

OPINION

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THE DEATH OF AN IRANIAN PRAGMATIST

Centrists in Iran will have a harder time without Ayatollah Rafsanjani's help.

Relations between the United States and Iran, which improved under President Obama to the point where the two sides were able to strike a nuclear deal, were already facing an uncertain future under Donald Trump, who has taken a tough line against Tehran. The death on Sunday of Ayatollah Ali Akbar Hashemi Rafsanjani has increased this uncertainty. A moderate in Iran's factional political struggles, Ayatollah Rafsanjani worked hard to soften its anti-Americanism and encourage constructive engagement with the West.

Ayatollah Rafsanjani played a major role in getting Hassan Rouhani, a reformer, elected president. He was instrumental in persuading Iran's supreme leader, Ayatollah Ali Khamenei, to agree to the 2015 deal, under which Iran has curbed its nuclear program in exchange for a lifting of international sanctions.

His absence leaves Mr. Rouhani and other moderates without a powerful champion and eminence grise capable of standing up to and outmaneuvering forces determined to keep the West at bay.

A pragmatic and skilled behind-the-scenes operator, Ayatollah Rafsanjani remained committed to the revolution that deposed Shah Mohammed Reza Pahlavi but felt that establishing relations with the United States was the best way to ensure the future of Iran's theocratic system.

To that end, he advocated not only a warmer attitude toward the West but also more personal freedoms and free-market reforms at home.

Mr. Trump has vowed to tear up the nuclear deal. He has threatened to make sure that Revolutionary Guards boats in the Persian Gulf are "shot out of the water" if they "make gestures" at American destroyers there. He has chosen a national security adviser and a C.I.A. director who are both adamantly opposed to the deal, regardless of the consequences of ending it.

It makes no sense to create a crisis with Iran where none exists. One result would be to undercut the voices of moderation that, after years of hostility, Washington should be most eager to encourage.

MYANMAR'S SHAMEFUL DENIAL

Brutal attacks on the Rohingya are a stain on the government of Daw Aung San Suu Kyi.

Last month, President Obama lifted sanctions against Myanmar, citing "substantial progress in improving human rights" following the historic election victory of the Nobel laureate Daw Aung San Suu Kyi's National League for Democracy party in November 2015. Tragically, that praise is proving premature.

Hopes that Ms. Aung San Suu Kyi would bring an end to the brutal repression of the Rohingya, a Muslim minority, lie dashed by a military campaign against the Rohingya in Rakhine State that began after an attack on a police station on Oct. 9. Since then, some 34,000 people have fled over the border to Bangladesh amid allegations of murder and rape by military forces, and satellite images of burned villages. At least 86 people have been killed.

Yet, a commission appointed by Ms. Aung San Suu Kyi concluded last week that "there were no cases of genocide and religious persecution in the region." Human rights groups rightly accuse the commission of a whitewash. In an effort to muzzle reporting, Myanmar's government has barred independent journalists from the region, and dismissed reports of abuses as "fake news" and "fake rape."

After a disturbing video of police brutally beating Rohingya villagers in November surfaced in late December, the government said "legal action was being taken." But, as Assistant Secretary of State Tom Malinowski observed, the video suggests such abuses are "normal and allowed."

Meanwhile, the International Crisis Group reports a new militant Rohingya organization with ties to individuals in Saudi Arabia and Pakistan was behind an Oct. 9 attack. The group warns that failure by Myanmar to address longstanding grievances by the Rohingya and the indiscriminate military crackdown in Rakhine State risk "generating a spiral of violence." This is the last thing Myanmar needs.

As the United Nations' human rights chief, Zeid Ra'ad al-Husseini, said last month, Myanmar's approach to the crisis is "shortsighted, counterproductive and even callous." On Monday, the United Nations human rights envoy for Myanmar, Yanghee Lee, arrived in the country on a 12-day visit. She will present a report to the United Nations Human Rights Commission in March. Given the failure of Myanmar's own commission to conduct a credible investigation, Ms. Lee should call for an independent investigation conducted under the auspices of the United Nations.

Last April, the European Union renewed remaining sanctions on Myanmar on "arms and goods that might be used for internal repression" for one year. The union should renew those sanctions if the government of Ms. Aung San Suu Kyi fails to end abuses against the Rohingya. That failure would also warrant new sanctions from the United States.

Can Trump and Castro make a deal?

Jorge I. Domínguez

CAMBRIDGE, MASS. Cuba operates as if it had two parties, President Raúl Castro joked in his main report to the Seventh Congress of the Cuban Communist Party last April: "Fidel leads one and I, the other."

This was more than just a joke: Fidel Castro, Raúl Castro's brother and the former president, had criticized President Obama's visit to Havana a month earlier in official publications. It was the first public split between the brothers on an issue of such importance. President Obama's Cuba policy change, announced in December 2014, drove a wedge through the Cuban leadership, making manifest the differences between government hard-liners and soft-liners. For the balance of 2016, the hard-liners dominated official communications, republishing tales of American perfidy over the previous two centuries. During the same period, however, Raúl Castro's senior team negotiated and signed many practical agreements to alter American-Cuban relations.

Fidel Castro is now dead; the ossified government he nurtured is vanishing as well. Since taking power in 2008, Raúl Castro has made many domestic

and foreign policy changes that happen to be in line with key foreign policy priorities of the American president-elect, Donald J. Trump, and at the same time open up Cuba's economy, and society. A deal-making Trump presidency will find a deal-honoring Raúl Castro presidency. The agreements that the Trump administration will inherit, reached under Mr. Trump's three predecessors, serve both the interests of the United States and Cuba as well as the presumed Trump presidential agenda. Reversing or scaling back such agreements, as Mr. Trump has threatened to do, will make it more difficult for him to fulfill that agenda.

The agreements that the new administration will inherit serve the interests of the United States and Cuba.

Last year, more than half a million visitors from the United States had set foot in Cuba and American commercial airlines now fly regularly between the United States and Cuban cities. Earlier in the Obama presidency, the United States government liberalized rules on sending money transfers to Cuba, and much of it informally financed the re-emergence of a Cuban private busi-

ness sector. The number of small-business licenses now exceeds a half-million in a country of 11.2 million people. Money transfers from the United States fund a Cuban civil society independent of the state for the first time in a half-century.

Recent agreements between the two countries make it easier for them to cooperate on hurricane tracking and biodiversity protection, share information on pollution and undertake joint maritime geological exploration. Other agreements protect migratory birds and fish. Cuba and the United States now also work together on cancer research, in which Cuban scientists have registered significant advances, and on the prevention and cure of infectious diseases, including combating the Zika epidemic, in which Cuba is a worldwide example of effectiveness.

Cuba and the United States have long cooperated on security matters, coordinating on security around the United States Navy base at Guantánamo Bay. Since the mid-1990s, the two countries have worked together to prevent undocumented migration. Cuba patrols its ports to prevent anyone from stealing boats and rafts; at its airports, it checks for valid visas among those about to board. United States Coast Guard cutters intercept undocumented migrants in the Straits of Florida and return them to Cuba.

The two countries have informally combined efforts on drug traffic interdiction since the 1990s, and this was formalized last July; Cuba provides an effective barrier against drug traffic into the United States.

And Cuba long ago adopted the Trump-preferred migration policy: seek to stop the departure and accept the return of undocumented migrants. Suppose you are the United States president-elect. What is not to like?

Still, while economic agreements emphasize the two countries' equality, some of the deals couldn't be more lopsided. Only American airlines fly between the two countries; Cubana de Aviación does not. And since late 2002, Cuba has purchased about \$5.3 billion worth of United States agricultural products, paying cash, while exporting almost no goods to the United States.

What's wrong with agreements already in place that benefit both countries? The United States wants to warn Florida and the Carolinas about hurricane trajectories, its fowl and fish to winter in Cuba's Caribbean waters and come back, and to benefit from Cuba's scientific expertise. Cuba and the United States are interested in exploring for oil in the Gulf of Mexico and have agreed to track seismic threats beneath the gulf's waters to prevent oil spills.

On delicate issues, President George W. Bush and Fidel Castro, and later President Obama and Raúl Castro, developed ways of agreeing substantively while publicly denying any negotiation had taken place. That diplomatic ruse worked. In 2002, the Cubans induced the Bush administration to begin exporting American agricultural products; each side made it known that these were unilateral, independent and sovereign decisions. In December 2012, the United States and Cuba did not trade spies; rather, each made unilateral, independent and sovereign decisions to release some of the other's prisoners.

Slowly, United States-Cuba relations got better. That serves Cubans who may travel more easily, receive friends, rent space through Airbnb, and get working capital through money transfers to establish private businesses and fund an independent civil society. That serves Americans who benefit from freer travel and cooperation on issues such as migration, crime and drug trafficking. What next? Rely on unilateral, independent and sovereign Cuban decisions to foster change.

Here's how Raúl Castro's joke ended at the April party congress: "Fidel will certainly say, 'I want to lead the Communist Party,' and I will say, 'O.K., I'll lead the other one, the name does not matter.'" If you are a Cuban hard-liner, that joke is terrifying. President Raúl Castro is prepared to open the gateway to something different, less dogmatic, whose name neither he nor we know. But we know what it is not. It is not called "Communist."

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JASPER RIETMAN

Ending identity politics in India

Indian politics have long been driven and riven by appeals to caste, religion, ethnicity and gender. The prime minister leads a Hindu nationalist party and has been accused of stoking hatred and violence against Muslims. But last week, the Indian Supreme Court ruled that political appeals on the basis of religion, caste, community or language, violate the Indian Constitution's guarantee of fundamentally secular elections. Elections could be voided if the rule is violated. But will the ruling create greater equality or undermine democracy?

INDIA PRESERVES CONSTITUTIONAL PROTECTIONS OF MINORITIES

The key to understanding the recent judgment by the Supreme Court of India lies not in what the court said, but in what it chose not to say. The court did not specify what constitutes an appeal by a candidate or whether candidates could be sanctioned because of statements by his or her political party or party leaders. Lawyers presented the court with several hypothetical scenarios that could have allowed it to decide what reference to religion, race, caste, community and language would constitute an appeal "on the ground of" these identity markers attracting penal consequences and what would be a permissible reference to identity.

Instead of addressing each of the questions raised, the court limited itself to a single issue and ruled that an appeal for votes on the grounds of religion, race, caste, community or language of the voter constituted a corrupt election practice. However, it left it up to judges in individual cases to decide whether such an appeal was made. Chief Justice T.S. Thakur, in his opinion, adopted this interpretation of the statutory provision on the basis that it serves the "constitutional ethos."

So fears that the ruling will prevent the oppression of ethnic, religious or social groups from being addressed are unfounded and based on a misunderstanding of the court's judgment. The right to equality and freedom from discrimination forms the bedrock of the Indian Constitution. Any exercise undertaken, during an election or oth-

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erwise, to serve these goals can never fall foul of the constitutional ethos.

Is a promise to root out discrimination against an oppressed caste or religious community an appeal on the basis of identity or is it a pledge to uphold core constitutional values? Much will depend on how the appeal is framed.

The judgment is also profoundly symbolic. The Supreme Court has sent a message that keeping divisive politics out of the democratic process is a core principle of the Indian political and constitutional system and the constitutional courts are watching to make sure that principle, as well as the right to equality, are respected.

Nizam Pasha was one of the lawyers who argued in support of the position taken by the Indian Supreme Court in its ruling on identity politics.

A MISGUIDED EFFORT WITH UNINTENDED CONSEQUENCES

Last week's 4-part, 113-page 4-3 ruling by India's Supreme Court banning

appeals to identity in electoral politics is well-written and grounded in compassion. It is also grossly misguided.

The opinion hinges on appeals "by a candidate or his agent or by any other person with the consent of a candidate on the ground of his religion, race, caste, community or language," but the justices have not made clear what would constitute "consent" or how precisely to determine who is a candidate's agent.

Will candidates now seek to weaken their opponents by hauling them to court on the basis of something one of their supporters says? Will media houses, already regularly accused on being biased toward one side or the other, now be considered candidate's agents? What happens if a journalist then seeks to advocate for a particular community in need? The majority opinion is expressly in favor of shoring up secularism and reducing prejudice and enmity between people. Yet the ruling may very well have the opposite effect.

For one thing, the ruling Hindu-nationalist Bharatiya Janata Party belongs to the Sangh Parivar, a disintegrated, loosely knit group of ideologically affiliated social, cultural, and

political organizations whose finances, networks, and organizational connections have long remained shadowy. A cultural unit could conceivably continue to advance a religious agenda, while the political unit could maintain its distance and plausible deniability about a relationship. While the opposition will seek to make hay, the sangh seems well positioned to spin such straw to their advantage.

More broadly, the dissent correctly observes that the Indian Constitution takes note of histories of discrimination based on caste and community throughout the subcontinent, and directs corrective, ameliorative action. How can this be done if communities cannot organize to seek representation and democratic redress?

The net result, in short, will be fourfold. Politics in India, already very rough, will become blood sport, as candidates and their party machines seek to use the judgment to disqualify their challengers. Social justice advocates, already in a precarious position, will be further pushed onto the back foot. The ruling will likely be ultimately ignored, because it is so broad that it is unenforceable. And this will, in turn, have the unfortunate effect of undermining the legitimacy of the court itself, and erode the already weak faith in institutions further — something democratic societies throughout the world can ill afford right now.

Manu Bhagavan is a professor of history and human rights at Hunter College and the Graduate Center-CUNY. He is the author of "The Peacemakers: India and the Quest for One World."

LIMITS ON PANDERING WON'T LIMIT THE FIGHT AGAINST DISCRIMINATION

"I am a Hindu nationalist," Narendra Modi announced from saffron hoardings across Mumbai, months before he was elected India's prime minister. Appeals to identity have always been central to campaigning in India, often so much so that they are not benign. At a rally for the prime minister's party's candidate in Uttar Pradesh, a local leader was reported to have told voters



TSEHING TOPGVAL/ASSOCIATED PRESS

A practice drill this month for the Jan. 26 Republic Day parade in New Delhi.