

Applying the Nationality Principle: Handle with Care

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This article looks at the challenge of applying a group-based approach to nationality. It asks 'what is the nation', 'who speaks for it', and 'who is responsible for protecting and promoting its interests'? It suggests that focusing on national groups rather than persons belonging to national minorities may hinder integration and strengthen national exclusivity. It warns of the consequences of protecting national interests across state borders and the role of the 'kin-state'. While agreeing with Will Kymlicka on the need to 'desecuritize' the interethnic discourse, the author cautions that one should handle the nationality principle with care.

I. Introduction

Strange as it may seem in an era of globalization, the nation still matters. People feel an affinity or bond with others who speak the same language, share a sense of common history, and have a shared sense of place. One cannot ignore the pulling power of the nation as a focal point and touchstone of identity.

But one can also go too far in accommodating national identity, to the point where it erodes societal cohesion and the international system. This article looks at the challenges of integrating diversity within multi-ethnic states and coping with nations within the inter-state system. It suggests that Kymlicka's group-based approach – while philosophically cogent – can have complicated practical effects that could hinder relations within and between states (West and East).

II. Nation-states, Diversity or McEurope?

History – including all too recent experience – teaches us that national identity (as a characteristic and defining principle) becomes nationalism (the political programme) when the nation comes under threat, either by assimilation (for example by the majority community or a neighbouring state) or dilution (for example through emigration, immigration or globalization). Whether it is wars in the Balkans,

¹ The views expressed are those of the author and do not necessarily reflect the official opinion of the High Commissioner and/or the OSCE. Some material in this article was first presented as 'Borders between Kin: Protecting Minorities Abroad' at a conference in Forli, Italy, June 2002.

xenophobia in Western Europe or the rise of extremism in Central Asia, excessive nationalism is usually the recourse of the weak or threatened rather than a strong suit played by a people that feels in control. Indeed, it is the desire to control one's destiny or fate that usually provides the fuel for nationalism's fire. That is why nationalism is such a useful adhesive to other movements that seek to gain popular appeal.

Because we define ourselves in cultural terms and culture usually relates in some way to our ethnicity or nationality, any threat to our way of life – if there are enough of 'us' who culturally define ourselves in a similar way – can be portrayed as a threat to our national identity. And any threat to our national identity is a threat to the way that *we* do things and the way that *we* have always done things around here. So *you* either make an effort to fit in, or *we* have a problem (which may be solved by finding ways of making *you* fit in or restricting the number of people like *you* from coming here in the future).

This issue is cropping up ever more frequently as populations become more mobile. Discussions about immigration, integration and coping with multiple identities in multi-ethnic societies are moving from sociology and philosophy to the political mainstream as theorists and practitioners (and now increasingly the media) try to explain and cope with the rise of xenophobia, populism and excessive nationalism. To some extent, this new awareness stems from trying to deal with conflict prevention and post-conflict rehabilitation in the post-communist space, but it is also heightened by a series of election results that suggest a surge in right-wing populism in Western Europe.

In most cases the 'we' is the dominant national group, the titular community (usually ethnic majority). This community usually tries to define the state in its image, for example, instituting its language as the state language. The public service is usually dominated by members of the majority community, the majority's symbols become the state symbols and school curriculum is taught according to the majority's perspective. Members of minorities either assimilate, carve out their own niche (often in the private sector), stick to themselves, or leave.

That being said, majorities, like minorities, seldom speak with one voice. Invoking the myth of a common, homogeneous ethno-cultural group is convenient shorthand for nationalists (from either the majority or minorities) who either presume to speak for the nation or hope to rally it behind their cause.

This appeal to national consciousness is the legacy of the nation-state model which originated with the Peace of Westphalia of 1648, was the driving force for nineteenth century national awakenings, and underpinned Woodrow Wilson's and Lenin's views on national self-determination. It enjoyed a renaissance in the 1990s as newly or renewed independent states threw off the shackles of Communism and looked back to real or imagined golden eras of national greatness for inspiration. Some invoked it as national destiny.

Because most formerly communist states are multi-ethnic, state-building along nationalist majoritarian lines often stunted the growth of civil society. The national majority's efforts to assert and legally entrench its (formerly suppressed) identity often debase minorities to the position of second-class citizens. This in turn fed the nationalism of minorities who either fought to assert their rights, built parallel structures, appealed for support to a kin-state, or sought autonomy or even secession.

To prevent potential conflicts brought on by this dynamic, the international community, particularly the OSCE High Commissioner on National Minorities (created in 1992), worked to integrate minorities into the life of the state by ensuring that the state was not overly biased in favour of the majority. The basic philosophy was, and continues to be, to try to integrate diversity. Since most states are multi-ethnic, the state should reflect and protect this plurality of identities and interests. This means ensuring that there is a legal framework to protect the equal rights of all members of society including persons belonging to national minorities. It involves protecting and promoting the identity of minorities, creating the possibility for effective dialogue between the minority and majority communities, allowing for the effective participation of minorities in public life, and being sensitive and responsive to the linguistic and educational needs of minorities. Fundamentally, it means to accord equal respect to all, to be inclusive, and not to discriminate.

The onus is on the state to create the framework and opportunities where minorities can feel – and indeed be – integrated into the life of the state. At the same time, minorities – like all citizens – have obligations as well as rights. Minorities should not pursue their individual or collective interests to the detriment of others. Nor should they isolate themselves within the state by, for example, refusing to learn the state language or undermining state institutions.

This should be considered as a social contract. On the one hand, one cannot expect the state to be culturally neutral. Because a state is an organized political community, the views of the majority will dominate in a democracy and, for the same reasons that one has to create the space for the flourishing of minority identity, one cannot expect the majority to selflessly give up its national interests and cultural reproduction for the sake of the *civitas*. On the other hand, there is no need for the agenda of one national community (especially in a multi-ethnic state) to dominate the state at the expense of the rights and opportunities of others. Therefore, the social contract – along the lines described above – can allow for the enjoyment of national interests to the enrichment rather than the detriment of the harmonious running of the state. This social contract is as relevant in Western Europe as it is in the former communist bloc.

Nobody is suggesting that we should aspire to an English or Esperanto-speaking McEurope where everybody has a common, neutral civic identity and national characteristics are reduced to folklore. That did not occur in the rigorously controlled experiment of the Soviet Union and it will not work in the new Europe either. But the other extreme is equally untenable, namely an entrenchment of narrow national identities and interests whereby national communities keep to themselves and pursue the myth of the nation-state and/or cultural purity. Europe has gone down that road before and history shows that it can lead to violent conflict, ethnic cleansing, war and genocide.

III. Nations Overlapping States

In the same way that nations do not usually fit nicely into states (which means there are few nation-states), national groups seldom correspond with state boundaries. National groups commonly have ties with the diaspora, especially between contiguous states where a minority on one side of the border shares the same (or very similar) nationality as a majority population on the other side of the border. The latter is sometimes referred to as the kin-state or the motherland. Such contacts are normal and indeed recognized by international standards and bilateral treaties.

But some rather simple questions need to be asked when addressing the issue of relations between so-called co-nationals. Even if one can establish what a nation is, it is not so straightforward to establish who is part of it. In the same way that a language

can have dialects, nationality is not uniform. There are differences between ethnic Germans living within Germany: North-South, East-West, according to dialect, which *Länder* they are from, etc. There are then differences between these Germans and those who live abroad. The same applies to Serbs, Russians, Hungarians, Albanians, Greeks and so on. One can also not assume that members of the national community living abroad share a common identity and the same characteristics and features of their so-called kin. In the Federal Republic of Yugoslavia, for example, Albanians are split between Gheg and Tosk speakers, some Croats see themselves as Croats others as Bunjevici, and some Vlachs distinguish themselves from Romanians.

On what basis is an individual part of the nation? Is it subjective, or are there objective criteria? Is it based on language, birth (blood), territory, cultural awareness, religious belief, and/or the recommendation of a co-national? (cf. Venice Commission 2001: 10-12) And how do you prove it?

Even where there are relatively coherent national groups, they seldom share a common political agenda. Albanians in the former Yugoslav Republic of Macedonia are divided into three main political parties. Hungarians abroad (for example in the Slovak Republic, Romania or Vojvodina) usually maintain political unity, but through coalitions that sometimes experience infighting.

One must also not confuse language and nationality. Russian-speakers in countries like Latvia, Estonia or Moldova are often intentionally or unintentionally lumped together with ethnic Russians although they may be Ukrainians, Belarusians, Bulgarians or Gagauz as the case may be. Roma (who define themselves in various ways) often speak the language of the titular majority and sometimes choose not to officially declare their Roma ethnicity.

The point is that it is hard (and dangerous) to identify pure-blood nations and homogenous national groups. It is also simplistic to assume that a national group will share the same views and interests, both with co-nationals within the state and the diaspora (Kemp 2002). Thus, nationalist political agendas and programmes may not be assumed or, much less, projected automatically from the capital of the state of the titular majority.

That is not to deny the fact that there are objective and subjective characteristics that bind national communities together, even if they are dispersed within a state or across borders. But one should not impose or assume cultural homogeneity for the

sake of convenience. Nor should one assume that national identity is the main defining feature in people's lives.

This should be kept in mind when one considers the question of national interests. What are they, how can they be protected, and who is responsible for promoting them?

IV. Protecting National Interests

The term 'national interest' is often misused because of the sloppy interchangeable use of 'nation' and 'state'. When people (usually American Presidents) speak about the national interest, they usually mean the interest of the state.

But what about national interests in multi-ethnic states? The model that has evolved since the Second World War is one in which the state is responsible for protecting and promoting the rights of persons belonging to national minorities living within their jurisdiction. This is partly the consequence of states wanting to control their own sovereignty, but it is also the result of lessons learned about what happens when other states (usually kin-states) take responsibility for protecting the national interest of their kin, even in the sovereign jurisdiction of other states. The result of the latter has often been violent conflict.

OSCE states have an obligation to protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity.² The aim of international standards like the OSCE Copenhagen Document and the Council of Europe's Framework Convention for the Protection of National Minorities is to allow minorities the freedom to protect and promote their national interests – within the framework of the state. The weaker the state's ability to live up to these commitments, the worse off minorities will be. This may lead to resentment by minorities that the state does not represent and protect their interests which in turn could lead to assimilation, minority mobilization (for example demands for national self-determination), or even an appeal to a kin-state for support. That is why the international community encourages states to live up to their commitments and works with governments to ensure that minorities are able to enjoy their rights.

² Paragraph 33 Document of the Copenhagen meeting, 1990.

Although it may seem a paradox, a strong democratic state is the best guarantor of ethnic pluralism.³ A weak state is more likely to be dominated by the national interests of one group (thereby alienating others), it will not have the legal instruments and mechanisms necessary to guarantee the rule of law, will not be able to afford programmes designed to facilitate integration and the promotion of minority culture (particularly language use), and will not have a strong enough civic framework to feel comfortable with devolving power to minority self-government. That is why there has been a delicate balancing act in states in post-communist transition over the past decade. State-building has occurred simultaneously with attempts by the titular majority to reassert its identity. They have tried to build a civic state, but in the image of the majority (on the French nation-state model). It is only now, when they have the confidence that their independence and identity are secure, that they feel more comfortable about allowing for a more pluralist society. Conversely, some politicians (increasingly in the mainstream) in Western Europe feel that this process has gone too far in their countries and that the majority's interests are in danger of being 'swamped' by foreigners and/or foreign influences.

In all cases it is important for the international community to emphasize to states that they must live up to their commitments in order to guarantee people from all backgrounds a foundation of basic human rights, the freedom to pursue individual (or collective) interests, equal opportunities, and effective participation. This should be done, not for the sake of appeasing the international community, but because it is in the self-interest of the states concerned to promote good governance, and thereby respond to the needs, interests and aspirations of their whole populations.

V. Criticizing Kymlicka

Some may argue that this does not go far enough and that more needs to be done to protect national groups rather than simply the rights of persons belonging to national

³ One could also argue that strong, undemocratic regimes may be well-suited to maintain cohesion in multi-ethnic states, federations and empires as demonstrated in the Austro-Hungarian, Ottoman and Russian empires, the Soviet Union and the Socialist Federal Republic of Yugoslavia.

minorities. This seems to be Will Kymlicka's position. My reading of his philosophy – as articulated most recently in *Can Liberal Pluralism be Exported?* and the introductory article to this special issue – is that he regards most states as 'wannabe nation-states' where the cards are always going to be stacked against the minority because the state is not ethno-culturally neutral and therefore, because of numerical inequality, the minority will always be at a disadvantage. His solution appears to be to devolve and concentrate as much power as possible for minority issues into the hands of national minorities. He puts down the challenge, which I accept, that "the burden of proof rests on those who would deny national minorities the same powers of nation-building as those which the majority takes for granted" (Kymlicka and Opalski 2001: 28).

While I agree with the basic premise, I fear that his theory makes certain assumptions which, when applied in practice, could cause the very problems that he is trying to prevent.

Firstly, devolving power to minority self-government could cause fissiparous tendencies in states that lack integrative structures. Federalism – which seems to be his archetype – is, in theory, the ideal paradigm for multi-ethnic states, especially those with territorially concentrated groups. But it also assumes a degree of state cohesion which does not yet exist to a sufficient degree in some countries in post-communist transition. Decentralizing power in a state with a weak centre and few integrative structures will likely lead to disintegration.

Secondly, Kymlicka seems to equate self-determination with national self-determination and then makes a further erroneous assumption that the latter requires territorial autonomy. National self-determination is not the same thing as self-determination and indeed the second in some respects subsumes the first. Nor does, let us call it nation-determination necessarily require a territorial component. Kymlicka cites majority nation-state building as an impediment to social harmony within multi-ethnic states and yet he proposes that a way of counter-acting this is for minorities to push their own nation-(state?) building agendas. This seems both illogical and unwise. It also risks ghettoizing national groups into communities where only they can speak for their interests. This does not facilitate integration.

Thirdly, on the one hand Kymlicka seems to suggest that integration is dangerously close to assimilation and yet on the other he advocates integrating diversity within

immigrant societies. His argument that we have to “renegotiate the terms of integration” (2001: 32) applies equally within societies in post-communist transition as it does in Western Europe or North America. Why seek to improve liberal pluralism in ‘the West’ and then apply a different set of standards in Eastern Europe? Indeed, many Western European states could learn a thing or two from their Eastern European colleagues about the merits and practices of protecting national minorities. Because the bar for EU accession has been so high for potential member states while minority-rights standards for EU members remain rather vague, Eastern European countries may wonder if there is one set of standards to get into the EU and another once they are in the club (cf. Ekeus 2002).

Related to this point is Kymlicka’s odd assertion that “In the West … ethnic politics have been almost entirely ‘desecuritized’” (2002: 21). The Basque, Northern Ireland, Cyprus, Kurdish and Corsica are hotter than most interethnic issues in Central and Eastern Europe. And it was not long ago that other situations like Quebec and South Tirol were marked by violence.

Fourthly, his fear that the state will never be able to fairly represent the interests of all citizens (which is why national groups should have a high degree of autonomy) suggests that the civic oriented multi-ethnic state is inherently flawed. The logical projection of this premise is that the nation-state, or at least highly autonomous national communities, are the best alternative. Following this train of thought, liberal nationalism could find itself as an unwitting fig-leaf for extreme nationalists.

An underlying assumption that, I believe, clouds Kymlicka’s judgement is that he assumes a certain degree of cultural homogeneity among national communities and therefore seeks group-based solutions for them. For that reason, he advocates, *inter alia*, national cultural autonomy.

We have little practical experience with national cultural autonomy, but it may be feasible. It is worth noting that the federal parliament of Serbia and Montenegro has recently adopted a Law on the Protection of Rights and Freedoms of National Minorities which includes an Article (19) that foresees the creation of National Councils. These elected Councils (which are similar to proposals devised by the Austro-Marxists at the end of nineteenth century (Bauer 2001 (1907))) would represent a national minority in the fields of language, education, and culture, and enable more effective minority participation. It will be interesting to see how this

works in practice. There is a danger that such national autonomy regimes, whether cultural or territorial, could create a situation where vertical forms of national government compete with horizontal levels of civil authority. This could institutionalize ethno-cultural or national identity. This is not an inevitable outcome, but it must be guarded against, which is why cross-cutting, integrative and common elements are key.

VI. Outsourcing the Nation

How far can representative sovereignty go based on the nationality principle? What will the constituency be? Who speaks for the nation (or national group) and who pays for its upkeep? These are all issues that will have to be tackled when putting the idea of national cultural autonomy into practice. If power is devolved from the state to the nation, how will this affect the integrity of the state and the bonds of citizenship rather than ethnicity? Is not one, in effect, outsourcing responsibility for national minorities from the state to the minorities themselves? And if the nation is the basis of the polity, is not the kin-state best placed to protect the national community, including minorities abroad? Taking the argument further, should not the majority then behave in the same way, in other words to protect the interests of its constituency? This could result in ethnicity and nationality defining relations within and between states. Instead of being post-modern, such an approach would revert to nineteenth-century nationalism, even tribalism. Experiences of the past decade, particularly in the Balkans, indicate that this scenario is not too far-fetched.

There are ways of giving minorities greater control over their interests without going to extremes. As already noted, this should include legislation that protects minority rights, specific institutions that ensure the effective participation of minorities in public life (including advisory and consultative bodies), arrangements at all levels of government to allow for participation in decision-making, and election systems that facilitate minority representation and influence. It may also include territorial self-government and/or non-territorial self-governance. All this can and – wherever possible – should be done within the framework of the state. It is both the duty of the state and in the state's best interests. History shows that the inclusion of

minorities within the state by enabling them to maintain their own identity and characteristics promotes good governance and maintains state integrity.

Some may argue that this is artificial since sovereignty is being eroded through trade, communications, finance, travel and the widening powers of supra-state bodies. If barriers are coming down and sovereignty is increasingly porous, and if states only grudgingly protect national minorities on their territory anyway (if they recognize them at all), why not let kin states do more?

Some states, particularly in Central and Eastern Europe, include references in their constitutions to that state's responsibility for kin abroad. Article 6 of the Hungarian Constitution, for example, says that "The Republic of Hungary bears a sense of responsibility for the fate of Hungarians living outside its borders and shall promote and foster their relations with Hungary". Similar passages can be found in other constitutions of the region (cf. Venice Commission 2001: 4-5). Does this reduce the obligation of the states where these minorities live? Or does it mean that such minorities get the best of both worlds, namely support from both the kin-state and the so-called 'home state'? Is this discriminatory? And what if, like the Roma or the Crimean Tatars, one does not have a kin-state?

How does this responsibility manifest itself? On the one hand, the kin-state could encourage citizens of the other country who share the same ethnicity to study in the 'motherland' or receive benefits there. This policy is applied by a number of states (including Bulgaria, the Slovak Republic and Romania). Supporters say that it helps to give tangible support to ethnic kin and helps them maintain a symbolic link to the motherland. Critics say that it is discriminatory, encourages brain-drain, and diverts resources from tax payers to non-citizens on the basis of ethnicity. Some critics also worry about the meaning and implications of the symbolism and its motivations.

Another alternative is to provide the same support and benefits in the state where the minorities live. This is one of the aspects of the Act on Hungarians Living in Neighbouring Countries. This is possible, but only to a limited degree in principle and only if it is non-discriminatory and with the consent of the state where the minorities live. It also raises procedural difficulties that relate to the problems already identified concerning who comprises the nation and how they should be supported in another state. What is the basis on which people will collect benefits? How will they be identified and how will they receive their benefits? What status will they acquire

through the acquisition of a certificate that identifies them as being ‘kin’ (and therefore entitles them to benefits) and will this create a political bond between these people who are citizens of one country and kin of another? These are some of the philosophical and practical issues that have been raised in the discussion on the Act on Hungarians Living in Neighbouring Countries.

The European Commission for Democracy Through Law (also known as the Venice Commission) has made a report on the *Preferential Treatment of National Minorities by Their Kin-State* which includes among its conclusions that: “The adoption by States of unilateral measures granting benefits to the persons belonging to their kin-minorities, which in the Commission’s opinion does not have sufficient *diuturnitas* to have become an international custom, is only legitimate if the principles of territorial sovereignty of States, *pacta sunt servanda*, friendly relations amongst States and the respect of human rights and fundamental freedoms, in particular the prohibition of discrimination, are respected” (2001: 18). The OSCE High Commissioner on National Minorities, Rolf Ekeus, was unequivocal when he said in a statement on 26 October 2001 that “protection of minority rights is the obligation of the State where the minority resides . . . Although a State with a titular majority population may have an interest in persons of the same ethnicity living abroad, this does not entitle or imply, in any way, a right under international law to exercise jurisdiction over these persons. At the same time it does not preclude a State from granting certain preferences within its jurisdiction, on a non-discriminatory basis. Nor does it preclude persons belonging to a national minority from maintaining unimpeded contacts across frontiers with citizens of other States with whom they share common ethnic or national origins.” (2001).

So, on the one hand, there is the position of the Hungarian Government that wants to protect Hungarians in neighbouring countries in what it regards as a post-modern way. On the other hand, some neighbouring states and the international community argue that this post-modern approach is little different than a nineteenth-century idea of the nation-state and national self-determination that has been so destructive over the past century.⁴

⁴ For more on an assessment of the clash of these two perspectives see Brigid Fowler (2001) “Fuzzing citizenship, nationalising political space: A framework for interpreting the Hungarian ‘status law’ as a

So where does that leave us?

VII. Good Governance, Good Neighbours

We have to maintain a state system based on sovereignty and citizenship, not one based on nationalism and ethnicity. That applies for relations within states and relations between states.

The idea that the protection of minority rights is the obligation of the state where the minority resides is double sided. The first is that it is not up to kin states to unilaterally play a role in the sense of projecting the state's authority beyond its territorial and personal jurisdiction. The corollary is that states have to live up to their obligations when it comes to minorities. It is inconsistent and insufficient to invoke the argument of statehood and sovereignty in order to rebuff intrusion by kin-states and yet only take a minimalist approach to protecting minority rights. If states argue that minorities are their responsibility, they should live up to that responsibility. If the state were to reduce the level of the majority's influence in fashioning the state in its own image then the minority would not feel threatened and the kin-state would have little grounds to complain (with the possible exception of historical revisionism).

As noted earlier in response to points raised by Kymlicka's philosophy, the aim should not be to entrench nationhood within multi-ethnic states. It should be to allow for the maintenance of diverse national interests within a civic state structure: allow for the flourishing of nationhood but without politicizing and institutionalizing it to the point of channelling all issues into national/ethnic ones. Chances are (based on experience) that if minorities feel that they have the legal framework to protect their rights, the ability to voice their opinions, have access to equal opportunities and can participate in the life of the state then they will feel that the state serves their interests. If the state is unwilling or unable to provide this, the minorities will look for alternatives.

Devoting insufficient attention and resources to protecting national interests will create disillusionment (either by the majority or the minority) and the impression that the power structure is illegitimate and/or unrepresentative. But too much emphasis on protecting national interests will weaken civic structures. The key is to find a

new form of kin-state policy in Central and Eastern Europe", Economic and Social Research Council

compromise along the lines of the social contract described earlier whereby national interests can be pursued within civic society. This is good governance.

The same applies for relations between states, especially neighbouring states where nations straddle borders. National interests should be allowed to flourish, but not to the point of destabilizing internal security or at the expense of bilateral relations and regional cooperation. Bilateral treaties that contain clauses concerning the protection of persons belonging to national minorities can be a useful way of building confidence and strengthening good neighbourly relations. Special bilateral agreements are another variant. Such mechanisms may ease suspicions about the use of minority issues as a pretext for external interference, and create mechanisms both to facilitate cultural exchanges of mutual interest and benefit, and also respond to points of dispute which may arise. This is good neighbourly relations.

Taken together, exercising good governance in the state, acting with good neighbourly relations between states, and demonstrating respect for the wider values and international standards of the international community is good international relations.

To conclude, the *status quo* in terms of minority rights protection may not be water-tight, but the more one looks for alternatives the more one appreciates why the current standards and mechanisms were developed in the first place. Of course, those standards must be equally and consistently applied. This will be a challenge within the EU in the near future.

As Kymlicka suggests, we should be more open to issues like minority self-government and look for more effective ways of enabling minority participation in order to desecuritize the interethnic discourse. But in the process we should not over-accentuate the nationality principle and create among minorities the very exclusivity that we are trying to break down with the majority. Nor should we allow nationalist agendas to complicate relations between states. When applying the nationality principle, handle with care.

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