

Seminar “From the protection of national minorities towards managing diversity”

28/29 April 2010, Zürich

The view of a member of a member of a so-called national minority

Theses

„Niemand hat mich gewarnt, ich solle mich vor Wörtern hüten, die trunken sind von Mohnblumen des Jenseits. Geh über Wörter wie über ein Minenfeld, ein falscher Schritt, eine falsche Bewegung...und alle Wörter...werden mit dir zusammen in Stücke gerissen“ (Abraham Sutzkever, a Baltic Yiddish poet).

Thesis 1

As a “medieval relic” originating from a multinational European form of state and society, Switzerland has preserved this form of government and shaped it to a modern type of multinational state. The difference of this concept of state from the nation-state becomes visible in notions such as “federal state” and “linguistic and cultural communities” which stand in opposition to notions like “nation-state” and “national minorities”. In Switzerland, the concept of state and the concept of nation never melt together (apart from the fact that Switzerland got itself the epithet of a “nation by will” to position itself as a “nation”); moreover, the idea that all other communities, peoples and nationalities had to subordinate themselves to a homogeneity ideal of the majority of the population never prevailed. The success story of the Swiss Model is mainly based on the fact that the federal state does not regulate in the linguistic, cultural, and educational sector. These are reserved to the cantons and even within the cantons, to the municipalities. Ultimately, these sensitive issues are beyond the power of the central state and have to be treated pragmatically and close to the basis rather than ideologically.

By contrast, the nation-state merged the idea of the state with the idea that the state should also be responsible for a however constituted ethnic, linguistic, and cultural “nation” in the meaning of a “people” which has resulted in problems. Indeed, from this perspective the state would reach its perfection in the complete fusion of the principles of a “Rechtsstaat” with the people as a naturally and monolithically grown unit. However, attempts to reach homogeneity of the “people” through the creation of an own state have failed in most of the European states.

“Managing diversity” is based on a conception of a state which views itself as multi-national as a matter of principle. An essential consequence of this is the claim not to assign to the state a de facto monopoly in the field of preservation and promotion of the historic national heritage of the majority population.

Thesis 2

The most disastrous notions of the 20th century are the “nation-state” and the “national minorities”, both inventions of the late 19th century.

Who are the “persons belonging to a national minority”? Do the Rhaetoromanshs, the Sorbs, the Catalans or Basques belong to them although they understand themselves as autochthon peoples? By contrast, “national minorities” are groups of a people who are typically separated by artificial state borders from the rest. “Many international organizations have struggled with this issue without any clear resolution, and their current policies and practices are full of ambiguities and inconsistencies” (W.Kymlicka The internationalization of minority rights, S.1)

As a Rhaetoromansh (one of the four linguistic and cultural community making up 0.5% of the population of Switzerland) I have never felt as such a “person belonging to a national minority” (moreover, “minority” as such was a concept even unknown to the Swiss Constitution); rather the opposite, the consciousness of belonging to one of the different patches - even if smaller than the others - within the patchwork of Switzerland has strengthened my loyalty and sense of responsibility as a citizen towards this state.

The finding that the nation-state was not a success story is trite; however, few alternatives to this state model can be found in the politically relevant literature. Therefore it’s unsurprising that the nation-state model has been unreflectedly exported to Eastern Europe as an ideological substitute for communism after the political opening up. To the infection of the new states with the “national” as a worth of its own and its “ethnization” corresponded the qualification of other communities as “persons belonging to national minorities” with all consequences that we know.

The export of the Western European nation-state model to the new states contrasted the historical experiences with multinational societies of most states of Eastern Europe and the Balkans. Indeed, even in the Soviet Union – and despite the ideology of the “homo sovieticus” to build – a notion of “nationality” was preserved which at least in theory accepted the equality of nationality in a state. Overall, this explains the many reservations of peoples with regard to the expression “national minority”.

The pair of notions “nation-state” and “national minority” belongs to the rubbish heap of history. Managing diversity uses and speaks instead of “nationalities” or “linguistic and cultural communities”. By doing this, it deprives the modern state of the foundation for a fictional and nevertheless aimed fusion to the one people who make up its majority.

Thesis 3

To the status of peoples and communities without their own state in the international political debate: The communities are often excluded from the process of creation and implementation of laws.

Examples: In the Ad hoc Committee for the elaboration of the European Charter of Regional or minority languages, the only members of minority communities were the two representatives of Switzerland. The same is true of the advisory boards and expert committees. Institutional bodies are often perceived as working “for” - but not “with” the communities. The same is true for the contacts of the international institutions on national level. The effective participation of the communities remains in the “shadow”. “It is very rare, however, to find that these good things (the states will do in relation to minority communities) have been developed in cooperation with communities directly concerned (Marc Weller, Filling the frames. 256).

The principle of “effective participation of persons belonging to national minorities”, stipulated by the OSCE (Copenhagen doc 1990), the Framework Convention (art. 15), and finally the Lund Recommendations (art. 12)) have had weak consequences. Appropriate institutional frameworks (consistent structures), funding or rights given to the communities to delegate their members in such bodies have not been realized sufficiently. If one wants to create strategies and propose solutions which serve the communities these have to be viewed and treated as equal partners “at eye-level” within states as well as in international organizations.

Two main players are involved in the debates and decisions about the needs and rights of communities, the state authorities on the one side and scientists/expert groups on the other side – with almost marginal/symbolic representation of representatives of the communities directly involved.

Managing diversity requires national and international institutions in which the communities are represented adequately.

Thesis 4a

To enable dialogue between states and communities, the communities have to be established as legitimate partners. Indeed, this is the decisive step which has to be done with priority given to the interest of a long-term process. All the

relevant international documents talk of participation by the “persons belonging to national minorities”; however, if one asks about the organization form and structures, hardly anything relevant can be found. More importantly, if something can be found, in my view, it pushes in the wrong direction. At the moment where one was trying to introduce democratic rules to the new states the focus was on forms of participation in the political system and the recommendations aimed at converting these into the parliamentary and administrative state structures. Yet, the basis of such forms of participation in a democratic state consists of the political parties. Accordingly, an ethnization of the political structures and processes took place.

In the medium-term this was a viable way for the “big” communities with obvious potential for violence and separatism. Admittedly, also the symbolic power of the inclusion in the apparatus of state may have had some importance for the people who were used to being confronted with an omnipotent state.

However, the wave of political representation by ethnical affiliation did not leave out the smaller of the communities where the integration in the parliamentary system generally isn't useful (more than 75% of the European communities consist of less than 300 000 speakers).

Three indications of the questionability of this development: The ethnization of society brings with it a double dilemma for the members of communities.

Should they vote according to their political ideals or prioritize their ethnical belonging?

Furthermore, the attitude of the majority will not be positive towards such communities if there need to be exception clauses from the principles underlying a “Rechtsstaat”. Indeed, this is even more the case when such ethnic parties advance to the stage whereby they are able to tip the scales in coalition negotiations.

My third point concerns the representativity of a political party of a community as such. Politics is interested in power whereas “managing diversity” aims at the preservation and promotion of linguistic and cultural values. A political party is not fit to develop a holistic and consistent strategy for a community.

<p>Democratically and politically the representation of communities through political parties is a questionable way to secure their interests on the long run. There is a real danger of losing the perspective of the state as a whole and cementing ethnic divisions when states are politically organized on the basis of ethnic parties. “Managing diversity” stresses the responsibility of the emancipated citizens for the entire state and, accordingly, defuses the danger of violence in a multinational state.</p>

Thesis 4b

In addition, I want to give an outlook on possible alternative forms of organization of communities. It makes sense to take up again the idea of a

depolitization of communities as for example RENNER had thought of to save the multinational state structure of the former Austro-Hungarian monarchy by taking it into modernity. Two indications in this regard: First, RENNER recommends that the communities first of all should establish a legitimate representation under public law. This form of organization enables them to take their affairs in their own hands and to negotiate with state institutions.

Accordingly, this enables them to negotiate and to reach compromises between claims for linguistic and cultural autonomy and the cohesion of the state as a whole. Second, RENNER gives preference to personal autonomy instead of territorial autonomy. The reason for this is that he believes that personal autonomy helps to preserve personal identity alone or in (a) community with others in an adequate way, especially with regard to the fact that community members do not live exclusively in their historical territory. In certain cases, of course, mixed forms with application of both principles are possible as well. However, such approaches have been disregarded notwithstanding their huge potential (St. OETER, *Selbstorganisation der Volksgruppen in Form öffentlich-rechtlicher Vertretung*). Only a few states experienced the model of personal autonomy, namely Finland and for a short period in the 20ies of the last century Estonia, while most of the states and the international instruments remained strongly linked to the territorial autonomy.

Usually, communities are organized as institutions of civil law in most of the states of Western old Europe, in some with de facto public law claims, e.g. the Rhaetoromanshs in Switzerland. However, they have not managed to organize themselves in a way which legitimizes their institutions democratically and is recognized in public law.

As far as Hungary is concerned the fact is quite astonishing that it is one of the new states which has at least in part chosen the way of depolitization in its politics with communities by applying the personal principle and granting political autonomy to minorities.

Communities need to organize themselves in forms which give them a democratic legitimacy in order to be able to reach sustainable policies based on dialogue, cooperation, and/or forms of autonomy. Indeed, this is a prerequisite for the creation of tailored measures which guarantee a “real” participation of communities. Specifically, as strategic options we can think of models based on public law which grant personal autonomy, eventually connected with some territorial components for communities.

Thesis 5

In conclusion, please let me express my appreciation for the efforts of the Council of Europe from the perspective of a “managing diversity”-policy perspective. It is important to notice that the work on the European Charter for

Regional or Minority Languages started late but nevertheless before the events of the 1990s. The Charter is an attempt by the Council of Europe to grasp and regulate the ethnic questions in their cultural dimension and view them not as a political issue. To preserve and promote the values of linguistic and cultural diversity means to deprive them from the power politics at the central level of the state. Conversely, political questions like those of decentralization and the application of forms of territorial autonomy within the organization of the state should be tackled with political instruments like the European Charter of Local Self-Government. From the experiences of Europe after WWII it came to the right conclusion, even if some details are disputable: a clear separation of the idea to preserve languages as a cultural task from the political organization of the state.

However, we have to admit that the Council of Europe has not succeeded in the time since WWII to develop a sufficient, politically supported strategy to avoid or resolve smoldering ethnic conflicts. Unfortunately, the timid efforts in this direction have ended abruptly in the face of the dramatic collapse of Communism and have moved again strongly in a political direction with the Framework Convention. The eruption of violence in the new states has forced the international community to deal with the problem and to present solutions within a few months. The Framework Convention tries to work out solutions based on an “unreflected” approval of the concept of nation-state and consequently, many measures seem limited to fighting the symptoms but not curing the disease.

Whereas the European Charter for Regional or Minority Languages constitutes a timid attempt to understand and to put into action linguistic diversity as a cultural task, the Framework Convention is fighting the symptoms as its solutions are based on an “unreflected” approval of the concept of nation-state. In conclusion, it is a prerequisite of “managing diversity” to separate the promotion of linguistic and cultural diversity from institutional questions of state organization.

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