Language and Religion Within Cultural Autonomy Arrangements: An Exercise in Minority Agency?

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Cultural autonomy describes the "devolution of political powers to nationalities/groups formed on a non-territorial basis through voluntary individual affiliation of their members" (Bauböck, 2001, 2) in order to provide the space for the cultural development of minority groups. It can be, therefore, understood as a form of non-territorial autonomy. Commonly, cultural autonomy as a means of self-governance on a non-territorial basis is juxtaposed to territorial autonomy, whereby autonomy arrangements follow territorially based criteria (i.e. criteria that apply on the basis of geographical identification). In practice, territorial and non-territorial elements of autonomy can co-exist.

Given the, often, abstract conceptual understanding of NTA, the aim of this chapter is not to provide an analysis of the ideal type(s) of cultural

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autonomy arrangements in minority group contexts. Instead, it purports to evaluate the design, implementation and evolution of such arrangements between states and minority groups as applied in specific areas of minority culture. Following a first brief section that describes the main features of cultural autonomy (see also Chapter 8), the chapter will focus on two important identity markers of minority groups to show how these have formed the basis for a number of NTA arrangements. These are language and religion which are at the heart of the protection of minority identities. Through the lens of these two important identity markers, the chapter will adopt a double objective: first, to outline the variety of cultural NTA arrangements and their limitations from a diversity governance perspective on the basis of language and religion and second, to highlight the link between cultural forms of NTA and minority agency.

9.1   The Main Features of Cultural NTA Arrangements

Cultural autonomy has been developed by theorists in Europe from the nineteenth century onwards and has known a number of historical attempts at implementation in order to manage diversity in highly heterogeneous contexts. Since its inception, cultural forms of NTA have extended beyond self-government arrangements to cover also informal co-decision arrangements between state and non-state actors, with the aim to manage diversity at all levels of government. To do so, the challenge in the contemporary applications of NTA has become to shift to less state-centric institutional approaches when protecting cultural diversity in order to allow for the empowerment of minority groups.

Cultural NTA arrangements have two main purposes: to guarantee collective rights in selected spheres of competences to the groups concerned but also to give shape to the right to determine one's conditions of cultural existence (normative autonomy). The most common forms of cultural NTA concentrate on awarding a linguistic, cultural, or religious minority the possibility to form a legal entity with public law legislative status. Such bodies are usually (though not always) distinct from non-governmental organizations and associations promoting the interests of their members. Distinguishing minority rights entitlements from NTA arrangements based on language and religion is not, however, straightforward: proposed criteria focus on the emphasis of NTA on

institutions as key elements (Malloy, 2015) and/or the degree of insti-tutionalization of the diffusion of powers from the state to entities representing minority groups (Ibid.).

In general, the recognition of national cultural autonomy arrangements by states may entail state support towards the designated institutions to fulfil their aims. Within such a framework, 'cultural councils' have certain (limited) legislative or executive functions, comparable to those of regional or local governments. Instruments delegating some power to designated NTA institutions to manage their cultural affairs can range from the establishment of fully functioning self-governing institutions to merely symbolic policies. The personal scope of cultural autonomy bodies extends to individuals that are members of the minority cultural group, regardless of their geographical location. Materially, their scope of compe-tences can cover culture, language, religion, and customs of the group but not any general functions that have a more territorial dimension (e.g. public transport). Common examples of areas covered by cultural autonomy arrangements include education, media, as well as personal and family law in some cases.[1]

In cases where minority groups do not enjoy state recognition or public law status, cultural forms of NTA can also become bottom-up processes, aligning themselves closer to functional types of autonomy (see Chapter 8). In those cases, minority cultural communities take the initia-tive to form religious, representative, educational, and other organizations with which the state can interact. Such arrangements cover a wide range of culture-related activities and aims such as the construction of places of worship, the establishment of educational institutions, institutions related to the production/consumption of foods, organizations that cater to women, youth or the elderly among the minority group or, very charac-teristically, religious councils and/or tribunals that serve specific cultural communities in matters of dispute resolution. While some of these forms of cultural organization fall into the scope of minority rights as applica-tions of the right to freedom of association, some move beyond the legal framework of minority protection and interact with states in the provi-sion of public services. In either case, the risk, within these arrangements, from the perspective of the minority groups, can be that they may lead

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[1] See for example Articles 11–15 of the Law on National Councils of National Minori-ties, Official Gazette of the Republic of Serbia, No 72/2009 or Chapter V of the Hungary Act CLXXIX on the Rights of Nationalities.

to the accommodation of values and norms that are contradictory to the political and legal systems in which these groups exist. In addition, these initiatives can also raise questions of legitimacy in terms of representation for the minority groups themselves, as the example of the Islam Councils illustrates below.

Case study	**Islam Councils in Europe** Established as a result of a bottom-up process initiated by Muslim diasporic communities in Europe or as part of government sponsored initiatives, these bodies have been created to provide a channel of communication between Muslim minority groups and their respective states. They encourage the reconciliation of religious observance with the rule of law, signalling the demand of Islamic religious bodies for recognition and representation of their interests. They often tend to be constituted however only by a part of the communities they represent (for instance primarily Sunni male-dominated segments of these groups). They can be found in many European states such as Austria (Islamische Glaubensgemeinschaft in Österreich), Spain (Comision Islamica de España), Italy (Consulta per l'Islam in Italia), or Germany (Deutsche Islam Konferenz) to name a few examples.

One of the critical challenges that cultural autonomy arrangements face concerns the criteria for belonging to the group benefiting from it (see also Chapter 8). On the one hand, self-identification matters insofar as the individual should feel part of the group. On the other hand, minority groups also wish to exercise some degree of control to prevent false intrusions. In general, the rights to self-determination and to association guarantee to the individual both the right to 'opt-in' but also to 'opt-out' of the minority system. The crucial character of the definition of group membership is further challenged today by the presence of multiple, overlapping and even shifting identities of individuals. Finnish legislation, for example, when determining Sami membership, establishes a dual legal basis: first, on the basis of self-determination where members express their subjective intention to associate with a group (subjective criterion) and second, on the basis of the closeness of the persons to the Sami community assessed on whether one or both of their parents spoke the Sami language or on whether one or both parents learnt Sami as their first language (objective criterion).[2]

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[2] Finnish Official Gazette SSK 17/1/1995/974.

Another important element of cultural autonomy arrangements in Europe (and beyond) stems from the fact that the geographic concentration of groups is no longer the norm due to population mobility. This is why, very often, cultural non-territorial autonomy is considered to be a supplement to territorial autonomy arrangements.

To sum up, although there are no universally accepted legal definitions neither of the concept of autonomy nor of culture, it is worth noting that the OSCE 1999 Lund Recommendations on the Effective Participation of National Minorities point out that 'non-territorial forms of governance are useful for the maintenance and development of the identity and culture of national minorities' and, within their Explanatory Note, further stress that institutions of self-governance must be based on democratic principles and the autonomous authorities have the obligation to respect and ensure human rights to all persons within their jurisdictions, even of the 'minority within a minority'.

9.2   Minority Identity Markers and NTA

There are several cohesive cultural elements that may impact the evolution of collective identities and broader integration processes within multi-ethnic and multicultural societies. Among these elements, language and religion are widely recognized as determinant cultural traits, though both are difficult to determine. As key cultural factors within the European context, non-territorial autonomy arrangements have focused on them as central elements in the institutional attempts to organize autonomously minority cultural life.

In practice, the benefits for minority groups from cultural NTA arrangements are modest upon implementation. Being opaque and fragile and containing limited legal entitlements for minority groups, these arrangements often do not reach their full potential. Particularly in relation to the aim of cultural preservation, national cultural autonomy arrangements in addition may in some instances assume that minority communities are homogenous groups culturally speaking and impose as a result static representations of minority cultures while creating tensions between groups rights and individual rights of some of their members (e.g. gender discrimination). Both the limited scope of their activities as well as the essentialization processes in cultural terms have implications for the degree of exercise of agency for the groups concerned.

9.2.1   Language

Language constitutes a prominent identity marker for minority groups. For some, it is arguably the main cultural creation of any minority group. It connects individuals with the same ethno-linguistic background to a sense of community in at least three ways: first, because language reflects a group's cultural identity, essence, and history. The second way that language matters for minority groups is as a social medium to organize the life of a community in schools, media, employment, or courts. Finally, language is also a symbolic power element as well as a public visibility instrument, as minorities use their language to assert distinctiveness and uniqueness, often with political implications.

Language, as one of the salient identity markers of a group, has been historically present in several self-determination struggles in Europe and has been furthermore closely associated with European nationalism during the nineteenth century. Similar to the broader framework of the distinction between territorial and non-territorial autonomy, the recognition of the rights of minority cultures, in connection to language policy, is usually based on the choice between regimes based on *territoriality* (where linguistic rights are afforded to inhabitants of a defined geographical area) and those based on *personality* (where linguistic rights are given to persons belonging to certain groups independently of territory).The second category, of particular interest here, presupposes self-identification of the members of the groups and a certain capacity of the group to govern itself. It is generally premised on an understanding of linguistic diversity as 'both a condition and an argument for political mobilisation' (Arraiza, 2015, 12).

Non-territorial autonomy models allow minority language speakers to use their language across the territory of a given state when accessing state services (e.g. in education, within public administration). Linguistic forms of NTA are essentially born out of the complex relationship between languages, societies, and political institutions. In simpler terms, linguistic diversity affects the design of autonomy arrangements and vice versa (Arraiza, 2015, 8). At the basis of these arrangements are identity claims aiming mostly for state recognition and/or state support in minority culture preservation, as the example of minority language schools in Serbia shows below.

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<tr><td>Case study</td><td>

Linguistic NTA and National Minority Councils in Serbia

Teaching of minority languages is available in Albanian, Croatian, Hungarian, Romanian and Slovak (pre-school/primary/secondary levels of education) as well as in Bulgarian and Ruthenian (primary/secondary levels of education) in Serbia. National minority councils of each respective group are involved in the setting up of own schools. They can participate at all educational levels from preschool to post-secondary in the management of the schools through proposals, recommendations and opinions, the appointment of school management boards as well as that of principals, and also have a say in the constitution of syllabi related to minority history, culture, language and textbooks (Articles 12–13 of Law on National Councils of National Minorities, 2009).

In practice, however, Minority Councils have no decisive authority in their area of competence and no legislative or taxation powers and therefore only function as consultative bodies (Yupsanis, 2019, 86).

There are also divergences observed among the minority groups in terms of the delivery of education in their native language. For example, there are 21 schools offering education in Bosnian as opposed to 72 schools for Hungarian speakers for approximately the same population size for both groups. The number of monolingual minority schools is even more reduced: 12 Albanian, 8 Bosnian, 8 Hungarian, 4 Romanian and 4 Slovak. Concerns related to teaching personnel and financial resources allocated to these schools persist (Viscek, 2018).

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In general terms, the question of language use, especially within education but also in public administration, is a commonly contested one within majority-minority relations. Particularly for education, determining the language of instruction within educational establishments largely depends on where the responsibility for education as a competence lies. NTA functional autonomy arrangements are common in education systems, especially where linguistic minorities are sufficiently concentrated to create minority language/minority religious schools (e.g. schools in North Macedonia can be provided in Albanian subject to sufficient demand).[3] The determining criterion in qualifying such schools as forming part of a web of NTA arrangements is the degree of autonomous decision-making power and agency (see the Canadian example of Minority School Boards below). Indicatively, national minority self-governments have been able to either take over from the state the management of minority schools or have established new ones or other supplementary minority education schemes to provide culturally relevant education to their members.

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[3] Law on the Use of Languages spoken by 20% of the Population of the Republic of N. Macedonia and in the units of Local Self Government, Official Gazette 101/08.

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Case study

Educational NTA in Canada and the Minority School Boards
The Canadian Charter of Rights and Freedoms defines the conditions under which Canadians can access publicly funded education in a minority language. Section 23 of the Canadian Constitution provides a right for citizens who are part of a linguistic minority in the province where they reside to be educated in their own language. This form of NTA has been institutionalized through the establishment of **minority school boards.** Each province and territory has established French-language schools boards to manage the French-first-language schools. In Quebec, the opposite structure applies to English-first-language schools.
These school boards represent a form of educational self-management. They adapt the provincial school curriculum to the minority's culture while integrating aspects of culture into it (e.g. events, historical elements). The Boards have decision-making powers that include the establishment of the programme of instruction within the schools, the administration of minority language facilities as well as the recruitment and assignment of teachers and other personnel. In that sense, they represent a comparatively advanced form of linguistic NTA both in legal and implementation terms.
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NTA arrangements in education, however, can lead to the separation of students according to language (but also religion). This kind of separation cannot be nevertheless qualified as discriminatory in human and minority rights legal terms as it guarantees the right to education in one's mother tongue. The case of the self-governing union of Danish minority schools in Germany (Schleswig-Holstein), which though private is entirely publicly funded by the state (with an equivalent scheme applying in Denmark's German minority schools) is a characteristic illustration of linguistic NTA that separates students according to minority language. Similarly, as the Belgian case shows below, these schools represent attempts to balance the principles of territoriality and personality.

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Case study

Linguistic NTA in Belgium

According to Article 129 of the Belgian Constitution, combined with Article 30, linguistic communities in Belgium can regulate language in the areas of administration, education and the private sector, within each community's borders. The arrangement allows French-speaking and Flemish-speaking communities to administer their cultural matters autonomously. Non-territorial units for each community therefore control matters related to education, language, culture, and health care.

The establishment of 'language areas' within Belgium illustrates the attempt at balancing the principles of territoriality with personality. This is because language in the Belgian context is not a neutral property, with an intense historical background (e.g. see the Flemish Movement of the last nineteenth century).

Particularly in the bilingual Brussels Capital Region (covering 19 municipalities) no official registration exists of who is a Flemish or French speaker. In theory, at least, people can shift their linguistic identity to the extent that the state supports both languages, using for example the services of a francophone hospital while reading public documents in Flemish. In practice, attitudes towards language use in Brussels mostly concern the adequate use of Flemish alongside French. The linguistic debate has been also intensified in the recent past in the periphery of Brussels which extends to officially Flemish-speaking municipalities: French-proficient Brussels population relocating to these areas has been perceived as a threat of *frenchification* of Flemish municipalities. The quest for the construction of monolingual homogenous spaces on the basis of linguistic autonomy arrangements seems therefore to be an ongoing process.

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9.2.2   Religion

Minority status of a religious and ethnic group, especially in diaspora, tends often to reinforce religious identification. Specifically, with regard to religion, minority cultural autonomy can take two forms: first, some countries provide for certain laws related to religion that apply to members of religious minorities regardless of where the person may be located. These kinds of arrangements are qualified as *personal law*. Issues of personal law usually cover aspects of family law (e.g. marriage, divorce, inheritance). Disputes are solved by different jurisdictions specific to religious communities. A typical example in this case is India and its personal law system. A second option is for the state to assign intermediaries to organize religious-identity-related activities. For example, the German Islam Conferences operate as a state-stakeholder partnership: the German state negotiates with various Muslim organization aspects of cultural and everyday life in Germany.

Breaking the limits of territoriality, minority groups often organize themselves to provide public services in culturally relevant ways to their respective group. This dynamic movement is particularly reflected in different patterns within public education (e.g. Islamic faith schools in the UK, Denmark, or Austria).[4] Minority groups are not, however, in general, automatically designated as beneficiaries of cultural autonomy. In simpler terms, there is no right to autonomy granted to them by virtue of international human rights law. States may decide to award degrees of cultural autonomy, however, either because they perceive such groups to pose a threat to the survival of the state in general or because the state considers the vitality of such groups as relevant for political, ideological, or even historical factors. In some cases, more concretely, minority groups create associations under private law within a domestic legal system which are active in the promotion of the cultural interests of a minority, expanding therefore the concept of cultural NTA as initially formulated by Bauer and Renner [for more on this see Chapter 1].

The form of these initiatives is shaped in present times, by the increasingly complex constellations of interactions between the State, the market and non-state, including religious, minority actors. They are also connected to the questioning of secularism (i.e. the separation of the state and religion) as the dominant trajectory to govern cultural diversity. Such conditions have triggered a process of change in the distribution of public goods from states. This happens because, although there is a decline of individualized religion's significance and role in society, at least within Europe, religion and religious actors remain still heavily involved in providing health care, education and other social services and at the same time, activism continues to be grounded on religious identities. As importantly, due to population movements particularly within Western Europe, minority religious identities are more and more hybrid and policy (as well as legal) interventions are called upon to take account of the growing spread of such multiple *hyphenated* identities.

Forms of NTA based on religious minority affiliation have been accordingly designed to prevent/limit conflicts and are most visible in public education: for instance, a typical scenario could envisage a private school,

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[4] The 1960 UNESCO Convention against Discrimination in Education was the first international legal document to establish a right awarded to a minority group to set up its own private schools under certain conditions.

operating in a minority language and/ or a minority religion and maintained by a minority cultural association issuing education diplomas under a licence by the State. It should be emphasized that these forms of diversity governance function as pluri-centric networks where state and minority-led actors form alliances towards culturally related public purposes. Autonomy in this context functions less as a framework or arrangement awarding cultural rights to minority groups through specific institutional set-ups. It resembles more a space in which minorities exercise agency by developing and promoting matters related to their culture in cooperation with the state. While these arrangements do not strictly fit into the framework of cultural NTA as devised by Bauer and Renner, especially as a number of religious minority schools are not recognized as corporations under public law, they nevertheless constitute responses to minority cultural claims and the quest for the protection of cultural diversity in contemporary terms. The essence of these arrangements relies on a partnership of these bodies with the state (e.g. through partial or full funding of their activities, the adoption of national curricula with discretion in certain areas, etc.) in order to provide education.

The role of minority religious schools in a globalized context is of interest to NTA arrangements and autonomy more broadly, especially when state support is entailed. They serve as institutions created for and by minorities to resist homogenization of their cultures (language, culture, religion, and traditions) while building bridges between groups to come into cultural contact.

At the same time, minority religious schools[5] are commonly singled-out as policy-related concerns connected to integration, social cohesion, citizenship, and the rights to religious freedom and education. To take the example of Muslim groups, the number of Islamic schools is growing in Europe along with the number of Muslim learners who attend them. The increase is due to the cultural and religious claims of Muslim minority communities, the group's population increase and parental dissatisfaction with secular public-school systems that are perceived as an 'alien social environment' for Muslim learners.

The role and support of the State can vary when responding to Muslim minorities' claims to religious education: in some European countries,

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[5] Religious or faith schools encompass all schools that adopt a distinctive religious character in their operation (e.g. curriculum, admission policies, appointment of teaching staff, internal regulations, etc.).

religious education can be funded either through grants or within the structure of the public education system, in itself. In other contexts, Islamic schools are privately funded or alternatively publicly funded and privately operated and even publicly funded and publicly operated.[6]

In the context of bottom-up movements towards the creation of Islamic schools in Western Europe, the state continues to play an important role, especially when regulating the activities of public religions. The level of competition and potential conflict among such public religions push the state to forge partnerships and co-operate with them.[7] For education, this means that faith organizations are encouraged to position themselves as 'agents' or 'mediators' of government policies, including when setting up schools. In those scenarios, the state can opt for selective and strategic partnerships, as already mentioned, that are usually labelled as community cohesion initiatives. This explains in many instances legal and policy choices within public education as well as the strictly regulated legal framework of such schools.

[6] Teacher training programs at university level for Islamic religious instruction exist in some instances as well (e.g. in Germany such programmes can be found in Muenster-Osnabruck, Frankfurt, Tuebingen and Nuremberg- Erlangen, [Berglund, 2015]). The cases of the US and France are explicit insofar as religious and more particularly Muslim schooling is exclusively private initiative based.

[7] The trend is particularly obvious in public education in the UK, with a long-standing cooperation of the State with faith organizations (e.g. New Labour's ‚faith sector' policy).

Religious Minority Schools in Denmark

Religious communities in Denmark have been given the right to establish private schools that are eligible to receive state funding of up to 75 per cent of their total budget, provided that their curriculum and practice meet state guidelines. Since 2005, the requirements for religious private schools with state support required additionally the educational institutions to prepare students to 'live in a society characterized by freedom and democracy'. The operation of religious minority schools has been particularly controversial with respect to the approximately 25 independent (private) Muslim schools on the basis of alleged tensions between their curricula and the rules of democracy and freedom. Seven among the private Muslim schools were recently closed by the state due to insufficient promotion of Danish values in their curricula.

Private religious education initiatives, however, enjoy constitutional protection in Denmark (Article 76 of the Constitution). While this provision can be construed prima facie as a minority protection guarantee, in practice there are traces of a development of a system of Islamic foundations in Denmark that count among their aims the establishment/support of private schools (e.g. the Culture and Education Foundation, the DIKEV Foundation, the Grand Copenhagen Endowment or the Foundation for the Muslim Association). The institutionalization of Islamic foundations within Denmark, and other Western European countries, is triggered by practical concerns that include the provision of Islam-compliant education. Their presence can be therefore interpreted as part of a broader diversity governance model contributing towards public service delivery. Without state financial support and transparency on the criteria for state support of these schools, their existence is however directly threatened.

9.3   The Prospects for Cultural NTA for Minority Groups

Cultural autonomy arrangements have the potential to promote minority collective rights and also lead to the empowerment of these communities. This is because they create the background against which the groups can shape their destiny and have a say in matters that affect them from the perspective of cultural heritage and protection of cultural difference. Such mechanisms, in their practical implementation in Europe, however, have only offered limited forms of autonomy to the minorities groups that have benefited from them. The degree of their success is limited by weak political influence on policy-making, reduced resources at their disposal and for minority languages, and their marginal use by their speakers.

The experiences of state endorsed cultural autonomy in Europe raise thus a number of issues: some arrangements that envisage self-governing entities performing public functions (e.g. in education) are symbolic,

devoid of a tightly defined content (e.g. Latvia, Russia, North Macedonia). Others implemented through minority representative bodies enjoy only consultative functions (e.g. Hungary, Serbia, Sami Parliaments). A third category of arrangements introduced from below (i.e. by non-state actors) in the form of public-private partnerships depend heavily on state support, limiting agency of the groups concerned. Finally, NTA arrangements in the cultural field may lead to institutionalized inequality among minority groups. Those groups lacking leadership and adequate resources are unable to take advantage of these schemes (e.g. the Roma in several CEE countries).

Overall, however, the potential of NTA arrangements in cultural matters represents today a challenge to a state-centric view of the world, particularly when accounting for 'new' minorities that have been created as a result of migratory movements but also of historic minority groups that are characterized by mobility but still wish to put forward cultural claims to states (Nimni, 2013, 2). As such, NTA arrangements can be used to include the diverse practices and theories of minority community empowerment and self-determination beyond territorial considerations.

Ultimately, such arrangements cannot ignore the impact of population movements and new technologies that have increased the type and degrees of complexity of cultural diversity in our societies. The debates over diversity preservation are constantly fed with new or evolving claims for the accommodation of minority cultural identity extending the character of cultural non-territorial autonomy practices. They also invite the consideration of the shortcomings of state supported NTA regimes in relation to language and religion in terms of public recognition processes, the need for the extension of their decisional powers and not least the sustainability of state funding to support their activities.

Summing-Up

- Cultural autonomy arrangements are designed to allow minority groups to manage their own cultural affairs through the creation of ethnicity-based or religion-based institutions.
- Minority cultural autonomy bodies are either the result of state recognition enjoying public law status or based on informal co-decision arrangements between the state and non-state actors.
- Minority language preservation occupies a central place in NTA arrangements and the degree of linguistic diversity determines the

design of NTA and vice versa. In practice, states may create legal frameworks granting cultural autonomy to minority groups and also devote resources to set up institutions of cultural autonomy but this does not automatically give these institutions significant power and/or functions.

- Religious forms of cultural autonomy function as pluri-centric networks where state and minority-led actors form alliances towards culturally related public purposes.
- Education is a prominent field of minority schools creation within and outside public schools systems, very often depending on state financial support. Both language and religion are significant minority identity markers at the core of these arrangements.

Study Questions

1. What are the usual forms of NTA arrangements in the field of culture?
2. To what extent NTA arrangements on language and education cover the needs of minority groups? What adjustments would you suggest?
3. What is the nature of the legal/political relationship between the state and minority groups in cultural matters within NTA scenarios? Does it correspond to the evolution of forms of minority agency on the ground?
4. Are forms of NTA culturally sustainable? What advantages/risks do you see?

Go Beyond Class: Resources for Debate and Action

- Minority Schools in Greece as Autonomous Institutions (Thrace): https://www.world-autonomies.info/non-territorial-autonomies/greece.
- Functional Minority Autonomy in Germany in cultural matters (especially point 3): https://www.world-autonomies.info/non-territorial-autonomies/germany.

Further Reading

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