



STATES, DIVERSITY AND MINORITIES

Prof. Jens Woelk
Faculty of Law
University of Trento

The great political, economic and legal challenge for modern times is the **equality** of all people. According to the slogan of the French Revolution "*Liberté, Égalité, Fraternité*", all "citizens" should enjoy freedom and equal rights. Added to this is fraternity, as an ideal bond and solidarity. These are the pillars of the social contract, which has been the virtual basis of social and state communities since the Enlightenment. As an answer to the deep - social - injustice before the revolution, therefore equality of all "citizens" needs to be guaranteed since 1789. But who is a citizen?

220 years later, the EU Treaty of Lisbon enters into force (TEU, 2009). Its Article 2 lists the values on which the Union is founded: human dignity, freedom, democracy, equality, the rule of law and respect for human rights, *including the rights of persons belonging to minorities*. The EU's well-known motto is "United in **Diversity**". Is diversity an antithesis of equality? And who is a minority and why?

The world is divided into **states**. According to the classical three-element doctrine of international law (Georg Jellinek, 19th century), states must have a territory, a population and a government that effectively controls both. For over two centuries, this concept dominated international law, just as states dominated international politics. Alongside this, however, human rights became increasingly important (e.g. the prohibition of the slave trade and slavery, of serfdom). After the World War II, these human rights were enshrined in various international declarations, in particular in the Universal Declaration of Human Rights of the United Nations (1948) and the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (1950). While these catalogues of general human rights include the guarantee of the principle of equality, they do not contain specific minority rights. Personal freedom includes self-realisation as one's own responsibility. Unlike states, which demarcate their territory (visible in borders and their control), persons are mobile. This can lead to conflicts between the interests of states and human rights (exit and entry bans, migration crisis, ...).

Schools beyond regions and borders (2021-2023)

Austria – Bosnia-Herzegovina – France – Germany – Ireland – Italy – Spain
web: www.sbrb.eu | email: sbrb.2023@gmail.com



"We the People..." These famous first three words of the American Constitution of 1787 affirm the sovereignty of the people, on which the democratic exercise of all governmental power is based. The citizens give themselves a constitution, which spells out rights and the concrete form of government (again: the idea of the social contract!). But who are "the citizens", who are "the people"? Who belongs to it? And who does not? Is there an American people? The USA is a classic immigration country, into which people from all over the world have migrated. But in the 18th century neither women nor blacks nor Indians were included in the concept of citizens. According to Article 1 of the Austrian Federal Constitution, Austria is "a democratic republic. Its law emanates from the people." Today, after 100 years, this sentence is self-evident. In 1919, after the end of World War I, many Austrians would have preferred to form a state together with Germany, whereas today an independent Austrian identity is out of the question (although "German" is the official language in Austria).

There are two, fundamentally different answers to the question "what is a people": According to the **civic approach** of the French Revolution, all persons in a given territory, without distinction, are citizens and thus at the same time "the people". This often corresponds to the *ius soli* principle for the acquisition of citizenship (birth on the territory of the state automatically confers citizenship on the newborn, e.g. in the USA). According to the **"ethnic" approach**, on the other hand, a people is a group defined by certain criteria that distinguish it from other groups (e.g. by common language, religion, history, or the like). This leads to the idea that only persons with the same criteria can form a people, corresponding to the concept of a "cultural nation". Accordingly, the *ius sanguinis* principle usually applies here to citizenship (the citizenship of the parents is decisive). While the civic approach is inclusive and largely equates population and citizen, for the ethnic approach homogeneity of citizens is a prerequisite for defining a people. Differences and diversity therefore tend to be a problem, demarcation the consequence. Of course, these are models: manifold combinations of both approaches can be found in today's world.

In the process of the **formation of modern states** (since 1648), peoples play a role as **"nations"**. Simplified, one can say that nations are peoples who are granted the right to form states (since World War I, one speaks of the principle of self-determination). In modern Europe, three large areas can be distinguished with regard to the formation of modern states, in which this process took place differently. In Western Europe, in the 18th century, France and the United Kingdom, as well as Spain, had already reached a size that made their rise to economic and military powers possible, and consequently also colonialism. Here, subjects became citizens and the equation of population and people worked, i.e. the civic approach. In Central and Southern Europe, on the other

Schools beyond regions and borders (2021-2023)

Austria – Bosnia-Herzegovina – France – Germany – Ireland – Italy – Spain

web: www.sbrb.eu | email: sbrb.2023@gmail.com



hand, there was a fragmentation into many small states and territories, while in Eastern and South-Eastern Europe three large, multinational empires dominated (Tsarist Empire, Habsburg Dual Monarchy and Ottoman Empire). In order to also create states in Central Europe that would match the critical size of France and Great Britain, it was necessary to unify the numerous territories. The concept of a German cultural nation served as a justification for this; the unification of Italy (*Risorgimento*) also took place with reference to a linguistic and cultural community. Massimo d'Azeglio's saying "*Fatta l'Italia, bisogna fare gli italiani*" is famous. (Italy is united, now we must create the Italians!). Homogeneity was thus justification, but rarely reality in practice. The multinational empires in the East found themselves under growing pressure from nationalist movements and the demand for self-determination of peoples. They were dissolved after World War I and new "nation states" emerged, whose populations, however, were by no means homogeneous. To this day, there is generally a great diversity of different population groups in Eastern and South-Eastern Europe. Time and again, therefore, the goal of some groups to form "their" nation state has led to violent conflicts.

How do states react to diversity? Basically, there are four different possibilities:

(1) **Repressive, nationalist states** emphasise national unity and the homogeneity of the population, ideologically and through measures designed to adapt reality to ideology. These are mainly assimilation, expulsion, "ethnic cleansing" and genocide. Ethnic differences or diversity must be eliminated.

(2) In the **liberal, agnostic state**, ethnic and other differences do not play any role in defining population/people, nation and state, at least officially. The Constitution is "colour blind" (according to the US Supreme Court). Different ethnic and linguistic identities must be lived in private (all Americans emphasise their ancestral origins, but their loyalty is to the USA). Despite this diversity, the emphasis on individual fundamental rights and the prohibition of discrimination both guarantee formal equality. However, official indifference to diversity can easily lead to a "tyranny" of the majority, according to whose needs the entire system is designed. This is shown by the USA's long orientation towards the "WASP" role model (White, Anglo-Saxon and Protestant). The result is the - de facto - discrimination of groups that do not fit this model and thus have to adapt to it in reality, despite equal rights. A child in Brittany who grows up speaking Breton in the family has the right to education, like all French children, but (only) in the French language. The normality created by the majority therefore requires adaptation.

(3) The **promotional state**, on the other hand, tries to accommodate this structural disadvantage of some in reality by explicitly recognising differences and overcoming

Schools beyond regions and borders (2021-2023)

Austria – Bosnia-Herzegovina – France – Germany – Ireland – Italy – Spain

web: www.sbrb.eu | email: sbrb.2023@gmail.com



obstacles in practice through special minority rights. While there is a clear majority, the minority situation is explicitly recognised and as a positive value, e.g. in Article 6 of the Italian Constitution: "The Republic protects linguistic minorities through special provisions." This principle is one of the essential constitutional principles that shape the entire legal system of Italy. It explicitly includes substantive equality, i.e. the removal of actual obstacles to full equality (Article 3(2) of the Italian Constitution). Moreover, there are special provisions for minorities at various levels, e.g. in some autonomy statutes (regional bilingualism), in a separate framework law on linguistic minorities (State Law 482/1999), in school legislation (minority language teaching), etc. These rights are particularly strong where minorities are more numerous and concentrated, in Italy, for example, in the autonomous regions in the Alpine area (Valle d'Aosta, Trentino-Alto Adige and Friuli Venezia Giulia).

(4) The counter-model to the nation-state is the **multinational state**, in which by definition there are no minorities, but only constituent groups, i.e. several "nations". Regardless of their numerical strength, these are equally of fundamental importance for the state (e.g. the Quebecois vis-à-vis Anglo-Canadians). Diversity is the rule. Therefore, the representation and participation rights of all groups are guaranteed in the constitution, a visible sign of equal status and equal rights in the common state. Examples are Switzerland, Belgium, Canada, India and Bosnia-Herzegovina. On the other hand, there are also stateless nations, e.g. the Kurds, who live in several states (Turkey, Syria, Iraq).

Minorities are not conceivable without a **majority**. Where this majority is a nation that has created a state, the exclusion of the minority from state formation is a major reason for special minority rights. The different treatment of minorities in the various states results from the respective state "model" in response to diversity and difference. In this context, the history and relationship of majority and minority are particularly important. For example, Sikhs living in Britain are allowed to ride motorbikes without helmets (this would otherwise be impossible because of their turban), while in France the turban is not even allowed on the passport photo. The special tolerance towards the Sikhs is of course related to their greater presence in Britain as well as to its colonial past. Groups in areas that are in a "different" state after a shift of borders are also often given special protection for this very reason (e.g. South Tyrol's special autonomy in Italy).

Despite the manifold differences in the concrete situation, **minorities** are thus groups that differ from the majority in objective distinguishing features (such as language, religion, ...), are numerically smaller than the majority and are not in a dominant position (unlike e.g. the whites in South Africa's apartheid regime). The distinction must have social relevance (vegetarians are probably still in the minority, but not

Schools beyond regions and borders (2021-2023)

Austria – Bosnia-Herzegovina – France – Germany – Ireland – Italy – Spain

web: www.sbrb.eu | email: sbrb.2023@gmail.com



legally recognised as such). It also requires group consciousness and the will of the minority to continue to preserve difference: the right to be different. The challenge is to respect this right and at the same time include minorities into the wider society:

united in diversity

Schools beyond regions and borders (2021-2023)

Austria – Bosnia-Herzegovina – France – Germany – Ireland – Italy – Spain

web: www.sbrb.eu | email: sbrb.2023@gmail.com