
Power and Minority Rights

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Introduction

Power and minority rights are inextricably linked. It is impossible to fully understand problems of minority rights without having mapped out the structures of power within the polity. This entry will discuss power and minority rights in order to outline their meaning within the organization of modern politics and to identify what shapes the relationship between the two. The entry will begin by mapping out the normative justification of power in modern public policy. Then it will frame the problem of minorities and minority rights within this normative justification. It will engage with issues of collective identity within the modern state, the construction of political community, the conceptualization of minorities, and the formulation of minority rights at national, regional, and international level. The entry will demonstrate why, in the normative context of globalization, increased mobility, and interdependence, it is problematic to establish institutions of power without considerations of minorities and their rights.

Power and Political Community

Definition: Political power is the ability to create and enforce policies on behalf of and for the community. Political power is thus firmly rooted in a notion of community, and its realm is determined by the boundaries of that community. It makes little sense to speak of political power in general, without specifying the subjects and objects of power. Rather, political power should always be understood within the context of the political community within which it is exercised. Without a political community that accepts, or is forced to accept, the political authority formulating public policies, power becomes meaningless. It is therefore essential to outline what a **political community** is and how it is being enacted and constructed in the realm of public policy. The agency and construction of political community in the structure of the modern state is the key link to the minority problematique and the key justification for minority rights.

The Westphalian System of Sovereignty

In modern politics, political community has been enacted and constructed on the basis of a particular arrangement which is often taken for granted but which, historically speaking, is rather recent. This arrangement came about at the end of an extended period of warfare in Europe in the mid-seventeenth century over political, economic, and religious autonomy within the context of the fragmenting Holy Roman Empire. The

arrangement is rooted in a series of peace treaties signed in the Westphalian cities of Osnabrück and Münster and is often referred to as the Westphalian Peace. The system of understanding contained in this peace arrangement established, among other things, the principle of **state sovereignty** over governed territory, which became the basis of modern politics and international relations.

Principle of Sovereignty and Self-Determination

Establishing the principle of state sovereignty as the governing rule of modern politics has two significant implications for the dynamics that governed the relationship between power and minorities. The first one is that the Westphalian arrangements created the normative basis for **self-determination**: the idea that political power should be exercised over willing political communities and in according to the expectations of these communities. In the context of seventeenth-century Europe, this referred mainly to the autonomy of local princes and principalities and the choice of religious affiliation. By the end of the eighteenth century, with the French Revolution, the idea of self-determination already referred to the will of *the people* as political actors. The people were seen as a clearly identifiable community – the community of the governed, who had the right to determine the way in which they were governed. By the late eighteenth and early nineteenth century, that community was increasingly referred to as *the nation*. The **nation** gradually became the shorthand reference for political community within the modern state. And while scholars of **nationalism** have not been able to agree on a single story of the origins of nations (see debates between primordialists and modernists described in Mole 2007), they have managed to reach a broad consensus on the central role of the idea of nationhood in the construction and legitimation of modern **statehood**.

Principle of Sovereignty and Noninterference

This is closely linked to the second important implication of establishing the principle of state sovereignty: the idea that others do not have

legitimate (and legal) rights to interfere in the affairs of a sovereign over their territory. In the tumultuous eighteenth and nineteenth centuries which witnessed the fall of many European monarchs, the legitimacy of the sovereign became increasingly more closely intertwined with the will and expectations of the people who inhabited the governed territory. The need to identify and express the will and expectations of these people in a coherent manner is what laid the groundwork for the inaction and the construction of the **nation**. But not all groups could subscribe to the stories of self-identification that united the nation. Because of irreconcilable differences or because of antagonistic relations, some groups saw themselves marginalized in the process of **nation building**. The claims of nations over political power within their states meant that attempts of such communities to access political power were often seen as illegitimate. The rule of noninterference into the sovereign affairs of a state left non-titular groups with the alternative to either revolt against the holders of power or accept their marginalized position.

National Political Community and Westphalian Sovereignty

Thus, on the basis of the agreements reached in the Westphalian peace treaties, political power in the modern world became firmly attached to a notion of political community that came to be expressed through the idea of nations and nationhood. Within this political community, solidarity was based on *national identity*. Those groups which could not identify with the nation became marginalized in the **power-sharing** arrangements within the state, as they could not legitimize their claims to power within the logic of national **statehood**. **National identity** became the ethical justification and legitimation of modern statehood as a form of political **self-determination** and as an expression of the sovereign will of the political community in the face of the nation. This is of central importance to understanding the place of minorities within the political community, their relationship to political power, and the formulation of minority-specific rights.

National Statehood and Minorities

In the immediate aftermath of seventeenth-century religious wars and the subsequent redrawing of sovereign borders, political solidarity often referred to religious affiliation and place of residence. With the advent of **nationhood** as a common marker, these two criteria were supplemented by common (or similar) language, shared ethnic characteristics, common ancestry claimed on the basis of that, as well as, particularly outside of European mainland territories, shared racial features. These characteristics became the markers of a common collective identity that was described through the notions of **nation** and **nationhood** and belonging to which outlined the boundaries of the political community under the political power of the sovereign state. Within this normative framework sustaining modern **statehood** as a national political project, the place of minorities is rather peculiar.

Definition: On the basis of such understanding of statehood, **minorities are all communities under the territorial jurisdiction of a sovereign state that in some way differ or diverge from the common characteristics that outlined the identity of the political community represented by the sovereign state.** In Europe and many of the dominions of European states across the globe, this identity was often described as **national identity**. This has become increasingly the case even if the basis of community in many parts of the non-Western world has been forged overwhelmingly on the basis of religious, tribal, ethnic, racial, or other shared identity, rather than national ideology. Since minorities can differ from the majority community on any of the common characteristics that outlined the common identity, ethnic minorities, religious minorities, linguistic minorities, etc., can be identified within the state.

Minorities and National Minorities

The term “national minority” has widely been used to make a distinction between minority communities within a state that represent a majority in another state – which is their *national* state – and those minority communities that do not have their own state. An example of the latter are Roma

communities in contemporary Europe. Historically, another example have been Jewish communities across the globe. Because of the different priority attached to different common characteristics, both analysts and practitioners prefer to distinguish between national minorities and, for instance, ethnic (such as the Rohingya in Myanmar), religious (such as the Yazidis in Iraq), or linguistic (such as Aramaic speaking communities in Syria) minorities around the world. As the significance of the national aspect of modern statehood has been decisive in the organization of politics today, the term “national minority” can be used in its broader meaning to describe all these communities within states dominated by the political communities of titular nations. In view of the practice of listing national minorities as one particular type of minorities (those that are a titular nation elsewhere), such usage needs to be explicitly specified.

What Defines a Minority?

The usage of the term “national minorities” as either a general category to describe minorities within the national state or as only one type of minority community among others is relevant to the way minorities have been defined in legislation and the literature. This has been notoriously problematic, as is evident from the application of the term “national minorities” in legal instruments without including a legal definition (example is the 1995 Council of Europe Framework Convention for the Protection of National Minorities) or from the addition of narrower categories together with the term “national minorities” (example is the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, henceforth UN Minorities Declaration). Academic literature has attempted to fill this gap by providing conceptualization of national minorities on the basis of objective criteria such as ethnicity, language, culture, religion, and race or on subjective criteria such as self-identification with a minority group. For a detailed overview of both legal and academic definitions, see Chapter II of Jackson-Preece (1998).

Inequality

What is important to highlight in all attempts at defining and conceptualizing minorities is the central role of the relationship between minorities and the holders of political power. By virtue of their very definition, minorities always hold a position of inequality in the context of that relationship. Political power is exercised over a political community within which minorities stand out as different from the majority. The reasons for that difference may be varied. Minorities may have been underrepresented numerically and prevented from equal participation in the processes that led to the construction of the common state identity (indigenous peoples of colonized territories may constitute such minority groups, which in **international law** have acquired their own standing). Minorities may have been deliberately ignored in these processes on the basis of their difference (examples include Jewish and Roma populations). They may have become a minority as a result of territorial border changes (in such cases, the term “national minorities” can be used in its narrower meaning to describe, for example, Hungarians living in Transylvania under the jurisdiction of Romania or Germans living in South Tyrol under the jurisdiction of Italy). Minority communities may have come into being as a result of long-term migration settlement (such as Afro-Caribbean communities in the United Kingdom which settled in the 1950s–1960s in the context of decolonization). Minority communities may have been formed as a result of segregation on the basis of cultural and religious practices that gradually distinguished a group of people from the larger community within which it existed (e.g., the Haredi community within the Jewish population of Israel). Minority communities may have been created also as a result of political processes of state formation including two or more ethnically or linguistically distinct communities (such as the processes that led to the creation of the states of Belgium, France, Spain, the United Kingdom, etc., with their Walloon, Basque, Catalan, and Welsh communities, respectively). Irrespective of the circumstances in which a community found itself in a minority status within a state, what characterizes this status is the *unequal*

position in terms of the exercise of political power. This is true even in cases when communities enjoy numerical parity with or advantage over the titular nation, as the example of African-Americans before the 1964 Civil Rights Act in the United States or the Blacks under the apartheid regime of South Africa demonstrates. This inequality is what characterizes most visibly the problematic of minorities and power, in terms of both the problems plaguing minority communities, and the measures taken to solve them.

Minorities and Problems of Inequality

Based on the experience of minority communities worldwide, four major concerns can be identified that are rooted in the unequal position of minorities in terms of political power within the state.

Survival and Existence

In the most extreme end of the spectrum of concerns stand the problems of **the survival and the existence** of minorities. The survival of the minority community is at stake when the holders of political power deny minorities a physical place in the political community of the state. This has often been the outcome of political projects which rely on homogeneity for the building of solidarity or whose success depends on narratives of victimization and practices of scapegoating. In their worst versions, such political projects have led to **ethnic cleansing** and **genocidal campaigns** aimed at a specific minority group. In most recent history, examples include the Bosnian Serbs’ campaign of ethnic cleansing against the Bosniaks in Bosnia and Herzegovina during the war of 1992–1995 or the Hutu-dominated government’s genocidal campaign against the Tutsi in Rwanda in 1994. Nonviolent political projects can also be aimed against the survival of a minority group, if they imply denying the existence of the minority as a separate community. France, for example, has maintained that no national minorities exist on its territories. Greece has claimed the existence of only one religious minority under its jurisdiction – the Muslims of Thrace. For minority

concerns in so-called denial states, see Malloy (2014).

Identity

Another problem linked to minorities' unequal position with regard to political power within a state concerns lack of appreciation for the minority group **identity** as a value in its own right. Since the basis of solidarity within national majority dominated states is the majority's identity, all divergent group identities may be neglected as irrelevant to the political community or, worse, threatening its stability. Where the group identity of minorities is not appreciated as valuable, the outcome is either gradual assimilation of the minority group within the majority community or increasing **segregation**. A prime example of this concern is the lack of appreciation of Roma communities' way of life within a series of European states.

Inequality and Discrimination

A third problem in minorities' relationship to political power is the **inequality of access** to social goods and **discrimination** toward minorities in the public and private spheres of social life. Both aspects of this problem are often rooted in the very differences that distinguish members of the minority group from those of the majority. A segregated place of residence, a different mother tongue, the use of religious symbols or pieces of clothing such as face- or head-covering scarves, and a distinctive diet can become impediments to equal access to social goods such as schooling, health care, social services, and employment opportunities. Such distinctive features can also be used as a basis for discrimination by providers of public services or by private sector employers.

Nonparticipation

Finally, even if all of the above problems have been addressed by the holders of political power, and measures have been taken to prevent them, it still does not mean that minority groups can enjoy **effective and meaningful participation** in the political community of the state. The national makeup of the modern state has placed the titular

majority community at the commanding heights of political power by virtue of the very processes of state formation and solidarity building within the state. Therefore, a deliberate legislative and public policy effort is often required to ensure effective engagement of the minority community in the exercise of power and meaningful **participation** of representatives of the minority in the public life of the political community of the state.

International Minority Protection: Emergence and Features

Acknowledging the unequal position of minorities within the structures of power of the modern state has given rise to normative thinking about providing redress to such inequality. This occurred within the international political realm, since national politics found no normative contradiction between national sovereignty and the marginalized position of national minorities. This is how the idea of **international minority protection** was born. Gradually, international negotiations on minority protection created legal principles and established practices that became the basis of a **minority rights regime**. Unsurprisingly, the emergence of the minority rights regime has revolved around the four main areas of concern identified above. International minority protection currently includes measures ensuring the survival and recognizing the existence of minorities within national legislations, measures protecting the collective identity of the minority group, measures ensuring equal opportunities and providing guarantees against discrimination, as well as measures enabling effective and meaningful participation in all aspects of public life.

But these measures have neither been universally accepted nor meaningfully implemented by states around the world. Minority protection is seen as an issue of highest importance to the holders of political power worldwide, because it relates directly to the normative justification of sovereignty. It implies an acknowledgment of the normative shortcomings of national sovereignty and an agreement to curtail the dominance of the titular majority within the structures of

sovereign power. This is why minority protection regimes have been so hard to formulate and to implement. It has variously been argued that no special minority protection is needed if the rights of everybody are guaranteed by national laws, that specific individual rights relevant to minorities are sufficient to ensure equality, that broader minority protection implies collective rights which are incompatible with the legal rights of nonminority citizens, or that guaranteeing **human rights** is the best possible way to provide equality for everybody in the modern state. These arguments have marked the emergence and implementation of the modern minority rights regime. Nevertheless, we can identify some of its defining features as they have been recognized in the interpretation and practice of minority rights in the realm of **international law**.

Special Measures

Currently, it has been widely acknowledged that measures of minority protection often imply differential treatment of members of minority groups that aim at correcting existing inequalities and past injustices. Differential treatment in public policy is usually dressed in the form of **special measures**, which are envisaged by several international legal instruments, including the 1969 UN International Convention on the Elimination of All Forms of Racial Discrimination. Special measures can be variously described as “affirmative measures,” “affirmative action,” or “positive action” and are temporary policies that aim to supplement the already guaranteed legal rights of members of minority groups as human individuals. The rationale behind such special measures is that often individual rights are insufficient to ensure adequate policy responses to all minority concerns, especially when taking into consideration the long-term position of inequality within the political community of the state.

Individual Versus Collective Rights

The consensus within the international regime on minority rights that special measures are an adequate – and necessary – policy response to minority concerns, however, is a relatively recent development. It refers to the UN Minorities

Declaration of 1992 (UN General Assembly Resolution 47/135) and the recognition that, to fully enjoy their individual rights, members of minorities also need, as a group, some targeted assistance on behalf of the state. This recognition opened the conceptual and policy debate on individual versus **collective rights** for minorities, undertaken by proponents of **liberalism** as political ideology (see Kymlicka 2000). Throughout the Cold War period, the general international agreement had been that it sufficed to guarantee individual **human rights** for everybody, including members of minorities. Any minority norms created within this period retained at all times their focus on the individual (“persons belonging to [such] minorities” instead of “minorities”), even if they conferred minority-specific rights. A prominent example is Art. 27 of the 1976 International Covenant on Civil and Political Rights which has been interpreted as containing a specific permanent right to individual members of minorities (to enjoy their own identity), in addition to the other rights they enjoy in common with everybody else.

Collective Rights: From Religious to National Minorities

But the normative preference for individual rather than collective minority rights should also be seen from a historical perspective. In fact, most historical references to minorities discuss, in policy terms, **collective rights**. From the Westphalian peace agreements formulating rights to faith practices for religious minorities within Europe’s redrawn boundaries to the millet system of non-Muslim confessional communities’ self-governance within the Ottoman Empire, rights were granted to the minority community as defined by its chief identifying characteristic. In the times of empires, this used to be ethno-religious rather than ethno-national identity. Due to the nature of the imperial state, it did not make political sense to enact and construct the political community of the state as monolithic. So group identities within the state did not pose threats to political power, as long as they acknowledged its legitimacy. With the rise of **nationalism** as an ideological justification of political power,

however, this started to change. Political organization along ethnic lines (whether on religious, linguistic, or other common basis) began to be seen as a threat to power, because of the claims to national **self-determination** and **sovereignty** that it implied. It is indicative that in the years preceding and following the First World War, minority concerns were very high on the international agenda, and minority clauses were the subject of extended negotiations among the Great Powers and between victors and defeated after the War. The system of treaties created as a result of the 1919 Peace Conference in Paris and within the framework of the League of Nations contained important minority clauses that address nationalist claims within a number of states. These clauses already clearly linked minority identities with state power by defining them as “national,” even as their defining characteristics may have been ethnic, linguistic, or religious belonging. In this period, collective minority rights were still not seen as problematic within the international protection regime.

Individual Rights: From Minorities to Human Rights

It was with the Second World War, the acknowledgment of the aggressive potential of ethnic nationalism, and the spread of communism that **collective rights** began to be viewed with suspicion. The creation of a universal regime of **human rights** as the common project of humanity and the United Nations within the framework of the eponymous organization was upheld as a solution to inequality. In the context of universal human rights, discussions about minority rights soon became superfluous. But analysts argue that the universal human rights regime had been the sovereign nation-states’ compromise on addressing minority inequalities within their borders by subscribing to grand universal agreements that had no binding legal force within national jurisdictions (see Mazower 2004). The Cold War bloc opposition made interference within sovereign borders highly problematic, thus reinforcing the point that attempts to enforce or even discuss minority rights were out of the question. It was only after the Helsinki process had gained speed and the

communist bloc had started to disintegrate that minority rights as *specific* rights and as *group* rights returned to the international political agenda. The adoption of the UN Minorities Declaration came to indicate that.

Sources of Minority Rights and Mechanisms for Protection

The UN Minorities Declaration is the main source of minority rights under the international human rights regime. It contains clauses that cover the full spectrum of concerns with minority inequalities: from physical survival through nondiscrimination to effective participation and representation in public life, including within the institutions of state power. Within the framework of the UN treaty bodies, mechanisms have been developed to address minority concerns, especially under the mandate of the UN Independent Expert on Minorities Issues established in 2005 and within the Forum on Minority Issues established in 2007. These mechanisms suffer from the widely recognized limitations of being dependent on nation-states’ cooperation and being constrained by national sovereignty. However, their contribution to elaborating the international standard of minority protection should not be underestimated.

Within the international regime of minority protection and as a consequence thereof, effective regional minority frameworks have also been created. A good example is the system of minority governance established in Europe. In 1993 the Organization for Security and Cooperation in Europe assigned to a High Commissioner on National Minorities early warning and monitoring tasks with regard to minority grievances. The High Commissioner’s work on creating guidelines on various aspects of minority protection has been unparalleled. Under the Council of Europe, the first international treaty with a multilateral, general protection regime for minorities was created: the 1995 Framework Convention for the Protection of National Minorities. The document mirrors the universal regime in that it upholds nonbinding standards and lacks sanctions

for nonobservance. It has, nevertheless, been significant in sustaining minority protection in the region because it has created a framework within which minority-specific legislation could be adopted and special measures for substantive equality of minorities could be taken. It was this regional regime that the European Union upheld as its own standard, when it included minority protection as one of the conditions of membership. See Henrard (2004) for a useful overview of that process.

Conclusion

The European framework is the best developed international system of minority protection. But it is also significant in its explicit focus on national minorities as a policy priority. Generally, the system understands national minorities, much in line with the UN standard, as defined on the basis of ethnic, religious, and linguistic difference. This does not mean that the European human rights framework does not engage meaningfully and effectively with minorities identified on the basis of gender, disability, or, indeed, race. But the elaborate focus on national minorities recognizes the significance of these minority groups in terms of maintaining political solidarity within the modern **nation-state** – whose model has been forged in Europe. National minorities appear as an aberration from the logic of national statehood, by challenging the link between nationhood and the state. Yet, all nation-states contain communities different from their titular majorities. The processes of globalization seem to be reinforcing this fact, by creating new types of minority communities (the so-called new minorities) or by making minority grievances politically more visible. In the context of globalization, all states appear to be ever more **multicultural** (Parekh 2006). This is precisely what presupposes the need for explicit minority protection within the current

organization of politics and determines the relationship between power and minority rights.

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