

Managing Diversity Through Non-Territorial Autonomy

Assessing Advantages, Deficiencies, and Risks

Edited by
TOVE H. MALLOY
ALEXANDER OSIPOV
and
BALÁZS VIZI

OXFORD
UNIVERSITY PRESS

OXFORD
UNIVERSITY PRESS

Great Clarendon Street, Oxford, OX2 6DP,
United Kingdom

Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
and education by publishing worldwide. Oxford is a registered trade mark of
Oxford University Press in the UK and in certain other countries

© The multiple contributors 2015

The moral rights of the authors have been asserted

First Edition published in 2015

Impression: 1

All rights reserved. No part of this publication may be reproduced, stored in
a retrieval system, or transmitted, in any form or by any means, without the
prior permission in writing of Oxford University Press, or as expressly permitted
by law, by licence or under terms agreed with the appropriate reprographics
rights organization. Enquiries concerning reproduction outside the scope of the
above should be sent to the Rights Department, Oxford University Press, at the
address above

You must not circulate this work in any other form
and you must impose this same condition on any acquirer

Crown copyright material is reproduced under Class Licence
Number C01P0000148 with the permission of OPSI
and the Queen's Printer for Scotland

Published in the United States of America by Oxford University Press
198 Madison Avenue, New York, NY 10016, United States of America

British Library Cataloguing in Publication Data
Data available

Library of Congress Control Number: 2015933280

ISBN 978-0-19-873845-9

Printed and bound by
CPI Group (UK) Ltd, Croydon, CR0 4YY

Links to third party websites are provided by Oxford in good faith and
for information only. Oxford disclaims any responsibility for the materials
contained in any third party website referenced in this work.

Introduction

Tove H. Malloy

Non-territorial autonomy (NTA) is one policy tool of a greater family of statecraft tools that aim to accommodate ethno-cultural diversity in situations where states must either cope with division due to irreconcilable differences or wish to develop society through promoting diversity as an added value. In either case, NTA aims to consolidate the state and promote social unity through accommodating ethno-cultural demands and requirements. As such, the viability of NTA as a state policy is vital not only to enhancing social unity but also to ensuring justice. Moreover, as a diversity management tool, NTA can contribute to social cohesion. However, the conceptual and functional features of NTA are poorly defined. Conceptually, NTA lives in the shadow of the much broader toolkit available for territorial autonomy (TA) regions. Both notions imply autonomy for ethno-cultural groups, but they are tools with distinct, separate aims. Moreover, the functions of NTA are rarely described comprehensively due to the concept's conflation with the very broad regime of human and minority rights. True, NTA needs to be normatively underpinned, but its institutional functions must be in place in order to speak of and implement autonomy. This volume seeks to describe and analyse the various functions of NTA through a number of case studies of existing NTA arrangements in Europe and Canada. The aim is twofold. On the one hand, we wish to contribute to sharpening the conceptual contours of NTA. On the other, we hope to provide informed contextual knowledge on the basis of which decision-makers and policymakers may determine the viability of NTA as a diversity management tool for policymaking in multicultural and multi-ethnic states.

1. The NTA Research Profile

This is not to argue that there is a shortage of research in the field of autonomy studies. Heretofore, a broad field of autonomy research has collected and analysed examples of autonomy arrangements. One need only refer to the seminal works

of Hurst Hannum,¹ Ruth Lapidoth,² Markku Suksi,³ Yash Ghai,⁴ Weller and Wolff,⁵ as well as Zelim Skurbaty.⁶ This research has focused on TA in federal and centralized states from the perspective of law and conflict studies in political science and international relations.⁷ With very few exceptions, this body of research has focused mainly on the macro perspective of policymaking.⁸ However, unlike this established field of research, NTA research has not developed into a separate field; at best, it has attained a sub-field status within autonomy research, and even that is an over-statement. Very few works dedicated solely to NTA exist in Anglo-American academic literature. These may be divided into several sub-fields of research, such as nationalism studies,⁹ conflict studies,¹⁰ and diversity management studies.¹¹ And like most TA research, these NTA studies focus on the macro perspective.¹²

¹ Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination. The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1990).

² Ruth Lapidoth, *Autonomy. Flexible Solutions to Ethnic Conflicts* (Washington, D.C.: United States Institute of Peace, 1996).

³ Markku Suksi, ed., *Autonomy, Applications and Implications* (The Hague: Kluwer Law International, 1998). See also André Légaré and Markku Suksi, 'Introduction: Rethinking Forms of Autonomy at the Dawn of the 21st Century', *International Journal on Minority and Group Rights* vol. 15, nos 2–3 (2008): pp. 195–225.

⁴ Yash Ghai, ed., *Autonomy and Ethnicity: Negotiating Competing Claims* (Cambridge: Cambridge University Press, 2000).

⁵ Marc Weller and Stefan Wolff, eds, *Autonomy, Self-Governance and Conflict Resolution. Innovative Approaches to Institutional Design in Divided Societies* (London: Routledge, 2005).

⁶ Zelim A. Skurbaty, ed., *Beyond a One-Dimensional State: An Emerging Right to Autonomy?* (Leiden/Boston: Martinus Nijhoff Publishers, 2005).

⁷ See also Javaid Rehman, 'The Concept of Autonomy and Minority Rights in Europe', in *Minority Rights in the 'New' Europe*, edited by Peter Cumper and Steven Wheatley (The Hague: Martinus Nijhoff Publishers, 1999), pp. 217–32; and more recently, Zoltan Kantor, ed., *Autonomies in Europe: Solutions and Challenges* (Budapest: L'Harmattan, 2014).

⁸ For a good example of a legal description of TA, see Jens Woelk, Francesco Palermo, and Joseph Marko, eds, *Tolerance through Law: Self-Governance and Group Rights in South Tyrol* (Leiden: Martinus Nijhoff Publishers, 2006).

⁹ Ephraim J. Nimni, ed., *Otto Bauer: The Question of Nationalities and Social Democracy* (Minneapolis: University of Minnesota Press, 2000); Ephraim Nimni, Alexander Osipov, and David J. Smith, eds, *The Challenge of Non-Territorial Autonomy. Theory and Practice* (Oxford: Peter Lang, 2013).

¹⁰ John Coakley, 'Approaches to the Resolution of Ethnic Conflict: The Strategy of Non-Territorial Autonomy', *International Political Science Review* vol. 15, no. 3 (1994): pp. 297–314. See also Steven C. Roach, *Cultural Autonomy, Minority Rights and Globalization* (Aldershot: Ashgate, 2005).

¹¹ David J. Smith and Karl Kordell, eds, *Cultural Autonomy in Contemporary Europe* (London: Routledge, 2008); see also André Légaré and Markku Suksi, 'Introduction: Rethinking Forms of Autonomy at the Dawn of the 21st Century', *International Journal on Minority and Group Rights* vol. 15, nos 2–3 (2008): pp. 195–225; *Ethnopolitics* vol. 6, no. 3 (2007): Kinga Gal, ed., *Minority Governance in Europe* (Budapest: Local Government and Public Service Reform Initiative, 2002).

¹² A few individual papers have focused on the implementation of NTA models. See for instance, D. Christopher Decker, 'The Use of Cultural Autonomy to Prevent Conflict and Meet the Copenhagen Criteria: The Case of Romania', *Ethnopolitics* vol. 6, no. 3 (2007): pp. 437–50; Balázs Dobos, 'The Development and Functioning of Cultural Autonomy in Hungary', *Ethnopolitics* vol. 6, no. 3 (2007): pp. 451–69; and Bill Bowring, 'The Tatars of the Russian Federation and National-Cultural Autonomy: A Contradiction in Terms?', *Ethnopolitics* vol. 6, no. 3 (2007): pp. 417–36.

There are reasons for the hegemony of TA studies, most notably the direction taken by contemporary discourses on European history, but also conceptual ones. With regard to contemporary discourses, TA research speaks to the security paradigm defining both European and global history of interstate relations over the last 400–500 years whereas NTA was seen as a religious accommodation tool in contemporary statecraft. With regard to the conceptual perspective, TA speaks to the security paradigm in terms of the diffusion of power to collectivities that are fairly easy to define as well as in terms of the nationalism discourse, whereas NTA diffuses power to individuals expressing group identities but living dispersed among the majority populations and thus very difficult to define. As such, NTA as a concept may overlap with the human and minority rights paradigm after World War II that emancipates the individual as opposed to the group. Because NTA as a distinct research field, and more importantly as a policy tool, has not been excavated from the TA research field, it is difficult to determine its value as a statecraft tool for multicultural and multi-ethnic societies. This volume aims to fill this gap.

2. The Aims of the Book

As noted, the main aim of this volume is to begin carving out a space for knowledge production on NTA in law and the social and political sciences. While the super goal is to produce open-ended knowledge, the specific purpose with regard to this volume is to produce contextualized knowledge on NTA arrangements in Europe and Canada. Contextual knowledge is particularly relevant for decision-making and policymaking. Contextual knowledge on NTA arrangements involves the description of institutions and their functionality as well as of the institutional and legal frames protecting them. It also involves critical assessment and risk analyses as well as penetrating insights as to the unintended consequences and hidden agendas behind NTA policies. All knowledge is of course theoretically informed, and this is also the case with contextualized NTA research. However, theoretical underpinnings of research are often not clearly delineated; often concepts float around in a sea of mist or are borrowed from one context to the next without logical or coherent explanations. As a result, the concept of NTA is at best opaque as to the differences between applications, at worst incorrectly analysed. In order to begin overcoming this problem, this volume will address three key approaches of NTA functions that devolve power to ethno-cultural groups living dispersed within multicultural states: (1) voice, (2) *quasi-voice*, and (3) non-voice.

With regard to *voice*, we will focus on self-governing policies for ethno-cultural minorities. We will ask, what self-governing institutions ethno-cultural groups have that enable them to take decisions or participate in decision-making about affairs relevant to their existence as distinct groups? Not all forms of representation and participation provide for autonomous decision-making. Thus, we ask, are these institutions really exercising diffusion of powers, and do they provide the freedom of choice and thought to the organizations representing ethno-cultural groups seeking protection and promotion of their culture? With regard to *quasi-voice*

we will focus on minority organizations established under public and private law. We will ask what self-management institutions exist that assist minorities in preserving and promoting their minority culture. Specifically, we try to ascertain if self-management involves self-governance, that is, do minority organizations decide on how to manage their institutions, or do they take directions from dominant groups imposing their ideological views through regulations and legal provisions? And with regard to *non-voice* we will focus on symbolic policies. We will ask whether there are NTA arrangements that purport to promote ethno-cultural autonomy without fulfilling the general aims of NTA as a right to make decisions or to co-decision. Basically, we wonder whether NTA has been used in manners that go against the core tenets of the notion of autonomy.

As such, our approach is conceptual and problem-oriented in its focus. We have sought to be systematic and comprehensive in the analysis of NTA examples. The chapters in this volume aim to describe the ideological backgrounds to NTA examples by analysing terminology, objectives, justifications, formal and informal practice, as well as legal frameworks. In other words, how are NTA arrangements presented in the broader narratives and discourses of diversity management in the particular state? The main aim of the chapters is to provide a mapping of the institutions and functionality of NTA examples. Do the NTA arrangements create and facilitate institutions, do they provide for resource distribution and accumulation, do they promote the acquisition and fulfillment of public competences, or perhaps local authority, do they provide for service delivery, and finally, what diffusion of power functions do they provide in terms of representation with decision-making powers? Moving from the descriptive to the analytical, the chapters will also discuss dynamics and outcomes of NTA arrangements. What achievements and failures are there, and what about unintended consequences? To fortify this discussion and enable analysis of the legitimacy of NTA examples, we also seek to bring in the beneficiaries by describing their reactions and views. Finally, the chapters will, where feasible, offer recommendations to policymakers with regard to strategic value and to ethno-cultural organizations with regard to legitimacy. A major ambition of this volume is thus to create a new methodological platform for NTA research through the institutional approach, since such has not been attempted systematically in the academic literature so far.

3. Defining NTA

The lack of clarity and accuracy in defining NTA derives, we believe, from the lack of institutional descriptions. References to institutions such as consultative bodies and reserved seats in local assemblies or parliaments are at times used as evidence of ethno-cultural groups holding the right to self-government even if in fact they have representation rights without autonomous powers. Elections to school boards may mean a say over educational issues but it needs to be established how such school boards actually function: are they defining their own governance, or do they have to follow regulations set by the majority? It is clearly not easy to penetrate

the many layers of governance and legislation to properly unearth the functioning of all institutions of NTA. However, lack of institutional description creates a gulf between theory and practice: what is observed is likely to be erroneously analysed as NTA, and what is perceived as theoretically valid is perhaps not reality. It is not feasible to determine the reasons for such scholarly stretches here. We know that the notion of autonomy is used in several academic disciplines and derives from the ancient Greek idea of the right or ability to make one's own laws.¹³ In law and the social and political sciences, the notion takes guidance from the philosophical notion of self-mastery and positive liberty through one's own rational will. Specifically with regard to positive liberty, it is important to stress the idea of being free from dominance and coercion.¹⁴ But to gain conceptual clarity, institutional knowledge and functional precision are vital. And more importantly, to provide advice in policymaking, it is essential.

Ironically, the reason why institutional knowledge is important has been pointed out early in the history of developing autonomy research and in the quest for a conceptual definition. Ruth Lapidoth, who in 1997 offered one of the most systematic accounts of the phenomenon of autonomy in statecraft, summarizes the academic consensus on the concept of autonomy into five main categories: (1) the right to act on one's own discretion; (2) independence; (3) decentralization; (4) exclusive powers of legislation; administration, and adjudication in specific areas; and (5) limited self-rule seen mainly as part of the minority rights regime.¹⁵ She concludes that this typology requires that one distinguish between administrative autonomy and political autonomy.¹⁶ Lapidoth elaborated her study in terms of specific TA arrangements, such as federalism, decentralization, self-government, associate statehood, and self-administration backed up by a number of case studies, all of which pertain to TA. With regard to NTA, Lapidoth offers a brief discussion of what she calls personal or cultural autonomy.¹⁷ This notion, she argues, emerged with the view to protect minorities living dispersed among the majority population. Specific historical examples according to Lapidoth are the Jews in Europe and non-Muslims in the Ottoman Empire. After World War I, certain countries adopted minority protection schemes that provisioned self-rule institutions in cultural areas, such as language, religion, and education. It follows, according to Lapidoth, that the difference between personal (cultural) autonomy and minority rights is mainly institutional; without self-regulating institutions, personal (cultural) autonomy does not exist.

¹³ *Auto* = self, *nomos* = law or rule.

¹⁴ Philip Pettit, *Republicanism. A Theory of Freedom and Government* (Oxford: Clarendon Press, 1997).

¹⁵ Ruth Lapidoth, *Autonomy*, ch 3.

¹⁶ Lapidoth offers her own definition of political autonomy for territorial units: 'a territorial political autonomy is an arrangement aimed at granting to a group that differs from the majority of the population in the state, but that constitutes the majority in a specific region, a means by which it can express its distinct identity'. Lapidoth, *Autonomy*, ch 3.

¹⁷ Lapidoth, *Autonomy*, ch 4.

Lapidoth further notices that personal (cultural) autonomy might be extended to other areas of societal issues, such as national questions of foreign affairs and security, through the notion of national cultural autonomy (NCA) developed by Karl Renner.¹⁸ Renner's approach basically promoted a matrix-type organization of public administration in culturally diverse states allowing for self-rule to ethno-cultural groups in (local) cultural and educational affairs while consociational institutions would rule the (national) central affairs, such as security and foreign affairs. The beneficiaries of NCA were identified on the basis of the 'personality principle', that is, the declaration of allegiance and belonging to a certain ethno-cultural group at the age of voting.¹⁹ Of course, the 'personality principle' has since lost all legitimacy in light of the singling out of minorities by the National Socialists during World War II, and in fact resulted in the emergence of the freedom of choice to belong or not belong after that war.²⁰ Lapidoth also notes that TA and NTA are not mutually exclusive; they can well be applied in parallel in the same region or country. However, she argues that ethnic-cultural groups, like minorities, often seek TA powers because these are stronger than personal (cultural) autonomy powers, for instance with regard to self-rule in socio-economic areas. She argues, therefore, that the scope of personal (cultural) autonomy should perhaps be extended to these areas as long as it does not regulate any territorial issues.

One might question whether Renner and Lapidoth were not consumed by the conceptual mist that engulfs NTA research when seeking to extend powers to national (central) affairs. Today, almost twenty years after Lapidoth's excellent account, it remains questionable whether the scope of personal (cultural) autonomy is seeing an extension to these levels. None of the examples described in this volume attest to this. However, in terms of the diffusion of personal (cultural) autonomy powers exercised through institutions and institutional frameworks, as defined above, Lapidoth's argument guides this volume. The institutional approach will allow not only policymakers but also beneficiaries a set of options from which to choose when seeking to accommodate ethno-cultural diversity. Moreover, given that Lapidoth foresees the target group as members of ethno-cultural groups who live dispersed in society, her argument speaks to the non-territorial notion assumed in NTA. Beneficiaries of NTA need not live together in one area or region; they may benefit from the diffusion of powers anywhere within the territory of the

¹⁸ Karl Renner, *Das Selbstbestimmungsrecht der Nationen in besonderer Anwendung auf Österreich* (Leipzig/Vienna: Franz Deuticke, 1918).

¹⁹ See Ephraim Nimni, 'National-Cultural Autonomy as an Alternative to Minority Territorial Nationalism', *Ethnopolitics* vol. 6, no. 3 (2007): pp. 345–64.

²⁰ For an example of the freedom of choice in minority rights, see the European Framework Convention for the Protection of National Minorities, art 3, available online, accessed 24 September 2014, <<http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>>. For an example of the 'personality principle' still in use, see the Autonomy Statute for the Province of Bozen/Bolzano and Emma Lantschner and Poggeschi Giovanni, 'Quota System, Census and Declaration of Affiliation to a Linguistic Group', in *Tolerance through Law: Self-Governance and Group Rights in South Tyrol*, edited by Jens Woelk, Francesco Palermo, and Joseph Marko (Leiden: Martinus Nijhoff Publishers, 2008).

state. Whether this is implemented is another question. This would be dependent on the individual claiming such powers; often this does not happen. Therefore, the most important factor is Lapidot's insistence on the existence of institutions; without institutions, NTA is not autonomy.

We might in fact speak of 'institutional NTA' in order to underline the difference between NTA and the broader regime of human and minority rights. The question is which institutions are relevant as NTA institutions? When can we argue that NTA exists? More importantly, how do we determine that these institutions allow ethno-cultural groups a degree of self-rule? To answer these questions, we need to unpack institutional NTA further.

4. Merits and Problems of Institutional NTA

Following Lapidot, NTA institutions may address administrative issues and/or political issues, and they may address only certain sectors, such as culture, religion, and education, as opposed to addressing the broad spectrum of societal sectors, from the administrative issues of culture to the socio-economic sectors, and foreign policy and security. There is thus clearly a menu of sectors from which to choose, just as there is a scope for devolving degrees of self-rule administratively or politically, that is, weak self-rule versus strong self-rule. The fewer sectors, the weaker the self-rule arrangement; the more sectors included in the NTA arrangement, the stronger the self-rule. Moreover, the nature of the institutions also will determine the strength of the NTA arrangement. Strong institutions may provide co-decision power at all political levels, whereas very weak institutions may provide a mere consultative function, formal or informal. Some strong institutions may provide self-government or self-governing and perhaps degrees of self-determination, whereas weaker institutions concentrate on providing the individual members of minorities with certain freedoms of choice. Medium-strong institutions may provide degrees of self-management or self-governing in areas of ethno-cultural minority identity, including education and language, religion, and folklore activities as well as social care for the elderly. Thus, one can place institutional NTA on a continuum from the very weak to the very strong in terms of self-rule decision power.²¹ Or, one can think of NTA as less onerous to very onerous ('expensive' or burdensome) in terms of both legal strength and political burdens.

The political burden may be defined further depending on specific and unique historical and regional aspects. One example is language policies. Linguistic rights may be addressed at the political and cultural levels, or only at the cultural level. Strong institutions tend to be underpinned by national political decisions on

²¹ See Andreea Cârstocea, and Mindaugas Kuklys, 'Contemporary Accommodation of Minority Groups: A Continuum of Institutional Approaches', *ECMI Handbook* (2015, forthcoming). See also Michael Thacik, 'Characteristics of Forms of Autonomy', *International Journal on Minority and Group Rights* vol. 15 (2008): pp. 369–401.

language policies of bilingualism or multilingualism, depending on the situation. Weaker institutions tend to handle linguistic rights as a cultural matter. Thus, political rights emanating from language policies involve linguistic rights in both the private and the public spheres, whereas linguistic rights aimed at cultural protection involve mainly the educational and private spheres.

The degree of funding to back up approaches and instruments is also a variable. No matter how beautiful the law text, and even if NTA is adopted by consensus, NTA without financial support and sustainability is inherently weak, if not non-existent. Moreover, at times financial support is extended but without autonomous powers to decide how the funds are used, thus putting in question the degree of autonomy. Finally, the degree to which institutions are anchored in law also determines the strength and degree of self-rule. Institutions may be either constitutionally entrenched or they may be adopted as statutes. A mixture of public and private law approaches exist in some countries while most countries prefer public law instruments. In some cases, private law institutions and a degree of trust can allow ethno-cultural groups self-management.

The questions to answer with regard to institutions are daunting, to say the least, but must be attempted. What follows in the rest of this section is a brief line-up of ethno-cultural institutions and institutional frames that may or may not provide NTA powers but which could be seen as relevant for ascertaining degrees of self-rule, either individually or in conjunction with other institutions.

4.1 Consultative bodies

Consultation with ethno-cultural groups is particularly important in countries where there are no arrangements to enable participation of minorities in parliament or other elected bodies. As such, states can establish advisory or consultative bodies within appropriate institutional frameworks to serve as channels for dialogue between governmental authorities and minorities.²² In order to ensure the legitimacy of consultative bodies, it is essential that their appointment procedures be transparent and inclusive allowing for members of ethno-cultural groups to maintain their independence. Specific types of consultative bodies that include ad hoc consultations can be useful to address particular issues while special purpose committees may be useful for addressing issues such as housing, land, education, language, and culture. It is essential that the legal status, role, duties, membership, and institutional position of consultative bodies be clearly defined just as it is important to ensure that consultative bodies have a legal personality (lack of this may undermine their effectiveness and their capacity to fulfil their mission). Publicity of the work of consultative bodies should be promoted to enhance transparency. Most importantly, the effective functioning of these bodies will require that they have adequate resources.

²² Marc Weller and Katherine Nobbs, eds, *Political Participation of Minorities: A Commentary on International Standards and Practice* (Oxford: Oxford University Press, 2010).

Consultative bodies should be duly consulted in the process of drafting new legislation, including constitutional reforms that directly or indirectly affect minorities. They should be able to raise issues with decision-makers, to formulate legislative and other proposals, as well as to prepare recommendations. Furthermore, they should be empowered to monitor developments and to provide views on proposed governmental decisions that may directly or indirectly affect minorities. While the system of consultative bodies may sound onerous to governments due to the need to ensure it through law and resource allocation, it is usually the least costly for governments to implement. Consultative bodies exist in numerous countries across Europe, including but not exclusively in Belarus, Czech Republic, Denmark, Finland, Germany, Moldova, the Netherlands, and Romania.

4.2 Service institutions

Public–private service institutions formed by ethno-cultural groups, who are not territorially defined, provide services to these minority groups. They usually take a variety of shapes. The issues most susceptible to regulation by these arrangements include education, culture, use of minority language, religion, and other matters crucial to the identity and way of life of minorities. Individuals and groups have the right to choose to use their names in the minority language and obtain official recognition of their names. Taking into account the responsibility of the state authorities to set educational standards, ethno-cultural minority institutions can usually determine curricula for teaching of their minority languages, cultures, or both. Ethno-cultural minorities can also determine and enjoy their own symbols and other forms of cultural expression. For this reason, service institutions are found as medium-strong on the continuum. The cost of such approaches varies from country to country and according to the development of social models. Service institutions may be established in private law both with and without government subsidies, or they may be established in public law with funding on an equal basis with majority institutions. The more autonomy the institutions have, the stronger the degree of NTA power. Service institutions thus leave a large amount of discretion to governments and policymakers as to the level of burden carried by public programmes. Many countries have opted for this approach as it provides for adjustment to specific circumstances, including for instance Austria, Canada, Denmark, Germany, the Netherlands, and Ukraine.

4.3 Political representation

Having representation in the political sphere means being heard, and depending on the nature of the representation it may also mean participating in decision-making. There are numerous ways to have representation; consultative bodies are also a type of representation. But where consultative bodies do not provide for voting rights, political representation usually does. At the political level representation tends to be more formal and usually enshrined in law, at either the national or local level. For this reason, it is a stronger institution than consultative bodies. However,

governments may consider it onerous, not only because allowing political representation usually requires subsidies to office holders and party secretariats, but also because it cements the relationship into law.

Reserved seats in parliamentary assemblies are a way to recognize the right of ethno-cultural groups to participate in the political decision-making process. Opinions vary as to the effectiveness of reserved seats, and critics warn that they may only have token value. Many countries, however, practise the system, for instance when ethno-cultural minorities are too small to be able to compete in the regular political party system. Countries also combine reserved seats with other institutions of accommodation, including consultative bodies. While reserving seats in parliamentary assemblies must be formalized, there is also an option to reserve seats in terms of cabinet positions, seats on the supreme or constitutional court or lower courts, and positions on nominated advisory bodies or other high-level organs.²³ Many countries provide for reserved seats, mostly in parliaments. These include Belgium, Denmark, Croatia, Finland, Italy, Kazakhstan, and Slovenia.

Most countries in Europe permit ethno-cultural minority parties. The right to form political parties is based on several human rights standards, such as the freedom of expression, the freedom of thought, and the freedom of assembly. It is therefore a core democratic institution that should be available to all. Ethno-cultural parties usually form on the basis of ethnic or religious identities.²⁴ For ethno-cultural groups to be able to form political parties and to compete in the public sphere for opinions and claims is a major tool of access to the decision-making process in democratic societies. Even though ethno-cultural parties are likely to get out-voted by the majority, they nevertheless provide ethno-cultural groups with a voice. In that sense, ethno-cultural parties range higher on the scale of institutions, or on the continuum they are stronger institutions than consultative bodies. For governments ethno-cultural parties may be seen as onerous in the sense that they will require subsidies on an equal footing with other parties. Funding ethno-cultural parties equally with majority parties is however a democratic right.

Experience in Europe demonstrates the importance of the electoral process for facilitating the participation of ethno-cultural groups in the political sphere. States are supposed to guarantee the right of ethno-cultural minorities to take part in the

²³ See for instance, Florian Bieber, 'Power-Sharing at the Governmental Level', in *Political Participation of Minorities: A Commentary on International Standards and Practice*, edited by Marc Weller and Katherine Nobbs (Oxford: Oxford University Press, 2010), pp. 414–33; and Francesco Palermo, 'At the Heart of Participation and of its Dilemmas: Minorities in the Executive Structures', in *Political Participation of Minorities: A Commentary on International Standards and Practice*, edited by Marc Weller and Katherine Nobbs (Oxford: Oxford University Press, 2010), pp. 434–52.

²⁴ For a definition of ethnic minority parties, see Janusz Bugajski, *Ethnic Politics in Eastern Europe: A Guide to Nationality Policies, Organizations, and Parties* (New York: Sharpe Armonk, 1993); Janusz Bugajski, *Political Parties of Eastern Europe. A Guide to Politics in the Post-Communist Era* (Armonk, NY/London: M. E. Sharpe, 2002); Karl Cordell, ed., *Ethnicity and Democratisation in the New Europe* (New York: Routledge, 1999); Levente Salat and Monica Robotin, eds, *A New Balance: Democracy and Minorities in Post-Communist Europe* (Budapest: Local Government and Public Reform Initiative, 2003); Lieven De Winter and Huri Türsan, eds, *Regionalist Parties in Western Europe* (London: Routledge, 1998).

political debate and process. International law prescribes the principle of freedom of association through the right to form political parties, including the freedom to establish political parties based on collective identities, such as culture, language, religion, or ethnicity. Where ethno-cultural groups are concentrated territorially, districts may provide sufficient minority representation. However, it might be necessary to allow for lower numerical thresholds for representation in the legislature to enhance the inclusion of ethno-cultural minorities in the political process. In that sense geographic boundaries of electoral districts should facilitate equitable representation of minorities. Systems of reduced thresholds do raise controversy in countries where they exist as well as in countries that have not adopted the approach. The notion is often raised that ethno-cultural minorities get a 'discount' and thus may not represent proportionally as many voters as ordinary parties while nevertheless holding the same degree of power. For this reason, securing the right to be exempt from thresholds at the constitutional level is often necessary, so that it may not be contested in courts. As such, it provides for a stronger measure from the perspective of diffusion of powers. Governments may see constitutionalization as a high 'price' to pay. Perhaps for that reason, threshold exemptions do not exist in many European countries; but Italy, Germany, Poland, and Romania provide for such.

A strong form of institutional, political accommodation is participation in coalition governments.²⁵ This presumes, however, a consistent participatory pattern in politics, not only through representation but also through effective participation in public affairs across the board. In other words, ethno-cultural minorities will need to be represented in a broad spectrum of society's institutions. It requires for the minorities to have a platform for the future of the shared nation in terms of all aspects of society management, including foreign and security policy. Not many ethno-cultural groups achieve this strong presence in mainstream society. In Europe, examples of coalition governments that included ethno-cultural parties have existed at the national level in Belgium, Croatia, Finland, Lithuania, the Netherlands, Romania, Slovakia, and Switzerland. At the local level, ethno-cultural minorities have been in coalition in Germany, Italy, Lithuania, Romania, and Switzerland.

4.4 Self-governing

Self-governing institutions hover between administrative autonomy and political autonomy. Often self-governing institutions are a combination of the institutions mentioned above. Usually this approach is referred to as self-government, although the institutions do not provide for government-type tasks. They may, however, be devolved powers in terms of self-government in certain competence areas, such as political decisions about these institutions. For this reason, self-governing

²⁵ For a good discussion on coalition building, see Giovanni Sartori, *Parties and Party Systems: A Framework for Analysis* (Cambridge: Cambridge University Press, 1976).

institutions provide a greater degree of autonomy than the public–private institutions. Basically, self-governing allows ethno-cultural minorities the ability to consent or dissent on the issues relevant to their community. Self-governing institutions are, therefore, placed high on the scale of the continuum. Self-governing institutions are, by the nature of the stronger NTA powers, also more onerous to sustain. Systems of self-governing exist, among others, in Belgium, Finland, Hungary, Norway, and Slovenia.

5. Trends in NTA Research

There is no doubt that ethno-cultural minority institutions exist across Europe, East and West, as well as in Canada. Usually, ethno-cultural minority groups seek NTA powers because they object to assimilative strategies of governments and wish to preserve and promote their culture and identity. Governments, on the other hand, will usually have country-specific reasons for choosing NTA as a tool of accommodation. Country-specific reasons are often determined by historical legacies and events. Depending on the nature of the country-specific reasons, governments may choose instrumental and/or normative approaches. Distinguishing between instrumental and normative approaches is not always possible in determining a government strategy. A crude analysis would hold that instrumental approaches usually have the overall aim of holding control over territory and populations, whereas normative approaches aim to provide justice. A more sophisticated analysis would reveal that normative approaches may also have instrumental aims, especially if providing justice secures control over territory and populations. A common denominator is, therefore, control.

Control in the political and social sciences usually refers to the hegemony of one dominant group, often a particular ethno-cultural group, over state ideology and institutions held through manipulative methods.²⁶ If a dominant group is to relinquish any control, it will depend on the depth of the divide between dominant and non-dominant groups as well as on the prospects of maintaining hegemony. Surrendering some control while maintaining hegemony is only possible if territorial borders remain intact, and in so far as that power over all important institutions servicing the dominant group remains unchallenged. Thus, any diffusion of powers to non-dominant groups will have to be measured carefully, and most likely be weak and controllable in nature. Autonomy as a concept signifying restricted diffusion of power fits into this scenario of maintaining control through devolution.

Government strategies with regard to maintaining control of ethno-cultural groups have taken two main paths over the twentieth century. Most dominant has

²⁶ Ian Lustick, 'Stability in Deeply Divided Societies: Consociationalism versus Control', *World Politics* vol. 31, no. 3 (1979): pp. 325–44; Eric Kaufmann, ed., *Rethinking Ethnicity: Majority Groups and Dominant Minorities* (London: Routledge, 2004).

been the security approach, which aims to control non-dominant groups without diluting state power. This approach is the legacy of several hundred years of wars in the European continent; wars that often were fought over territory and thus over population groups living in these territories. These population groups were often minorities either in terms of religious or linguistic differences or in terms of national allegiances. Especially, national allegiances of such groups to their mother group have been the cause for conflict and strife. Hence, the securitization of issues related to accommodation has contributed to the overpowering position that the security approach has held and still holds in contemporary research on TA. The other approach is the minority rights approach, or the protection approach, which is considered a normative strategy and an approach that seeks to accommodate non-dominant groups based on good faith rather than control. The aim here is to implement some positive measures for non-dominant groups because they are seen as representing an intrinsic cultural value, be it a culture, a nation, a religion, or some other. The minority rights regime developed in Europe after 1990 includes a few positive measures all of which are cast nevertheless in very cautious state-centred language. Thus, it could be argued that minority protection in terms of the paternalistic normative framework also belongs in the category of control.²⁷ As noted, instrumental approaches can also have normative aims. This may be a reason why NTA research lacks clarity as to the concept's position and aim as a statecraft instrument.

A important reason why studies of the two strategy approaches do not provide a full picture of the strategic role that institutional NTA plays in the statecraft of multicultural and multi-ethnic societies is the predominant focus on the macro-level perspective. Both strategies are top-down, and both provision primarily formal measures and instruments through legal frameworks. They both see the power relations between dominant and non-dominant groups as hegemonic in a traditional paternalistic and controlling sense, meaning the dominant group decides to which fraction of power the non-dominant group is entitled. Thus, studies analyse the macro level of the state or of international cooperation; hence, overlooking meso- and micro-level action and actors. And in so doing, they overlook the functions of NTA institutions as a diversity management and statecraft tool.

6. Plan of the Book

As already hinted in section 2, this volume is divided into three parts, each devoted to analysing different degrees of power devolution in terms of the strength of voice that ethno-cultural groups have in their own affairs and in the community. For each part we have identified relevant case studies that aim to support the specific purpose of producing contextualized knowledge on institutional NTA in Europe

²⁷ Jennifer Jackson Preece, *National Minorities and the European Nation-States System* (Oxford: Oxford University Press, 1998).

and Canada. Thus, a mapping of NTA arrangements in a number of countries will lay the foundation for the conclusive analysis on the concept of NTA as well as the final statecraft analysis. The authors of the individual chapters are associating themselves with the theories of their choice but have been asked to apply the institutional approach to the description and analysis of the relevant NTA models adopted within the country they have been assigned. The chapters are structured according to a stylized description of the ethno-cultural institutions and the dynamics of these, including brief analyses of the outcomes of the implementation of NTA powers.

In order to set the stage for the micro-level discussions, Chapter 1 starts out at the macro level with a discussion that interrogates the political issues that states may face when seeking to decide on a strategy to accommodate ethno-cultural groups, including the possibility of choosing between TA and NTA (Sherrill Stroschein). Unlike most works on autonomy that praise the model of TA as the superior model of accommodation and minority–majority relations as a zero-sum game, the discussion in Chapter 1 highlights the advantages of NTA as a peaceful solution to inter-ethnic and inter-cultural settlement.

Part I focuses on the aspect of voice through institutions of self-governing. Five country cases have been identified to represent the idea that NTA institutions enable ethno-cultural groups to take decisions or participate in decision-making about affairs relevant to their existence. The discussion in this part begins with Chapter 2 detailing the system of ‘self-government’ in Hungary (Balázs Vizi) and continues in Chapters 3 and 4 with two examples of NTA through national minority councils in Croatia and Serbia (Antonija Petrićević and Tamás Korhecz). Chapter 5 discusses NTA arrangements for Hungarians and Italians in Slovenia (Miran Komac and Petra Roter), and finally Chapter 6 provides an analysis of the institutionalization of the Sami Parliaments in Finland (Adam Stępień, Anna Petréttei, and Timo Koivurova).

Part II continues to deal with voice, however, in a weaker sense in terms of the delegation of public functions to ethno-cultural minorities. To recall, we term this *quasi-voice* as it is questionable how autonomous such institutions are. Three examples have been selected to discuss this phenomenon. The discussion starts in Chapter 7 with a description of the self-management of minority education in Canada (Daniel Bourgeois). Chapter 8 discusses the institutional framework for the Sorbs in Germany and asks whether this is in fact a case of NTA (Detlev Rein), and Chapter 9 takes a cross-national perspective and discusses functional NTA in a reciprocal setting, namely between Denmark and Northern Germany (Tove Malloy).

Part III focuses on the weakest form of autonomy. Basically, the two selected cases in this part represent what we have termed non-voice following the arguments made in the two chapters. This is because they do not constitute a say over own affairs or any co-decision power. Thus, Chapter 10 discusses the situation in a number of countries in the post-Soviet space, all of which have adopted NTA legislation without devolving any self-governing or self-management power to ethno-cultural groups (Alexander Osipov), and Chapter 11 recounts the situation

of the Estonian approach to NCA, a clear example of empty promises of purely symbolic value (Vadim Poleshchuk).

Finally, the Conclusion (Levente Salat) takes stock of the institutional approaches introduced by the authors and provides a typology of weak-to-strong NTA institutions, which may function as a toolkit for future policymaking in the area of ethno-cultural accommodation. On this basis, the Conclusion also assesses the conceptual revision of NTA in order to direct toward further research, which we pursue in future volumes.

Preview - Copyrighted Material
www.wkaponline.com