Book Review


This work provides an excellent introduction to current debates concerning the accommodation of national minorities in European democracies. Its concern is to establish why ‘national minorities’ have not been accorded a right of political self-determination. National minorities are defined as ‘co-nations’:1 “autochthonous” populations which are “native to a particular region, in this case certain regions of Europe that were once either independent or belonged to a neighbouring State”.2 ‘National minorities’ are those territorially concentrated historic non-sovereign nations that “have inadvertently found themselves ‘on the wrong side of the border’”.3 It is not clear why this (contested) definition should have been adopted. The term ‘national minority’ was excluded from the minorities regime of the League of Nations to avoid any association with collective rights.4 It is included in the non-discrimination provision (Article 14) of the 1950 European Convention on Human Rights and Fundamental Freedoms, although the meaning of the term is not clear, and the judgments of the European Court of Human Rights have failed to elucidate its scope and content thus far. The express inclusion of national minorities in the UN ‘Declaration on Minorities’ does not extend the scope of application of the protection of minorities under general international law,5 although Eide has argued that it is possible to allocate different rights to the different categories of minorities, with national minorities enjoying “stronger rights relating not only to their culture but to the preservation and development of their national identity”.6 The 1995 Framework Convention for the Protection of National Minorities does not contain a definition of the term ‘national minority’, but it is clear from the text of the Framework Convention and the exchanges between states parties and the Advisory Committee on the Framework Convention that its scope of application is not restricted to historic nations.

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1 At p. 40.
2 At p. 21.
3 At p. 22.
The focus of *National Minority Rights in Europe* is political and/or philosophical rather than legal. The work provides a sustained argument for an accommodation of the ‘multi-nation’ identities of many European democracies based on arguments of discursive justice. Malloy seeks to develop a political and constitutional theory of ‘co-nation self-determination’. Freedom for co-nations requires that they “have the right to participate in negotiations [with ruling/majority co-nations] about justice”. The state should recognise its multi-nation character; power should be shared at the level of central government; and nations should enjoy rights of self-government/self-determination (i.e. territorial autonomy). Malloy is dismissive of the value of international human rights law to deal adequately with the just demands of national minorities, arguing that a minority rights scheme, “subsumed by the human rights regime, is a non-solution to the issue of co-nation rights in terms of self-determination”. According to Malloy, autochthonous minorities are not considered ‘peoples’ for the purposes of the human right of peoples to self-determination: Self-determination is the right to “a collective notion, and national self-determination is essentially collective autonomy, or . . . political collective autonomy”. Malloy does not deal with the emerging recognition that groups within the state may be recognised as peoples, and consequently posses a right to self-determination, nor with the possibility that a strict typology may not exist in international human rights law. In its Opinion on Denmark, the Advisory Committee on the Framework Convention noted that the populations of Greenland and the Far-Oer Islands did not fall within the scope of application of the Framework Convention “because they are entitled to a different form of protection as an indigenous people or a people”. The Advisory Committee concluded that “[t]he fact that a group of persons may be entitled to a different form of protection, cannot by itself justify their exclusion from other forms of protection”. According to Malloy, the rights of national minorities are political rights “backed up by political institutions; they may complement the human rights regime of international law by filling the gap from the general principles of law”. Co-nations are, according to this analysis, non-state nations. Malloy argues that the state national identity, is defined by the identity of the majority and then imposed on other citizens. The recognition that the state is a multi-nation polity demands a political constitutional accommodation which recognises this reality in the form of federal government or consociational democracy. This is an accommodation between ‘nations’,

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7 At p. 303.  
8 At p. 142.  
9 At p. 169.  
10 At p. 302.  
11 At p. 30.  
12 At p. 139.  
13 Opinion on Denmark, ACFC/INF/OPI(2001)005, para. 16 (emphasis in original).  
14 Ibid. para 17.  
15 At p. 6.  
16 At p. 106.