Abstract

The dichotomy between ‘old’ and ‘new’ minorities that underpins existing approaches to 'national minority' protection in Europe tends to put (im)migrants and their descendants at a disadvantage in making claims for special treatment. This paper examines four such assumptions operating in discourses and practices of European minority rights. Each has a scholarly as well as a popular face and I shall be moving rather loosely between these two orders of thought and speech as they are articulated in the ‘order of discourse’ created by the Framework Convention for the Protection of National Minorities. In so doing, I deliberately refrain from treating 'national minority rights' as either a unified concept or a generic practice, and I do not stipulate a particular definition of 'national minority' as universally valid. Rather, my aim is to surface key assumptions within contemporary articulations of specifically European ‘national minority rights’ such that the category distinction posited between ‘old’ / ‘minority’ and ‘new’ / ‘(im)migrant’ may be critically assessed.

Problem

The key European monitoring instrument directed at 'national minority rights', namely the Framework Convention for the Protection of National Minorities (FCNM) (1995), does not define the key signifier ‘national minority’. Instead the accompanying explanatory report notes the following:

It should also be pointed out that the Framework Convention contains no definition of the notion of “national minority”. It was decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member States.

The absence of a fixation of meaning to the key signifier 'national minority’ at the European level is widely acknowledge to follow on from a controversial politics of inclusion/exclusion which operates at the national level to distinguish members from non-members so as to limit potential 'national minority rights' claims against the state.

Some states including Austria, Denmark, Estonia, Germany, Hungary, Poland, Slovenia, Sweden, Switzerland and FYROM set out their own definition of 'national minority' when they ratified the FCNM. Other state signatories such as Croatia, Cyprus, Czech Republic, Hungary, Finland, Ireland, Italy, Lithuania, Norway, Portugal, Romania, Slovakia, Serbia, Spain, United Kingdom, and Ukraine commented upon the scope of 'national minority' in their first state report on state compliance with FCNM undertakings. These various definitions aim to fix the identity of would-be 'national minority rights' claimants. Such a fixation of meaning may be achieved in a number of ways, most notably by naming specific groups to whom the FCNM will apply, by excluding particular groups from the scope of protection afforded by the FCNM (most commonly non-citizens and / or (im)migrant-origin groups), by invoking pre-existing domestic signifiers (laws, constitutions, etc.), or some combination thereof. Additionally, Lichtenstein, Luxembourg, Malta and San Marino are parties to the FCNM but have articulated their accession as
‘acts of solidarity’ with the principles underlying the FCNM while denying the existence of any ‘national minority’ within their respective territories.

The net effect of this floating signification regarding the identity of ‘national minority’ rights claimants at the European level is a contested order of discourse amongst FCNM state signatories which tends to privilege old / minorities while at the same time excluding new / (im)migrants and their descendants (see figure 1 below).

Figure 1: Key Articulated Positions Within FCNM Order of Discourse

Within this contested order of discourse, we can identify four distinct positions regarding the fixation of ‘national minority’ identity:

1. A pragmatic discursive strategy which aims to extend the key signifier 'national minority' by encouraging the inclusion of old / minority, new / (im)migrant and citizen / non-citizen groups on an article by article basis (currently the position taken by the Advisory Committee, which is the monitoring body established by the FCNM);
2. The key signifier ‘national minority’ remains open, although in practice the inclusion of potential claimants may vary both between citizens vs. non-citizens and across different citizen groups (as in Armenia, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Montenegro, Russia, Serbia, Switzerland, Ukraine and the United Kingdom) (shown as DOTS on map below);
3. The key signifier ‘national minority’ is closed to specific named citizen group claimants (as in Albania, Austria, Croatia, Cyprus, Denmark, Finland, Germany, Ireland, Italy, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Slovakia,

1 Of the 44 FCNM signatories, 39 states have ratified / acceded while 4 (Belgium, Greece, Iceland and Luxembourg) have signed but not yet ratified. In terms of the key discursive positions, 16 states currently occupy position 2; 21 states currently occupy position 3; 4 states currently occupy position 4; and there is no information available regarding Belgium, Greece and Ireland.
Slovenia, Spain, Sweden, and Former Yugoslav Republic of Macedonia) (shown as vertical DASHES on map below);

4. The key signifier ‘national minority’ is denied and all potential claimants are excluded (Liechtenstein, Luxembourg, Malta, San Marino) (too small to show on map below)

This contested order of discourse ultimately manifests itself in a variable geography of ‘national minority’ protection across the forty-four signatories of the FCNM (see figure 2 below) (NB white background indicates signed but not ratified; black background indicates non-signatory).

Diagram 2: Variable Geography of ‘National Minority’ Protection in Europe

Such variation contrasts with the universality enclosed by the concept of human rights and its egalitarian signifiers as, for example, they are expressed within the European Convention of Human Rights (ECHR) and the related jurisprudence of the European Court of Human Rights (EctHR).

It also goes against United Nations General Commentary 23: the rights of national minorities (1994) where the Office of the High Commissioner of Human Rights specifically affirms that a state may not restrict the minority rights arising under article 27 International Covenant on Political Rights (ICCPR) to its citizens alone, and moreover that it is not relevant to determine the degree of permanence within the state:

‘those rights simply are that individuals belonging to those minorities should not be denied the right, in community with members of their group, to enjoy their own culture, to practise their religion and speak their language. Just as they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State party.”
constituting such minorities are entitled not to be denied the exercise of those rights. As any other individual in the territory of the State party, they would, also for this purpose, have the general rights, for example, to freedom of association, of assembly, and of expression. The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.'

Discourse Analytic Method

The paper will make use of discourse to analyse how and why existing European 'national minority rights' currently privilege old / minorities and whether and to what extent it is possible to extend the scope of 'national minority' rights to include new / (im)migrants and their descendants.

'Discourses' are herein understood as contingent fixations of meaning within a particular domain, in this case European 'national minority rights', but crucially they do not ensure that meaning will prevail forever. Accordingly, there are always other meanings which may challenge and transform the structure of the existing discourse.

According to Laclau and Mouffe (Laclau and Mouffe 1985: 112f), the fixation of meaning within a discourse occurs at a 'nodal point' or privileged sign around which the other signs are ordered and acquire their meaning. Once we have identified the signs that are 'nodal points', we can then investigate how other discourses define the same signs ('floating signifiers') in alternative ways. By examining the competing ascriptions of content to the 'floating signifiers', we can begin to identify the struggles currently taking place over meaning and assess the possibilities for change. To do that, Laclau and Mouffe suggest that we focus on specific articulations, paying particular regard to the meanings that they establish as well as the meanings that they exclude.

Laclau and Mouffe imagine such contestations within a 'field of discursivity' understood as all surplus meaning not included within a specific discourse (Laclau and Mouffe, 1985: 111). The 'field of discursivity' is ontologically important in that it underscores the contingency and fundamental openness of social relations, but it has been criticized as overly (unhelpfully) broad from a methodological perspective (Jorgensen and Phillips, 2011: 56-57).

Within a particular context (policy area), not all meanings are equally open and consequently not all possibilities are equally likely. For example, the identity of a 'minority' in the context of the FCNM is categorically limited to 'persons'. This rigid closure makes it highly improbable that the content of such rights will be extended to 'non-persons'. For example, while animal rights / animal welfare discourses are by no means absent from Europe, we may confidently exclude them as discursive possibilities arising under the FCNM. The emphasis on 'persons' as distinct from 'peoples' also strongly limits the claims of collectivities per se. Thus, people's claims to self-determination (for example in the guise of secession from existing states), although less far removed from the ascribed meaning of the FCNM than animal rights / welfare claims, may still be regarded as highly unlikely outcomes in this context.
A rigorous evaluation of constraints versus possibilities for change, as is the intention here with regard to European 'national minority rights' articulations, arguably requires a more focused 'order of discourse' in which the relationships between relevant competing discourses may be assessed. An 'order of discourse' encompasses 'two or more discourses, each of which strives to establish itself in the same domain' (Jorgensen and Phillips, 2011: 56). An 'order of discourse' thus denotes a potential or actual area of specific discursive contestation within the universal 'field of discursivity'.

This paper will examine the order of discourse established by the monitoring procedures of the FCNM as illustrative of the range of articulations that currently compete within the terrain of European 'national minority rights. It will therefore pay particular regard to the list of state declarations, reservations and other communications made with respect to the FCNM, state reports, advisory committee opinions, government comments, committee of ministers of the Council of Europe resolutions, and advisory committee thematic comments.

In so doing, it will postulate two discrete and competing minority discourses in Europe: an exclusive discourse that privileges old / minorities and an inclusive discourse that is more accommodating towards new / migrants. In each case, the key nodal point within the discourse is taken to be the identity of those persons considered capable of making legitimate minority rights claims against the state.

The exclusive discourse that privileges old / minorities contains the following key floating signifiers that are used variously within different articulations in an attempt to fix a narrow identity of 'national minority rights' claimants: (1) history; (2) territory (3) nationals / citizens.

The inclusive discourse that is more accommodating towards new / (im)migrants and their descendants contains the following key floating signifiers that are used variously within different articulations in an attempt to fix a broader identity of 'national minority rights' claimants: (1) self –identification / multiple – identification; (2) non-arbitrary; (3) dynamic.

**Discursive Case Selection Criteria**

There are currently (April 2013) 44 state signatories to the FCNM. It is therefore not feasible within the confines of this paper to analyse all 'national minority' articulations. Instead, this paper will compare selected cases from each of the four key articulated positions mentioned previously. To recall, these positions are as follows:

1. A pragmatic strategy which aims to extend the key signifier 'national minority' by encouraging the inclusion of old / minority, new / (im)migrant and citizen / non-citizen groups on an article by article basis (currently the position taken by the Advisory Committee, which is the monitoring body established by the FCNM);

2. The key signifier 'national minority' remains open, although in practice the inclusion of potential claimants may vary both between citizens vs. non-citizens and across different citizen groups (as in Armenia, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Montenegro, Russia, Serbia, Switzerland, Ukraine and the United Kingdom);

3. The key signifier 'national minority' is closed to specific named citizen group claimants (as in Albania, Austria, Croatia, Cyprus, Denmark, Finland, Germany, Ireland, Italy, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and Former Yugoslav Republic of Macedonia).
4. The key signifier 'national minority' is denied and all potential claimants are excluded (Liechtenstein, Luxembourg, Malta, San Marino) (too small to show on map below)

Cases have been selected with regard to the following contingent possibilities which are taken as potentially significant for the construction of 'national minority' articulations:

1. Prior experience of ethnic conflict (presence or absence)
2. Prior experience of 'national minority rights' conditionality (presence or absence)
3. Size of old / minority population (large or small)
4. Size of new / migrant population (large or small)

It should be emphasized that no attempt will be made to isolate these factors (instead there is a presumption in favour of plurality) or to determine their causal priority. This perspective is, of course, in keeping with the post-positivist approach of the paper.

Figure 3: Selected Cases From Each Articulated Position
Preliminary Sources and References

Methodology


Texts

Council of Europe, Framework Convention for the Protection of National Minorities, State Reports, Opinions, Comments and Resolutions, available at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp


Background Reading


