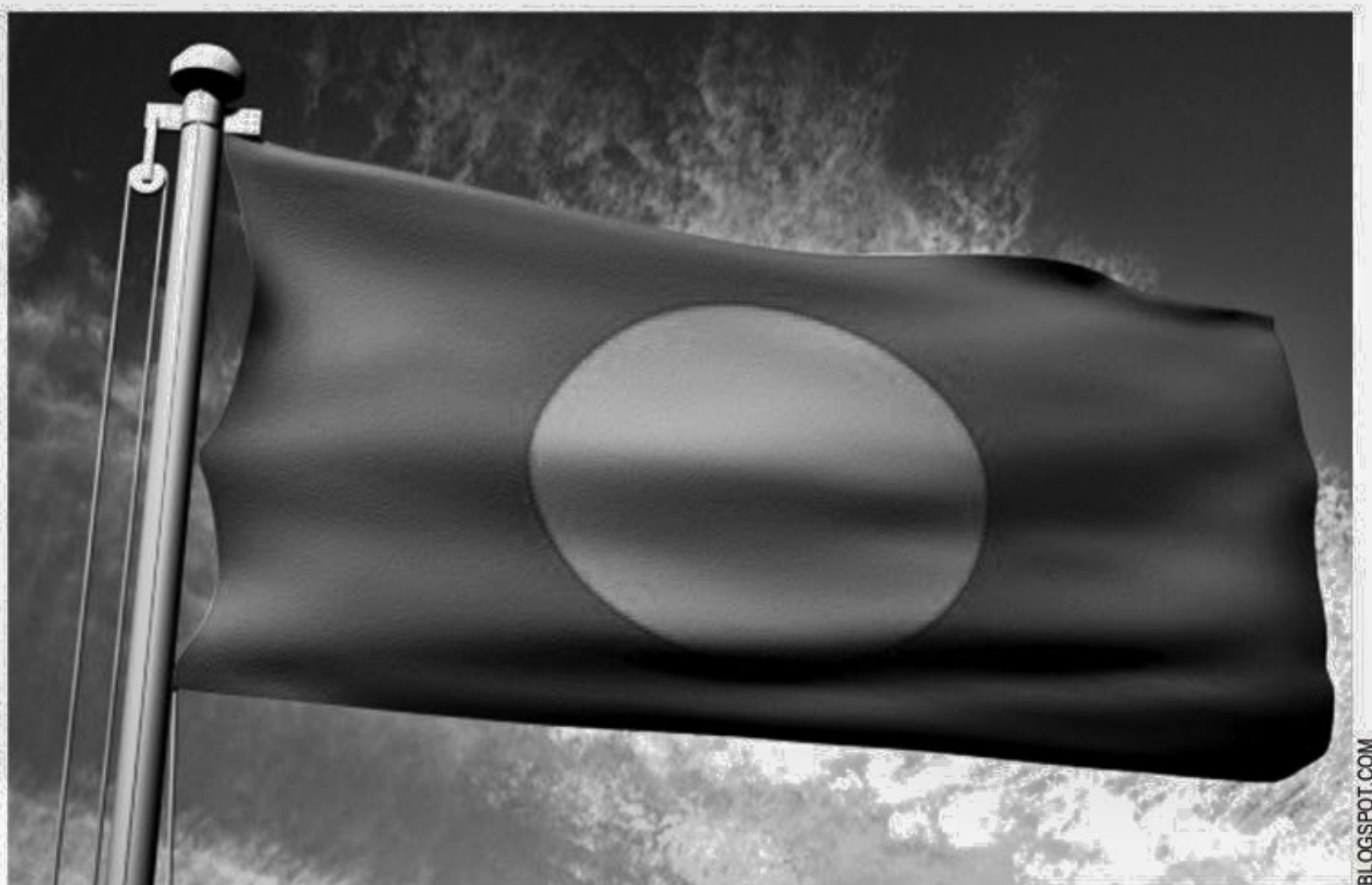




Flying National flag on vehicles cannot be a privilege of the few



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NATIONAL flag symbolises and identifies a country. Likewise, millions of Bangladeshis connect and associate themselves very closely with the national flag as is evident in the widespread display of the national flag on different occasions. Hence, one cannot use it in any manner as one may please. To uphold its symbolic value, certain rules and regulations should govern the usage, display and disposal of the national flag. Presumably, the Bangladesh Flag Rules, 1972 [hereafter Flag Rules] has been in

operation to achieve such purposes. However, with regard to the provision on the flying of national flag on different vehicles, the Flag Rules raise a concern that I would attend to in this essay. Rule 6(3) of the Flag Rules provides that the President and the Prime Minister shall be entitled to fly the Bangladesh Flag on motor vehicles, and vessels and aeroplanes. Rule 6(4) of the Flag Rules mentions that the Speaker of Parliament, the Chief Justice, Cabinet Ministers, Chief Whip, Deputy Speaker, the Leader of the Opposition, Persons accorded the status of a Cabinet Minister, Heads of

Diplomatic/Consular Missions of Bangladesh in foreign countries will be entitled to fly the Bangladesh Flag on motor vehicles and vessels. Rule 6(5) of the Flag Rules provides that Ministers of State and Deputy Ministers and Persons accorded the status of a State or Deputy Minister shall be entitled to fly the Bangladesh Flag on motor vehicles and vessels while they are on tour outside the capital if within the country or abroad. While the Flag Rules does not specifically lay down any prohibition on flying the national flag on their vehicles by persons other than the above mentioned dignitaries, there are several wordings in the Rule that unambiguously signify so. One may contend that the use of the term 'shall' only indicates an obligation imposed on the dignitaries that when they are in the aforementioned type of vehicles, those vehicles must fly the national flag. However, arguably, the use of the term entitled indicates that the Rule perceives flying the flag on a vehicle as a privilege, not as an obligation. This is a fortiori, when we compare the use of the terms 'shall be flown on the official residence of the following persons' in Rule 6 (2) of the Flag Rules. Arguably, the wordings 'shall be flown' in Rule 6(2) and 'entitled to fly' in Rules 6(3) -6(5) implies a distinction between the nature of flying flags on a residence and on a vehicle; in the sense that while the former is an obligation, the latter is an entitlement or privilege. The special nature of flying the national

flag on vehicles is also implicitly recognised by the classification among the dignitaries in terms of their entitlement to fly national flag on different type of vehicles and at different places. While the President and the Prime Minister shall fly the national flag on motor vehicles, vessels, and aeroplanes at all places, dignitaries mentioned in Rule 6 (4) are entitled to fly the Bangladesh Flag on motor vehicles and vessels but not on aeroplanes. Again, Rule 6 (5) of the Flag empowers State and Deputy Ministers and their equivalents to fly the national flag on motor vehicles and vessels only while they are on tour outside the capital if within the country or abroad. This restrictive nature of the usage rule denotes a sort of hierarchy in the entitlement to fly national flags in vehicles. One may contend that restrictive provision regarding flying national flag on vehicles is merely a matter of official protocol and does not preclude ordinary citizens to fly the flag on their vehicles. However, this line of contention would give rise to absurd consequences in that an ordinary citizen would be allowed to fly the national flag on their vehicles anywhere in Bangladesh but State and Deputy Ministers and their equivalents would be allowed to do so only outside the capital or abroad. Such an absurd consequence could not be the intention of the law. Furthermore, as the Flag Rules does not distinguish between any official or personal vehicle of the dignitaries, it does not seem to limit its application to

official protocol. While the privileged nature of flying the flag in vehicles of the dignitaries is apparent, the rationale behind appears to be indefensible. Apparently, this exclusivity is to distinguish the vehicles of dignitaries from that of the others. However, more often than not the presence of members of the security forces and the pomp associated with the dignitaries is so vivid in our country that it is perhaps difficult for even visually or hearing impaired persons to fail to notice the presence of these privileged and powerful few in their vehicles gracing the streets. Nonetheless, if they need special symbols to distinguish them from the crowd, they may devise some other type of special symbols for their exclusive use. For example, judges of the Supreme Court use special flags in their cars. Thus, few dignitaries, no matter how large their status looms, need not monopolise the symbol of the nation to stand apart from the common. All the people of Bangladesh should have the right to fly the national flag on their vehicles if they wish to do so. National flag cannot be the monopoly or status symbol flying on the vehicles of the few. Ordinary citizens can validly claim that the national flag which is the outcome of a long struggle for liberation, in which people from common people have sacrificed their lives, is an absolute entitlement of all people in Bangladesh.

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LAW EXCERPTS

'Ethnicity' in the International Law of Minority Protection

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THIS article examines how the ethnic notion of 'otherness' expressed along the line of the liberal traditions informs international law of minority protection. It attempts to grasp the ambivalence that the confrontation between liberal 'progress' and ethnic 'primitiveness' has engendered in relation to minority protection. I argue that although 'ethnicity' informs the concept of minority as the ethnic 'other', the individualist response to minority protection endeavours to remove 'ethnicity' from the notion of 'minority'. To substantiate this argument, this article first traces how the notion of 'ethnicity' travelled through time, and in the process what meaning it acquired within the liberal understanding. This will offer us an analytical framework through which the role of ethnicity in the liberal understanding of minority protection can be explored.

Ethnicity as Primitive 'Otherness' vis-a-vis Liberal 'Progress'

The term 'ethnicity' derives from the Greek word *ethnos*, which referred to the 'other' in ancient Greek, while *genos* was generally used by Greeks of Greeks themselves in a restricted kinship sense. In Greek classics, *ethnos* was used for the 'other' in a derogatory sense, such as for wild animals or foreign or barbarous nations, or husband-killing women. In later uses, in New Testament Greek, *ethnos* appeared as a religious indicator to refer to non-Christian and non-Jewish. For throughout the Middle Ages it was the Church Latin that dominated literacy in Europe, the term *gentile* a grouping for religious 'otherness' succeeded *ethnos*. In public Roman law, *jus gentium* represented a body of rules for Romans in maintaining relations with foreigners, while *jus civile* governed interactions between citizens. The term 'law of nations,' the synonym for the present day phrase 'international law,' is the literal translation of the Latin term *jus gentium* into English.

However, from about the mid-nineteenth century, scholarship has made of *ethnos* a word meaning something such as 'group of people of shared characteristics'. The notion of 'otherness' in *ethnos* then shifted to the image of the 'self', expressed through the dominant political vocabulary of the nineteenth century 'nation'. As the etymology of the term demonstrates, 'nation' used to refer to shared biological characteristics. Deriving from the

past participle of the verb *nasci*, meaning to be born, the Latin noun *nationem* connotes breed or race.

The relevance of biological features in the construction of a nation would get impetus with the emergence of social Darwinism in the latter part of the nineteenth century. However, prior to the emergence of 'scientific' justifications for racial superiority of a nation, what dominated the quest for finding the self-image in the nineteenth century was 'culture'. This quest appears largely as the Romantic response to the Enlightenment. While the Enlightenment was premised on 'individualistic, universalistic and egalitarian' ethic as opposed to the 'oppression, dogmatization, superstition and inequality of the agrarian age', the Romanticism praised a sense of specificity in feeling and culture. Such a romantic image of a nation having its foundation in ethnicity was destined to exclude the remaining 'other' in the process of constructing the 'self'.

Conversely, if the liberal nation is conceived as the reflection of universal spirit in temporal form, ethnicity must be assigned quite a different role. Thus, here ethnicity remains at the sidelines, and the liberal discourse on whether the ethnic 'other' should be assimilated or allowed to maintain cultural distinctiveness is informed by an instrumental understanding of ethnicity. For example, although John Stuart Mill held the view that for the efficient functioning of a representative government it is imperative that the boundaries of government coincide with those of nationalities, he does not see the solution in the creation of German-style ethnic nations by excluding the 'other'; instead, he advocated the assimilation of the lower and backward portion of the human race into that of the higher. Thus, according to Mill, a greater interest of the Breton and the Basque of French Navarre, or the Welshmen and the Scottish Highlander lies in their assimilation into the highly civilized and cultivated French and British nations, respectively.

The nineteenth century concept of world



civilization was translated into the theory of modernization in the early twentieth century and then the notion of globalization in the following epoch. Nevertheless, in both phases, culture in ethnic hence backward terms, i.e. the low culture remained labelled as a barrier to progression; culture was invoked to explain apparently irrational behaviour and self-destructive strategies directed against the attributes of advancement such as development and democracy.

The notion of primitive 'otherness' still persists in contemporary use of the term 'ethnic'. The Oxford Dictionary provides two meanings of 'ethnic', both of which are also mentioned in the Chambers Dictionary: one is something 'connected with or belonging to a nation, race or tribe that shares a cultural tradition', and in this sense, 'ethnicity' is defined as '[t]he fact of belonging to a particular race'. Though inter-related, each of these three categories nation, race, and tribe represents three different connotations. Early Greek use of *ethnos* might be compared to modern English 'tribe' 'a term still used by many educated people to describe all political units that are not of the familiar nation and nation-State kind'. The 'otherness' in 'ethnic' is exhibited more precisely in another Oxford meaning of the term: 'Typical of a country or culture that is very different from modern Western culture and therefore

interesting for people in Western countries,' e.g., ethnic dress, food, so on. In other words, ethnic is exotic, non-European. In a sense, this understanding of 'ethnic' reinforces the liberal social Darwinist notion of 'progress', wherein some social groups lag behind in the march towards modernity, individualism, and civilisation all attributes of the Western societies.

'Minority' as the 'Ethnic Other' Although any study on 'minority' essentially refers to the complexities involved in defining the term, 'ethnicity' remains the core of a perception of 'minority'. For example, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities formulated in 1950 guidelines for a definition of 'minority', one of which conceives 'minority' as those non-dominant groups in a given population that 'possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population'. 'Minority' was defined accordingly in 1954. Inherent features of ethnicity primordial ties (even if socio-historically constructed) as well as the notion of distinctiveness or otherness are evident in this understanding of minority by the Sub-Commission.

Similar approach was also adopted by the special rapporteurs on minorities in their seminal works. The Capotorti Report of 1979 defined minority, in the context of Article 27 of the International Covenant on Civil and Political Rights (ICCPR), as 'a group which is numerically inferior to the rest of the population of a State and in a non-dominant position, whose members possess ethnic, religious or linguistic characteristics which differ from those of the rest of the population and who, if only implicitly, maintain a sense of solidarity, directed towards preserving their culture, traditions, religion or language'. Another special Rapporteur Deschenes, in a text transmitted to the Human Rights Commission in 1985, defines minority in the like manner.

This trend is unmistakably reflected in the post-Cold War international and European instruments. The text of the Declaration on Persons Belonging to Minorities (1992) and the document issued by the CSCE Meeting of Experts on National Minorities (1991) both perceive minorities as bearers of 'ethnic, cultural, linguistic and religious identity'. This is also true for the definition of minorities (in some cases working criteria for identifying minorities where no consensus on a definition could be achieved) adopted by the Steering Committee on Human Rights to the Council of Europe, the Parliamentary Assembly of the Council of Europe (COE), and Organization for Security and Cooperation in Europe (OSCE).

Taken together, what is common in all these definitions and understanding of the term 'minority' is the image of a group which has at its core certain primordial attachments, even though socio-historically constructed if not intrinsic, that the members of the group not only share but also intend to preserve as an insignia of their identity. In other words, different international and European organizations understand 'minority' as an ethnic phenomenon. And because of this ethnic character, minority is perceived as the 'other'; it possesses primordial features that are sufficiently different from those of the majority or the rest of the population. In this sense, instead of being understood as an isolated object with certain distinctive features, 'minority' should be perceived in relational terms. It is in this uneven relationship with the majority or the rest of the population that 'minority' is consistently defined and understood as 'distinct'. The hierarchy of this relationship is, furthermore, informed by another aspect of inferiority attached to the definition of 'minority': as Schermerhorn puts it lucidly, an image of 'minority' essentially captures a condition of inferiority in relation to both demography and power.

Thus, ethnic 'otherness' lies at the core of an understanding of the minority as expressed in a series of definitions adopted over a number of decades. However, ethnicity plays a paradoxically different role in the 'protection' of minorities, to which we turn in the following part.

To be continued....

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