

Bloody Borders

On his African tour, President Bush deplored the genocide in Rwanda, defended his refusal to send U.S. troops to Darfur, and decried the ethnic slaughter in Kenya.

Following a fraudulent election, the Kikuyu, the dominant tribe in Kenya, have been subjected to merciless assault. People are separating and butchering one another along lines of blood and soil.

According to a compelling lead article in the new *Foreign Affairs*, “Us and Them: The Enduring Power of Ethnic Nationalism,” we may be witnessing in the Third World a re-enactment of the ethnic wars that tore Europe to pieces in the 20th century.

“Ethnonationalism,” writes history professor Jerry Z. Muller of Catholic University, “has played a more profound role in modern history than is commonly understood, and the processes that led to the dominance of the ethnonational state and the separation of ethnic groups in Europe are likely to recur elsewhere.” Western Man has mistaught himself his own history.

Writes Muller: “A familiar and influential narrative of 20th-century European history argues that nationalism twice led to war, in 1914 and then again in 1939. Thereafter, the story goes, Europeans concluded that nationalism was a danger and gradually abandoned it. In the postwar decades, Western Europeans enmeshed themselves in a web of transnational institutions, culminating in the European Union.”

Muller contends that this is a myth, that peace came to the Old Continent only after the triumph of ethnonationalism, after the peoples of Europe had sorted themselves out and each achieved his own home.

At the beginning of the 20th century, there were three multi-ethnic empires in Europe: the Ottoman, Russian and Austro-Hungarian. The ethnonationalist Balkan wars of 1912 and 1913 tore at the first. World War I was ignited by Serbs seeking to rip Bosnia away from Austria-Hungary. After four years of slaughter, the Serbs succeeded, and ethnonationalism triumphed in Europe.

Out of the dead Ottoman Empire came the ethnonationalist state of Turkey and an ethnic transfer of populations between Ankara and Athens. Armenians were massacred and expelled from Turkey.

Out of the Russian and Austro-Hungarian empires came Finland, Estonia, Latvia, Lithuania, Poland, Czechoslovakia, and Yugoslavia. In the latter three nations, however, a majority ethnic group ruled minorities that wished either their own national home or to join lost kinsmen.

In Poland, there were Ukrainians, Germans, Lithuanians and Jews. In Czechoslovakia, half the population was German, Slovak, Hungarian, Polish, Ruthenian, or Jewish. In Yugoslavia were Slovenes, Croats, Bosnians, Serbs, Macedonians, Montenegrins, and Albanians.

The second World War came out of Hitler’s attempt to unite all Germans in one ethnonational home—thus the Anschluss with Austria, the demand for return of the Sudeten Deutsch, and the pressure on Poland to return the Germans’ lost city of Danzig and for Lithuania to give back German Memel and the Memelland it seized in 1923.

World War II advanced the process in the most horrible of ways. The Jews of Europe, with no national home, perished or fled to create one in Israel. The Germans of the Baltic states, Prussia, Poland, Czechoslovakia, the Balkans, and their own eastern provinces, almost to Berlin, were expelled in the most brutal act of ethnic cleansing in history—13-15 million Germans, of whom 2 million perished in the exodus.

At the end of World War II, Europe’s nations were more ethnically homogenous than they had ever been, at a horrendous cost in blood.

After 45 years of Cold War, the remaining multi-ethnic states—the Soviet Union, Czechoslovakia and Yugoslavia—broke up into more than two dozen nation-states, all rooted in ethnonationalism.

As Muller argues, ethnonationalism may be a precondition of liberal democracy. Only after all the tribes of Europe had their own ethnically homogenous nation-states did peace and comity come. And what happened in Europe in the 20th century may be a precursor of what is to come in Latin America, the Middle East, Africa and Asia.

Americans, writes Muller, “find ethnonationalism discomfiting both intellectually and morally. Social scientists go to great lengths to demonstrate that this is a product not of nature but of culture. ... But none of this will make ethnonationalism go away.”

Indeed, we see it bubbling up from the Basque country of Spain to Belgium, Bolivia, Baghdad and Beirut. Perhaps the wisest counsel for the U.S. may be to get out of the way of this elemental force. Rather than seek to halt the inexorable, we should seek to accommodate it and ameliorate its sometimes awful consequences. ■

The McCain Court

Appointing conservative judges would undermine the maverick's legislative legacy.

By Michael Brendan Dougherty

THE PROSPECT of overturning *Roe v. Wade* may be only incentive powerful enough to turn a disillusioned conservative into a motivated McCain voter this November. After the betrayals of the Bush era, many on the Right still point to the ascendance of John Roberts and Samuel Alito to the Supreme Court and proclaim, "It was worth it." Campaigning across the country, McCain promises conservative audiences, "We're going to have justices like Roberts and Alito." And Sen. John Cornyn told the *New York Times* that judges "are the one issue that cuts across all aspects of the Republican coalition," saying that in the run up to November, "I will encourage him to make it a prominent part of his pitch."

But will the Arizonan make good and usher in a conservative majority on the Court? Unlikely. Republicans hoping to rally their dispirited base in 2008 can find little evidence that John McCain is interested in effecting a judicial counter-revolution. Though there will probably be multiple vacancies in the Supreme Court in the next presidential term—John Paul Stevens turns 88 this April; Ruth Bader Ginsburg is 74; Anthony Kennedy is 71—McCain has never made the judiciary a central theme of his campaign.

Given the chance to join conservatives in disarming Democratic opposition to conservative judges, McCain compromised. Lacking incentives to appoint strict constructionists, his attitude toward judicial conservatives runs between indifference and hostility. And while McCain dutifully praises Roberts and Alito in public, he some-

times questions their rulings—particularly when they threaten to overturn his legislative legacy.

Reacting to the disappointing appointees of Reagan and Bush I, the Right adopted a "No More Souters" mantra. By insisting that judges need a verifiable record of strict constitutionalism in order to be appointed, conservative activists helped scuttle the abysmal Harriet Miers nomination. It is difficult to see how, after launching such a full-throated mutiny against her, they could accept McCain, whose answer to the impasse over Bush's judicial nominees was to elevate himself as a moderate powerbroker.

In 2005, when Democrats threatened to filibuster the president's appointees, conservatives countered that the Constitution requires only a majority vote for confirmation—not the 60 votes needed to invoke cloture. They argued that the filibuster itself represented an unconstitutional addition to the simple "advise and consent" role envisioned in our founding documents. Grassroots conservatives urged Republicans to exercise the "nuclear option" whereby the presiding officer—in this case Vice President Cheney—could invoke a little used procedural device and proceed to an up-or-down vote with only majority consent.

Rather than contending with the constitutional question, McCain joined Democrat Ben Nelson to form the Gang of 14. The seven participating Democrats agreed that for the duration of the 109th Congress they would no longer vote with their party to filibuster judicial nominees except in "extraordinary cir-

cumstances"; in turn the seven Republicans would refuse to vote with then Majority Leader Bill Frist on the "nuclear option." For hardcore conservatives, the Gang of 14, though expedient to confirm Roberts and Alito, placed principle second to bipartisan accommodation. Even today, McCain admits that his deal with Democrats ensured that several of Bush's appointments to federal appeals courts were permanently sidelined.

Judicial nominations were one of Bush's reliably conservative selling points. But McCain is not similarly beholden to the traditional Republican base. Bush could attribute his 2004 victory to evangelical Christians, and he received support from movement conservatives throughout his presidency. This will not be McCain's story. When he called evangelical leaders "agents of intolerance," he became a media darling. Over the past seven years, McCain's leading critics have been movement conservatives, and he won the nomination of his party against the bitter opposition of talk radio. Bush could be persuaded that the health of his party depended on judicial appointments that satisfied his core constituency. McCain's career has taught him that success comes from ignoring or opposing conservatives. Far from looking out for their interests, he will be focused on his own—safeguarding the measures that defined his Senate career.

McCain would be the first president in the modern era to come into office with major legislative accomplishments at the federal level. As conservative legal