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Abstract

A review of:

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Keywords

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Democracy, Minorities, and International Law by Steven Wheatley, Cambridge: Cambridge University Press, 2005. 201 pp.

Steven Wheatley's Democracy, Minorities, and International Law explores the contributions which international law may make to resolve cultural conflicts in democratic states. His argument may be summarized as follows. First, international law offers several important principles with regard to cultural minorities. Chapter one surveys the right to enjoy one's culture, or, as he calls it, "cultural security." At minimum, according to the International Covenant on Civil and Political Rights, minorities "'shall not be denied the right...to enjoy their own culture, profess and practice their own religion, or to use their own language'" (62). At maximum, states are obligated to protect minorities, and to "encourage conditions for the promotion of their identity" (63).

Chapter two examines the right of peoples to self-determination, which is not equable with secession, though Wheatley concedes that secession might be the only efficacious solution to difficult cases in which majorities cannot admit rights of cultural security to minorities. Self-determination might entail guaranteed rights of participation in government through constitutional reconfigurations to "accommodate the 'multi-nation' character of the state" such as in Bosnia-Herzegovina (83), or territorial autonomy and self-government, such as that provided for by the 1994 Ethiopian Constitution (85). Surprisingly, Wheatley later derides constitutional reconfigurations as incompatible "with the concept of democracy recognized in the [sic] international instruments" (189).

After a thorough exploration of these two rights, Wheatley concludes that the international legal regime regarding ethno-cultural groups is indeterminate: while broad principles are recognized, they remain unaccompanied by laws that delineate with specificity how these principles are to be effectuated. This process, largely the domain of domestic institutions, thus informs the second part of his argument. Chapter three maintains that treatment of cultural minorities in democratic states permits the international community an entry-point into the state, since democracy has ascended to the status of an international legal obligation. In other words, on Wheatley's reading, how a democracy deals with its minority issues is an international, not solely a domestic, issue. Consider international outrage (and European Union sanctions) over the 1999 Austrian parliamentary election of Jörg Haider on a xenophobic, anti-Semitic platform; international scrutiny can restrain state policy towards minorities.

On Wheatley's view, democracy should not simply be construed as majority rule, but as a system of government that is both open to all and that ensures a scheme of rights available to all. Furthermore, he maintains, cultural differences are best respected and protected by deliberative processes in ideal conditions, not by particular, prescribed institutional arrangements (189). Formal, inclusive and reasoned deliberation may be a good thing, but what is a minority to do when votes are still tallied and majorities determine policy? Wheatley has answers: either the State must justify its position on non-cultural grounds or, in particularly difficult cases, political boundaries should be redrawn "to reflect the fact that there are two political communities, not one" (196).

Yet these responses precipitate unease. First, states may simply invoke national security to justify abridging the rights of minorities (Think of the Japanese-American internment camps,

which the U.S. Supreme Court unanimously declared illegal over 63 years ago). This point seems to annul much of his argument, which may not be so palatable in this age of the “war on terror.” Second, what does redrawing of political boundaries mean? Can we really expect states to willingly dis-integrate? Are there grounds for believing that reasonable democratic states will grant increasingly restive minorities—Scots, Basques, and Québécois—increasing autonomy? My invocations suggest yes, but these “successes” merely highlight the plight of indigenous populations. Third, I would argue that he unfairly disparages high courts: “there is no reason to privilege those who would claim the title of ‘philosopher king’ simply because they sit in a judicial capacity” (193). True enough, but one can hardly be certain that democratic peoples will always uphold the rights of minorities. Otherwise a book such as his would be unnecessary. Sometimes so-called philosopher kings are needed to protect rights against majoritarian impulses.

Overall, the book is admirable. It comprehensibly wades through an array of literature. It focuses on democracies—the very states we tend not to think of when dealing with cultural conflicts. And it is nearly exhaustive in its research such that one can easily trace the evolution of interpretations and implementations of broad principles, thus making the book perfect for students at all levels.

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