

**Kristin Henrard.** *Minority Protection in Post-Apartheid South Africa: Human Rights, Minority Rights, and Self-Determination.* Westport: Praeger, 2002. xvi + 310 pp. \$83.95, cloth, ISBN 978-0-275-97353-7.



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Six years after South Africa's formal transformation to democracy, which led it to join the mainstream discourse of human rights issues, Kristin Henrard's *Minority Protection in Post-Apartheid South Africa: Human Rights, Minority Rights, and Self-Determination* is an attempt to evaluate constitutional development minority protection, a term with special connotations in the South African context.

The book comprises three distinct parts. The first (chapter 1) provides a theoretical framework for the discussion. The second (chapters 2-5) describes the South African scenario and provides a chronological description of the constitutional process and results. The third part (chapter 6) evaluates the implementation of the constitutional framework.

The theoretical groundwork in chapter 1 begins with a concise account of the historical development of minority protection and introduces the principles of non-discrimination and substantive equality. Henrard provides a definition of "minority" and highlights the relationship between minority protection on the one hand, and individual

human rights, minority rights standards, and the right to internal self-determination on the other. She argues that all three types of rights are necessary to provide an adequate system of minority protection.

In chapter 2 Henrard explains her choice of South Africa as a case study. First, she notes that minority protection is also relevant for plural societies with many population groups without a clear majority, of which South Africa is a classic case. South Africa is also of interest because of apartheid's legacy of abusing minority and group protection mechanisms to perpetuate minority rule. Thirdly, minority protection was prominent in the debate on constitutional reform in South Africa. Chapter 2 also provides a short description of the minority phenomenon in South Africa, and a summary of strategies practiced by the apartheid regime related to minorities, particularly in terms of language, religion, education, and traditional leadership, themes which later appear as benchmarks for evaluation of the constitutional process and implementation measures.

Chapter 3 describes the negotiations leading to the 1993 Interim Constitution and the Constitution itself, focusing on equality, language and education, power sharing, customary law, traditional leadership, and self-determination.

Chapter 4 covers the negotiations leading to the 1996 Constitution, focusing broadly on the same parameters as chapter 3, but also addressing more general constitutional issues, such as the horizontal application of equality and the general limitation clause.

Chapter 5 evaluates the constitutional foundations of post-apartheid South Africa, again through examination of human rights, minority and group rights, and internal self-determination. Henrard suggests that in the balance between minority protection and accommodation of population diversity on one hand, with unity and national building on the other, emphasis is often on the latter rather than the former. She also concludes that together with a move away from notions of territorial self-determination, there is recognition that the group dimension is essential for adequate accommodation of population diversity.

Chapter 6, the longest in the book, describes the implementation of minority protection measures in post-apartheid South Africa. It begins with examination of constitutional and other case law on equality, and proceeds to examine the accommodation of linguistic diversity, the right to education, political rights, the role of customary law, and power sharing. Henrard notes some difficulties in implementation of the constitutional framework. Concluding, she opines that while it is still too early to formulate conclusions on the implementation of minority protection, the constitutional foundations for it are available.

The second part of the book is by far the best. It follows the chronological development of the Constitution and its implementation. This enables the reader to understand the debt of the various constitutional provisions. Moreover, the detailed description and discussion, particularly in chap-

ters 3-5, provide the reader with an intimate understanding of various minutiae and intricacies. Unlike many constitutional textbooks which review individual rights against international standards and in abstract, Henrard exposes the particular local issues that should be read into the Constitution. As a result, the book is a valuable "annotation" of the minority protection aspects of the Constitution.

The main problem of the book, however, is that the three parts of the book are not linked strongly enough. The book is clearly a continuation of Henrard's earlier work, *Devising an Adequate System of Minority Protection*.<sup>[1]</sup> The theoretical framework in the current book is explicitly based on the previous one. What is lacking, however, is a closer link of the theoretical parameters with the particular characteristics of South Africa. As a result, the attempt to tie the legal analysis with the socio-political is not very successful.

In the first section, theoretical discussion is so brief that there is no discussion (besides the definition of minority) of the applicability of the minority protection regime to privileged minorities. Henrard clarifies that according to her definition, which is a group that is numerically smaller than the rest of the population (thus making "minority protection" parallel to "accommodating diversity"), nondominance is not an issue. Thus, Afrikaners are a minority. However, this is not reflected in the theoretical groundwork. Is the regime for minority protection neutral towards the status of the minority? If it is, how is its application affected by such special circumstances? If it is indeed geared towards underprivileged minorities, how should it be applied to the Afrikaner community? Given that Henrard later focuses largely on the Afrikaner community, this absence of theoretical analysis is disappointing.

The inadequate linkage to the local scenario also permeates the third part of the book. While under no circumstances can it be said that the analysis is abstract, further information on soci-

etal forces would have helped the reader appreciate the significance and impact of the constitutional framework. Moreover, there is almost no reference to non-governmental sources or to voices outside the institutionalized negotiating Parties (both in government and in opposition). It is difficult to imagine that there are no voices in South Africa willing and able to offer a critical realistic assessment of some of the initiatives, their appropriateness and efficacy. Thus, the evaluation sometimes resembles a national report to a UN human rights committee more than a legal-political analysis. In addition, it is surprising how little case law there is on the constitutional framework and its implementation. This, together with Henrard's own caveats, raises the question whether the final chapter is not a little premature.

That said, the book is carefully researched, relying on written sources and interviews, with the final chapter particularly impressive in the details it contains on legislative and administrative initiatives.

Finally, a word on editing. The book is replete with linguistic and editorial flaws. As English is not Henrard's first language, responsibility lies with the editor. Particularly annoying are brackets containing words that should have been deleted. Those as well as extremely cumbersome sentences appear on almost every page. These are avoidable obstacles in reading a book which requires and deserves careful attention.

A more substantive problem is the shorthand references to international and constitutional provisions without clarifying their content (or clarifying it in endnotes, which, by definition and location, are complementary to the text and not part of it); see page 119, for example. Similarly, references to the case law without laying out the facts (pp. 167-169) leave the reader baffled. On the other hand, basic Latin legal terms are translated into English (pp. 8, 11, and more).

Although marketed as a work on African history, this book would probably make easier read-

ing for legal scholars, as it assumes substantial familiarity with legal doctrine, particularly in the field of human rights. However, the juxtaposition of the South African context on the theoretical framework transfers it from a purely legal analysis towards a socio-political document. This combination should be received with enthusiasm, both by legal scholars, often accustomed to only abstract models, and by political scientists and historians, who may have interest in a different disciplinary approach to an otherwise familiar topic.

In conclusion, Henrard makes an important contribution to constitutional analysis, applying her framework for minority protection to the constitutional process in South Africa. The attempt to evaluate the success of the framework against reality is perhaps a case of too much too soon, as it suffers from too little application against the particular backdrop of South Africa, absence of non-governmental input, and, as Henrard herself remarks, insufficient historical perspective. Nevertheless, Henrard's book provides a valuable account of the development and interpretation of the South African Constitution with regard to measures for minority protection and accommodation of population diversity.

#### Note

[1]. *Devising an Adequate System of Minority Protection: Individual Human Rights, Minority Rights, and the Right to Self-Determination* (The Hague and London: Martinus Nijhoff Publishers, 2000).

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