

# Non-Territorial National Autonomy in Interwar European Minority Protection and Its Habsburg Legacies

*Börries Kuzmany\**

What is the relationship between ethnic diversity and sovereign territoriality? Central Europe was a bustling laboratory for this question both before and after the dissolution of the Habsburg Empire. The notion of minority rights overseen by an international organization like the League of Nations was one of the most striking innovations of the interwar international order. From the perspective of Central European activists, scholars, and politicians, however, this system emerged as just one possible response to an older problem concerning the form of rights and jurisdiction best suited to a region in which different ethnicities, languages, and religions were densely intermingled. In fact, various thinkers had developed a number of bold proposals that sought to redefine the relationship between rights and territory by forming national jurisdictions and communities on a corporate—and thus non-territorial—basis. This chapter traces the emergence of ‘non-territorial autonomy’, as this idea is referred to by scholars today, in the multinational Habsburg state and its translation into the area of interwar minority protection.

At the very heart of this idea was the aim of disentangling the state from the nation, thereby making non-territorial autonomy the exact opposite of what was considered the state of the art in 1918. Yet the true winner of the First World War was the idea of the nation state, which was realized even in those parts of Europe that had previously been ruled by the multinational Habsburg, Ottoman, and Romanov empires. New borders were demarcated according to historical, economic, and ethno-linguistic considerations. But the region’s dense ethnic diversity meant that these new borders effectively simply created a set of smaller multinational states. According to their own legal definition, they were all nation states, however—even

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if they housed a twin-headed state nation like the Czecho-Slovaks or were home to a trinity of nations like the Kingdom of Serbs, Croats, and Slovenes. Any citizens not belonging to the titular state nation had the status of minority—for better or worse. Whereas a national minority is basically a deviation from the ideal type of the nation state, multinational states formally do not perceive their multilingual populations as minorities but as nationalities constituent to the state itself.<sup>1</sup> In both cases, arrangements to deal with national diversity must be found—and it is possible for a nation state to treat its minorities more liberally than a multinational state treats its nationalities.

The Habsburg Monarchy in particular had struggled with this very issue since the revolution of 1848. As if in a political laboratory, political thinkers and policy-makers discussed and negotiated different options to deal with the empire's linguistic diversity, its fuzzy national dividing lines, and various national movements. While the principal equality of all languages and nationalities was accepted in the wider framework of civil liberties, the question of how—or whether at all—to reorganize the empire on national grounds was fiercely discussed.<sup>2</sup> The Hungarian publicist and politician József Eötvös (1813–1871) elaborated on two options for national reorganization, but eventually dismissed both of them. The first one would have been to redraw the internal borders of the Habsburg Empire according to national criteria and thereby grant national self-rule to the provinces thus defined; this has been labelled the 'territorial principle'. Eötvös's second option was to transfer cultural self-rule to national collectives that would be constituted by all members of a given national group—which meant organizing political community according to individuals' national belonging and was therefore labelled the 'personal principle' of national autonomy.<sup>3</sup>

<sup>1</sup> Ignaz Seipel, *Die geistigen Grundlagen der Minderheitenfrage. Vortrag gehalten im Minderheiteninstitute der Wiener Universität am 14. Jänner 1925* (Franz Deuticke 1925) 3. On the intricacies of the emergence of the term 'national minority' itself, cf. Anna Adorjáni and László Bence Bari, 'National Minority: The Emergence of the Concept in the Habsburg and International Legal Thought' (2019) 16/1 *Acta Universitatis Sapientiae, European and Regional Studies*.

<sup>2</sup> The Kremsier/Kroměříž draft constitution negotiated during the summer of 1848 stipulated the equality of all Austrian nationalities, and Emperor Francis Joseph proclaimed the same in the address during his ascendancy to the throne on 2 December 1848. On the importance and acceptance of the principle of equality of all Habsburg nationalities, cf. Stourzh's seminal monograph: Gerald Stourzh, *Die Gleichberechtigung der Nationalitäten in der Verfassung und Verwaltung Österreichs 1848–1918* (Verlag der Österreichischen Akademie der Wissenschaften 1985).

<sup>3</sup> Joseph von Eötvös, *Über die Gleichberechtigung der Nationalitäten in Österreich* (C.A. Hartleben's Verlag 1850) 83–85, 90–92. A huge number of other contemporaries wrote about the Habsburg Empire's nationalities problems and suggested solutions as well. Following is a very small selection: Franz Palacký, 'Über Zentralisation und nationale Gleichberechtigung in Österreich' (23 December 1849) *Národní Noviny*; Adolph Fischhof, *Oesterreich und die Bürgschaften seines Bestands* (Wallichhauffer'sche Buchhandlung 1869); Ludwig Gumpowicz, *Das Recht der Nationalitäten und Sprachen in Österreich-Ungarn* (Wagner 1879); Karl Hugelmann, *Das Recht der Nationalitäten in Österreich und das Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger. Zwei Vorträge, gehalten in der juristischen Gesellschaft zu Wien am 25. November und 16. Dezember 1879* (Styria 1880); Aurel Popovici, *Die Vereinigten Staaten von Groß-Österreich. Politische Studien zur Lösung der nationalen Fragen und staatrechtlichen Krisen in Österreich-Ungarn* (B. Elischer Nachfolger 1906);

In this chapter, I will explore the Habsburg legacy of non-territorial autonomy based on the personal principle in four steps. To begin with, I will sketch the practical and theoretical approaches to the concept as they developed in Habsburg Austria during the last fifty years of its existence, that is, the implementations of non-territorial arrangements in several provinces that arose from pragmatic and administrative considerations as well as the theoretical notions elaborated mainly by Austro-Marxist thinkers. The second section of this chapter scrutinizes the first steps of non-territorial autonomy into the sphere of international minority protection. In the wider setting of the Paris Peace Conference, different protagonists promoted or rejected this form of collective rights. In the third section, I will investigate how intensively the non-territorial autonomy ideas that had developed in imperial Austria were received and adapted in Central and Eastern Europe before and after the Russian Revolutions of 1917. The next section contains an analysis of how transnational minority activists—who were well-acquainted with the idea's Austrian roots—approached non-territorial autonomy as a solution to Europe's minority issues, not least because they were unsatisfied with the minority protection system established by the League of Nations. The two final sections of this chapter highlight the role of the continent's eastern parts within the post-war international order, portraying them as actors and contributors to the field of national diversity management and not as mere objects of considerations. The aim is not to suggest that these Central and Eastern European approaches were better or worse, but simply to include them in the greater picture.

## **I. Two Approaches to Non-Territorial Autonomy in Habsburg Austria**

There are several ways to begin this story, but I would like to start with Rudolf Laun (1882–1975), a Prague-born legal scholar of international and civil law who had closely followed the nationalities question in Habsburg Austria during the last two decades before the war. In mid-January 1918, he wired his rather critical remarks on President Wilson's Fourteen Points to The Hague, where the *Central Organization for a Durable Peace* had asked him to assess Wilson's declaration. With reference to the tenth point concerning the autonomous development of the peoples of Austria-Hungary, Laun stated:

Edmund Bernatzik, *Über nationale Matriken. Inaugurationsrede gehalten von Edmund Bernatzik* (Manz 1910); Rudolf von Herrnritt, 'Die Ausgestaltung des österreichischen Nationalitätenrechtes durch den Ausgleich in Mähren und der Bukowina' (1914) 5&6 *Österreichische Zeitschrift für öffentliches Recht*; 'Die Stellung der Kronländer im Gefüge der österreichischen Verfassung. Eine Rundfrage' (1916) Special issue *Österreichische Zeitschrift für öffentliches Recht*.

If Wilson wishes to afford the peoples of Austria-Hungary the opportunity for autonomous development, he is misinformed. He does not know, for example, of the Moravian and the so-called Budweis [Budějovice] Compromise, free and autonomous agreements between the equal Czech and German nation.<sup>4</sup>

What was Laun referring to in his statement? The Moravian Compromise was the first (in 1905), and the compromise in the Bohemian city of Budějovice/Budweis the last (1914), in a series of new provincial or municipal constitutions that aimed to realize national autonomy based on non-territorial arrangements; the other such agreements were concluded for Bukovina (1910), Bosnia-Herzegovina (1910), and Galicia (1914). All five cases were driven by two conditions: the need for a fairer political representation of each nationality, and the wish for a certain degree of national self-rule. They were basically negotiated by the conflict parties in the provinces themselves, yet Vienna invariably served as an importunate mediator. The results of the individual negotiations varied markedly given the different national settings, power relations, and general developments over time. Laun may have chosen these examples not only out of local patriotism for his native Bohemian lands, but supposedly also because the Moravia and Budějovice cases demonstrated the development the basic idea had seen within a decade.<sup>5</sup>

In the 1900 census, more than 70 per cent of Moravia's population had declared Czech to be their language of daily use, whereas only 28 per cent stated German. Yet due to the province's class system of franchise, people identifying as Germans had dominated the provincial diet, the executive authority, and the administration since the return to constitutionalism in the 1860s. By the turn of the century, however, the Czech bourgeoisie had grown and would have eventually reversed power relations. Under these circumstances, a national compromise became possible, and the results of the negotiations stipulated national quotas in the provincial diet and administration via non-territorial arrangements.<sup>6</sup>

<sup>4</sup> Austrian State's Archives/Haus-, Hof- und Staatarchiv (furthermore ÖStA/HHStA), Min. d. A., 25/23, 'Rudolph Laun writing to the ministry of foreign affairs, 13 January 1918, draft of a reply telegram, Jong Beekdonk, Bern, Bernerhof. The letter was published as a facsimile in Egmont Zechlin, 'Die „Zentralorganisation für einen dauernden Frieden“ und die Mittelmächte. Ein Beitrag zur politischen Tätigkeit Rudolf Launs im Ersten Weltkrieg' in *Forschungsstelle für Völkerrecht und ausländisches öffentliches Recht der Universität Hamburg* (ed), *Festschrift für Rudolf Laun zu seinem achtzigsten Geburtstag* (Vandenhoeck & Ruprecht 1962) 448, 514.

<sup>5</sup> For a synopsis of these compromises, cf. Börries Kuzmany, *Habsburg Austria: Experiments in Non-territorial Autonomy* (2016) 15/1 Ethnopolitics.

<sup>6</sup> The most comprehensive study of the Moravian Compromise is still Horst Glassl, *Der Mährische Ausgleich* (Veröffentlichung des Sudetendeutschen Archivs 1, Fides 1967). The University of Brno organized a bilingual conference on the occasion of the centenary of the Moravian Compromise, cf. Lukás Fasora, Jiří Hanuš, and Jiří Malif (eds), *Moravské vyrovnání z roku 1905 / Der Mährische Ausgleich von 1905* (Maticе moravská 2006). The best delineation of the compromise in English is the as yet unpublished article by Jeremy King, cf. Jeremy King, 'Which Equality? Separate but Equal in Imperial Austria' (2010) Article Draft. Another English overview was published by Mills T. Kelly, 'Last Best Chance or Last Gasp? The Compromise of 1905 and Czech Politics in Moravia' (2003) 34 *Austrian History Yearbook*.

In order to avoid nationalist agitation during the election campaign, Moravia's politicians decided to reorganize the electorate not only according to five social classes—that is, the curiae of the big landowners, members of the chambers of commerce, urban taxpayers, rural taxpayers, and the common voters—but also according to national affiliation. Three of the five social curiae were thus divided into a Czech and a German section each. This meant that, even if they lived next to each other in the same village, a Czech voter from, for example, the curia of rural taxpayers (fourth curia) would only be allowed to vote for a Czech candidate in the Czech constituency, whereas his German neighbour could only choose among German nominees in the German electoral district of the fourth curia. For this purpose, the local authorities had to register every eligible voter in either the Czech or the German national register of the corresponding social curia. Given the situation in early twentieth-century Moravia, where many people did not identify along national but rather along social or confessional lines, the decision who should be registered in which national cadastre was often not as clear-cut as nationalists tried to assert.<sup>7</sup>

Yet every Moravian citizen except those belonging to the first curia, that is, the large estate owners, had to be registered, and there was a fixed number of delegates to be elected to the provincial parliament by each nationality: seventy-three Czechs, forty Germans, and thirty-eight major landowners. Once elected, each national parliamentary group could designate their envoys to each of the parliamentary committees and the provincial government. During the normal legislative process, they sat together, deciding jointly on political matters and—most importantly—agreeing on a budget. Autonomous agency existed primarily in the area of education, where the local, district, and provincial schoolboards were each divided into two separate bodies and the monolingual high schools were to be controlled by the respective co-national deputies of the provincial government.<sup>8</sup>

As indicated above, the landowner curia was not split into a German and a Czech section. This not only corresponded to the self-identification of these mostly high aristocrats but was also a political means of counterbalancing the nationalist interests with power loyal to the empire: with thirty-eight seats in the provincial

<sup>7</sup> Over the last fifteen years, a very rich research literature showing the ambiguity and fluidity of national identifications in the Habsburg Empire has developed. In her influential article, Tara Zahra coined this phenomenon as 'national indifference', cf. Tara Zahra, 'Imagined Noncommunities: National Indifference as a Category of Analysis' (2010) 69/1 *Slavic Review*. Yet the doyen of Habsburg nationalities policies, Gerald Stourzh, has remarked that this terminology is blurred in itself and might not be suitable as an analytical category, cf. Gerald Stourzh, 'The Ethnicizing of Politics and "National Indifference" in Late Imperial Austria' in Gerald Stourzh (ed), *Der Umfang der österreichischen Geschichte. Ausgewählte Studien 1990–2010* (Studien zu Politik und Verwaltung 99, Böhlau 2011).

<sup>8</sup> Glassl, *Der Mährische Ausgleich* (n 6) 197–198, 212, 214–216. The referenced legal text is: *Landesgesetz- und Verordnungsblatt für die Markgrafschaft Mähren 1906. I. Stück. Nr. 1–4. Gesetz vom 27. November 1905*. The German version of the provincial law gazette is available at the ALEX online law collection of the Austrian National Library <<http://alex.onb.ac.at/cgi-content/alex?apm=0&aid=lma&datum=1906>>.

diet, the noble landlords could always tip the scales.<sup>9</sup> Hence while the Moravian Compromise was—symbolically speaking—a first step towards non-territorially organized national autonomy, it was more of a consociational system in its real-life implementation.

The other case referred to by Rudolf Laun in his evaluation of Wilson's declaration was the national compromise concluded in the Bohemian city of Budějovice in February 1914. Owing to the outbreak of the First World War, this compromise was never legally enacted, however. While the basic elements of the Moravian Compromise were to be found in the Budějovice case as well, the latter agreement went much further. In contrast to the year 1905, there were no longer any nationally unaligned curiae, and every voter was registered according to nationality. In addition, the compromise was the first to provide financial autonomy to the two national groups within the municipal government.<sup>10</sup>

The years 1913 and 1914 were actually a very busy period in terms of negotiations for national self-rule based on non-territorial arrangements. The very same question of financial autonomy as in Budějovice was also one of the topics during the renegotiations to further develop the Moravian Compromise taking place in Brno/Brünn in February 1914.<sup>11</sup> The Galician Compromise, which became law less than three weeks before the beginning of the First World War, also stipulated non-territorial elements for the provincial electoral system. There was almost no autonomous agency for the national curiae within the provincial diet, however—only a blocking minority for the smaller national group, the Ruthenians.<sup>12</sup>

In this respect, the Budějovice Compromise came closer to the theoretical considerations of the Austro-Marxist thinkers Etbín Kristan, Karl Renner, and Otto Bauer, who had developed a model of national autonomy that was person-based instead of territory-based—or to be more precise, they were a mixture of both approaches.<sup>13</sup> Arguing that confessional wars had ended in Europe only after state

<sup>9</sup> Robert Luft, 'Die Mittelpartei des Mährischen Großgrundbesitzes. Zur Problematik des Ausgleichs in Mähren und Böhmen' in Ferdinand Seibt (ed), *Die Chance der Verständigung. Absichten und Ansätze zu internationaler Zusammenarbeit in den böhmischen Ländern 1848–1918* (Oldenbourg 1987) 187, 218–219.

<sup>10</sup> Emil Brix, *Der Böhmisches Ausgleich in Budweis* (1982) 24/2 *Österreichische Osthefte* 225–248. Jeremy King, *Budweisers into Czechs and Germans. A Local History of Bohemian Politics. 1848–1948* (Princeton University Press 2002) 137–147.

<sup>11</sup> Jiří Malíř, 'Druhé moravské vyrovnání z roku 1914' in Fasora, Hanuš and Malíř, *Moravské vyrovnání* (n 6) 87–102.

<sup>12</sup> I prefer the ethnonym 'Ruthenian' over the later 'Ukrainian' because it was used until the early twentieth century both in Austrian official terminology and by the people themselves. On the Galician Compromise cf. Börries Kuzmany, 'Der Galizische Ausgleich als Beispiel moderner Nationalitätenpolitik?' in Elisabeth Haid, Stephanie Weismann, and Burkhard Wöller (eds) *Galizien. Peripherie der Moderne—Moderne der Peripherie?* (Tagungen zur Ostmitteleuropaforschung 31, Herder-Institut 2013).

<sup>13</sup> Only two of the relevant Austro-Marxist's texts were translated into English: Karl Renner, 'State and Nation' in Ephraim Nimni (ed), *National-Cultural Autonomy and its Contemporary Critics* (New York 2005 [1899]); and Otto Bauer and Ephraim Nimni, *The Question of Nationalities and Social Democracy* (University of Minnesota Press 2000 [1907]). Neither Kristan's Slovenian nor German text,

and religion became disassociated, they claimed that national conflicts would come to an end only once the state separated from the nation. Their suggestion was thus the exact opposite of the idea of the nation state, yet in accordance with the idea of national self-determination. Both Austrian social democrats proposed a double structure for the entire monarchy: the first pillar would be organized around a central parliament elected by all citizens of the empire and responsible for general state affairs like infrastructure, foreign relations, police, military etc., while the second pillar would be formed by several national councils (German, Czech, Polish, etc.) responsible mainly for matters of culture and education. Via these national councils and their executive organs, all national groups would constitute themselves as legal entities with autonomous rights and duties.

For the second, the national pillar of state organization, Karl Renner suggested a bottom-up approach with autonomous administrative districts at its heart. Returning to a decades old idea, Renner suggested to dissolve the historical provinces and to split up Imperial Austria into monolingual districts as much as possible and give full political autonomy to these districts. According to Renner around 90 per cent of the population would end up in such nationally homogeneous districts, where national and political self-rule would coincide. The nation would thus become part of the state administration and thereby more democratic and more powerful.

Only the remaining 10 per cent of the Austrian districts would be constituted as bi- or multi-lingual. Here, all inhabitants of the district would have to enrol in national registers. For general political matters all district inhabitants would elect a joint district council. In addition to this political district council, each national group would elect its separate national district diets responsible for all cultural matters. These national district diets would later delegate representatives to the above-mentioned overarching national councils.<sup>14</sup>

While Renner and Bauer were never able to convince their own Austrian Social Democratic Workers' Party of their concept, many other political activists read their writings attentively. Most important were the reception and adaptations by Jewish socialists, who popularized the Austro-Marxist non-territorial autonomy model in the leftist political camp of Central and Eastern Europe before the First

in which he argued for a radical non-territorial autonomy approach, was translated into English: Etbin Kristan [Anonymus], 'Avtonomija', 1 January 1898, Delavec. Etbin Kristan, 'Nationalismus und Sozialismus in Oesterreich' (1898) 2/2 Akademie. Organ der socialistischen Jugend. Renner's most important book and its second and revised edition are also not available in English: Karl Renner [Pseud. Rudolf Springer], *Der Kampf der österreichischen Nationen um den Staat. Das nationale Problem als Verfassungs- und Verwaltungsfrage* (Deuticke 1902); Karl Renner, *Das Selbstbestimmungsrecht der Nationen. In besonderer Anwendung auf Oesterreich. Zugleich zweite, vollständig umgearbeitete Auflage von des Verfassers Buch 'Der Kampf der österreichischen Nation um den Staat'* (Deuticke 1918).

<sup>14</sup> This is the basic model as it was designed in Renner's 1902 book, cf. Renner [Springer], *Der Kampf der österreichischen Nationen um den Staat* (n 13).

World War.<sup>15</sup> At the end of the war, non-territorial autonomy was demanded, discussed and partly implemented in many of the newly created nation states. One crucial change had occurred with reference to the Austrian experiences; however, non-territorial autonomy was no longer intended to organize national diversity within a given state in its entirety but was now proposed as a tool for the protection of minorities. In this regard, returning to the activity of Rudolf Laun within the Central Organization for a Durable Peace seems sensible.

## II. Non-Territorial Autonomy's First Steps in the Arena of International Minority Protection

The Central Organization for a Durable Peace, established in the Netherlands, was an initiative of intellectuals from neutral states who were attempting to design a just political order that would prevent future wars. In its 1915 minimum programme, the members agreed on nine points including the principle of non-annexation of territories against the will of the local population as well as the protection of national, religious, and linguistic minorities.<sup>16</sup> During the following year, important legal scholars from different parts of Europe discussed this programme in written statements.<sup>17</sup> Rudolf Laun actively participated in the Central Organization's written debates and meetings. Despite some serious criticism,<sup>18</sup> he considered the overall treatment of national groups in Austria to be far better than in any other state, and he encouraged Austria to openly present its nationalities legislation as a strength and not as a deficit in the international public arena. The German sociologist Franz Oppenheimer likewise painted a rather positive picture of the Habsburg Austrian experiences in his statement, referring in particular to the model of (non-territorial) national autonomy as conceived in the writings of Karl Renner and embodied in the Moravian and Bukovinian Compromises.<sup>19</sup> Digesting the various statements, Norwegian historian and later politician Halvda Koht, the leader of the Central Organization's internal expert commission, lauded the Habsburg Empire's achievements in the handling of national diversity and its early approaches to national autonomy.<sup>20</sup>

<sup>15</sup> Cf. e.g. Roni Gechtman, 'Conceptualizing National-Cultural Autonomy: From the Austro-Marxists to the Jewish Labor Bund' in Dan Diner (ed), *Simon Dubnow Jahrbuch, vol. 4* (Vandenhoeck & Ruprecht 2005) 17.

<sup>16</sup> Organisation pour une paix durable (ed), *Une paix durable. Commentaire officiel pour un programme minimum* (The Hague 1915) 7–8.

<sup>17</sup> They were published in four volumes: Organisation centrale pour un paix durable (ed), *Recueil des Rapports sur les différents points du Programme Minimum* (The Hague 1916–1918).

<sup>18</sup> Rudolf Laun, 'Das Nationalitätenrecht als internationales Problem' (1917) 4 & 5 *Österreichische Zeitschrift für öffentliches Recht* 397.

<sup>19</sup> Franz Oppenheimer, 'Nationale Autonomie' in Organisation centrale pour un paix durable (ed), *Recueil des Rapports sur les différents points du Programme Minimum, 4 vols.* (The Hague 1918) 74.

<sup>20</sup> Halvdan Koht (ed), *Avant-Projet d'un Traité général relatif aux Droits des Minorités nationales. Rapport présenté par H. Koht* (The Hague 1917).

After several meetings during the war, the Central Organization arranged the so-called Bern meeting of the 'League of Nations' in March 1919—an association not to be confused with the 'real' League of Nations that would come into being a year later. The participants in this summit unanimously agreed on a draft of an International Treaty on the Protection of National Minorities and forwarded it to the Paris Peace Conference. The author of this treaty was Rudolf Laun, and its text was based on his knowledge of the Habsburg experiences. Most notably, Laun suggested in Articles 16 and 17 that the collective of persons registered of their own accord in a single national cadastre should constitute a legal entity with autonomous agency in cultural affairs, including the right to levy taxes on its members:<sup>21</sup>

§ 16. If there exists in a municipality [ ... ] a national minority that is manifestly recorded in a national cadastre, then all people registered in the national cadastre form a public corporate body.

§ 17. This corporate body is entitled [ ... ] to regulate the following affairs by means of self-elected organs:

2. create schools and educational facilities in which instruction occurs in the language of the national minority;

3. form national confessional organisations [ ... ];

6. collect national contributions in the sense of direct taxes for the abovementioned affairs from those persons who, according to the cadastre, belong to the national minority.

The Paris Peace Conference entirely ignored this proposal, and the eventually established League of Nations also rejected the idea of non-territorial autonomy since Europe's new political order was built around the nation state and strongly disapproved of any ethno-national group rights.<sup>22</sup> Even though individuals and organizations had the right to inform the League Council about violations of the rights stipulated in the minority treaties, members of the Council could only become active in cases where the national rights of individuals were at stake.<sup>23</sup>

<sup>21</sup> Rudolf Laun, *Entwurf eines internationalen Vertrages über den Schutz nationaler Minderheiten. Vorgelegt der Berner Völkerbundkonferenz, März 1919* (Haymann 1920).

<sup>22</sup> David James Smith and John Hiden, *Ethnic Diversity and the Nation State: National Cultural Autonomy Revisited* (Routledge 2012) 22.

<sup>23</sup> There is a plethora of secondary literature on the minority protection system of the League of Nations. One of the earliest concise descriptions is Julius Stone, *International Guarantees of Minority Rights: Procedure of the Council of the League of Nations in Theory and Practice* (Oxford University Press 1932). For other comprehensive descriptions, cf. Christoph Gütermann, *Das Minderheitenschutzverfahren des Völkerbundes* (Schriften zum Völkerrecht 63, Duncker & Humblot 1979); Martin Scheuermann, *Minderheitenschutz contra Konfliktverhütung? Die Minderheitenpolitik des Völkerbundes in den zwanziger Jahren* (Materialien und Studien zur Ostmitteleuropa-Forschung 6, Herder-Institut 2000) 26–29. For more specific information on strategies of minority groups petitioning with the League of Nations, cf. Stefan Dyroff, 'Der Platz der Völkerbundbeschwerde in den politischen Strategien nationaler Minderheiten. Positionen aus dem Kreis des 'Europäischen

This is not the full story, however. Forms of corporative rights were at least discussed in Paris when it came to Jewish issues. Even though Jews certainly did not sit at the table of the victorious powers, Jewish organizations were able to exercise a certain influence.<sup>24</sup> This was possible firstly because they were not among the vanquished, and secondly because US president Woodrow Wilson considered Jews to be the paradigmatic minority population whose rights the new international order would have to safeguard.<sup>25</sup> But there were two competing Jewish claims: the first formed around the French-dominated Alliance Israélite Universelle and the British Joint Foreign Committee, which actively lobbied for an international guarantee of Jewish civil and confessional rights. On the other side were the Zionists, who had gathered in Copenhagen in October 1918 to vote on a manifesto including three basic demands: a Jewish homeland in Palestine, national autonomy for Eastern European Jews, and a Jewish representation in a future League of Nations.<sup>26</sup>

Zionist groups from Eastern Europe gathered again in London in February 1919 to coordinate their demand for recognition as a national group with the right to national autonomy before the peace talks in Paris began. Their most important ally became the American Jewish Congress, which by the end of 1918 had found a compromise among its members to seek equality for Jews throughout the world in either an individual rights approach or a collective one; the corresponding declaration is often referred to as the Jewish Bill of Rights.<sup>27</sup> In mid-March 1919, the American Jewish Congress and Zionist activists established the Committee of Jewish Delegations,<sup>28</sup> which was represented at the peace conference by the Americans Julien W. Mack and Louis Marshall. Mack and Marshall actively lobbied with David Hunter Miller, an American diplomat and confidant on minority issues of Edward M. House, who in turn was one of Wilson's closest advisors.<sup>29</sup>

Central and Eastern Europeans, however, led the Committee's programmatic commission—first and foremost in the shape of its secretary general Leo Motzkin, a long-term Zionist activist and ardent promoter of the colonization of Palestine

Nationalitätenkongresses" in Mathias Beer and Stefan Dyroff (eds), *Politische Strategien nationaler Minderheiten in der Zwischenkriegszeit* (De Gruyter 2014) 27–56.

<sup>24</sup> This influence has been discussed (and exaggerated) very frequently. For an early and still valuable assessment, cf. Oscar I. Janowsky, *The Jews and Minority Rights* (Columbia University Press 1933).

<sup>25</sup> Erwin Viefhaus, *Die Minderheitenfrage und die Entstehung der Minderheitenschutzverträge auf der Pariser Friedenskonferenz 1919. Eine Studie zur Geschichte des Nationalitätenproblems im 19. und 20. Jahrhundert* (Marburger Ostforschungen 11, Holzner 1960) 112.

<sup>26</sup> Simon Rabinovitch, *Jewish Rights, National Rites: Nationalism and Autonomy in Late Imperial and Revolutionary Russia* (Stanford Studies in Jewish History and Culture, Stanford University Press 2014) 257–263.

<sup>27</sup> Julian W. Mack, 'Le congrès juif américain' in Comité des Délégations Juives auprès de la Conférence de la Paix (ed), *Les droits nationaux des Juifs en Europe Orientale. Recueil d'études* (Beresniak & Fils 1919) 28–30.

<sup>28</sup> In 1936, the Committee became the World Jewish Congress.

<sup>29</sup> Viefhaus, *Minderheitenfrage* (n 25) 78–92. Carole Fink, *Defending the Rights of Others: The Great Powers, the Jews, and International Minority Protection, 1878–1939* (Cambridge University Press 2004) 126–205.

as well as the fostering of a Jewish national sentiment in Europe. Already a decade earlier, Motzkin had suggested some form of collective cultural autonomy for the Arab population in a future Jewish province under Ottoman and European protection, and he also seems to have been aware of the Austro-Marxist writings of the first decade of the twentieth century.<sup>30</sup> Although Zionists in Central and Eastern Europe were in strict opposition to the Yiddishist and atheist agenda of Jewish leftist parties, they agreed with them on the need for collective rights and national autonomy for Jews in the diaspora, at least after the 1906 conventions of Russian Zionist organizations—and they equally acknowledged borrowings from Renner and Bauer.<sup>31</sup> Socialist parties like the Jewish Labour Bund had previously already adopted programmes that represented adapted versions of the Austro-Marxist non-territorial autonomy.<sup>32</sup> What was more, the liberal Folkist Party of Jewish historian and thinker Simon Dubnov had customized the traditional Jewish community autonomy patterns to the needs of a modern Jewish nation. The model of Jewish autonomy existing in the early modern Polish-Lithuanian Commonwealth had been based on the Jewish community, the *kehillah*, along with a non-territorial assembly uniting representatives from all parts of the country, the *Vaad arba aratsot* or Council of Four Lands.<sup>33</sup>

Leo Motzkin's right hand and the actual editor of the Committee's guideline of arguments for the peace conference was Leon Reich, one of the five vice-presidents of the Committee and the man responsible for propagandizing its positions.<sup>34</sup> Reich was an early Zionist activist in Austrian Galicia, and the idea of corporative Jewish national self-rule must have come to him quite naturally. A mere five years earlier, Polish and Ukrainian politicians in Galicia had negotiated a national compromise that built on the experiences made with the Moravian Compromise.

<sup>30</sup> Frank Neseemann, 'Minderheitendiplomatie—Leo Motzkin zwischen Imperien und Nationen' in Dan Diner (ed), *Synchrone Welten: Zeitenräume jüdischer Geschichte* (Vandenhoeck & Ruprecht 2005) 147, 154–157.

<sup>31</sup> Jolanta Żyndul, *Panstwo w Panstwie? Autonomia narodowo-kulturalna w Europie Srodkowo-wschodniej w XX wieku* (Wydawnictwo DiG 2000) 18–32.

<sup>32</sup> Cf. Gechtman 'Conceptualizing' (n 15); and Roni Gechtman, 'National-Cultural Autonomy and 'Neutrality': Vladimir Medem's Marxist Analysis of the National Question, 1903–1920' (2007) 3/1 *Socialist Studies / Études socialistes* 69.

<sup>33</sup> Recent studies have elaborated Simon Dubnov's ideas in general, cf. Rabinovitch, *Jewish Rights* (n 26); Anke Hilbrenner, *Diaspora-Nationalismus. Zur Geschichtskonstruktion Simon Dubnows* (Schriften des Simon-Dubnow-Institutes 7, Vandenhoeck & Ruprecht 2007); and Grit Jilek, *Nation ohne Territorium. Über die Organisation der jüdischen Diaspora bei Simon Dubnow* (Schriftenreihe der Sektion Politische Theorien und Ideengeschichte in der Deutschen Vereinigung für Politische Wissenschaft 24, Nomos 2013).

<sup>34</sup> On Reich in general, cf. ÖBL, <[http://www.biographien.ac.at/oebf/oebf\\_R/Reich\\_Leon\\_1879\\_1929.xml](http://www.biographien.ac.at/oebf/oebf_R/Reich_Leon_1879_1929.xml)>. The guideline was published in French: Comité des Délégations Juives auprès de la Conférence de la Paix (ed), *Les droits nationaux des Juifs en Europe Orientale. Recueil d'études* (Beresniak & Fils 1919). Leon Reich, 'Das Komitee der jüdischen Delegationen in Paris' (1920/1921) 5/8–9 *Der Jude. Eine Monatsschrift* 439, 441.

Much to the discontent of Jewish nationalists, however, the Galician Compromise of 1914 had not recognized Jews as one of the registered nations.<sup>35</sup>

Leon Reich was given the opportunity to speak before the peace conference's influential Subcommittee for Polish Affairs as a representative of East Galician Jewry, and he elaborated on the importance of Jewish national autonomy for the region.<sup>36</sup> His contribution to the Committee of Jewish Delegations' argumentative guidelines is perhaps the most revealing example of how the Jewish delegation used former Austrian non-territorial autonomy approaches in Paris. Reich openly referred to Karl Renner, honouring his inventive propositions to remodel the Habsburg Empire into a federation of corporative nationalities and attempting to portray these ideas as the analogous predecessors of Wilson's principles:

In the old Austrian Empire, Karl Renner preached in numerous academic books and newspaper articles the importance of transforming the unitary state with its central power into a federal state based on the autonomy of its diverse nations. And since the borders of each country in no way correspond to the territories inhabited by the members of each nation, who are distributed unevenly across all of the territories, it is impossible to conceive of national autonomy as territorial autonomy, only as national-personal [autonomy] by giving each inhabitant the possibility to declare to which nation he desires to belong and to opt equally for the dominance of his choice.

This very precisely developed theory is in its consequences nothing else than Wilson's principle, which is accepted by all victorious and defeated powers and embodies the protection of ethnic minorities.<sup>37</sup>

In the same guideline document, Leo Motzkin formulated the demands of the Committee of Jewish Delegations, which were likewise focused on non-territorial autonomy. Among other measures, he called for the following in the second set of demands: II.a, the recognition of Jews as an ethnic community; II.c, proportional representation in all legal organs via national curiae; II.f, obligatory membership of all Jews in the Jewish community and the right of the latter to impose taxes on its members; and II.g, the establishment of a Jewish body exercising authority across the entire country.<sup>38</sup>

<sup>35</sup> Börries Kuzmany, 'The Rise and Limits of Participation: The Political Representation of Galicia's Urban Jewry from the Josephine Era to the 1914 Electoral Reform' (2015) 42/2–3 *East Central Europe* 216, 230–240.

<sup>36</sup> Reich, 'Komitee' (n 34) 445.

<sup>37</sup> Léon Reich, 'La situation des Juifs en Pologne et leurs revendications' in Comité des Délégations Juives auprès de la Conférence de la Paix (ed), *Les droits nationaux des Juifs en Europe Orientale. Recueil d'études* (Beresniak & Fils 1919) 36, 38–39.

<sup>38</sup> Leo Motzkin, 'Les revendications nationales des Juifs' in Comité des Délégations Juives auprès de la Conférence de la Paix (ed), *Les droits nationaux des Juifs en Europe Orientale. Recueil d'études* (Beresniak & Fils 1919) 7, 22–23.

By April 1919, it was clear that any plans to incorporate minority protection directly in the statutes of the League of Nations had failed—but also that the League would sign separate bilateral minority treaties with Poland and other newly established or enlarged states in Central and Eastern Europe. Based on Motzkin's demands and Reich's elaborations, Louis Marshall and Julien Mack sketched a minority treaty that they intensely discussed with David Miller, the aforementioned American diplomat. They eventually convinced him of their vision that Eastern European Jewry needed national group rights, and together they elaborated a draft treaty suggesting the recognition of minorities as 'distinct public corporations' with the right to tax members and proportional representation based on electoral colleges, as well as the right of each individual to withdraw from the minority.<sup>39</sup>

Shortly after receiving the draft, President Wilson read Miller's suggestion in the Council of Four meeting on 1 May 1919. Wilson and Lloyd George decidedly rejected any form of national autonomy. Miller therefore could not even proffer collective corporative rights within the peace conference's minority commission meetings a few days later, and separate electoral colleges were repudiated *expressis verbis*.<sup>40</sup> Attempting to convince the minority commission, the Committee of Jewish Delegations submitted—once more in vain—a final draft treaty and a memorandum on 10 May. Therein it underlined the need to urge Poland to recognize 'the several national minorities in its populations as constituting distinct, autonomous organizations, and as such having equally the right to establish, manage, and control their schools and their religious, educational, charitable, and social institutions.'<sup>41</sup>

Eventually, the Polish Minority Treaty—which later became the prototype for similar treaties concluded with other Central and East European countries—stipulated no corporative rights for minorities. And where it did guarantee some sort of collective rights, it employed rather awkward vocabulary to circumscribe the subjects it referred to, avoiding the term 'national' minorities in particular. Instead, it spoke of 'Polish nationals who belong to racial, religious or linguistic minorities' or, in an even more complicated phrasing, of 'Polish nationals of other than Polish speech'. On the one hand, this can be interpreted as a tacit concession to Poland's general discontent at being forced to sign a minority treaty at all.<sup>42</sup> But on the other hand, it also reflected the unwillingness to introduce into international law other subjects than states and their respective citizens. The treaties thus targeted national groups as subjects while simultaneously concealing them—an

<sup>39</sup> David H. Miller, *My Diary: At the Conference of Paris. With Documents* (vol. IX, New York 1924) 194, cited in Vieffhaus, *Minderheitenfrage* (n 25) 151.

<sup>40</sup> Vieffhaus, *Minderheitenfrage* (n 25) 151–165.

<sup>41</sup> This document is cited in full in the annex to Vieffhaus, *Minderheitenfrage* (n 25) 228, 229.

<sup>42</sup> Fink, *Defending the Rights of Others* (n 29) 258–259.

approach heavily criticized by a legal scholar with acknowledged expertise in national group rights: Rudolf Laun.<sup>43</sup>

How come, then, that so many scholars and policy-makers claim to this day that the minority treaties were an example of collective rights that was replaced by a focus on individual human rights because the League of Nations' minority policy was ultimately a failure?<sup>44</sup> The reason may lie in the impreciseness of the term 'collective rights', which can be interpreted in a very broad and controversial sense,<sup>45</sup> and a purported dichotomy between individual and group rights.<sup>46</sup> Indeed, those who argue that the League of Nations had installed a collective rights system seem to interpret minority rights themselves as collective rights, since a national minority is constituted by definition by a group of people numerically inferior to the majority population. Yet it would be simplistic to term all rights designed for members of specific groups 'collective rights'. Rather, I suggest applying the differentiation developed by legal scholar Yvonne Donders to the minority treaties. Donders distinguishes between 1) community or group rights, where the holder of the rights is a collective entity as such; 2) communal rights, where the holder is an individual recognized as a member of a collective entity; and 3) individual rights with a collective dimension.<sup>47</sup>

Transferring these considerations to the minority treaties,<sup>48</sup> we might say that they were largely spelled out in the spirit of individual rights with a collective dimension, thus placing them in Donders' third category. Yet some provisions can be understood as falling into to the second category, that is, communal rights: among other civil liberties, Article 7 guaranteed the use of a person's mother tongue before the courts; Article 8 gave all members of a racial, religious, or linguistic minority

<sup>43</sup> Natasha Wheatley, 'Spectral Legal Personality in Interwar International Law: On New Ways of Not Being a State' (2017) 35/3 Law and History Review 753, 776–777. Wheatley also points to another contemporary scholar, Alfred Verdross, who lamented the absence of a legal definition of 'minority' as a collective bearer of rights, cf. Alfred Verdross, *Völkerrecht* (Springer 1937).

<sup>44</sup> This direct causation is not entirely obvious. Mark Mazower critically evaluates the moralistic overtone that accompanied the post-Second World War II human rights narrative, yet he also wrongly refers to the minority treaties as collective rights. Cf. Mark Mazower, 'The Strange Triumph of Human Rights' (2004) 47/2 The Historical Journal 379.

<sup>45</sup> Philip V. Ramaga, 'The Group Concept in Minority Protection' (1993) 15/3 Human Rights Quarterly 575, 582–584.

<sup>46</sup> Joseph Marko, *Autonomie und Integration. Rechtsinstitute des Nationalitätenrechts im funktionalen Vergleich* (Studien zu Politik und Verwaltung 51, Böhlau 1995) 199.

<sup>47</sup> Yvonne Donders, 'Foundations of Collective Cultural Rights in International Human Rights Law' in Andrzej Jakubowski (ed), *Cultural Rights as Collective Rights: An International Law Perspective* (Leiden 2016) 87, 89–90. I would like to thank Marina Germane for making me aware of this article and discussing its applicability to the minority treaties. Before Donders other scholars also pleaded for a more nuanced application of the term collective rights, e.g. Peter Jones, 'Human Rights, Group Rights, and Peoples' Rights' (1990) 21/1 Human Rights Quarterly 80. Marko, *ibid.*, 195–427 distinguishes between cases where legal norms stipulate 1) minority peoples are legal personalities, 2) the protection of the very existence of groups, 3) the de facto existence of groups in order to ensure individual human rights.

<sup>48</sup> For the text of the Polish Minority Treaty, cf. Clive Perry (ed), *The Consolidated Treaty Series* (Vol. 225, Oceana Publications 1919) 412–424.

the right to manage and control private social and educational establishments; Article 9 recognized the rights of members of minorities to an equitable share of public funds for their educational, religious, or charitable institutions; Article 12 stipulated that the victorious powers were to guarantee these provisions for minority members. From my point of view, Article 11, which prohibits forcing Jews to violate their Sabbath rules, is somewhere between Donders' second and third category. The fact that the subject of the provision are Jews and thus members of a collective entity points to the second type. However, the phrasing of the article as well as the fact that the protection of the Sabbath was a long-standing determination to guarantee religious freedom, which is clearly an individual right with a collective dimension, rather supports a reading in the sense of Donders' third type of collective rights.

In no article, however, was the minority itself as a corporate group the holder of autonomous rights as suggested in Donders' first type of collective rights—the form of arrangement that would come closest to the idea of non-territorial autonomy. Only Article 10 regulating Jewish education could potentially also be interpreted on a corporate rights basis, as it mentioned 'educational committees' to be appointed by the 'Jewish communities of Poland'. Whether these communities were to be the traditional religious community bodies or some other national corporative bodies yet to be established was not specified.<sup>49</sup>

Non-territorial autonomy and Habsburg experiences also came to the fore in two other cases at the Paris Peace Conference. The first was the memorandum on the March 1919 mission of the American referee on Czechoslovakia, Archibald Coolidge, which included two contradictory reports: the paper drafted by Coolidge himself argued that Czechoslovakia's future borders should follow the national principle as closely as possible. At the same time, it criticized another report written by Robert Kerner that strongly supported the historical, economic, and military arguments of the Czechoslovak government but suggested a decentralized nation state 'giving full protection to German minorities on some such basis as the Moravian nation-Register system.'<sup>50</sup> This reference to the 1905 Moravian Compromise obviously represented Kerner's personal opinion, since the Czechoslovak delegation had never referred to earlier Austrian experiences. The latter was quite understandable, as Czechoslovakia was trying to position itself as the national and thus democratic counter-thesis to the Habsburg Empire. Yet in his influential 1918 book *The New Europe: The Slav Standpoint*, Tomáš G. Masaryk briefly referenced Renner's and Bauer's non-territorial autonomy model explicitly—only to largely dismiss it. He stated that every developed nation

<sup>49</sup> Reich, 'Komitee' (n 34) 443.

<sup>50</sup> 'Professor R. J. Kerner to Professor A. C. Coolidge' in United States Department of State (ed), *Papers Relating to Foreign Relations of the United States. The Paris Peace Conference, 1919* (US Government Printing Office 1947) 337, 340.

would sooner or later seek to found its own nation state and that even honestly implemented ‘national autonomy’—applying the terminology used in the Habsburg Empire—would not be sufficient for this purpose; it could at most be applied to small and scattered minorities.<sup>51</sup>

Karl Renner was the leader of the Austrian delegation to the Paris Peace Conference, and Rudolf Laun was one of its counsellors. Yet their long-standing expertise and knowledge of Habsburg Austrian approaches to non-territorial autonomy seem not to have played any role in 1919, despite the fact that Renner had published a reworked version of his influential 1902 book outlining non-territorial autonomy as late as 1918. Only at one point in Austria’s written reply to the treaty draft do we find a reference to it: the delegation suggested that, in the event that the German-speaking areas of Bohemia and Moravia should not become a part of Austria, Czechoslovakia should introduce a comprehensive territorial autonomy based on national cantons; only if such a cantonal system were likewise not applied should a ‘national autonomy’ be granted.<sup>52</sup>

The German government referred to cultural autonomy at least to some extent in its unavailing correspondence with the allied powers. The German international law specialist Theodor Niemeyer<sup>53</sup> had drafted a statute for a future League of Nations<sup>54</sup> in January 1919 that mentioned a national cadastre system for dispersed minority groups rather as an aside.<sup>55</sup> Yet the extensive but ultimately futile German response to the conditions of the allied powers in late May 1919 clearly demanded the protection of Germans outside Germany’s future borders: ‘It would be well if a still more completely cultural autonomy could be procured, on the basis of national land registers.’<sup>56</sup>

As it was, because the Paris Peace Conference considered the protection of Jews a matter that needed to be addressed, it conceded something akin to party status to Jewry—that is, Jewish delegates were at least heard. Indeed, representatives of the Committee of Jewish Delegations made serious efforts to table non-territorial autonomy with its corporate rights approach at the conference, in particular when it came to the drafting of the bilateral minority treaty prototype with Poland. They not only proved to be familiar with Habsburg experiences in their discussions with diplomats, but—as Jews were considered to have been ‘on the good side of

<sup>51</sup> Tomáš G. Masaryk, *The New Europe: The Slav Standpoint* (Eyre & Spottiswoode 1918) 81–83.

<sup>52</sup> *Bericht über die Tätigkeit der deutschösterreichischen Friedensdelegation in St. Germain-en-Laye*. Vol 1 (Deutschösterreichische Staatsdruckerei 1919), Annex 47, Partie III, Section III, Annexe a, Régime cantonal dans l’État Tchéco-Slovaque, 338, 341.

<sup>53</sup> On Niemeyer, cf. Hans Wehberg, ‘Theodor Niemeyer’ (1939) 39/5–6 *Die Friedens-Warte* 238, 239.

<sup>54</sup> The American diplomat David H. Miller must have known about Niemeyer’s draft; at least it can be found in his collection of documents. Cf. Miller, *My Diary* (n 39) Vol. IV, Doc. 248, Art. 33a, 294.

<sup>55</sup> ‘Proposals of the German Government for the Establishment of a League of Nations’ in United States Department of State (ed), *Papers Relating to Foreign Relations of the United States. The Paris Peace Conference, 1919* (Vol. VI, Washington 1946) 765, chapter VII, 772.

<sup>56</sup> ‘Observations of the German Delegation on the Conditions of Peace’ in United States Department of State, *ibid.*, 800, 823.

the war’—the members of the Committee of Jewish Delegations did not have to fear that their outspoken and favourable references to Austro-Marxist conceptions would detract from their goals.

### III. Developments in Interwar Nation States

Another careful reader of Rudolf Laun’s draft treaty on national minorities was the Baltic German activist Werner Hasselblatt. In a much later Festschrift in Laun’s honour, he admitted how influential Laun’s writings had been for the drafting of Estonia’s and Latvia’s non-territorial minority protection regulations. Hasselblatt also mentioned Renner’s general ideas but conceded that he had been only vaguely familiar with them in the early 1920s, whereas Laun’s draft had been directly accessible to him.<sup>57</sup>

While this may be true for Hasselblatt individually, non-territorial autonomy was in fact one of the options for managing the multinational Russian Empire that had been discussed since the failed revolution of 1905. And although the discussion in Russia was also influenced by concrete Habsburg-Austrian developments in various provinces, it gave rather more regard to the theoretical elaborations of the Austro-Marxists. Considering how many socialists in the Russian Empire were able to read German—in some regions, they were apparently influenced as much by German as by Russian theoretical texts<sup>58</sup>—it is remarkable how quickly Austro-Marxist treatises were translated. As early as 1906, a Russian translation of the minutes of the 1899 Brünn/Brno convention of the Austrian Social Democrat Party was published in Kyiv. It was at this convention that Etbin Kristan had (unsuccessfully) proposed for the first time in the name of the South Slavic section of the party to include non-territorial autonomy in the official party programme. Three years later, in 1909, two key books—Renner’s 1902 *The Struggles of the Austrian Nations over the State* and Bauer’s 1907 *The Question of Nationalities and Social Democracy*—were published in Russian translations as well.<sup>59</sup>

The intense interest with which Austrian developments were received in Russia is also exemplified by two other publications. In 1910, A. I. Kastel’janskij edited a more than 800-page collection of articles entitled *Forms of the National Movement in Contemporary States*, which dedicated around 300 pages to the Habsburg

<sup>57</sup> Werner Hasselblatt, ‘Kulturaautonomie. Ein Erinnerungsblatt für Professor Rudolf Laun’ in Gustaf C. Hermarck (ed), *Festschrift zu Ehren von Rudolf Laun anlässlich der Vollendung seines 65. Lebensjahres am 1. Januar 1947* (J. P. Toth 1948) 32, 34–35.

<sup>58</sup> For the importance of German socialist thinking in Latvia, cf. Marina Germane, ‘Pēteris Stučka and the National Question’ (2013) 44/3 *Journal of Baltic Studies* 1, 4.

<sup>59</sup> The Russian titles of these three publications are: *Debaty po nacional’nomu voprosu na brjunnskom partejtage* (Serp 1906 [1899]); Karl Renner [Rudolf Špringer], *Nacional’naja problema. Bor’ba nacional’nostej v Avstrii* (Krasand 1909 [2010]); and Otto Bauër, *Nacional’nyj vopros i social-demokratija* (Serp 1909 [1907]).

Empire. He invited important Austrian protagonists to contribute to the volume, including Karl Renner himself, who wrote on the general evolution of the national question in Austria-Hungary. Among the ten chapters dedicated to the various nationalities of the empire, we find the abovementioned Etbin Kristan elaborating on the South Slavs; the Moravian lawyer Alfred Fischel writing thirty pages about the Germans in the Bohemian lands, including a three-page explanation of the central elements of the Moravian Compromise; and Nathan Birnbaum (under the pseudonym of Mathias Acher) reflecting on the Jews' ambiguous position in the nationalities struggles.<sup>60</sup>

Another contributor, Engelprecht Pernerstorfer, who had actually been one of delegates to dismiss non-territorial autonomy at the Brünn convention, wrote the following appreciatory acknowledgement in his concluding note to the editor: 'I would really not have thought that the reading public in Russia is acquainted to such an extent with the Austrian national relations, and especially because of this I felt obliged to describe the external twists in greatest detail.'<sup>61</sup>

The second and even more influential publication was Josef Stalin's *Marxism and the National Question*. At Lenin's request to critically study the Habsburg nationality policies, Stalin had spent two months in Vienna in early 1913. His lengthy article dedicated an entire chapter to national-cultural autonomy, in which he heavily criticized the Austro-Marxist model as reactionary and false.<sup>62</sup>

While Stalin ostensibly dressed down Renner and Bauer, the real addressee of his text was the Jewish Labour Bund in Lithuania, Poland, and Russia. The Bund was founded in October 1897 as a socialist party dedicated to the economic, political, and cultural interests of the Jewish proletariat. When the Russian Social Democratic Labour Party (RSDRP) was established in March 1898, the Bund initially joined it, but after the RSDRP attempted to eliminate the Bund's autonomous structures within the party in 1903, the Bundist delegates left the party only to eventually merge with it again in 1906. Bundist thinkers like Vladimir Kosovskij and Vladimir Medem had been among the first to adopt the Austro-Marxist ideas of non-territorial autonomy and adapt them to the circumstances in the Russian Empire.<sup>63</sup> They also attempted to get the RSDRP to formulate a national

<sup>60</sup> A. I. Kasteljanskij (ed), *Formy nacional'nogo dviženija v sovremennych gosudarstvach. Avstro-Vengrija. Rossija. Germanija* (Obščestvennaja Pol'za 1910).

<sup>61</sup> Engelbert Pernerstorfer, 'Nacional'nyj vopros i socialdemokratija v Avstrii' in A. I. Kasteljanskij (ed), *Formy nacional'nogo dviženija v sovremennych gosudarstvach. Avstro-Vengrija. Rossija. Germanija* (Obščestvennaja Pol'za 1910) 801, 817.

<sup>62</sup> Joseph V. Stalin, 'Marxism and the National Question' in Joseph Stalin (ed) *Works. Volume 2, 1907–1913* (Foreign Languages Publishing House 1953 [1913]) 300, 331–344.

<sup>63</sup> Their first contributions were in Yiddish and thus addressed the Jewish political arena. Vladimir Kosovskij, *Tsu der frage vegn der natsjonal-kultureler oytonomye un iberboyung di ruslendishe sotsyal-demokratische arbeter-partey ofy federative yesoydes* (New York 1901). Vladimir Medem, *Di natsyonale frage un di sotsyal-demokratie* (Di velt 1906). Both men, but especially Medem, also engaged in the Russian discussion. For the adoption and adaptations of Austro-Marxist ideas by the Bund, cf. Roni Gechtman, 'Conceptualizing National-Cultural Autonomy: From the Austro-Marxists to the Jewish Labor Bund', *Simon Dubnow Jahrbuch* (vol. 4, Leipzig 2005) 17–49.

programme based on the Bundist vision, which could be realized only after the final split between Bolsheviks and Mensheviks in 1912. Propelled by the Bund, the entire party spectrum of the democratic political left (e.g. Mensheviks, Social Revolutionaries, etc.) had eventually accepted non-territorial autonomy as a desirable solution to Russia's nationality problems by the time of outbreak of the revolution in 1917.<sup>64</sup>

Yet the year 1917 also offered many new options. Even though ethno-federalist ideas had been circulating in Russia after the 1905 revolution, they had hardly been considered realistically implementable in the near future.<sup>65</sup> After the March Revolution in 1917, many non-Russian political protagonists quickly began planning a reorganization of Russia based on national territorial units. In this regard, Ukrainian politicians were among the loudest voices, and they convened a Congress of Representatives of the Peoples and Regions of Russia in September 1917 in Kyiv.<sup>66</sup> Among the ninety-three delegates, the largest groups with nine to ten envoys each were Jews, Latvians, Tatars, Lithuanians, and Ukrainians. In its resolutions, the Congress not only demanded a federalized Russian Republic based on national territories but also called for non-territorial autonomy for national groups dispersed across Russia.<sup>67</sup>

The Bolshevik coup in November 1917 gave developments yet another spin, however. Finland, Latvia, Poland, Estonia, Lithuania, and Ukraine declared their independence over the course of 1918, with the latter three of these new nation states promising non-territorial autonomy provisions for the national minorities within their territories. The first state to make good on its promise was the Ukrainian People's Republic: mere hours before its declaration of independence, the Ukrainian assembly passed a law on national-personal autonomy for the Russian, Jewish, and Polish minorities.<sup>68</sup> After the unanimous adoption of the law,

<sup>64</sup> Irina V. Nam, 'Nacional'naja programma Bunda: korrektyvy 1917 goda' (2003) 3/276 *Vestnik Tomskogo gosudarstvennogo universiteta, Serija Istorija. Kraevedenie. Etnologija. Archeologija* 83, 86–88.

<sup>65</sup> For the Ukrainian national movement, cf. the writings of Mychajlo Hrušev's'kyj, e.g. Michail Gruševskij, *Nacional'nij vopros i avtonomija* (Obščestvennaja Pol'za 1907 [1906]). For the national movements in the Baltics, cf. Kaarel Piirimäe, 'Federalism in the Baltic: Interpretations of Self-Determination and Sovereignty in Estonia in the First Half of the Twentieth Century' (2012) 39/2–3 *East Central Europe* 237–265.

<sup>66</sup> On this meeting in general, cf. H.D., Hulenovyč, 'Z"izd narodiv Rosiji u Kyjevi (veresen' 1917 r.)' (1994) 6 *Ukrajins'kyj istoryčnyj žurnal* 83–84. CDAVO, 1115-1-7, 1–6, Protokol. S'ezd predstavitelej Narodov i Oblastej, stremjaščichsja k federativnomu pereustrojstvu Rossijskoj Respubliki, Kyiv, 6–15 September 1917.

<sup>67</sup> The resolutions are published in: Vladyslav F. Verstjuk (ed), *Ukrajins'ka Central'na Rada. Dokumenty i materialy; u dvoch tomach* (vol. 1, Kiev 1997) doc. 127, 15 September 1917, *Postanovy Z"jizdu Narodiv*, 307–312.

<sup>68</sup> For the only article on the making of the law in English, cf. George Liber, 'Ukrainian Nationalism and the 1918 law on national personal autonomy' (1987) 15/1 *Nationalities Papers: The Journal of Nationalism and Ethnicity* 22–42. There is hardly any analytical research literature in Ukrainian either. The best legal description of the law itself and its creation is perhaps Natalja V. Čebotok, *Deržavna etnonacional'na polityka v Ukrajinu u 1917–1921 rr.* (unprinted PhilD thesis, University of Kyiv 2005) 64–84.

Moyshe Zilberfarb, who was the minister of Jewish affairs in the Ukrainian government and had actually drafted the bill, lauded it and mentioned that such a solution had first been approved at the Brünn party convention of the Austrian Social Democrats.<sup>69</sup>

Although Zilberfarb understandably referred to the imperial Austrian roots of the Ukrainian law, he disregarded the fact that the delegates at Brünn had only *discussed* non-territorial autonomy for the first time but had not actually accepted it as their official national programme. This misinterpretation can be found in other places as well, for example, in a series of articles on the idea of non-territorial autonomy published by the Estonian historian and socialist politician Hans Kruus during the summer of 1917. Kruus nevertheless demonstrated a thorough knowledge of the origins of the idea, as he not only referred to the Austro-Marxists and the Bund but also correctly pointed to the aforementioned national curiae in the abortive 1871 Bohemian Compromise, which he perceived to be the very first seeds of non-territorial national autonomy provisions.<sup>70</sup>

The interwar Baltic states are actually the most interesting cases in regard to non-territorial autonomy—or cultural autonomy, as it was usually termed in the interwar period. All three countries professed their intent to grant collective autonomy rights to their national minorities. The first to make such a statement on 24 February 1918 was Estonia in its independence manifesto *To the Peoples of Estonia*, whose second article promised cultural autonomy to the new country's minorities.<sup>71</sup> The same promise was included in the Estonian constitution drafted in 1920, but it would take five more years before a provisional law on cultural autonomy was passed and implemented by the Estonian parliament.<sup>72</sup>

The driving force behind the Estonian cultural autonomy law was the Baltic German minority, which consisted mostly of big landowners, urban white-collar workers and craftsmen. The German large estate owners had suffered most from the radical Estonian agrarian reform of 1919 and lost their dominant position within the region's political and economic life. Supporters and opponents of corporative minority legislation were to be found across the entire Estonian political spectrum. The leader of Estonia's Agrarian Party and later authoritarian head of

<sup>69</sup> Verstjuk: *Ukrajins'ka Central'na Rada*, vol. 2, doc. 46, 9 January 1918, Materialy zasidannja Maloji Rady, 98–99.

<sup>70</sup> Hans Kruus, '[Rahvusautonoomia] Rahvuskultuuriline autonoomia' (22.7.1917), 48 Töö Lipp: sotsialistlik ajaleht 2.

<sup>71</sup> The manifesto is printed in German in: Ago Pajur, 'Die Geburt des estnischen Unabhängigkeitsmanifests 1918' (2006) 1 Forschungen zur baltischen Geschichte 136, 160–162. An online English version can be found at: <<https://www.president.ee/en/republic-of-estonia/declaration-of-independence/index.html>>.

<sup>72</sup> Cornelius Hasselblatt, *Minderheitenpolitik in Estland. Rechtsentwicklung und Rechtswirklichkeit 1918–1995* (Baltos Lankos 1996) 31. Kaido Laurits, 'Die deutschbaltische Minderheit in der Republik Estland von 1918 bis 1940' (2010) 19 Nordost-Archiv. Zeitschrift für Regionalgeschichte 71, 72–74. Kari Alenius, 'Birth of Cultural Autonomy in Estonia: How, Why, and for Whom?' (2007) 38/4 Journal of Baltic Studies 445.

state Konstantin Päts strongly endorsed the idea, as did the social democrat Karl Ast, who justified his support in a parliamentary session in 1923 with reference to the Austro-Marxists and the fact that the existing European minority protection was hardly democratic:<sup>73</sup>

The Social Democrats are pleased that this law has been put forward since it derives from the work of Springer and Bauer. We would be happy to see Estonia become a modern democracy, which in its approach to the national question applies a set of principles wholly different to those employed by the old democracies. We already know that the latter offer no cause for celebration as far as the development of the national question is concerned. Despite everything that was said before and during the Versailles treaty, European democracy has done nothing as far as peoples' rights to self-determination are concerned; rather, old methods still prevail to the same extent.<sup>74</sup>

Eventually, the Baltic German elite was still influential enough to have a cultural autonomy law for Estonia's Germans, Jews, Russians, and Swedes passed in 1925. The act was designed around the needs of the Germans, and the latter two groups never even implemented the stipulated autonomous institutions. While some researchers suggest that cultural autonomy for Estonia's tiny Jewish minority was an unintended by-product of the state's complex relationship with the Germans living in the country,<sup>75</sup> the Estonian Jews should not be disregarded as independent actors. They were well aware of the idea of non-territorial autonomy and convinced of its usefulness for their community. At a gathering of Jewish communal representatives in Tallinn in 1919, Hirsh (Grigorij) Aisenstadt, the later long-term head of the autonomous Jewish Cultural Council, communicated 'the ideas of Renner and Bauer, stressing as key principles the belonging of an autonomous minority to the state in which it resides and the "inviolable" unity of the citizen body.'<sup>76</sup> The minimum numerical threshold needed to apply the cultural law was originally set at 4,000 potential members. It was only during the concrete negotiations for the drafting of the bill in 1925 that this threshold was eventually lowered to 3,000 in order to make the law applicable to the Jewish minority as well.<sup>77</sup>

In contrast to Estonia, Latvia's declaration of independence issued on 18 November 1918 guaranteed cultural and national rights and a fair share in the government to ethnic minorities—although it did not explicitly mention any specific

<sup>73</sup> Smith and Hiden, *Ethnic Diversity* (n 23) 34–35.

<sup>74</sup> Karl Ast in: I Riigikogu: IX istungjärk: [11. jaan. - 9. märts 1923]: protokollid nr. 185–221: (Tallinn 1923), 2062, cited according to Smith and Hiden, *ibid.*, 35.

<sup>75</sup> Cf. Anton Weiss-Wendt, *On the Margins: About the History of Jews in Estonia* (Central European University Press 2017) ch. 2, 69–93.

<sup>76</sup> Smith and Hiden, *Ethnic Diversity* (n 23) 33.

<sup>77</sup> Hasselblatt, *Minderheitenpolitik* (n 72) 51.

form of autonomy.<sup>78</sup> This does not imply, however, that non-territorial autonomy was unfamiliar to either the majority or the minority populations. Latvians actively participated in the abovementioned 1917 Kyiv meeting, and Latvian socialists had repeatedly referred to the Austro-Marxists already prior to the country's independence.<sup>79</sup> Indeed, during the first years of its independence the new state was very much inclined toward the idea of Latvia being not an ethnic but a civic nation. When the Latvian parliament passed a law on the educational system of minorities that provided them with a wide range of self-rule in December 1919, minority protagonists hoped that this would be but a first step.<sup>80</sup> Further measures were never taken, however, and neither of the bills proposed by advocates of non-territorial autonomy—one by Baltic German lawyer Paul Schieman and one by Jewish lawyer Max Laserson—were passed by the Latvian parliament.<sup>81</sup>

The situation was slightly different in Lithuania, since unlike Estonia and Latvia it was not clear whether a future Lithuanian state should be a multinational one with a large territory similar to the early modern Grand Duchy of Lithuania or a smaller ethnic Lithuanian state. Poland as well as Soviet Russia contested the proposed territory and borders when Lithuania declared independence on 18 February 1918. Ethnic Lithuanians were in search of allies to support their national and territorial claims, in particular those to the Vilnius/Wilno region occupied by Polish forces. Cooperation between Lithuanian national and Jewish national protagonists had already begun long before the First World War, and this fact led the Lithuanian parliamentary assembly to not only admit three Zionists to its provisional government in mid-December 1918 but also to accept their demand for non-territorial autonomy.<sup>82</sup>

<sup>78</sup> 'Politische Plattform des Volksrates Lettlands. Angenommen am 17. November 1918' in Herder-Institut (ed), *Dokumente und Materialien zur ostmitteleuropäischen Geschichte. Themenmodul 'Lettland in der Zwischenkriegszeit'* <<https://www.herder-institut.de/resolve/qid/1343.html>>, accessed 14 April 2020.

<sup>79</sup> Marina Germane, 'Latvia as a Civic Nation: The Interwar Experiment' in David J. Smith and Matthew Kott (eds), *Latvia—A Work in Progress? One Hundred Years of State- and Nation-Building* (Ibidem 2017) 55, 57–58. Helene Dopkewitsch, *Die Entwicklung des lettländischen Staatsgedankens bis 1918* (H. R. Engelmann 1936) 17–20.

<sup>80</sup> Marina Germane, *The History of the Idea of Latvians as a Civic Nation, 1850–1940* (unprinted DPhil thesis, University of Glasgow 2013) ch. V, 272–280.

<sup>81</sup> Kaspar Näf, 'Die nationale Autonomie Karl Renners als Vorbild für die jüdische Kulturautonomie in Litauen und Lettland während der Zwischenkriegszeit' in Vanessa Duss (ed), *Rechtstransfer in der Geschichte / Legal Transfer in History* (Jahrbuch für junge Rechtsgeschichte, Peter Lang 2006) 64, 76–79. On the ambiguous relationship between Laserson and Schieman on minority issues, cf. Marina Germane's forthcoming article Marina Germane, "A Melancholy Enterprise?": Revisiting German and Jewish Minorities' Cooperation in Interwar Europe.

<sup>82</sup> Šarūnas Liekis, *A State within a State? Jewish Autonomy in Lithuania, 1918–1925* (Versus Aureus 2003) 42–79. The volume edited by Sirutavičius and Staliūnas points to many forms of interethnic co-operation in general, cf. Vladas Sirutavičius and Darius Staliūnas (eds), *A Pragmatic Alliance: Jewish–Lithuanian Political Cooperation at the Beginning of the 20th Century* (Central European University Press 2011). Besides the Jewish Ministry, there was also a Belarusian Secretariat within the Lithuanian government until 1924; cf. Tomasz Błaszczak, *Białorusini w Republice Litewskiej 1918–1940* (Białoruskie Towarzystwo Historyczne 2017) chapter 2.

To further strengthen this strategic alliance, the Lithuanian government sent a declaration to the abovementioned Committee of Jewish Delegations at the Paris Peace Conference in August 1919 wherein it promised to grant Lithuania's Jews non-territorial autonomy. Many of the eight points of this declaration of intent used a wording very similar to that of the Austro-Marxists, for example, those referring to the national curiae, the sphere of competence of the autonomous organs, or the autonomous organs' status as state organs. Indeed, one of the earliest analysts of Jewish autonomy in Lithuania, Leyb Garfunkel, underlined that its very idea derived from Karl Renner.<sup>83</sup> Despite these promising beginnings, however, Jewish autonomy in Lithuania was already being hampered in 1922, and by early 1926—that is, even before the authoritarian coup—the autonomous Jewish communities had been abolished.<sup>84</sup>

It would nevertheless be simplistic to reduce the cultural autonomy law for Jews in Lithuania to the influence of Austro-Marxist theories and Bundist intermediation. Equally important was Simon Dubnov's abovementioned concept of a modernization of Poland-Lithuania's Jewish self-rule. Jewish activists throughout Central and Eastern Europe—whether leftist or rightist, Zionist or Bundist, religious or atheist—were always aware of this early modern legacy. Non-territorial cultural autonomy for Jews conceived as a modern nation thus came to these protagonists quite naturally.<sup>85</sup>

In conclusion of this subchapter, I wish to stress the fact that minority activists in all countries generally observed the minority rights developments in other countries closely. Naturally, they were interested in all forms of legal arrangements including non-territorial autonomy provisions—as shown by the following example: three weeks after the Ukrainian Peoples' Republic had passed its law on national-personal autonomy in January 1918, the executive committee of the Austrian Zionists sent a letter congratulating and thanking the Ukrainian government for its far-sighted decision.<sup>86</sup> A Baltic German newspaper in Tallinn later also elaborated on the pioneering character of the Ukrainian law, and the abovementioned Lithuanian-Jewish advocate Leyb Garfunkel likewise dedicated several paragraphs to the developments in Ukraine.<sup>87</sup>

<sup>83</sup> Leyb Garfunkel, *Di idishe natsyonale avtonomye in Lite. Aroysgegebn durkh dem idishn natsyonal-rat* (Bak un tankes 1920) 5. Garfunkel also prints the text of the declaration of the Lithuanian government, dated 5 August 1919, 31–33.

<sup>84</sup> Samuel Gringauz, 'The Jewish National Autonomy in Lithuania (1918–1925)' [1952] *Jewish Social Studies* 225–246. Smith and Hiden, *Ethnic Diversity* (n 23) 29–30. The most thorough study of Jewish non-territorial autonomy in Lithuania is Liekis, *State within a State?* (n 82).

<sup>85</sup> Rabinovitch has demonstrated the omnipresence of the idea of national autonomy in Jewish modern political thought, cf. Rabinovitch, *Jewish Rights, National Rites* (n 26). See also Żyndul, *Panstwo w Panstwie?* (n 31) 17–52.

<sup>86</sup> ÖStA/HHStA, Ministerium d. Äußeren, PL Akten, K. 193, Letter from the executive committee of the Austrian Zionists to the government of the Ukrainian Peoples' Republic, Vienna, 12 February 1918.

<sup>87</sup> Völkische Autonomie in der Ukraine, in: *Revaler Bote*, 18.02.1920, 1. Garfunkel, *Idishe natsyonale avtonomye* (n 83) 11–13.

#### IV. Developments in the Interwar International Arena of Minority Protection

This interest in minority rights developments in other countries, coupled with the increasing disappointment of many people with the minority rights regimes as implemented by their own home countries and supervised by the League of Nations, led to a surge in inter- and transnational minority protection activism during the 1920s. This activism was transnational not only in the sense of coordinated action by specific national groups across Europe, but also in the sense that it brought together stakeholders from different national minorities. An initial form of transnational organizations like the Committee of Jewish Delegations or the *Verband deutscher Volksgruppen* established in 1922 already existed or originated quite quickly. By the mid-1920s, however, the time was ripe for a second form of transnational minority activism. The Baltic German publicist and politician Ewald Ammende initiated a pan-European lobby group that was to speak on behalf of all of the continent's national minorities: the Congress of European Nationalities. During the thirteen years of its existence, it brought together more than 200 minority representatives from various European countries, with Germans, Jews, Catalans, Ukrainians, and Hungarians being the most numerous groups. Perhaps the most active members were the Baltic German and Zionist activists—the latter at least until the Congress began leaning more and more towards racist and Nazi ideology after 1933.<sup>88</sup>

While there was consensus that national minorities formed a collective and had to be protected against denationalization, the resolutions of the Congress' first meeting in Geneva in August 1925 stated that only the members of a given minority group should be allowed to decide whether they actually wished to establish national-cultural self-rule for themselves. The Congress insisted that membership in any minority register had to be a free choice for each individual concerned. A respective resolution stipulated that:

1. the constitution and implementation of national-cultural self-administration, respectively the emergence of corresponding associations, is subject to the approval of the minorities within whose volition the decision-making concerning this matter lies,

<sup>88</sup> Sabine Bamberger-Stemmann, *Der Europäische Nationalitätenkongreß 1925 bis 1938. Nationale Minderheiten zwischen Lobbyistentum und Großmachtinteressen* (Materialien und Studien zur Ostmitteleuropa-Forschung 7, Herder-Institut 2000) 60–78; 104–125. On Ammende's interesting biography, cf. Martyn Housden, *On Their Own Behalf: Ewald Ammende, Europe's National Minorities and the Campaign for Cultural Autonomy 1920–1936* (On the Boundary of Two Worlds, Rodopi 2014). For a study on the Congress in English, cf. Ulrike von Hirschhausen, 'From Minority Protection to Border Revisionism: The European Nationality Congress, 1925–38' in Martin Conway and Kiran Klaus Patel (eds), *Europeanization in the Twentieth Century* (Palgrave Macmillan 2010) 87.

2. the free affirmation of a nationality by the individual and, if a national register is created, the accedence to that register may be neither disputed nor verified, must be protected by law, and may not form grounds for any disadvantages in public life for the individual or the entirety of the national group,
3. the State and all compulsory corporate bodies that provide cultural functions using public funds are obligated to contribute financially to this self-administration in the same proportion as they contribute to the cultural life of the majority nation.<sup>89</sup>

The resolution was delivered by one of the Congress's most active protagonists—and a man we have encountered before: Leo Motzkin. Already as a leading member of the Committee of Jewish Delegations at the Paris Peace Conference, he had argued in favour of corporative non-territorial rights for Jews. He continued to strongly support the idea and was an attentive observer of developments in Europe; in 1926, for instance, he congratulated the Estonian Jews on implementing the country's law on cultural autonomy for their community.<sup>90</sup>

The Estonian example played an important role for the Congress of European Nationalities in general. This was in part because the Congress's initiator Ewald Ammende as well as the editor of its semi-official mouthpiece *Nation und Staat*, Werner Hasselblatt, were Estonian citizens, and in part because Estonia's cultural autonomy law was widely perceived as an achievement and frequently presented as a model. Numerous articles in minority journals and other publications across Europe testify to this fact.<sup>91</sup> Most prominent in this respect may be the survey initiated by Ammende in 1930/31, when he asked a wide range of Estonian protagonists—including left-wing and right-wing, majority and minority politicians—to share their opinions on the country's experiences with non-territorial autonomy. The predominantly positive evaluation was presented at the Congress' annual convention in Geneva in 1931.<sup>92</sup> Eventually, the Congress even

<sup>89</sup> *Sitzungsbericht des Kongresses der organisierten nationalen Gruppen in den Staaten Europas. Genf, 25.–27. August 1926* (Wilhelm Braumüller 1927) 69–70.

<sup>90</sup> The telegram was printed in the publication on the occasion of the tenth jubilee of the Jewish cultural autonomy, cf. *E. V. Juudi Vähemusrahvuse Kultuuromavalitsuse juubeli album* (Juudi Kultuurvalitsus 1936) 11.

<sup>91</sup> Estonia's non-territorial autonomy law was particularly well received by German and Jewish activists, cf. e.g. 'Die Kulturautonomiepläne der Juden und Russen in Estland' (1925) I Kulturwille. Zeitschrift für Minderheitenkultur und -politik; Friedrich von Poll, *Das Kulturautonomiegesetz der Republik Estland und seine Bedeutung für das europäische Minderheitenproblem* (unprinted DPhil thesis, Universität Würzburg 1926); Moritz Mintz, *Die nationale Autonomie im System des Minderheitenrechts unter besonderer Berücksichtigung der Rechtsentwicklung in den baltischen Randstaaten* (Walters und Rapa 1927); Fritz Cohn, *Nationale Minderheiten und kulturelle Autonomien: mit besonderer Berücksichtigung des Estnischen Kultur-Autonomiegesetzes vom 5. Februar 1925* (unprinted DPhil thesis, Universität Breslau 1929); Werner Hasselblatt, 'Hat sich die Kulturautonomie bewährt?' (1930) 4 *Nation und Staat* 441; Max Laserson, 'Das Minoritätenrecht der Baltischen Staaten' (1931) 2/1 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 401–429.

<sup>92</sup> *Sitzungsbericht des Kongresses der organisierten nationalen Gruppen in den Staaten Europas. Genf, 29.–31. August 1931* (Wilhelm Braumüller 1932).

called upon the League of Nations to recommend corporative minority systems to all European nation states.<sup>93</sup> As we will see in the next but one paragraph, the League's reaction to this proposal was bluntly dismissive.

Yet we should also not perceive the Congress of European Nationalities as a unitary block, for not all of its protagonists were such staunch supporters of non-territorial autonomy as the leading figures Ewald Ammende, Paul Schiemann, Leo Motzkin, and Max Laserson. On the one hand, representatives of small and economically weak minorities like the German Sorbs or the Austrian Slovenes feared that only few of their members would be willing to register in a national cadastre and that they would never be able to finance autonomous structures.<sup>94</sup> On the other hand, minority groups living in smaller and more compactly delimited areas, like the Sudeten Germans or the Hungarian-speaking Szeklers in Romania, preferred territorial autonomy. Ammende considered such wishes illusionary, as he was certain that the governments of unitary nation states would perceive territorial autonomy as a first step towards secession, in particular where territories adjacent to a minority's kinstate were concerned. This danger of any form of territorial autonomy being interpreted as a precursor to territorial revision was not mitigated by the fact that the Congress admitted any minority representatives only under the condition that they renounced any potential changes to borders.<sup>95</sup>

The internal disagreement was taken up by Ludvig Krabbe, deputy director of the League of Nations' minorities section, when he was officially commissioned to examine cultural autonomy on behalf of the League in 1931. He dismissed the idea as a general tool for minority protection and criticized the way in which the dominant protagonists of the Congress of European Nationalities was attempting to promote cultural autonomy as the ultimate and universal solution to all minority problems.<sup>96</sup> Yet the underlying reason for his critical remarks may have been the fact that the League of Nations and the Nationalities Congress had fundamentally opposing approaches to national diversity within states, as reflected in the very terminology of their names: the Congress had *nationalities* as its agents, whereas the League had a *minorities* section—and national minorities could exist only where a nation state existed. While the League of Nations thus insisted that there could be no further legal body between the individual and the state, the Congress wished to introduce the ethnic nation as an additional corporate legal entity with rights

<sup>93</sup> 'VII. Sitzungsbericht des Kongresses der organisierten nationalen Gruppen in den Staaten Europas', cited in Glasul Minorităților / La voix des minorités / Die Stimme der Minderheiten, Sept. 1931, no. 1, 297–298.

<sup>94</sup> Zyndul, *Panstwo w Panstwie?* (n 31) 203. On Sorbs in Germany, cf. in particular Bamberger-Stemmann, *Nationalitätenkongreß* (n 88) 176–177; on Slovenes in Austria, cf. Valentin Einspieler, *Verhandlungen über die der slowenischen Minderheit angebotene Kulturautonomie 1925–1930. Beitrag zur Geschichte der Slowenen in Kärnten* (Verlag des Geschichtsvereines für Kärnten 1980) 60–62.

<sup>95</sup> David J. Smith, Marina Germane, and Martyn Housden, '“Forgotten Europeans”: Transnational Minority Activism in the Age of European Integration' (2018) 24/1 *Nations and Nationalism* 1, 7.

<sup>96</sup> Housden, *On Their Own Behalf* (n 88) 246–249.

and duties in specific, delineated matters like education and culture. Although originally conceived by Austro-Marxist theoreticians and liberal legal scholars in the Habsburg empire as well as by minority activists in the Baltic states as a tool to increase democratic participation, the idea of an ethnic nation possessing legal personhood with autonomous agency was one that far-right and Nazi ideologists could easily get behind.<sup>97</sup>

## V. In Lieu of a Conclusion

Non-territorial autonomy was widely discussed in many different languages in interwar Europe, and the Habsburg origins of the concept were familiar to most of the protagonists in one way or another. Although three important countries—the Soviet Union, Great Britain, and France—were barely involved for different reasons, it was nevertheless a true trans-European discussion. The Soviet Union refuted non-territorial autonomy on ideological terms and therefore hardly became involved in the debate.<sup>98</sup> In France, however, we can find at least two scholars who were very well informed about the notion and origins of non-territorial autonomy. Not surprisingly, one of them was an Alsatian—Robert Redslob, a law professor at the University of Strasbourg and fierce critic of the concept.<sup>99</sup> The other was the French diplomat Jacques Fouques Duparc, who worked at the League of Nations between 1921 and 1924 and dedicated an entire chapter to Karl Renner in his book, which is maybe one of the best early histories of minority protection.<sup>100</sup>

Although German protagonists certainly dominated the interwar discourse on non-territorial autonomy, policy-makers and legal scholars from the north, south, east, and west of Europe conversed about how to deal with national diversity in journals like *Kulturwehr*, *Glusul Minorităților*, *Magyar Kisebbség* or, most importantly, *Nation und Staat*. These publications served as transnational platforms for

<sup>97</sup> Natasha Wheatley, 'Making Nations into Legal Persons between Imperial and International Law: Scenes from a Central European History of Group Rights' (2018) 28 *Duke Journal of Comparative & International Law* 481, see in particular the final section, 493–494. The ongoing ERC project 'Non-territorial Autonomy: History of a Travelling Idea' specifically investigates the claim that non-territorial corporate autonomy was translatable through the entire political spectrum from the far left to the far right.

<sup>98</sup> Besides some forms of de facto implementations of non-territorial autonomy arrangements, Matthias Battis shows that there was even a limited discussion on the topic during the 1920s in his forthcoming article, cf. Battis, *Matthias: On Common Ground—Soviet Nationalities Policy and the Austro-Marxist Premise*.

<sup>99</sup> Robert Redslob, 'Le principe des nationalités' [1931] *Recueil des Cours de l'Académie de droit international* (1931) 37/III, see in particular chapter IV, Les solutions possible, sub-chapter II.B, *Autonomie des groupes ethniques*, 50–57.

<sup>100</sup> Jacques Fouques Duparc, *La protection des minorités de race, de langue et de religion* (Daloz 1922), in particular chapter III, 'Les difficultés du problème (Les précédents autrichiens; la formule de M. Renner)' 43–53. Another scarcely received book is Dragoljub Krstić's doctoral thesis published in 1924, cf. Dragoljub Krstić, *Les minorités, l'état et la communauté internationale* (Librairie Arthur Rousseau 1924).

the discussion of national minority issues, where ideas could be exchanged, criticized, and adapted to local circumstances. In conclusion, I would like to reference a multi-part contribution published in *Nation und Staat* between 1935 and 1936 by Austrian legal scholar Karl Braunias: ‘The Further Development of Old Austrian Nationalities Law After the War’.<sup>101</sup> Braunias observed continuities of the idea of non-territorial autonomy as developed in the Habsburg Empire in several cases. On the one hand, he pointed out the general influence that Austro-Marxist thinking had on Eastern European socialist movements, particularly in imperial Russia. On the other hand, he mentioned several cases in interwar Europe that directly or vaguely involved corporate rights for nationalities—most prominently Estonia’s 1925 cultural autonomy law.<sup>102</sup>

With Braunias’s article, my chapter comes full circle, for I initially argued that both kinds of Habsburg Austrian experiences with non-territorial autonomy influenced developments during the interwar period: the national compromises in the provinces of Moravia, Bukovina, Bosnia-Herzegovina, and Galicia as well as the Austro-Marxists’ theoretical elaborations. This legacy crystallized for the first time in the context of the 1919 Paris Peace Conference, where Zionist activists lobbied for corporate rights for Jews based on non-territorial arrangements. In general, we can hardly overstate the importance of Jewish protagonists, Zionist and non-Zionist alike, for translating the idea of non-territorial autonomy to the needs of Eastern European minorities before and after the First World War.

Despite the fact that the Paris Peace Conference—and eventually the League of Nations as well—disregarded corporate minority rights, non-territorial autonomy was discussed or even (temporarily) implemented in several newly established nation states in Central and Eastern Europe during the interwar period. Debates about non-territorial autonomy did not occur in a void, and in one way or another, most discussants were familiar with the idea’s origins as well as with developments in other European countries. Sometimes they were also active in the transnational arena of minority protection, for example by participating in the annual meetings of the Congress of European Nationalities. Many protagonists involved in the interwar discussion of non-territorial autonomy thus either knew each other in person or were at least familiar with each other’s writings. Through this entangled intellectual space, the idea of non-territorial autonomy found its way from late imperial Austria into the post-Habsburg period—and although its voyage sometimes followed direct lines, it very often occurred via indirect and winding paths.

<sup>101</sup> Karl Braunias, ‘Die Fortentwicklung des altösterreichischen Nationalitätenrechtes nach dem Kriege’ (1935–36) 9 *Nation und Staat* 226–238, 288–301, 358–370, 578–589.

<sup>102</sup> *Ibid.*, (1936) 9/6 364–367.