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Volume 38 | Issue 1

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2006

# Rebuilding Nation Building: An Introduction

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## Recommended Citation

Hiram Chodosh, *Rebuilding Nation Building: An Introduction*, 38 Case W. Res. J. Int'l L. 1 (2006)

Available at: <https://scholarlycommons.law.case.edu/jil/vol38/iss1/1>

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## REBUILDING NATION BUILDING: AN INTRODUCTION

*Hiram Chodosh*<sup>†</sup>

From the experience of post-colonial states in Asia and Africa to more recent experience in Haiti, Bosnia, Kosovo, Somalia, Afghanistan, and Iraq, the conceptual clarity and goals of nation building have been difficult to achieve. Beyond the international recognition of what Benedict Anderson called an *imagined community*,<sup>1</sup> several fundamental questions remain unanswered. What are the desirable features of the nation under construction, and what, if any, is the appropriate role of the international community in designing, financing, and building them? How should the government be chosen, and powers separated between branches, allocated between the center and the regions, or shared by competing ethnic or religious groups? What are the necessary tools of conflict resolution? How critical is the role of women? Is religion a divisive or unifying force? What is the role of the United States, the United Nations, or the international financial institutions? With a view to comparative experience, a candid look at Iraq, and perspectives on the future, the Frederick K. Cox International Law Center and the Center for the Interdisciplinary Study of Conflict and Dispute Resolution (“CISDR”) co-sponsored a day-long symposium on April 8, 2005 to focus scholarly and public attention on a few of these many, major issues.

To address these issues, we invited several world-leading experts to explore how we might all contribute to build peaceful, prosperous, and just societies. Uniquely, the contributors shared several exceptional qualities: a deep commitment to improve the human condition, an engaging curiosity,

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<sup>†</sup> Associate Dean for Academic Affairs and Joseph C. Hostetler – Baker & Hostetler Professor of Law at Case Western Reserve University School of Law; Dean-Designate, S.J. Quinney College of Law, University of Utah. We are all deeply indebted to my dear colleagues, Professors Michael Scharf (Director of the Frederick K. Cox International Law Center) and Calvin Sharpe (John Deaver Drinko-Baker & Hostetler Professor of Law and Director of the Center for the Interdisciplinary Study of Conflict and Dispute Resolution), dedicated students on the Case Western Reserve Journal of International Law, led by John Waszak (Executive Symposium and Topic Development Editor), and talented staff (Alice Simon and Nancy Pratt) for their vision, hard work, and effective development of the symposium.

<sup>1</sup> BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* (1991).

refreshing candor about what we do not understand or know, and appropriate humility about the limits of any particular nation-building strategy.<sup>2</sup>

In an attempt to reach beneath the surface of the rhetoric and politics of nation building, the symposium posed three critical questions about the intertwined roles of federalism, the international donor community, and religion in building nations. Does the recognition of sub-national polities strengthen or weaken a cohesive national political process and identity? Does international intervention facilitate or frustrate the development of local political and economic processes of rebuilding a country? Does religion exacerbate conflict or provide the foundation for compassion and reconciliation?

#### THE ROLE OF FEDERALISM: PROMISE OR PERIL?

Drawing on his immensely broad and deep reading and his clear, analytical mind Peter Schuck, Simeon E. Baldwin Professor of Law, Yale Law School, defines frequently utilized terms (federalism and devolution) and clarifies significant distinctions (nation/state and building/maintaining). He thoughtfully explores the dual edges of the knives that spread of cut national identity: language, religion, patrimony, constitutionalism, and external threats. Professor Schuck then identifies several techniques of nation building (subordination, leadership, and federalism). He sketches the alternative structures of federalism and its ambivalent relationship to nation building. He outlines five distinct powers that can be devolved in a federalist structure. Emphasizing the unique attributes of each federalist system, Professor Schuck discusses the primary threats to their viability and the importance of political culture, including leadership, in determining either success or failure.

A courageous and scintillating intellectual of singular expertise and vision, Chibli Mallat, EU Jean Monnet Professor in European Law at Université St. Joseph, Beirut, and Director of its Centre d'Études sur l'Union Européenne, and currently a candidate for the Presidency of Lebanon, offers a panoramic global perspective on constitutional law in the Middle East and

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<sup>2</sup> Beyond the published comments and papers below, we had two very special guests. First, Joanne Dickow, one of our distinguished graduates (J.D., 1999), inspired us with a personal account of her work for the Department of Defense in Iraq during the spring and early summer of 2003. An Iraqi-American, Joanne inspired us to think about the importance of trust, the dissociation of corruption from culture, the need to challenge assumptions about the beliefs and values of foreign society, and the commitment to find hope, even in brutal failure. Second, Ramez Islambouli, the Islamic representative of the University and an adjunct professor of Islamic law here at the law school, provoked us by asking whether the concept of religion caused unnecessary conflict in its effect of separating of the secular from the spiritual.

failed attempts of regional integration, with historical examples richly illustrative of divergent models of statehood. He goes on to evaluate core indices of constitutionalism: election processes and power sharing, civil society, and the role of courts. Professor Mallat challenges us to think beyond our conventional territorial (zero-sum) models of federalism, to develop new models for (positive sum) community identities based on personal law that can powerfully transcend and yet co-exist with the territorial control of nation states. Drawing on the model of Lebanon, he thus opens a window to the possibility of *communitarian* federalism.

#### THE ROLE OF INTERNATIONAL INSTITUTIONS: FACILITATION OR FRUSTRATION?

By many accounts one of the great international lawyers of our time, Sean Hagan, General Counsel and Director of the Legal Department at the International Monetary Fund, briefly details the Fund's role in the post-conflict financial stability. He sensitizes us to the problem of *odious debt*, an indeterminate, doctrinal impediment to the reemergence of a local economy in the global markets and introduces us to the Fund's tools for facilitating financial transitions and providing technical assistance. In his comments, he stresses the unique dynamics of each crisis, and admonishes us that law is only as strong as its weakest institution, including judicial institutions.

Drawing on her extensive experience in Latin American as one of the world's leading experts on judicial reform, Linn Hammergren, Senior Public Sector Management Specialist, Latin America Regional Department at the World Bank, picked up where Sean Hagan concluded. She shares a candid critique of the role, limits, and dangers of technical assistance. First, she details the rule of law movement in Latin America and raises fundamental questions about what precisely has been achieved. Second, she identifies common causal factors in disappointing outcomes: the lack of donor coordination, the steep learning curve of working in new territory, changes in leadership and policy, more sophisticated resistance from entrenched interests, and other profound tendencies (the failure to look empirically at the nature of caseloads or normatively at the role and limits of judicial institutions). Finally, she looks for closer analogues within Latin America of post-conflict societies (Haiti and El Salvador) and thoughtfully teases out lessons beyond the region for nation-builders to consider: time as a necessary condition, the effect of preexisting conditions of institutional performance, the need for prioritization based on local demand, the wisdom of modest investments, and an approach that ensures sustainability.

## THE ROLE OF RELIGION: SOURCE OF CONFLICT OR RECONCILIATION?

An intellectual leader in the relationship between religion and violence, David Little, the T.J. Dermot Dunphy Professor of the Practice in Religion, Ethnicity, and International Conflict and Faculty Associate at the Weatherhead Center for International Affairs, Harvard Divinity School explores both the destructive and constructive roles of religion in conflict, drawing on positive examples from Eastern Europe to South Africa. He disabused us of the common, but competing, dogma that religion (always or never) is a central cause of conflict, and sophisticates our view of the competing tendencies (both positive and negative) in the heightening or flattening of conflict in society.

### FUTURE CHALLENGES

The accomplishments of the symposium are at once stunning and modest. The contributors cause us to reflect on so many deep questions of definition, richly diverse historical example, and complex social dynamics in which the relationships of subnational, national, and transnational communities, the positive and negative impacts of international organizations, and the role of religion in nation building are nearly impossible to disentangle, no less reweave into a peaceful and just civilization. By breaking down the parameters of this profoundly important phenomenon, our talented and dedicated contributors take a small step forward—at a moment when in Chibli Mallat's phrase "thought can be effective"—to rebuild our collective understanding and strategies of nation building.