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Review of Henrad K.: 'Minority protection in post-apartheid South Africa: human rights, minority rights, and self-determination'

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overall value. Human rights scholars, researchers, activists, NGOs, policy-makers, international, regional, and national human rights institutions, and others interested in the protection and promotion of human rights within and outside Africa will find it particularly useful.

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Kristin Henrard. *Minority Protection in Post-Apartheid South Africa: Human Rights, Minority Rights, and Self-Determination*. Westport Conn.: Praeger, 2002. xvi + 310 pp. Notes. Bibliography. Index. \$ 69.95. Cloth

One of the most remarkable features of South Africa's postapartheid constitutions is the elaborate accommodation of minority rights, especially with regard to language, religion, customary law, and the right to internal self-determination. Under apartheid, the discourse of group rights and the separate destinies of South Africa's diverse population groups was used as a divide-and-rule ideology to legitimize white domination. In reaction, the African National Congress (ANC) and its allies have emphasized the unitary nature of the South African state and the essential equality of all its citizens, regardless of race or ethnicity.

The ANC's universalist concept of mankind, with its strong emphasis on egalitarianism, left little space for discussion about the status of customary law and chiefs ("feudal relics" and "stooges of apartheid"), the status of Afrikaans ("the language of the oppressor"), or ethnic identities ("false consciousness"). The liberation discourse stressed the concept of nonracialism, not multiracialism. The ANC also was clearly influenced by the ideology of its loyal ally, the South African Communist Party, in which class rather than race or ethnicity was seen as the fundamental organizing principle of society.

Not surprisingly, the principle of equality in all its dimensions was the ANC's overriding concern for the new constitutional dispensation. But the former liberation movement proved amazingly willing to engage in attempts to reconcile the principle of racial, religious, and gender equality with the protection of ethnic and religious minorities. Ethnic minorities were irredeemably burdened by the apartheid legacy, but since their rebirth as cultural communities they have received a fairly generous deal. Customary law has been recognized (including polygamous marriages), chiefs have retained their official status and improved their salaries and stature, eleven South African languages have been recognized as official languages, and efforts have been made to accommodate Muslim personal law.

Minority Protection in Post-Apartheid South Africa explores the intriguing question of how to undo minority rule while protecting minority interests.

Henrard describes in considerable detail the relevant sections of the 1993 interim constitution and the—slightly less generous—final constitution of 1996. She emphasizes that South Africa's constitution makers interpreted equality not as a merely formal notion, but as substantive equality. Most interesting is chapter 6, which deals with the implementation phase. In order to counter past disadvantages, the state has to pursue affirmative action policies to achieve meaningful equality and representative institutions while avoiding "unfair discrimination" against whites. Similarly, the tenets of gender equality have to be reconciled with respect for customary law and Muslim personal law. The main interest of the book is its spelling out of these dilemmas, taking into account some later developments on the basis of judgments by the Constitutional Court. The author rightly cautions that the democratic transformation process is still in flux.

Henrard employs the format of a textbook: The issues are clearly and systematically itemized, followed by detailed legal analysis with reference to international law. Nonlegal minds, however, may have trouble memorizing all the sections and articles referring to the constitution or to international law.

There is no attempt to situate the process of constitution-making in a wider sociopolitical context. The author does not look beyond the world of legal documents and arguments to explore the meanings and consequences of constitutional law in South African society. Why was the ANC so forthcoming, for example, in accommodating traditional leaders? Was it out of respect for African cultural traditions or in order to gain control over the chiefs and prevent them from becoming counterrevolutionary agents, as happened in Mozambique? To what extent do minority rights—and the concomitant state subsidies—open the door for ethnic entrepreneurs whose *raison d'être* lies in reinforcing group identities or even in inventing communities or traditions? The Griqua are now creating the chiefs they never had. Henrard tends to take the rhetoric of the minority discourse too much at face value.

Nevertheless, this is an informative and balanced overview of the sensitive issue of minority rights in postapartheid South Africa, and it deserves to be commended for its clarity of style and argument.

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