

The Opening in Burma

THE NEED FOR A POLITICAL PACT

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Burma today is in the midst of what will likely be a drawn-out game of political transition. It is going *from* a highly authoritarian military regime *to* something else. It is by no means clear that this will be a transition to democracy—or that the long-ruling military intends genuine democracy to be the destination. Indeed, even the current nature of the regime—whether it still reflects “military rule”—is in dispute. The core feature of all political transitions is uncertainty. As Guillermo O’Donnell and Philippe Schmitter have observed, when countries move from one regime type to another, the rules are “in constant flux” and “are usually arduously contested.” Thus, in all transitions, at least two types of contests proceed simultaneously. One is the substantive competition over power and policy outcomes. The other is the constitutional struggle “to define rules and procedures whose configuration will determine likely winners and losers in the future.”¹

There are also political struggles within each of the competing camps. Almost invariably, authoritarian regimes in transition are divided between “hard-liners,” who either do not want to relinquish the spoils of power or who viscerally fear and unconditionally reject democracy, and “soft-liners,” who have been part of the authoritarian regime (and perhaps are even parties to its repression), but who have become persuaded that the regime must open up, allow greater civic freedom, and “make use . . . of some degree or some form of electoral legitimation.”² Mary Callahan’s essay on Burma’s military leaves little doubt that this is a highly salient cleavage in Burma today, and one that could set back the transition if it is not managed artfully.

In transitions away from authoritarian rule, the intraregime cleavage between hard- and soft-liners finds its mirror image in the opposition's likely split between moderate and militant elements. Moderates may be passionately committed to democracy, and they may have sacrificed much in the struggle for it, but they understand the need to negotiate with the authoritarian rulers in order to bring about a transition to democracy. Militants are not inclined to compromise, but rather seek to use strikes, demonstrations, and other forms of mass mobilization to compel the autocrats to transfer power more or less unconditionally. Where the authoritarian regime is in crisis, as a result of defeat in war, fiscal distress, or a general meltdown of its authority, it may have no option other than to hand over power on the opposition's terms. However, "no transition can be forced purely by the opponents against a regime which maintains the cohesion, capacity, and disposition to apply repression."³

Whatever its inner splits and liberalizing intentions, Burma's authoritarian regime—with the Tatmadaw (military) at its core—still has the cohesion and coercive readiness to guard what it sees as its vital interests. Many political prisoners remain in jail; fierce fighting persists in some ethnic-minority states; and it is unclear how far anyone can go in challenging the regime without harsh consequences. So if there is to be a transition to democracy, it will have to be a negotiated one, in which regime soft-liners and more pragmatic and flexible leaders of the democratic opposition come together to agree on new rules.

Transition pacts are by their nature difficult and often painful compromises. "At the core of a pact lies a negotiated compromise under which actors agree to forgo or underutilize their capacity to harm each other by extending guarantees not to threaten each other's corporate autonomies or vital interests."⁴ A core reason for making a pact is to build what Robert Dahl called a "system of mutual security" between the government and its opponents, in which each side comes to recognize that the costs of repressing the other are greater than the costs of toleration. This system emerges when oppositionists gain enough power to make it costly for the regime to repress them, and when both (or all) political sides are sufficiently able to narrow their differences and accumulate trust so that they can be confident that if the other comes to (or retains) power their most vital interests will not be decimated.⁵

The more issues that pile up to be resolved, the trickier and more complex transitions become. Inevitably, there is a struggle over policy and interests, and a struggle over the rules of the game. But there may also be simultaneous struggles over the structure of the economy, the role of the armed forces, and the nature and boundaries of the state. In Burma, all these issues are on the table. This means that pulling off a successful democratic transition there will be harder than what we have seen in Southern Europe and Latin America over the last four decades



and at least as hard as what South Africa went through, even if easier than Iraq's exceptionally wrenching, violent, and still uncertain transition following the fall of Saddam Hussein.

Fortunately, Burma does have a functioning state. While that state's coherence and authority have been challenged by more than half a century of waxing and waning ethnic insurgencies—to say nothing of drug traffickers and other organized criminals—in the border regions, Burma has a central government with some ability to make its writ run over most of the national space. It is not emerging from state collapse or full-scale civil war, even if the state's capacity to deliver basic public services has been decimated by decades of misrule and sanctions. But Burma confronts the imperative of simultaneous transitions on several other fronts: from authoritarianism to democracy, from military to civilian rule, from a closed and monopolistic to an open and competitive economy, and from an ethnically fractured state to a more viable and coherent union. Moreover, it lacks a number of the conditions associated with successful democratization, such as prior experience with democracy, a sizeable middle class, a strong civil society, a unified political opposition, widespread access to modern information and communications technology, and a regional context conducive to democracy.

As the preceding articles show, Burma does have some things going for it. These include an extraordinary democratic leader with broad moral authority in Aung San Suu Kyi; a passionate aspiration for democracy on the part of a society that has risen up repeatedly and courageously to demand it, most recently in the 2007 Saffron Revolution; an emerging civil society that is now blossoming with programs to educate, mobilize, and prepare citizens for democratic self-rule; and the dominance within the authoritarian government of soft-liners who now appear to have a compelling mix of strategic incentives to sustain political reform.

By virtue of the transition timetable that the military has imposed through its 2008 Constitution, Burma has one other advantage: time. National parliamentary elections are not due again until around November 2015. This means there are three more years to address the formidable structural and institutional problems that stand in the way of successful democratization. Let us look at the key challenges—relating especially to questions of political process, constitutional structure, and means of handling ethnic conflict—that Burma will have to meet during this time.

Renegotiating the Rules

Any hope for democratic change in Burma must confront the hard realities of the constitution that the military imposed in 2008. The document was officially adopted via a May 2008 referendum widely condemned as a mockery of democracy. Although opposition groups had loudly urged a boycott or a “no” vote, the regime absurdly claimed 98



percent turnout and a 92 percent “yes” vote despite the mass devastation that Cyclone Nargis had wrought just a short time before polling day. The new constitution then opened the door to a process of political reform that few observers at the time expected, but that still severely limits how far the opening can go. Careful examination of the 2008 Constitution’s provisions suggests an intent to set up a competitive authoritarian regime in which the military will remain a dominant veto player in politics, even if its favored party fares poorly in future elections.

If the political transition is to lead to democracy, numerous provisions of the 2008 Constitution will have to change. These are listed in the box on page 142.

Although it is indirectly elected, the presidency is a powerful position under the new constitution, as the president not only heads the executive branch but also names the electoral commission. But with a majority on the National Defense and Security Council, the Tatmadaw will retain enormous power even if the president is someone from outside its ranks. And with 25 percent of the seats in Parliament, the military can block any constitutional amendment, which will need 75 percent support in Parliament.

Burma’s democrats thus face an acute and urgent structural dilemma. If they play by the rules of the current constitution, they *could*—if elections are as free and fair as were the April 2012 parliamentary by-elections—win the vast majority of seats in both houses of Parliament. And then they could elect the president, but not (by the current provisions) Aung San Suu Kyi. Yet at that point they would still be saddled with a deeply defective “democracy” whose institutional rules could be amended only if some military MPs broke ranks—an unlikely act made even more difficult by the military high command’s retention of the right to replace any military-nominated MP at will.

If the 2008 Constitution goes unrevised, Burma could find itself stuck indefinitely with a hybrid system—part democratic, part military-dominated, and intrinsically prone to instability stemming from the irreconcilable tension between those two competing sources of authority. Or, given the potentially prominent role of the military-dominated National Defense and Security Council in declaring a state of emergency, the new electoral regime might fall victim to renewed military intervention should a democratic president go too far for the military’s taste in trying to establish civilian supremacy and the rule of law.

Hence near-term prospects for democracy in Burma depend heavily on whether constitutional amendments can be negotiated and adopted in advance of the 2015 elections. There is a deal to be had on political rules and structures, for two major reasons. First, the regime needs democratic forces, particularly the largest opposition party, Suu Kyi’s National League for Democracy (NLD), to go along in order to stage credible national elections in 2015. Only a credible vote will allow the



WHERE THE 2008 CONSTITUTION NEEDS REFORM

Articles 109(b) and 141(b), which give the Commander-in-Chief (C-in-C) of the Defense Services—a uniformed, active-duty military officer—the right to appoint a quarter of the members of each house of parliament.

Article 232(b), which requires the president to appoint the ministers of Defense, Home Affairs, and Border Affairs from lists of nominees (who can include serving military officers) provided by the C-in-C.

Article 201, which appears to ensure that the military will have at least six seats on the powerful eleven-member National Defense and Security Council.

Article 59, which effectively disqualifies Aung San Suu Kyi from the presidency because she was married to a foreigner and her sons have citizenship in another country. (It should be noted, as Mary Callahan has pointed out, that this provision might also rule out of contention several military officers with children abroad; thus there might be some within the military who would favor removing it.)

Article 60, which establishes a cumbersome process for electing the president by means of an electoral college comprising the two houses of parliament, including all the military-appointed MPs. (This provision also effectively gives the military MPs—assuming they vote as a bloc—the power to choose one of the three vice-presidents, one of whom is then made president by the whole electoral college.)

Article 40(c), which authorizes the C-in-C “to take over and exercise State sovereign power in accord with the provisions of this Constitution” under a broad set of vague conditions: “If there arises a state of emergency that could cause disintegration of the Union, disintegration of national solidarity and loss of sovereign power or attempts by wrongful forcible means such as insurgency or violence.” Chapter XI gives the president power to declare a state of emergency “after coordinating” with the C-in-C and other top officers. The president must also “submit the matter” to parliament, but taken together these extensive provisions for declaring a state of emergency have the air of a license to return to military rule and suspend basic rights if things seem to be going too far.

Article 20(b), which gives the Defense Services “the right to independently administer and adjudicate all affairs of the armed forces,” thus insulating the military from any civilian control or oversight (particularly if, in some future government, the executive and legislative branches are not dominated by former military officers).

Chapter VIII on Fundamental Rights, which guarantees civil liberties only to the extent that they are “not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality”—a very broad set of exceptions.

regime to claim that it has made the shift to a “normal” constitutional system and thus get remaining U.S. and international sanctions lifted.

Moreover, the regime is beginning to realize—as are most of the ethnic-minority parties and the smaller (mainly NLD-spinoff) democratic parties—that the current first-past-the-post (FPTP) electoral system is in no one’s interest except the NLD’s. As Min Zin and Brian Joseph note, FPTP is likely to hand the NLD a massive landslide not unlike that of May 1990, when NLD candidates totaled about 60 percent of the vote and got 81 percent of the seats while the military’s party got about a fifth of the vote but only 2 percent of the seats. Even the NLD should be wary of FPTP because, as 1990 showed, too big a win can rouse a backlash that will cost everything: The military stepped in that year and annulled the results, driving much of the NLD leadership into exile.

The Search for a Viable Pact

On general principles, it is not good for democracy to have any party—even one that professes deep commitment to democratic ideals—enjoying an enduringly lopsided edge over all rivals. In similar circumstances in the South Africa of 1990, a newly freed Nelson Mandela and a newly unbanned African National Congress (ANC) quickly came to grasp that their own interests would be best served by guaranteeing other groups, especially the ruling white minority, representation in Parliament roughly proportionate to their vote shares. In the actual constitutional negotiations themselves, moreover, the ANC went further and gave guarantees not only to whites but also to other minority groups and the Zulu-based Inkatha Freedom Party.

After an initial round of failed negotiations in 1991–92, the apartheid regime, led by President F.W. de Klerk, and the ANC, led by Mandela, resolved to press on toward compromise. In November 1993, they agreed on an interim constitution that provided for a transitional power-sharing period under a government of national unity. Any party winning 20 percent or more of the vote in the founding election (held on 27 April 1994) would be entitled to nominate an executive deputy president, and each party was allowed to nominate one cabinet minister for every 5 percent of the vote that it won. Other provisions, such as the continuation of public servants and even hard-line military officers in their posts, also reflected the broad nature of the pact that was negotiated.⁶ In the end, the ruling National Party barely won 20 percent of the vote and President de Klerk assumed the position of deputy president under new president Nelson Mandela.

What is crucially instructive about the South African case is not only the usefulness of power-sharing during transitions, but also the explicitly *temporary* nature of this power-sharing. The National Party sought early on to lock in long-term constitutional guarantees of power-sharing



and minority vetoes, not unlike the veto powers that the Tatmadaw in Burma has given itself in that country's 2008 Constitution. But the white minority party lacked the power to impose its will indefinitely. In the words of a leading ANC strategist, it may have been "necessary to share power for a while and meet de Klerk halfway," but this could not be allowed to "block permanently any future advance towards a nonracial [democracy]." The power-sharing provisions were dropped in the 1996 Constitution, which took full effect after the 1999 elections. Other provisions to help reassure the white minority and ease the way to a new political order remained, however. These included an amnesty (granted through the truth and reconciliation process) for acts of political violence, guaranteed pensions, generous severance packages for bureaucrats who were eased out, and a commitment to respect existing property rights.

It is unlikely that Burma's military regime will agree to a wholesale rewriting of the 2008 Constitution. But amending key provisions could achieve an effect similar to South Africa's interim constitution: power-sharing with "sunset clauses." Having repeatedly seen the military crush democratic hopes, many in the opposition are ready for compromise. Among these pragmatists are not only the small democratic parties that agreed to contest the 2010 elections on the regime's terms, but also Aung San Suu Kyi herself, her party, the prodemocratic ethnic-minority parties, and many leaders of the "Four Eights" generation associated with the prodemocracy upsurge that began on 8 August 1988. In negotiations, complexity can be an advantage. Having many issues to resolve means that there will be many ways to horse-trade and strike compromises.

The search for a viable pact must begin by identifying the core interests of each constituency. In particular, the military needs guarantees that its autonomy will be respected, its members will not be prosecuted, and its wealth will not be confiscated. And Burmese democrats need to know that the country is on a clear path to genuine democracy, even if there are limits for a period of time. It is possible to imagine a pact, for example, that would phase out the military-appointed MPs after one term, as was done in Indonesia in 2004.⁸ The military's right to nominate three cabinet ministers might also be phased out after a term, while other problematic parts of the constitution could be amended before 2015. In exchange, the military and its cronies might receive amnesty for past crimes, security for their assets (however corruptly acquired), and preservation of their institutional autonomy.

The regime could also obtain a consensus agreement to switch the electoral system to proportional representation (PR), though in the case of a geographically complex and predominantly rural country such as Burma, it will be important to preserve bonds of electoral accountability and responsiveness between specific geographic constituencies and their respective MPs. Probably the best way to do this would be with



some version of the German (two-ballot) system, which is fully proportional but which elects half the seats from single-member districts, and then gives each party an additional number of seats from its PR list so that its overall representation is proportional to its vote share.⁹ The one change that I would recommend is a much lower electoral threshold than Germany's 5 percent barrier. Burma has smallish ethnic minorities and fledgling democratic parties that ought not to be locked out of the legislature by a too-high threshold.

If such a scenario were to unfold, one of the most difficult issues would probably involve the military's demand for institutional autonomy and an ongoing "leading role" in national political life. From the standpoint of normative democratic theory, Burma's democrats would be completely justified in seeking clear constitutional provisions mandating civilian supremacy over the military. But given the balance of power, it is hard to imagine the military agreeing to such an immediate, radical restructuring of its prerogatives. The urgent early imperative is to get the military out of politics and government, and to shrink back its mission "to a narrower set of 'professional' duties defending the national constitution and territory," as Mary Callahan characterizes in these pages the stated goal of top Tatmadaw commander Vice Senior General Min Aung Hlaing. For a country emerging from half a century of military rule, that would be a huge step forward, and even that would require time to take effect.

In Brazil, which experienced only two decades of military rule before the transition to democracy was completed in 1985, "the Brazilian military entered the New Republic with a sense of their legitimate role . . . that entail[ed] deep, permanent involvement in managing conflict in the polity."¹⁰ As Alfred Stepan argues in his seminal work on civil-military relations, change in such entrenched role conceptions and power relations will not happen overnight. Civilians must gain knowledge and influence in matters of military and national-security policy. "The democratic leadership of the state" must implement "a well conceived, *politically led* strategy toward the military," and a new generation of military leaders must come to see its own institutional interests as being served by a new, more limited role for the military that restores its internal hierarchy and discipline, modernizes its capabilities, and elevates its professionalism.¹¹

Managing Ethnic Conflict

In terms of national identity, Burma is among the most deeply divided transitional countries that anyone has seen since the "third wave" began in 1974. Up to a third of Burma's estimated 54 million people are outside the Burman majority, sharing neither its language nor its ethnic identity. More than a hundred minorities—including the Shan, the Kar-



en, the Karenni, the Chin, the Kachin, the Mon, and the Arakan—live mainly on the geographic periphery of Burma, in borderlands rich in natural resources such as timber and gems. Since independence in 1948, they have had a history of violent conflict with the center in what has amounted to a decades-long, intermittent civil war. In some of these areas, fighting still rages. For decades, the military has been trying to defeat ethnic insurgencies and control resources found in minority areas.

Although it gestures toward devolution, the 2008 Constitution remains highly unitary whereas Burma's minorities want federalism. Only a broad shift away from the current overcentralized form of government can offer hope of lasting peace and genuine integration. It would seem that Burma needs something like what Aung San Suu Kyi called for in 2010, a "second Panglong Agreement" like the one that her father Aung San, modern Burma's founder, signed in 1947 with leaders of the Shan, Chin, and Kachin minorities. The Panglong accord laid the basis for a Union of Burma in which frontier minority groups would enjoy "full autonomy in internal administration," and even the right to secede after ten years of national independence. But Panglong did not specify these groups' autonomous powers and rights, and the rise of secessionism in the late 1950s was a key factor in the military's takeover of power.¹² It is difficult to imagine a successful Burmese transition that does not resolve the persistent structural problem regarding the nature of the Union.

As Juan J. Linz and Alfred Stepan have written, "In a democratic transition, two potentially explosive questions are unavoidable: Who is a citizen of the state? And how are the rules of citizenship defined? A democracy requires a definition of the *demos*."¹³ A multinational state such as Burma cannot quickly, peacefully, and democratically become a nation-state. Rather, like India, its better prospect is to become a "state-nation"—that is, a state made up of many nationality groups in which the central state "nonetheless still manages to engender strong identification and loyalty from [its] citizens."¹⁴

In a state-nation, the central government and the dominant ethnic group recognize that they cannot impose a single exclusive linguistic and cultural identity upon all the people and territory of the country. Instead, they encourage "multiple but complementary" identities through institutions such as asymmetrical federalism, or at least some significant devolution of power down to subnational units dominated by various minority ethnic groups. This system recognizes each group's right to its own language and culture, while obtaining commitment to membership in the state-nation.¹⁵

A viable democracy would require Burma to become in some form or degree a "state-nation," similar in many respects to India, with its asymmetrical federalism and ample provisions for cultural autonomy. The current constitution does not go nearly far enough to ensure devolution of power. Although legislation could probably go a long way toward



granting the states and regions significant powers and responsibilities, the constitution gives the national president the right to appoint the chief minister of each region or state (technically, regional legislatures can

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reject such nominees, but only under hard-to-meet conditions). Fully elected subnational government, with some meaningful authority over local development, resources, and culture, seems a *sine qua non* for democratic stability. In return for such restructuring, Burma's ethnic minorities would have to commit fully to permanent membership in the Union and drop secessionism for good.

If the 2015 elections are to produce a viable democracy rather than a repeat of the 1990 calamity or a deeply resented and unstable semiauthoritarian regime, Burma has a lot of political

work to do in the next two years. The good news is that national elections are still three years away. The worrisome news is that the hardest political work of the transition—the negotiation of political pacts—has not yet begun. Neither is there a clear sense among democratic forces of the urgent need for these negotiations, or a strategy for entering and pressing them. Intensive negotiations are needed to forge a complex, interlocking set of compromise agreements between the regime and the democratic opposition, the civilians and the military, the major opposition party (the NLD) and its lesser rivals, and the majority Burmans and the various minorities. Fortunately, there appears to be a rapport and mutual respect between President Thein Sein and Aung San Suu Kyi. But mere dialogue is not a substitute for focused negotiations, and even a leader as esteemed and heroic as Suu Kyi cannot negotiate alone on behalf of such a diverse array of forces in politics and society.

Whether Burma gets to democracy in 2015, or at least manages to place itself clearly and consensually on the road to democracy, will heavily depend on what happens over the next two years. Democrats in Burma must use this time to forge a structure of compromises and a system of mutual security that can allow democratization to proceed. Politics needs to go from being a zero-sum to being a positive-sum game, and each major group in both the regime and the opposition needs to see that it has a clear stake in a democratic future.

Before opposition forces can effectively engage the regime in negotiations, they must engage one another. They must craft a more unified, politically coherent, and tactically coordinated front to present to the regime, even as they rally society behind their common



vision of a democratic future. Clearly, the democrats must and will be led by Aung San Suu Kyi in these negotiations. But as she revives and modernizes her own party, she must reach out across partisan, ethnic, and generational lines to forge a broad opposition front. And while some of the most sensitive negotiations must be carried on delicately—indeed often very personally, and in secret—in order to build trust, there also needs to emerge a broader and more structured negotiating framework.

The challenge, to be sure, appears daunting. But there is a new and more hopeful mood in Burma today. Neither the regime nor the opposition wants to see another painful implosion of political reform, for each side is now more acutely aware than it was in 1990 of what it has to lose from such a reversal. And if one looks at other transitions such as South Africa's twenty years ago, similar portraits of daunting, almost impossible challenges appear. Analysts of democratic success and failure rightly give great weight to underlying structural conditions. But within those constraints, people do make history, and this great drama is now in the hands of Burma's regime and opposition leaders. Success or failure is up to them.

NOTES

1. Guillermo O'Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (Baltimore: Johns Hopkins University Press, 1986), 6.

2. O'Donnell and Schmitter, *Transitions from Authoritarian Rule*, 16.

3. O'Donnell and Schmitter, *Transitions from Authoritarian Rule*, 21.

4. O'Donnell and Schmitter, *Transitions from Authoritarian Rule*, 38.

5. Robert A. Dahl, *Polyarchy: Participation and Opposition* (New Haven: Yale University Press, 1971), 15–16 and 36–37.

6. Steven Friedman, "South Africa: Divided in a Special Way," in Larry Diamond, Juan J. Linz, and Seymour Martin Lipset, eds., *Politics in Developing Countries: Comparing Experiences with Democracy*, 2nd ed. (Boulder, Colo.: Lynne Rienner, 1995), 549–50; Ian Spears, "Africa: The Limits of Power-Sharing," *Journal of Democracy* 13 (July 2002): 126.

7. Vincent Maphai, "A Season for Power-Sharing," *Journal of Democracy* 7 (January 1996): 71.

8. However, the proportion of appointed military and police members of Indonesia's parliament during the first five-year term of the new democracy (1999–2004) was much smaller than in Burma, less than 10 percent (38 of the 500 seats).

9. Germans cast two ballots, one for district representative and one for the party list, but it is the latter that determines the overall share of the vote each party will have in parliament. Germany's PR lists are state-level lists, which might also be a good idea for a country as big as Burma. The key is to avoid the disastrous situation of South Africa,



which in opting for a fully proportional system drawn from provincial and national lists left the country with no meaningful geographic ties between voters and representatives.

10. Alfred Stepan, *Rethinking Military Politics: Brazil and the Southern Cone* (Princeton: Princeton University Press, 1988), 131.

11. Stepan, *Rethinking Military Politics*, 142.

12. Michael Lwin, "Ending Myanmar's Civil War," *Al Jazeera*, 13 February 2012, available at www.aljazeera.com/indepth/opinion/2012/02/20122494825985895.html.

13. Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (Baltimore: Johns Hopkins University Press, 1996), 28.

14. Linz and Stepan, *Problems of Democratic Transition*, 34.

15. Alfred Stepan, Juan J. Linz, and Yogendra Yadav, "The Rise of 'State-Nations,'" *Journal of Democracy* 21 (July 2010): 50–68; and Stepan, Linz, and Yadav, *Crafting State-Nations: India and Other Multinational Democracies* (Baltimore: Johns Hopkins University Press, 2011). It should be stressed that in Burma as in India, there are other minorities living within each of the states where this or that ethnic minority predominates (thus probably a third or more of the people living in Shan State are non-Shans, for instance). It should go without saying that in any new arrangement, the rights of *all* (and not merely the rights of a local majority) must be secured.



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