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**Human and Minority Rights
Protection by Multiple Diversity
Governance**
Routledge, New York 2019,
504 pages, EUR 153.50
(ISBN: 978-1-138-95444-1)

The book “Human and Minority Rights Protection by Multiple Diversity Governance” is a comprehensive and thorough analysis of the state of the art of minority protection. Through an extensive and in-depth analysis of historical developments, political theories and national and international case law, the authors aim to deconstruct the ‘problem’ of minorities as an ideological construct of the nation-cum-state paradigm. Provoked by the global trend of renationalisation, national tensions in the West (by now considered immune to ‘bad nationalisms’) and the rise of the far-right on both local and global levels, the book aims to provide answers to two burning questions – why should we protect minorities and whether it is possible to effectively protect them.

Already at the beginning of the book, we sense a dose of pessimism that within the present context, which frames minorities as the ‘problem’ and the ‘threat’ to the very existence of the state, effective minority protection is impossible to

be achieved. The authors, however, turn this logic upside-down and argue that, instead of minorities, the actual problem is the nation-cum-state paradigm, which requires a critical deconstruction and its eventual replacement with an alternative, more just model. To achieve this ambitious goal, they take an interdisciplinary approach building on the tenets of social constructivism (extensively elaborated on in the second chapter).

After describing the research problem and methodological contours of the analysis, in Chapter 3 the reader is introduced to the historical development of state formation and nation-building that has led to the present ideological hegemony of the nation-cum-state paradigm. This chapter relies on a critical interpretation of political and philosophical discussions in the period between the 16th and 19th centuries, as well as key historical events in Western and Central Europe, with a view to the development of human and minority rights and standards. On this basis, the authors reveal four paradoxes embedded in the liberal democratic state (Lock’s liberal paradox, Jennings’ democratic paradox, Arendt’s paradox and Böckenförde’s paradox), which amount to structural limitations on effective human and minority rights protection. However, despite the comprehensive analysis of religious and political power constellations through history, the analysis here suffers from a lack of consideration of the economic aspect, precisely the impact of the development of capitalist economic

relations on the standing of minorities. Drawing parallels from other analyses about the impact of capitalism on other discriminated groups in history, such as women (illustratively captured by Silvia Federici in the “Caliban and the Witch”), this emerges as a potentially important perspective also worth considering in the context of minorities.

In Chapter 4, the nation-cum-state is dissected as an ideological construct relying on many irreconcilable dichotomies – state society, civic ethnic, politics culture, public private, universal particular and individual vs. collective rights. Although constructed, the authors confidently argue that these ideological dichotomies are no less real as they are internalised in the very organisation of the nation-cum-state and thus used as a basis for legitimating the many problematic policies that disproportionately affect minorities. Through a rich empirical, theoretical and case-law analysis, the authors discuss these problems along the following lines: 1) the myth of neutrality referring to the duty, but also inability of the liberal state to be neutral (leading inevitably to the assimilation or marginalisation of cultural diversity); 2) the concept of collective self-determination torn between, on one hand, the goal of autonomy pursued by minorities and, on the other, the principle of the indivisibility of sovereignty guarded by the state (discussed through the case of Catalan independence); and 3) the artificial antagonism between formal and substantial equality favouring

the former to the detriment of the latter.

Further, as an additional problem of the nation-cum-state, Chapter 5 refers to the essentialist approach to “diversity as a natural difference”, which perceives groups as homogeneous entities with pre-determined behaviour based on their ethnic or cultural ‘properties’. To counter-argue this position, the authors adopt a sociological neo-institutionalist stance and discuss differences between groups as a product of interaction and social relations embedded in a specific situational context. On this basis, they rebuke the naturalised conflation of ethnicity culture and difference diversity characteristic of the nation-cum-state, and thereby open the door to intersectionism which understands identity as a multidimensional construct (consisting of dual or multiple identities). This new approach leaves room for optimism since it no longer sees internally divided societies as inherently antagonistic. However, annulling group antagonism in practice requires something that the nation-cum-state lacks (and is incapable of having), that is, social and system integration that encourages the development of multiple identities and secures equal status on both individual and group levels, in all segments of society. The significance of this chapter lies in deconstructing how ambiguous a phenomenon cultural difference can be, in contrast to the nation-cum-state illusion of it being a fixed and ‘natural’ property.

In addition, provoked by the many gross atrocities minorities have experienced in history, Chapter 6 refers to the right to existence understood as the physical and psychological security of members of a minority group; fulfilment of their economic needs while keeping their different lifestyle; and their right to have rights (i.e. Arendt's paradox). This relies on a thorough analysis of the legal standards established since the Second World War addressing various degrees of violations of this right: war crimes, ethnic cleansing, crimes against humanity and genocide. Regarding genocide, as the worst violation of all, the authors note some progress in terms of: 1) wide acceptance of the doctrine of the 'responsibility to protect', which puts the burden on states to prevent mass atrocities; and 2) the fact that not only individuals but also states can be considered perpetrators. As to the economic aspects of the right to existence, the conclusions are more pessimistic, noting that the different lifestyles crucial for the economic and cultural survival of certain groups (i.e. indigenous people) cannot be effectively protected within the present neoliberal economic context. In the end, by revisiting Arendt's paradox (the 'right to have rights') in the context of the problem of statelessness, the authors conclude that the deeply entrenched presumptions of the nation-cum-state do not allow it to be solved in favour of the most disadvantaged.

In Chapter 7, the authors discuss the obstacles to multiple identity

formation as a potential 'antidote' to the essentialist approach of the nation-cum-state to ethnic/cultural difference. As the main obstacle, they identify the primacy given to majority languages and religion resulting from: 1) linguistic standardisation of the language of majorities implying superiority and hierarchy vis-à-vis non-standard dialects and minority languages; and 2) secularisation presuming the freedom of religion as a negative freedom. The former rests on the perception of language as a means of communication, which together with the significant margin of appreciation given to states generates a favourable environment for the assimilation of linguistic minorities. The latter – the freedom of religion as a negative freedom, indirectly privileges the Christian majority while disproportionately affecting religious minorities (precisely Muslims). Without trying to undermine the conclusions about the position held by religion in Europe today, this chapter would have benefited from a clearer expression of the authors' stance on specific case law – whether they see the court's argument for building on the nation-cum-state logic, or the decisions as such, as problematic.

Chapter 8 revisits the 'formal substantial equality' dichotomy to more closely look at the tension between, on one hand, the duty of the state to refrain from discrimination and, on the other, the need for active state intervention to effectively address the unfavourable conditions faced by persons belonging to minorities.

This discussion is complemented with a deliberation on the distinction between direct and indirect discrimination on whose basis the authors build the argument for the need for a group dimension in policymaking. However, they conclude that, although necessary, the group dimension is insufficient to effectively uproot structural discrimination unless it is combined with a redistributive dimension.

As an issue related to the problem of equality, Chapter 9 refers to the effective participation of persons belonging to minorities and critically discusses a range of instruments and rights, from freedom of association to external self-determination. Based on an extensive comparative analysis of different arrangements of minority participation, the authors come to a similar conclusion as in the previous chapters, namely, that to ensure effective participation state policies/instruments must include a group dimension. In this context, the reader is also provided with a critical analysis of already implemented institutional solutions, which contrary to their initial goal have not only deepened the ethnic cleavages, discrimination and marginalisation of minorities but led to state dysfunctionality (demonstrated in the case of Bosnia and Herzegovina). Nevertheless, these failures are not pointed out as the inevitable destiny of participatory instruments, as the authors also provide some positive examples, such as the case of the German-speaking community in Belgium.

Eventually, the last chapter draws the contours of an alternative model to the nation-cum-state paradigm called multiple diversity governance. This model builds on the triangulation of the principles of liberty, equality and human dignity, recognised as the most solid basis for reconciling the ideas of political unity with legal equality and multiple diversities. The key role here is given to the principle of human dignity as the main yardstick for the interpretation of normative principles and establishment of institutional arrangements, to achieve both freedom from domination and freedom from interference by others. However, this concluding chapter would have benefited more had 'human dignity', as a highly contested theoretical concept, been critically discussed and defined. Specifically, a reference to the criticism of this concept as being too vague and potentially problematic (even retrograde) from the aspect of the lately very popular political/philosophical discussions tackling the issue of animal rights would have enriched this chapter and justified (or made the authors reconsider) the very basis of this model.

Nevertheless, this book is a must-read for all those working or interested in the areas of human and minority rights, nationalism and European politics. It provides a rich body of information and thought-provoking discussions that clearly detect and dissect the structural problems which are preventing effective minority protection. Moreover, this book

identifies the need for an alternative model to the nation-cum-state and provides the initial input in this direction. At this point, the multiple diversity governance model proposed as a solution would benefit from a wider and more critical discussion, which will hopefully inspire a more comprehensive and solid framework for effective minority protection.

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Rado Bohinc
Univerza in država: Pravna analiza družbenega položaja univerze
Založba FDV, Ljubljana 2020,
zbirka: Pravo in gospodarstvo,
348 str. (ISBN 978-961-235-964-5)

Dr. Rado Bohinc nam je postregel z dokaj obsežnim in razvejanim delom. V središču njegove pozornosti je umeščenost univerze v sistem družbenih institucij, pri čemer izstopa odnos z državo. Obravnava temo, ki jo je živel kot univerzitetni profesor, dekan fakultete in rektor univerze. Pri tem uporabi orodja pravne analize, izhajajoč iz svoje specializacije za področje organizacijskega prava. Analizira normativne akte in sklepe sodišč. Bralcu razširi pogled z drugimi področji prava in družboslovne analize, pri čemer dobro izkoristi svoje karijerne izkušnje iz politike, javnih služb in gospodarstva, vključno s pisanjem nikoli sprejetega zakona o univerzi.

Knjiga je razdeljena na osem

notranje podrobno razčlenjenih poglavij, dodan pa ji je predgovor dveh bivših rektorjev. Skozi ta poglavja avtor analizira položaj univerze z mnogoterih vidikov, kar daje knjigi značaj enciklopedičnosti. Bralcu ponuja tako rekoč več odgovorov, kot bi ta utegnil imeti vprašanj. Pravno analizo dopolnjuje z opazovanjem univerze v sistemu visokega šolstva in znanosti v Sloveniji ter z njenim odnosom do trga dela, kjer odpira tudi vprašanje zaposljivosti diplomantov. Mestoma doda tudi zgodovinsko razsežnost, izrazito pa jo obogati z mednarodnimi primerjavami, pri čemer izpostavi opredelitev položaja univerze v dokumentih mednarodnih organizacij, v nekaterih evropskih državah ter v Južni Koreji.

Avtorjev pristop je družboslovno kritičen. Ost kritike je uperjena na neustrezno izpeljavo 58. člena Ustave Republike Slovenije, ki univerzi izrecno podeljuje avtonomijo z zapisom, da so univerza in druge javne visoke šole avtonomne, da pa jim država mora zagotoviti financiranje na podlagi zakona. Namesto da bi univerzam in visokim šolam namenili posebno, njim prilagojeno ureditev, so jih po Zakonu o zavodih opredelili kot javne zavode. Namesto da bi jim omogočili, da sami urejajo notranja razmerja med članicami, z zaposlenimi in študenti, so jih podvrgli podrobnemu normiranju od zunaj, in to ne le z Zakonom o visokem šolstvu, temveč tudi z mnogimi drugimi, kot so Zakon o javnih uslužbencih, Zakon

o sistemu plač v javnem sektorju in podobni. Namesto da bi visokošolskim učiteljem, raziskovalcem in študentom omogočili ustvarjalno delo, so jih spremenili v javne uslužbence oziroma državne uradnike. S tem so povsem zgrešili pri urejanju položaja akademskega osebja, katerega naloga je skupaj s študenti ustvarjati novo znanje in razmišljati in delovati zunaj ustaljenih okvirov, ne pa rutinsko zagotavljati storitve vsem strankam v enakem obsegu in na enak način, kakor to velevajo predpisi. Namesto da bi bila univerza najpomembnejši agens družbenega razvoja, ki v partnerstvu z državo išče najboljše razvojne rešitve, je državi hierarhično podrejena in nadzirana tako, da ne more v polni meri izkoristiti intelektualnega potenciala zaposlenih in študentov, ki jih omejujejo nepotrebna pravila, postopki, poročanja in podobno. Podrejenost univerze državi tudi preprečuje, da bi ta lahko odgovorno uresničevala svoje družbeno poslanstvo, saj se mora nenehno ozirati na zahteve, ki prihajajo do nje iz državne administracije.

Takšno stanje se vzdržuje že vse od nastanka slovenske države, ko »sta bili obe takratni univerzi v bistvu nacionalizirani« (str. 313). Kljub občasnim presojam Ustavnega sodišča se v zadnjih tridesetih letih stanje ni bistveno spremenilo. Še več, tudi Ustavno sodišče ni zmoglo univerze iztrgati iz objema javnih zavodov – ne glede na to, da ustavna opredelitev avtonomije univerze ne dopušča nobenega dvoma. Tako je Ustavno sodišče odločilo, da »avtonomnost

univerze ne vključuje tudi pravice do samoorganiziranja« (str. 209), kar je po avtorjevi sodbi pravno nevzdržno. Zakonodajalec je vseskozi držal visoko šolstvo v okviru zastarelega Zakona o zavodih in krpal Zakon o visokim šolstvu, katerega obseg se je povečeval, posamezni členi pa so pogosto v medsebojnem nasprotju ter v neskladju z Ustavo. Med drugim ne opredeljuje javne službe. Je pa tudi v neskladju s priporočili in usmeritvami različnih mednarodnih dokumentov.

Posledice dolgo trajajočega neustreznega zakonskega urejanja visokega šolstva v Republiki Sloveniji so globlje, kot se zdi na prvi pogled. Avtor jih prikaže skozi polom uresničevanja strategije visokega šolstva v obdobju 2010–2020 ter skozi razvojno neučinkovitost visokega šolstva pri nas. Med drugim kljub pogosti hvali politike zaostajamo za razvitimi državami tudi v deležu visoko izobraženega prebivalstva. Kot piše avtor, »univerza v slovenski družbi žal ni partner državi, ampak njej podrejena in od nje odvisna javna ustanova z ustavno zagotovljeno, vendar v praksi neuresničeno avtonomnostjo. Razlog za takšno stanje je njen zakonsko podrobno in v mnogočem protiustavno opredeljen položaj v družbi in na tem utemeljena oblastna percepcija univerze« (str. 79).

Osrednji avtorjev koncept je avtonomija univerze, ki ga motri z razvojne perspektive in perspektive mednarodnih dokumentov. Sicer pa sledi operacionalizaciji

univerzitetne avtonomije, kot jo uporablja Evropsko združenje univerz. Gre za akademsko, finančno, organizacijsko in kadrovsko avtonomijo. Avtor posebej kritično analizira kadrovsko neavtonomnost, pri čemer univerzi ni priznana partnerska vloga v socialnem dialogu, kjer so plače in nagrajevanje po uspešnosti in napredovanju določeni z državnimi predpisi, uvrščanje v plačne razrede je določeno z zakonom, prav tako visokošolski nazivi, delovna in pedagoška obveznost. Pri tem jasno izpostavi, da avtonomija ni absolutna, je pa nujno potrebna, če naj univerza razvija partnerske odnose z državo in drugimi deležniki. Posebej zanimiva je njegova opredelitev sodobne univerze, ki bi morala biti raziskovalna in ustvarjalna, vpeta v družbeno okolje, mora delovati v občo korist, mora biti odprta v mednarodni prostor in povezana z njim, njeni značilnosti pa sta tudi univerzalnost in odličnost.

Avtor ne ostane le pri kritiki. Zavzame se za spremembo zakonodaje o zavodih, pri čemer bi morali upoštevati njihove različne funkcije, poslanstva in vire financiranja ter slediti praksi razvitih držav, v katerih so javne službe pogosto organizirane po korporacijskih načelih, visokošolsko izobraževanje pa štejejo kot gospodarsko dejavnost. V tem okviru bi morali sprejeti tudi poseben zakon o univerzi, ki bi ji priznal

poseben status najvišje kulturne, raziskovalne, izobraževalne in razvojne institucije in jo razločil od drugih visokošolskih organizacij. Kot pravi avtor, je »nujno temeljito preurediti visokošolsko in raziskovalno zakonodajo ter vzpostaviti sodoben institucionalni okvir ...« (str. 11). »Univerza naj ima status samostojne in samoupravne neprofitne korporacije« (str. 145). Mora biti avtonomi zavod s posebnim položajem, podobno kot ga ima Slovenska akademija znanosti in umetnosti. Pri oblikovanju predlogov avtor ne ostane le na načelni ravni, temveč da zelo konkretne napotke, kako to urediti.

Knjiga je pregledno urejena in razčlenjeni podnaslovi omogočajo bralcu, da hitro najde vprašanje, ki ga zanima. Podajanje je tekoče brez nepotrebne pravne ezoterike in je tako dostopno širokemu krogu izobraženih bralcev. Priporočam jo vsem, ki iščejo odgovore na vprašanja o prešibkem razvoju visokega šolstva pri nas. Še posebej pa pomaga pojasniti številne nelogičnosti, na katere pri svojem delu in študiju naletijo akademsko osebje in študenti. Ko se ob koncu vprašam, ali v tej knjigi kaj pogrešam, je to analiza vloge sindikatov in študentske organizacije pri ohranjanju nizke avtonomije slovenskih univerz. To pa je morda tudi tema za naslednjo študijo.