Introduction – National Minorities between Protection and Empowerment

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This special issue examines some of the complexities intrinsic to the journey from the protection of national minorities to their empowerment, both at the theoretical level, and through the analysis of empirical data from three case studies. The special issue was compiled following the workshop 'National Minorities between Protection and Empowerment: Contemporary Minority Politics in Europe', at the 41st Joint Sessions of Workshops of the European Consortium for Political Research (Mainz, 2013).[1] The workshop was chaired and co-organized by Tove Malloy (Director, European Centre for Minorities Issues) and David J. Galbreath (Professor in International Security, University of Bath). It explored the relationship between European approaches to minorities in a post-Cold War environment, and how European governments and institutions are moving (or could move) beyond management and protection of minorities towards their empowerment.

Twenty-three excellent papers were presented during the workshop. The papers that were selected for inclusion in this special issue are: a theoretical paper offering the conceptualization of a theory of empowerment; and papers analysing three case studies: the Autonomous Province of Trento, the German-Danish border region and the Hungarian minority in Romania. The authors of the papers not only analyse different situations but also adopt varied approaches to empowerment, revealing the multi-faceted nature of the notion, as well as the ample opportunities for future research.

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1.   A paradigm shift?

The 2013 workshop and the present special issue reflect an impetus to revisit the original approach to majority–minority relations. The traditional literature on minority rights—whether from the point of view of the European Union (EU) conditionality, participation and power-sharing, and European minority rights law—has generally treated minorities as *objects* of law and state policies, with an emphasis on the protection of their individual rights (particularly through anti-discrimination legislation). Moreover, the minority rights regime has been seen as instrumental in preventing the escalation of tensions that can lead to conflict—as well as an aspect of democratic governance and of European integration (Malloy 2005). The main focus has been conflict prevention and/or conflict resolution, particularly at the end of the Cold War and as a response to ethnic-motivated conflict in the Western Balkans. Galbreath and McEvoy (2012: 265) argue that the European minority rights regime still maintains a focus on the containment of regional instability, while minimizing the role of minorities. It has led to a choice of "protection over empowerment" in resolving the complexities posed by diversity in Europe.

Enhancing minority *protection*, without necessarily enabling minorities themselves to claim their own rights, positions them primarily as objects (recipients of protection or victims) rather than subjects. A near-exclusive focus on security and conflict prevention, or on anti-discrimination measures, is myopic; it is far from reflecting the complexities of majority–minority relations, or addressing the multiple needs of minorities. Similarly, expressions such as "diversity management" reveal a tendency towards a top-down process of integration, a majority-centred approach to the co-existence of members of various groups—where minorities can be effectively relegated to the margins of society. Genuine minority *empowerment* would require the majority to relinquish some of its own power, so as to create favourable conditions for minorities to claim their own rights, actively participate in the development of public policy, and in its implementation. Enabling minorities to become "actors" places them in a position in which they might decide, and act, upon their own destiny and their own approach to their own cultural distinctiveness.

The workshop implied a shift in the configuration of minority-majority relations that is agency-centred, treating minorities as subjects, rather than as "the other" in its various manifestations, and often positioned antagonistically with regard

to the majority. Thus, the contributions to this special issue are also agency-centred, inasmuch as they treat minorities as actors, and emphasize their agency.

The need for such a paradigm shift becomes obvious when one considers recent changes at the European (and global) level. First, migration in the past few years, particularly through EU enlargement, has led to changes in the configuration of our societies, with new patterns in the "mixing" of people. Many states, particularly in Western Europe in the post-EU enlargement phase, experience high levels of immigration, which leads to ever-increasing complexity of the fabrics of societies. In the case of the United Kingdom, for example, Vertovec (2006) has talked about a form of "super-diversity". It is not only groups that are diverse, but their individual members can display plural, multi-layered identities. In addition to frequent travel and migration, the development of communication technologies means that people can identify with more than one community. These developments have also led to calls for a re-conceptualization of the social sciences, to reflect a *cosmopolitan*, rather than nationalist, approach. Cosmopolitanism (and transnationalism) increasingly challenge the centrality of the nation-state as a unit of analysis (Beck and Sznaider, 2006). At the same time, cosmopolitanism does not forcefully imply that the local level has become unimportant, and secondary to globalizing processes. Rather, we ought to transcend the rigidity of the nation-state and its boundaries to focus on *both* the transnational and the local: Beck and Sznaider (2006: 3) have argued that dualities (the global versus the local, the national versus the international, us versus them) have dissolved and created new forms that call for fresh analysis. The nation-state centred perspective is now an anachronism; the notion of a minority protected by a majority, but not empowered, is also becoming increasingly outdated.

2.   The contributions

The contributions to this special issue seek to problematize, and critically engage with, the relationship between minority protection and empowerment. The three case studies address national minorities in political processes at the domestic (Trentino and Romania) and inter-state level (the German-Danish border).

In her paper, **Malloy** sets the scene for the development of a theory of empowerment which can assist us in analysing the dynamic interaction of protection and empowerment. Malloy argues there has been no formulation of a clear notion of empowerment or of the specific processes that can lead to it. The paper thus aims to

unpack the notion of empowerment, including by analysing its various definitions, which tend to focus on top-down processes (e.g. somebody giving power to somebody else). As the approach to minorities has been mostly informed by the protection paradigm—with governments initiating a top-down process of minority protection— governments are also often treated as agents of empowerment, with empowerment, like protection, being regulated from above. Malloy thus seeks to shift the focus from the top-down, macro-level, action (by governments) to the *micro-level*. She further argues that, thus far, the overwhelming reliance on the institutional approach has prevented a view of national minorities as actors, sidelining the agency of individual and groups.

The author draws on Elisheva Sadan's theory of empowerment. Malloy focuses on community empowerment, which connects the individual to the group, making empowerment a social phenomenon. She then links Sadan's theory, which is based on *power*, to *rights*, through the "capabilities theory" (Sen and Nussbaum), by pointing to the capability of an individual to act (alone or as part of a group) through "capabilities" that are protected by rights. The agency-centred approach is evidenced by the emphasis on minority mobilization: it is persons belonging to minorities themselves who, by mobilizing as rights-holders, hold the duty-bearers accountable. In her conclusion, Malloy notes that a theory of empowerment needs to combine the macro with the micro, and the social structure (the state/inter-governmental level) with collective agency (action of individuals/groups based on choice).

Following Malloy's paper, the case of the Autonomous Province of Trento ("Trentino") is analysed by two complementary papers, by Penasa and Guella. The two authors suggest that Trentino, and its elaborate minority rights regime, could serve as a "laboratory" to test various legal and institutional frameworks devised to empower small minorities, and their degree of effectiveness. Informing these papers is the right to participation, enshrined in Article 15 of the Framework Convention for the Protection of National Minorities. The authors refer specifically to the empowerment of three linguistic minorities with a traditional presence in Trentino: Ladins, Mòcheni and Cimbrians. They note that some of the solutions that have been developed in Trentino could serve as models for other contexts, and be potentially exported and adjusted to new realities.

Drawing on Palermo and Woelk (2005), **Penasa** brings in the concept of the "law of diversity"—a framework to empower minorities that takes into account the

concrete characteristics of each group, and whose content is carefully negotiated with the group(s) in question. He outlines the Trentino system, particularly the legal model arising from Provincial Law 6/2008. This regime assures opportunities for minorities to implement legislation favourable to the preservation of their linguistic diversity, and to be involved in impact evaluation.

The Trentino minority regime focuses on empowerment through participation, with a combination of power sharing and duty sharing, and institutions that facilitate the effective implementation of (reviewable and adjustable) minority policies. On the basis of Penasa's paper, one could suggest that the conundrum of "top-down empowerment" may be resolved through high levels of participation: it is ultimately immaterial whether the impetus behind empowerment, and its framework, first originated from minorities themselves, or from a sympathetic majority (or a mixture of the two), when minority members enjoy practical means to influence policy making and its implementation. What Penasa places an emphasis on, however, is the need for effective, rather than "symbolic", participation, which poses a particular challenge for small groups. Key to success in participation are, Penasa argues, consultative and participatory mechanisms, both in decision making and in the realization of policy. Through these mechanisms, representatives of minorities and their institutions become implementing actors (transitioning from "objects" to "subjects"). Minorities become directly responsible for creating the conditions to exercise their rights and implement specific policies, though direct participation, which places them in a position to influence the *impact* of policies. Such processes are beneficial as they imply a shared ownership of policies on the part of minorities, as well as mainstreaming a minority perspective across all levels of policy making.

Penasa does note, however, that the legislative framework of Trentino has still not been fully implemented, due to various practical difficulties and delays. In the presence of these residual shortcomings, he suggests that monitoring and evaluation be used extensively in the effort to overcome the gap between objectives and existing means. This implies the regular review of existing policies to elaborate improved mechanisms, through—naturally—the involvement of minorities themselves. It can lead to a dynamic process of "trial-and-error", to finesse both objectives and *modus operandi*.

In his paper, **Guella** focuses on the institutional framework to protect minority groups in Trentino. Overall, Guella take a different approach from Malloy. While

Malloy argues that an institutional approach has contributed to minimizing minority empowerment (by prioritizing top-down over bottom-up processes), Guella implies that institutions are not part of the problem but part of the solution. Thus, Guella describes how local and regional institutions can be structured in such a manner to create favourable conditions for the accommodation of minorities' demands. Even if the establishment of these systems may originate from an initiative of the majority, in practice they can lead to the enhancement of minority self-governance. Minorities are thus equipped with various options for participation, and room for manoeuvring in the protection and promotion of their languages and cultural distinctiveness. Trentino policies facilitate the employment of minority representatives in public bodies and provide options for autonomy in areas such as education, by equipping school management with special representative organs. At the same time, the paper also refers to minorities' *own* institutions, which have emerged through bottom-up processes, such as, in the case of the Ladin community, the Union of Ladins of the Fassa Valley and the General Union of Ladins of the Dolomites. There is further reference to the fact that, in some instances, Trentino facilitates the implementation of linguistic policies, rather than managing them directly, thereby offering support to linguistic minorities but allowing them autonomy of action.

The benefits of the Trentino system seem to be linked to a combination of flexibility (at the local level, through subsidiarity and self-government), with an overarching co-ordination framework at the regional level. Thus the local administration can tailor its functions and modes of operation to the specific needs of individual groups, despite their small size, while still fitting within a coherent, broader framework.

The paper stresses the importance of the micro-level in favouring empowerment, also noted by Malloy. Through the principle of subsidiarity, policies for minority protection are implemented through those bodies that are closest to the linguistic community, at the local level. Smallness can then become an advantage, by facilitating flexibility at the micro-level (with *ad hoc* solutions to enhance sustainability and efficiency), and proximity to (or direct membership in) the community that is being served. The downside is clearly the higher financial costs due to the proliferation of institutions and the costs of sustaining complex organizational structures.

Schaefer-Rolffs introduces the 2005 Office of the High Commissioner for Human Rights (OHCHR) *Plan of Action: Protection and Empowerment* ("OHCHR plan"). The OHCHR plan acknowledges that the most effective form of human rights *protection* is achieved through *empowerment*. The author argues that, in the sense of the OHCHR plan, empowerment is initially top-down; however, it is conceived as triggering an impulse that will transform it into a bottom-up process. The empowerment process provides the empowered person with scope for action, by which the actor can transition from protection to empowerment. The author then analyses the German-Danish border region from this perspective, with a view to determining in what instances the region has made the transition from protection to empowerment. Opportunities for empowerment in the existing institutional and political framework are outlined, and empowerment is linked (as in Penasa's and Guella's papers) to participation—or the representation of minorities in relevant bodies and their direct involvement in activities promoting minority rights. The institutions where minorities are not represented are classified as providing protection *without* empowerment: they fall short of providing opportunities for active involvement (and Schaefer-Rolffs cautions that, in some instances, the *presence* of minorities in some such institutions might be merely symbolic and lead to no, or limited, practical impact). Empowerment then is linked to high levels of (effective) representation. This is found to be the case with the German Secretariat in Copenhagen, given that it is participation oriented and can count on substantial minority involvement. This is less true of its counterpart in Germany (the Commissioner for Minorities and Culture of Schleswig-Holstein), although its shortcomings seem to be balanced out by the high levels of exposure of minority interests in politics, through a visible minority political party and its access to parliament. Various institutions in the region (including schools, student organizations and minority newspapers) are also run directly by minority representatives. These institutions are generally financed by the Danish and German governments, but managed autonomously by minorities; in this way bottom-up and top-down processes become intertwined and mutually reinforcing.

The author presents the findings of social surveys, revealing that persons belonging to minorities evaluate more positively those institutions that *empower* them than those that simply provide a (top-down) mechanism of protection. The author concludes that it is of paramount importance for governments to financially support

institutions that foster minority identity and contribute to "collective empowerment", while also guaranteeing their independence.

Thus, Trentino and the Danish-German border have established institutions that are conducive to empowerment. They promote the status of minorities as actors in shaping their own rights-based minority regime, rather than limiting their role to that of beneficiaries (or victims). However, institutions and favourable conditions might not be sufficient. In their paper, **Balázs and Schwellnus** ask the crucial question as to why, despite the seemingly high level of empowerment of the Hungarian minority in Romania, the legislation on minority language rights is applied inconsistently across the country. The authors conceive minority empowerment as the representation of minorities in political and administrative structures, and their being in charge of processes for their adoption and implementation of minority policies. In Romania, the Hungarian minority is represented in decision-making structures at both the central and local levels through the party Democratic Alliance of Hungarians in Romania, yet outcomes are scattered.

The authors focus on the implementation of linguistic rights (use of minority languages in communication with state authorities and setting up bilingual signs), guaranteed by law in administrative districts where persons belonging to minorities reside. In identifying shortcomings in the delivery of policy objectives, they draw from the literature on agency theory and sociological institutionalism, and use data from interviews in various Romanian counties.

Their findings reveal a process of "decoupled empowerment": legal provisions have become disassociated ("decoupled") from implementation, and political processes at the central level are largely "decoupled" from the local administration. Various factors influence the process of decoupling: whether officials responsible for implementing relevant legal provisions display a "policy-seeking" behaviour (aimed at the realization of policies rather than simply striving to gain votes); and different degrees of actual commitment to an institutionalized minority language use in government and public administration. Ultimately, the central decision makers and national-level politicians primarily seek to gain legitimacy through "symbolic" politics and "ceremonial" oversight rather than being results driven. They are, then, principally interested in the adoption of (largely symbolic) legislation, and not necessarily in its implementation. The decoupling of central monitoring and enforcement leads to marked variation in implementation strategies at the local level,

with a mixture of informal and institutionalized implementation. Decoupling thus becomes more apparent at the local level, given that the electorate is closer to the implementation site. These dynamics, the authors argue, are best described through the prism of sociological institutionalism.

The findings reveal that minority empowerment *per se* does not necessarily lead to the effective implementation of minority policies. Indeed, the journey from law making to implementation does not take place in a vacuum, but in a web of political interests and socio-economic realities.

This special issue constitutes a first step towards the development of a theory of minority empowerment, and towards a more detailed assessment of the impact of relevant processes on the ground. The papers show a need to move from a paternalistic approach to minority protection to one of empowerment, and for greater emphasis to be placed on bottom-up processes and grassroots initiatives, combined with the creation of a favourable climate for them. This is particularly the case when confronting the specific challenges posed by small minorities.

The papers point to different forms of empowerment: in some instances minority representatives may act *proprio motu*; in others empowerment might be triggered by what is (initially) a top-down process, which is then redirected as a bottom-up one. What is common in all cases is minority *mobilization* and opportunities for action. Another point that emerges, particularly in the case of Trentino, is the importance of flexibility and of periodic reviews that allow for progressive readjustments; indeed, minorities themselves, and well as political and socio-economic realities, are constantly in a state of flux. Finally, the case studies point to the need to be wary of "symbolic" empowerment, which does not translate into concrete benefits for minorities. This is also the danger of decoupling law making and legal implementation: it can result in the truncation of the process from protection to genuine empowerment. As Penasa argues, there is a need to conduct assessments to measure the concrete impact of minority-oriented policies. The data resulting from such assessments can, in turn, equip minorities with additional tools to enhance their real (rather than symbolic) empowerment.

The "cosmopolitan" condition requires a reconceptualization of the minority rights regime. Malloy notes that we are at 'the beginning of a theory of

empowerment'. Yet, 'there is more to understanding minority empowerment than structure and agency. One must also study the individual's action within the collective; one must study minorities both as subjects and objects, and finally, one must examine the phenomenon as a multi-directional process.'

Notes

1. See http://ecpr.eu/Events/PanelDetails.aspx?PanelID=76&EventID=7. Retrieved: July 24, 2014.

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