the need to preserve the past and the need for modernity and economic progress. In the city of Liverpool, designated European Capital of Culture for 2008, there has been intense controversy about the city’s regeneration being harmed by excessive concerns to protect the past at the expense of the future. All over Europe, there are similar controversies whenever the protection of historic buildings comes into conflict with the need for new roads, new supermarkets or new skyscrapers.

On another level, the debate concerns the need to respect other cultures than one’s own. Most people would agree that the cultural monuments of other cultures and religions should be treated with care and respect, even after those who created and believed in them are no longer present. There are no Romans anymore in the Greek city of Thessaloniki but the many Roman archaeological sites are looked after with great care and pride. Perhaps in the future, the architectural heritage of the centuries when the city was under Ottoman rule will be treated in the same way. In the Balkans, the legacy of the wars of the 1990s has created the danger of the “ethnic cleansing” of cultural heritage as well as of people.

On the deepest philosophical level, the debate concerns the value to be placed on cultural monuments as compared to the value of human lives. It can be argued, for example, that the terrible destruction of Hiroshima and Nagasaki forced Imperial Japan into a surrender that would otherwise have been delayed by many months during which millions would have died. It is often argued that buildings can be repaired and rebuilt but human lives cannot. And yet the destruction of cultural monuments causes a deep sense of loss and outrage.

After the destruction of the historic bridge over the Neretva at Mostar in 1993, a Croatian journalist attempted to explain this sense of loss. He wrote:

“Why do we feel more pain looking at the image of the destroyed bridge than we do when looking at the images of people? Perhaps it is because we see our own mortality in the columns of the bridge, more than in the deaths of the people. We expect people to die. We expect our own lives to end. But the destruction of cultural monuments is something else. The beautiful old bridge at Mostar was built to outlive us. It transcended our individual destinies. The death of a man is one of us; the death of the bridge is all of us forever”.
A variety of viewpoints

Comments by a German tank commander leading the attack on Ypres in 1940. He had fought in the long battles for Ypres in the First World War. His men were asking him to order air strikes on the tower of the medieval Cloth Hall apparently being used by the forces defending the city to guide their artillery:

“No. No Stukas. For this city, one war is enough.”

Report of the Battle for Monte Cassino in 1944:

“During the first days of the battle, the Allies spared the Monte Cassino monastery from air, artillery or ground attacks, even though it was a crucial strongpoint. But sightings of German defenders within the monastery walls prompted General Freyberg to request its destruction by air and artillery bombardment. On 15 February 1944, 230 Allied bombers pounded the historic site. Though most of the monastery and its outer walls was destroyed, the German defenders were able to shelter in underground chambers. Even though in ruins, the monastery remained a strong defensive position.”

Comments early in 1945 by Sir Arthur Harris, Chief of RAF Bomber Command:

“The feeling over the destruction of Dresden could easily be explained by any psychiatrist. It is connected with German bands and Dresden shepherdesses. Actually, Dresden was a mass of munitions works, an intact centre of government, and a key transportation centre. It is now none of those things.”

An interview after the war with Martin Mutschmann, the former Gauleiter of Dresden:

“Interrogator: What do you have to say about the air raids on Dresden?  
Mutschmann: It’s terrible, the quantity of cultural valuables destroyed in one night. Dresden was a city infinitely rich in artistic treasures. Now all that is gone.  
Interrogator: So you are not at all concerned about the human victims?  
Mutschmann: Of course, a very great number of human beings died. I just meant that artistic treasures cannot be replaced.”

A report by Colin Kaiser, former director of the UNESCO office in Sarajevo, in September 2000:

“Before the war, many Serbs, Muslims and Croats took equal pride in their secular buildings such as the Sarajevo National Library. All this was changed by war. Although we perceive destruction as barbaric, its perpetrators see it as an act of creation – as the creation or liberation of a mythical rural society, with the symbols of the unwanted ‘other’ eliminated from the horizon. In the cities, a common civic identity was destroyed. Secular and sacral buildings became ‘ethnicised’. Before the war, nobody in Mostar would have said that the Old Bridge was a ‘Muslim’ monument – but its destruction by Croatian tanks turned it into one.”
Comments by the American writer, Susan Sontag, in an interview on Croatian Radio, December 1991:

“I want to emphasise my feeling of horror, because of the absolute ruthlessness of the war. I’m horrified above all about Dubrovnik. Whatever happens, this war will end. All wars end. And what will happen then? Dubrovnik no longer exists, as well as many other cities, and lives. But Dubrovnik has a very special status – it belongs to everyone. People understand that you don’t bomb a Venice, nor the historic centre of Rome. You don’t attack and destroy Dubrovnik. That simply must not be done, whatever the war may be like.”

Comments by Leszek Kolakowski, interviewed on Croatian Radio, January 1992:

“The Serbs say they have to be able to defend the Serbian minority. All right, but I don’t see how that can be said in the case of the siege of Dubrovnik, that great jewel of the Mediterranean. What Serbian minority needed to be defended there?”

A letter to the Guardian newspaper from Professor J.P. Maher in October 2000:

“I read in your recent report references to the ‘pounding of the beautiful Croatian town of Dubrovnik in 1991’. This is a fraud. Since 1991, the press has dozens of times printed the hoax that the Pearl of the Adriatic was reduced to rubble. Those stories were fakes. In March 1992, I visited Dubrovnik to see for myself the truth about the war. The old city was never destroyed. It was barely scratched. Dubrovnik’s destruction was an invention of PR companies in the hire of the war criminals who broke up Yugoslavia without negotiations.”

The librarian of Sarajevo’s National Library, Kemal Bakarsic, describing the fire of August 1992:

“All over the city, sheets of burned paper, fragile pages of grey ashes, floated down like a dirty black snow. Catching a page, you could feel its heat and, just for a moment, read a fragment of text in the strange kind of black-and-grey negative until the page melted to dust in your hand.”

Report from the American Schools of Oriental Research, April 2003:

“The looting of the Baghdad Museum is the most severe blow to cultural heritage in modern history, comparable to the sack of Constantinople I, the burning of the library at Alexandria, the Vandal and Mongol invasions and the ravages of the Spanish conquistadores.”

From “Museum Madness in Baghdad”, an article in Middle Eastern Quarterly by Alexander Joffe, Spring 2004:

“In April 2003, in the mayhem that followed the collapse of Saddam Hussein’s regime, looters entered the Iraq National Museum in Baghdad. They stole and destroyed artefacts and caused damage to the museum. Western archaeologists created their own narrative of these events and promoted it in the world media. They claimed the US authorities had deliberately failed to stop the looting and were possibly complicit in it. There is only one problem with this saga of culpability and guilt – it bears no relation to reality. The looting of the museum was far less devastating than was originally claimed.”
Comments on the bombing of the Golden Mosque at Samarra by Abdulaziz Sachedina, a religious studies professor and expert on Shiite Islam:

“This was a shrine where I once sat with my teachers to study law and theology. Even when the Golden Mosque with its blue dome was a Sunni mosque, the Shia and Sunni communities came together there to worship and to pay their respects to the Prophet Muhammad. It is heartbreaking and deeply disturbing to see Muslims engaged in destroying this monument that celebrates the spiritual heritage of Islam.”

What Do You Think?

- If you were the government official responsible for the defence of a town or city threatened with attack, would you give top priority to the protection of cultural monuments and art treasures?

- If you were a military commander in wartime, would you change your plans, and risk heavier casualties among your troops, in order to avoid damaging historic buildings?

- Can it ever be justified to order the destruction (or to allow the ruin by neglect) of the cultural monuments of a different culture or religion?
KEY QUESTION SIX: What is more important: maintaining a healthy national economy or ensuring that everyone is entitled to the basic necessities of life?

Robert Stradling

Human rights are international norms or standards which help to protect all people everywhere from political, legal, social and economic abuse or mistreatment and from discrimination because of their gender, age, ethnicity, nationality, religion or cultural background.

We are probably most familiar with those international norms which are commonly referred to as civil and political rights: the right to a fair trial when charged with a crime, the right to freedom of speech, the right to associate with others to pursue our own political and civil interests, the right to practise our religion or to be an atheist, the right not to be enslaved or tortured and the right to vote and participate in political activity.

Governments are expected to uphold the civil rights of every person who resides in their countries, regardless of whether or not they were born there, are citizens or migrants and refugees from other countries or even tourists. Governments can usually expect international condemnation and even economic and political sanctions (such as a refusal to buy products from a country or lend money for economic development) when they regularly and systematically violate people’s civil and political rights. They may find that their actions are criticised in a report by the United Nations Human Rights Committee or they may even find that they have to defend their actions in the International Criminal Court or the European Court of Human Rights. In cases of extreme violations of human rights, the Security Council of the United Nations may also authorise military intervention to protect people from the actions of a particular government.

But what happens when a government fails to ensure that all of its people have adequate housing or medical care? In 1948, the Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations, with no opposing votes and only eight member states abstaining. This Declaration makes it clear that everyone is entitled to the same rights and that individuals as well as states must take responsibility for the rights of others. Included in the list of rights specified in the Universal Declaration were social, economic and cultural rights. These included equal rights for men and women, access to employment opportunities, fair pay for work, safe and healthy working conditions, the right to rest and leisure, the right to form and join trade unions, the right to strike, the right to an adequate standard of living, the right to adequate housing, the right to health care and education.

Declarations have no power in law. The next step, therefore, was to draw up a Treaty or International Covenant – the United Nations International Covenant on Economic, Social and Cultural Rights. It took nearly 20 years (1966) before it was ratified (or agreed) by 133 member states. It took a further 10 years (1976) before the Covenant became international law binding on those states which had signed it.

To what extent are these economic, social and cultural rights universally recognised 60 years after the Declaration of Human Rights was adopted by the United Nations? During the second half of the 20th Century, most liberal democracies introduced some kind of welfare state where all people receive benefits and entitlements to ensure that they have an adequate standard of living, including at least a basic minimum of social security and health care. In
some cases, this was funded through taxation and, in other instances, it was funded by people making payments to social insurance schemes. Most communist states also made universal provisions for medical care, pensions for the elderly, public housing and employment though some of the economic and social rights, such as the right to strike, were not necessarily guaranteed.

However, if we look around the world today, a lot still needs to be done before everybody could be said to be provided with the basic necessities of life: sufficient food, good health, adequate shelter and a job that provides enough income to take care of themselves and their families. A billion adults in the world cannot read or write. Over 500 million children do not receive any primary education. More than 1.5 billion people do not have access to proper sanitation or water that is safe to drink. Everyday, over 35,000 children die because they are starving or have diseases which could be prevented by immunisation and cleaner water and sanitation. For many of these adults and children, the economic and social rights listed in the UN International Covenant must seem like unattainable goals rather than universal entitlements.

Perhaps it is not surprising then that the whole idea of economic and social rights has been controversial ever since the end of the Second World War. The Canadian writer, Michael Ignatieff, has suggested that, as growing mutual mistrust between the Soviet Union and its wartime allies in the west developed into the Cold War, so two distinct perspectives on human rights emerged – one socialist and the other capitalist. The former emphasised the importance of economic and social rights while the latter, particularly the United States, tended to give more emphasis to civil and political rights.

Indeed the main reason why two separate International Covenants were produced - one on civil and political rights and the other on economic, social and cultural rights - was because it would enable governments, particularly those allied with the United States in the Cold War, to ratify the Convention on Civil and Political Rights without also having to accept the Convention on Economic, Social and Cultural Rights. For a similar reason, economic and social rights were not included in the European Convention on Human Rights (1950) but were covered in a separate document, the European Social Charter.

However, in reality, the actual situation at the time was much more complex than this simple ideological divide would seem to indicate. In the first post-war elections, voters in several West European countries elected governments which were committed to the idea of the welfare state. There was a recognition that steps had to be taken to ensure that the social and political unrest which had emerged as a result of the Great Depression in the 1920s and early 1930s, and which led to mass support for fascism in Europe, would not happen again.

It is also true that the Soviet Union and governments in the rest of the communist bloc gave more priority to economic and social rights than to freedom of speech and some other civil rights. However, the Soviet Union had actually been one of the eight member states which abstained from voting on the Universal Declaration of Human Rights and it was developing countries such as Chile, Cuba, Panama and the Philippines who took the lead in drafting the key documents which informed the International Convention on Economic, Social and Cultural Rights.

Ever since the Universal Declaration and the European Convention on Human Rights were first published, there has been a lively debate about the status of economic and social rights in comparison with civil and political rights. This debate has focused, and continues to focus, on a number of questions and issues:

- Are civil and political rights more important than economic and social rights?
Are economic and social rights really statements about what people need in the ideal world rather than norms or standards which have to be guaranteed for all regardless of whether or not a government has the resources to do so?

If a government was democratically elected to reduce spending on public services such as education, public housing and medical care, would it not be undemocratic if the law courts took action against that government for violating people’s economic and social rights?

We do not have the space here to examine each of these issues in real depth. Instead, we will briefly outline the different positions and leave you to decide for yourselves which position, if any, you agree with.

Are civil and political rights more important than economic and social rights?

It is often claimed that the most important rights are those associated with personal freedom, and that of these liberties the most important are freedom from torture and slavery and the right to a fair trial. Certainly these are the civil rights which have no conditions attached to them, whereas the International Conventions on Human Rights usually spell out certain conditions where an individual might not be able to exercise a particular civil or political right. For example, in most countries, children and young people under the age of 18 do not have the vote. We may have freedom of speech but this does not mean that we can slander or libel someone without facing legal consequences or that we can pass on information which may endanger national security. But it is widely believed that no-one can truly live in dignity and live the life of a free and independent person if they are tortured or treated like a slave or even live under the threat of torture or slavery.

Some of the people who argue that certain freedoms or civil and political rights are the most important ones tend also to describe economic and social rights as “second class rights”. By that, they mean rights that governments can only guarantee when they have sufficient resources to do so. They also mean that such rights should have a lower priority for every government than the civil and political rights.

However, others argue that economic and social rights are just as important as civil and political rights. In their view, we cannot live dignified lives, we cannot flourish and we cannot function as free and independent persons if we are starving, homeless, living in extreme poverty and unable to read and write. What is more, they argue, if we are living in these appalling conditions and we lack the basic necessities of life, then we will probably not be able to exercise our civil and political rights either.

Are economic and social rights really statements about what people need in the ideal world rather than universal rights?

Of course, at one level, the answer to this question is quite straightforward. Most of the countries in the world have signed the United Nations Declaration on Human Rights and ratified the International Convention on Economic, Social and Cultural Rights and this Convention has had the force of international law since 1976. So, simply put, these are rights because international law says they are rights.

But some critics continue to argue that economic and social rights are not rights in the same sense as civil and political rights and, indeed, even in some of the most economically developed countries in the world, certain economic and social rights are not being enforced or guaranteed as rigorously as civil and political rights. These critics tend to fall into two distinct camps. The more extreme position is that rights are norms which are universal and
apply to everyone at all times. But, so they argue, economic and social rights are not universal in this sense. The right to form or join a trade union only applies to those workers in industries where it is possible to organise the workforce into a union. The right to medical care only applies to people who are sick. The right to public housing only applies to people who are unable to provide accommodation for themselves and their families. And so on.

Those who take this view sometimes go on to argue that it is unjust to expect people who provide for themselves and their families to contribute money to meet the needs of others. A typical example of this position is to challenge why people who do not have children should contribute through taxation to the education of other people’s children.

A common response to those who argue that economic and social rights are not rights in the normal sense of the word is to argue that the word “universal” is being used in a misleading way here. They suggest that a right is universal, not because we all exercise it, but because we all could exercise it if we needed to. Many people will go through life without being arrested by the police and charged with a crime. So they will not need to claim the right to a fair trial. Similarly, most people are likely to go through life without encountering a situation where they might be tortured or enslaved. What makes these rights universal is that we could all claim them as a right if we needed to. The emphasis here is on the word “if”.

Those who argue that economic and social rights are rights in the same sense as civil and political rights also tend to point out that rights are protections against the arbitrary decisions of those who are in power or authority over us. Over the last 200 years, people have struggled to establish universal civil and political rights precisely because their rulers often exercised power in arbitrary ways. People were punished for saying things that the rulers did not like, or because they tried to organise themselves to oppose the rulers, or they were just thrown into prison and left there without ever receiving a proper and fair trial.

They usually go on to argue that the same situation also applies to economic and social rights. These exist as universal rights so that public officials cannot arbitrarily decide who can and cannot get medical treatment or education or emergency housing. That is why international and national laws on economic and social rights usually include measures to prevent discrimination against minorities and other groups in society when they try to access public services.

A more moderate critique of economic and social rights as “rights” takes the line that they are goals or ideals which every government should strive to achieve but will only be able to do so gradually as their country becomes more industrialised and wealthy and acquires the financial and economic resources to make it possible to achieve those goals. To support their position, these critics usually point out that the International Convention on Economic, Social and Cultural Rights specifically states that governments should “take steps....to the maximum of its available resources, with a view to achieving progressively the full realization of [these] rights.”.

These critics argue that this statement demonstrates a clear difference in the status of economic and social rights compared with civil and political rights. All countries are expected to guarantee the latter rights for all if they have signed the Convention but are only expected to introduce the economic and social rights gradually as and when their economies develop sufficiently to be able to afford to do so. On this basis, these critics assume that the government of a developing economy will not be able to ensure that all of these economic and social rights are guaranteed and even that the government of a developed economy might have similar problems during an economic crisis. Indeed, in the economic recession of the 1980s, some Western European states introduced restrictions on the rights of trade unions.
Those who disagree with this position usually argue that the phrase “achieving progressively the full realization of [these] rights” only refers to certain but not all economic and social rights and that all governments, regardless of their levels of economic development are expected to take steps to end discrimination and arbitrary decisions by public officials regarding access to public services.

They also argue that the phrase “to the maximum of its available resources” does not mean that governments can use this as an excuse for not taking action until they are developed economies or until economic conditions are favourable. What it means, they suggest, is that governments are obliged to ensure at least a minimum level of social and economic support for those who are starving, homeless and suffering form serious diseases that could be treated. Furthermore, they argue that, where a government is unable to respond effectively to a major disaster, such as widespread famine, then other countries have an obligation under the International Convention to provide aid and technical assistance.

Are economic and social rights undemocratic?

If the state violates someone’s civil or political rights that person can take their case to court and ask a judge to rule on it. If the judge decides that that person’s rights have been violated, then the judge can demand that the government takes action to rectify the situation. But, as some of the critics argue, political parties usually disagree with each other about how much of the national budget should be spent on public services such as education, health, social security, public housing, etc. If judges ruled that not enough was being spent on education or housing and required a democratically-elected government to spend more on a particular social service, then this would be undemocratic. The critics of economic and social rights usually see this as yet one more reason why they are “second-class rights” compared with civil and political rights.

The opponents of this view tend to point out that, in most liberal democracies it already possible for people to appeal to the courts for a ruling if they believe that the decision of a public official has been arbitrary or unfair. So, for example, if public officials were discriminating against people from another ethnic group or religion so that they could not get adequate medical care or schooling for their children then the judicial system could take action against them.

Some also argue that there are other situations where the judges have the right to intervene and demand that governments take action. These are situations where an individual or group of people lack the bare minimum of basic necessities for life, such as shelter, food and medical care. Then, it is argued, they should be able to appeal to the courts and a judge could rule that the government has an obligation under national and international law to help these people.

This remains a controversial issue. For example, suppose a hurricane destroys the homes of a community of people. These people then move on to some land and erect tents as emergency shelter. The landowner then asks the police to remove these people from his land because he wants to build on it. The people then ask the government for help but the government says it does not have the resources to help them (and is worried that this would set an expensive precedent in a country prone to hurricanes). The community are left to try and get help from charities and international aid agencies. A lawyer offers to help the group and takes their case to the high court. The judges rule that, under the International Convention, the government has a duty to provide emergency housing for the whole community until they are able to support themselves or return to their re-built homes.

Would this be undemocratic? What do you think?
CASE STUDY 11: Did the end of communism leave the elderly and vulnerable in a worse position?

Robert Stradling

Timeline

19-22 August 1991: An attempted coup took place in the Soviet Union while President Gorbachev was on holiday in the Crimea. The coup leaders sent tanks into the centre of Moscow to threaten the White House or Parliament building. Thousands of Russians went to the Parliament building to defend it. Boris Yeltsin, President of the Russian Soviet Federated Socialist Republic, declared the coup to be a criminal act. The leaders were then arrested.

24 August 1991: Gorbachev returned to Moscow and resigned as General Secretary of the Communist Party but retained his office of President of the Soviet Union.

August 1991: The World Bank approved a special $50 million trust fund to provide technical assistance to the Soviet Union to support economic reforms.

25 December 1991: Gorbachev resigned as President. The Soviet Union ceased to exist.

July 1992: The Russian Federation joined the World Bank and the International Monetary Federation (IMF) to secure more financial and technical assistance.

1991-1995: The Russian Federation under Yeltsin attracted large international loans and foreign investments and a small number of “oligarchs”, bought up state enterprises at very low prices and became billionaires. The circumstances for many ordinary people got worse rather than better. By 1995, the Russian Gross Domestic Product had fallen by 40% Unemployment and inflation increased. Many people saw their savings disappear and the low paid and people on fixed incomes, such as pensioners, were particularly badly affected.

1997 –1998: A financial crisis in Asia led to a serious drop in the price of oil and other raw materials. This affected Russia badly since oil, natural gas and metal ores accounted for 80% of her exports. The sudden drop in foreign earnings from its exports created a financial crisis in Russia as well. Inflation rose to 84%, banks closed, and welfare costs increased.

13 July 1998: the IMF and World Bank approved a support package to Russia of $22.6 billion to support economic reforms. One of the required reforms was to change the old Soviet system of social benefits to ensure that welfare assistance was targeted on those most in need.

1999-2000: The Russian economy began to improve partly as a result of international financial support but also because world oil prices were increasing.

2001-2004: Some reforms in social benefits were introduced and planning began for a more comprehensive reform programme in 2004; but there was nervousness within the government about the possibility of popular anger if these reforms were introduced after what had already happened to people’s savings, pensions and job security in the 1990s.
29 July 2004: Several thousand pensioners, war veterans, disabled people and victims of Chernobyl gathered in Moscow to demonstrate about the Kremlin’s plans to replace social benefits and privileges by cash payments.

3-5 August 2004: The State Duma of the Russian Federation approved Federal Bill 122 by a vote of 304 to 120. The Communist Party, Rodina (Motherland Party) and most of the independent deputies voted against it. This new law replaced many of the social benefits and privileges inherited from the Soviet era by cash payments. The social groups who most relied on these benefits and privileges were pensioners, the disabled, war veterans, victims of Chernobyl and many public officials, including military, police and customs officials.

22 August 2004: President Putin signed Federal Law Number 122-FZ, also known as the Law on Monetarisation.

1 January 2005: Federal Law 122 came into operation. On the same day, large increases in transport fares and in the maintenance costs for housing also came into effect. Most people did not feel the effects of the changes in the first week of January because of the extended New Year holiday in Russia.

9 January: Thousands of pensioners marched in protest against the reforms in St Petersburg. Their protest was timed to coincide with the 100th anniversary of the massacre of workers in St Petersburg and the outbreak of the 1905 Revolution.

10 January: When Russians returned to work after the New Year holiday, the protests began to spread. Several hundred protestors stopped traffic on the highway connecting Moscow with its international airport. In Kaliningrad, policemen refused to pay for bus travel. The next day, pensioners in Tolyatti, the home of the Lada factory, tried to break into the mayor’s office in protest against the loss of social benefits. Other pensioners’ protests took place across Russia, including blocking highways.

18-19 January: The Russian Government allocated 105 billion roubles to be spent on improved pensions and transport subsidies for pensioners, police and the military (who all had free public transport before the reforms). The money came from revenues from higher oil prices. In Moscow, the Federal Finance Minister Alexei Kudrin claimed the protests had been organised by the Communist Party and the National Bolshevik Party. The National Bolshevik Party leader, Eduard Limonov told Ekho Moskvy, the independent Radio Channel, that this was news to him - but he would be delighted if it were true.

20-21 January: Television coverage of the protests led to even more demonstrations in many other Russian cities, with the obstruction of main highways and city centre streets to paralyse traffic. Public transport workers complained about their treatment by police and military personnel. In Tula, there were 40 assaults on bus and tram conductors in just three days.

February 2005: Some of the regional authorities announced that they would temporarily continue with some of the social benefits and privileges to reduce social tensions. On 1 February, most consumers found that their bills for public utilities such as electricity, heating and water had also greatly increased.

March – June 2005: Protests continued, often supported by opposition political parties, and were particularly widespread in Moscow City, Moscow Region, Volgograd Region, Nizhny Novgorod Region and Bashkiria.
2005 – 2006: In practice, the regional authorities acted very cautiously. By the end of 2006 a mixed system, with both cash payments and some in-kind benefits and privileges still existed in some regions of the Russian Federation.

What was in dispute

In the second half of the 20th Century, most liberal democracies introduced some kind of welfare state which guaranteed at least a basic minimum of social security and health care. Socialist states tended to make universal provisions for medical care, pensions for the elderly, public housing and employment; but some other social rights, such as the right to strike, were not always guaranteed. Under the Soviet system, housing and public utilities like water, electricity and gas, were provided at low, subsidised prices for all. And a network of social benefits and privileges (or *lgoty*) were allocated to certain categories of citizens. These benefits were usually in-kind rather than financial payments - free or subsidised use of public transport, medication, dental care, sanatoriums, solid fuel, telephones and so on.

During the Soviet era, there were three main categories of beneficiary who were entitled to these benefits:

- The “deserving disadvantaged” – those who, through no fault of their own, needed assistance (e.g. the disabled, pensioners, people on very low incomes);
- Those who had given special service to their country (e.g. war veterans, those who went into the nuclear plant at Chernobyl to clear up after the disaster);
- Those working for the state for whom the benefits were a hidden supplement to their salaries (e.g. police, military, administrators, etc).

The transition from a socialist state to a liberal democracy and from a centralised command economy to a market economy was painful and prolonged. The “oligarchs” did well out of the process by buying up state enterprises, particularly public utilities, at very low prices. Many people suffered badly during the transition. Inflation ate up their savings, there was no longer any job security and there were food queues again. Pensions bought less than under the Soviet regime, and many factories paid their employees in goods instead of money. The old certainties of the communist era had been replaced by a highly uncertain situation.

Amongst some groups in society, it led to a kind of nostalgia for some though not all aspects of the old soviet system. The historian, Tony Judt, quoted one elderly Russian couple who said to their interviewer:

“What we want is for our life to be as easy as it was in the Soviet Union, with the guarantee of a good, stable future and low prices and, at the same time, this freedom that did not exist before”.

During the 1990s, the Russian economy struggled. Production fell, more goods had to be imported which had to be paid for in foreign currency and at higher prices because of inflation. To obtain foreign currency, the Russians needed to export oil, natural gas and other raw materials. There was little demand abroad for manufactured goods such as Lada cars. The financial crisis of the late 1990s made things worse. The World Bank and the IMF, put together a new financial package to support the Russian Federation but, in return for that
support, they expected economic reforms. Among these reforms was a call to phase out social benefits and privileges and replace them by cash payments.

Those in the Russian Government, the World Bank and the IMF who supported the reforms believed that they would ensure that social assistance would be targeted more on those who needed it; that targeted support would be less expensive than the current system; that the whole system would be more transparent and accountable.

The reformers identified the following criticisms:

- The benefits are provided regardless of need. For example, the better off the household the more it would get in housing benefits. The independent Institute for Social Policy in Moscow estimated that the richest segment of the population received 20% of total available benefits while the poorest 10% of the population only received 4% of benefits.

- It was not known how many people actually made use of their privileges and benefits. For example, there was no means of checking how many pensioners actually used public transport or how many journeys they made each day. Transport services and companies had to make estimates of the financial cost of providing free travel for those entitled to it without knowing how much the actual cost of this was and then the city and regional authorities had to decide whether or not these estimates seemed reasonable and realistic.

- In view of the state of the Russian economy after democratic and economic transition, the World Bank and IMF did not believe that the government could afford to keep social benefits at the level set in the early 1990s and also carry out the other changes needed to stimulate economic growth.

Nevertheless, the reforms also had their opponents. Even within the government, there were some who thought that the reforms could lead to the kind of popular protest that had led to the Orange Revolution in neighbouring Ukraine. Others thought that the cost of replacing in-kind benefits with cash payments would be too high. They also had doubts about the capacity of the administration at federal, regional and local level to distribute the payments efficiently. Opponents believed that, with inflation running at 20%, the cash payments would steadily decline in real value. Some also noticed that senior government officials would keep their subsidised housing, state-rented dachas, free travel, free medical care and pension schemes.

In practice, the changes were not as wide-ranging as had been anticipated. The protests led some regional and local authorities to reinstate the social benefits and privileges, at least on a temporary basis. Even where reforms were introduced, most regional and local authorities opted for a mixed system with some benefits and privileges retained and some cash payments. At the same time, government spokespersons claimed that most pensioners and other beneficiaries of privileges were now better off under the new system. The protesters, they claimed, were being misled by agitators and opposition political parties, particularly the communists and the left-wing nationalists, Rodina.

Opinion polls taken in 2006 indicated that around 60% of pensioners believed that the role of the state in Russia was to look after its citizens; about a third of Russians in the polls wanted to return to state planning while only 10% thought that the introduction of free enterprise should be a government priority.
A variety of viewpoints

In the first months of 2005, the news media in Russia, particularly the independent ones, were full of interviews with people who had been beneficiaries of social benefits and now believed that their standard of living would fall as a result of Federal Law 122-FZ (2004):

Nina Simyonoova, a pensioner addressing a demonstration outside Moscow on 15 January 2005:

“Many of us have children and grandchildren in the city, but now we can’t afford to travel there. What are we supposed to do, sit at home? Who is responsible? The leadership, starting with Putin.”

A pensioner at another demonstration explained:

“Now, with my benefits, I can take the trolley bus for free to go shopping. I can go to one market, then another, even a third one, and hunt for the cheapest food. If our benefits go, I’ll have to pay for my tickets. That would cost 40 roubles a day.”

Rafail Islamgazin, a retired army colonel, told Komsomolskaya Pravda:

“I received [the equivalent of] some 7,500 rubles worth of benefits, but my monetary compensation is 930 rubles while my utility bills have increased by 150%. The state must really hate its defenders to taunt them like this.”

A Krasnodar Krai police captain told Novye Izvestiya:

“Free travel was not just the one last remaining benefit, but a work necessity. Ordinary policemen are not assigned cars and you have to wait around a long time for a duty car. So that means you now have to travel several times a day at your own cost. The last time they raised our salaries was two years ago.”

The official response to the protests sought to blame it on a minority of agitators. President Putin thought that not enough had been done to prepare everyone for the reforms. Opposition deputies tended to see the protests as the start of something bigger.

Finance Minister Aleksei Kudrin, quoted by Reuters, described the protesters as:

[only representing] “1% of all recipients of benefits...We are on a very dangerous line. In wanting to be heard, they are disrupting transport, blockading roads, dealing an economic blow to regions and harming those who cannot be reached by ambulances”.

Vladimir Ryzhkov, independent member of the State Duma said:

“The initial protests were spontaneous. But now we shall see more organised mass demonstrations across the whole country. People – elderly people – have been driven to desperation by this reform.”

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Kommersant reported that President Putin said:
“The government and the regions have not completely carried out their task that we spoke of – which was to not make the situation of those who depend on state assistance any worse.”

Acting Governor of the Moscow Oblast, Aleksei Panteleev, suggested that the protests were organised by provocateurs who were not pensioners:
“Our law enforcement organs have videotapes of all those people younger than pension age who are travelling back and forth from city to city, inciting the population to close streets and engage in other violations of the law. They have been detained in accordance with the law”.

Yegor Gaidar, former Russian Prime Minister, was quoted in the Financial Times, 17 January 2005:
“The reform was not properly thought through…the government did not have a consolidated position, the calculations were sloppy and the cabinet allowed itself to be dragged into a lengthy open debate which showed its weakness.”

Sergei Glaziev, nationalist politician, announcing his intention to propose a referendum on the issue said:
“I think President Putin will lose at least half of the electorate over this. People are astonished. I have received thousands of letters. We see a lot of frustration.”

Meanwhile economic and social policy analysts also expressed their views.

Sergei Smirnov of the Institute for Social Policy at the Higher Economic School said:
“Federal authorities did not discuss the reform plan with the regions, did not precisely define who was responsible for what, and did not explain the details of the plan to receiving benefits.”

Economic analyst, Stanslav Belkovsky, suggested that opposition to the reforms was as much emotional as economic:
“For this nation, the role of the state as a father and mother is of paramount importance…Its much more important than the money.”

Lila Ovcharova, health care analyst at Moscow’s independent Institute for Social Policy, said:
“Russia’s system of privileges was never designed to support the poor…the poorest 10% of the population receive 4% of existing benefits, while the richest 10% receive 20%.”

In 2007, Anastassia Alexandrova of the Institute for Urban Economics in Moscow and Raymond Struyk of Chemonics International in Washington observed that:
“The reform of in-kind privileges in Russia can be assessed as making very limited progress, compared to what could have been achieved…..[I]mproved accounting, modest results in
transition towards cash benefits and zero progress in introduction of targeting [on those most in need] do not appear worth the implementation difficulties and political price.”

**What Do You Think?**

Some people think that civil and political rights are universal and must be guaranteed for everyone, but economic and social rights (such as the right to join a trade union or the right to take strike action or equal rights for men and women in the workplace) are less important and we should not expect such rights to be guaranteed by law until the country’s economy is sufficiently developed to provide the necessary resources. What do you think?

Here is a view that some observers and economic advisers were expressing at the time of the political and economic transition after communism in the 1990s:

> “*When major political and economic changes have to be made, there will always be winners and losers*. The important thing is to introduce the changes as quickly and as effectively as possible so that the country can rapidly develop its economy and the government will soon have the resources to help those who were most badly hit by the changes*.”

What do you think?
CASE STUDY 12: Has government intervention been effective in promoting the principle of Equal Pay for Equal Work?

Christopher Rowe

Timeline of the issue

27 March 1957: Article 141 of the Treaty of Rome (the EC Treaty) enshrined the principle that men and women should receive equal pay for equal work.


9 February 1976: EEC Directive 76/207 implemented the principle of equal treatment for men and women as regards access to employment, vocational training, promotion and working conditions.


2 October 1997: The Treaty of Amsterdam, amending and updating the 1957 EC Treaty, set the objective of integrating equality of women and men into all the activities of the European Community. This integration (known as “gender mainstreaming”), was a “fundamental Community principle”. Article 141 authorised positive discrimination in favour of women.

December 2000: The European Action Programme on Equal Opportunities (2001-2005) was issued to implement the Community’s Framework Strategy for Gender Equality. For 2001, the priority theme was equal pay for women and men. Later priorities included the balance between work and family life, women in decision-making roles, and promoting change in gender roles and overcoming sexist stereotypes.

October 2004: A joint media release by the Conference of European Public Service and Education Unions, held in Geneva, stated that: “Despite all the equal pay legislation, equal pay for work of equal value by women and men has yet to become a reality in Europe. Women continue to be concentrated in public services, often trapped in low-paid, undervalued jobs. As public service leaders in Europe, we are calling for investment where it really matters. What we need is not blind support for privatisation but proper rewards for undervalued public service jobs.”

February 2006: The European Parliament agreed in principle to the establishment of a European Institute for Gender Equality.

December 2006: An interim report by the British Equal Opportunities Commission stated that: “Our current investigation is about Pakistani, Bangladeshi and Black Caribbean women in Britain. Our research highlights the importance of providing equal opportunities for ethnic minority women at work. It demonstrates a mismatch between the aspirations of young women and their ability to find work that matches their skills and abilities.”
Jan 2007: the Guardian newspaper reported on a legal case of 2006 as follows: “Jessica Starmer won her sex discrimination case against British Airways last year after she was refused permission to cut her hours in order to look after her two-year-old daughter. At the time, she was one of only 152 women pilots out of 2,932 BA pilots.”

What was in dispute here?

Equal pay for equal work is part of a larger debate about equality for women and girls. During the 20th Century, there was a shift in attitudes – not only about gender issues but also about equality in other fields – racial equality, the rights of the disabled, or fixing a minimum wage to protect low-paid workers. Especially since 1970, there has been general support for government intervention to promote equality.

There has been a great deal of legislation, both by the European Community and by individual states, to create the conditions for true equality in the workplace. But the principle of equal pay for equal work has proved to be extremely difficult to achieve in practice. In 1957, the EC Treaty enshrined the principle of equal pay for equal work – in the 50 years since then, there has been a stream of directives and amendments to make the principle a reality. Many national governments have passed Equal Pay laws. And yet, despite all the legislation, average earnings of women across Europe remain persistently lower than those of men.

There are two broad schools of thought about why this should be so; the “Choice Theory” and the “Discrimination Theory”. According to the Choice Theory, pay equality has been achieved wherever male and female workers have similar levels of availability, experience and educational qualifications. This suggests that the disparities in pay between men and women are the result of different life choices. Men choose more adventurous (and more highly-rewarded) careers; women choose careers in the caring professions, or organise their careers to fit in with being a mother, or caring for elderly relatives. This is why many women choose part-time work; or interrupt their full-time jobs to bring up pre-school children.

The Discrimination Theory claims women have no genuine choice at all because artificial barriers prevent true equality of opportunity. There is gender segregation at work - in hospitals, most (highly-paid) doctors are men; most (less well-paid) nurses and cleaners are women. Jobs predominantly done by women are undervalued. Few firms give the same levels of pay or the same employment and pension rights to part-time employees as to their full-time workers. This disproportionately affects women. Structural factors and social attitudes make it much more difficult for women to gain promotion than for their male colleagues.

During the past 50 years, therefore, it has become clear that the question of equal pay is much more straightforward than the more complex question of equal work. If the Choice Theory is correct, how can social and cultural attitudes be changed so that women make (and are able to make) different choices? If the Discrimination Theory is correct, how can modern societies remove the various barriers that block the path to true equality of opportunity?

This involves many factors, such as what is taught in schools, what the social and religious influences are within families, what images and stereotypes are projected by the entertainment industry and mass advertising. There is strong evidence that there has been a significant shift in attitudes over recent decades. Statistical research supports the view that the biggest single factor determining women’s pay levels is the time when they were born. For women born before the Second World War, income averaged about 60% of male earnings; for the
generation born after 1945, it averaged about 70-75%; for those born in the mid-1960s, it was about 80-85%; for those born after the mid-1980s, it was 90-95%. It can be argued that this upward trend has been brought about by the changes in the choices made by women as successive generations reflect new cultural attitudes.

Supporters of the Discrimination Theory are less optimistic. They see a never-ending struggle against structural factors blocking women from being able to make a free career choice. One such structural factor is the state of the economy. In times of full employment and shortages of specific skills, many job opportunities become open to women that were not previously accessible such as in wartime, with the widespread employment of women in jobs traditionally thought of as “men’s work”. Conversely, in times of economic depression, women’s job opportunities have been disproportionately reduced. This suggests choice plays little part - circumstances are all-important. So eliminating the adverse factors holding back women’s pay and rights requires intervention, both by detailed legislation and by education.

It is argued that intervention has to include both action against negative discrimination and positive discrimination in favour of women. One key factor is motherhood and childrearing. For women, this is not really a choice – only women can have babies, not men. To achieve true equality, it is necessary to protect women against falling behind in their career while pregnant or staying at home with small children. Such protection includes paid maternity leave, and measures to ensure women do not miss out on pension rights or promotion – such as equal rights to part-time and full-time workers, or allowing the possibility of job-sharing.

Legislation to outlaw discrimination has addressed numerous interrelated issues. One is the “closed shop” – restrictive practices by a trade union or a professional association to control entry to certain jobs and reserve them for males only. Another concerns the advertising of posts and the interviewing of candidates for them. Legal measures have attempted to ensure that women are not excluded because of the unequal way the job specification is drawn up. Interviewing panels can no longer ask women applicants such questions as “are you married?”; or “do you intend to become pregnant in the near future?”.

The concept of positive discrimination is perhaps the key factor in the debates about equality. Many campaigners for women’s rights argue that it is not enough to eliminate overt discrimination. They argue that the entrenched negative attitudes in key parts of the economy and the professions can only be overcome by legislation and regulation; that “equality of opportunity is not enough”. Against this, some women claim that it actually prevents them from achieving equality on their own merits, while libertarians argue that the state has no business interfering in personal matters like attitudes to family life. Others argue that positive discrimination is expensive and inefficient - the problem should be left to market forces.

This leads to a debate about the controversial issue of “interference” by the state. Is legislation essential to compel reluctant employers to accept the principles of true equality? Should employers have the right to pay their employees whatever market forces will allow? Many employers argue that regulations designed to promote equality are burdensome and expensive, imposing unfair extra costs and making their enterprises uncompetitive. As a result, there are reduced employment prospects for everybody, women as well as men.

It is notable how much more far-reaching the interventions of government became over time. The original assertion of principle by the EC Treaty of 1957 was relatively simple and limited – “equal pay for equal work”. Over the next 50 years, the aims became much more ambitious – “equal treatment”, rather than merely pay; “gender mainstreaming”, “changing sexist
stereotypes” and so on. The position of women in employment has changed greatly since the 1950s. It is not fanciful to talk about a “gender revolution”. But there is continuing debate about the impact of positive discrimination and government regulation.

Is it true that state intervention has successfully accelerated change and brought about a vastly improved situation for women in employment? Or has such intervention been a costly waste of resources – both because it has helped to make businesses uncompetitive and because it has had less impact on actual working practices than market forces would have done if left alone?

A variety of viewpoints about the issues associated with equal pay

Comments about one of his female colleagues made by an experienced secondary school teacher in the north of England after the Equal Pay Act came into force in 1975:

“She always takes the day off when her children are sick. I don’t. I regularly stay behind to help with after school activities and I come in every Saturday morning to run team games. She doesn’t. Why should she be paid the same as me?”

The reply by his female colleague when she was told what he had said:

“That’s because he has a little wife at home looking after his children while he’s running around the football field.”

“France Tries Again To Give Women Equal Pay”, a special report for The Guardian by the British journalist Jon Henley in May 2005:

“The French national assembly launched a campaign yesterday to raise pay for women, who, despite laws dating back to the 1970s, still earn 25% less than men. ‘This gulf is unacceptable morally and economically’ said Nicole Ameline, the state secretary for equality. She claimed her bill, to achieve wage parity in five years, was ‘modern’ because it relied on cooperation with employers, not coercion. Critics said it was toothless and did not address real issues such as part-time working. In part, the lowly place of women in French life is a legacy of the legal code drawn up by Napoleon, who once said: ‘Women belong to men just as trees belong to gardeners’.”

An article by the American journalist, Rana Foroohar, in the 27 February 2006 issue of the current affairs magazine Newsweek International:

“Here’s a pop quiz on gender equality. Where are women most likely to reach the highest rungs of business power? Choice A offers new mothers only 12 weeks maternity leave, little subsidised childcare, no paid paternity leave - and has a notoriously hard-driving business culture. Choice B gives new mothers up to three years paid time off work after having kids. Government agencies protect workers at the expense of business and favour a kinder, gentler corporate culture. So which place is better for women who want to make it to the top? If you chose A, the US, you’d be right. If you chose B, Europe, think again. Women are 45% of high-level decision-makers in the US. In the UK, women hold 33% of the top jobs. In Sweden – supposedly the very model of gender equality – it’s 29%. In Germany, it is 27%; in Italy, it’s a pathetic 18%. Europe is killing its women with kindness.”
Comments made in October 2006 by Leena Linnainmaa, President of the European Women’s Association:

“The situation will only become fairer for women executives when more men take paternity leave. The fact that women take maternity leave is a great burden on their careers. We strongly urge men to take paternity leave; and we urge those countries that have no specific legislation on the right to paternity leave to amend their laws.”

A letter to the Editor of the evangelical American newspaper Today’s Christian Woman January 2007:

“The crusty old codgers who run the Wimbledon tennis tournament have been criticised because they don’t pay the women players as much as the men. It’s outrageous. And I think they are absolutely right. Don’t get me wrong. I’m all in favour of equal pay for both genders – as long as it’s for equal work. But it’s not equal work. The men play best-three-out-of-five sets, and matches often last four hours. The women play best-two-out-of-three sets, and matches rarely last two hours. So it’s simple. Less time on the job, less pay.”

Comments by a feminist British journalist in 2006:

“Leave it to market forces? The most efficient thing market forces ever produced was the slave trade. If we’d left it to market forces, slave ships would still be sailing merrily along.”

What Do You Think?

- Are there any jobs that in your opinion should be regarded as “men-only” or “women-only” careers?
- Are women generally less well paid than men because they have chosen jobs for different motives than simply how much money they might earn?
- What would be your reaction if you applied for a job and discovered that the interview process would be influenced by positive discrimination in favour of female candidates?
- Do you think that the issues about equal pay should be decided by governments – or by business?
CASE STUDY 13: Should women and girls have the same right to education as men and boys?

Timeline of the issue

1787: The feminist writer Mary Wollstonecraft published *Thoughts on the Education of Daughters*. The book’s subtitle was “Unfortunate Situation of Females, Fashionably Educated and Left Without a Fortune”.

1865: The English feminist Emily Davies, together with Elizabeth Garrett Anderson and Millicent Fawcett, formed the Kensington Society, campaigning for women’s rights. Emily Davies was instrumental in the founding of the first all-women’s college, Girton, in 1869.

March 1870: Marianne Hainisch, founder of the Austrian women’s movement, wrote an article on women’s right to education but found that no newspaper was willing to publish it. She then held a meeting in Vienna, demanding parallel school classes for girls. In response, the First Austrian Savings Bank donated 40,000 gulden for the foundation of a girls’ school.

1872: Newnham College was established at Cambridge University – the first all women’s college since the beginnings of the university in the 14th Century – but women were not awarded full degrees by the university until 1947.

1888: Marianne Hainisch initiated the League for Extended Women’s Education, agitating for women to be permitted to enrol in higher education.

1952: The International Conference on Public Education at Geneva recommended ministers of education to promote the access of women to education at all levels.

1960: The Convention against Discrimination in Education was established by the UNESCO General Conference held in Paris.

3 September 1981: CEDAW (Convention on Elimination of All Forms of Discrimination against Women) came into force in accordance with the 1979 decision by the United Nations General Assembly.

September 1989: The first case in France of girls being excluded from school for refusing to remove the hijab. This began a lengthy controversy over the wearing of religious symbols in French schools – it reached a climax of public debate in France in 2004. Similar conflicts over headscarves in schools arose in Italy in November 2006; in Smolyan, Bulgaria, in December 2006; and in Germany in January 2007.

1995: The Fourth World Conference on Women, held in Beijing, issued its declaration on education of women and girls as a key factor in the elimination of poverty.

February 2004: In France, a law prohibiting the wearing of “conspicuous religious symbols” in schools was passed by 494 votes to 36.

June 2006: The European Ministerial Conference on Equality Between Women and Men was held in Stockholm. The main theme of the Conference was “Human Rights and Economic Challenges in Europe – Gender Equality”. The conference placed special emphasis on achieving greater equality of educational opportunities for women and girls.
What is in dispute here?

There are two chief aspects of the controversy about the rights of women and girls to equality in education. The first is the question whether women should have access to education; the second question is whether that education should be identical to the education of men and boys – or should allow for a variety of approaches based on gender differences. Over and above this is the issue of religious and cultural traditions – should state education be uniform for all, or should it reflect religious and cultural preferences? Further, is attendance at school a matter of choice for children and parents – or should it be compulsory, enforced by the law?

In western societies, the first important battle – for the principle of equal rights to education for women and girls – has effectively been won. Few people any longer resist the idea of girls being educated. In the majority of schools, girls and boys are educated together – schools for boys or girls only have become the exception, not the norm. In recent years, the main focus has been on education rights for women and girls in the developing world.

The issue of what women and girls should be taught, as opposed to if they should be taught at all, has proved more difficult to resolve. Traditional attitudes tended to regard certain parts of the school curriculum as very gender-specific – cooking and domestic science exclusively for girls, engineering and craft subjects exclusively for boys, and so on. These attitudes also influenced vocational training – nursing and other caring professions for girls, industrial apprenticeships for boys. In recent years, many educational initiatives have been launched to change perceptions and to overcome “sexist” stereotypes.

The question of legal compulsion to attend school is controversial. Some parents demand the right to educate children at home. Some parents wish to withdraw their children from certain lessons at school – sex education, for example, or physical education and team games, or lessons touching on issues such as “creationism” and science. The question “who decides” - whether education is an entitlement or a legally enforceable responsibility remains intractable.

Perhaps the greatest challenge to the idea of equality for all in education comes from efforts to promote multiculturalism. In France, for example, all pupils, whatever their cultural, religious or ethnic background, were provided with the same secular education. This concept came under strain, especially from demands for religious tolerance. It was argued that “the equality of uniformity” leads to prejudicial treatment of minorities. The most controversial example of this concerned the issues of religious symbols being worn at school – Catholic crucifixes, Sikh turbans and the forms of dress worn at school by Muslim women and girls.

From 1989, the question whether Muslim girls had the right to wear a headscarf (niqab) at school became a very contentious public issue. Many girls were excluded from their schools. There were divided opinions among teachers and administrators. It caused particularly intense debate in France in 2004. Similar concerns arose in other countries in 2006 and 2007. In Italy, the government proposed banning the veil not only in schools but anywhere in public. In Britain, a Muslim classroom assistant lost her job because she refused to remove her veil after pupils had complained it was difficult to understand what she said in class. Two Muslim girls were excluded from school in the Bulgarian town of Smolyan. In Germany, a Munich court upheld a ban on Muslim teachers wearing headscarves - leading to protests against nuns wearing head-covering habits in Catholic schools.

The headscarf controversy forms part of a wider debate about what constitutes equal rights to education. On the one hand, equal access to education is vital to overcome discrimination and to remove stereotypical images of females “belonging in the kitchen and the nursery”. On the
other hand, forcing complete uniformity of educational provision may be seen as conflicting with other essential freedoms.

**A variety of viewpoints**

The pioneering English feminist Emily Davies, writing in 1896:

“Let it be understood that the choice for women in education is not between a life wholly given over to study, or a life entirely spent on domestic duty. The aim of these new all-women colleges will not be to change the occupations of women but to ensure that whatever they do is done well and makes use of their abilities. Whether as mistresses of households, mothers, teachers, or workers in the fields of art, science and literature, their work is presently held back by lack of training.”

*Women’s Liberty and Man’s Fear, an article written by Teresa Billington Greig in 1907:*

“Man is afraid of women. He proves it every day. History proves it to him. Man is afraid of Woman because he has oppressed her. Men fear that the end of domination may come; and that women’s rebellion may mean not merely the throwing off of the yoke but vengeful retaliation against men’s tyranny.”

Adolf Hitler, speaking to the NSW (National Socialist Women organisation) in 1934:

“We do not consider it correct for the woman to interfere in the world of the man. We consider it natural that these two worlds, the spheres of women and of men, remain distinct. To the one belongs strength of feeling, the strength of the soul. To the other belongs the strength of toughness, of decision, of willingness to act. Education must prepare girls and boys for their separate roles, mutually valuing and respecting each other.”

Comments by Jaime Torres Bode, Director-General of UNESCO, to the Conference on Obstacles to Equality of Educational Opportunities for Women, December 1949:

“I cannot over-emphasise the truly fundamental importance of women’s education. The man who said that a child’s education begins with the education of his mother was nor being funny. More than half the the population of the world is female. The constant association of children with their mothers during their early years gives women a decisive part in the upbringing of the human race. The campaign to secure educational opportunities for women is a precondition for all other efforts to achieve a just and lasting peace in the world.”

The “Amman Declaration” of the Middle East/North Africa Summit, 1995:

“Education is empowerment. It is the key to establishing and reinforcing democracy. In a world where creativity and knowledge play an ever-greater role, the right to education is the right to participate in the modern world. The priority of all priorities must be the education of women and girls. There can be no enduring success in basic education until the gender gap is closed.”

*Women Watch; Information and Resources on Gender Equality and the Empowerment of Women, 2005:*
“Education and training for women and girls is a human right and an essential element for the full enjoyment of all other social, economic, cultural and political rights. It is not enough just to enrol girls and women in education and training. Education must challenge existing power relationships and be the basis for attitudinal and behavioural changes in girls and boys, and women and men.”

*The Hijab and the Republic: Headscarves in France* by David Macey, June 2004:

“A modern democracy has, probably for the first time, ruled by law on what certain girls can wear to school. Very few commentators on France have any doubt as to the real target.”

*A report on* Freedom of Religion and Religious Symbols in the Public Sphere, produced for the Bibliothèque du Parlement in France, March 2006:

“Different countries apply varying interpretations to the balance between religious freedom and other freedoms. While some governments attempt to accommodate all forms of religious expression in a neutral manner, others often apply a more restrictive and formally secular approach. In particular, France applies its historical policy of “laïcité” in a way that enforces strict secularism in the public sphere, relegating overt forms of religious expression to the private sphere. This has important implications for equality in education.”

**What Do You Think?**

Are there any subjects that, in your opinion, should be studied at school only by either girls or boys?

Is attending school a right, a privilege, or an obligation? Should young people be compelled by law to attend school?

What would be your reaction if you applied for a place at university and discovered that places would be awarded on a quota system to ensure gender equality?
KEY QUESTION SEVEN: Why do human beings seem to find it so difficult to look after their environment?
Zosia Archibald and Robert Stradling

What is the environment?

When we think about “the environment”, we may be considering a number of different subjects, although they are interrelated. Originally this was an old French word, meaning the things and places that “surround” us. In the 19th century, with the systematic study of plants and animals in their indigenous settings, the term acquired a much more specific and technical meaning as the habitat or eco-system which is not only inhabited by a living organism but which also sustains it. In the scientific study of ecology, the environment comprises the sum total of the biological, chemical and physical factors which sustain particular living organisms. In practice, of course, most environments, even microscopic ones, will sustain different kinds of living organism, and most living things are themselves environments for other organisms, e.g. the parasites that live off other insects and animals. Or, as the satirist and poet, Jonathan Swift, put it more graphically in the 18th century:

So, naturalists observe, a flea
Hath smaller fleas that on him prey,
And these have smaller fleas to bite ’em,
And so proceed ad infinitum.

In the 20th century the term was extended to include the built as well as the natural environment, particularly as concern grew about the impact of the urban environment on the health and quality of life of the people living in it.

Is concern about the environment a new phenomenon?

Some of the oldest surviving written texts from Eurasia suggest that people have had a very acute awareness of their environment for thousands of years. We can see from the mythologies of early societies that, to a greater or lesser extent, people have always speculated about their relationship to and dependence on the rest of the natural world. From the moment that humans started to record their thoughts and memories we find anxieties about their environment. For example, the oldest written story in the world, the Epic of Gilgamesh, the Sumerian hero, was written more than 4,000 years ago. It tells of the coming of a great flood which destroys humankind except for one family who survive by building an ark and from them springs a new race who populate the world once the flood has subsided. This myth subsequently spread throughout the so-called Fertile Crescent around the great rivers – the Nile, Tigris and Euphrates - re-emerging, of course, in the Hebrew Bible with the story of Noah and his family. The histories of these early civilisations abound with stories about the human disasters resulting from floods, droughts, severe storms, plagues of locusts and longer-term climatic changes.

At the same time the gradual evolution from hunter-gatherer nomadic tribes to settled communities planting and harvesting crops and keeping sheep and cattle highlights that even in pre-historic times humans were not just at the mercy of the climate and other natural phenomena they were also exploiting and cultivating natural resources and consciously adapting their environment to meet their needs.
While it is probably the case that the majority of environmental crises until modern times had natural causes, it is also the case that humans have been depleting natural resources ever since they started to form settlements. However, until recent times the earth was not heavily populated so people could always move on to uncultivated, undeveloped environments when they had depleted local resources and left the land infertile. That option is no longer available.

Today many of our environmental crises are the results of the actions of human beings. Our use of land and the over-exploitation of natural resources that cannot be renewed, the waste we create and what we do with it, our wasteful material lifestyles, the impact of toxins on local and global eco-systems and the impact of the emission of so-called ‘greenhouse gases’ on the climate, have all had a negative impact on our environment. The consequences are familiar:

- Melting icecaps and rising sea levels
- Floods, droughts, hurricanes and other climatic extremes
- Disappearing forests
- Expanding deserts
- Polluted air and water
- Depleted fish stocks
- Radiation contamination of areas where nuclear weapons were tested, nuclear waste is stored or there have been explosions and leaks from nuclear power plants

Scientific journals have been running stories about these environmental catastrophes since the Second World War. But, in the last few decades, the mood has changed. James Lovelock, a British scientist, developed the “Gaia Theory” in 1972, according to which the planet earth is a self-regulating, living system. In 2006, he published a new chapter to this theory, in a book called *The Revenge of Gaia*. In this latest book, Lovelock argues that:

“*Humanity, wholly unprepared by its humanist traditions, faces its greatest trial. The acceleration of the climate change now under way will sweep away the comfortable environment to which we are adapted. Change is a normal part of geological history; the most recent was the Earth’s move from the long period of glaciation to the present warmish interglacial. What is unusual about the coming crisis is that we are the cause of it, and nothing so severe has happened since the long hot period at the start of the Eocene, 55 million years ago, when the change was larger than that between the ice age and the 19th Century, and lasted for 200,000 years.*”


**A growing body of evidence of environmental change**

During the last half century, environmental scientists have developed more accurate methods of analysing environmental changes. Rachel Carson’s *Silent Spring* (1962) was the first extended study of the long-term effects of chemical pollution. “Environmental impact assessments” have become a normal part of any process of development, not just in countries with highly developed industrial strategies, but equally in those where industrialisation has been less intense. It has become increasingly clear that changes have not been limited to local situations, such as the pollution of rivers and lakes by mining and manufacturing plants.
Traces of toxic chemicals are present in the bodies of all living things but in comparatively low concentrations, which do not affect our daily lives.

Much more serious is the proportion of gases in the atmosphere, which affect global temperatures, and thus the overall conditions for life. Scientists worldwide have long been divided about the evidence for climate change and equally equivocal about the remedies. Controversy has focused on the “greenhouse gases”, particularly carbon compounds, such as methane and carbon dioxide. These gases transmit light in a way that resembles the glass panels of a greenhouse. The light focuses heat on the earth’s surface while infra-red radiation is not released back into the atmosphere. The huge increase in carbon dioxide levels, from 280ppm (parts per million) in 1750 to 375ppm today, an increase not seen for 420,000 years, can be attributed in large part to the burning of fossil fuels since the beginnings of the Industrial Revolution.

Among the less pleasant side effects of increasing temperatures are the positive feedback loops that rising temperatures create. So long as lands covered by ice sheets remain large, the light that falls on them is reflected back into space, keeping temperatures cold. But glaciers at the ice caps are melting at an increasing rate, which reduces this effect. Methane held in ice crystals is also released in the process. Increasing temperatures in the oceans reduce the amount of algae growing in their waters, which also reduces the capacity of these microorganisms to absorb carbon dioxide down into the ocean depths. Higher temperatures also reduce the rate at which forests reproduce themselves. Trees absorb carbon dioxide and methane but release them at night, and when they begin to decompose.

It is becoming difficult to deny the effects of climate change. Critics today are more likely to question the pace of these changes than to be sceptical that changes are occurring. The only way in which increasing levels of greenhouse gases can be reduced is by cutting back on the ways in which humans and animals contribute to this process, as well as by reducing the gases by physical or chemical means.

What can be done?

From the 1960s onwards many national governments began to develop environmental protection policies and passed laws designed to reduce pollution. International Aid Agencies introduced support programmes to assist the victims of environmental catastrophes, particularly in developing countries in Africa and Asia. International non-governmental organisations also emerged around this time to raise public awareness and support for programmes designed to protect endangered species. Then from the 1970s onwards a number of international organisations, such as the United Nations, the Council of Europe and the European Union, through various international declarations and conventions, have taken a lead in trying to persuade governments to adopt policies aimed at promoting environmentally-sensitive economic development, controlling pollution and ensuring that future generations will live in an environment that does not threaten their health, wellbeing and human rights.

In 1972, for example the UN held a conference in Stockholm which led to the Declaration on the Human Environment. Seven years later the Council of Europe agreed the Convention on the Conservation of European Wildlife and Natural Habitats (1979). In the 1990s the Council of Europe ratified additional Conventions aimed at the use of civil and criminal law to prevent any activities by manufacturing and other corporate bodies that might threaten the natural environment. Other declarations, conventions and recommendations have been issued over
the last ten years by both the UN and the Council of Europe that have called on governments to take action to protect each individual’s right to a clean and healthy natural and man-made environment.14

**Human Rights and Responsibilities**

Although environmental campaigners have been calling for many years now for a special category called environmental rights this has tended to be regarded as a problematic category. Essentially the problem lies with the fact that human rights, by definition, are about the entitlements and protections that individual people should expect from their governments. With regard to the environment and environmental protection the human rights agenda over the last 60 years or so has tended to focus on two broad themes.

The first of these has been how to protect the individual from the consequences of the actions and policies of governments and multi-national corporations. As such, the emphasis here has been on the right to adequate health, food, water, air and shelter; the right to a healthy and working environment; the right of access to information about the environment; the right to be consulted about environmental decisions and developments, and so on.

The second broad theme has been about what might be described as environmental justice. This stems from a recognition that the weak, the poor, the indigenous communities and some cultural and ethnic minorities have often been the ones who have suffered disproportionately from environmental catastrophes. They are most likely to live in unhealthy urban environments or rural environments contaminated by toxins and other pollutants. The issue here has focused mainly on equality of treatment. They have also sometimes suffered from the environmental policies of governments and international agencies. In Africa, for instance, governments, with the support of the World Bank and environmentalist organisations, have set up over 10,000 protected wildlife reserves. One estimate indicates that over 14 million people have been displaced from these areas, mostly without any form of compensation. Those who have been allowed to stay have been banned from using their traditional hunting grounds. Their cultural rights have tended to be ignored, they have rarely been consulted and the governments and international wildlife agencies have been unwilling to negotiate a compromise position or even consider the possibility that these indigenous peoples might recognise that it is not in their interests to allow endangered species, including those which they hunt, to become extinct.

Essentially, instances such as this highlight that major environmental problems such as pollution, global warming, depletion of natural resources and endangered species are highly complex and are not necessarily resolved by coercive measures by governments and international agencies. We all share in the responsibility for these crises and we all have a role to play in finding effective ways to address the problems.

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14 See, for example, the Stockholm Declaration of the United Nations Conference on the Human Environment (1972); the Convention on the conservation of European wildlife and natural habitats (Bern, 1979); The Convention on civil liability for damage resulting from activities dangerous to the environment (Lugano 1993); the Convention on the protection of the environment through criminal law (Strasbourg 1998), the UN Convention on access to information, public participation in decision making and access to justice in environmental matters (Aarhus 1998) and the ongoing work within the Council of Europe to draft a European Charter on general principles for Protection of the environment and sustainable development.
As ordinary people and citizens we are not just victims of the environmental harm caused by governments, manufacturing firms, unscrupulous landowners and large multinational corporations. The choices we make, the lifestyles we lead or aspire to, our political expectations and demands and, above all, our attitudes to the natural world have all helped to create the environmental crises now facing the world. For most of human history people have seen themselves as separate from and superior to all other animals and in a fundamental way we have also dissociated ourselves from the natural world (i.e. regarded ourselves as separate from it). This has meant that we have looked at the natural world as something that we can exploit for our own benefit rather than as something for which we should be responsible and accountable. Unless those attitudes change it seems unlikely that the problems described here and in the following case studies will ever be effectively resolved.
CASE STUDY 14: The Kyoto Protocol and the debate on the speed and impact of climate change

Zosia Archibald and Robert Stradling

Background

Serious international attempts to control global output of greenhouse gases have been under way since the “Earth Summit” of 1992 in Rio de Janeiro where the United Nations Framework Convention on Climate Change was adopted. While the Convention set out the basic principles for action on climate change, it did not establish specific targets for cutting the greenhouse gas emissions which are thought to be partly responsible for global warming. After five more years of increasingly intense negotiations, representatives from 189 countries met in the ancient Japanese city of Kyoto to consider amendments to the Convention which came to be known as the Kyoto Protocol.

Those countries with developed economies that agreed to ratify the protocol were committing themselves to reducing their emissions of carbon dioxide and other so-called greenhouse gases by a specified amount within a specified period of time. Using 1990 emission levels as a baseline, the countries ratifying the protocol were expected to cut global emissions by 5.2% by 2008 - 2012. The targets varied from country to country. The member states of the European Union were expected to cut their emissions by 8% and Japan by 5%. But large developing countries, such as India, China and Brazil were not set targets at this stage.

However, the Kyoto Protocol did not come into force as a legally binding treaty until two conditions were met:

- It had to be ratified by at least 55 countries;
- It had to be ratified by sufficient nations to account for at least 55% of the world’s emissions of greenhouse gases.

The first target was met by 2002 but when President Bush was elected in 2001 the United States pulled out of the Kyoto Protocol and Australia also chose not to ratify. The withdrawal of the USA was a major blow to the United Nations because it is responsible for over a third of the world’s emissions of greenhouse gases. This meant that Russia’s decision became crucial if the second condition of the Protocol was to be met. Russia finally ratified the treaty on 18 November 2004 and the Kyoto Protocol came into force 90 days later and is now binding on all those countries which had signed it and had also been set targets for reducing their emissions.

15 Although 99% of the earth’s atmosphere is made up of nitrogen (78%) and oxygen (21%) and these are crucial to supporting life they do not regulate the climate. This is carried out by some of the gases that make up the remaining 1% of the earth’s atmosphere: the greenhouse gases. These include: Carbon dioxide, Methane, Hydrofluorocarbons (HFCs), Perfluorocarbons (PFCs), chlorofluorocarbons (CFCs), Sulphur hexafluoride, Nitrous oxide, ozone and water vapour. All these gases absorb heat. Without them the earth would be 30°C colder. However, if we produce too much of them then we get global warming.
At time of writing 141 countries and states have ratified the treaty. Many of them are developing countries that are likely to suffer most from the effects of global warming. They do not yet have to commit themselves to specific targets but they are required to report their emission levels and develop programmes for responding to climate change. Some countries, including France, Sweden and the UK, have already met their specified targets but it is anticipated that many others will not meet their targets by 2012 given their current rates of progress.

Because countries vary so greatly in the levels of their greenhouse gas emissions a system has been introduced where highly polluting countries can buy unused ‘credits’ from those countries which are allowed to emit more gases than they actually do. Countries can also gain credits by large-scale tree planting and soil conservation – to absorb carbon – and by helping developing countries with similar projects. This process is usually described as emissions trading or carbon offsetting.

When the leaders of the world’s major industrial economies, met for their G8 Summit in Gleneagles, Scotland in July 2005, they recognised their responsibility for a proportion of past emissions, and agreed to work with developing nations to help build appropriate capacity to counteract the negative effects that many of these countries are likely to experience in the near future.

When they met again in Heiligendamm in Germany in June 2007, there was a recognition that much more needed to be done to reduce gas emissions and the proposal on the table was to cut greenhouse emissions in half by 2050. However, the Americans had come to the G8 Summit with their own proposal which did not include specific targets and timescales. In the end, a compromise was negotiated which did not include the 50% reduction target but enabled the EU members of the G8 group to say that there had been a significant shift in the US position on global warming.

In the next few decades, greenhouse emissions by the countries of South-East Asia are likely to rise dramatically as the economies of these nations expand. There are some hopes that China, India, and Brazil will agree to join a new stage of the Convention after 2012, and many individual states within the USA have expressed a willingness to comply by similar regulations.

**Timeline**

1957 Oceanographer, David Keeling, established the first continuous monitoring of Carbon dioxide levels in the atmosphere and found that levels were increasing each year.

1979 The First World Climate Conference was held. It calls on governments to address the problem of predicting and preventing human-made changes in the climate.

1985 First major international scientific conference on the greenhouse effect. Scientists reported that gases other than carbon dioxide contribute to global warming.

1987 The warmest year since records began.

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16 The G8 members are Canada, France, Germany, Italy, Japan, Russia, UK and USA.
1988 An international meeting in Canada of scientists specialising in climate change called for 20% cuts in carbon dioxide emissions around the world by 2005. The United Nations set up the Intergovernmental Panel on Climate Change (IPCC) to analyse and report on the scientific evidence.

1990 The IPCC reported that the earth had warmed by 0.5°C in the 20th Century and warned of the need to reduce greenhouse emissions. The UN began negotiations for a Convention on Climate Change.

1992 The “Earth Summit” was held in Rio de Janeiro, where the UN Framework Convention on Climate Change was adopted by 154 countries.

1995 The hottest year on record. The IPCC reported that global temperatures will have risen between 1°C and 3.5°C by 2100. The report also stated that global warming is partly human-made.

1997 At an international conference in Kyoto, Japan agreed to the Kyoto Protocol which required the industrialised nations who sign up to it to reduce greenhouse gas emissions by an average of 5.2% by 2012.

1998 The hottest year on record.

2000 The IPCC revised its predictions on future greenhouse emissions and warned that the earth could warm by 6°C during the 21st Century.

2001 President Bush was elected and renounced the Kyoto Protocol because he feared that it would damage the US economy too greatly. Most other industrialised nations decided to go ahead and ratify the Kyoto Protocol without the USA.

2002 Australia decided not to ratify the protocol but it was ratified by the member states of the European Union. Russia delayed ratification.

2003 Europe experienced the hottest summer for over 500 years. Scientists reported an increase in the annual rate of growth in the levels of greenhouse gases in the atmosphere.

2004 Russia ratified the Kyoto Protocol which meant that the conditions for implementing the Protocol could come into force in 2005.

2005 At the G8 Summit meeting in Scotland, the leading industrialised nations agreed that they must do more to counter the effects of global warming particularly in developing countries. Also agreed to start the process of discussing targets for emission reduction after the current deadline of 2012.

2007 At the G8 Summit meeting in Germany, they discussed the possibility of reducing greenhouse emissions by 50% by 2050. The USA agreed to work within the UN framework rather than introduce a parallel programme with other countries such as China, India and Brazil.

What is at issue here?
As the timeline shows, the debate about the nature and impact of climate change and the most appropriate steps to take to address the problem have been ongoing since the 1980s. Some of the debate has been very technical but it is also an issue which has mobilised ordinary people to join environmental campaigning groups and even to take to the streets to protest about the actions of their own governments and of the international political community. The thousands of people who have protested at recent G8 Summits illustrates the fact that many people have deep anxieties about the environment and feel that these are not being adequately addressed at the international level.

Essentially, this is neither a single nor a simple issue although the campaigners for and against change have often presented it as if it was. There are a number of related issues here.

First there is the inter-governmental debate. In the United States, the Clinton administration took an active role in the discussions in Kyoto and expressed a commitment to reduce their emissions by 7%. The US team was led by Vice President Al Gore, who has subsequently been an active critic of the Bush Administration’s policies on climate change and won an Oscar for his documentary film, *An Inconvenient Truth*, which addressed the challenge facing the world. However, even under Clinton the USA seemed to be “dragging its heels” about ratifying the Kyoto Protocol. When the Republican, George W. Bush, became US President in 2001, he made it clear that the United States would not ratify the Kyoto Protocol, even though it was the world’s largest emitter of greenhouse gases. He believed that the changes necessary to meet the Kyoto targets would damage the US economy and cost millions of American jobs.

Like Australia, another major industrialised country which did not ratify the Protocol, the Bush Administration was unwilling to sign a treaty on climate change which exempted two other major global polluters, China and India, from having to reduce their emissions. He regarded their exemption as both unfair and fatally flawed. The other industrialised countries, which had ratified the Protocol, and committed themselves to reducing emissions by 2012 now embarked on a prolonged (five-year) dialogue with the USA and Australia to try to persuade them to join what one EU adviser described as the “climate change bandwagon”. To some NGOs and independent observers and journalists, the dialogue seemed to have more to do with economics and the competitive advantage in global markets of the US, Japan and the EU rather than with environmental science.

The Climate change debate also had a north-south dimension. As we have already noted, although many developed and developing countries ratified the Kyoto Protocol, it was only the industrialised nations who were set specific emission reduction targets to be achieved by 2012. Rapidly industrialising nations such as India and China were exempt as were the less industrialised, developing nations of Asia, Africa and South America. Some of their leaders, particularly those in countries experiencing some industrial growth, tended to point out that the developed north expected those countries in the south who were just beginning to industrialise to show a level of environmental awareness and responsibility which they had not shown during their phase of rapid industrialisation.

The developing nations who were most vulnerable to catastrophe as a result of climate change – the low-lying countries of South-East Asia, including the Philippines, many Pacific islands, and Bangladesh; the semi-arid tropical regions of East Africa – were likely to be the least well prepared for these eventualities. The Alliance of Small Island States – many of whom fear that they might disappear beneath the waves as sea levels rise as a result of global warming -
organised themselves in the mid-1990s to present a unified position at Kyoto and subsequent international climate control conferences. They called for a 20% cut in global emissions by 2005 and for them the Kyoto agreement - 5.2% cuts by 2012 – was too little too late. By contrast, there was not much evidence of cooperation amongst the other developing states and after Kyoto and the later international Climate Control conference in Montreal, it was not unusual to find environmentalists and the mass media in Asian and African countries complaining about the absence of an agreed Asian or African agenda for climate control.

Since the early 1980s, there have also been a number of ongoing debates within the international scientific community. Scientists have disagree about the rate at which change is taking place, how best to counteract it and the exact causes of climate change - particularly the extent to which climate change is man-made. At the same time, the scientific debate has often been politicised by the politicians, the mass media and some of the scientists themselves. The English-speaking mass media, for example, particularly in the United States, has tended to give a great deal of coverage to any environmental scientist or economist or social scientist who has been sceptical about the evidence of climate change or its likely impact on people’s lives.

Nevertheless, when President Bush announced in 2001 that the United States was not going to ratify the Kyoto Protocol because “there was still scientific disagreement over the issue”, the national science academies of 17 countries – representing the elites within their scientific communities – published a joint statement in the US journal, Science, which concluded that “Doubts have been expressed recently about the need to mitigate risks posed by global climate change. We do not consider such doubts justified... It is at least 90% certain that temperatures will continue to rise by 5.8°C in the 21st century”.

Now that the majority of environmental scientists around the world agree that global warming is a problem, that temperatures are increasing and that this is partly due to human activities the debate has shifted to a new issue: the “tipping point” when the level of greenhouse gas emissions would be so high that they would trigger changes that would be irreversible. The particular concerns here are the melting ice caps, desertification and the destruction of sea life as a result of a temperature rise in the oceans and seas, especially around the coral reefs. At present there is a lot of uncertainty about when the “tipping point” might occur but the debate has influenced the decision of the European Union to press for a 50% cut in greenhouse emissions by 2050. At the same time, some scientists are arguing that the tipping point has already occurred for some of the small island nations in the South Pacific, such as Kiribati.

Finally, there is also an ongoing debate about what should be done. On the one hand, we have the radical conservationists, who favour taxes on transport, restrictions on travel (since air travel accounts for a substantial component of greenhouse gas emissions), an emphasis on the re-cycling of waste and a personal commitment to reducing one’s “carbon footprint”. On the other side, we have the government planners who have introduced emissions trading and argued that new technologies, such as zero-emission power stations and switching to hydrogen-powered vehicles will be an effective way of combating climate change, without necessarily having to change our lifestyles dramatically.

**A variety of viewpoints**

**According to the United Nations the Kyoto Protocol is:**
“An agreement under which industrialised countries will reduce their collective emissions of greenhouse gases by 5.2% compared to the year 1990 (but note that, compared to the emission levels that would be expected by 2010 without the Protocol, this limitaiton represents a 29% cut). The goal is to lower overall emissions of six greenhouse gases – carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, HFCs and PFCs – calculated as an average over the five-year period of 2008-2012. National limitations range from 8% reductions for the European Union and some others to 7% for the US, 6% for Japan, 0% for Russia, and permitted increases of 8% for Australia and 10% for Iceland.” Press Release 10 July 2006.

President Bush in a press release issued on 13 March 2001 said:

“I oppose the Kyoto Protocol because it exempts 80% of the world, including major population centers such as China and India, from compliance, and would cause serious harm to the U.S. economy…… I support a comprehensive and balanced national energy policy that takes into account the importance of improving air quality….. Any such strategy would include phasing in reductions over a reasonable period of time, providing regulatory certainty, and offering market-based incentives to help industry meet the targets. I do not believe, however, that the government should impose on power plants mandatory emissions reductions for carbon dioxide, which is not a ‘pollutant’ under the Clean Air Act. Coal generates more than half of America's electricity supply. At a time when California has already experienced energy shortages, and other Western states are worried about price and availability of energy this summer, we must be very careful not to take actions that could harm consumers. This is especially true given the incomplete state of scientific knowledge of the causes of, and solutions to, global climate change and the lack of commercially available technologies for removing and storing carbon dioxide.”

The Indian environmentalist, Neelam Singh, criticised the US Administration’s objection to the Kyoto Protocol because it exempted India and China:

“Bush can attack India and China all he likes. But there is no getting away from the fact that the United States which is highly industrialised is also one of the highest emitters of carbon dioxide.”

President Bush’s chief science adviser, John H. Marburger said:

“There’s no agreement on what it is that constitutes a dangerous climate change…We know things like this are possible but we don’t have enough information to quantify the level of risk.”

A US environmental lobby group criticised the arguments raised by the Bush administration against the Kyoto Protocol (National Resources Defence Council NRDC)

“The Bush administration has done absolutely no analysis to substantiate its claim that the Kyoto Protocol or domestic policies to reduce carbon dioxide pollution from power plants would seriously harm the U.S. economy. While industry trade associations have published many misleading claims of economic harm, two comprehensive government analyses have shown that it is possible to reduce greenhouse pollution to levels called for in the Kyoto agreement without harming the U.S. economy. In 1998, the White House Council of Economic Advisers concluded that the costs of implementing the Kyoto Protocol would be
‘modest’ -- no more than a few tenths of 1% of gross domestic product in 2010, equivalent to adding no more than a month or two to a 10-year forecast for achieving a vastly increased level of wealth in this country. A subsequent and more detailed study by five Department of Energy national laboratories found that policies to promote increases in energy efficiency would allow the United States to make most of the emission reductions required to comply with the Kyoto Protocol through domestic measures that have the potential to improve economic performance over the long run.”

Al Gore, writing about his documentary film, An Inconvenient Truth:

“Humanity is sitting on a ticking time bomb. If the vast majority of the world's scientists are right, we have just 10 years to avert a major catastrophe that could send our entire planet into a tail-spin of epic destruction involving extreme weather, floods, droughts, epidemics and killer heat waves beyond anything we have ever experienced.”

Sir Robert May, the UK government's chief scientific adviser in the 1990s, said:

“Global climate change is a worrying reality and nobody can afford to delay action in tackling it. Some people have unjustifiably sought to undermine the work of the IPCC, but governments should be left in no doubt that it offers the best source of expertise on climate change. It has brought together scientists from all over the world, and their deliberations transcend national boundaries and the interests of individual countries.” Guardian, 18 May 2001.

Although Canada was one of the first developed nations to ratify the Kyoto Protocol not all Canadians welcomed the treaty:

“Implementing the Kyoto Protocol would force us to pay a higher price than we would have to pay to cover any damage that might be caused by global warming. Kyoto is purported to be an agreement about the environment. But if you take a closer look, it is, in fact, all about economics and all about policy that would benefit certain countries (mostly in Europe) over others (primarily the United States).” The Toronto Star, 4 December 2005.

The Natural Environment Research Council in the United Kingdom emphasises the high degree of agreement amongst environmental scientists about global warming:

“The overwhelming consensus among climate change scientists is that human activities, particularly those producing greenhouse gases, are responsible for much of the climate change we’re seeing. The climate also changes naturally over time. This may account for some of the warming, but not all. This consensus is apparent from work that climate researchers (including many NERC scientists) have submitted to the United Nations Intergovernmental Panel on Climate Change (IPCC). The IPCC is recognised worldwide as the definitive source of information on climate change. In 1995, the IPCC reported that the balance of evidence suggests that humans have a noticeable influence on global climate. In a further report in 2001, the IPCC concluded that most of the warming seen over the last 50 years can probably be attributed to human activities. Computer-based climate models and actual observations from the last 140 years match most closely when the models include emissions from human activities.”
But Philip Stott, Professor of Biogeography at London University, raises a note of caution about the use of computer models:

“Climate is one of the most complex systems known, yet we claim we can manage it by trying to control a small set of factors, namely greenhouse gas emissions.”

**What Do You Think?**

Do you agree with those people, like former US Vice President Al Gore, who believe that global warming is a “ticking time bomb” and we all have to change our lifestyles now, or do you agree with those who believe that the problem can be solved by developing new technologies?
CASE STUDY 15: How are we going to meet our increasing energy needs in the 21st century?

Zosia Archibald and Robert Stradling

Timeline

1763  James Watt developed the steam engine.

1760 – 1850  The first wave of the industrial revolution, fuelled by coal, took place in Britain, then Belgium and the northern states of the USA.

1800 - 1821  First electric battery invented by Alessandro Volta in 1800. In 1820, Marie Ampere discovered that a coil of wires acted like a magnet when a current is passed through them. A year later, Faraday invented the first electric motor.

1837  The first industrial electric motors were produced.

1850 – 1900  The second wave of the industrial revolution in Germany, Northern Italy, Scandinavia, France, the Netherlands and parts of Central Europe. Again, coal was the main energy source for the emerging heavy industries.

1859  Edwin Drake sunk the first oil well in Pennsylvania, USA.

1860s  The rapid expansion of the steel industry in the industrialised world led to a major growth in the demand for coal.

1870s  By now, US oil wells were producing 11 million barrels of oil per year. This was mainly used as kerosene for domestic oil lamps. John D. Rockefeller gained virtual control of the entire industry through his Standard Oil Company.

1878  Thomas Edison invented the electric light bulb and the Edison Electric Light Company is founded.

1879  The first commercial electric power station was opened in San Francisco.

1892  General Electric Company was formed in the USA.

1895 – 1914  A series of major breakthroughs in physics (by Einstein, Röntgen, Bequerel, Thomson, the Curies and Rutherford) changed the way we see the physical world, no longer as lumps of matter but as aggregates of atoms which could be split because of their structure as systems of particles. This also paved the way for nuclear fission.

1909  The first electricity storage plant is built, located in Switzerland.

1903- 1919  The first automobiles had emerged in the late 1880s but it was not until Henry Ford established the first moving assembly belts at his Detroit plant that mass production really became possible. By 1918, Ford was producing 500,000 cars a year.
1914-1920 New battleships built in the period leading up to the Great War (1914-18) were designed to run on oil rather than coal. This decision had long-term implications for international relations in the 20th Century. The Middle East became a central focus for international politics as the major powers sought to secure their oil supplies.

1927 Mass production of automobiles meant that the demand for petroleum increased rapidly. The Ford motor company alone was producing over 15 million cars per annum.

1942 Scientists produced nuclear energy in a nuclear reactor.

August 1945 US airforce dropped atom bombs on Hiroshima and Nagasaki to end the war with Japan. Over 100,000 people died instantly; many more died within a year from injuries and radiation.

1952 The world’s first nuclear reactor for developing commercial energy was opened in the USA.

1954 The development of the first silicon solar power collectors.

1956 The UK passed the first Clean Air Act which required industry and households to burn smokeless fuels. This was after 4,000 people were killed by the London smog—a mixture of smoke, fog and chemical fumes. Oil was now rapidly replacing coal as the main energy source in industrialised countries.

1961 The International Clean Air Congress was held in London.

1973 By the early 1970s, the major industrial economies were heavily dependent on cheap oil supplies from the Gulf States and Saudi Arabia. In October 1973, Egypt and Syria declared war on Israel. Diplomatic support for Israel from the US, Japan and most of Western Europe led the oil-producing Arab states to restrict oil supplies. The price of oil rose dramatically and caused an economic recession.

1979 An accident occurred at the Three Mile Island nuclear generating plant in the USA when the nuclear core suffered a partial meltdown. Nobody was killed.

1980s The first Wind Farms were developed in the United States and Europe.

1986 An explosion at the Chernobyl nuclear reactor plant in Ukraine led to massive radiation fallout in Ukraine, Belarus and Russia later spreading on wind currents to much of Europe. 300,000 people were re-settled. Statistics vary as to how many died at the time or have died since from exposure to radiation.

1980-2007 The Iran-Iraq war from 1980-1988, the two Persian Gulf wars between Saddam Hussein’s Iraq and the US-led coalition, the post-war occupation and insurgency in Iraq and unrest elsewhere in the region have highlighted the vulnerability of a large part of the world’s oil supplies. The security of Europe’s natural gas supplies also came into question when supplies from Russia to the rest of Europe were disrupted by a price dispute between Russia and Ukraine in 2005-06.
What is at issue here?

The leading industrial economies of today bear very little resemblance to their predecessors at the beginning of the 20th Century. Many of the coal mines have been closed. In 1900, coal was the main source of energy and, while it is still an important source, it is increasingly supplemented by a wide range of other energy sources, including oil, natural gas, nuclear power and hydroelectricity. Many of the iron and steel works have been closed because it is cheaper to import steel from other countries. Many of the large automobile producers have moved their factories to countries where labour costs are lower and the workforce is not unionised. More generally there has been a gradual switch from heavy industries to electronics and plastics and from manufacturing to the provision of financial and retail services.

Some things did not change much during the 20th Century. The richest countries in 1900 and in 1960 are more or less still the richest although their group has been enlarged to include the so-called tiger economies of South East Asia. The gap between the rich north and the poor south continues to grow as does the gap between rich and poor within the northern hemisphere.

Although methods of industrial production may have changed over the last 100 years scarce resources continue to be used in wasteful and inefficient ways and people have become increasingly concerned about the long-term effects of environmental pollution, including global warming, acid rain, ozone depletion and deforestation.

Concerns about the environmental pollution caused by some fuels; the security of supplies of oil and natural gas, and the possible rate of depletion of fossil fuels such as oil and natural gas and widespread opposition to new nuclear reactors being built have provoked the governments of most industrial nations to start thinking about how best to invest in alternatives.

These include ways of generating electricity from solar power, wind and waves, more use of hydro-electric and geothermal power stations where the local environment permits, generating gas from burning household and agricultural waste on a large scale – known as biogas; and growing certain crops for processing into oils and gas – known as biomass.

Most recently, some of the leading industrialised countries have been investing in the development of nuclear fusion. It is thought that many of the disadvantages of current nuclear power stations might be avoided if it were possible to create energy by fusing hydrogen atoms to make helium, rather than by the fission (breakdown) of radioactive particles. The isotopes Plutonium 239 and Uranium 235 are particularly suitable for nuclear reactors because their fissile properties can be controlled to release energy for industrial and commercial use. But such radioactive materials are nevertheless potentially dangerous and could be misused. Until now, scientists have not had much success with fusion experiments.

A new $12 billion project, the International Thermonuclear Experimental Reactor (ITER), sponsored by the EU, USA, Russia, Japan, South Korea, and China, was launched in June 2005. Originally conceived in 1985, this project will create a research facility at Cadarache, in Southern France, where laboratory experiments to generate energy by fusion will be carried out with the aim of constructing a demonstration plant by the 2030s. If successful, such a plant could produce energy on a commercial scale by the 2050s.
Every method of generating energy on a large scale has its advocates and critics. The supporters often over-state the potential benefits of their preferred energy source while the critics often over-emphasise the problems and disadvantages. What we have tried to do in the grid below is identify some of the main advantages and disadvantages that can usually be found in the literature on energy supplies. We leave you the reader to make up your own mind on this important issue.

<table>
<thead>
<tr>
<th>The advantages and disadvantages of different sources of energy</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FOSSIL FUELS:</strong> These are hydrocarbons such as coal, oil and natural gas, which are formed from the fossilised remains of dead plants and animals. Together, fossil fuels produce around 70% of the world’s energy.</td>
</tr>
<tr>
<td><strong>Advantages</strong></td>
</tr>
<tr>
<td>It is still cheaper to extract and process fossil fuels on a large scale than any of the alternatives.</td>
</tr>
<tr>
<td>In most industrialised countries, networks of power stations using fossil fuels are linked up to electricity distribution grids. A major switch to other fuel sources would be very expensive.</td>
</tr>
<tr>
<td>Global stocks of coal are still abundant and although experts disagree on whether or not extraction and production of oil and gas have now peaked, supplies are not yet seriously threatened.</td>
</tr>
<tr>
<td>The power generators for fossil fuels are relatively compact.</td>
</tr>
<tr>
<td>Oil and natural gas do not produce as much carbon dioxide as coal.</td>
</tr>
</tbody>
</table>

**NUCLEAR ENERGY:** This can be obtained in two main ways. Nuclear fission obtains energy from the breaking apart of very large atomic nuclei. This creates heat which is used to boil water that then produces steam to drive a steam turbine which generates electricity. Nuclear fusion releases energy by joining very small nuclei together. The fusion reaction produces a lot of “fast” neutrons which heat up the reactor and this produces steam which turns the turbines to generate the electricity. As yet, there are no nuclear fusion power stations. Electricity from nuclear power is either produced by conventional reactors or from what are known as “fast breeder” reactors.
### Conventional nuclear reactors:

**Advantages:**
- Large amounts of electricity can be produced by moderate-sized nuclear power stations.
- The fuel costs are relatively low.
- Conventional nuclear power stations normally produce very little atmospheric pollution (unless there is an accident).
- Very few accidents have occurred since nuclear power plants were first built.
- The waste produced by nuclear power plants is much smaller than for fossil fuel power stations.

**Disadvantages:**
- The construction of nuclear power stations is very expensive.
- It can take over 10 years from the decision to build a nuclear power plant to getting it into operation.
- The maintenance costs are high compared with other kinds of power generation.
- Scientists disagree about stocks of uranium but agree that a significant increase in the number of reactors around the world would deplete stocks in 50-75 years if these reactors were conventional and still needed to extract U235.
- Nuclear waste from conventional reactors needs to be stored out of contact with the biosphere for thousands of years. Difficult and expensive.
- De-commissioning the ageing nuclear reactors is also difficult and expensive.
- There have been very few accidents but the fear is that the consequences of an accident in the future could be globally catastrophic.
- There is also a widespread fear that nuclear reactors could be a target for terrorists or wartime bombing and here too the radioactive contamination could be catastrophic.

### Fast breeder reactors

**Advantages:**
- More efficient and cheaper use of fuel. Fast breeder reactors use almost all of the uranium fuel rather than just the 1% which is U235.
- By using most of the energy in uranium, fast breeder reactors should continue to generate electricity for a much longer time than conventional reactors.
- The fast breeder process means that there is less nuclear waste than from conventional

**Disadvantages:**
- The disadvantages of fast breeder reactors are similar to those listed above for conventional reactors, e.g.:
  - High construction, maintenance and de-commissioning costs;
  - Non-sustainable uranium stocks;
  - Widespread concerns about accidents;
  - A potential target for terrorists and wartime bombing.
- In addition, the fast breeder reactors have not
reactors.
The nuclear waste still has to be stored away from the biosphere but only for hundreds rather than thousands of years.

Normally there is hardly any atmospheric pollution.

yet proven themselves as commercially viable. Most of those that became operational in the US, UK, Japan, France, Germany, Russia, UK and USA have been closed down, either because of popular opposition to them or because cheaper forms of energy were available.

There is also concern that the fast breeder reaction process can produce weapons-grade plutonium so, if developed globally, this could greatly increase the risk of nuclear weapon proliferation.

Nuclear Fusion

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fusion reactors cannot melt down so the risks associated with accidents are greatly reduced.</td>
<td>Nuclear fusion is not yet a proven commercial option.</td>
</tr>
<tr>
<td>Commercial fusion reactors would probably use atoms of lithium and deuterium rather than uranium and there are large stocks of both.</td>
<td>So far, the fusion reactor devices which have been developed have not created significantly more energy than they use. That is why ITER has been developed.</td>
</tr>
<tr>
<td>Unlike with fossil fuels there would be negligible pollution and greenhouse gases.</td>
<td>We will not know for another 25 years if it will be viable and not gain any benefits until after 2050.</td>
</tr>
<tr>
<td>Fusion reactors could not only generate large amounts of electricity but also hydrogen which could also be used as an alternative fuel for vehicles.</td>
<td></td>
</tr>
<tr>
<td>A small nuclear fusion experimental reactor (JET) was built in the UK in 1983. ITER is the next step for testing the potential of fusion power reactors to generate electricity on a large scale.</td>
<td></td>
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</tbody>
</table>

ENERGY FROM RENEWABLE FUELS: resources that cannot be depleted or are self-generating. These include hydropower through dammed rivers, wave power, wind power, geothermal power from volcanic steam, solar power, biogas, which is obtained from burning organic waste, and biomass which involves extracting energy from crops such as corn or sugarcane either as an oil or through burning. Renewable fuels currently account for about 14% of the world’s energy supplies.

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>These are renewable, sustainable sources of energy.</td>
<td>The most advanced forms of generating electricity from renewable sources – hydro, wind, wave and geothermal - are only suitable in certain climatic and environmental conditions, i.e. where there are fast flowing rivers, a lot of wind, a coastline, volcanic</td>
</tr>
<tr>
<td>Minimal levels of atmospheric pollution.</td>
<td></td>
</tr>
<tr>
<td>Do not produce greenhouse gases.</td>
<td></td>
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</tbody>
</table>
A variety of different means of extracting energy from natural resources means that each country can choose those which are most abundant locally.

For many countries, the use of renewable fuels would reduce their dependence on imported fuel from other countries.

The technology is developing rapidly not only for extraction on a large scale but also for large-scale storage and distribution.

Some renewable fuels, particularly hydroelectric power, wind power and, to a lesser extent wave power and geothermal power are already producing large amounts of electricity for distribution in some countries (e.g. hydropower in Austria, Norway and Scotland).

The technology already exists to enable individual households to obtain some of their electricity from solar panels or small wind turbines.

Some of these sources of energy are intermittent, e.g. not generating electricity when there is no wind or sun.

Other sources, particularly biogas and biomass, require a great deal of fuel to produce fairly small amounts of energy.

Some critics argue that it would be unethical to convert large areas of agricultural land to grow biomass crops to sustain the way of life of people in developed countries when many people in developing countries in Africa and parts of Asia are still starving.

Some of the power plants, e.g. the dams for generating hydroelectricity, can destroy local ecosystems and habitats, including people’s homes and way of life.

Some of these sources are controversial because people who live near them protest that they are “visually polluting”, e.g. lots of wind turbines across the countryside, the large solar “chimneys” which would be necessary to convert large amounts of solar radiation into electricity.

Critics argue that, in many countries, renewable fuels would only ever contribute small amounts of energy to the distribution grids and they would still have to rely on fossil fuels and nuclear power for much of their energy in the foreseeable future.

<table>
<thead>
<tr>
<th>What Do You Think?</th>
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<tbody>
<tr>
<td>Imagine that the government of the day has decided to carry out a public consultation exercise on its future energy policy. You have been invited to take part in a focused group discussion with a sample of other young people from your locality. You have also been sent a short questionnaire and been asked to fill it in and bring it to the discussion group meeting.</td>
</tr>
<tr>
<td>You can make use of the information in the grid above and, if you need further information to help you make up your mind, you will find a lot on the Internet – but bear in mind that a lot of this information will be provided by people and organisations who want to persuade you to opt for one particular energy source, whether it be nuclear power, biomass crops, solar energy, oil, natural gas or coal. <strong>Please bring your completed questionnaire to the discussion group.</strong></td>
</tr>
</tbody>
</table>


Which of the following energy policy options would you like the government to promote and invest in? [You can tick more than one option].

Re-open coal mines which still have sustainable seams of coal and invest in the technology to extract and safely dispose of pollutants including carbon dioxide and other greenhouse gases.

Provide tax incentives to automobile companies to develop vehicles that do not rely on petrol and diesel (e.g. that use hydrogen or biogases such as ethanol)

Build a new generation of safe, more efficient fast breeder nuclear reactors to be operational by 2020.

Invest in the development of power stations that can generate electricity from those renewable fuels that are locally available. Which ones would you give priority to:

- Build more Solar power plants
- Construct more Hydroelectricity plants
- Locate more wind turbine farms in rural areas
- Locate more wave turbine power stations on the coast
- Encourage farmers to switch from food crops to biomass crops
- Convert all sewage works and waste disposal landfill sites to generate biogas
- Build geothermal plants in those areas where there are hot springs

Provide grants to individual people who wish to install solar panels or small wind turbines on their properties to generate some of their electricity.

Launch a nation-wide campaign to encourage people to use energy more efficiently, e.g. use public transport, fit long-life light bulbs, have holidays at home, etc.

At present, most of our energy is generated from fossil fuels, while the amount generated by nuclear power is less than 10% and the amount of energy generated by renewable fuels is about 15-20%. In the grid below, fill in the percentages from the main fuel sources that you would like the government to aim for by 2030.

<table>
<thead>
<tr>
<th>Percent of energy generated by 2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>From fossil fuels (coal, oil, natural gas)</td>
</tr>
<tr>
<td>From nuclear power</td>
</tr>
<tr>
<td>From renewable fuels</td>
</tr>
</tbody>
</table>
KEY QUESTION EIGHT: Is democracy enough?

Robert Stradling

Textbooks often define democracy in terms of its distinctive political institutions and processes: a constitutional framework, free, fair and regular elections, a multi-party system, representative assemblies or parliaments, separation of powers between legislature, executive and judiciary, and so on. But a state can have all of these institutions and yet the political party in government can still behave in an authoritarian and undemocratic way.

It should not be forgotten, for example, that the National Socialists in Germany came to power through the democratic process. At the Reichstag elections in March 1933, the National Socialist German Workers’ Party won the largest number of seats (288) which represented 43.9% of the vote. The second largest party was the Social Democrats with 120 seats and the Communist Party with 81 seats. The total number of seats in the Reichstag was 647 so the National Socialists were 36 seats short of the majority needed to form a government. However, they were able to form a coalition with the nationalist German National People’s Party (DNVP), which had won 52 seats at the election. Virtually the first act of the coalition government was to ban the German Communist Party. This then gave the National Socialists a majority without needing the support of the DNVP.

The National Socialists then set about using the constitutional process to establish a totalitarian one-party state. This was possible because the German Republic, which had been created in 1918 after the abdication of the Kaiser, emerged during a period of great social unrest and revolution throughout Germany. In drafting the new constitution – the Weimar Constitution – it was thought to be sensible to include an emergency clause that would enable the President to ask the government to enact whatever laws were necessary to maintain public order without needing to consult the Reichstag.

The National Socialists in 1933 used this clause in order to gain total control. However, to bring this about, they needed to get two-thirds of the deputies in the Reichstag to vote for an Enabling Act. They succeeded in doing this with the support of the DNVP and the Catholic Centre Party, and, because the Communists were not allowed to vote, and also because the deputies were intimidated by the Brown Shirts who were present in force in and around the assembly. The Act was passed on 23 March 1933 (just 18 days after the elections) by 441 votes to 94, with the only opposition coming from the Social Democrats (SPD). By May, the DNVP had dissolved, the SPD had been banned and so had the trade unions. In July, the Catholic parties were declared illegal and, on 14 July, the National Socialists declared themselves to be the only legal political party in Germany.

This is an extreme case of a political party using the constitution and the democratic political institutions and processes to gain power in order to destroy democracy and create a dictatorship. However, J.L. Talmon has coined the phrase “totalitarian democracy” to refer to a system of government where citizens have the right to vote and the political representatives are lawfully elected but, in between elections, the citizens have little or no influence over the decision-making process and the main organs of the mass media are controlled or heavily influenced by the government. Now it is possible to detect some anti-democratic trends in most political democracies. There is not a clear-cut distinction that can be made between liberal democracies, totalitarian democracies and authoritarian dictatorships. It is probably more sensible to think of these “concepts” on a single spectrum and then to examine each

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state and identify the tendencies within each towards liberal or totalitarian or authoritarian practices.

When a political system moves from being a dictatorship or autocracy to a democracy, the first thing that usually happens is that the provisional or transitional government drafts a constitution, establishes an assembly and organises elections. Meanwhile, people with different political views form political parties and begin to campaign for support from the electorate. After the fall of communism in Central and Eastern Europe in 1989-90 and the break up of the Soviet Union and Yugoslavia in the 1990s, we saw many countries going through this transitional process.

However, experienced political observers have argued that transitional democracies have not fully demonstrated their commitment to democracy until they have passed the “two turnover test”. This means not just that they need to have experienced two elections but rather that they need to have experienced at least two elections in which the ruling party (or coalition) has been defeated and replaced by another party (or coalition) without there being any violence or resistance to the change of government. The introduction of the appropriate institutions and procedures is only the first step - the means to an end. It is still necessary to demonstrate how deeply the electorate is committed to the idea of democracy.

So what is this democratic idea? It revolves around certain basic principles. The first of these is popular sovereignty or popular control. That is, that people have the right to influence the process by which public decisions are made and a right to influence the people who make those decisions. Not only that, they also have a right to hold those decision-makers accountable for their actions and decisions. The second key principle is political equality - that every citizen is of equal worth. Their votes count the same regardless of their social status, position, wealth, age, gender, religion, etc.

The third main principle here could be called “reciprocity”. That is, that people will accept decisions which they may disagree with and which may not be in their interests because they believe that the decision-making process was fair and not intentionally biased against them. They also believe that, on some other issue, the decision might well be in their favour and then other people who disagree with this decision will also accept it because they too believe that there is no built-in bias against them. Similarly people will accept the election of a government for four or five years, even though they disagree fundamentally with its policies, on the basis that the election was fair and that they have a chance of electing an alternative government at the next election.

In other words, the essence of democracy lies not just with its institutions and processes but also with its citizens. They authorise democratic governments to act for them and those governments, in turn, must remain accountable to the citizens and responsive to their opinions, wishes and needs. This means that citizens need to be ready, willing and able to play an active part in the political process, to respect the civil and political rights of other citizens and to treat them as political equals.

This is not to say that the political institutions which we commonly find in a modern political democracy are not important. They are the mechanisms by which these principles can be put into practice. Free and fair elections, a multi-party system, parliaments, separation of powers, along with an independent mass media, have proved to be effective means of ensuring some level of popular control and governments which are responsive to public opinion. But it is also worth noting that, in the older western liberal democracies, some of these institutions pre-
dated the emergence of political democracy as we know it today. In most countries, mass political parties did not emerge until the late 19th or early 20th Century. Elections were often riotous affairs with intimidation, bribery and vote-buying being quite common and it is not until the 20th Century that most western democracies introduced universal adult suffrage.

By now, you may be wondering why the idea of “majority rule” has not been included in this list of democratic principles. Is this not the essence of the democratic process? Not necessarily. The political process is all about trying to find a way of reaching decisions that will be binding on everyone regardless of whether or not those decisions were in everybody’s interests or reflected everybody’s wishes and demands. If agreement can be reached through discussion, persuasion, negotiation and compromise, then so much the better.

The decision to abide by the will of the majority is, in many respects, the last resort when all other means of reaching agreement have been exhausted. If the same group or groups in a democracy always seem to be in a minority, then there is a risk that we may have what some observers have called “the tyranny of the majority”. This is why the principle of “reciprocity” is so important. It is far more likely that people who seem to be in the minority will willingly accept the decisions of a majority if they think, firstly, that there is a chance that sometimes they might be in the majority instead and, secondly, that, if they were in the majority, then others would be willing to abide by their decisions as well.

Now, in everyday politics in most liberal democracies, this reciprocity is possible. At election time, the supporters of the larger political parties hope to secure enough votes to form a government while the supporters of the smaller parties hope that they will win enough votes to influence the decision-making process and even to be invited to join a coalition government with other parties. Then, during the lifetime of the democratically-elected government, most people will anticipate that they will agree with some of the decisions taken and disagree with others and that some of the decisions will be in their interests while others will not. That is the core of democratic politics. However, for this process to work effectively and not lead to the “tyranny of the majority”, it is essential that the majorities which support a particular opinion or policy or action will not always be the same.

The problem with majority rule emerges when politics revolve around issues of identity - race, nationality, language or religion. Identity is far less changeable (and less responsive to argument and persuasion) than opinions about the best way to finance and organise the health service, education or support for the elderly. Then there is the danger that one section of society, representing a minority identity group, will be permanently excluded from any share in the governmental process. In such circumstances, the principle of reciprocity can break down and, for that minority, the rule of the majority ceases to be legitimate and the minority can become disillusioned with democratic politics and may even turn to violent methods instead.

Since modern societies are characterised increasingly by their diversity – not only people with different languages, religions, cultures and ethnicities but also with different beliefs, life styles and identities - the resulting potential for conflict between the different groups and interests is why we need politics. As the political philosopher, Hannah Pitkin has pointed out:

“What characterises political life is precisely the problem of continually creating unity, a public, in a context of diversity, rival claims and conflicting interests. In the absence of rival claims and conflicting interests, a topic never enters the political realm; no political decision needs to be made. But for the political collectivity the ‘we’, to act, those
continuing claims and interests must be resolved in a way that continues to preserve the collectivity.”.

How can modern societies preserve some sense of unity if conflicts emerge that prove difficult to manage democratically? Pluralist democracies have survived largely because moral and religious differences have seldom become politicised. A fairly clear line has been drawn between the public sphere and the private sphere. This is not to say that this line is never crossed but the real problem arises when a totalitarian government comes to power and seeks to extend its control into almost every aspect of people’s lives. It can also happen if the governing elite sees no distinction between the political and religious spheres or when the governing elite only allows people to be citizens – to be politically equal - if they meet certain criteria such as the same nationality, ethnicity, religion or culture. Those who fail to meet these criteria are permanently excluded from the political process and can become classified, as in the Third Reich, as “non-persons”.

So what does unite people from diverse backgrounds who do not necessarily share the same political opinions and allegiances? We have already discussed the basic principles that are central to the democratic process and these are underpinned by values that are concerned with respecting the dignity of the individual person: treating each person with the same degree of respect and believing that each person is of equal worth. However, there is also a second set of ethical values around which a pluralist democracy can unite: universal human rights. On the one hand, it is clear that the democratic process cannot function effectively if all citizens do not share freedom of speech, freedom of association, freedom of assembly, freedom from torture and unjust imprisonment and freedom of movement. Without these freedoms, you cannot have a multi-party system, an independent media, free and fair elections, a government that is controlled by, and accountable to the public or active political participation.

Until the 20th Century, many democrats believed that civil and political rights, such as those described above, would be sufficient to ensure that citizens could freely and actively participate in the democratic political process. However, it is now more widely accepted that if people lack education, good health and a basic standard of living they will probably not have the capacity to exercise those civil and political rights. This is why so many states have also signed Conventions that commit them to seeking to protect the social, economic and cultural rights of their citizens as well.

So, to return to our key question. Democracy is not enough if what we mean by that is the existence of a state which has democratic institutions and procedures. One of the case studies attached to this section of the booklet explores the problems of transplanting democratic institutions to Iraq when there is no democratic tradition and democratic political culture. Even when steps are taken to ensure greater popular control of the democratic process – for example, through enhancing the potential for using the Internet to engage more people directly in the political process (the second case study) - there is still a risk that this will decline into the tyranny of the majority unless there are also safeguards that will ensure that everyone has an equal opportunity to influence the decision-making process.

Democracy is a project that we can never fully complete. We can hope that we are always moving in the right direction but, in most democracies, there are anti-democratic tendencies and citizens always need to be vigilant to ensure that the institutions of the state do not infringe our democratic rights even when the state appears to be doing this for the best of motives.
CASE STUDY 16: Can democracy take root when it is transplanted? The example of Iraq

Robert Stradling

Timeline

16th Century – 1918: The territory now called Iraq was part of the Ottoman Empire but it was three provinces rather than one: Baghdad, where the majority were Sunni Muslims, the Kurdish area of Mosul in the north and Basra in the south, where the majority were (and still are) Shiite Muslims.

25 April 1920: After the defeat of Turkey and the end of World War I, the victors met at San Remo and agreed that Iraq should be placed under a League of Nations Mandate to be administered by Britain.

23 August 1921: Faisal, a member of Syria’s Hashemite royal family, was brought in by the British to be crowned as Iraq’s first king, Faisal I.

3 October 1932: Iraq became an independent state.

July 14 1958: King Faisal II was overthrown and killed in a military coup.

February 1963 – July 1963: A series of coups, sometimes by the Arab Socialist Baath Party, and at other times by the military, meant that the country remained politically unstable. A final coup on 18 November 1963 led to the Baathists taking control of the country.

16 July 1979: President Ahmad Hasan al Bakr, who was in power for 11 years resigned and was succeeded by Vice-President Saddam Hussein.

4 September 1980: An eight-year war between Iraq and Iran began in which almost a million people died before the ceasefire on 20 August 1988.

August 1990: Iraq invaded Kuwait. The UN Security Council Resolution 660 called on Iraq to withdraw. Iraq did not withdraw its forces and UN Resolution 661 imposed economic sanctions on Iraq.

November 1990 – March 1991: UN Resolution 678 authorised a coalition of member states led by the United States to “use all necessary means” to enforce UN Resolution 660. On 16 January 1991, coalition forces began aerial bombing and, on 24 February, their forces entered Kuwait. On 3 March, Iraq accepted terms for a ceasefire and withdrew its remaining forces.

March-April 1991: Rebellions broke out against the rule of Saddam Hussein in the north and south of Iraq. These were suppressed. The United States called on Iraq to end all military activity in Northern Iraq to protect the Kurdish population. A year later, US and Britain set up a no-fly zone in Southern Iraq to protect the Marsh Arabs from bombing attacks by the Iraqi air force.
16-19 December 1998: After Iraq refused to cooperate with the United Nations Special Commission to Oversee the Destruction of Iraq’s Weapons of Mass Destruction, the US and UK launched an aerial bombing campaign to destroy Iraq’s nuclear, chemical and biological weapons programmes.

February 2001: After over two years, during which Iraq refused to cooperate with the UN over inspection for weapons of mass destruction, the US and Britain carried out aerial bombing to disable Iraq’s air defences. This action had little international support.


September 2002: US President George W. Bush told the UN General Assembly either to confront the “grave and gathering danger of Iraq” or stand aside and leave the United States to act. The British Government published a dossier that claimed to be based on available evidence of Iraq’s military capability. In November, UN weapons inspectors returned to Iraq.

February 2003: Donald Rumsfeld, the US Secretary of State for Defence, claimed that the Americans had “bullet-proof evidence” of links between the Iraqi leadership and al-Qaeda. President Bush said that Iraq was the new frontline in “the war on terrorism” and went on to say: “In Iraq, a dictator is building and hiding weapons that could enable him to dominate the Middle East and intimidate the civilised world – and we will not allow it”.

20 March- 9 April 2003: War began with American missiles bombing targets in Baghdad. US forces entered central Baghdad and coalition forces gained control in the north and the south. Most of the coalition forces came from the US, the UK and Poland but, in all 29 countries, sent troops.

1 May 2003: President Bush officially declared the end of major combat operations but coalition forces now faced intensified guerrilla activity. The Coalition Provisional Authority (CPA) was set up to run the country.

14 December 2003: Saddam Hussein was captured in Tikrit.

June 2004: The US transferred sovereignty to an interim Iraqi Government led by Prime Minister Iyad Allawi. The Americans’ preferred leader was Ahmed Chalabi but he was not acceptable to other Iraqis on the Council.

13 January, 2005: Nearly eight million Iraqis voted in elections for the Transitional National Assembly. Not many Sunnis voted. The Shia United Iraqi Alliance won a majority of seats in the Assembly. Negotiations began within the elected Iraqi National Assembly to form a government. Ibrahim al-Jaafari, leader of the largest party, the United Iraqi Alliance, and Jalal Talabani of the Patriotic Union of Kurdistan was appointed President.

August 2005: A draft constitution was approved by Shia and Kurdish negotiators but rejected by the Sunni representatives.

October 2005: In a referendum, 79% of the voters approved the new Constitution to create an Islamic federal democracy although many Sunnis abstained or voted against.
15 December 2005: Iraqis voted for the first government and parliament since the invasion by coalition forces. The Shia-led United Iraqi Alliance emerged as the largest party in the new Assembly but did not have a majority. A coalition government was formed.

30 December 2006: After a year-long trial, Saddam Hussein was found guilty of crimes against humanity and executed.

January 2007: President Bush announced a new strategy for Iraq and sent more troops to improve security. A UN report said that more than 34,000 Iraqi civilians had been killed in violence during 2006.

What was in dispute here?

There are a number of highly contentious issues surrounding events in Iraq, not least the decision by the US-led coalition to invade Iraq in 2003. However, the issue which concerns us here arises from the stated intention by the US Government to introduce a democratic constitution and democratic institutions and processes in Iraq as quickly as possible. Speaking on 27 February 2003, President George W. Bush declared “All Iraqis must have a voice in the new government, and all citizens must have their rights protected”.

But, is it realistic to believe or assume that liberal democracy, with genuinely representative parliamentary institutions and effective guarantees of human rights, can be introduced from scratch in a country which is deeply divided on ethnic and religious grounds, where law and order has not been restored in some areas after a devastating war and where insurgents are still killing security forces and ordinary civilians?

The critics argue that liberal democracies emerge once the right conditions exist within a country. Two academic experts on the history and politics of Iraq quote Thomas Jefferson, author of the American Declaration of Independence and the third US President, who once said: “Democracy must be rooted in the soil if it is to grow”. The experts go on to observe that “very few plants, and certainly not democracy, grow from the top down”. [W. Polk & J. Lund, Understanding Iraq, 2006, p.197].

Others have picked up this theme and argued that the Anglo-Saxon and European traditions of democracy emerged in countries where the people were trying to remove or limit the powers of the rulers who had exercised absolute power over them rather than find a means of creating order out of chaos and anarchy, even if the period of revolution when power was transferred from monarchs or dictators to the people often seemed to be chaotic and anarchic. According to this argument, if the Iraqi people, rather than the coalition forces, had overthrown Saddam Hussein, then they might have chosen to introduce a democratic constitution, create democratic institutions and hold free and fair elections.

Even then, according to some observers, a short period of democratisation is likely to descend into chaos, disorder and conflict when the people’s political allegiances are divided on ethnic and religious grounds rather than on the basis of alternative political and economic policies.

To support their case, they point to the situation in Rwanda and Sudan. Rwanda had been a Belgian colony in the Horn of Africa until independence in 1962. During the colonial period, the minority Tutsi tribe filled most of the senior posts in the administration and the army. After the first democratic elections, the majority Hutu tribe formed the first government. Many Tutsis left the country but the exiles formed the Rwandese Patriotic Front and the
Rwandese Patriotic Army (RPA) which then invaded Rwanda in 1990 leading to a long civil war. During this period, over 800,000 Tutsis living in Rwanda were massacred. However, the RPA succeeded in taking the capital city in 1994 and this was followed by a massacre of Hutus. In all, over a million people have died since independence and another two million have fled the country - out of a population of around six million.

Sudan gained its independence from the British in 1956, but the roots of ethnic and religious conflict were already there. The majority living in the north of the country were Arab and Muslim; the majority living in the south were African and Christian. In 1958, there was a military coup by Muslim forces from the north. Five years later, civil war broke out between north and south which lasted for nine years. Civil war resumed when the government attempted to impose Sharia law on the whole country. In 1989, another coup brought the National Islamic Front to power. Conflict has continued since then and has even broken out between the anti-government forces in the south. Meanwhile, many ordinary people have continued to suffer famine, poverty and the brutality of life during a civil war.

The critics highlight the parallels between Iraq and Rwanda and Sudan. They point out that, after independence and democratisation, political parties and movements emerged in Rwanda and Sudan around ethnic and religious divisions. They were not willing to negotiate or compromise or accept decisions with which they disagreed - all of which are essential if pluralist, democratic politics are to work. They point to the geographical divisions in Iraq, with the Sunnis living mainly in the centre and west of the country, the Kurds in the north and the Shia - the largest group in the population – concentrated in the south.

Whilst the critics accept that similar geographical divisions have existed elsewhere without necessarily leading to the conflicts experienced in Rwanda and Sudan, often because some kind of federal system has been introduced with a lot of autonomy for each region, they doubt whether this would work in Iraq. First, they argue, the three groupings are not completely separate geographically. In fact, the population of Baghdad, the capital city, is mixed. Second, the potential wealth of Iraq lies in its oil but the oil wells are not evenly distributed across the whole country and the Sunni, in particular, fear that they would lose out if the oil was mainly controlled by the Shia and the Kurds.

Some of the critics argued that the US strategy in Afghanistan would be more appropriate for Iraq. Here was another country with ethnic and religious divisions. Several large ethnic groups exist, such as the Pashtuns, the Tajiks and the Uzbeks, which, in turn were divided into different, sometimes warring tribes. In this case, the US Government had attempted to set up a national unity government, which included representatives of most of the factions and warlords who had opposed the Taliban, and build support around a strong leader, Hamid Karzai, a Pashtun war leader, with a base in the south who was also acceptable to some of the other regional leaders.

Finally, the critics usually also note that the only way in which democracy could be established in Iraq is if the US Government and/or the United Nations was prepared to stay there for a very long time, establish order and stability, ensure economic development and help to create a democratic political culture. However, as they point out, many voters in the United States and in the other coalition countries want their troops to be withdrawn from Iraq as quickly as possible and therefore, according to the critics, it is unlikely that any future US Government would be prepared to adopt such a long-term strategy.
So how have those who support the attempt to introduce democracy to Iraq as quickly as possible addressed the issues and concerns raised by the critics? In response to the view that democracy cannot grow in a country where there is no history of democratic traditions or a liberal, democratic political culture, they point to what has happened over the last 20 years in Eastern Europe after the end of communism.

To those who point to events in Rwanda and Sudan and argue that a country which is divided along ethnic, religious and geographical lines is inherently unstable and consequently infertile soil for “the democratic plant”, they point to developments in Bosnia and Herzegovina, Kosovo and East Timor. Whilst not arguing that the transition to stable, pluralist democracies has already taken place, they argue instead that the United Nations has put in place a long-term development programme that is creating the conditions necessary for democratic institutions and processes to flourish.

The supporters of the US Government’s position on Iraq also argue that Iraq may have ethnic and religious divisions like Afghanistan, Rwanda and Sudan but differs from them in other important respects which could make the transition to democracy easier. They point to the fact that 75% of the Iraqi population lives in towns and they do not have any ties to rural tribal leaders and warlords; that many Iraqis are secular and do not want to be ruled by religious leaders; that revenues from the oil, once production is back to normal, will finance rapid economic development and that literacy and educational levels are much higher in Iraq than in those other countries mentioned by the critics.

To those who suggest that the Afghanistan model might be more appropriate for Iraq than immediate democratisation, they argue that the national unity government strategy worked in Afghanistan precisely because there were several leaders who had sufficient legitimacy to represent and speak for their tribes and communities. By comparison, Saddam, during his dictatorship, had eliminated any local or regional leaders who posed a threat to him while others had fled the country and no longer had a power base in Iraq.

To those who argue that the US electorate and voters in other coalition countries want a quick military withdrawal from Iraq, the supporters of democratisation point out that critics were saying the same thing after World War II but the United States sustained a presence in Japan and Germany and then South Korea for many years and has now been actively involved in the political and economic development of Bosnia for 10 years.

Finally, some of the supporters of the US Government have argued that President Bush and his advisers had no choice but to push for democratisation as quickly as possible. Having opted for war and then having deposed Saddam and opted for a regime change, they would have been universally criticised if they had then replaced one dictator with another who was more favourable to them.

**A variety of viewpoints**

**James Woolsey, former director of the CIA and a strong supporter of the decision to invade Iraq:**

“Everybody can say, ‘Oh sure, you’re going to democratise the Middle East…But if you look at what we and our allies have done with the three world wars – two hot, one cold – …..we’ve already achieved this for two-thirds of the world. Eighty five years ago, when we went into World War I, there were eight or 10 democracies at the time. Now it’s around 120 – some free
some partly free. An order of magnitude! The compromises we made along the way, whether allying with Stalin or Franco or Pinochet, we have gotten around to fixing, and their successor regimes are democracies. Around half of the states of sub-Saharan Africa are democratic. Half of the 20-plus non-Arab Muslim states. We have all of Europe except Belarus and occasionally parts of the Balkans. If you look back, what has happened in less than a century, then getting the Arab world plus Iran moving in the same direction looks a lot less awesome. Its not Americanising the world. Its Athenising it. And it is do-able.”

A US State Department Report on Human Rights published in March 2006, citing as evidence the elections in January of that year and the growth of non-governmental organisations, claimed that:

“Last year [2005], was marked by major progress for democracy, democratic rights and freedom in Iraq.”

Daniel L. Byman and Kenneth Pollack, from the Saban Center for Middle East Policy at the Brookings Institution, Washington DC, USA suggest that:

“Failure to establish democracy in Iraq…would be disastrous. Civil war, massive refugee flows, and even renewed interstate fighting would likely resurface to plague this long-cursed region. Moreover, should democracy fail to take root, this would add credence to charges that the United States cares little for Muslim and Arab peoples…..The failure to transform Iraq’s Government tarnished the 1991 military victory over Iraq; more than 10 years later, the United States must not make the same mistake.”

On the other hand, US Marine General Anthony Zinni, who had retired by the start of the Iraq War, doubted whether there was a short-term means of introducing democracy in Iraq:

“If we think there is a fast solution to changing the governance of Iraq, then we don’t understand history, the nature of the country, the divisions, or the underneath suppressed passions that could rise up. God help us if we think this transition will occur easily. The attempts I’ve seen to install democracy in short periods of time where there is no history and no roots have failed [e.g.]……Somalia.”

Journalist Robert Kaplan argued in the Washington Post on 2 March 2006 that:

“Globalization and other dynamic forces will continue to rid the world of dictatorships. Political change is nothing we need to force upon people; it’s something that will happen anyway. What we have to work toward – for which peoples with historical experiences different from ours will be grateful – is not democracy but normality. Stabilizing newly democratic regimes, and easing the development path of undemocratic ones, should be the goal…..The more cautious we are in a world already in the throes of tumultuous upheaval, the more we’ll achieve.”

Instability also concerns Iraq’s neighbours. Shibley Telhami, Anwar Sadat Professor of Peace and Development at the University of Maryland, USA, says that:

“In states like the United Arab Emirates and Qatar, even Saudi Arabia, there is the fear that the complete demise of Iraq would in the long run play into the hands of Iran, which they see
as even more of a threat…they see instability, at a minimum, for a long period of time, and in the worst case the disintegration of the Iraqi state.”

**Dr Hamid al-Bayati, a political adviser to the Shiite United Iraqi Alliance emphasises:**
“We have to take Iraqi reality into account – we can’t copy any one democratic system in the world and apply it here.”

**Middle east expert, N.N. Ayubi, argues in his book Overstating the Arab State: Politics and Society in the Middle East (2001) p.424.**
“To speak about democratisation in relation to Iraq, however much one may stretch the meaning of this term, seems almost to border on the ridiculous.”

**Not everyone on the right of American politics supports the government’s view on Iraq. Patrick Basham of the conservative Washington-based Cato Institute is pessimistic about the presence of the pre-conditions necessary for a functioning democracy, although it is also clear that what he has in mind is a Western-style liberal democracy with a free market economy:**
“In such an environment, most people adopt a political passivity that acts as a brake on the development of the principles – such as personal responsibility and self-help – central to the development of economic and political liberalism. Hence political freedom is an alien concept to most Iraqis………[In addition he notes that many of the educated middle class who might have been ‘the fertile soil for democracy’ fled the country under Saddam’s rule and ‘the remnants can contribute to the democratisation of their country but the current middle class does not constitute a critical mass capable of moderating and channelling political debate in a secular, liberal fashion’].” Quoted in T. Dodge, (2003) Inventing Iraq: The Failure of Nation Building and a History Denied, p.157.

**What Do You Think?**

In your opinion, is it realistic to expect that Iraq will have evolved into a western liberal democracy by 2020?

What conditions will need to be present if that development is to happen?

What do you think of Robert Kaplan’s view that it is more important to bring stability to Iraq rather than democracy? Could (or should) the same argument be applied to some of the countries that had been communist until 1989 or were their circumstances very different from those in Iraq?
CASE STUDY 17: Can New Technologies help to make governments more accountable to the people?
Robert Stradling

Timeline: Cyber-dissidents in China

Shi Tao is 39. He is a journalist in China. Until May 2004, he worked for the Dangdai Shang Boa [Contemporary Business News], then he became a freelance journalist and writer.

15 May 1989: Thousands of protesters occupied Tiananmen Square in Beijing to call on the government to introduce democratic reforms.

20 May 1989: The Chinese Government declared martial law and troops and tanks were sent in to Tiananmen Square.


September 2000: Qui Yanchen was sentenced to four years in prison for putting subversive material on to the Internet.

14 January 2002: The Chinese Information and Technology Ministry introduced new rules about use of the Internet. Internet Service Providers were required to install software to monitor and copy the content of “sensitive” email messages and report the authors to the Chinese authorities. They were also required to censor their sites to prevent access to any sites that were held to be subversive by the Chinese authorities.

2002: The Internet Search Engine, Yahoo, voluntarily signed the “Public Pledge on Self-Discipline for the China Internet Industry”. In this pledge, they agreed to abide by the Chinese Government’s censorship regulations. This meant that any search topic which the Chinese authorities deemed to be sensitive, such as “Taiwan Independence”, would only produce government-approved results on screen.

September 2002: The Chinese authorities blocked access in China to the search engine Google for 12 days.

15 November 2002: The Chinese Government introduced a law requiring the owners of cybercafés to be responsible for the websites looked at by their customers or risk being fined or shut down.

July 2002: A group of 18 Chinese intellectuals wrote a “Declaration of the Rights of Chinese Internet Users” which called for freedom of expression through creating blogs and websites, freedom of access to online information and freedom of association through networks, chatrooms and cybercafés. This document was subsequently signed by thousands of Chinese Internet users.

2003: By early 2003, there were 26 cyber-dissidents in prison in China for putting material on to the Internet which the authorities thought was subversive.
**Spring 2004** The Chinese Government wrote to all forms of Chinese media: television, newspapers, magazines and Internet-based news providers informing them of the restrictions that would be imposed on them in the period leading up to the 15th Anniversary of the Tiananmen Square protests and deaths. Shi Tao emailed a summary of these restrictions to a dissident online newspaper, Min Zhu Tong Xun.

**24 November 2004:** Officials from the Changsa Security Bureau arrested Shi near his home in Taiyuan, in the north eastern province of Shanxi. They then visited his home and confiscated his computer.

**14 December 2004:** Shi was charged with learning state secrets.

**4 March 2005:** Shi’s lawyer, Guo Guoting was informed that he has been banned from practising as a lawyer for a year. This was just 20 days before Shi’s trial began.

**27 April 2005:** The Changsa Intermediate People’s Court found Shi guilty of leaking state securities.

**30 April 2005:** Shi was sentenced to 10 years in prison.

**2 June 2005:** Shi’s appeal against his sentence was rejected by the Hunan Province High People’s Court without a hearing. Shi Tao was sent to the National Security Bureau prison of Hunan Province, Changsa.

**14 September 2005:** The Dui Hua Foundation releases a translation into English of the Court’s verdict on Shi which revealed that the Hong Kong office of Yahoo, the Internet Server, had provided Chinese police with detailed information that enabled them to link the email message containing the alleged state secret with the IP address of his computer even though he was using a pseudonym.

**19 March 2007:** Jian Ling was sentenced to six years in prison by a court in Ningbo in the province of Zhejiang. Jian, a pro-democracy dissident, had been sent to a re-education camp for 18 months for counter-propaganda after the massacre in Tiananmen Square in 1989. In August 2005, he started his own website, which was then closed down by the Chinese Government in March 2006. Jiang joined 61 other people held in detention or awaiting trial for posting messages or accessing websites that the authorities considered to be subversive.

**What was in dispute here?**

Elections, even when they are free, fair and virtually the whole adult population is eligible to vote, do not guarantee democracy in a regime if they are only mechanisms for legitimating governments which, once they are elected, are not particularly responsive to the demands or needs of their citizens. But how to ensure that they are responsive to the demands of all of their citizens when some or even many of them feel excluded from the political process most of the time and feel that power lies in the hands of a political elite consisting of a small number of mainstream political parties, a bureaucracy which is growing steadily larger and influencing more and more of people’s lives, a number of powerful political and economic interest groups and a mass media which is mostly owned by a small number of rich and influential tycoons and oligarchs.
It is perhaps not surprising that many people have looked to new technologies, particularly email and Internet, as a possible way of redressing the balance of power between the apparatus of the state and the individual citizen. Some have seen the Internet as a means of seeking out information that those in power do not want others to have or providing others with information that challenges the official view presented by the government or by others in positions of power and authority.

A particularly interesting group here are those sometimes described as “whistle blowers” - people who have inside information about the activities or motives of those in power and wish to share it with everyone else. Such people have always existed but now their revelations can reach a much wider proportion of the population than ever before. Others draw a parallel between economic consumers and political consumers. In the economic market, they argue, the consumer is able to use the Internet to compare products in terms of price, value for money, performance and so forth. They can “shop around” until they find the product that best suits their needs. They can check the claims in the advertising against the information provided by existing consumers.

Similarly, there are those who argue that the “political consumer” can do the same with the claims made by those who are seeking their votes in order to get elected and gain power. Paraphrasing the 16th Century philosopher, Francis Bacon, they argue that “knowledge [or information] is power”.

On the other hand, others have challenged whether the Internet really does fulfil this critical role in a modern, technocratic society. Jonathan Zittrain and Benjamin Edelman of the Berkman Center for Internet & Society at the Harvard Law School in the United States have been monitoring ways in which governments block access to the Internet for more than five years now. Their work has shown that a number of autocracies and dictatorships such as China, Cuba, Burma, North Korea, Saudi Arabia, Syria and the United Arab Emirates now lead the way in blocking public access to websites that they consider to be sensitive or subversive and also in prosecuting dissidents and pro-democracy activists who use the Internet to disseminate their opinions through their own blogs and websites and to create networks with other critics of the regime.

As our case study shows, countries like China have invested a lot of human and financial resources in installing software that will enable them to restrict searches on topics such as Taiwan, Tibet or the pro-democracy movement, all of which are sensitive to the regime; to censor the material that internet users can access and also to read people’s email messages and track down those whom they regard as dissident and counter-revolutionaries who are criticising or even seeking to undermine the security of the state. In doing this, it would appear that some Internet Service Providers (ISPs) have been willing to agree to censorship in order to gain a toe-hold in the Chinese Internet market and, in some cases, have been willing to act as police informers.

At the same time, it should not be assumed that only dictatorships and autocracies seek to control and censor how people access and use the Internet. For some time now, most liberal democracies have been putting pressure on ISPs not to offer access to websites containing child pornography and, in some cases, Internet users who have downloaded this material have been prosecuted for possessing it. The mass media in those same liberal democracies, particularly the cultural industries such as film, television and music publishing, have also been very active in taking action against those who pirate their work and release it through the Internet.
But perhaps the most significant change that has taken place in recent years is as a direct result of the terrorist attacks of 11 September 2001. A month later, the US Congress passed the Patriot Act and then other western states began to introduce their own legislation designed to give police and other security forces new surveillance powers and the right to obtain personal data about Internet users. Whilst many people would probably support these kinds of measures in order to protect the public at large, there is also some growing concern that these new powers give the authorities in liberal democracies the means of extending their surveillance beyond terrorists, paedophiles and video pirates to include anyone who is engaged in lawful actions but visits controversial and radical websites or uses the Internet to disseminate information which might embarrass and politically compromise the government of the day.

So, one debate which has been ongoing over the last decade has been mainly about the implications of extending political and civil rights to the Internet to ensure that Internet users are assured of freedom of speech, freedom of association and freedom from censorship and that sanctions will not be taken against them if they exercise those rights through the Internet. However, over the last 10 years or so, another debate has also emerged which focuses on the potential that the Internet offers for a more direct kind of democracy. In 1994, the term E-democracy was coined, although some prefer to use terms such as cyber democracy or digital democracy. Whichever term is used, the aim is broadly the same: to enhance the democratic process by narrowing the gap between the governed and the government, the electorate and the elected representatives.

At one level, this technological development opens up the possibility of electronic campaigns, grassroots campaigns that bypass the usual political channels, interactive political dialogues between voters and candidates for office and even virtual political associations, parties and interest groups.

At another level, it can mean the use of the Internet to enable people to be directly involved in the decision-making process through electronic voting at elections and electronic referendums. In 2002, a number of experiments were carried out in Switzerland where they had already introduced postal voting as an alternative to the traditional ballot box. This required the development of procedures that would ensure that the electronic vote would be as private and secure and as free of fraudulent voting as the traditional system or the postal voting system. The card which entitled a person to vote electronically included a scratch card strip concealing a password that was exclusive to that person. They could not access the e-voting system without both the password and some additional personal information.

The advantages of electronic-voting for elections and referendums are clear to any population which, like the Swiss, is highly mobile. They do not have to be in their locality when they vote. It also offers more opportunities for those who are physically handicapped to exercise their right to vote in secrecy. But perhaps the main attraction for the supporters of direct democracy is that it increases the possibility of the electorate exercising their vote regularly on a whole range of referendums and opinion polls between elections. The supporters also argue that this would encourage people to vote more frequently and to become more politically active and involved in the important decisions which affect their everyday lives.

However, as yet, in Switzerland, it would appear that the experts are undecided as to whether or not this will happen. Some other countries have also started to make tentative steps towards electronic democracy, particularly the United States and some of the EU member
states. Perhaps the strongest argument that has been put by the supporters of electronic democracy is that most democracies are now confronted by electorates where a growing number of people are cynical about politics and politicians and where there is widespread political apathy and unwillingness to engage in the political process. The opportunity to express their views, engage in electronic campaigns, and organise electronic petitions might help to reverse what is otherwise a dangerous trend for any democracy.

This move towards electronic democracy is not universally welcomed. There are three main concerns or objections. The first is both a practical and ethical consideration. Political equality is a fundamental principle of democracy. If people are eligible to be citizens, then they have a fundamental right to take part in the political process and they should not be excluded from that process simply because they do not own or have access to the necessary electronic media. This is an important consideration but there is no reason why people could not continue to vote by post or at the ballot box if they could not access a computer. However, it may also be the case that they might be less likely to exercise their right to vote as frequently as someone who simply has to access the Internet.

A second argument that is sometimes made when supporters of e-democracy mention the Swiss example is that there is a political culture and a tradition of direct democracy in Switzerland which is not present in most other liberal democracies. On average the Swiss go to the polls at least four times a year and, when they do, they often vote on several proposals and referendums at the same time. They will also vote on local, cantonal and federal issues on that occasion. Even so, it has also been pointed out that the turnout for these votes is usually only about 40% of the electorate, although it is anticipated that this would probably increase if people could vote electronically.

A third argument made by some of those who are sceptical about electronic democracy is that it increases the likelihood of political populism - sometimes described by the critics as a tendency for some political activist to “pander to people’s lowest instincts”, such as racism, anti-Semitism, fascism, demands for vengeance for real or imagined wrongs, and so on. Some of these critics express a fear of what they describe as “the tyranny of the majority” - a situation where direct democracy enables the largest ethnic, religious, national or other group always to win every vote leaving minorities feeling powerless and oppressed. This gets to the heart of any discussion of democracy. Sometimes people claim that democracy is the rule of the majority. The problem with this definition is that the democratic process itself tends to break down if the majority in each case is essentially the same group. Then it would mean that the minority or minorities would never be able to influence any political decision. Their participation in the democratic process would be a sham.

Majority rule depends on two things. First, that all citizens agree to be bound by the will of the majority on any particular decision. This depends on the principle of reciprocity. I agree to abide by your decisions as long as you will abide my decisions when I am in the majority. But, for this principle to work, everyone has to have an equal chance of belonging to the majority on some issues some of the time. A fundamental problem arises when a regime is split into a permanent majority and permanent minorities based on race, ethnicity, religion, language or some other characteristic which is part of people's basic identity. If their opinions and choices always reflect their identity, then there is no hope that people will make up their minds on the basis of specific circumstances, information or evidence. This problem can also arise in representative or parliamentary democracies as well but usually the institutions and the constitutional checks and balances (different parliamentary chambers, an independent judiciary, etc) are designed to limit the possibility of tyranny by the majority.
The key question for supporters of direct democracy or e-democracy therefore is how to ensure that there are constitutional safeguards in this system too that will prevent the total domination by the same majority over the different minorities in society.

The fourth and final argument from the critics of e-democracy is partly a technological one but it is also rooted in another fundamental principle of liberal democracy. The rise of electronic commerce led to widespread concerns about online privacy. Indeed, many people are still reluctant to use the Internet to purchase goods because they are afraid that information they provide (financial and personal) will lead to an invasion of their privacy: information about their credit cards, their bank accounts, their email and home addresses, and so on, and after there has been a transaction then the Website they were visiting may have left cookies and other files on their personal computer to enable a commercial interest to continue gathering information about them and their online purchasing patterns. The website may even choose to make this information available to other commercial enterprises without your permission.

Now, say the critics, translate this typical consumer concern into a political context. Their view is that citizens would be vulnerable whenever they engaged in political activity via the Internet. If they participated in an online discussion or debate, wanted to find out more about a particular campaign or piece of legislation, or whatever, the web servers they were accessing could create a “cookie” that would contain that person’s unique identification number which would then allow the people who control the web site to call up information about that person collected on previous occasions.

Furthermore, any web site that knows a person’s identity and has a cookie for them could then exchange their data with other agencies who have web sites and synchronise their cookies. This may seem rather paranoid but these techniques are already being used to a limited degree in US Presidential, Senate and Congressional elections where political campaigning consultants are profiling voters in this way so that candidates can target their campaigning on those who are likely to agree with them and not waste scarce resources on trying to convince people who are unlikely to vote for them anyway.

At the same time, the supporters of E-democracy point out that, in an open political democracy, this kind of activity cannot be kept secret for very long. To support their view they point to the widespread public outrage in the United States in 1999 when the Internet advertising network, DoubleClick, proposed to merge with Abacus Direct, an off-line direct marketing company, which had a large database containing information about people’s credit cards, incomes, home loan records, etc. In the end, the public objections were so intense and widespread that DoubleClick did not go through with the deal.

It is of course possible that legal and electronic safeguards can be introduced to protect the privacy of every citizen who becomes actively engaged in politics through the Internet. However, it is worth remembering just how important individual privacy is in the modern democratic political process. Privacy was never an issue in ancient Greece or Rome. Private interests were not supposed to have any place in the political public sphere. The Latin origins of the word “privacy” was “privatus” meaning “withdrawn from public life”.

Of course, in practice, as anyone who has read a history of life in classical Athens or Rome will know, the distinction between private interest and public life was never that clear-cut. Nevertheless, when we come to more modern times, with our knowledge of what life can be
like in a totalitarian regime, there is a recognition that privacy ensures greater freedom to engage in politics without fear of threats designed to force them into supporting a particular position. So the important question that any advocate of direct-democracy, electronic or otherwise, always has to answer is what safeguards can be put in place to ensure that each individual’s privacy can be protected.

A variety of viewpoints about the issues

A statement issued by Google in January 2006:

“While censoring search results is inconsistent with Google’s mission, providing no information (or a heavily degraded user experience that amounts to no information) is more inconsistent with our mission.”

Sergey Brin, founder of Google, when asked if Google had agreed to censorship regulations set down by the Chinese authorities replied:

“No, and China never demanded such things. However, other search engines have established local premises there and, as a price of doing so, offer severely restricted information. We have no sales team in China. Regardless, many Chinese Internet users rely on Google. To be fair to China, it never made any explicit demands regarding censoring material. That’s not to say I’m happy about the policies of other portals that have established a presence there.” Interview in Playboy, September 2004.

US intelligence agencies have recently shown a great deal of interest in Internet surveillance. One thrust of this is determining geolocation from IP numbers. Currently this is about 80% effective in fixing the IP number to a major city and over 90% in fixing it to a country. It is believed that when geolocation is combined with an analysis of the kinds of search topics people in that location have most often visited ...that would provide an insight into a society and its sub cultures.

Guo Guoting, lawyer to Shi Tao, explained that:

“The law on state secrets is not very clear. As a result, the interpretation of the concept of so-called secrets is vague. It is therefore very easy for the authorities to use this law against journalists who speak their mind.” 25 January 2005.

Spokesperson for Yahoo:

“Just like any other global company, Yahoo must ensure that its local country sites must operate within the laws, regulations and customs of the country in which they are based.”

The Prison Committee of International PEN urged Yahoo: “To re-examine its policies to ensure that they do not have a negative impact on the legitimate practice of the right to freedom of expression and information, as guaranteed by international human rights standards, notably Article 19 of the Universal Declaration on Human Rights.”

Reporters sans Frontières, 6 September 2005:

“We already know that Yahoo collaborates enthusiastically with the Chinese regime on questions of censorship, and now we know it is a Chinese police informant as well……the company will yet again simply state that they just conform to the laws of the countries in
which they operate. But does the fact that this cooperation operates under Chinese law free it from all ethical considerations? How far will it go to please Beijing?"

The British journalist, Nick Cohen, writing in The Observer, on 25 February 2007, surveyed the steps being taken in a number of countries, but particularly China, suggests that:

“The net is humbling big business, so it is claimed, as consumers compare the price of everything from gas to bank interest rates and take their custom to the corporations offering the best value. Doctors face patients who can find out where the best value-for-money treatments are offered. Politicians must cope with an electorate that can investigate the claims of soundbites and manifestos with the click of a mouse. …The globalisation of the net was meant to challenge censorship and tyranny but dictatorships are tenacious and it has not happened yet,…the net is proving surprisingly easy for dictatorships to control.”

E.J. Bloustein describes life under a totalitarian regime, but the question that might follow on from this, would be whether a similar condition might emerge when electronic means of enabling people to get more information and to participate more widely in political activity can also lead to greater surveillance of their behaviour and opinions:

“The man who is compelled to live every minute of his life among others and whose every need, thought, fancy or gratification is subject to public scrutiny, has been deprived of his individuality and human dignity. Such an individual merges with the mass. His opinions, being public, tend always to be conventionally accepted ones; his feelings, being openly exhibited, tend to lose their quality of unique personal warmth and to become the feelings of every man.” “Privacy as an aspect of human dignity” in F.D. Schoeman (ed) Philosophical dimensions of privacy, New York (1984).

C.D. Hunter, a political analyst in the United States, suggests that there are a number of steps that any liberal democracy can take to ensure that every political campaign web site conforms to the same privacy policy:

“Given the sensitive nature of individuals’ deeply held political convictions, [personal] information should be afforded a high level of privacy protection. All campaign web sites collecting personal information should have a posted privacy policy which states:

1. What personal information is collected?
2. How and where it is gathered?
3. Whether personal information will be sold to third parties or shared with other campaigns, and if so the right to opt-out;
4. The ability to access and correct information held by the campaign;
5. An assurance that personal information will be stored in a secure fashion; and
6. The ability to opt-out of campaign e-mail lists.”

What Do You Think?

Would it be anti-democratic to prevent a political party from contesting elections and achieving power if it threatened in its public statements to undermine democracy by banning opposition parties, trades unions, opposition media, etc?

In your opinion, can new technologies help citizens to participate more directly in the political process? If you do think this, what steps would need to be taken to ensure that this happens?

Would access to Electronic Democracy encourage more people to take an interest in European issues and elections to the European Parliament?
CONCLUSION

Today most of us live in societies which are increasingly characterised by their ethnic and cultural diversity. This is partly due to the enlargement of the European Union since 1989 which has enabled people to move from one European country to another in search of employment or education. But there are also historical reasons for this diversity: the continuing links between some West European countries and their former colonies, the desire of some indigenous linguistic and cultural minorities to maintain their languages and traditions, and the creation of ethnic and national minorities in some countries as a result of the break up of the old European empires after the First World War, the re-drawing of some national borders after the Second World War and then the changes which occurred after the break-up of the Soviet Union and the former Federal Republic of Yugoslavia in the 1990s.

These are relatively recent changes but they are part of a much longer historical process of cultural borrowing and assimilation - enhanced by trade, wars, invasions and colonisation – that have helped to create the rich cultural diversity which characterises contemporary Europe.

However, in recent years, there has been a growing concern that this increased cultural and ethnic diversity may undermine the cohesion of the societies in which we live. In other words, that some minorities do not seem to have a sense of belonging to the society as a whole, are not appreciated or positively valued, and are consciously excluded from mainstream society or exclude themselves. This cultural volatility, it is often claimed, creates social tensions within multicultural communities which can then lead to violence and public disorder.

In the view of the editors of this book, diversity, in itself, does not pose a threat to social cohesion. The threat lies in how we respond to diversity; how we treat people who are different from ourselves – whether “we” represent the majority or a minority. As F. Peter Wagner points out, problems tend to arise in two general situations. The first is where one group abides by certain practices, beliefs or values which are unacceptable to other groups in that community. It is likely that issues around this conflict of values will become volatile and divisive in circumstances where an attempt is made to place limitations either on the rights of that group to propagate and pursue its beliefs and values or on the rights of other groups to publicly oppose those beliefs and values.

The second situation is where the cultural practices, beliefs or values of a specific group (often a minority) appear to challenge the cultural practices, beliefs or values of other groups (often the majority) to the point where the latter question the inclusion and participation of the former within the community or the minority virtually exclude themselves and opt-out of participation in that community.

When the International Covenant on Civil and Political Rights was being ratified, a number of member states of the United Nations expressed concern about Article 27 which asserts the right of minorities “in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”. Several member states proposed an amendment to Article 27 to the effect that recent immigrants should not be considered to be minorities because they were not yet assimilated and

constituted a potential challenge to the unity of the nation. In this sense, “inclusion” and “participation” seemed to presuppose “loyalty”. Ultimately, the amendment was defeated but the tension between “rights” and “loyalty” (or between “rights” and “responsibilities” in the current debate) has continued to shape discussion about citizenship in the 21st Century.

Essentially, two very different interpretations of citizenship have emerged out of this debate. One view focuses on assimilation into a common national history and cultural traditions; the other focuses on generating cross-community support for certain fundamental processes which enable multicultural communities to sustain themselves regardless of whether or not their members have a common history, cultural tradition and practices. This book is firmly rooted in the latter tradition.

Through a variety of case studies focused around some of the most important questions about how we live and how we interact with each other, we have tried to encourage the adoption of a way of thinking and arguing which:

- Challenges the taken-for-granted assumptions and perspectives of all who engage in a debate on a particular issue (regardless of whether they represent a majority or a minority);
- Acknowledges that those who represent “a minority view” may lack the power and access to the mass media to promote their views as effectively as those who represent “a majority view”;
- Respects all cultures but will critically examine the specific views held or actions taken by individual members of different cultures, particularly if their views or actions would violate the rights of others (both within and outside those cultures);
- Attempts to understand different perspectives and points of view and why people might hold them, without necessarily agreeing with those views;
- Expects to have one’s own views and taken-for-granted assumptions critically challenged as well.

In this book, we have suggested that, at one level, the basis for how we treat other people is set out in documents such as the UN Declaration of Human Rights and the European Convention of Human Rights. Although these documents are primarily concerned with the relationship between the state and the individual, they also have important implications for how we behave in our everyday lives. We are expected to respect and protect other people’s rights and, in return, we expect them to respect and protect our rights. However, as we have seen in each of the case studies, human rights often conflict with each other in everyday practical situations. In such circumstances, we would argue that there is a second, even more fundamental, basis for determining how we treat each other: the core procedural values which underpin human rights. That is, that other people, regardless of whether or not we share a common culture, traditions, faith, lifestyle or political beliefs and ideals, are entitled to be treated with respect, to get the same fair and equal treatment as you expect for yourself and to have the same opportunity as you to express their views or practise their faith or way of life. In return we expect the same degree of respect and fair and equal treatment from them so that any interaction between us can be based on good faith.

For centuries now, as we have tried to show in the Timeline which accompanies this book, people around the world have been engaged in a prolonged, difficult and often violent struggle to promote these core values and the fundamental human rights which represent their

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practical expression in every aspect of our day-to-day lives. Nevertheless, as the heavy caseload of the European Court of Human Rights and, indeed, the caseloads of the highest courts in each European nation, clearly demonstrate, states, multinational corporations and individual people need constant reminders that their actions may be violating other people’s human rights and treating them in ways which ignore natural justice. These core values need to be practised and upheld not only in the law courts but in our everyday dealings with each other. Otherwise they cease to have real meaning and we will cease to have any real sense of commitment to them. To return to the words of Eleanor Roosevelt which we quoted in the Preface to this book, human rights begin close to home where everyone of us seeks justice, equal opportunities and dignity without discrimination. “Unless these rights have meaning there, they have little meaning anywhere.”