**Minority Issues in Europe:
Rights, Concepts, Policy**

Tove H. Malloy (ed.)

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Edited by

Tove H. Malloy

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Acknowledgements

Since 2011, the research staff at the European Centre for Minority Issues (ECMI) has been teaching a winter semester course in minority issues at Flensburg University as part of the University's MA Programme in European Studies. The course is taught in English, and the students come from all over the world with many from the former Soviet Union and Eastern Europe. The aim of the course is to introduce the students to a multi-disciplinary approach to understanding minority issues in Europe. In preparing the course, we soon realized that relevant teaching material was as diverse as the topic. Not only did it we draw on the literature of a number of academic disciplines in the social and political sciences as well as law, we also brought in new materials not generally known to the sub-discipline of minority studies. Occasionally, there was an overlap in that the same material was assigned for differing topics. Thus, assigning a general textbook proved rather challenging. To fill the gap, we set out to draw up an outline and divided the writing tasks between the teaching staff. Thankfully, both our co-operation partner, Prof. Dr. Charlotte Gaitanides at Flensburg University and the ECMI Executive Board supported the idea.

In preparing the typescript we have incurred many debts. As editor, I would like to thank the contributors for their co-operation and forbearance in responding to queries and corrections even during holiday periods. And thank you to our former ECMI colleague, Thomas Parker, who acted as language editor with great precision. I would also like to thank the Centre's technical and administrative staff, ECMI Librarian William McKinney, intern Tinatin Genebashvili and Project Assistant Oana Musteata, who helped with style issues and prepared the Bibliography and the Index. A great debt and special thanks is owed to my PA, Tamari Bulia, for supervising the technical preparation of the entire typescript. Tamari is an alumna of the MA Programme and without her efficiency and dedication, the volume would not have been a reality. Our editor at Frank & Timme Publishers, Ms. Astrid Matthes, provided important assistance in the final stages of the preparation for which we are thankful. Finally, we would like to thank our local partner, Sydbank Germany, for supporting the project financially.

Flensburg, August 2013   Tove H. Malloy

List of Abbreviations

AC	Advisory Committee
CEDAW	Committee on the Elimination of Discrimination against Women
CEE	Central and Eastern Europe
CERD	Committee on the Elimination of Racial Discrimination
CoE	Council of Europe
EBLUL	European Bureau for Lesser-Used Languages
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECMI	European Centre for Minority Issues
ECPR	European Consortium for Political Research
ECRI	European Commission on Racism and Intolerance
ECRML	European Charter for Regional or Minority Languages
EGTC	European Grouping of Territorial Cooperation
ENP	European Neighbourhood Policy
EP	European Parliament
ERA	European Research Area
ERDF	European Regional Development Fund
ETS	European Treaty Series
EU	European Union
EURAC	European Academy of Bozen/Bolzano
EUROREG	European Institute for Regional and Local Development
FCNM	Framework Convention for the Protection of National Minorities
FGM	Female Genital Mutilation
FRA	Fundamental Rights Agency
HCNM	High Commissioner on National Minorities
ICESCR	International Covenant on Economic, Social and Cultural Rights
IMER	International Migration and Ethnic Relations
IMISCOE	International Migration, Integration and Social Cohesion
InIIS	Institute for Intercultural and International Studies
IPMS	Indigenous Peoples and Minorities Section

ISCA	Institute of Social and Cultural Anthropology
MEP	Member of the European Parliament
NAACP	National Association for the Advancement of Colored People
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
OED	Oxford English Dictionary
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
OSI	Open Society Institute
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
USSR	Union of Soviet Socialist Republics

Introduction

Tove H. Malloy

The Aim of the Book

This book aims to assist advanced students in understanding minority issues as these have developed during the modern era in Europe. We do not propose to cover all aspects of minority existence in Europe, nor do we attempt to cover all disciplines. The book is meant as an introduction providing the starting points from which students may delve deeper into specific aspects and issues of their interest. We believe the field of minority studies is expanding rapidly, in many directions and over many sub-fields of academic exploration. While this is a welcomed development, it requires stocktaking from time to time. Minorities have been part of European history and politics since ancient Greece, and from the middle of the 16th Century they have been objects of policy-making. Early on religious minorities were seen as obstacles to state-building and later, national and language minorities came to be seen as a threat to nation-building. Immigrants who left Europe for the New World experienced less pressure as cultural minority groups but were nevertheless met with lack of acceptance and respect. In the 20th Century, minorities in Europe became the object of major bellicose conflicts and protracted international mediation. At times they were seen as an anomaly of international relations, a 'fifth column.' Domestically, traditional minorities had to fight their own way to be able to remain in their homelands while newcomers were received with rejection and were expected to return home. At the same time, personal identity became a public domain item; minority groups emerged and formed on the basis of identity and difference. Whether 'old Europe' or the New World, minorities have often been seen as a threat to peace and security and mostly as outsiders who do not fit in. In the early 21st Century of inter-connected societies and hyper-mobility, minorities are also seen as a threat to social cohesion and the common public goods of the welfare state.

The period covered in this book, basically from the Peace of Augsburg (1555) to the second Lisbon Treaty (in force 2009), represents essentially four minority discourses aimed at governing minority issues.[1] The first and most powerful, the security discourse, formed during the Reformation around the need to protect the freedom of religion of minority groups living in homelands

governed by a different religious creed. Later in Europe's history, the security discourse expanded to include national and ethnic minorities, and it remains a vital part of European intergovernmental politics around the Helsinki Process, especially in areas where so-called 'frozen' conflicts have stalled the possibility to protect minorities. Early on these issues were governed by inter-state treaties and later by the League of Nations; today, they are monitored mainly by the dialogue mandate of the Organization for Security and Co-operation in Europe (OSCE). The second discourse, the justice discourse, emerged as a result of the atrocities committed against minorities during World War II, and formed first around the United Nations (UN) system's peace mandate in the immediate aftermath of the War, and later around the Council of Europe's democratization mandate. The justice discourse regulates the human rights domain, and minority rights have ironically by default also become part of this discourse—by default because initially minority rights were not included in the UN system. The third discourse, the cohesion discourse formed around the European Economic Community, now the European Union (EU), in the 1980s, when the Single Act (1986) laid the foundation for greater cohesion among member states, and thus eventually for the cohesion of the European Continent, with the number of member states growing after the opening up of the Soviet bloc.[2] This discourse has regulated minority protection through two main instruments: the conditionality track for new members of the EU and the social inclusion track for all member states. Finally, the fourth discourse, the European citizenship discourse, emerged during the drafting of the Maastricht Treaty (adopted 1991) and the conceptualization of the EU transition from being mainly an economic integration project to becoming a political project. This discourse has grappled with seminal issues, such as a common European identity in light of the EU's so-called 'democratic deficit.' The European citizenship discourse incorporates mainly two strands of articulations with regard to minorities: One is on dual/multiple and transnational citizenship and the other on active citizenship and participation. While these discourses have different starting points, they exist today in parallel as well as overlapping within the field of minority issues.

The Problem of a Definition

The concern of this book is minority groups and their individual members. Finding a definition of a 'minority' has, however, been fraught with controver-

sy for decades. This is to the consternation of most international lawyers because it is difficult to argue litigation without knowing who the defendant is. The UN Sub-Committee on the Prevention of Discrimination and Protection of Minorities has grappled with the issue almost since its establishment, and a number of prominent experts has been asked to seek a solution to the problem.[3] The problem of a legal definition in international law is a question of whether a universal definition of minorities can be properly articulated. Inasmuch as international law instruments must apply to a wide range of states, a definition would by necessity have to be broad and general. That is near impossible in contemporary circumstances where minorities self-identify according to particular characteristics and a hybrid of diverse affiliations. Moreover, seeking a definition runs into the dilemma of whether to use objective or subjective criteria.[4] Objective criteria may result in discrimination; subjective criteria could lead to segregation. This is why in the legal context experts will have to work from the premise that a minority is a matter of fact, not law. Thus, it has been suggested that minorities are voluntary associations,[5] and most human rights instruments aimed at protecting minorities provide that belonging to a minority is a free choice.[6] This does not, however, allow for the innate bonds that many cultures foster. Finally, it could be argued that each case is unique. The characteristics and contexts vary from minority to minority and from country to country. Thus, in other academic fields, such as the social and political sciences, scholars operate with analytical definitions; that is, working definitions that possess the sole purpose of analysing a phenomenon. Whether one works on the basis of positivistic or hermeneutical/interpretist methods, a dependent variable is usually necessary.[7]

For analytical purposes, and only for analytical purposes, minority studies apply a dichotomy system of two categories of minorities in Europe: the so-called 'old' and 'new' minorities. Old minorities refer to minorities who have traditionally been a minority for many years, whereas new minorities indicate a group which has been present in a territory for a shorter period. These vague rules are, of course, only guidelines; it is difficult to define exactly what constitutes many years versus a few? This question will always invite arbitrary responses. This is why scholars prefer to argue that the question of a definition is unique to each case. Notwithstanding this dilemma, there are scholars outside the realm of law, who have volunteered definitions over the years; they have usually combined objective and subjective criteria.[8] The problem of the objective and/or subjective views is related to the issue of pre-determination versus self-determination. Where self-determination allows minorities to manifest

themselves, pre-determination requires advanced decisions on the identity of minorities.[9] Therefore, a combination of the two may at times be the best solution.

Due to the long history of old minorities in Europe, the scientific debate on a definition has focused mainly on these groups. Although they may possess several characteristics of belonging, i.e. religion, language and national allegiances, they are often jumbled together under the rubric of 'national minorities'. Will Kymlicka has suggested a short-hand version holding that national minorities are "groups who formed functioning societies on their historical homelands prior to being incorporated into a larger state."[10] More recently Jennifer Jackson Preece has put forth a detailed definition which holds that a national minority is

… a group numerically inferior to the rest of the population of a state, in a non-dominant position, well-defined and historically established on the territory of the state, whose members—being nationals of the state— possess ethnic, religious, linguistic or cultural characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion, or language.[11]

As a working tool, this definition is helpful. However, national minorities are a specific type of minority group; they are autochthonous. [12] While not entirely uncontroversial,[13] the term *autochthonous* refers to a minority that is native to a particular region, in this case certain regions of Europe that were once either independent or belonged to another sovereign, often neighbouring state. An autochthonous minority's status is a result of incorporation into another sovereign unit through the change of borders after major conflicts in the modern era. Most notably this has happened after bellicose conflicts, such as the Napoleonic Wars, World War I and II, but also after the breakup of the USSR.[14] Thus, one could argue that national minorities of autochthonous status in Europe are in essence the groups that have inadvertently found themselves 'on the wrong side of the border'. Important to note is that these minorities have not had any instrumental reasons, such as economic or political, for changing national allegiance. In fact, they have not been in the position to make a choice.

Autochthonous minorities include, but are not limited to, ethnic Hungarian speakers in Slovakia, Romania, Slovenia, Serbia and the Ukraine; ethnic Turks

in Bulgaria and the Balkans; ethnic Albanians in Kosovo and Macedonia; ethnic Rusyns, Russians, Romanians, Slovaks, and Belarusians in the Ukraine; ethnic Moravians in the Czech Republic; German speaking Austrians in northern Italy; ethnic Italians in southern Austria and Slovenia; German speakers in southern Denmark; Danish speakers in northern Germany, and Russian speakers in the Baltic states. While the territorial criterion for the autochthonous status of most of these groups is usually quite clear, the criteria of time and language are less so. Whereas the Hungarians had been in the Danube basin for many centuries prior to the demise of the Austro-Hungarian Empire, the Russians in the Baltic states have migrated fairly recently. But they were migrating within the territory of their own state in much the same way the Turkish people had migrated into Bulgaria and other parts of the Balkans during the Ottoman Empire. Hence, the elimination of empires resulted in national groups residing away from what became their 'nation-state' due to the change of borders within which they had at some point migrated. Moreover, autochthonous national minorities also include other old minorities, such as the Bretons in France, the Basques and the Catalans in Spain, the Welsh, the Scots and the Irish in the United Kingdom. In fact, these autochthonous national minorities might well be seen as autochthonous in a stronger sense inasmuch as they have been national groups attached to territory over an even longer period and some of which have held independence at one time. Except perhaps for the Scots, most of these minorities did not choose to become minorities.

Unlike old minorities, new minorities have usually made a conscious choice to start out a new life as a member of a minority. This does not mean that they accept the idea of minority status, but for analytical purposes the rational decision to leave a homeland in favour of another territory has been characterized as voluntary no matter what reasons may have led to the move.[15] Political refugees are not included in this group mainly because they did not have a 'free' choice, and they are protected under different international law provisions than minorities.[16] Nevertheless, once they have arrived in the settlement country, they are often seen and treated as immigrants, and in the analysis of new minorities it is very difficult to distinguish the two categories. Analytical definitions of immigrant groups vary considerably from continent to continent due to different push and pull factors that have led to the migration.[17] Often migration happens in waves, but with the onset of hyper-mobility due to mass transportation as well as regional conflict patterns, the periods between waves have virtually disappeared. In Europe, most migration patterns

are due mainly to decolonization or economic conditions in Africa and Asia as well as the more recent political conditions in the Middle East. Some immigrant groups may be edging closer to the definition of an old minority in terms of timeframe. These are immigrants from the colonies as well as immigrants from Turkey and Central Asia who came in the mid-20th Century. The immigrants from the colonies where allowed entry for moral reasons, whereas immigrants from Central Asia were invited to work in the new mass production sectors in the more industrialized countries. Their decision to come to Europe was for the most part a free choice based on instrumental reasons.

A third category of minorities in Europe may be termed social minorities. This is also an analytical category which the literature on minorities often either overlooks or jumbles together with the broad understanding of a minority. Social minorities are characterized by gender, age, sexual orientation, or physical or mental handicaps. They may also include specific types of vulnerability which requires special attention by the majority society. These groups are not the focus of this book.

It should be clear that it is not wise to promote one particular definition of what constitutes a minority. We return to the issue of definition from time to time in this book; however, without any prejudices one way or the other. Our scholarly aim is to provide the reader with the foundation to undertake analytical precision because we believe this is required to understand the many ways that different issues, events, and phenomena are related, or thought to be related in the area of minority studies.

A Note on Approach and Method

This book is multi-disciplinary in its approach to studying minority issues within European states and inter-state relations. We cover the relevant disciplines for our topics according to available literature. The study of minority existence in Europe has mainly been the focus of historians as well as legal and international relations scholars.[18] The approach of most of these studies is normative. It has only been within the last few decades that political scientists have turned their attention to the role of minorities as political actors in developed democracies.[19] While much of this literature focuses on the political and institutional accommodation of minorities in terms of self-government or self-administration, such as collective autonomy within unitary and federated states, it also takes a normative view. This literature is not only informed by

both the security and the justice discourses but has also remained frozen in its focus on the national state due to the substantial number of minorities that gained collective autonomy rights within European states during the 20th Century.[20] One off-shoot of this literature has placed minorities in the perspective of European integration and speculated whether autonomous minority regions might be mobilizing within the politics of multi-level governance in the EU.[21] With a few exceptions in the study of Euro-regions, little has been written about minorities as political actors with regard to cross-border issues.[22] Even these studies focus mainly on the institutionalisation of Euro-regions and less on the how national minorities have been involved in these types of regions. The social science literature has focused primarily on immigrant communities in Europe, mainly from the perspective of oppression and exclusion.[23] Thus, there is a gap in the literature on the relation between the economy and minority existence with the exception of the focus of development studies on vulnerability.[24] Some sociologists have focused on the socio-economic exclusion of specific minorities, especially immigrants, whereas the economic empowerment of minorities has become the interest of political sociologists. Finally, while cultural studies exist in abundance in the field of anthropology,[25] the humanities lack studies on minorities, especially in the field of cultural production and minority literature. In short, the academic literature available in the area of minority studies has become somewhat unbalanced with a strong leaning towards history, law and international relations, while the social sciences have focused more on the processes of exclusion and inclusion rather than on the specific groups.

The overarching guiding method of this book falls within the inter-section between neo-institutionalism and ideas.[26] By neo-institutionalism, we mean the study of the impact of institutions upon individuals as well as with the inter-action between institutions and individuals. Institutions refer here broadly to patterns of political behaviour, informal conventions as well as formal structures, with specific attention paid to the way in which institutions embody values and power.[27] In short, the focus is on rules and conceptions, formal and informal, as well as dynamic (as opposed to static) and disaggregated (as opposed to holistic) conceptions of institutions and critical thinking about values and the contexts in which institutions exist and change. By ideas we mean concepts derived from the major ideologies that have fostered development in Europe during the modern era. Ideas are thus part of the large-scale historical change that influences institutions. This causal link is important, especially when studying minority issues where institutions have gone

from not providing any interest in minority protection to grand conventions focusing particularly on minorities. While international actions were based on actual events, as in the case of the human rights regime after World War II or the European minority rights regime after 1989, the outcome was based on liberal ideals of individual rights to protection against violations committed by the state. A proper understanding of the state as an actor is thus the fundamental concept underpinning any analysis of minority issues in Europe. While we do not engage in analyses of statecraft, we analyse a number of sociological concepts relevant for statecraft and nation-building. Traditional conceptual analysis is, therefore, the foundation of our approach.

As indicated in the title of this book, we cover three main areas of minority studies. In Part I, we discuss minority issues in a historical context tracing first the early origins of minority governance up through the early 20th Century (Chapter 1) followed by a discussion of the developments in the second part of the 20th Century in terms of the intensified legal attention paid to the protection of individual members of minorities (Chapter 2). As noted, most of the traditional literature on minority studies emanates from the fields of history and international relations that we apply in these chapters. Next, we delve into a more detailed analysis of the international relations aspect of European politics and minority issues. We look at the intensified integration of the European Continent through the process of Europeanization and how this influences minority existence (Chapter 3). This chapters draws on alternative texts not traditionally part of minority studies. In Part II, we turn to the theoretical and conceptual aspects of understanding minority existence. Here, we put the main concepts involved in the understanding of minority issues under scrutiny. We ask how one might define culture, and whether ethnicity is different from culture *per se*? And what is the relation between minority membership and language (Chapter 4)? These differences in group definition and self-identification become manifested in the politics of most states since there is virtually no state in Europe that is not multicultural. This poses numerous challenges of how to accommodate group differences in societies that desire social unity (Chapter 5). Moreover, given the hyper-mobility which characterizes a globalizing world, the aspect of transnationalism as a social phenomenon with growing importance becomes relevant for the understanding of the 'fifth column' syndrome (Chapter 6). Here we draw on literature new to the field of minority studies which addresses identity and citizenship in new perspectives. The last focus of this Part analyses the ramifications of social change on the late modern life of minority existence (Chapter 7). What issues have

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become the 'hard' cases to accommodate and how do they influence co-existence in the public space? In Part II, we draw on literature from the fields of sociology, political science and political theory as well as international relations.

Part III turns to the policy aspect of minority protection. The neo-institutional approach is here applied against the conflict management and security regime that has developed in Europe since World War II (Chapter 8). Managing conflict involves law as well as institutions, and inter-agency relations are here of special importance. In the end, though, it comes down to how the individual state decides to structure its institutions for group participation (Chapter 9). How far will minority rights be implemented to ensure a democratic ethos that includes all groups and minorities? Moreover, the need for states to design specific policies which aim specifically at the inclusion of individuals through non-discrimination and positive measures becomes paramount (Chapter 10). Ending on a note of diversity management as the new paradigm for Europe is, therefore, not without reason.

The phenomenon of minorities in Europe is being redefined. From being a continent traditionally grappling with minority issues in terms of security and peace, Europe is a now forced to find justice for all through accommodation of diversity domestically. Granted, for centuries, Europe had to find ways to protect minorities against violations such as assimilation and persecution. However, in the 21st Century there is also a need to protect minorities against the discriminatory acts of fellow and new citizens. While conformity and uniformity remain the goals of many modern societies, diversity is a fact of life. We hope that this book will provide students with a set of tools with which they may begin to understand the fact of European diversity and how it relates to minority existence in the European context. For students who wish to proceed further, each chapter provides a guide to further reading.

Notes

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1   See further, Tove H. Malloy, "National Minorities in the 21st Century Europe: new discourses, new narratives?" *ECMI Issue Brief*, No. 24 (ECMI, 2010).

2   Some might prefer to call this discourse, the integration discourse. In minority studies this invites confusion, as sociological integration is a common concept used in the understanding of minority accommodation. See further, Chapter 5.

3   Francesco Capotorti, "Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities", UN Doc. E/CN.4/Sub.2/384/Rev.1 and Jules Dechênes, "Proposal concerning a Definition of the term 'Minority'", UN Doc. E/CN.4/Sub.2/1985/31. See also Tove H. Malloy, *National Minority Rights in Europe* (Oxford University Press, 2005), Chapter 7.

4   For a good discussion see, Gaetano Pentassuglia, *Minorities in International Law* (Strasbourg: Council of Europe Publishing, 2002), Chapter III.

5   John Packer, "On the Definition of Minorities" in *The Protection of Ethnic and Linguistic Minorities in Europe*, eds. John Packer and Kristian Myntti (Åbo: Institute for Human Rights, 1995), pp. 23–65 as well as John Packer, 'Problems in Defining Minorities' in *Minority and Group Rights in the New Millennium*, eds. Deidre Fottrell and Bill Bowring (The Hague: Kluwer International Law, 1999), p. 252.

6   See for instance, the *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, Art. 3(2), and the European Framework Convention for the Protection of National Minorities, Art. 3(1).

7   David March and Paul Furlong, "A Skin not a Sweater: Ontology and Epistemology in Political Science" in David Marsh and Gerry Stoker (eds.), *Theory and Methods in Political Science*, 2nd edition (Basingstoke: Palgrave Macmillian, 2002), pp. 17–41.

8   Inis L. Claude, *National Minorities: An International Problem* (Cambridge: Harvard University Press, 1955), p. 2; Jean A. Laponce, *The Protection of Minorities* (Berkeley: University of California Press, 1960), 6. See also in general, Carlile Aylmer Macartney, *National States and National Minorities* (London: Oxford University Press, 1934) and Tore Modeen, *The International Protection of Minorities in Europe* (Åbo: Åbo Akademi, 1969).

9   Arend Lijphart, "Self-Determination versus Pre-Determination of Ethnic Minorities in Power-Sharing Systems" in *The rights of Minority Cultures*, ed. Will Kymlicka, *The rights of Minority Cultures* (Oxford: Oxford University Press, 1995), pp. 275–288 at p. 275.

10   Will Kymlicka, *Politics in the Vernacular. Nationalism, Multiculturalism, and Citizenship* (Oxford: Oxford University Press, 2001), p. 54.

11   Jennifer Jackson Preece, *National Minorities and the European Nation-States System* (Oxford: Clarendon Press, 1998), p. 28.

12   Silvo Devetak uses the term in "Autonomy as One of the Means of Minorities' Protection. The Case of Slovenia" in *Ethnic Conflicts and Civil Society*, eds. Andreas Klinke, Ortwin Renn and Jean-Paul Lehners (Aldershot: Ashgate, 1997), pp. 99–115.

13   The concept autochthonous, if not well defined, could lead to discrimination. See "Constitution Watch" of Slovenia in *East European Constitutional Review* 102 (2001), pp. 41–44, reporting that the Constitutional Court of Slovenia has ruled the lack of an official definition a cause for concern, arbitrary and discriminatory.

14   Jackson Preece, op. cit., note 11.

15   Will Kymlicka, *Multicultural Citizenship. A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995), pp. 10–11.

16   *UN Convention* and *Protocol* relating to the Status of Refugees.

17   For a good discussion of defining immigrants according to their goals and status, see Alejandro Portes and Ruben G. Rumbaut, *A Portrait: Immigrant America*, 3rd edition (Berkeley: University of California Press, 2006), p. 19 ff.

18   Claude, op. cit., note 8; Laponce, op. cit., note 8; Jay A. Sigler, *Minority Rights: A Comparative Analysis* (Westport, Conn: Greenwood Press, 1982); Vernon Van Dyke, *Human Rights, Ethnicity, and Discrimination* (Westport, Conn: Greenwood Press, 1985); Will Kymlicka, *Multicultural Citizenship. A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995); Jackson Preece, op. cit., note 11; Eduardo Ruiz Vieytez, *The History of Legal Protection of Minorities in Europe, XVII–XX Centuries* (Derby: University of Derby, 1999); Kristin Henrard, *Devising an Adequate System of Minority Protection. Individual Human Rights, Minority Rights, and Self-Determination* (The Hague: Martinus Nijhoff Publishers, 2000).

19   Michael Keating, *State and Regional Nationalism: Territorial Politics and the European State* (London: Harvester-Wheatsheaf, 1988); Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights*, 2nd edition (Philadelphia: University of Pennsylvania Press, 1996); Will Kymlicka, *Multicultural Citizenship. A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995); Michael Keating, *The New Regionalism in Western Europe. Territorial Restructuring and Political Change* (Cheltenham: Edward Elgar, 1998); Michael Keating, *Plurinational Democracy. Stateless Nations in a Post-Sovereignty Era* (Oxford: Oxford University Press, 2001); Will Kymlicka and Magda Opalski eds., *Can Liberal Pluralism be Ex-*

ported? Western Political Theory and Ethnic Relations in Eastern Europe (Oxford: Oxford University Press, 2001); Michael Keating and John McGarry eds., *Minority Nationalism and the Changing International Order* (Oxford: Oxford University Press, 2001); Tove H. Malloy, *National Minority Rights in Europe* (Oxford University Press, 2005).

20 For an overview of autonomy arrangements, see Hannum, op. cit., note 20.

21 Tove H. Malloy, "National Minority 'Regions' in the Enlarged European Union: Mobilizing for Third Level Politics?" *ECMI Working Paper* 24 (Flensburg: ECMI, 2005); Tove H. Malloy, "Forging Territorial Cohesion in Diversity: Are National Minorities Promoting Fourth-Level Integration?" in *The Protection of Minorities in the Wider Europe*, eds. Marc Weller, Denika Blacklock and Katherine Nobbs (Basingstoke: Palgrave Macmillan, 2008) pp. 54–91; Tove H. Malloy, "Creating New Spaces for Politics? The Role of National Minorities in Building Capacities of Cross-Border Regions" in *Regional and Federal Studies* 20 (2010), pp. 335–51.

22 Martin Klatt, *Fra modspil til medspil? Grænseoverskridende samarbejde i Sønderjylland/Schleswig 1945–2005* (Aabenraa: Institut for Grænseregionsforskning, University of Southern Denmark, 2006); Zoe Bray, *Boundaries and Identities in Bidasoa-Txingudi, on the Franco-Spanish frontier*, PhD-thesis, European University Institute, 2002.

23 Christian Joppke, *Immigration and the Nation-State: The United States, Germany, and Great Britain* (Oxford: Oxford University Press, 1999) and *Citizenship and Immigration* (Cambridge: Polity Press, 2010); Christian Joppke ed., *Challenge to the Nation-State: Immigration in Western Europe and the United States* (Oxford: Oxford University Press, 1998).

24 For a good exception see for instance, Keith Banting and Will Kymlicka, *Multiculturalism and the Welfare State. Recognition and Redistribution in Contemporary Democracies* (Oxford University Press, 2006).

25 The trend started with Clifford Geertz' seminal study, *The Interpretation of Cultures: Selected Essays* (New York: Basic, 1973).

26 Mark Blyth, "Institutions and Ideas" in Marsh and Stoker, op. cit., note 5, pp. 292–310.

27 Vivien Lowndes, "Institutionalism" in Marsh and Stoker, op. cit., note 5, pp. 90–108.

PART I

Chapter 1: European History of Minority Relations

Raul Cârstocea

Summary

The history of majority-minority relations in Europe from 1555 to 1945 exhibits the progressive emergence of mechanisms offering guarantees and varying degrees of protection to minority groups. Beginning with religious freedoms that can be traced back to the Late Middle Ages, extending to notions of civil and political rights in the context of the emergence of the modern, secular nation-state, and finally encompassing linguistic rights and a certain degree of cultural protection, the evolution of the rights of minority groups in Europe tells a story in which considerations pertaining to international peace and security gradually gave way to a liberal, rights-based understanding of politics, as well as illuminating the ensuing tensions between the two. As multinational empires gave way to nation-states and ethnicity or language replaced religion as the primary marker of identity, new political arrangements were designed to respond to these developments. Beyond the diversity of approaches to the treatment of religious or national minorities, the picture that emerges is one where significant modifications of international borders and political upheavals were consistently accompanied by changes in the status and degree of protection of minority groups. And this shows, in contrast to the linguistic connotation of the term 'minority', the centrality and importance of minority relations, and, ultimately, of minorities as such, however defined, to the very core of Europe's historical legacy.

Introduction

This chapter provides a succinct history of the diverse arrangements for the protection of minorities in Europe, from its earliest beginnings concerning guarantees of religious freedoms for minority groups to the establishment of an international minority regime after World War I and its eventual demise as a result of World War II. The history of the evolution of minority-majority relations and of the development of minority rights is meant to endow students with a historical perspective enabling them to understand that the contemporary minority rights regime is not an abstract creation occurring in a

political vacuum, but the result of specific European historical processes that affected the ways in which minorities were conceptualized at different times in Europe's history and that progressively led to a higher degree of protection and eventually to the empowerment of minority groups, in spite of considerable setbacks and permanent re-negotiation. For purposes of brevity, the chapter follows an approach focusing on the most significant international accords and treaties that embedded changes in the status of minority groups, while also devoting attention to the political ideas and ideologies that influenced such changes. The primary assumption informing the presentation is that adopting a historical perspective to the evolution of minority rights allows us to see how all the important developments in international politics during the period under consideration were consistently accompanied by modifications in the status and degree of protection of minority groups. This aspect emphasizes the importance of studying minority-majority relations, as well as providing a historical context that permits assessing the relative importance, at different times, of the forces impacting upon their evolution. Students should consequently acquire an awareness of continuity and change in the history of the protection of minority groups over an extended timespan. The chapter is divided into five sections, covering respectively (I) the early beginnings of minority rights in the form of religious freedoms; (II) the emergence of nationalism and the increasing recognition of minority groups as national rather than religious; (III) the establishment of minority rights obligations as part of international treaties; (IV) the institutionalization of minority rights and their placement under the guarantee of an international organisation, the League of Nations; and (V) the functioning of the League of Nations, its limitations and demise.

Early beginnings: religious freedoms

As religion was the primary marker of social identity in Europe before the modern period, the history of minorities in the European space begins as a history of religious minorities rather than national ones, and the former can be said to have acted at least to some extent as a blueprint for arrangements concerning the latter. Dating back to ancient times, and involving significant persecutions of minority groups that were perceived as deviating from norms of behavior defined according to religious principles, religious minorities first came to be recognized and to some degree protected as such following the

wars of religion between Christian and Muslim political entities over control of the Middle East, seen as the 'Holy Land' by both religions. One of the results of these conflicts was the regime of the capitulations which guaranteed to Christians in the Levant the right to appeal to the jurisdiction of their countries of origin, through the medium of consular courts. These were the result of bilateral negotiations between the states in question, were largely dependent on the good will of the Oriental sovereigns, and were often limited in scope, failing to prevent widespread discrimination and frequent persecutions.[1] Moreover, as with later provisions, these capitulations applied only to Christians who were subjects of certain states, and not to other religious minorities, such as the Jews.

A further important development in the history of religious minorities in Europe was introduced by the Ottoman Empire following the conquest of Constantinople (1453). Under the millet system, antedated by similar provisions in other Muslim states but fully established by sultan Muhammad II Fātih after 1453, the principle of religious tolerance was extended to non-Christian communities as well. As such, the main millets in the Ottoman Empire were the Greek Orthodox, Jewish, Armenian and Syrian Orthodox; smaller religious communities, such as the Catholics, Karaites, or Samaritans were also organized according to this system, and by the 19th century seventeen millets existed in the empire. Furthermore, rather than being limited to consular rights, the millet system provided for extensive autonomy for religious communities, which were given jurisdiction over education, social security, tax collection, health, religious affairs and family law matters.[2] While showing a degree of pluralism in the management of a multi-confessional empire, the millet system was however far from being based on a notion of the equality of all religions, but was rather predicated on the idea of the superiority of Islam over all other religions.

In Central and Western Europe, the Reformation challenged the previously undisputed position of Catholicism and made religious differences into an integral part of the European heritage. In its wake, wars of religion shook the very heart of Europe, and the new territorial arrangements that followed them saw a gradual but steady erosion of the dynastic empires and of the horizontal structure of feudal society, and the emergence of the modern international system of sovereign territorial states. At this time, the homogenizing principle within the emerging sovereign states was still religion and not nationality or ethnicity, as evidenced in the *cujus regio ejus religio* principle (translatable as 'whose realm, his religion'), explicitly mentioned for the first time in the Peace

of Augsburg (1555). The Peace of Augsburg was a treaty signed by Charles V, Emperor of the Holy Roman Empire, and representatives of the Schmalkaldic League, an alliance of Lutheran princes, officially concluding the first major conflict between Catholics and Protestants. The aforementioned principle within the treaty allowed Lutheran and Catholic princes to choose the religion for the domains they controlled, thus providing for internal religious homogeneity within a principality, while allowing dissenting religious minorities to leave the territory with their possessions. However, the treaty was limited in its scope, recognizing an equal status to the Catholic faith only for Lutheranism (referred to in the treaty as 'the Augsburg confession') and not for the other Reformed confessions, such as Calvinism or Anabaptism. Furthermore, under the principle of *reservatum ecclesiasticum*, a prince-bishop who chose to convert to Lutheranism had to give up the territories he ruled.[3]

The Peace of Augsburg represented only a partial solution to the religious tensions in Europe, further exacerbated by the Counter-Reformation and the spread of Calvinism. The Cologne War of 1583–1588 exposed the weaknesses of the peace treaty, arising when a prince-archbishop of the city of Cologne converted to Calvinism. Against the background of the wars of religion fought between Catholics and Protestants ('Huguenots') in France (1562–1598) and the revolt of the seventeen protestant provinces in the Low Countries against the Counter-Reformation policies promoted by Phillip II of Spain (1568–1648), the mounting religious tensions in Europe culminated in the Thirty Years' War (1618–1648). The war pitched the Holy Roman Empire and its Catholic allies against Protestant states and their allies, including Catholic France (in an attempt to thwart the power of the Habsburgs and increase the influence of the Bourbon dynasty), the Christian Orthodox Zaporozhian Cossacks, and the Ottoman Empire. With a death-toll of almost 8,000,000 casualties including civilians, the war was one of the longest and most destructive conflicts in European history, and the first such conflict to involve most of the countries in Europe, making it the first war with a European dimension.[4]

The series of peace treaties signed between May and October 1648 in Osnabrück and Münster, generally referred to as the Peace of Westphalia (1648), marked the end of the Thirty Years' War. Widely considered by historians as a landmark signaling the beginning of the modern political order, in which sovereign states increasingly prevailed over dynastic empires as the main unit of international relations, the peace treaties included significant territorial adjustments and a general recognition of the exclusive sovereignty of a ruler over both people and territory. Yet more importantly for the history of minori-

ties in Europe, the Peace of Westphalia also placed Calvinism on an equal footing with Catholicism and Lutheranism. At the same time, the provisions of the Treaty of Münster included the first explicit recognition of the rights of religious minorities within a state to freely practice their religion, in public at allotted times and in private at their will.[5] While the primary concern of the states involved in the conflict was at this point with maintaining international peace and stability and was not based on any conception of inalienable rights, the principle of religious tolerance established in the Peace of Westphalia (no longer involving population transfers but guarantees for a religious minority within a sovereign territory where the majority religion was of another denomination) represented a very important precedent for later developments in international law. Similar provisions were subsequently included in other treaties concluded at the end of the numerous conflicts that involved territorial adjustments in 17th and 18th Century Europe, such as the Treaty of Oliva (1660), the Treaty of Nijmegen (1678–1679), the Treaty of Ryswick (1697), the Treaty of Dresden (1745), the Treaty of Hubertusburg (1763), etc.[6]

The Enlightenment and the emergence of nationalism

In the 18th century, notions of political legitimacy based on the doctrine of the divine right of kings and entitlements from marriage, succession, purchase or conquest came under increasing attack from political philosophers, as they began to explore the normative relationship between the ruler and the ruled. Arguing for a political system that involved the consent of the governed, the Enlightenment challenged traditional views of legitimacy, introducing concepts of natural law and natural rights, popular sovereignty, political representation, and tolerance. These ideas found political expression with the American and French Revolutions, which squarely placed notions of the universal, inalienable rights of all citizens at the core of government. Despite limitations that restricted citizenship to propertied white males, thus excluding women, foreigners and men who were not property owners, as well as failing to tackle the issue of slavery, the declarations issued by the American and French revolutionaries were permeated by liberal democratic principles and consequently exerted considerable influence on the further development of rights-based liberal democracy.[7]

The French Revolution of 1789 extended these notions of natural rights from individuals to nations as well, with the Declaration of the Rights of Man

and of the Citizen explicitly stating that 'the principle of all sovereignty resides essentially in the nation'.[8] The national idea, anticipated in the philosophy of the Enlightenment, subsequently gained increasing political weight in 19th century Europe as an alternative legitimizing principle challenging the former dynastic and religious allegiances, and represented the basis of a specifically modern political entity, the nation-state, whose existence was predicated on the congruence of the borders of the nation and the state. Paradoxically perhaps, notions of national self-determination were encouraged in certain parts of Europe by Napoleon in the context of his conquest, and, even when the French imperial ambitions were thwarted by the alliance of the other Great Powers, they found their expression in the numerous movements for national independence rising against the multinational empires of the 19th century. At the Congress of Vienna (1815), which marked the end of the Napoleonic Wars and was meant to prevent future hegemonic ambitions by a new balance of power system known as the Concert of Europe (representing a general framework for European politics until World War I and a predecessor of later international organizations such as the League of Nations and the United Nations), minority rights were recognized for the first time in international treaties as pertaining to national rather than religious groups.[9] Referring to the partition of Poland, the treaty stated that the Poles, who are respective subjects of Russia, Austria, and Prussia, shall obtain a representation, and National institutions, regulated according to the degree of political consideration, that each of the Governments to which they belong shall judge expedient and proper to grant them.[10] While no explicit guarantees or enforcement mechanisms were associated with these provisions, they would later be invoked by France and Great Britain in their protests against the actions of the Russian Empire. Furthermore, civil and political rights, and not only religious freedoms, were for the first time guaranteed for minority groups subject to territorial adjustments.

Throughout the 19th century, the granting of full civil and political rights to groups that increasingly identified themselves and mobilized along national lines is to be understood partly as an attempt of multinational empires to contain the rising tide of nationalism that would eventually lead to their collapse. The civic notion of the nation that had been one of the driving forces of the American and French Revolutions was however hardly suitable for the significant ethnic groups in Central and Eastern Europe living in multinational empires where they were in a subordinate position to the dominant group, and where calls for independence from foreign rule were based on an alternative

form of national affiliation, a shared ethnic culture.[11] Movements for independence consequently sprung up all over Central and Eastern Europe (and not only, as was the case with the revolution that led to the establishment of independent Belgium in 1830) at the beginning of the 19th century, culminating in 1848 with the wave of revolutions that came to be known also as the 'Spring of Nations'. The Revolutions of 1848, while politically unsuccessful and defeated by imperial forces in the space of one year, set however into motion forces that eventually led to the *Risorgimento* and the unification of Italy (proclaimed a Kingdom in 1861, completely unified in 1870), to the unification of Germany (completed in 1871), and to the *Ausgleich* of 1866 which entailed *de facto* full Hungarian autonomy within the redefined Dual Monarchy of Austria-Hungary. In addition, the revolutions gave further impetus to the national movements of Czechs, Slovaks, Poles, Ukrainians, Romanians, Croats, Serbs, and Slovenes within the Habsburg and Ottoman Empires, resulting in their achieving a higher degree of autonomy and political representation within the empires or, in the case of Romania, Serbia and Montenegro, to outright independence following the Russo-Turkish War of 1877–1878.[12] As such, just as nationalism had become the most important driving force in European politics during the course of the 19th century, so did the issue of national minorities come to the fore in the context of the emergence of new nation-states, just as it became increasingly clear on the one hand that the idea of an overlap between national and state boundaries was a practical impossibility, and on the other that the opposing drives towards assimilation and exclusion of minority groups were two of the potential negative consequences of the nationalist orientation within the realm of international politics.

The Congress of Berlin (1878) and the establishment of minority rights obligations

If previous treaties made reference to the rights of religious or national minorities as expressions of benevolence or voluntary recognition on behalf of the state within the borders of which minority groups were to be found, those agreed upon by the representatives of the Great Powers (which now included the recently unified Kingdom of Italy and the German Empire) at the Congress of Berlin (1878) were the first to stipulate minority rights obligations.[13] The Congress, convened at the end of the Russo-Turkish War of 1877–1878 under German leadership, dealt with the changed balance of power in the Balkans, in

an attempt to account for the declining power of the Ottoman Empire and to contain the Russian gains and growing influence in the region. More importantly for the purpose of minority rights, the Congress addressed the issue of the independence of Romania, Serbia and Montenegro, the establishment of Bulgaria as an independent principality within the Ottoman Empire, as well as the territorial changes that ensued as a result. The recognition of these countries' independence (including Bulgaria) was conditioned by their granting of equal civil and political rights to the minority groups within their new borders and their acceptance of the principle of non-discrimination on the basis of religion. Articles 5, 27, 35, 44 and 62 of the Treaty of Berlin, dealing respectively with Bulgaria, Montenegro, Serbia, Romania and the Ottoman Empire, guaranteed that differences in religious affiliation would not constitute a reason for excluding any person from the enjoyment of full civil and political rights in these states.[14]

There were multiple inter-related reasons behind these stipulations, which are important to take note of also because they anticipate later developments implemented at the end of World War I. First of all, they denoted the increasing Great Power awareness that any redrawing of borders in Europe would not be able to accomplish in practice the ethnic homogeneity that the nation-state was predicated on, least of all in Eastern Europe, and that significant ethnic and religious minorities would be left within the borders of the new states. Second, they exemplified both a reinforced commitment to a liberal and decisively secular conception of rights and the express desire to ensure that what was perceived as the mistreatment of minority groups under Ottoman rule would not occur again in the newly independent states. As such, they were designed to guarantee what has been referred to as a 'standard of civilization' as a precondition for the recognition of the new states as full (but not quite equal) members of international society. This latter aspect points toward a third motivation behind the imposition of minority rights obligations, i.e. the perception of the new Eastern European states as 'backward' by comparison to the Great Powers, in need of tutelage in their adoption of modern, liberal principles of rule.[15]

This paternalistic approach to the obligations set out for the newly independent states reflected on the one hand a new, explicitly interventionist orientation in international politics, although the only such intervention that actually occurred—the postponing of recognition of Romania's independence until 1880 due to its refusal to emancipate the Jewish minority—did not prevent Romania's *de facto* disregard of its obligations through a procedural subter-

fuge.[16] The most significant weakness of the minority rights obligations imposed at the Congress of Berlin was in fact that no explicit enforcement mechanisms were associated with them, the provisions being merely placed formally under the guarantee of the Great Powers. This potential threat of foreign interference was nevertheless strongly resented by the new nation-states that had recently gained their independence from foreign rule, and came to represent a constant source of tension in the years leading up to World War I. On the other hand, the paternalistic imposition of such obligations and the notions of the inherent Eastern European backwardness or inferiority reflected some of the prevailing ideas in fin-de-siècle Europe, where notions of racial inequality were becoming widespread at this time. Consequently, a nationalist ideology that had been associated with liberal principles and political emancipation at the beginning of the 19th century was gradually becoming more exclusionary and aggressive, and the rise of modern, ideological anti-Semitism was symptomatic of this shift. In a period when Europe's empires were confronted with growing national movements at home, this was also the time of the 'scramble for Africa', when colonial policies inspired by pseudo-scientific racism and eugenic ideas anticipated outside Europe some of the horrors of the two world wars, of the 'new imperialism' that saw a proliferation of chauvinism and jingoism, and, in the clash of rival imperial powers, led directly to World War I.

At the same time that seemed to witness the zenith of nationalism in ever more extreme forms, socialism provided an internationalist challenge to the dominant ideology of the day. Socialist thinkers, originating mostly from the multinational empires of Austria-Hungary, Germany and Russia, were fully aware of the problems engendered by the aspirations for self-determination of the national minorities within the borders of empires, and put forth their own, alternative views regarding the resolution of national minority issues in interpretations that emphasised the importance of economic factors and departed from a liberal paradigm that focused on the one hand almost exclusively on the nation-state and on the other on the preservation of the existing international balance of power. As such, Vladimir Lenin took the principle of national self-determination to its radical conclusion, arguing in his debates with Austrian, Dutch, German, or Polish social democrats that its Marxist interpretation necessarily entails the right to secession of every oppressed nation, and thus dismissing all arguments about the questionable viability of small independent states. In Lenin's view, a radical form of self-determination represented the only possible premise to the international solidarity that the working class